

Senator Jon Tester
Post-Hearing Questions for the Record
Submitted to Kirstjen M. Nielsen

Nomination of Kirstjen M. Nielsen to be Secretary of the Department of Homeland Security
Wednesday, November 8, 2017

Airport Security

1. During your confirmation hearing, you committed to working with me on strengthening airport security, particularly the Law Enforcement Officer Reimbursement Program. As mentioned during the hearing, I understand the program is still at risk of being eliminated despite its utility in keeping our nation safe.

Should you be confirmed, do you commit to immediately informing me and members of the U.S. Senate Committee on Homeland Security and Governmental Affairs and the Appropriations Subcommittee on Homeland Security of any proposed changes to the Law Enforcement Officer Reimbursement Program by either DHS or TSA?

Yes.

REAL ID

2. Do you commit to working with me and the State of Montana to ensure that Montana is allowed the flexibility and time it needs to come into full compliance with REAL ID?

Yes.

Border Security

3. What technological resources do you believe are necessary for adequate patrolling of our northern and southern borders and egresses?

The sheer size and diversity of terrain on the Northern Border, from seaway and Great Lakes, to flat, rolling plains, to high-mountain and dense forest, require a diverse array of technology to increase domain awareness and position patrol assets for effective response. As I understand it, a variety of technological resources are needed to include: On the maritime borders and Great Lakes, the ability to detect small boat traffic and ensure it is lawful and compliant requires a combination of radar, cameras, and electro-optical and infrared sensors; On the plains, fixed and air assets providing surveillance and sensors that can provide detection capability are critical; In the high-mountains, fixed cameras on trails and egress routes assist patrol elements.

In all cases, partnerships and cross-border intelligence sharing is fundamental, and access and mobility with trained Border Patrol Agents, US Coast Guard personnel, and other Federal, state, and local partners, with effective communications capability remain essential elements to interdict any activity that is detected. Should I be confirmed I look forward to discussing in detail with CBP and USCG, as well as other parts of the Department which bring important resources and technology to the table, such as the Joint Requirements Council, I&A, and S&T.

4. What roles do you believe Canada should play in our joint security?

Canada plays a critical partnership role in our joint security, and, if confirmed, I intend to maintain and strengthen our bilateral and multilateral security efforts. DHS maintains a robust and multi-faceted partnership with multiple Cabinet Departments and operational agencies. On one of his first international trips abroad as Secretary, then Secretary Kelly met with multiple Ministers covering partnership areas from immigration and counterterrorism, to infrastructure protection and emergency response.

Operationally, DHS shares intelligence with Canadian partners at the national level and regionally through Integrated Border Enforcement Teams. DHS relies on partnership with Canada to secure travelers headed to the United States through 8 Preclearance locations in Canadian airports.

Canada has also joined DHS and State, as well as Mexico, in supporting security capacity building and economic development in Central America to help address migration flows and criminal activity.

Finally, our partnership with Canada is vital with respect to the security and resilience of our mutual and interconnected critical infrastructure and the provision of essential functions.

5. What do you see as our most significant national security threat from Mexico? From Canada?

The most significant threat on the Southern Border is the potential for exploitation by Transnational Criminal Organizations who attempt to smuggle a variety of threats into the United States. These organizations are smuggling hard narcotics, including deadly synthetic opioids, engage in human trafficking, and can bring individuals to our border from conflict zones and countries at risk for terrorist activity outside the Western Hemisphere.

With regard to our Northern Border, we must be vigilant against movement of potential security and criminal threats, and protecting and securing our critical infrastructure.

Should I be confirmed, I look forward to discussing potential threats in greater detail.

6. What specific measures do you believe DHS should undertake to keep our Northern Border secure?

Based on the findings of the DHS Northern Border Threat Analysis, former Secretary Kelly recognized the need to update the DHS Northern Border Strategy. If confirmed, I look forward to reviewing the threat analysis in detail and the strategy recommendations to ensure that the update is risk and intelligence-based, and designed to integrate DHS capabilities with our Canadian partners in order to investigate, interdict, disrupt, and dismantle terrorist, transnational, and other criminal organizations that may utilize the Northern Border to introduce threats into the United States. The strategy must also ensure we facilitate lawful international travel and trade.

The revised Northern Border Strategy and its associated implementation plan will serve as key management tools and should recognize the unique nature and challenges of the Northern Border. If confirmed, I would look forward to working with the Committee on implementation.

7. Describe your plans to enhance border security along our land ports of entry.

The land border ports of entry along our Northern and Southern border are gateways to the economy and process hundreds of millions of legitimate travelers each year. CBP is charged with screening all foreign visitors, returning American citizens and imported cargo that enters the U.S. at more than 300 land, air and sea ports. To enhance security, DHS must continue to pursue solutions based on technology, partnerships, and effective counter-network investigations and operations.

If confirmed, I will plan to support and pursue balanced investments in innovative technologies and enhanced staffing, while deepening collaboration with interagency, State and local, and international partners. For example, to address the flow of hard narcotics through ports of entry on the Southwest Border, DHS must increase its capacity to examine vehicles with non-intrusive inspection equipment.

Terrorism

8. What anti-terrorism initiatives have your predecessors undertaken that you plan to expand upon? Any that you plan to scale back?

To name a few:

Terrorists continue to look for vulnerabilities in our aviation system, and should I be confirmed, I plan to continue Secretary Kelly and Acting Secretary Duke's work to raise the baseline of aviation security measures to make it harder for terrorists to carry out attacks against civil aviation.

DHS's ability to prevent terrorists from coming into the United States relies on having access to all relevant, available intelligence to inform the visa process, to screen and vet travelers, and to vet anyone applying for an immigration benefit. If confirmed, I intend to continue and intensify these efforts to make sure DHS has access to all relevant, available intelligence to inform our decisions, and to make sure that the right intelligence gets into the hands of field personnel for mission execution.

In general, should I be confirmed, I will review current programs and initiatives to ensure that they both address evolving risk and do so in a cost effective and efficient manner. If confirmed, I plan to use metrics and performance reviews and other internal control and oversight measures to ensure the terrorism prevention programs we support are able to demonstrate results.

9. What will be your highest anti-terror priority should you be confirmed?

In general, the highest anti-terror priority is protecting the Homeland, the American people, and our interests from terrorist attack. One of the greatest threats at this time comes from Homegrown Violent Extremists who are inspired by terrorist groups overseas such as ISIS or al-Qa'ida, and who have been radicalized by a combination of direct contact with other terrorists and through terrorist propaganda found on the Internet. DHS's core mission for counterterrorism is to identify previously unknown terrorists or facilitators, and to prevent known and previously unknown terrorists from entering the United States and from carrying out attacks on our homeland.

10. What resources should DHS invest in to combat the rise of homegrown violent extremism (HVE)?

Addressing the challenge of HVEs through terrorism prevention is one of the most important terrorism problems we face. Secretary Kelly initiated a review of both DHS's strategy and the level and direction of resources to address the challenges from HVEs. This review extended both to the organization and staffing of our personnel and the level of grants funding to promote community-level programs. In June, DHS announced 26 grants totaling \$10 million, focusing on developing community resilience, training and engagement with local partners, support for programs that disrupt the radicalization process, challenging terrorists' narratives, and building the capacity of local partners to sustainably address the problem of radicalization. If confirmed, I intend to evaluate these

and any prospective programs that address HVEs to ensure they are effective and are having the impact we need to help protect the Homeland from the threat of HVEs.

Senator Rob Portman
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1. From your existing knowledge of DHS initiatives to assist religious communities with mitigating security risks, are there any other steps or tools you think appropriate within the Department or alongside interagency partners to further these efforts?

If confirmed, I will meet with DHS leadership from DHS offices that engage with religious communities, to include leaders from the Office of Public Engagement, Office of Community Partnership, NPPD and FEMA, to discuss what more the Department can do to provide tools, resources, guidance, training, planning assistance and other support to religious communities to help them protect soft targets, identify threats, share suspicious information, receive threat information, partner with local governments and law enforcement, perform vulnerability assessments, prepare for active shooter scenarios, identify radicalization warning signs, strengthen alert and warning systems and protocols, encourage citizen preparedness and otherwise strengthen the security and resilience of their community. If confirmed, we will also discuss what additional needs and concerns have been communicated from such communities and how DHS can strengthen outreach and partnership.

Specifically, I believe the recent cross-DHS soft target coordination group led by NPPD which brings together all DHS components to coordinate, identify gaps and opportunities in capabilities and engagements is a promising start not just for communities of faith, but broader efforts to manage risk and secure soft targets. If confirmed, DHS will continue to work with the community to develop flexible risk assessment tools; foster technology solutions to counter the threat; prioritize information and intelligence sharing in a timely manner; train law enforcement, emergency responders, and employees across sectors; and recommit to broader public awareness campaigns focused on suspicious behavior and reporting.

2. From your recent experience as DHS Chief of Staff, what is your assessment of the Department's unity of effort initiatives to-date and where do you think greater attention is needed?

My perspective during my time there, is that the Department has made significant progress in the last decade on this front, but we still have a long way to go to really be a cohesive Department and workforce. Overall, additional focus is needed on fostering a 'one team' environment from hiring to training to professional development to career

advancement. Should I be confirmed, I would plan to continue the strong initiatives of Secretary Kelly and Acting Secretary Duke, and Secretary Johnson before them. I will work with the Deputy Secretary and the Undersecretary for Management to assess the effectiveness of current unity of effort programs and processes and strengthen them where needed. If confirmed, we will also continue to assess hiring, pay and retirement throughout the Department. We will assess what policies and processes can and should be centralized to reinforce that the components are part of a larger whole and that all employees are DHS employees. For example, standardizing lexicon, travel policies, cybersecurity policies, and leave policies enforce the 'one team' outlook. I will also seek to eliminate stovepipes and develop plans, processes and programs to integrate and leverage capabilities and tools throughout the Department. I will also work to promote what I think is the cornerstone of future success in building on best practices, which we have borrowed from the Department of Defense: -- joint education, training and assignments of DHS personnel as a required part of career advancement. Joint education, training and assignments truly underscore that homeland security, although made up of component missions, is one mission, and to be effective DHS must be able to function as one team.

3. What do you think are the greatest challenges in recruiting and retaining cybersecurity professionals at DHS and what actions do you think are necessary to improve the Department's ability to effectively staff this mission area?

I think the greatest challenge for the federal government in general for recruiting and retaining the highest skilled computer and information technology workers is the number and attractiveness of private sector technology career opportunities in a growing industry with more jobs than qualified candidates. The competition is fierce for these professionals and the government is often at a disadvantage in what we can offer to entice them to work for the government instead of at a 'hot' tech start up or a major technology company. When we do manage to successfully attract and train one of these professionals and get them through the laborious process to hold a security clearance, he or she is now even more valuable to federal contractors and other private sector companies who may hire them away from us. Ultimately, to be successful we have to be clear with respect to our mission and find people with the right skills or capabilities who share that sense of mission and who are called to serve in the same way as those who join the military or law enforcement.

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. 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. If confirmed, I would also look to identify opportunities across the existing talented DHS workforce and provide training opportunities to enhance cybersecurity expertise. As mentioned elsewhere, 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.

Senator Gary Peters
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Questions for Ms. Kirstjen M. Nielsen, Nominated to be Secretary, Department of Homeland Security

1. Cybersecurity: The U.S. faces an ever-growing threat from increasingly sophisticated cyberattacks and we must remain vigilant to safeguard our national security. In a recent report, the President's National Infrastructure Advisory Council (NIAC) concluded, "there is a narrow and fleeting window of opportunity before a watershed, 9/11-level cyberattack to organize effectively and take bold action." The challenges identified are well-known and reflected in study after study.
 - a. Could you tell me how your previous experience has prepared you to address our nation's cybersecurity needs?

My experiences within government and supporting governments (federal, international, State and local); within the private sector; supporting owners and operators of critical infrastructure; supporting cybersecurity firms; serving as a subject matter expert in various studies, assessments and forums; and collaborating with international partners, NGOs and nonprofits have given me a unique view into the evolving threat environment; system, asset and data vulnerabilities; potential consequences within systems and entities and cascading between and amongst sectors, regions and essential functions; pace of technology innovation and its use as both a weapon and as a protection force multiplier; the implications for risk and how we address it from issues such as the hyperconnectivity of our environment, the patchwork of laws and legal frameworks amongst states and nations, and the speed, ease and low cost of attacks.

I have experience as a government employee and in supporting governments in a full range of cybersecurity related activities including identifying and assessing cyber risk; assessing our posture and capability; developing and coordinating policy; determining roles and responsibilities; identifying needed authorities; developing strategies, plans and operational plans; developing situational awareness policy, processes, sources and initiatives; designing information sharing frameworks; creating public-private partnerships to share information and take collective action; designing cyber exercise programs, developing scenarios and moderating and executing exercises; supporting the development of DHS cybersecurity tools and programs; identifying cyber related research and development needs for critical infrastructure security and resilience; conducting stakeholder outreach; and raising cybersecurity awareness.

I have also supported private sector companies and NGOs seeking to increase their security and resilience to cyberattack. My experiences, capabilities and knowledge stem from a wide range of cybersecurity activities including providing support in crisis communications; exercises design and execution; reviewing and revising operational concepts of operations; aligning with the NIST cybersecurity framework providing education and awareness support to Boards of Directors; assessing ways in which to

share sensitive information with the government; assessing mechanisms for partnering with governments and other private sector companies; assessing operational implications of various cybersecurity policies; designing bring your own device policies; and creating performance metrics for cybersecurity programs.

Finally, I have also served as a subject matter expert, convening various platforms and groups of stakeholders from various sectors, levels of government and regions of the world to identify and determine how to assess systemic cyber risks, to identify measures we as a community can take to increase security and resilience, to assess consequence quantification methodologies, to align legal frameworks, and to assess the benefits and limitations of cyber insurance.

In sum, my experiences have provided me with perspectives, insights and operational understanding from all sectors and parts of our cybersecurity community.

b. What priority will cybersecurity have under your leadership at DHS?

