

**Post-Hearing Questions for the Record
Submitted to DHS Secretary-designee Kirstjen M. Nielsen
From Senator Kamala Harris**

“Nomination of Kirstjen M. Nielsen to be Secretary, U.S. Department of Homeland Security”

November 8, 2017

Deferred Action for Childhood Arrivals (DACA)

At your nomination hearing, you committed that the information submitted by DACA applicants will not be shared for enforcement purposes outside of limited circumstances, to make this policy position clear to DHS employees and a response to the letter I sent to Acting Secretary Duke on this matter. You also committed to me that young people who have received DACA will not be enforcement priorities.

1. If you are confirmed, by what means do you plan to make the information sharing policy related to DACA information articulated above clear?

As I understand it, currently there are limited circumstances when such information might be shared to include national security or public safety. To my knowledge, there are limited reasons or exceptions to enable that information to be shared for any other enforcement purpose. I also understand this to be consistent with the policy implemented and observed by the previous Administration. If confirmed, I will review whether there is any ambiguity in the current policy such that additional communication to personnel is required. If confirmed, I commit to meeting with Acting Commissioner McAleenan, Acting Director Homan, and Director Cissna to ensure that all DHS policies are clearly understood by personnel at all levels. Written guidance will be issued to reinforce existing policies when necessary.

2. Within how many days of confirmation would this be done?

I do not have a definite time table as I am not certain any further articulation is necessary until, if confirmed, I have a chance to review current guidance in place and consult with the relevant components.

At your nomination hearing, you committed consider extending the now-passed October 5, 2017 deadline for DACA renewals. You also committed to considered the extraordinary circumstances that DACA recipients faced in meeting that renewals, including the hurricanes and wildfires that occurred in that time and the fact most Americans are unable to pay an unexpected \$500 bill.

1. What is your deadline for completing this reexamination of the DACA renewal deadline?

Should I be confirmed, I commit to looking into the concerns raised by some on the committee that persons in disaster areas were unable to renew their applications. As

the nominee, I do not have a definite time table for such a review. Should I be confirmed, I will work with DHS leadership to determine how best to address and prioritize the Committee's requests for various reports within current resources to ensure that DHS is providing to the Congress all needed oversight information including meeting statutory reporting requirements.

2. Please provide the number of individuals eligible to renew their status by the October 5 renewal deadline?

As the nominee, I am not privy to that information at this time and do not know the Department's ability to produce it.

3. Will you transmit an explanation of your decision on extending the DACA renewal deadline to HSGAC, including how the extraordinary circumstances of natural disasters and an unexpected \$500 bill weighed in your decision?

If confirmed and if a review determines there is the need for an additional decision on the current Administration position on DACA, I will of course communicate such information to the Committee and Congress.

Previously, DHS directly notified DACA recipients of the need to renew their status as their DACA expiration date approached. It is my understanding that this practice was changed under this Administration.

1. Were you involved with this policy change?

I am not aware of such a policy change if it exists, nor was I involved in such a decision if it took place.

2. If so, please describe the reason DHS stopped providing this notification to DACA recipients and provide any related memo or guidance effecting his change.

I am not aware of such a policy change if it exists, nor was I involved in such a decision if it took place.

During your nomination hearing, you represented that you were part of the decision to end the DACA program in a policy-coordinating role, and that you attended a late August 2017 meeting where to decision to end DACA was made.

1. Did you or any other Administration officials from DHS, DOJ, or the White House, consult outside stakeholders on the decision to end DACA prior to September 5, 2017?

I did not consult outside stakeholders. I have been advised that because your question relates to the subject of ongoing litigation, it would not be appropriate for me to comment further.

2. If so, can you provide a list of those stakeholders?

Generally, as a nominee, I do not have access to lists of stakeholders who may have been consulted. I have also been advised that because your question relates to the subject of ongoing litigation, it would not be appropriate for me to comment further.

3. Did you or any other Administration officials from the White House, DHS, or DOJ discuss the decision to end DACA with any of the state attorneys general or representatives of the state attorneys general threatening to file suit to end DACA?

I did not have such discussions. I have been advised that because your question relates to the subject of ongoing litigation, it would not be appropriate for me to comment further.

4. The Center for American Progress has estimated that the rescission of DACA will cost the U.S. \$460 billion in gross domestic product over ten years and cost California \$11 billion annually. Other economists and business leaders have agreed that ending DACA will not only hurt those with DACA, but our economy as a whole. Did you consider the adverse economic impact of rescinding DACA as part of your decision? If so, please detail any related research, data and findings as part of that consideration.

To be clear- I did not make a decision. The DHS Acting Secretary made the decision upon advice provided by the Department of Justice. I have been advised that because your question relates to the subject of ongoing litigation, it would not be appropriate for me to comment further.

Immigration Enforcement Priorities in February 20th Implementation Memo

At your nomination hearing, you agreed that immigration enforcement should prioritize violent criminals, serious criminals, and national security risks. You committed to issuing written guidance to agents that prioritize immigration enforcement.

1. If confirmed, within how many days of confirmation will you issue this guidance?

If confirmed, I will review whether there is any ambiguity in the current policy such that additional communication to personnel is required. If confirmed, I commit to meeting with Acting Commissioner McAleenan and Acting Director Homan to ensure that all DHS policies are clearly understood by personnel at all levels. Written guidance will be issued to reinforce existing policies when necessary. I do not have a definite time table as I am not certain any further articulation is necessary until, if confirmed, I have a chance to review current guidance in place and consult with the relevant components.

2. Will you provide me a copy of this written guidance?

Written guidance will be issued to reinforce existing policies if and when necessary, and appropriate information will be shared with Congress.

3. Will you also provide me a copy of previous guidance that has been given to ICE and CBP agents about the February 20th implementation memo, including any broadcast e-mails from agency or department leadership?

I am not aware of the formats of previous guidance issued by DHS or its components, if confirmed I will ensure appropriate information is shared with Congress.

4. Will you commit to providing training to ICE and CBP agents that prioritizes immigration enforcement to focus on violent and serious criminals as well as on sensitive location policy?