If confirmed, I will ensure that cybersecurity is prioritized in line with the risk it poses to the Nation. Report after report highlights the efforts nation-state actors, cyber criminal gangs, politically motivated groups, and others, are taking to target the U.S. The Department has a unique role in leading the Federal network protection efforts of the government's civilian, non-national security system, as well as the lead coordinator for working with the critical infrastructure community and the private sector. I will ensure that the Department's cybersecurity leadership team has the necessary resources and support they need to be effective. To that end, for instance, I will work to accelerate Federal network protection efforts to instill a more effective governance model across Federal civilian systems, ensure network defenders have actionable and timely information to make risk-informed decisions, drive towards automation of basic network defense actions, and offer more scalable service offerings, including "SOC as a service" to consolidate security investments across the Federal government. Similarly, I will prioritize NPPD efforts to work with private and state and local network defenders, sharing actionable threat information, automating response efforts, and addressing systemic risk across our key services and functions. Among those efforts, I will prioritize the protection of election systems nationwide, working with the EAC, NIST, vendors, and others to ensure state and locals have the tools necessary to ensure the security of the ballot box.

c. What do you see as DHS' role in supporting state and local governments that lack the resources to adequately respond to cyber-attacks?

DHS plays a role in providing tools, resources, threat information and support to state and local governments. DHS also plays a role in articulating roles and responsibilities and clarifying who will do what when. Towards that end, the National Cyber Incident Response Plan, released earlier this year, describes a national approach to cyber incidents, addresses the important roles that the private sector, state and local governments, and multiple federal agencies play in responding to incidents and how the

actions all fit together for an integrated response. The NCIRP also serves as the Cyber Annex to the Federal Interagency Operational Plan (FIOP) that built upon the National Planning Frameworks and National Preparedness System developed pursuant to PPD-8. DHS is also deploying personnel throughout the country to assist state and local governments in developing incident response and recovery plans. DHS is providing technical assistance via remote or onsite engagements to identify vulnerabilities and provide mitigation plans. These initiatives assist state and local governments to prioritize the development of their capabilities to respond to cyberattacks. If a state or locality requests it, DHS can also provide onsite incident response teams to assist an entity in driving the adversary out of their networks and restoring their systems quickly. DHS is working with the National Governors Association to develop additional plans to supplement state and local response should their capacity be overwhelmed in a significant cyber incident.

Should I be confirmed, I also intend to draw on my experience in incident management to improve cyber incident response and support to State and Local governments. Accordingly, I'll prioritize current efforts to study scalable workforce options and flexible funding models, such as those employed by FEMA responders. FEMA's Surge Capacity Force (SCF) ensures that sufficient responders are available to support response operations. A cybersecurity incident response surge force would likely include cross-training existing DHS employees, employees from other Departments and agencies, as well as innovative uses of existing contract vehicles with private sector companies to include surge contract lines. In addition, FEMA's ability to draw on the Disaster Relief Fund to direct, coordinate, manage, and fund eligible response and recovery efforts under the Stafford Act may serve as a model for a future cybersecurity emergency assistance framework to State and Local governments. Similarly, existing FEMA grant programs will be reevaluated to ensure preparedness grant expenditures are in line with the findings of the National Preparedness Report, which has year after year highlighted the low level of cybersecurity preparedness across the nation.

- d. With your background in infrastructure protection, how will you seek to improve DHS' engagement with the private sector entities that own and operate much of the country's most critical infrastructure?

We must continue to assess information – whether it be vulnerability, consequence or threat information - and provide it in a timely, tailored and accessible way so that private sector entities can act on it and manage their risk accordingly. To do this and provide the necessary context, we must seek to further our understanding of how critical services and functions are connected and dependent on cyber infrastructure. This is increasingly requiring not just a sophisticated understanding of how an individual industry is connected (such as the financial services sector) but necessitates an understanding of cross sector dependencies and interdependencies. If confirmed, my goal is to ensure the Department and critical infrastructure owners and operators have a shared understanding of these dependencies and the risk that results from them.

I will also seek to advance our work to improve our ability to provide both rapid tailored information that is most useful to network defenders as well as information that would assist critical infrastructure executives in their risk management decisions. In addition, my experience in the private sector underscored the need for DHS to more clearly articulate both the interconnected risk we face today as well as the value proposition for industry engagement with the government. In some cases, industry does not clearly understand the Department's role or its capabilities, and due to the voluntary nature of DHS engagements, absent any requirement to work with DHS, entities either chose not to work with DHS or did not know how to. I believe that DHS can overcome this challenge by developing a more comprehensive stakeholder engagement strategy and related campaign, including improved branding, marketing, and an understanding of industry requirements, incentives and common outcomes.

e. What more can be done to reinforce the cybersecurity posture of those networks?

DHS must do more to work alongside our partners, including improving the quantity and quality of touchpoints we have with industry. In many cases, the nation's critical infrastructure operators engage via Sector Coordinating Councils and Information Sharing and Analysis Centers (ISACs) or Organizations (ISAOs). Some partners have seats in or have access to the National Cybersecurity and Communications Integration Center. I believe further integration with industry is key. We should review options such as sending DHS personnel into the field to embed in industry for short term assignments. Similarly, we should consider prioritizing industry technical personnel sitting in the NCCIC on short term analyst exchange assignments. These exchanges build trust and understanding of industry requirements and operational realities, as well as build capacity and proficiency of the respective workforces. This will help refine DHS's solution development and its ability to tailor solutions to specific sectors, systems, assets and information types, as well as inform industry's understanding of what capabilities DHS can bring to bear once the requirement is defined.

In addition, I believe that critical infrastructure owners and operators should continue to embrace the NIST cybersecurity framework. Many have done so but we have more work to do, particularly in security control systems. DHS is expanding its ability to provide assessments and recommendations to assist this community with the implementation of the Framework – this includes both highly technical assessments, as well as strategic reviews. More broadly, DHS, in partnership with NIST, plays a leadership role in engaging the control systems community to ensure that the gaps are bridged between security and safety and that the Framework readily applies to the operational and information technology environments.

f. How will you work to improve DHS' information sharing processes to ensure the appropriate private sector individuals receive actionable cyber threat information?

Processes must support rapid, accurate, tailored and actionable threat information. DHS's information sharing programs are focused on two major areas: (1) sharing known threat indicators with as wide an audience as possible (via Automated

Indicator Sharing, alerts, reports, and bulletins), and (2) enhancing our ability to provide tailored information based on an improved understanding of systemic risks, single points of failure within an industry, and the government's unique position to provide context to technical information. We must continue to improve the quality of the threat information we share, including by implementing a reputational scoring process that provides additional information on indicators. We also need to improve feedback processes around indicator sharing – not just from DHS, but from our information sharing partners. If a piece of threat information was useful, or not useful, that information can help inform further dissemination of indicators.

- g. Describe how DHS' cybersecurity mission could support a broader, whole of government cyber deterrence strategy.**

Within the framework of Presidential Policy Directive 41 and the National Cyber Incident Response Plan, DHS is an active contributor both to the deterrence by denial and deterrence by cost imposition aspects of the nation's current approach to cybersecurity deterrence. The U.S. Secret Service and ICE Homeland Security Investigations, through their law enforcement authorities, seek to investigate, arrest, and support the prosecution of cyber actors domestically and abroad. Working alongside other law enforcement partners such as the FBI and the private sector, these efforts create a climate hostile to cyber criminals.

On the deterrence by denial side, DHS focuses on network protection and incident response efforts that aim to minimize the attack surface and dramatically reduce vulnerable systems, manage consequences of an incident, and generally create a safe, secure, and more resilient cybersecurity ecosystem. NPPD is the hub for these efforts, coordinating defense actions such as providing network defenders actionable threat and risk management information, conducting hunt and incident response actions, training and exercises, directing cross-government operational planning efforts, and developing scalable solutions and tools that enable more effective network defense activities. DHS has unique statutory authorities under FISMA 2014, including the Binding Operational Directive authority, that allow DHS to direct agencies to take certain information security risk management activities. This directive authority has been proven to be incredibly effective in managing risk and reducing vulnerabilities. Combined with the Federal Enterprise wide understanding of risk posture provided by the Continuous Diagnostics and Mitigation (CDM) dashboard, DHS is in a position to help other agencies manage risk and improve their security posture.

- 2. Bioterrorism: A bioterrorist attack could have a devastating impact in a major city, both in terms of human life and our sense of safety and security. However, reports such as the Blue Ribbon study panel's report on biodefense have indicated that our national defense against bioterrorism is lacking in both detection capability and response. In the 2016 Worldwide Threat Assessment, the CRISPR gene editing tool was identified as a key enabling technology that could be used by terrorists to more easily create a biological weapon.

- a. What do you see as DHS' role in research and development, including against bioterrorism and nuclear terrorism?

DHS plays a critical role in protecting the homeland against biological and nuclear terror threats. On the biodefense side, DHS conducts an array of research and development (R&D) activities internally, including sensitive R&D regarding biological threats that could be weaponized for use against the U.S. population. By better understanding the danger, DHS R&D activities allow us to calibrate our defenses to protect against the nefarious intentions of state and non-state actors. DHS also leverages partnerships with the Department of Defense and other agencies for access to basic research, ongoing pilots, and the testing of late stage R&D efforts. The Department is currently focused on developing more effective early warning mechanisms to detect the release of biological threats—including through new technology, enhanced systems, and first-responder awareness.

On the nuclear defense side, DHS is responsible for a wide range of radiological and nuclear R&D through the Domestic Nuclear Detection Office. The Department's research plays an important role in helping to improve detection of radiological and nuclear threats and to conduct attribution after incidents. DHS also leverages R&D conducted by the National Nuclear Security Administration and in the Department of Energy National Laboratories primarily for the nuclear mission. If confirmed I will work with DHS leadership to reinforce that DHS R&D supports frontline operators in ensuring they have effective tools to detect and interdict radiological and nuclear threats entering or transiting our territory.

- b. How would you prioritize the R&D efforts of DHS?

The Administration is currently developing a National Biodefense Strategy and I look forward to reviewing should I be confirmed. If confirmed, I will also ensure DHS R&D efforts to counter biological threats prioritize the rapid deployment of technologies that improve situational awareness, detection, and response. This includes collaborating with interagency partners that are also working on early warning sensors to ensure that we avoid waste, overlap, and duplication. I will also make it a priority for DHS to continue to aggressively assess the biothreat landscape so that advances in technology are not used to endanger our homeland and our people.

- c. What capabilities or resources does the DHS need to develop to be prepared for a bioterrorist attack?

As noted, the Administration is currently developing a National Biodefense Strategy that will help guide the Department's decision making regarding capabilities and resources needed for biodefense. If confirmed, I will ensure DHS examines deficiencies in our previous biodefense architecture and how we can close security gaps—such as reducing delays in threat notification—to better safeguard our homeland. We must be able to detect threats more quickly after they are released, adjudicate them with trained personnel, and ensure the appropriate response organization has the right information to rapidly mitigate the danger. I will also

examine the Department's existing resources, authorities, and capabilities in this space to ensure they adequately align with the pending strategy and the seriousness of the threat.

3. Space Weather: In order to protect critical infrastructure, like the power grid, from the threat of space weather, we are dependent on observations and predictions from various science agencies, like NASA and NOAA.

- a. To fulfill your mission, how important is it that we improve our ability to forecast space weather?

A vital component of risk management is understanding the threat. Just as information related to terrestrial weather events, earthquakes or terrorist attacks is important to help DHS manage risk, improving our ability to forecast and understand the threat space weather can pose will support DHS situational awareness and risk management.

- b. What types of preparations will you emphasize to prepare the nation for space weather events, both for government and the private sector?

Space weather events can have high potential consequences and more work needs to be done to understand and address the threat to critical infrastructure. As I understand it, the Department of Defense, NASA, and NOAA are partners in understanding the risk, ensuring resiliency and developing response and recovery planning. Partnership remains the cornerstone of addressing such threats as much of our nation's critical infrastructure is owned and operated by the private sector. We must better understand the panoply of attack vectors and attack types against our critical infrastructure- both through modeling and information sharing. If confirmed, I will continue DHS' work with its interagency partner to better understand the risk space weather poses to critical infrastructure and to identify measures to increase our security and resilience to such threats.

4. Muslim Registry:

- a. Will you commit to ensuring that religion does not become a basis for U.S. counterterrorism or law enforcement policy particularly as it relates to the targeting of individuals with ancestry from Muslim-majority countries?

Yes.

5. Travel Ban: As you know, Saudi Arabia is not on any version of the executive orders despite the fact that 15 of the 19 September 11th terrorists were from that country. In contrast, no terrorist attack has been committed by individuals from the countries banned by the President's executive orders.

- a. Please explain how executive orders banning entry by people from six Muslim-majority countries and suspending the refugee program for 11 countries deemed "high risk" increase public safety.

I would note that DHS has a responsibility to anticipate and prepare for the next terrorist attack – not the last one. DHS prioritizes allocation of resources – to include screening and vetting – based on where the intelligence indicates the risk is coming from. While we must learn from past events which in turn influence risk allocation, we must focus on what is happening currently and could happen in the future.

Given pending litigation, for relevant details, I would refer to the President's public proclamation on September 24, 2017. As that proclamation states, the travel restrictions announced by the President were not determined in any way based on race, religion, or creed. The restrictions were based on a comprehensive interagency review and extensive engagement with foreign partners around the world. The Department of Homeland Security (DHS), in coordination with interagency partners and the intelligence community, established a new information-sharing baseline to ensure that the United States could appropriately vet nationals of foreign countries in order to identify terrorists, criminals, and other threats to public safety.

6. Northern Triangle: People from Central America are presenting themselves at the U.S. southern border, often fleeing violence. I had the opportunity to spend time in the Northern Triangle a trip I found very informative.
 - a. Based on your experience, what would be your first steps to address the influx of unaccompanied minors fleeing the Northern Triangle?

The causes of the influx, so called “push and pull factors” and the solutions are both simple and complex. While I was Chief of Staff to Secretary Kelly we spent considerable time discussing this issue, and I benefited greatly from his knowledge of and commitment to the region and from meetings we held with Central American leaders. I concur with his assessment given to this Committee that the continued “push” drivers for illegal migration from Central America are the crime and instability in those countries that are largely a consequence of drug demand in the United States and the resulting destabilization from drug trafficking organizations using these countries as transit zones. The “pull” factors continue to be economic opportunities in the United States that are substantially better than those available at home to most citizens of these countries and also a continued, but decreasing, perception that if a person can successfully get to the U.S. border they will either not be caught or be allowed to stay. In terms of the solutions available to us, I believe we can and should continue to seek greater cooperation with willing partners in these countries and devote greater energy and resources to help them combat DTO's and criminal gangs as well as assist them to provide economic opportunities for their citizens at home so they will not be “pushed” to make a dangerous journey in the first place. We also can continue to improve all aspects of our immigration enforcement process from border security, to certainty of deportation and return, to employment verification in order to reduce the “pull” for illegal immigrants from Central America and elsewhere and to act as a powerful deterrent to the choice of illegal rather than legal means of migration. Finally, if confirmed, I will work with my Cabinet colleagues on a comprehensive drug demand reduction strategy and to further combat transnational criminal networks.

- b. What do you see as the future of the Alliance for Prosperity? Do you think that the Northern Triangle countries (Honduras, El Salvador, and Guatemala) are fully committed to their obligations under the agreement?

During my time at DHS, I found our Northern Triangle partners to be engaged and willing partners. This was highlighted during the Conference on Prosperity and Security held in June. I understood the Northern Triangle Countries to be mobilizing their domestic resources to implement the Alliance for Prosperity. Likewise, I believe the U.S. needs to continue to support Central America through foreign assistance. It is my understanding that the FY18 budget request includes an additional \$460M to advance the goals of the Alliance for Prosperity. Should I be confirmed, I look forward to receiving an update on the status of these efforts, and I will collaborate closely with the Department of State in engaging our Central American partners to achieve their obligations under the agreement.

- c. How will you ensure that people seeking asylum in the U.S. receive fair hearings regarding their fears for their safety should they return to their home countries?

Should I be confirmed, I will work with DHS component leadership at CBP and ICE to review our directives and training to field personnel to ensure they are abiding by all legal obligations such that those claiming credible fear are provided the appropriate due process to which asylum seekers are entitled.

7. Trade:

- a. Will enforcement of our trade laws be a priority for you, and what other measures do you have in mind to help protect our domestic industries from unfair trade practices at the border?

The Department's responsibilities in the area of trade law enforcement are very important and will be a priority for me. The President has made clear that ensuring American competitiveness against unfair foreign trade practices is a priority for all federal agencies with trade responsibilities in their portfolio. U.S. Customs & Border Protection has been active in implementing recent legislation, the Enforce and Protect Act (EAPA), which provides additional tools and authorization for stopping the evasion of anti-dumping duties. I understand that in fiscal year 2017, CBP collected over \$1.5 billion in anti-dumping and countervailing duties deposits and levied penalties of over \$253.6 million for importers committing fraud and negligence. DHS works closely with the Department of Commerce, Department of Labor, the Patent and Trademark Office and Department of Justice on various initiatives and litigation to enforce trade laws including those related to products of forced labor and the theft of intellectual property. We also rely on cooperation with the private sector through representatives of affected U.S. industries. If confirmed, I will look to build upon the work being done and enhance our partnership with interagency, private sector, and international partners to bring renewed energy and ideas for doing even more to foster and protect Americans from unfair trade practices.

8. Civil Rights:

- a. Do you support laws and policies that allow police and other authorities to demand proof of citizenship or immigration status based on their perception that an individual might be undocumented?

As I understand it, the Supreme Court recently affirmed, federal immigration authorities can only be exercised by federal personnel, or personnel specifically trained by DHS under ICE's 287(g) program. The Department supports the 287(g) program, through which particular state and local law enforcement personnel are deputized with limited federal immigration authorities under the supervision of ICE, and following extensive training that includes appropriate safeguards on racial or ethnic profiling.

While recognizing that state and local law enforcement agencies operate under their own authorities, DHS strongly opposes unlawful profiling by any of our law enforcement partners.

The Department's own personnel, including officers deputized under the 287(g) program, follow the 2013 DHS policy statement and the 2014 Department of Justice Guidelines. As explained in a public fact sheet DHS released concurrently with the DOJ Guidelines, existing DHS policy prohibits all racial profiling at all times, by any employee of DHS. It also makes clear that DHS personnel may only use race or ethnicity as a factor "when a compelling governmental interest is present, and only in a way narrowly tailored to meet that compelling interest." Although I defer to DOJ with respect to its guidance, I would note that the guidance expanded both the covered activities and scope of personnel and agencies that are covered at DHS. The DOJ policy applies stringent and expanded anti-profiling requirements to many DHS activities previously not addressed.

Finally, I would note that the DHS' Office for Civil Rights and Civil Liberties has been involved in the selection process for new 287(g) jurisdictions. Their role is to ensure that a new jurisdiction does not have a record of racial profiling or show other red flags that may cause DHS to reject the application. Additionally, CRCL has been involved in training for local law enforcement on the issue of what constitutes reasonable suspicion and racial profiling.

If confirmed, I will work to ensure that the Department's enforcement of the immigration laws continues to be within the bounds of our legal authorities and consistent with proscribed Constitutional protections and standards regarding due process.

- b. If so, what would constitute reasonable suspicion, and how would this differ from racial profiling?

If confirmed, I will work to ensure that the Department's enforcement of the immigration laws continues to be within the bounds of our legal authorities and consistent with proscribed Constitutional protections and standards regarding due process.

9. Enforcement Priorities: Congress allocates a set amount of money to DHS to enforce immigration laws, and DHS currently prioritizes its limited resources based on priorities.

a. What is your approach to prioritization?

As I stated during my confirmation hearing, I intend to continue DHS' policy of prioritizing enforcement for those with a history of having committed violent and serious crimes and those who otherwise post a risk to national security or public safety.

10. H-2B Visas: The employment visa program known as H-2B that provides a safety net for small and seasonal businesses to supplement their year round workforce when necessary. This visa program is very important to the tourism industry in my state as well as to the state fair and carnival industry among others. As you know, the program is capped at 66,000 visas.

a. What are your plans for this visa program – specifically, do you have plans for the treatment of returning workers?

The H-2B program allows U.S. employers who meet specific regulatory requirements to bring foreign nationals to the U.S. to fill temporary non-agricultural jobs. I am aware that in past years, Congress has provided for H-2B returning workers to apply for visas notwithstanding the statutory cap. DHS does not have the unilateral authority to provide visas in excess of the 66,000 cap established by Congress. Under the law, the number of workers who may be granted H-2B classification in a fiscal year (the H-2B “cap”) is limited to 66,000, and the cap is allocated semiannually, allowing for up to 33,000 H-2B workers in the first half of the fiscal year, and for the remaining H-2B visas to be allocated to workers during the second half of the fiscal year. I understand some late-season industries (e.g., salmon workers in Alaska and seasonal workers on the coast of Maine) argue that the dates of the two cap openings (i.e., October 1 and April 1) prevent them from obtaining H-2B workers. In order to obtain one or more visa numbers during either half of the fiscal year, an employer must have a start date of work on or after October 1st, or on or after April 1st.

I understand that under DHS regulations, USCIS will not accept an H-2B petition unless it is filed with an approved temporary labor certification (TLC). DOL regulations, in turn, provide that an employer cannot apply for a TLC with the DOL until 90 days before the start date of work to ensure that no U.S. workers are able and available to perform the proffered temporary jobs.

If confirmed, I look forward to learning more about utilization of this visa category and current sticking points or areas of concern. I look forward to working with USCIS, Congress and stakeholders from employers utilizing this visa category to understand better how we may seek additional improvement, efficiency and transparency in how the program parameters and administration are working to fill key jobs with labor shortages while protecting Americans seeking work and preventing fraud and abuse.

11. Private Prisons/Detention Centers: The last administration had instructed the Department of Justice to phase out the use of private prisons in the federal court system because they were deemed less safe and a poor substitute for government-run facilities. The DHS announced a re-

evaluation of its own use of private prisons to hold undocumented immigrants. Since then the new administration has announced plans to expand private, for-profit detention centers in many states including Michigan.

a. Do you intend to oversee new construction of for profit detention centers?

I understand that ICE utilizes detention facilities managed by contractors, including through Intergovernmental Service Agreements with state and local governments. The facilities are required to meet ICE requirements and are subject to inspection from the Inspector General in addition to other oversight mechanisms. I do not know whether ICE deems its current detention capacity sufficient to meet its operational needs consistent with ICE's authorities and available resources. As such, at this time, I cannot answer whether new facilities, either contract or government-run, are necessary.

b. Do you see a conflict of interest between for-profit detention centers and American tax payers?

I do not understand the premise of this question. Consistent with legal authorities and available resources, departments and agencies must assess how best to meet their mission needs and deliver for the American people in a cost effective manner. Should I be confirmed, I will strive to do just that.

12. Federal Disaster Response and Communications: On September 25th, just five days after Hurricane Maria made landfall, the President tweeted: "TX and FL are doing great but PR, which was already suffering from broken infrastructure and massive debt is in deep trouble..." This was just one of a number of tweets that maligned the people and government of Puerto Rico and seemed to imply the devastation that occurred was not worthy of assistance. We now know that Texas suffered significant flooding that was due, in part, to rapid growth and inadequate drainage infrastructure but no one is suggesting their damage is not worth billions in federal funding, and rightfully so. Federal assistance is based on a number of factors but I don't believe we can penalize disaster survivors for things largely outside their control. The President's communication could be interpreted as signaling policy change or at the very least, influencing how the public interprets FEMA policy and certainly impacts how FEMA coordinates with State, local, and tribal officials across this country.

a. Have you been directed to review or do you know of any effort to change how the federal government assesses whether a disaster declaration is warranted to include a determination of whether local decision-making has increased risk?

To my knowledge, there has been no change in the process by which the federal government assesses the impact of an event, or if a presidential disaster declaration is warranted.

b. If you are confirmed, would you commit to reviewing how communications from around the Federal government, including from the President's various methods of communications, impact FEMA's ability to accurately communicate the facts to those impacted by disasters?

Providing the public timely and accurate lifesaving information during major incidents remains FEMA's highest priority. The Emergency Support Function (ESF) #15 Standard Operating Procedures is FEMA's primary guiding document to coordinate outreach and ensure consistent public information through an integrated Federal incident communications system. If confirmed, I will work with Administrator Long to ensure that FEMA is able to accurately communicate needed facts and guidance to those impacted by disasters.

- c. If the President used inaccurate or unhelpful language in future disaster situations, how would you address this and limit the impact on both the FEMA workforce in the field and disaster survivors?

If confirmed, as Secretary it would be my responsibility to communicate clearly with the White House if I believed that actions or communications from the White House were impeding the ability of FEMA to effectively respond during a disaster.

13. Congressional Oversight of FEMA: As you know, this Committee has already begun examining the federal government's ongoing response and recovery from Hurricanes Harvey, Irma, and Maria. Based on your experience in the post-Katrina interagency lesson's learned process, I assume you recognize and appreciate the work that must be undertaken after large events to identify challenges and opportunities for improvement.

- a. Will you commit to empowering FEMA to share their expertise with this Committee as we seek to first do no harm and ensure they are not unduly limited by DHS?

Yes.

14. National Preparedness: In your questionnaire, you indicated interest in reviewing the metrics and reporting tools used for the suite of preparedness grants administered by FEMA.

- a. What are your initial thoughts on the programs as they are currently structured and do you envision a holistic shift away from the National Preparedness Report/THIRA/BSIR model of assessment?

I believe that we owe it to those affected directly by disasters and all taxpayers to ensure that we understand the risk management value of various preparedness grants. FEMA's preparedness grants are structured to meet the statutory requirements; for example, the Homeland Security Grant Program is designed to support state, local and tribal efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. Similarly, the National Preparedness Report satisfies a number of requirements in the Post-Katrina Emergency Management Reform Act (PKEMRA).

The THIRA is a risk assessment process that helps the whole community—including individuals, businesses, faith-based organizations, nonprofit groups, schools and academia and all levels of government—understand its risks and estimate capability requirements.

The Biennial Strategy Implementation Report (BSIR) is a legacy tool that will be replaced

when FEMA completes its Grants Management Modernization (GMM) effort, in the next few years.

If confirmed, I will work with Administrator Long to review the effectiveness and efficiency of all DHS grant programs and ensure adequate metrics and reporting structures in place

15. The National Preparedness Goal (NPG) was mandated by HSPD-8 which, as you indicated in your questionnaire, you oversaw the development of while at the Homeland Security Council.

a. What is your impression of how the Goal has been implemented thus far and is it a relevant tool for the federal government?

The National Preparedness Goal is “A secure and resilient nation with the capabilities required across the whole community to prevent, protect against, mitigate, respond to, and recover from the threats and hazards that pose the greatest risk.” It includes 32 core capabilities—distinct, critical elements necessary for success—organized in five mission areas and was refreshed in October 2015. The Goal continues to evolve as do the type and definition of the core capabilities. The Goal is developed through a variety of outreach mechanisms to ensure that the perspectives and experiences of stakeholders inform the next iteration.

b. Do you believe the current National Planning Frameworks are meeting their stated objective of guiding how the whole community achieves the National Preparedness Goal?

The National Frameworks—one for each of the five mission areas, namely prevention, protection, mitigation, response, and recovery—address the roles and responsibilities across the whole community to deliver the core capabilities necessary to achieve the National Preparedness Goal of a secure and resilient nation. The Frameworks were updated in June of 2016, and each guides activities in the mission areas. In conjunction with other National Preparedness System documents such as the Federal Interagency Operational Plans, the frameworks provide guidance on roles and responsibilities and need capabilities- with targets- to support community achievement of the National Preparedness Goal.

Senator Rand Paul
Post-Hearing Questions for the Record
Submitted to Kirstjen M. Nielsen

Nomination of Kirstjen M. Nielsen to be Secretary of the Department of Homeland Security
Wednesday, November 8, 2017

1. At the U.S.-Mexico and U.S.-Canada border, DHS personnel have used the so-called border search exception to conduct searches of Americans within 100 miles of a border, without a warrant or even probable cause. These searches are premised on individuals transiting to or from the United States, yet many millions of Americans live and work in these zones and are not transiting into or out of the country. The result is that Americans in large swaths of the country have diminished constitutional rights.
 - Question: Should the regulations on which this practice is based be updated to more narrowly define this practice?
 - Question: Do you believe any geographic limitation exists to where and how DHS personnel may deploy suspicionless checkpoints within the United States?

In response to both questions above:

Customs officers are authorized to conduct a border search of travelers, conveyances, and merchandise crossing the United States border. As the Supreme Court has long recognized, the border search doctrine operates as an exception to the warrant and probable cause requirements of the Fourth Amendment. Border searches may be performed at places such as the border (the territorial boundaries of the United States that exist on land, sea, and air) or the functional equivalent of the border (e.g., the airport where an international flight to the United States lands).

Immigration checkpoints concern separate authority. More specifically, the Immigration and Nationality Act (INA) § 287(a)(3) authorizes law enforcement agents to board and search for aliens on vessels located in U.S. territorial waters and vehicles or conveyances located within a reasonable distance from the exterior boundary of the United States. A “reasonable distance” under this statute extends 100 air miles inland from the border of the United States. Additionally, when making a stop pursuant to INA § 287(a)(3) at locations other than an immigration checkpoint, an agent must have at least reasonable suspicion to stop a vehicle. Any search of the vehicle will have to be separately justified via consent to search, or probable cause to conduct a readily mobile conveyance search of the vehicle. DHS does not conduct suspicionless checkpoint searches.