Yes.

Immigration Enforcement at Sensitive Locations

At your nomination hearing, you committed to keeping DHS's policy of immigration enforcement at sensitive locations, including churches, schools, and hospitals. You also committed to issuing guidance to ICE and CBP about the sensitive locations policy in light of the recent apprehension of Rosa Maria Hernandez.

1. If confirmed, within how many days will you issue this guidance?

If confirmed, I will review whether there is any ambiguity in the current policy such that additional communication to personnel is required. If confirmed, I commit to meeting with Acting Commissioner McAleenan and Acting Director Homan to ensure that all DHS policies are clearly understood by personnel at all levels. Written guidance will be issued to reinforce existing policies when necessary. I do not have a definite time table as I am not certain any further articulation is necessary until, if confirmed, I have a chance to review current guidance in place and consult with the relevant components.

2. Will you provide me a copy of this written guidance?

If confirmed, written guidance will be issued to reinforce existing policies if and when necessary, and appropriate information will be shared with Congress.

Unaccompanied Minors

At your nomination hearing, you committed to learning more about the human impact of deporting unaccompanied minors, as well as to providing me with any policy memos that the department is planning to implement affecting the processing of unaccompanied minors.

1. What is your timeline for completing this outreach?

I do not have a definite time table as the nominee because I do not yet know efforts the Department has already undertaken or has underway to take these inputs. Should I be

confirmed, I will work with DHS leadership to determine how best to address and prioritize the Committee's requests within current resources to ensure that DHS is providing to the Congress all needed follow up actions including meeting statutory reporting requirements.

2. Who do you plan to meet with during this outreach? Do your stakeholder groups include organizations that represent unaccompanied minors in immigration proceedings, non-profits advocating for unaccompanied minors, or unaccompanied minors themselves?

I do not have a particular set of stakeholders in mind as the nominee because I do not yet know efforts the Department has already undertaken or has underway to receive inputs and from which stakeholders. I would certainly ensure the Department includes appropriate stakeholder organizations in gathering input.

Temporary Protected Status

Over the next several months, you will be deciding whether to extend Temporary Protected Status for approximately 300,000 people—mostly Salvadorans, but also Haitians, Syrians, Hondurans, and more. Without TPS, virtually all of these people would go from having work authorization and being lawfully present to being undocumented. For most, ending TPS would strip lawful status that they have had for more than 10 years—for some even 20 years.

1. What process will you go through to analyze whether conditions continue to support TPS for each of the countries?

Should I be confirmed, I will meet with the Department of State to understand what data is available to meet the legal determinations requirements under the INA as passed by Congress. The process of TPS review requires the Secretary of Homeland Security to review conditions in each country designated for Temporary Protected Status (TPS) and, after consultation with appropriate U.S. government agencies (including the Department of State), to determine whether the requirements for designation continue to be met and whether an extension, re-designation, or termination is warranted. As I understand it, the factors the Secretary must consider when determining whether the requirements for the temporary designation continue to be met are based on the criteria identified in the statute that accord with the specific basis for designation. If confirmed, I will ensure that all TPS decisions consider all factors allowable under the laws as passed by Congress.

2. Will you take into account the assessments of experts with deep knowledge of the conditions in the country at issue?

Yes

In recent years, the United States has invested heavily in partnerships with the governments of El Salvador, Honduras, and neighboring countries to promote security and prosperity. In addition to working to increase citizen security and opportunity in those countries,

these efforts also have been motivated by a desire to address the root causes of migration. Over the past years, many experts in the Western Hemisphere, including organizations that work in and around Central America, have argued that ending Temporary Protected Status and forcing the return of more than 250,000 Hondurans and Salvadorans could jeopardize much of the work we have been doing. That could both worsen conditions in the region and increase the number of people seeking opportunity further north along our borders.

1. Several big TPS decisions are coming up in the weeks and months ahead. As Secretary, how will you weigh these important factors when making your decision?

I will ensure that all TPS decisions consider all factors allowable under the laws as passed by Congress. The process of TPS review requires the Secretary of Homeland Security to review conditions in each country designated for Temporary Protected Status (TPS) and, after consultation with appropriate U.S. government agencies (including the Department of State), to determine whether the requirements for designation continue to be met and whether an extension, re-designation, or termination is warranted. As I understand it, the factors the Secretary must consider when determining whether the requirements for the temporary designation continue to be met are based on the criteria identified in the statute that accord with the specific basis for designation.

In May, then-Secretary of Homeland Security John Kelly extended TPS for Haiti, concluding conditions on the ground warranted an extension. Since that time, the country has been hit by two devastating hurricanes--Irma and Maria--and is in the midst of a steady increase in diphtheria cases.

1. Given that conditions in Haiti warranted an extension of TPS in May, it seems they would certainly warrant a further extension when that decision is set to be made in two weeks. Does that sound right?

I would not, as nominee, pre-judge any future TPS decisions in either direction at this time whether they would be made by me or Acting Secretary Duke depending on the timing. If confirmed, I will ensure that all future TPS decisions made by me in the role of Secretary would consider all factors allowable under the laws passed by Congress..

With so many people and families directly affected by the decisions you will make on TPS, it is extremely important that the basis for those decisions be transparent and clearly explained to the public.

1. Will you commit to explaining in full how you arrived at the decision in each case and what factors were important to your decision?

If confirmed, I would intend to follow current practice in which the Department shares significant information with Congress and the public whenever a TPS decision is made by the Secretary.

Asylum Seekers

In 2015, The Office of Inspector General expressed concern that DHS was violating international law by referring individuals who express fear of persecution for criminal prosecution for illegal entry and re-entry prosecutions before it is determined whether they might have a valid claim for protection under U.S. law.

1. What will you do to end the practice of referring asylum seekers for criminal prosecution?

I am not familiar with the specifics of this practice as referred to in the question. Should I be confirmed, I will work with relevant DHS leadership including Acting Commissioner McAleenan, Acting Director Homan and Director Cissna to understand the practice and ensure that those claiming credible fear are provided the appropriate and legal hearing for asylum seekers.