- Question: If confirmed as Secretary, will you expand the use of suspicionless checkpoints within the United States?

If confirmed, I will work to ensure that DHS will adhere to all applicable legal authority and judicial decisions concerning checkpoint operations. DHS does not conduct suspicionless checkpoint searches.

I understand that the Department's Office for Civil Rights and Civil Liberties (CRCL) recently investigated allegations related to the checkpoints and found that CBP checkpoints were not violating the constitutional rights of persons transiting. However, CRCL is working with CBP to enhance public outreach and CBP training to ensure that travelers and agents are aware of their rights when crossing at checkpoints.

- Question: Do you support the capture of all vehicle information by DHS, including license plates, for vehicles that travel through a DHS checkpoint—including those that have done nothing wrong and are simply driving from Point A to Point B as part of their daily business? If so, what limitations on this practice—including storage of vehicle information—might you support?

As I understand it, U.S. Border Patrol checkpoints utilize license plate reader (LPR) technology for the purpose of identifying illegal alien smuggling. LPR technology is utilized at checkpoint locations that have been identified as routes of travel utilized by alien smugglers. Checkpoints and LPR technology further assist the overall national security mission.

Currently CBP captures the data and maintains it for seventy-five years, and the images for two years (due to storage limits), as stipulated in the TECS System of Record Notice.

If confirmed, I will work with CBP, DHS Counsel, and CRCL to ensure that the constitutional rights of all Americans are upheld with respect to vehicle information emanating from a DHS checkpoint.

2. I remain concerned about reported instances of American citizens being detained at points of entry when traveling back into the United States—in particular, the reported instances of Americans being asked by DHS officials to turn over their phones or other digital devices for search, including:
 - i. This year, a NASA engineer and U.S. citizen was reportedly pulled into inspection when returning from a vacation in Chile. The individual subjected to inspection recounted how Customs and Border Protection (CBP) demanded the PIN to his phone and handed him a form that

explained how CBP had the right to copy the contents of his phone. He recalled that the form indicated that participation in the search was “mandatory” and it threatened “detention and/or seizure” of the device if he did not comply.¹ He was reportedly released after providing the PIN to his phone—a work phone that was itself property of NASA.²

- ii. Two U.S. citizens were stopped on a return from Canada and held for two hours after their phones were taken by CBP officers. They alleged that they were stopped again on another return trip from Canada three days later in which they were again told to turn over their phones. They also alleged that CBP officers physically took one of the phones in order to search it.³
- iii. An NBC News investigation reported that they examined 25 different cases of U.S. citizens being told to turn over their phones, unlock them, or provide passwords to CBP officers.⁴
- iv. A U.S. citizen was reportedly stopped from boarding a flight in Los Angeles, handcuffed, and released after “a Homeland Security agent looked through his phone for about 15 minutes.”⁵
- v. In 2015, a U.S. citizen journalist alleged that, while traveling back to Texas from Brazil, he was detained while officials “went through all his contacts, emails and WhatsApp messages on his phone.”⁶
- Question: If DHS agents lack a warrant, would you as Secretary allow an American citizen, a green card holder, or any other valid visa holder to be delayed or denied entry into the United States if the individual refuses to provide his device’s password, unlock his device, or otherwise provide access to the information on his device? If yes, under what authority, and how does an individual’s citizenship or visa status affect your answer?

The Secretary of Department of Homeland Security is under an obligation to safeguard our country to the extent possible by law. Legal issues such as this

¹ <https://www.theatlantic.com/technology/archive/2017/02/a-nasa-engineer-is-required-to-unlock-his-phone-at-the-border/516489/>

² <http://www.cnn.com/2017/02/13/us/citizen-nasa-engineer-detained-at-border-trnd/>

³ <http://www.nbcnews.com/news/us-news/american-citizens-u-s-border-agents-can-search-your-cellphone-n732746>

⁴ *ibid*

⁵ <https://www.nytimes.com/2017/02/14/business/border-enforcement-airport-phones.html>

⁶ https://www.buzzfeed.com/tasneemnashrulla/this-american-journalist-said-he-was-detained-at-miami-airpo?utm_term=.elMvKx0EB#goOwWgBpZ

will be determined with the assistance of counsel provided by the DHS Office of General Counsel. I would asked to be further briefed on this if confirmed. However, as I understand the current law, all persons and their devices arriving in the US are subject to a border search because CBP must determine the admissibility of both the traveler and his or her accompanying goods and baggage, to ensure that those goods are permitted to enter. In other words, and as I understand it, because any traveler may be carrying an electronic device that contains evidence relating to offenses such as terrorism, illegal smuggling, or child pornography, CBP's authority to search such a device at the border does not depend on the citizenship of the traveler.

Importantly, I also understand that CBP will never prevent a U.S. citizen from entering the United States because of a need to inspect that traveler's device. Therefore, although CBP may detain an arriving traveler's electronic device for further examination, in the limited circumstances when that is appropriate, CBP will not prevent a traveler who is confirmed to be a U.S. citizen from entering the country because of a need to conduct that additional examination. CBP's public guidance to travelers I think succinctly summarizes current policy and practice. (<https://www.cbp.gov/sites/default/files/documents/inspection-electronic-devices-tearsheet.pdf>).

To be clear, I believe that all CBP officers are and should be required to strictly adhere to all constitutional and statutory requirements and CBP has strict oversight policies and procedures that implement these safeguards. To my knowledge, the instances in which CBP seeks to conduct a border search of information in an electronic device are exceedingly rare – I remember the statistic that such searches affect less than one-hundredth of one percent of travelers arriving to the United State.

- Question: If you believe you have the authority to delay entry in any of these instances, what is the maximum amount of time you believe you can delay entry for each an American citizen, a green card holder, or any other valid visa holder?

CBP exercises border search authority very judiciously and has made available to the public, since 2009, its governing policy on the border search of information in electronic devices. Although CBP's law enforcement policy directives are generally issued internally for official use only, CBP recognized the importance of the public dialogue on this issue, and CBP Directive, Border Search of Electronic Devices Containing Information, includes comprehensive guidance for searching, reviewing, retaining, and sharing information obtained from

border searches of electronic devices containing information. It remains publicly available on the DHS website. ICE, which also has border search authority, issued a companion policy directive on this topic at the same time as CBP.

I understand that CBP's policy specifically states that CBP will protect the right of individuals against unreasonable search and seizure and will ensure privacy protections. To that end, it recognizes that, if a border search of an electronic device cannot be completed during the time that the traveler is at the port of entry, the device may be detained by CBP, ordinarily for a period not to exceed five days, after the traveler has departed the port of entry. Therefore, additional time needed to complete a thorough border search will not necessarily require the traveler to remain at the port of entry during the time of the search.

Moving forward, and in recognition of the requirement described in law, which require CBP to review and update at least every three years its standard operating procedures relating to searches of electronic devices at ports of entry, I understand CBP is currently reviewing the CBP Directive and intends to revise and update it to reflect evolving operational practices on this important and sensitive issue. If confirmed, I will ensure that such revision and update complies with all laws, protects Constitutional rights, and provides sufficient information to the reader about border searches of electronic devices.

- Question: As Secretary, would you permit the sharing of information gathered at the border from electronic devices with other federal, state, and local law enforcement?

As I understand it, CBP's governing policy directive specifically recognizes the potential need to share information with other federal agencies in order to seek their assistance and expertise to enable CBP to complete the border search. Further, any information shared occurs in accordance with the governing Privacy Act system of records notice.

- Question: On June 6, 2017, General John Kelly told me that "we don't [search phones] routinely unless there's a reason why...we do it whether they're citizens or non-citizens coming in." This is a change from what he told me on April 5, 2017, when he said "I just don't believe we're doing it." As Secretary, will you continue his policy of searching the contents of phones at the border?

If confirmed, I will work to ensure that CBP, and all of DHS complies with all laws, regulations and court cases in executing its mission. Currently, as I understand it, in addition to long-standing precedent, including that of the Supreme Court, that recognizes the broad scope of CBP's authority to conduct border searches, this authority is enshrined in numerous statutes – which support CBP not only in the enforcement of the nation's immigration laws, but also empowers CBP in support of our customs, agriculture, and counterterrorism missions at the border. It is my understanding that given today's threats and the CBP mission, similar to CBP's responsibility for inspecting luggage, vehicles and cargo upon arrival to the United States, in this digital age CBP must also conduct limited and targeted inspections of electronic devices to determine whether they contain contraband (such as child pornography), information indicating inadmissibility, or information that could present a threat to national security (such as WMD information).

- Question: You have indicated informally, and your predecessor as Secretary has indicated, that you do not detain U.S. citizens if they refuse to submit their digital devices to an electronic search at a point of entry. However, in such a scenario, would you seize or otherwise seek to separate the U.S. citizen from their device? Would you ask the U.S. citizen to leave the point of entry while agency officials retain possession of the device(s)? Does DHS assert that it has the authority, regardless of whether it is current practice, to separate a U.S. citizen from their digital device(s) at a point of entry for the purposes of an electronic search? If so, what procedures govern such actions?

As I understand it, there are CBP Directives on point. Specifically, one that recognizes that in the rare instance an international traveler's cell phone or other electronic device may need to be detained (beyond the time that the traveler is at the port of entry) to complete the necessary border search, there is a specified process for such a detention, including the requirement that a traveler receive a custody receipt and that the traveler be notified of the search when such a fact can be disclosed without hampering national security or law enforcement or other operational considerations.

In addition, the Directive provides that searches of electronic devices should be conducted in the presence of the traveler unless there are national security, law enforcement, or other operational considerations that make it inappropriate to permit the individual to remain present.

3. If confirmed, what will you do to ensure employees can and will disclose violations of law, rule, or regulation, and instances of fraud, waste, abuse and mismanagement within the DHS to any or all appropriate sources, including Congress?

I will work to foster an environment of respect and trust, providing ways in which voices can be heard and engaging with employees at various levels to identify and address concerns. I have always been a person who speaks truth even when the truth is uncomfortable. If confirmed, I will encourage the same candor from all DHS employees, and expect that managers will also foster an environment of trust and respect and will listen to any employee concerns and take actions to address them. Overall, we must foster a culture at the Department that encourages the same “see something, say something” attitude of vigilance we promote to the public and safeguard those who do come forward in compliance with whistleblower laws and regulations. I believe all DHS employees have a duty to report all such violations you describe. If confirmed, I will uphold all legal protections for the reporting of fraud, waste, abuse and mismanagement within DHS, and, in my position, will be especially vigilant to the issue of any potential management retaliation. I will partner with the IG to ensure that all complaints are properly investigated. I will also ensure that employees understand and have ready access to information describing the various ways to disclose violations of law, rule or regulation, and instances of fraud, waste, abuse and mismanagement within DHS.

4. Notwithstanding the recent cancellation of some \$16 billion of the program’s debt by Congress, the National Flood Insurance Program will remain deeply in the red for the foreseeable future. The Office of Management and Budget, in its Oct. 4, 2017, disaster supplemental request to Congress, called the NFIP “simply not fiscally sustainable in its current form.”⁷

- Question: Do you support any of the proposed reforms that OMB included in its Oct. 4 supplemental request? If yes, which proposed reforms? If no, what NFIP reforms would you support?

Yes. I strongly support reforms to the NFIP. As the Administration and many in Congress have noted, the program is not sustainable. Reforms are necessary such as those to enable a robust private market and to raise rates to reflect risk while including a means tested affordability program.

5. As “the only [Intelligence Community] element statutorily charged with delivering intelligence to state, local, tribal, territorial and private sector partners,”⁸ the DHS Office of Intelligence and Analysis presents potential dangers to civil liberties, including a blurring of the line between domestic law enforcement and intelligence gathering activities as well as intentional abuse or inadvertent misuse of intelligence products.
- Question: If confirmed, what will you do to insure that any and all intelligence gathered or disseminated by DHS will be handled with utmost concern regarding people’s privacy and other rights by all entities that may receive or encounter such information?

As I remember from my time as Chief of Staff, DHS has extensive mechanisms in place to guard against the concerns you have described, including built-in oversight within the Office of Intelligence and Analysis and safeguards through the Office of Privacy, the Office of Civil Rights and Civil Liberties, the Office of the General Counsel, and appropriate inspectors general. If confirmed, I commit to ensuring that DHS remains focused on gathering and disseminating intelligence information strictly within the confines of the law and with utmost respect for privacy, civil rights, and civil liberties.

- Question: With regard to Fusion Centers, what will you do to ensure the appropriate use of and consistent privacy protections for information shared by them among their partner entities?

While fusion centers are owned and operated by state and major urban area governments, as I understand it, to the extent they receive federal grants, access to federal networks, and DHS personnel, they are also subject to thorough oversight and review to ensure they comply with all relevant laws and have rigorous policies in place to respect privacy, civil rights, and civil liberties. If confirmed, I will work with the Department’s Under Secretary for Intelligence and Analysis to review DHS policies and procedures with regard to fusion centers to ensure they continue to handle information appropriately and to make sure any and all DHS personnel assigned to those centers are in compliance with requirements and have the necessary training to protect sensitive information, individual privacy and other rights.

⁸ <https://www.dhs.gov/office-intelligence-and-analysis>

6. From your tenure as DHS Chief of Staff, what ideas and aspirations do you have to improve the management of the Department of Homeland Security with respect to identifying and eliminating waste, fraud or abuse?

As described above, I will work to foster an environment of respect and trust, providing ways in which voices can be heard and engaging with employees at various levels to identify and address concerns. I have always been a person who speaks truth even when the truth is uncomfortable. If confirmed, I will encourage the same candor from all DHS employees, and expect that managers will also foster an environment of trust and respect and will listen to any employee concerns and take actions to address them. I believe all DHS employees have a duty to report instances of fraud, waste or abuse. Overall, we must foster a culture at the Department that encourages the same “see something, say something” attitude of vigilance we promote to the public and safeguard those who do come forward in compliance with whistleblower laws and regulations. If confirmed, I would review the various options available for reporting fraud, waste or abuse and ensure that such options are accessible to all DHS employees. I will also ensure that employees understand and have ready access to information describing the various ways to disclose instances of fraud, waste, or abuse within DHS, to include reporting to the IG and GAO.

If confirmed, I will uphold all legal protections for the reporting of fraud, waste, or and mismanagement within DHS, and, in my position, will be especially vigilant to the issue of any potential management retaliation. I will partner with the IG to ensure that all complaints are properly investigated and that if a process doesn’t exist today, that one is created to track reporting, investigate claims and ensure needed revisions or adjustments are made my managers and leadership. Should there be any gaps in authorities to appropriately address any of the concerns raised, I will work with the Congress.

Finally, as was discussed in a recent IG report, we must strengthen the DHS internal control environment to ensure that the Department can effectively, efficiently and lawfully execute its mission. If confirmed, I will work with the Deputy Secretary and the Under Secretary for Management to expand and strengthen our internal controls.

7. As your nomination moves forward, will you commit to providing a written response to any further questions related to your nomination prior to your confirmation vote?

Yes.

**Ranking Member Claire McCaskill
Post-Hearing Questions for the Record
Submitted to Kirstjen M. Nielsen**

**Nomination of Kirstjen M. Nielsen to be Secretary of the Department of Homeland
Security
Wednesday, November 8, 2017**

MANAGEMENT AND EXPERIENCE

1. Committee staff has received reports that the Department Homeland Security (DHS) political appointees are politically vetting career Senior Executive Service (SES) applicants and in some cases GS level career employees.
 - a. Do you agree that that political vetting of career employees is improper?

Yes.
 - b. If so, will you commit to providing written guidance to DHS employees that this kind of interference is improper?

Yes.

NATIONAL SECURITY

2. Will you commit to conducting cost-benefit analyses to ensure that all budgetary matters, including the proposed southern border wall and cuts to grants programs, are done with full consideration of the attendant risks and priorities of the Department?

Should I be confirmed, I look forward to working with you, the Committee and the Appropriations Committees to ensure that DHS considers both risk and cost – throughout the Department – to ensure that we are effectively and efficiently utilizing taxpayer money to secure our homeland against the greatest risks.

3. Do you agree that the Counterterrorism Advisory Board (CTAB) is a key DHS coordinating mechanism and that it has served a valuable purpose during and after elevated threat situations?

I agree that the CTAB is valuable and has improved the Department's ability to address terrorist threats. As part of my commitment to continue unity of effort initiatives, I will continue to support initiatives, such as the CTAB, that promote cross component information sharing.

- a. Do you plan to continue to exercise the CTAB?

Yes, and should I be confirmed, I look forward to clarifying the CTAB's processes and policies to ensure that it meets its mission requirements. Should I be confirmed, I would also like to assess whether its purpose should be expanded to include a wider array of threats and that its charter aligns with today's threat environment.

- b. The National Threat Advisory System relies on the CTAB for implementation. If CTAB is disbanded, what body or person will inform and make decisions on issuances of NTAS bulletins and alerts?

I have no plans to disband CTAB.

- c. What other counter terrorism/threat coordination mechanisms (if any) within DHS will you rely on?

Generally, I believe we must look at further integrating operations and threat intelligence throughout the Department to respond to emerging threats. Should I be confirmed, I look forward to assessing models such as the joint interagency task forces and interdepartment task forces to address risk across threat vectors.

- 4. If confirmed, do you commit to DHS providing a briefing to Committee staff regarding your review of Countering Violent Extremism and assessments of the related programs and grants within 90 days of your confirmation?

If confirmed, I commit to working with you and others on the Committee, including Senator Hassan who has requested a related assessment and information within 120 days to ensure that I provide you with the information requested no later than 120 days after confirmation.

- 5. If confirmed, do you commit to DHS providing a briefing to Committee staff regarding the results of your review of all visa programs within 90 days of your confirmation?

If confirmed, I commit to working with you and others on the Committee who have requested to be briefed on any review by the Department of visa programs in order to provide the information in a timely manner. As nominee, I do not know whether the time frame requested relative to confirmation is achievable as I do not myself know the status of such a review or the timing of its completion as well as actions that other stakeholders outside DHS like the Department of State may need to take.

FEMA DISASTER CONTRACTING

- 6. Do you think it is appropriate for DHS and its components to enter into contracts for disaster relief where a contract expressly prohibits a government audit or review? If so, under what circumstances would such a contract be appropriate?

I do not think it is appropriate for DHS to enter into contracts for disaster relief where a contract expressly prohibits a government audit or review.

7. During today's hearing you stated that you would advocate for a public after-action review of the federal government's response to recent hurricanes. If confirmed, will you commit to DHS conducting an after-action review of the federal government's response to Hurricanes Harvey, Irma, and Maria, and publicly release the results?

Yes.

CUSTOMS AND BORDER PROTECTION OFFICERS

8. President Trump has proposed significant increases in staffing for Border Patrol and ICE, but has not proposed commensurate increases for Customs and Border Protection (CBP) officers at our ports of entry.
- a. Does President Trump's budget proposal give CBP the resources it needs to achieve "operational control" of our ports of entry, which he required in his January 25 Executive Order and defined as "the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband."¹ If it does not, what additional resources would be required to do so? How many additional personnel would be required? Is it even possible to achieve full operational control of ports of entry?

If confirmed, I will meet with Acting Commissioner McAleenan and CBP leadership to ensure that CBP is adequately resourced, and if not, determine what additional resources are necessary. I commit to sharing the results of my review with the Committee and discussing how we can together ensure that our ports of entry have the personnel, technology, tools and resources needed to address today's threats.

- b. Are you concerned that our ports of entry are understaffed? Why or why not?

Should I be confirmed, I will remain committed to ensuring that the Department is appropriately staffed to meet today's threats and needs. I understand that our ports of entry have experienced significant growth and that staffing likely may need to be adjusted or increased. I commit to meeting with Acting Commissioner McAleenan to ensure that our ports of entry are adequately resourced, and if additional resources required, will work with the Congress to address any deficit.

¹ Exec. Order 13767, 82 Fed. Reg 8793 (Jan. 25, 2017).

- c. If confirmed, do you commit to review the allocation of staffing by Customs and Border Protection, and report back to this committee on your findings and plans to implement any changes?

Yes.

AGRICULTURAL SECURITY

9. Passage of the Securing Our Food and Agriculture Act, which President Trump signed into law this summer, requires DHS to carry out a program to defend the U.S. food, agriculture, and veterinary systems against terrorism and other high-risk events. If confirmed, what are your priorities for bolstering agricultural security operations at DHS?

DHS plays an important role in ensuring the nation's food supply is guarded against terrorist and other threats. Should I be confirmed, I would work hand in hand with the Department of Agriculture to align roles, responsibilities and expertise to ensure that together as a federal interagency we are addressing today's agriculture security operations.

10. In early October, DHS provided authorizing committees with notice pursuant to Section 872 of the Homeland Security Act about a departmental reorganization of certain chemical, biological, radiological and nuclear functions into a new Countering Weapons of Mass Destruction (CWMD) Office. The new office will include the Domestic Nuclear Detection Office (DNDO) in its entirety and parts of the Science and Technology Directorate (S&T) and the Office of Health Affairs (OHA).

- a. Who will be in charge of carrying out agricultural security work at DHS in the context of this reorganization? Will that person and the entity be able to successfully coordinate department activities in this area?

As I understand it, OHA and S&T have resources and authorities related to agricultural security, working with interagency partners. Under the proposed reorganization, these specific roles would remain with the same level of expertise and attention. Should I be confirmed, I will examine the roles and ensure proper focus is provided within the federal government to meet agricultural security needs.

- b. Will you commit to working with me to enhance security in the agriculture sector?

Yes.

- c. If you are confirmed, will you commit to reviewing the 872 Reorganization proposal prior to its taking effect on December 5, 2017? Will you commit to informing me whether you will use 872 authority to place the new office of CWMD within S&T?

Yes and Yes. Should I be confirmed, I will also work to ensure that any reorganization uses best practices and internal controls to ensure resources are not wasted, processes and programs are aligned, and to reduce any potential overlaps.

- d. Would an Office for CWMD within the S&T Directorate be better equip the Department to address CWMD? Would a joint task force enhance focus in the area of CWMD?

If confirmed, I commit to reviewing the 872 Reorganization proposal to ensure it is the best way to execute WMD defense efforts.

JOINT TASKFORCE TO COUNTER OPIODS

- 11. I have been deeply concerned about the opioid epidemic in the U.S. and investigating how the federal government can assist local efforts to address this scourge.
 - a. What are your thoughts on the joint task force (JTF) and having them do more work in the area of counternarcotics, specifically countering opioids?

We must leverage all capabilities and authorities the federal government has to offer to counter the opioid epidemic in the U.S. Should I be confirmed I would look at the DHS JTFs to see if they can offer more to help fight this epidemic and to help counter narcotics smuggling.

DHS is also a partner in the Joint Interagency Task Force - South which conducts counter illicit trafficking operations, and should I be confirmed, I will work towards ensuring that DHS is leveraging all of its capabilities and capacities to support Task Force efforts.

- b. Do you commit to work with me on legislation to enhance DHS' work in this area?

Yes.

Senator John McCain
Post-Hearing Questions for the Record
Submitted to Kirstjen M. Nielsen

Nomination of Kirstjen M. Nielsen to be Secretary of the Department of Homeland Security
Wednesday, November 8, 2017

Question on Opioid Abuse:

1. Deaths from opioid abuse and manufactured heroine have increased rapidly, to the point that the President in October declared the opioid epidemic a “Nationwide Public Health Emergency”. As you are aware, these deadly drugs are grown and manufactured in Mexico and they're coming across our southern border to meet demand here in our States. We cannot successfully combat this epidemic without both reducing demand at home and disrupting the networks moving the supply. Solving the drug epidemic will require a whole of government approach that calls upon law enforcement, the medical community, the diplomatic corps, and our military.
 - a. What will you do to prevent these drugs from crossing our border?

I agree that we cannot combat this epidemic without both reducing demand at home and disrupting the networks moving the supply. Should I be confirmed, I will work with CBP, USCG, ICE, and I&A and other DHS components to continue to reduce and disrupt supply and to reduce the smuggling of opioids and illegal drugs across our borders, through our ports of entry and through the mail. Should I be confirmed, I will also work with other Cabinet officials to ensure a whole of government approach to comprehensive drug demand reduction, to include combatting opioid abuse. Should I be confirmed, I will work to strengthen current DHS efforts to stem the flow of opioids and illegal drugs, including cheap and deadly fentanyl mostly manufactured in China, cocaine mostly produced in Colombia, and heroine from Mexico to name a few, including such efforts as those by DHS/CBP and the U.S. Postal Service to increase the amount of advance information DHS receives on international mail and CBP's efforts to use canine teams to screen international mail and express consignment shipments. DHS is also a partner in the Joint Interagency Task Force - South which conducts counter illicit trafficking operations, and should I be confirmed, I will work towards ensuring that DHS is leveraging all of its capabilities and capacities to support Task Force efforts. Finally, should I be confirmed, I will continue to strengthen the partnerships DHS enjoys with Mexico, Central and South America and the Caribbean governments towards the elimination of the networks trafficking and smuggling illegal goods, to include drugs.

- b. How will you work with these other government entities to combat this epidemic?

As stated above, should I be confirmed, I will work with other Cabinet officials to ensure a whole of government approach to comprehensive drug demand reduction, to include combatting opioid abuse. Today, DHS works with interagency and international partners to implement a comprehensive approach to attacking the opioid crisis. Should I be confirmed I would continue the Department's efforts. The Department's efforts to attack the opioid crisis include: working with international partners to stop the flow of illicit opioids and opioid analogues at the source; efforts to interdict illicit narcotics at or before they reach our borders; and investigative and intelligence related efforts to drive a counter network approach to disrupt and dismantle the transnational criminal organizations responsible for poisoning and killing Americans. In addition to efforts described above, a few additional examples:

- ICE-HSI and CBP work closely with interagency partners to leverage interagency capabilities to attack the opioid crisis and combat transnational organized crime. Both ICE-HSI and CBP work together with the DEA, U.S. Postal Inspection Service and other federal agencies on the Heroin and Fentanyl Task Force (HFTF).*
- Internationally, CBP shares real-time information and intelligence with the Border Five (B5) countries to target express and postal consignments which leads to enhanced targeting and the identification of individuals and organizations involved in the illicit opioid trade.*
- CBP continues to foster relationships with national law enforcement organizations, the High Intensity Drug Trafficking Areas (HIDTA) Program, non-profits, and national organizations representing mayors, city managers, governors, tribal nations, first responders, and other key stakeholders to share information about CBP's capabilities and current efforts to combat the opioid epidemic, as well as contribute to intelligence products and information sharing on trends frontline personnel are seeing in CBP's interdiction.*
- DHS is a co-chair of the Threat Mitigation Working Group (TMWG) which works to improve federal interagency coordination to identify, interdict, investigate, prosecute, and dismantle transnational criminal organizations, subsidiary organizations and their networks.*

Questions on Border Security:

2. In October, this Committee passed a bill that I sponsored, S. 146, the *Border Security Technology Accountability Act*, which would improve the management and accountability of Department of Homeland Security border technology acquisition programs. As you may know, numerous reports have concluded these acquisition programs are at "high-risk" for waste, fraud and abuse.

 - a. What steps should DHS take to improve the management of border technology acquisition programs?

I believe the development and maintenance of internal controls to be a vital part of effective management and stewardship of taxpayer monies. As I understand it, CBP continues to develop and enhance governance and business processes to facilitate

risk-informed decisions. As discussed elsewhere, should I be confirmed, I will work with CBP and all DHS leadership to ensure that performance management processes are enhanced so that programs, investments, and acquisitions will be measured for reaching the desired outcomes and planning, programming, budget, and accountability (PPBA) business processes will be risk-based.

Should I be confirmed I look forward to working with the Deputy Secretary and Under Secretary for Management in assessing the effectiveness of the Joint Requirements Council (JRC) to validate mission needs and operational requirements for all major acquisition programs prior to their movement through the acquisition process. I also look forward to working with Acting Commissioner McAleenan to discuss ways that CBP is improving the management of border technology acquisition programs and what more can be done.

- b. Should DHS develop a plan that is available to Congress for testing and evaluating new border security technologies to ensure taxpayer dollars are being used efficiently and effectively?

As I understand it, Test and Evaluation Master Plans are developed for all major CBP acquisition programs which lay out all of the testing that must be successfully completed through development prior to deployment of the capability. Should I be confirmed, I look forward to working with Acting Commissioner McAleenan to ensure that processes and plans are in place to ensure taxpayer dollars are being used efficiently and effectively.

- c. Do you have any concerns with the requirements outlined in the Committee passed bill, S. 146?

I am not currently familiar with requirements outlined in the Committee passed bill. I am not aware of any DHS expressed concerns. Should I be confirmed, I will ensure that the Department engages with the Committee on S. 146 and provides any appropriate technical assistance.

- 3. Securing our southern border must be a top priority for DHS. Agreeing on how to measure border security has continued to complicate the issue, but one way to measure border security is by our ability to identify and respond to threats along our southern border. Do you agree with this approach?