2. Are you aware of a recent report by Human Rights First documenting cases of asylum-seekers being turned away at ports of entry and complaints that CBP officers are coercing or pressuring applicants for admission, including asylum seekers, from withdrawing their applications?

I am not aware of this particular report.

3. What steps will you take to support the investigation of the aforementioned complaint and to ensure that CBP officers are complying with the law and held accountable where they are noncompliant?

If confirmed, I will work with Acting Commissioner McAleenan to review the report and ensure CBP follows all laws, regulations and policies. I will also work with CBP to ensure CBP Officers and Border Patrol Agents receive any needed training, are complying with the law, and held accountable in accordance with the law and Department policy.

4. What steps will you take to ensure that both Border Patrol agents and Office of Field Operations officers are trained on this legal obligation and how referral of asylum-seekers for prosecution constitutes a violation of U.S. law?

I believe training is critical for success. I commit to working with Acting Commissioner McAleenan to ensure that Border Patrol Agents and CBP Officers are adequately trained on all legal obligations and that the related laws, policies and guidance are clearly articulated and disseminated.

5. What will you do to ensure that border enforcement operations, policies or practices in no way dissuade or prevent genuine asylum-seekers from seeking protection in the United States?

I will work with DHS Leadership to ensure all personnel are following all applicable laws, regulations, and policies.

Separating Mothers from Children

The Young Center for Immigrant Children's Rights has reported a dramatic increase in the number of requests for Child Advocates for children separated from parents by immigration authorities this year. For example, in New York, there has been nearly a fourfold increase in such requests as compared to the same quarter of the prior year.

1. If confirmed, will you issue written guidance to make clear that mothers are not to be separated from their children at the border?

I am not familiar with the increase cited in the question nor its causation. Should I be confirmed, I will work with Acting Commissioner McAleenan and Acting Director Homan to understand the current practice and policy and if necessary work with them to issue additional guidance.

2. What are you doing to ensure families are not being systematically separated, and if they are, what steps is the Department taking to ensure reunification and communication of separated family members?

As the nominee, I currently have no role in what you describe. If confirmed I will review current policies to ensure DHS is not unnecessarily separating families. My understanding is that while ICE has limited-capacity family residential detention facilities to house alien family members, the separation of alien families generally occurs outside the United States when one or both parents, particularly those from countries in Central America, depart their countries and illegally enter the United States, leaving behind their children, or, the parent(s) arrange for illicit human smuggling organizations to smuggle their children into the United States. In either case, the children arriving at or between ports of entry entering the United States without their parents or legal guardians are processed as unaccompanied alien children (UAC) upon apprehension and, pursuant to the Trafficking Victims Protection Reauthorization Act (TVPRA), the Department of Health and Human Services (DHHS), not DHS, has the sole statutory authority and obligation to provide for the care and custody of such children and to seek reunification with their parents or suitable sponsors in the United States. I am aware that ICE does have an Online Detainee Locator System to help family members locate individuals in immigration custody.

3. If you are confirmed, will you report to me whether DHS is currently drafting or considering a policy to separate families at the border?

If confirmed, I commit to sharing additional policy guidance and appropriate information with Congress.

4. Will you commit to review what procedures exist when U.S. Customs and Border Protection (CBP) makes such a decision (i.e, reviews, opportunity for parents to be represented in challenging a separation)?

I will.

Detention of Pregnant Immigrants

A recent report by the Women's Refugee Commission found that 292 pregnant women were held in immigrant detention during the first four months of this year. ICE policy has been that pregnant women are not to be detained unless they are subject to mandatory detention or extraordinary circumstances existed.

1. Do you commit to maintain this policy and to issue guidance to ensure that the policy is being followed?

I commit to reviewing the policy as I am unfamiliar with current policy and practice with regard to pregnant detainees. I would notify Congress if any change to existing policy were to be recommended.

Detention Standards

There have numerous reports of inhumane treatment in detention facilities that includes abuse of force by officers, excessive use of segregation and lockdown, and medical negligence leading to deaths. Despite this, ICE has shut down the Office of Detention Policy and Planning, which was charged with overseeing detention reform, and has announced plans to weaken governing standards in many detention facilities.

1. Will you commit to maintaining or strengthening standards for immigration detention, which is civil in nature?

Yes.

2. Will you commit to a review and overhaul of the current inspections system, as recommended by the Homeland Security Advisory Council in December 2016?

I am unfamiliar with the specific recommendation of the HSAC but if confirmed will review the status of implementation of that recommendation with DHS leadership.

Parole Programs

There have been reports that U.S. Citizenship and Immigration Services (USCIS) is reviewing parole programs.

1. If confirmed, do you commit to reporting to me which parole programs is USCIS reviewing and what is the status of those reviews? Will you also specifically report if the USCIS is reviewing the Filipino World War II Veterans Parole Program (FWVP)? If so, what is the status of that review?

If confirmed, I commit to sharing the status of such reviews and appropriate information with Congress.

2. According to the most recent data from USCIS, there are 282 pending applications to the FWVP program. What will you do to ensure that processing these applications is prioritized?

If confirmed, I will consult with the Director of USCIS on this topic.

Removal of Refugees

ICE's position is that countries have an obligation to accept their nationals, regardless of repatriation agreements set in place between the U.S. and foreign governments.

1. What are your thoughts on detention when no proof of citizenship can be established (e.g. people born in refugee camps)?

My understanding is that for aliens without a known country of nationality or citizenship who are ordered removed from the United States, ICE will endeavor to locate an appropriate removal country in accordance with the law. In addition to one's country of nationality or citizenship, the Immigration and Nationality Act authorizes removal of aliens to the country of their birth, last residence, or one that is willing to accept them. ICE does not indefinitely detain aliens, regardless of their citizenship or nationality, or lack thereof. ICE detains aliens for the purpose of removal, and the mere fact that an alien lacks proof of citizenship does not necessarily preclude removal.

2. In cases when ICE is detaining individuals who do not have travel papers issued under repatriation agreements, what will you do as Secretary to ensure meaningful oversight of prolonged detention?

ICE does not indefinitely detain aliens, regardless of their citizenship or nationality, or lack thereof. Should I be confirmed, I would ensure that ICE continues to comply with all constitutional and statutory requirements related to the detention of aliens pending their removal from the United States pursuant to a final order of removal. Further, I understand that DHS has regulations in place that are consistent with Supreme Court precedent (*Zadvydas v. Davis*, 533 U.S. 678 (2001)) and does not generally detain aliens for whom removal in the reasonable foreseeable future is not significantly likely.

Management Challenges at DHS

At your nomination hearing, you represented that you had read the DHS Inspector General's report from last week that found that, "DHS often fails to update and clarify guidance and policies, ensure full and open communication between employees and management, offer sufficient training, and reduce administrative burdens. Our reports are replete with examples of insufficient training to enable and enhance job performance." You also represented that you read a previous DHS IG report that found the same thing. You then committed to report to me on

what you will have done to increase training and clarify guidance and policies to frontline employees.

1. If confirmed, by what date do you expect to make this report?

As I stated at the hearing, I agree with you about the importance of training. As a nominee, I do not have a definite time table for such a review. Should I be confirmed, I will work with DHS leadership to determine how best to address and prioritize the Committee's requests for various reports within current resources to ensure that DHS is providing to the Congress all needed oversight information including meeting statutory reporting requirements. If confirmed, I commit to working with the Under Secretary for Management to increase management training throughout the Department and ensuring that clear guidance is shared with frontline employees. After meeting with the Deputy Secretary, Under Secretary for Management, and other component heads, I will be able to provide you with a timeline for the report.

2. What do you expect to do to respond to the DHS IG's ongoing concerns about clarity of policies and training around policies?

I share the DHS IG's concerns. I also believe that guidance and policies should be consistently reviewed, updated, rescinded or sunsetted as risk and operational requirements mandate. If confirmed, I will work to ensure that internal controls are in place to ensure a robust policy process from development through to issuance and review. I also commit, if confirmed, to working with the Deputy Secretary and Under Secretary of Management to develop a unified plan to increase training and ensure all DHS employees are given clear policy guidance.

Election Security

On September 22, 2017, state officials elected to oversee elections were officially notified by DHS – for the first time – of attempted or actual intrusions into their election systems during the 2016 election.

1. Why did DHS wait for over a year to notify secretaries of state and other elected officials of actual or attempted security breaches in their states? Has DHS considered the implications of this delay on securing such systems in advance of upcoming elections?

As the nominee, I do not have access to all of the steps that DHS took to notify state and local officials of actual or attempted security breaches in their election systems prior to the 2016 election. However, I am aware that DHS and other federal agencies shared with election officials information regarding election-related threats, including the DHS issuance of several public statements between August and Election Day to share information regarding the threat and urging election officials to seek cybersecurity assistance from either DHS or other experts. As I understand it, the Secretary personally held multiple phone calls with election officials to highlight the seriousness of the threat. As early as August 2016, DHS broadly shared specific tactics and indicators observed against some states—specifically information

regarding targeting of voter registration systems—with state and local governments to increase awareness of the threat and asked recipients to check their systems for similar activity.

DHS and the Office of the Director of National Intelligence declassified attribution and alerted the public to malicious activity directed towards our elections in early October 2016. Several days later, DHS's National Cybersecurity and Communications Integration Center (NCCIC) and the Federal Bureau of Investigation (FBI) published and shared with election officials a joint analysis report containing recommendations and over 650 technical indicators of compromise to assist election officials with detecting malicious activity on their networks. Some of these indicators had previously been classified and were pulled from analysis of previous incidents relevant to the threat. Between August and Election Day, DHS and other interagency partners shared several other products, including best practices specific to election infrastructure, intelligence assessments, risk assessments, and technical information to assist election officials with network protection. Further relevant information was declassified in January 2017 and provided in an intelligence community assessment.

In 2016, through intelligence and information sharing efforts with trusted third parties such as the Multi-State Information Sharing and Analysis Center (MS-ISAC) and state and local cybersecurity officials, the Department and its partners learned of specific communications or attempted communications from malicious infrastructure to known state or local government networks in at least 21 states. At the time these communications were identified and highlighted to network operators, the United States Government had not yet completed its attribution work and therefore did not attribute the communications to Russia. In some cases, state and local government network operators further shared reports with election officials, but not in all cases. The decision to share was at the discretion of the network operators. As I understand it, and should I be confirmed would ask for a complete briefing- In more recent DHS discussions with some of these network operators, it was communicated that a major reason for not sharing further with elections officials was the fact that the majority of the observed communications were preparatory in nature and indicated no evidence of compromise.

I understand some Secretaries of State and other state chief election officials expressed frustration at not being informed whether their states were included in the 21 states referenced in DHS's June 2017 testimony before Congress. To address these concerns, DHS reached out to Secretaries of State and State Election Directors to let them know if their state was or was not included in DHS's assessment.

If confirmed, I will ensure that DHS remains committed to improving the effectiveness of information sharing protocols. As the sector-specific agency, DHS is providing overall coordination guidance on election infrastructure matters to subsector stakeholders. As part of this process, the Election Infrastructure Subsector Government Coordinating Council (GCC) was established as described above. The Election Infrastructure Subsector GCC is a representative council of federal, state, and local partners with the mission of focusing on sector-specific strategies and planning. This includes the development of information sharing protocols and establishment of key working groups, among other priorities.

2. At a June Senate Intelligence Committee hearing, DHS Acting Under Secretary for Cybersecurity and Communications Janette Manfra asserted that DHS was developing a policy to help states secure their election systems. What is the timeline for establishing such a policy?

DHS has been actively working with election officials to improve the security of the Nation's election infrastructure (see previous answer). DHS's National Protection and Programs Directorate (NPPD), in collaboration with the Election Assistance Commission (EAC), the Department of Justice (DOJ), and others, engage directly with election officials. Since the summer of 2016, DHS has focused on prioritizing cybersecurity assistance to election officials.