Yes, identification of threats through intelligence and surveillance capabilities; as well as timely responses to threats are key elements in measuring security of the border.

- a. What is your assessment of the current state of border security?

Should I be confirmed, I look forward to reviewing the latest border threat assessments as well as the northern and southern border strategies I understand DHS is developing. I currently believe we must do more to ensure we can identify

and assess the threats, strengthen situational awareness and our ability to impede or deny illegal entry through a combination of personnel, technology and infrastructure. We must target and prioritize our efforts based on risk.

b. How does DHS currently define a secure border?

As I understand it, DHS and the USBP are developing a plan for obtaining and maintaining operational control (OPCON) between the Ports of Entry. USBP operationalizes OPCON between the Ports of Entry as: the ability to impede or deny illegal border crossings, maintaining situational awareness, and applying the appropriate, time-bound law enforcement response. Achieving OPCON will take an integrated approach. Wall in appropriate places must be combined with the right mix of technology and personnel to ensure operational control. Border security and lawful immigration rely not only on USBP's authority to accomplish OPCON, but are also dependent upon the roles of our partners within the Federal and State and Local agencies to execute their authorities as well.

c. What oversight mechanism of Border Patrol agents should be implemented to ensure a secure border and humane implementation of our immigration policy?
Should I be confirmed, I will work with Acting Commissioner McAleenan to understand what oversight mechanisms are in place and what further mechanisms may be needed.

4. Last year's NDAA included a provision that requires the Secretary of Homeland Security to develop metrics to measure the effectiveness of security along the border. Will you commit to working with Congress to meet this requirement?

As I understand it, the NDAA directs the Department to report on over 40 specific border metrics. I believe the Department published a report in September 2017 that provides some of the most important required metrics and expects to complete the full report by the end of the calendar year. Should I be confirmed, I am committed to building on this existing work to produce fully credible and transparent border security metrics, including by working to meet all the reporting requirements in the NDAA.

5. Should a "border wall" and any discussion of border security along the southern border also include the use of technology, drones, towers, fences, and other surveillance capabilities?

Absolutely

a. What percentage of the Southwest border has surveillance capabilities in place?

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

b. What impediments exist to full surveillance coverage?

As the nominee, I am not able to comprehensively answer this question at this time. However, as I understand it, current impediments to full coverage include funding restrictions, technology limitations, and land issues to include variances in terrain, environmental issues, and land ownership.

6. According to the Executive Order entitled, “Enhancing Public Safety in the Interior of the United States,” issued by the President on January 25, 2017, Department personnel may exercise prosecutorial discretion in removal proceedings on a case-by-case basis.

- a. Can you please provide your assessment of the range of discretion permitted by the Executive Order?

Congress has defined the Department's role and responsibilities regarding the enforcement of the immigration laws of the United States. Executive Order 13,768 sets forth the immigration enforcement policy of the executive branch. These priorities do not, however, preclude the authority to exercise prosecutorial discretion, which is inherent in all law enforcement authorities. As I currently understand it, prosecutorial discretion should not be exercised in a manner that exempts or excludes a specified class or category of aliens from enforcement of the immigration laws.

Further, as I currently understand it, prosecutorial discretion may take a number of forms from deciding whether to issue or cancel a detainer to deciding whether to grant deferred action or an administrative stay of removal.

- b. In discretionary removal proceedings, do you support distinctions made between serious criminals and minors?

As set forth in Executive Order 13,768, criminal aliens are the Department's highest removal priority.

7. In previous years, border agents prioritized removal of national security threats, serious criminals and recent border crosses. Since January to early September, DHS has deported nearly 54,000 illegal immigrants living in the U.S., which is a 34 percent increase over the same period last year.

- a. Can you please explain DHS guidelines as it relates to apprehending an alien?

Apprehensions are guided by the priorities set forth in Executive Order 13,768, including aliens unlawfully in the United States charged or convicted of crimes, those who otherwise pose a risk to public safety or national security and those who have final orders of removal from a federal judge.

- b. Can you please explain DHS guidelines as it pertains to asylum seekers and whether they would be treated in accordance with U.S. and international law?

Should I be confirmed as Secretary, I will work to ensure that DHS abides by U.S. law and upholds the United States' international legal obligations related to asylum seekers. Generally, the U.S. Citizenship and Immigration Services (USCIS) adjudicates asylum claims submitted by individuals who are already in the U.S. and who are not in removal proceedings. These individuals may apply for asylum by filing an application with USCIS, regardless of their immigration status. Applicants for asylum who do not hold a lawful immigration status and who are found ineligible by USCIS are placed in removal proceedings, and their applications are referred to an Immigration Judge who will consider their asylum claims. In addition, as I understand it, certain aliens seeking admission to the U.S. or who are apprehended in between ports of entry who indicate an intention to apply for asylum, a fear of persecution or torture, or a fear of return to their home country are referred to USCIS officers to determine whether they have a credible fear of persecution or torture. USCIS officers then conduct a credible fear interview to determine if there is a significant possibility that the alien can establish eligibility for asylum.

Questions on Cyber Security:

8. The report by the Commission on Enhancing National Cybersecurity determined that the organizational construct for cybersecurity within the federal government was inadequate given the cyber challenges we face.
- a. Do you agree that the current organization of the government is insufficient and that dramatic changes may be needed to better posture us to address the cyber threats we will face in the future?

I am a firm believer that organization directly affects the ability of an entity to perform its mission effectively and efficiently. Operational coordination across Federal agencies and the clear articulation of roles and responsibilities with respect to cybersecurity is essential. Actions must also be coordinated at a strategic level across the interagency to ensure an all-of-government approach to countering the cyber threat. Continued coordination at all levels is necessary. Should I be confirmed as Secretary, I will work with DHS leadership to determine whether DHS is sufficiently postured and optimally organized to address its critical mission with respect to current and evolving cyber threats. See also my related answers to the Policy Questionnaire.

- b. What do you think is the cyber security mission of Department of Homeland Security and how does it relate to the other parts of the federal government with significant cyber roles?

The mission of the Department is to safeguard and secure cyberspace. DHS does this through leading efforts to strengthen the security of networks in Federal civilian agencies and the security and resilience of our nation's critical infrastructure, and through law enforcement efforts to combat cybercrime.

As I stated in the Policy Questionnaire, in this current cyber environment, no one entity has all of the authorities, capability or capacity to protect every asset or stop every threat. Our approach must be rooted in risk management and partnership. We must identify the criticality of assets, identify and assess systemic risks, and prioritize the application of protective measures in a scalable, risk-informed way. Addressing our Nation's cybersecurity threats and vulnerabilities requires a whole of Government, and indeed whole of Nation, approach that is coordinated with our private sector, state, local, tribal and territorial governments, and international partners. We must collectively leverage our various authorities and capabilities to secure vital systems, assets and functions, improve resilience against cyber incidents, and quickly respond to and recover from incidents when they occur.

Agencies with various missions support each other in complementary ways. Close collaboration with partners such as the FBI and Department of Defense are essential to success. This collaboration is enshrined in PPD-41 and the National Cyber Incident Response Plan.

Questions on Interoperability:

9. Public safety communications interoperability is one major component of an effective response to a terrorist attack or other disaster. In order to improve public safety communications, Congress created the First Responder Network Authority to develop a nationwide public safety broadband network. It also established the Office of Emergency Communications and SAFECOM at DHS to improve public safety communications interoperability.
 - a. Do you believe these initiatives have been effective in improving interoperability among first responders?

The interoperability of first responder communications remains absolutely essential. And yes, I do believe that DHS has made important strides in supporting communications interoperability among first responders from the publication of the Interoperability Continuum to the National Emergency Communications Plan. DHS serves as an important resource to public safety stakeholders and sits in a unique position to play the role that it does.

At a high level, as I understand it, DHS supports interoperability by offering training, tools, workshops, regional support, guidance documents, and planning

technical assistance. DHS also manages priority telecommunications programs to ensure first responders can communicate during emergencies.

- b. If confirmed, what, if any, additional steps need to be taken to ensure effective public safety communications during the response to a disaster or act of terrorism?

Continued engagement with and support to emergency communications stakeholders is essential. I would offer that an important step is full funding of the budget for DHS, other federal agencies and the budgets at state, local, tribal, and territorial partner agencies. These partners must have the plans, resources, and training necessary to support communications needs during a major incident. Should I be confirmed, I will work with the leadership of FEMA, NPPD and S&T to identify additional steps DHS can take to help ensure effective public safety communications.

FEMA Fire Grants Programs

10. In August, the Senate passed by unanimous consent legislation that I sponsored (S. 829) that would reauthorize the highly successful Assistance to Firefighters (AFG) and Staffing for Adequate Fire and Emergency Response (SAFER) grant programs through Fiscal Year 2023. The *Fire Grants Reauthorization Act* would ensure that our nation's more than one million fire and emergency services personnel continue to have access to the necessary training, equipment and staffing as first responder missions increase. The bill also includes language that would strengthen oversight and monitoring of the fire grants to minimize the risk of waste, fraud and abuse, and create training programs to assist fire departments in properly managing the grant awards. The legislation is currently with the House of Representatives.
- a. Should Congress reauthorize these fire grant programs? Why or why not?

The Department supports the re-authorization of the fire grant programs which provide critical resources to the Nation's fire services. The Federal Emergency Management Agency in partnership with the U.S. Fire Administration manages the fire grant programs to help build and sustain the capabilities of the nation's fire services; this is an important part of the Nation's Homeland Security strategy. Adequately staffing the fire services to standards and providing reliable, modern, equipment and training ensures that our nation is prepared during day to day service in our communities as well as able to provide critical lifesaving capabilities in the event of a natural disaster or terrorist incident. As we have seen during recent events from the tragic shootings to unprecedented natural disasters, the nation's fire services are critical to a safe and resilient nation.

Jones Act

11. The Department of Homeland Security recently waived the Jones Act requirements for 10 days in Puerto Rico. From your perspective, has the Jones Act had an impact the ability of the Department to respond to natural disasters such as hurricane Maria in Puerto Rico?

From my perspective as the nominee, the Jones Act has not hindered DHS' response to Hurricane Maria. The Department worked with the Department of Transportation Maritime Administration to ensure that sufficient Jones Act qualified vessels were available to support the response. As I understand it, overall, the biggest challenge in restoring commodity supply chains on Puerto Rico was commodity distribution and movement on the island due to the disruption of transportation networks - not the movement of supplies to the island.

Senator James Lankford
Post-Hearing Questions for the Record
Submitted to Kirstjen M. Nielsen

Nomination of Kirstjen M. Nielsen to be Secretary of the Department of Homeland Security
Wednesday, November 8, 2017

1. It is imperative that the Transportation Security Administration continuously evaluate and improve checkpoint screening procedures in fulfilling its responsibility to protect our nation's transportation systems. With the agency's increased screening responsibilities and decreasing budget, the TSA must work vigilantly to ensure that screening operations are efficient and secure. Do you believe the TSA should explore new technologies that observe and analyze passenger traffic data in its efforts to optimize the allocation of screening resources, reduce the risk of screening breaches, and help modernize the Agency?

Yes, and if confirmed I will work closely with Administrator Pekoske to ensure that TSA is consistently evaluating and implementing new technologies to address risk and meet operational and legal requirements.

**Senator Heidi Heitkamp
Post-Hearing Questions for the Record
Submitted to Kirstjen M. Nielsen**

**Nomination of Kirstjen M. Nielsen to be Secretary of the Department of Homeland
Security
Wednesday, November 8, 2017**

TSA

1. Each year, the Partnerships for Public Service releases a survey of the “Best Places to Work in the Federal Government.” TSA is ranked number 303 of 305.
 - a. What do you think is contributing to TSA’s low ranking?

Employee morale surveys have repeatedly shown that the people of DHS are inspired by and motivated by the mission. At the same time, they raise challenges regarding quality of life within the workplace and interactions with management. I also understand there are requests for additional career planning and professional development and training throughout the Department

As a leader, it is important to clearly articulate objectives, hold people accountable and acknowledge success. If confirmed, I look forward to fully engaging with TSA leadership and the frontline workforce to identify specific issues, address them and to ensure that they have the tools, resources and support they need to execute the mission.

I understand that TSA Administrator Pekoske is making employee morale one of his highest priorities and, if confirmed, I look forward to working with and supporting him in his efforts.

- b. What Policies will you implement to improve morale at TSA and what metrics will you use to measure effectiveness?

During my service as the Department’s Chief of Staff, we initiated a leadership employee listening tour by the DHS Deputy Secretary. This tour reinforced the need for Department leadership to clearly articulate objectives, hold people accountable and acknowledge success. General Kelly also ensured that DHS employees – including those at TSA – were no longer inappropriately abused by the public, media and others for professionally and effectively doing their jobs and enforcing the laws Congress has adopted. I plan to continue this form of leadership. If confirmed, I look forward to fully re-engaging in initiatives to identify what the Department has learned and to develop specific implementation steps

the Department can take on issues identified. I will also work with Administrator Pekoske to both assess the specific steps TSA can be taking to improve morale and measure progress and to develop performance, hiring and retention metrics to help us better understand the effectiveness of planned activities.

2. According to the American Federation of Government Employees, when the Aviation and Transportation Security Act was enacted in 2001, TSA was given extraordinary authority over the labor rights of Transportation Security Officers (TSO). As a result, there are two personnel systems at TSA that are separate and unequal. Unfortunately, TSOs are not provided the same labor rights and standards that other categories of TSA employees enjoy.
 - a. What percentage of the TSA workforce is employed in the TSO classification?

DHS has advised me that the percentage is 75.3%. As the nominee, I am not otherwise familiar with the specific percentage.

- b. Why does TSA extend rights to a minority of its employees and limit or deny rights to the majority that work as TSOs?

I am not fully briefed at this time on the complete history or background of policy determinations made about the workforce under the preceding two Administrations and previous Congresses regarding the TSA workforce. I am generally aware that under the Aviation and Transportation Security Act, provisions of Title 5 do not apply to the TSA screeners. I am also aware generally that Congress vested in the TSA Administrator the authority to set the terms and conditions of employment for the screening workforce notwithstanding any other provision of law and to establish levels of compensation and other benefits for those employees. If confirmed, I look forward to working with Administrator Pekoske to better understand these issues and ensure the TSA workforce is best able to fulfill its security mission within the authorities and resources we have been provided.

- c. If confirmed, will you commit to examine the labor rights and standards provided to TSOs and assess whether they should be provided the same rights as standards that are provided to other categories of TSA employees?

If confirmed, I look forward to working with Administrator Pekoske to better understand these issues and ensure the TSA workforce is best able to fulfill its security mission within the authorities and resources we have been provided.