With the establishment of election infrastructure as a critical infrastructure subsector, DHS has been formalizing policies and structures to support the prioritization of assistance for election officials. As part of this process, DHS established the Election Infrastructure Subsector (EIS) GCC, described above.

In addition, DHS is working with the EAC to identify Sector Coordinating Council (SCC) members. Sector Coordinating Councils are self-organized and self-governed councils that enable critical infrastructure owners and operators in the private sector, their trade associations, and other industry representatives to interact on a wide range of strategies, policies, and activities.

The full GCC and SCC formation of the subsector will help shape policy direction over the long term about how to best help states secure their election systems. These bodies serve as the key forum to coordinate the development of information processes and protocols, as well as other strategic initiatives, such as incident response plans.

3. One of the impediments to providing more-detailed threat assessments to the states in 2016 was the classified nature of the information. What is the timeline for providing state officials with clearances? Once clearances are granted, what process will be in place to ensure threat assessments are provided to the states?

It is important to recognize that the Department of Homeland Security seeks to share information at the lowest classification level whenever possible, and when possible in an unclassified form. In an effort to expedite security clearances for Secretaries of State and chief election officials to ensure they are able to receive classified threat information related to state and local election systems, the Department of Homeland Security worked closely with the National Association of Secretaries of State (NASS) and the National Association of State Election Directors (NASED) to identify key state election officials with oversight of election infrastructure.

As I understand it, this past August, the DHS Office of Intelligence and Analysis (I&A) contacted state chief election officials on behalf of the NPPD-led Election Infrastructure SSA to begin the security clearance process. The Election Infrastructure Subsector SSA continues to work with state election officials and DHS I&A to support the processing of clearances for state chief election officials in each state. It is anticipated that the clearance nomination process will be expanded to include additional state election personnel to allow for additional election-related staff to receive classified information at the state and local level.

As I understand it, ensuring that appropriate election officials in the States have security clearances is a top priority for the Department. However, other agencies also play a critical role in the timely processing of security clearance applications- for example those agencies that conduct background investigations. Also, some security clearance applications can take longer to process due to derogatory information in the applicant's background, potentially leading to the denial of a clearance.

If confirmed, I am committed to ensuring that election officials receive appropriate threat information. While it is the goal of DHS, and would be my goal if confirmed, to provide these clearances as quickly as possible, it should be noted that the Department has other tools to provide officials with classified information when necessary. For instance, through DHS processes or by leveraging those of partner agencies, DHS can provide one-day read ins for classified information when appropriate.

More specifically to the sharing of threat assessments, in October, the Election Infrastructure Subsector SSA, in conjunction with state partners, chartered an EIS Government Coordinating Council (GCC). One of the main goals of the Election Infrastructure Subsector GCC is to develop information sharing protocols and processes to better speed-up information sharing and enhance current election-related intelligence sharing. Overall, the process will leverage existing intelligence sharing resources that DHS has coordinated at the state level, including DHS field intelligence officers, NPPD regional directors, state and local fusion centers, and other accessible facilities critical infrastructure stakeholders use to receive classified briefings.

4. I am working with my colleague, Senator Lankford, and a bipartisan group of senators to draft a bill that aims to address many of the vulnerabilities and inefficiencies surrounding state election cybersecurity, such as improving information sharing, modernizing election infrastructure, and providing guidelines about steps state officials can take to strengthen their defenses. Does this sound like a measure DHS would support?

The Department of Homeland Security is committed to working with State and local partners to improve information sharing and enhance the security of election systems. As part of this effort, the Department strongly support efforts to address vulnerabilities in election infrastructure. If confirmed, I look forward to working with Congress to improve election cybersecurity.

5. Homeland Security has reportedly formed an election security task force to improve state and local voting infrastructure, drawing on resources and expertise from across the Department. Can you please provide details regarding the mission of the task force, the number of staff and budget of the task force, mechanisms for coordinating with state election officials, and plans to report its operational plans and observations to Congress?

Yes, DHS has stood up an Election Task Force (ETF) to improve coordination with and support to its stakeholders. DHS's National Protection and Programs Directorate (NPPD) is leading the task force. The task force includes personnel from the Office of Cybersecurity and Communications, the Office of Infrastructure Protection, and the Office of Intelligence & Analysis, among others who have been designated by the Department to prioritize their efforts in support of the ETF. As I understand it, as the efforts are proceeding, DHS is cross-purposing personnel and re-assigning personnel over the course of the next month. Given the stand up status, as I understand it firm numbers on personnel and budget are changing as often as daily.

I have been advised that the ETF focuses efforts on:

- *Improving communication with election officials in order to provide understanding and actionable information to assist them in strengthening the security of their election infrastructure as it relates to cybersecurity risk.*
- *Ensuring coordination of these activities across the Department.*
- *Increasing coordination with intelligence community and law enforcement partners.*
- *Supporting regional efforts to ensure they are coordinated and provide election officials with the support and expertise they need.*

If confirmed, I am committed to working with Congress and election infrastructure stakeholders to ensure a full understanding of the Department's efforts to assist with the security of our elections.

Invasive Species

California citrus farmers have assets worth up to \$2.5 billion in fruits they produce and ship all over the world. However, the Asian citrus psyllid is an invasive species that is still found to threaten to compromise this industry.

1. If confirmed, will you commit to get me an answer to the following questions within 30 days:

I cannot commit to a definite time table as the nominee because I do not yet know what other responses CBP and DHS may be working on or how long this data will take to compile. Should I be confirmed, I will work with DHS and CBP leadership to determine how best to address and prioritize the Committee's requests within current resources to ensure that DHS is providing to the Congress all needed follow up actions

including meeting statutory reporting requirements. We would provide this information to you as soon as possible.

- a. What specific plans has CBP instituted at ports of entry to ensure that invasive species does not enter the California?
- b. Does CBP share data and coordinate a unified management plan with other federal agencies like the USDA, Fish and Wildlife, and the EPA to ensure early detection, exclusion, and eradication of invasive species?
- c. What sort of data does the CBP have on invasive species that have entered and been caught or have entered but have been overlooked at ports of entry?
- d. I understand that mail is another mode that invasive species have increasing entered into our nation. Could you tell me your coordination with the U.S. Postal Service to deter pests from entering?
- e. What percentage of CBP's budget is dedicated to invasive species management? Does this get shared with other federal agencies?
- f. Do you think more funding is needed to bolster CBP's invasive species program or do you think there are other recommendations that could help improve the programs

Wildfires

During our meeting last Thursday, you committed to looking further into providing a blanket waiver for individuals who have lost green cards, naturalization certificates and other immigration documents as a result of the Northern California wildfires. Yesterday, my office received an e-mail from DHS staff re-stating current policy related to individuals waivers.

1. Does this represent closure of your consideration of this matter, and if not, within how many days of your confirmation will you provide a decision?

I was not aware that DHS staff provided the current policy and I have not reviewed it. As discussed, should I be confirmed, I commit to reviewing current policies and their application to wildfire survivors.

Preliminary estimates from the state suggest that \$1.4 billion is needed from FEMA for disaster relief like affordable housing.

1. Will you commit to providing California the funding needed to help victims of the wildfire rebuild their lives?

DHS and FEMA are and will be committed to helping those affected by the wildfire rebuild their lives as allowed within the legal authorities and funding provided by Congress.

As of November 5, 2017, there have been 3,658 household requests for temporary shelter but FEMA has not been able to provide shelter for all the requests.

1. Will you commit to providing FEMA Individual Assistance, like temporary shelter, as quickly as possible?

Yes.

FEMA has partnered with state and local government to provide them with Public Assistance for Categories A and B (debris removal and emergency response measures).

1. Given the wide scale damage to publically owned facilities, will you also commit to ensuring that you will work to allow for Public Assistance Categories C-G, which helps pay for repairs to transportation, water, and other public infrastructure?

Yes.

Executive Orders Restricting Travel from six Muslim-majority Countries

1. What was your role, both at DHS and at the White House, in the policy formulation and roll-out of the two Executive Orders known as the First and Second Travel Ban and the September 25, 2017 presidential proclamation updated Executive Order 13780?

I served as the Chief of Staff to Secretary Kelly when the two Executive Orders were issued and as Principal Deputy Chief of Staff at the White House when the proclamation was issued. In those capacities, I was involved in the rollout of the Executive Orders and the proclamation and the policy formulation of the proclamation. I have been advised that, in part because your question relates to the subject of ongoing litigation, it would not be appropriate for me to discuss the details of internal deliberations and decision-making.

2. Do you believe that these Executive Orders increase public safety? If so, please explain how.

In general, I believe it is a well-established right and obligation of any country to control its borders, which includes knowing who enters and whether they intend to do harm. The orders and the proclamation address nationals of foreign nations that are state sponsors of terrorism; that are otherwise compromised by terrorism; or that present other serious security concerns. The proclamation in particular was the result of careful evaluation of national-security considerations by the professional men and women of DHS and other agencies. I have been advised that, in part because your question relates to the subject of ongoing litigation, it would not be appropriate for me to comment further.

Transparency and Congressional Oversight

In your policy questionnaire and during your nomination process, you stated that you that your leadership and management style promoted transparency.

As the nominee, I do not currently have access to any of the information requested below in parts “a.”-“k.” nor do I know what would be required by the components attempting to compile such information in order to produce such a report. I am unable to determine at this time whether such a report is feasible and if so, on what interval it could be produced. If confirmed I would commit to looking into how such information could be produced within the limits of existing information systems at regular intervals and provided to the Committee on a regular basis given statutory requirements and current resources. I commit to working with you to ensure that the Committee has the information it needs to meet its oversight duties.

1. Would you commit to sending my office a monthly update on all ICE and CBP apprehension and removals broken down by the following data fields:
 - a. Age
 - b. Gender
 - c. Country of Origin
 - d. Country of Citizenship
 - e. Immigration Status, including if they are a current or former DACA recipient
 - f. Nonimmigration-related criminal offense broken down by felony, misdemeanor punishable by more than 90 days imprisonment, and misdemeanor punishable by less than 90 days imprisonment including whether the offense was within the last five years or not.
 - g. Immigration-related civil offense, such as visa fraud or visa abuse.
 - h. Whether individuals had pre-existing removal order broken down by whether the order was effectuated and whether the order is more or less than 5 years old at the time of apprehension.
 - i. Whether individuals were apprehended within 1,000 feet of a courthouse, school, hospital, place of worship, site of a religious ceremony, or public demonstration.
 - j. Whether individuals apprehended or removed served in the U.S. Armed Services.
 - k. Whether individuals apprehended or removed have at least one U.S.-born child.

Additional Questions:

During our meeting last Thursday, you committed to looking further into providing a blanket waiver for individuals who have lost green cards, naturalization certificates and other immigration documents as a result of the Norther California wildfires. Yesterday, my office received an e-mail from DHS staff re-stating current policy related to individuals waivers.

1. Does this represent closure of your consideration of this matter, and if not, within how many days of your confirmation will you provide a decision?

I was not aware that DHS staff provided the current policy and I have not reviewed it. As discussed, should I be confirmed, I commit to reviewing current policies and their application to wildfire survivors.

ICE has announced plans to drastically expand immigration detention facilities. It is my understanding that the areas being considered for these facilities lack access to legal service providers.

1. Will you review this issue, and provide a report to this committee on the availability of legal providers within 100 miles of any planned detention facilities?

I am not currently familiar with this issue. Should I be confirmed, I commit to working with Acting Director Homan to review and assess this issue and working with DHS leadership to determine how best to address the Committee's requests for various reports within current resources to ensure that DHS provides the Committee with needed oversight information.

On November 9, 2017, the Washington Post published an article that included reports that White House Chief of Staff John Kelly and White House Homeland Security Advisor Tom Bossert sought to pressure Acting Secretary Elaine Duke to end TPS for Honduras.

1. Were you aware of reported calls to Acting DHS Secretary Duke about ending TPS for Honduras?

I am aware that various calls were conducted between the Acting DHS Secretary and various WH officials with respect to TPS determinations.