Border Security

3. A few months ago, Senators Tester, McCaskill, and I wrote to CBP Acting Commissioner McAleenan about Border Patrol radio failures. The letter discussed severe shortfalls in secure, reliable communications systems along the Southern and Northern borders that have been brought to our attention by the National Border Patrol Council and individual Border Patrol agents. We have heard reports that the radios many agents use can't talk with state and local law enforcement, and in remote areas of the border, the radios often simply don't work. If confirmed, will you commit to resolving this problem?

If confirmed, I will work with the leadership of CBP to examine this issue and develop a plan to resolve it.

4. As we discussed at your confirmation hearing, it is very important to me to see the new Northern Border Strategy implemented quickly and with DHS 100% committed to supporting following through with the desired outcomes of the strategy. Once again I want to ask you:
 - a. If confirmed will you commit to budgeting for sufficient funds to execute the Northern Border Strategy including funds to begin improving facilities, and smart investments in technology to improved domain awareness?

Yes, I will commit to reviewing the strategy and following through with the desired outcome of the strategy and work with the Committee on any additional resources or authorities that might be required.

- b. Will you commit to me that Northern Border Security will be a priority of yours if you are confirmed?

Yes, I will.

5. CBP is experiencing tremendous difficulty with filling vacancies in rural and remote locations along our borders. Recently several Minnesota ports, just across the border from North Dakota, had their operating hours reduced partially due to such staffing challenges.
 - a. Will you commit to reviewing CBP's current staffing models and move forward with creating new initiatives that increase recruitment and retention in rural and remote areas?

Yes, I will.

6. How would you improve the acquisition and deployment of border security technology, especially in remote areas along the Northern Border where domain awareness is at a disturbingly low level?

If confirmed, I will be briefed immediately on the forthcoming strategic plans for managing and securing our Northern and Southern borders, including the Northern Border Strategy. That will include assessing CBP's priorities for

acquisition and deployment of technology along the northern border. I believe that technology can be particularly useful in meeting domain awareness needs.

DHS Management

7. What is the role of the DHS Deputy Secretary? How do envision working with Deputy Secretary Duke if confirmed?

The Deputy Secretary assists the Secretary in developing and implementing policy as well as overseeing delivery of the Department's critical missions and operations. The Deputy Secretary is part of the Department's core leadership team, providing general direction and management support consistent with the Secretary's "commander's intent." The individual is trusted and capable of serving as Acting Secretary in the Secretary's absence. The Deputy also participates in federal interagency policy meetings at the "Deputy-level" speaking on behalf of and representing the Secretary and the Department as a whole. I have great respect for Deputy Secretary Duke and expect we will work as a team to support the great men and women of DHS should I be confirmed.

8. What in your view is the difference between the role of DHS Chief of Staff, and the role of DHS Secretary?

The Chief of Staff serves as the principal advisor to the Secretary and Deputy Secretary on all Department risk, policy and operational issues, and manages the Secretary's office. The Chief of Staff works closely with the heads of the seven operational components and eighteen directorates and offices to ensure the Secretary and Deputy Secretary's guidance is conveyed, track progress against the Secretary's priorities, and determine when and how issues requiring the Secretary's awareness or action are raised.

The role of Chief of Staff of a complex organization or entity is also to serve as the coordinator of all of the supporting staff. An effective COS must encourage all feedback and keep communication open across all levels. He or she must engage with staff at all levels of the organization constantly to identify and address underlying issues. The Chief of Staff also works with the Chiefs of Staff throughout the interagency to ensure that missions amongst departments are aligned and to facilitate Principal discussions and to help resolve any conflicting plans, policies, etc.

The role of the Secretary, to name a few roles, includes setting risk-based priorities, clearly articulating mission and corresponding roles and responsibilities, ensuring that the men and women of DHS have the resources, tools and support they need to execute their missions, creating a culture of trust and respect, accountability and acknowledgement, and strategically assessing tomorrow's challenges and threats. The Secretary represents the Department in interagency discussions, advises the President, and works with other Cabinet officials on cross-cutting initiatives to bring a whole of government approach to specific risks when needed.

Ideally, within a large Department context, the Deputy Secretary can focus on operations, modernization and long-range planning, while the Chief of Staff manages the Department serving as the Executive Officer, ensuring that direction and guidance from the Secretary and Deputy Secretary is executed through a variety of avenues, and the Secretary leads the Department, determines homeland security policy, executes statutory duties and serves as the Chief Executive Office of the Department. Obviously, any specific division of roles and responsibilities will account for the unique skill sets and capabilities of the Secretary, Deputy Secretary and Chief of Staff and would be determined in consultation.

- a. If confirmed, how will you establish those boundaries with your Chief of Staff?

Should I be confirmed, I will discuss roles and responsibilities with the Chief of Staff to ensure they are clear, not conflicting and not unnecessarily overlapping. I will ask the Chief of Staff to always give me his or her honest assessment, to ensure that issues that are brought to me or to the Deputy Secretary have received review by the relevant components, that operational context and limitations are considered, that stakeholder outreach has been conducted and that the information I need to make an informed decision has been collected, assessed and provided. I value dissenting opinions and would ask that differing opinions be presented in addition to any consensus view. If confirmed, I would execute my role and responsibilities as Secretary pursuant to the law and as described above.

9. DHS is a department that employs 229,000 people; CBP alone has over 45 thousand law enforcement officers. One of the greatest challenges in an agency of this size is the consistent application of law and policy across components. As Secretary, how will you ensure that consistent guidance and policies will reach and inform the actions of front line officers?

Should I be confirmed, I will work with the component heads to ensure that front line officers have a clear understanding of commander's intent, the application of the law and that of policy. I believe such an understanding begins with clear and consistent communication, the availability of related information and ensuring that employees and officers have opportunities to request any needed clarification, consistent training and performance reviews. 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.

10. Why do you think issues such as employee morale continue to persist despite a long acknowledgement that they have been problems and what would you do about it as Secretary?

Employee morale surveys have repeatedly shown that the people of DHS are inspired by and motivated by the mission. Should I be confirmed, I will work to ensure the men and women of DHS have clarity of mission, are empowered to perform their duties, have all the necessary tools to do their jobs, are both held accountable and acknowledged for their performance and have opportunities for professional development and career advancement. I see these actions as essential to strong job satisfaction and high employee morale. As I stated in prior answers, I also will engage fully with Department leadership and the frontline workforce to identify specific issues and address them.

Hiring Challenges

11. What steps can OPM and Congress take to help DHS address challenges in recruiting qualified cyber security and information technology professionals to the agency?

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 support strong recruiting, and the ability to grow in one's job and have access to continual training and education support 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.

12. Do you ever believe it's appropriate to have different hiring standards for federal workers and contractors for the same job?

As we have discussed, I recognize the Department must improve its ability to recruit, hire and retain talented people. It is a top priority. While I am not specifically familiar with the differences, if any, in hiring standards utilized for federal workers and contractors, I know that current law, regulations, and policies exist in this area. If confirmed, I look forward to working with the Under Secretary of Management, the Chief Human Capital Officer and Department leadership as

well as OPM, OMB and Congress to develop creative solutions where needed and to ensure that standards appropriately reflect and lead to successful mission execution.

- a. If so, in what circumstances?

If confirmed, I look forward to working with the Under Secretary of Management, the Chief Human Capital Officer and Department leadership as well as OPM, OMB and Congress to consider appropriate actions to address hiring issues with respect to both federal workers and contractors.

Congressional Oversight

13. DHS answers to over 100 congressional committees and subcommittees. Oversight of DHS components such as FEMA is often split between multiple committees and subcommittees. This is an extensive amount of jurisdiction. How problematic is this for DHS? How would reducing the number of committees responsible for oversight increase the efficiency of DHS?

It is widely acknowledged that a key 9/11 Commission recommendation regarding consolidation of congressional oversight remains unfulfilled. I strongly support efforts in Congress to consolidate Congressional oversight jurisdiction over homeland security. The current number of oversight Committees itself makes it difficult for DHS officials to be fully responsive to Congress while executing their mission. As context and as I understand it from DHS, DHS has participated in 80 hearings and provided 120 witnesses since January 1 of this year which averages to about two per week. DHS has also participated in approximately 2, 018 non-hearing engagements with Congress and Congressional staff (e.g., meetings, calls, briefings, CODELs).

CVE

14. I am very interested in DHS's Countering Violent Extremism program and the Office for Community Partnerships. I place a lot of value on building relationships within the community in order to prevent radicalization and homegrown extremism.
- a. Will you commit to evaluating the CVE program at DHS and reporting back to this committee within 90 days on your initial plans regarding the program, the goals of the program, grants within the program, and how you plan on prioritizing the mission of the program?

Yes, I will.

First Responders

15. On December 19, 2016, President Obama signed into law my legislation called the RESPONSE Act. I wrote that legislation after a very serious train car derailment in North Dakota in 2013. That law requires FEMA's National Advisory Council (NAC) to pull together the private and public sectors to issue recommendations on how to improve first responder training for handling incidents involving the transport of hazardous materials incidents on railroads. The law requires that these recommendations are submitted to the NAC no later than December 16, 2017.
- a. If confirmed, will you commit to ensuring that the NAC fully evaluates and properly implements approved recommendations provided by the RESPONSE Act Subcommittee in a timely fashion, and that you will push to ensure sufficient support for such training is included in the next DHS budget?

Yes, I will work with FEMA and DOT to ensure that such training is offered.

Threat and Hazard Identification Model

16. In conversations my staff has had with the North Dakota Department of Emergency Services, we have heard that there needs to be a single overarching threat and hazard identification model across the nation that states can use to identify risk and make investments. Currently, DHS uses the Threat and Hazard Identification and Risk Assessment (THIRA) and the Federal Management Agency uses the Hazard Identification and Risk Assessment (HIRA).
- a. In general, what are your thoughts on the utility and importance of the THIRA and HIRA assessments?

First, let me reiterate my belief that we must continually assess our risks and that risk assessments and preparedness evaluations should go hand in hand. I also agree that standardized risk assessment methodologies enable us to compare risks across sectors, components, vectors and enterprises to ensure that we are effectively and efficiently addressing risks in a prioritized manner.

We must have tools to establish the baseline capability levels, identify remaining gaps, and work to close those gaps. Both the THIRA and the HIRA are tools meant to get at this problem. We must continually build on and improve these tools. If confirmed, I will work with FEMA leadership to improve our ability to assess risk, measure capabilities and identify gaps.

- b. Do you see opportunities to merge these assessment processes in a way that would provide states more clarity on where they should make investments?

The States are key partners in the homeland security enterprise, and given the myriad threats and limited resources we have today, we must work together to ensure these tools effectively measure preparedness and risk and assist in prioritizing investments.

- c. If confirmed, will you commit to evaluating these assessments and collecting input from emergency services like the NDDDES that are calling for a single threat and hazard identification model across the nation?

Yes

Cyber-Hygiene

17. I appreciate your background and expertise on cybersecurity issues. Cyber threats pose a grave threat to U.S. national security, and we must take a comprehensive approach to keeping our citizens, businesses, government, and critical infrastructure secure. As you know, cyberattacks rely on vulnerabilities to exploit and infiltrate systems and networks. At times, these vulnerabilities are created and compounded when people use bad cyber practices, such as clicking on unverified links, relying on weak internet protocols, or accessing secure systems from unsecure locations. Ensuring that people know how to remain safe online is critical to maintaining a cyber secure environment.

- a. Could you briefly discuss your perspective on the role DHS should play in educating the general public on cyber-hygiene?

The Department has a public education campaign called Stop.Think.Connect. and has developed toolkits and associated outreach for this effort. If confirmed, I will assess the Department's activities in this area and identify areas that can be strengthened. Studies continue to show how great a difference basic cyber hygiene makes in improving our overall security to cyberattacks. I believe DHS, with its interagency partners, plays a vital role in educating the general public. In today's hyperconnected threat environment, your cyber risk becomes my risk and so the importance of and need for a whole of nation approach cannot be overstated. Raising the bar of cybersecurity across the nation begins with awareness and education of the threat posed and basic hygiene measures that every citizen can take to increase our nation's cyber security and resilience.

- b. If confirmed, will you commit to reviewing DHS's efforts to educate the public on cyber-hygiene practices and reporting back to my office within 90 days regarding the effectiveness of these efforts and what additional steps you will take to encourage end-users to adopt cyber-hygiene practices?

Yes, I will.

Information Sharing

18. The sharing of information in homeland security is absolutely critical. Unfortunately, across the federal government, there are still issues with information silos.

- a. In your view, what are the most effective ways to break down silos and foster environment of information sharing?

I view information sharing with and among our federal, state, local, tribal, territorial and private sector partners as a vital part of effectively securing the homeland. I co-drafted and oversaw the federal implementation of all Bush Administration Executive Orders (EOs) and Presidential Memoranda regarding information sharing and the Information Sharing Environment (ISE). In creating and instituting the ISE, we spent time categorizing the types of information we needed to share and the stakeholders who needed to share and receive such information. The basic frameworks, policies and procedures have expanded and been updated over the years, but the underlying goal - to connect the dots - has remained. I believe that information sharing silos are most effectively broken when individuals can articulate clear mission needs and objectives and when leadership is engaged to solve those real problems. Information sharing must also be driven from a clear sense of what information is needed for mission execution. Once people begin to work together, additional opportunities for collaboration and information sharing become clear.

- b. Are there existing efforts in DHS that you have found particularly conducive to promoting an environment where information is shared across agencies and with the private sector?

I am somewhat familiar, from my time as DHS Chief of Staff, with some of the Department's recent initiatives to enhance and improve information sharing, including efforts led by the Office of Community Partnership, Office of Partnership and Engagement, I&A, and NPPD. I have recently had conversations with a number of representatives from state and local law enforcement and first responder organizations, including the fusion center community and their private sector partners, to gain their perspective on how DHS is doing and how it can do better. If confirmed, I look forward to working with such representatives and other federal partners to expand the use of best practices, address gaps in sharing, identify innovative tools and processes to ensure that such sharing is accurate, timely and actionable and in general to continue to strengthen the Department's relationship with federal, state, local and tribal officials and the flow of information in both directions. These officials are on the front line of our nation's homeland security, and we all benefit greatly from improving our information sharing.

- c. If confirmed, what steps will you take to break down information silos?