- a. If so, what was your role in making or preparing White House officials to make those calls?

I had no role in making or preparing WH officials to make or receive those calls.

2. While you were employed at the White House, did you have any conversations with Acting DHS Secretary Duke or other DHS staff about the TPS program, and specifically about TPS for Honduras, Nicaragua, El Salvador, or Haiti?

I did not have any conversations with Acting DHS Secretary Duke about the TPS program. I did have calls with other DHS staff regarding the TPS program, its deadlines and the need to ensure an orderly rollout of any decisions.

- a. If so, what was the content of those conversations?

I had conversations with DHS staff to verify TPS deadlines and discuss the need to ensure an orderly rollout of any decisions.

3. Based on the Washington Post reporting, it seems that some at the White House have prejudged whether to end TPS status for Honduras. Do you plan to end TPS for Honduras?

Should I be confirmed, in reviewing any TPS related decision, I will consult with the State Department, DHS leadership, and other experts to ensure that I fully understand all legal TPS considerations to include the country conditions. In my current role, I have not made any decisions or plans with respect to the TPS of any country.

- a. If yes, what on-the-ground facts form the basis for your decision to end TPS for Honduras?

N/A

- b. If not, what will is your timeline for reaching a decision on TPS for Honduras? Also, what facts will you use when making your decision on whether to extend TPS for Honduras?

Should I be confirmed, I will endeavor to meet all legal deadlines- including timelines under the law for TPS. Should I be confirmed, I will also meet with the Department of State to understand what data is available to meet the legal determinations requirements under the INA as passed by Congress. The process of TPS review requires the Secretary of Homeland Security to review conditions in each country designated for Temporary Protected Status (TPS) and, after consultation with appropriate U.S. government agencies (including the Department of State), to determine whether the requirements for designation continue to be met and whether an extension, re-designation, or termination is warranted. As I understand it, the factors the Secretary must consider when determining whether the requirements for the temporary designation continue to be met are based on the criteria identified in the statute that accord with the specific basis for designation. If confirmed, I will ensure that all TPS decisions consider all factors allowable under the laws as passed by Congress.

4. Are you aware of what procedures DHS followed in determining that TPS for Nicaragua should be terminated, and if so, please describe such procedures.

Given my nomination status, I am not familiar with the specific procedures that DHS followed with respect to the TPS determination for Nicaragua.

5. If confirmed, will you commit to provide any DHS memos, letters or emails regarding the termination of TPS in Nicaragua?

Should I be confirmed, it is my understanding that I would not be able to provide pre-decisional information but if appropriate and compliant with law and policies, I will provide any documentation describing the final determination to the Committee in its oversight role.

6. Are you aware of the procedures DHS followed in its decision to request information concerning the criminal histories of Haitian TPS beneficiaries in May 2017, and if so, please describe such procedure.

As the former Chief of Staff, I remember various requests for information relating to various groups receiving immigration benefits, but am not familiar with the procedures DHS followed in any request relating to Haitian TPS beneficiary background information.

Since 2000, the U.S. Border Patrol budget has increased by 245%. At the same time, apprehensions are the lowest since the 1970s. Between 2000 and 2016, apprehensions have dropped from 1.6 million to 400,000, continuing a decade-long trend toward lower border apprehensions.

1. Do you agree with the Office of Immigration Statistics border security report that the border is much more secure than ever? If not, why not?

As described in the Policy Questionnaire, I am not familiar with the OIS report but I generally agree that investments in infrastructure, personnel and technology over that time period have made it more difficult to illegally cross our southern land border. I also believe that the Administration's focus on enforcing our immigration laws has deterred would-be illegal crossings and that deterrence, combined with the efforts of the men and women of DHS, has reduced the threats and vulnerabilities that we face at our borders. Despite that, our southern border is not fully secure as indicated by an uptick in recent border unauthorized border crossings and much more can and will be done.

2. Is the American public getting a fair return on investment for all the money that has been spent on border security? If not, why not?

I believe DHS should always assess risk, identify risk-based security and resilience priorities and ensure that any measures, programs, plans, expenditures, acquisitions, training, hiring, etc. meet the risk based priorities. Ultimately, Congress through the Appropriations process has the final say on whether the return on investment is what they expect. I would offer that at a macro level, based on the stats cited in the question above that a 400% reduction in illegal border crossings suggests some positive correlation of return on investment with the 245% increase in budget. One of the great concerns with illegal entry between the ports of entry is that someone may enter unknown, unvetted and with weapons of mass destruction. Such an illegal entr(ies)

would dramatically tip the balance of any cost benefit equation. Unfortunately, given the high consequence nature of the threats faced, DHS must often assess the worst case scenario when making resource allocations as part of risk based border security.

The Department of Homeland Security Office of Immigration Statistics recently released a report noting it is harder to cross the Southwest border than ever. Despite this, DHS continues to advocate for a border wall and 5,000 additional Border Patrol agents.

1. Has DHS or CBP produced any reports to justify these proposed funding and force-level increases?

As I understand it, DHS has been developing northern and southern border strategies that will be delivered to Congress in the coming months. Additionally, the methodologies for resource determinations will be further described in more detail in the soon to be released Border Security Improvement Plan to the House and Senate Appropriations Committees. As I understand it, these combined documents will provide prioritization of investments based on Border Patrol and CBP assessments of necessary expenditures.

2. Will there be an assessment given to Congress to justify these expenditures?

As I understand it, DHS has been developing northern and southern border strategies that will be delivered to Congress in the coming months. Additionally, the methodologies for resource determinations will be further described in more detail in the soon to be released Border Security Improvement Plan to the House and Senate Appropriations Committees. As I understand it, these combined documents will provide prioritization of investments based on Border Patrol and CBP assessments of necessary expenditures.

Recently, the previous DHS Secretary waived dozens more laws for construction of prototypes and replacement fencing in southern California.

1. Would you commit to complying with, instead of waiving, all laws for any further construction of border wall?

Should I be confirmed, I commit to complying with the law and exercising any waiver powers granted to the Secretary with appropriate discretion.

2. Before moving forward with the construction of border wall prototypes and replacement fencing, will you meet with residents of border communities in order to determine the quality-of-life impacts that erecting new barriers or replacing old barriers will have on people who live near the border?

I am not currently familiar with the specific procedures CBP has utilized to determine where replacement fencing and physical barriers are needed. Should I be confirmed, I commit to ensuring that the views of stakeholders, to include residents of border communities, are heard.

3. What metrics will you use to evaluate the effectiveness and return on investment of various methods used for border security, including walls, fences, levees, personnel at and between ports, and manned and unmanned aircraft? Will you commit to making this analysis public?

I believe DHS should always assess risk, identify risk-based security and resilience priorities and ensure that any measures, programs, plans, expenditures, acquisitions, training, hiring, etc. meet the risk based priorities. I also believe that performance metrics to determine the effectiveness of programs, initiatives, acquisitions, measures, etc. are important to ensure we are effectively addressing risk. Should I be confirmed, I will review the border strategies I understand DHS is drafting and work with CBP to ensure that we are effectively securing the border through an integrated combination of personnel, technology, and infrastructure.

In past, a lack of security clearances has hindered the Department's ability to share election cybersecurity threat information with state election agencies. The Department has confirmed that it is in the process of providing those security clearances. Please provide, without including any personally identifiable information.

As the nominee, I do not currently have access to any of the information requested below in 1-6 nor do I know whether information about pending security clearances can be shared in the manner below in a public environment. If confirmed, I will work with DHS leadership to provide you with appropriate information.

1. A list of state election agencies that have requested security clearances.
2. When the request was made.
3. The level of security clearance that was requested.
4. The number of individuals within each agency who are included in the request.
5. The job descriptions for the individuals within each agency who are included in the request.
6. Whether the clearance process for each individual is complete, and if it is not, when DHS expects to complete the clearance process.

States have, in past, not taken significant advantage of the Department's free election cybersecurity assistance.

1. How does the Department inform states about the free assistance that is available? Please provide a copy of each brochure and similar materials.

As I understand it, DHS has informed states through a variety of outreach mechanisms and through a variety of State points of contact. As the nominee, I do not have access to any brochures or other materials.

2. Please provide:

As the nominee, I do not currently have access to any of the information requested below.

- A list of election agencies (state, county, or municipal) that have requested DHS cybersecurity assistance.
- The forms of assistance that were requested.
- When the request was made.
- When the assistance was provided, and if it has not been provided, when DHS anticipates providing the assistance.

The Department is participating in a Elections Government Sector Coordinating Council (GCC).

1. What is the Department's role in the GCC?

Government Coordinating Councils are part of the partnership structure described in the National Infrastructure Protection plan. Each of the critical infrastructure sectors established under Presidential Policy Directive 21 on Critical Infrastructure Security and Resilience utilize a GCC. GCCs are comprised of representatives from across various levels of government and are formed as the government counterpart to the Sector Coordinating Councils and enable interagency and cross-jurisdictional coordination. DHS coordinates and works in partnership with the SCCs and GCCs to address the security and resilience of our nation's critical infrastructure.

2. What activities does the Department expect the GCC to undertake?

I am not currently familiar with the specific activities the Department is encouraging the GCC to undertake. But I believe the roles of GCCs are generally described on the DHS website.

On September 22, 2017, the Department notified election officials in 21 states that they had been targeted by Russian hackers during the 2016 election cycle. According to news reports, more than one state has disagreed with the Department's technical assessment that prompted the notification that it received.

1. Which states have informed the Department that they disagree with the Department's technical assessment?

As the nominee, I do not currently have access to relevant information to be responsive to this question.

2. For each state that has disagreed, does the Department stand by its technical assessment? If yes, why? If no, has it informed the state of its changed view?

As the nominee, I do not currently have access to relevant information to be responsive to this question.

3. Future election cybersecurity legislation could involve a DHS grant program to state election agencies. Does DHS have the capability to operate such a grant program?

Should I be confirmed, I look forward to working with Congress on any proposed cybersecurity legislation and providing technical assistance as appropriate to ensure that any legislation correctly reflects DHS' operational environment to include its capability and capacity.

Some members of Congress have suggested that cybersecurity responsibilities within DHS should be consolidated into a cybersecurity agency. Do you agree with that direction for reorganizing the Department?

Should I be confirmed, I look forward to working with the Committee and Congress to ensure that DHS organizational structures optimize the ability of DHS to execute its cybersecurity roles and responsibilities.

1. Is the Department able to attract and retain the cybersecurity talent that it requires? If not, what will you do to improve the DHS cybersecurity workforce?

Should I be confirmed, a priority focus area will be to ensure that DHS is able to attract and retain the cybersecurity talent that it requires. Towards that end, as I described in the Policy questionnaire, it is my understanding that DHS has partnered with a variety of entities to include nonprofits, all levels of educational institutions and school boards across the country to encourage the teaching of cybersecurity concepts. DHS has also partnered with the nonprofit National Integrated Cyber Education Research Center (NICERC) to provide cybersecurity curricula and teacher professional development. I have also applauded DHS efforts in sponsoring the CyberCorps Scholarship for Service which provides scholarships towards cybersecurity degree programs in return for service in Federal, State, local, or tribal governments upon graduation. Should I be confirmed, I would look to strengthen and expand DHS' efforts in collaboration with other federal partners and the Administration's overall STEM efforts to recruit and retain cybersecurity personnel. I would also look to identify opportunities across the existing talented DHS workforce and provide training opportunities to enhance cybersecurity expertise. I believe a clearly articulated mission and adequate tools and resources supports strong recruiting, and the ability to grow in one's job and have access to continual training and education supports retention. Recognizing the importance of this issue as a cornerstone of DHS cybersecurity efforts, should I be confirmed I would assess current efforts and work with Department leadership to strengthen related campaigns and programs. Finally, if confirmed, I look forward to

working with Congress and OPM to ensure we are fully utilizing the unique hiring authorities granted to the Department for cyber security efforts.

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