If confirmed, I will set the tone from the top of the organization on the importance of information sharing across agencies and with our partners in state, local, tribal and territorial government, the private sector, and international partners to protect the homeland. I will hold my staff accountable for ensuring information is shared systematically and appropriately to meet mission needs and ensure that investments support

information sharing capabilities. I will review classification requirements and restrictions, security clearance processes for DHS non-federal partners and work with DHS leadership to identify additional types of information that can and should be shared, within the law, across components and mission spaces. Assessments that identify information types and categories needed for mission execution should be shared across the Department to identify potential additional existing sources that can be cross leveraged within the law.

**Senator Maggie Hassan
Post-Hearing Questions for the Record
Submitted to Kirstjen M. Nielsen**

**Nomination of Kirstjen M. Nielsen to be Secretary of the Department of Homeland
Security
Wednesday, November 8, 2017**

1. You said at the hearing that the reason that you eliminated the Countering Violent Extremism grants was that it was meant to only serve as a temporary grant program that would allow the Department to assess the viability and effectiveness of the grant program. However, you did not address why the staffing levels of the office had been so drastically cut. You specifically suggested that best practices would need to be gleaned from the grants process, but when the office personnel is cut and half and its support staff have been eliminated, it is pretty hard to measure effectiveness. This office was located in the Office of the Secretary and Executive Management, which was directly under your purview. When combined with the abrupt resignation of the Director and the elimination of the grants as a whole, this certainly paints a picture the office was not given the chance to achieve its goals.
 - a. Why was the Office's staff and its support elements so dramatically reduced during your time?

To be clear, we did not eliminate any grant programs. The CVE Grant Program was not renewed by Congress in 2017 and did not receive additional funds in the President's 2018 budget, as the current grants had not yet been disbursed long enough to yield clear results. This reflects the majority of recent changes in funding for DHS CVE efforts. I do not believe, however, it is accurate to state that OCP permanent staff has been cut in half. While certain contracted field staff have been eliminated, most of the core permanent staff remains in place and is very focused on terrorism prevention. If confirmed, I will examine ways to strengthen and enhance DHS activities in this mission space to ensure our efforts are risk-based, intelligence-driven and effective.

- b. If confirmed, will you commit to reporting to the Committee--within 120 days of being sworn in as Secretary--
 - Your strategic objectives for this office;
 - The metrics you will use to evaluate the performance of this office;
 - The optimal level of staffing of the office;
 - An assessment of whether the Department will continue with the CVE grant program; and
 - Any additional authorities, authorizations, or legislative changes needed in order to achieve the strategic objectives laid out for the office.

Yes, I will.

2. During the hearing, you and I discussed election security and there was a discrepancy between us about the current state of DHS's official outreach to states in regard to the security of voting systems and the ability to defend against malicious hacking efforts. Could you please provide the committee with the following:
 - a. A full list of the steps taken so far to conduct outreach to states to improve the cyber defense of their voting systems.

As the nominee, I do not have access to the full list of steps taken so far to conduct outreach to states to improve the cyber defense of their voting systems. Should I be confirmed, I will provide you with the requested information. DHS through the Sector Coordinating Council and Government Coordinating Council continues to engage with State and local governments and election officials to ensure they are made aware of the various tools, support and guidance DHS has to offer.

From what I am aware of because of my prior time at DHS or because of public accounts of actions taken I can additionally provide the following summary information at this time.

In 2016, the Department of Homeland Security (DHS) took unprecedented action to alert chief state election officials of relevant cybersecurity threats. DHS issued several public statements between August and Election Day to share information regarding the threat and urged election officials to seek cybersecurity assistance from either DHS or other experts. DHS and the Office of the Director of National Intelligence declassified attribution and alerted the public to malicious activity directed towards our elections on October 7, 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 information relevant to officials was declassified in the January 2017 intelligence community assessment, "Assessing Russian Activities and Intentions in Recent U.S. Elections."

In 2016, through intelligence and information sharing efforts with trusted third parties like 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. In more recent discussions with some of these network operators, it is clear 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 – low-level activity that generally does not require further notifications. 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.

DHS is committed to improving the effectiveness of information sharing protocols, both from DHS and among state officials. 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. 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 development of information sharing protocols and establishment of key working groups, among other priorities.

The Department of Homeland Security (DHS) has also stood up an Election Task Force (ETF), to improve coordination with and support to our 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 we are ramping up these efforts, DHS is cross-purposing personnel and re-assigning personnel over the course of the next month. Firm numbers on personnel and budget are changing as often as daily. 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.***

On August 4, 2017, the DHS Office of Intelligence and Analysis (I&A) contacted state chief election officials on behalf of the NPPD-led Election Infrastructure Subsector Sector-Specific Agency (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.

In October 2017, the Election Infrastructure Subsector SSA, in conjunction with state partners, chartered an EIS Government Coordinating Council (GCC). One of the main goals of 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.

- b. If confirmed, a commitment to update the committee, in writing, every 30 days after your swearing-in—and terminating on election day 2018—the subsequent steps taken within that month to improve the security of voting systems across the country?

I commit to regularly updating you on this issue and the steps taken on a mutually agreed to schedule, should I be confirmed and after I am able to consult with NPPD leadership to better understand current efforts.

3. In New Hampshire, the Indonesian community includes many people who came to our country years ago fleeing religious persecution. They have since become members of the community, they have worked jobs and paid taxes, and they have raised their families in the Seacoast.

Beginning in 2009, an agreement with U.S. Immigration and Customs Enforcement (ICE) allowed members of this community to remain in the state and obtain work permits so long as they regularly checked-in with ICE. Yet over the past few months, ICE has reversed course and prioritized deporting members of the New Hampshire Indonesian community.

Fortunately, a federal judge has issued an order protecting these individuals from deportation. But that protection is temporary – and I am concerned that ICE prioritized deporting these members of our community in the first place.

- Why did ICE end the longstanding agreement allowing members of the Indonesian community to stay and obtain work permits so long as they regularly checked-in with ICE?

I'm unfamiliar with the details of this particular case. Should I be confirmed, I commit to looking into this issue.

- Why did ICE prioritize deporting these members of the Indonesian community beginning earlier this year?

See above response.

- Why is ICE continuing to seek to deport these members of the Indonesian community?

See above response.

- Do you agree that ICE should prioritize deporting these members of the Indonesian community, many of whom are members of a church community in New Hampshire, and who fled religious persecution in their home country years ago?

Again, as I am unfamiliar with the details of this case, I cannot opine on the actions asserted. I will note that foreign nationals in the United States who fear persecution upon return to their country of origin can apply for asylum. I commit to looking into this case.

- If confirmed, will you commit to re-instating the agreement that allowed members of New Hampshire's Indonesian community to stay and obtain work permits so long as they regularly check-in with ICE?

See above response.

4. This committee has recently examined the critical role that specially trained detection-canines play in DHS' ability to stem the flow of drugs, in particular fentanyl, from coming across our Southern border. I understand that DHS is limited in this effort by the supply of qualified canines, as well as costs associated training and certification programs. Could you share your thoughts on the current investments being made by DHS in canine procurement and training and how DHS is working with the private sector to expand options for certification and secure more canines from the private sector?

As the nominee, I do not have access to information regarding current investments, procurement plans or plans to engage the private sector. I can

offer that CBP is the first federal law enforcement agency in the United States to train canines to detect fentanyl. CBP currently has over 100 canines trained to detect fentanyl and is planning to expand fentanyl training to existing teams that operate in the border security environment as well as ensuring all new canine teams have the ability to detect fentanyl. As I understand it, the USBP Canine Program continues investing in the training and expansion of the number of canine teams certified in the detection of illicit narcotics, which includes opioids. We must do more to combat the spread of fentanyl as part of comprehensive border security and drug demand reduction strategies. If confirmed, I will work with CBP to expand options for qualified canine supply to aid in this important work.

I would also note that TSA is looking to expand its canine certification options through development of a third party canine program for air cargo. This program, once implemented, will provide an option for airlines to use canine teams that are owned, trained, and certified to TSA standards by third parties to screen air cargo for explosive threats. If confirmed, I would look to see what lessons learned other DHS canine programs could glean from this innovative program.

5. As a cyber expert, I'd like to get your opinion on the challenge of the internet-of-things. It is estimated that 8.4 billion internet-connected devices will be used this year alone, which opens us up to a lot of risks. If we are to prevent the ability of hackers to disrupt our economy and the flow of information, we are going to have to take action to try to raise the cyber defenses of consumer's internet connected devices. That's why I joined Senator Warner's legislation, the Internet of Things Cybersecurity Improvement Act (S.1691), which requires that anytime the US government purchases an internet-connect device, that device must adhere to certain baseline cyber standards. This committee focuses on government information security and government purchasing efforts, so Sen. Warner's Internet of Things bill is directly in our jurisdiction. Therefore, I would appreciate your position on the following:

- Would you support this approach and specifically the provision specified in S.1691?

I share your concern regarding the internet of things. I would note that how we define what we call the "Internet of Things" (IOT) can be an elusive endeavor with working definitions evolving as technology evolves. Given the pace of technological innovation and today's hyperconnectivity, threats can be introduced in and through any number of vectors and devices. Overall, I support encouraging more informed purchasing for Federal acquisition, including providing guidance and standards for minimum security requirements for all connected devices. I am not specifically familiar however with S.1691 and have not discussed with DHS leadership. In general, if confirmed, I intend to meet this challenge by working with the General Services Administration and the National Institute of Standards and Technology to

continue ongoing efforts to identify best practices in this area that can be applied to devices across the Federal government, including IOT devices.

- Since DHS is in charge of securing all of the “.gov” domains, then do you believe—in general--that requiring all government-owned internet connected devices to meet baseline cyber standards would help to address “.gov” security?

To clarify, DHS is charged with protecting the federal '.gov' domain of civilian government networks (not all “.gov”). Consistent, improved cybersecurity practices can only help improve .gov security. In addition to policy changes, DHS supports agency efforts to manage their cyber risk through the implementation of shared services, and capabilities such as the Continuous Diagnostics and Mitigation (CDM) program. CDM allows DHS and the agencies to know exactly what is on .gov networks and identify the associated vulnerabilities and risks. Once risks are identified, then agencies and DHS can work together to mitigate them and ensure the security and resilience of our networks. DHS tools and capabilities are designed to give agencies what they need to have a well-managed and controlled IT environment, leading to improved security.

6. I introduced S.1281, the Hack DHS Act with Senator Rob Portman in early May and in October, the Committee passed the bill. This bill requires DHS to establish a bug bounty pilot program within 180 days of passage that would allow white-hat vetted hackers to probe DHS’ public facing websites in order to identify vulnerabilities. The hackers would report these vulnerabilities to DHS and in return, DHS would compensate these hackers for each previously undiscovered vulnerability reported to DHS. Would you answer the following questions for us:

- Would you support establishing a bug bounty pilot program at DHS?

As a part of a larger cyber effort, Bug Bounties have value for security and networks defenders. I believe that the Office of the Chief Information Officer could get value out of such a program if implemented well. In addition, NPPD also offers similar services as well as more in-depth identification of vulnerabilities and, importantly, mitigation plans to remediate those vulnerabilities. If confirmed, I will discuss a bug bounty pilot program and current related efforts with NPPD and CIO leadership.

- Do you think that an appropriately constructed permanent bug bounty program could be of value to the Department?

As a part of a larger cyber effort, Bug Bounties have value for security and networks defenders. I believe that the Office of the Chief Information Officer could get value out of such a program if implemented well. In addition, NPPD also offers similar services as well as more in-depth identification of

vulnerabilities and, importantly, mitigation plans to remediate those vulnerabilities.

7. As you know, TSA personnel have endured low morale rates. According a Partnership for Public Service study, out of 305 total agencies evaluated for morale, TSA was 303rd. Perhaps more than any other agency, TSA needs to improve its morale. We need to make sure that screeners and aviation security workers are focused on their critical tasks and not on personnel issues.
 - a. How would you go about improving morale at TSA and what experiences would you draw upon to help achieve increased moral?

Employee morale surveys have repeatedly shown that the people of DHS are inspired by and motivated by the mission. At the same time, they raise challenges regarding quality of life within the workplace and interactions with management.

As a leader, it is important to clearly articulate mission objectives, priorities, and roles and responsibilities, hold people accountable and acknowledge success. It is also important to ensure that career paths are specified, and professional development and training are offered. If confirmed, I look forward to fully engaging with TSA leadership and the frontline workforce to identify specific issues and address them.

- b. Would you consider making TSA employees full-fledge federal employees?

I'm not familiar with the assertion being made by this question. If confirmed, I commit to supporting the needs of TSA employees in meeting their mission.

8. We discussed at the hearing the concrete steps you would take to address the challenges of the foreign fighter population that may return to Western countries in the aftermath of the collapse of the so-called caliphate. We also talked in my office about whether you would support the Unity-of-Effort initiative undertaken by Secretary Jeh Johnson and you suggested that this initiative and the Joint Task Forces at the Department might be expanded. We discussed the possibility of a Joint Task Force focused on cyber and you suggested at the hearing the possibility of a Joint Task Force on foreign fighters. Additionally, my state and other states are faced with the crippling effects of the opioid crisis and we suggested to your predecessor that that Department of Homeland Security needs to bring its full resources to bear on addressing the opioid crisis. Therefore, I would respectfully ask from you that, if confirmed, you will provide me within 90 days of your swearing in your assessment of the viability and value of establishing separate Joint Task Forces at DHS that focus on cybersecurity, foreign fighters and the opioid crisis.

Yes, as stated in the Policy Questionnaire and in the hearing, I support the Unity of Effort initiative undertaken by Secretary Johnson. If confirmed, I pledge to assess the value and viability of establishing additional Joint Task Forces to further integrate DHS capabilities and capacities. As the nominee, I cannot commit to a 90 day

timeframe at this time without having the benefit of knowing all current related efforts, and operational and resource constraints. If confirmed, I will provide you with a timeline as soon as possible.

9. We have recently discovered instances in which nominees, cabinet members, White House staff or campaign staff for the President have had previously undisclosed relationships with Russian nationals, to include Russian government personnel.

- a. Have you maintained any personal or professional relationships with Russian nationals in the past seven years?

No, I have not.

- b. Have any of the contacts been with Russian government personnel?

No, not to the best of my recollection.

- c. If the answer is yes to either (a) or (b), please briefly describe the extent of these relationships.

N/A

- d. Do you have any business dealings with or partnerships that include Russian nationals?

No, I do not.

**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 the 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 (TVPR), 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 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.

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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Senator Thomas R. Carper
Additional Post-Hearing Question for the Record
Submitted to Kirstjen M. Nielsen

Nomination of Kirstjen M. Nielsen to be Secretary of the Department of Homeland Security
Wednesday, November 8, 2017

1. The Washington Post has reported that the President's chief of staff, John Kelly and top homeland security advisor, Tom Bossert, had unsuccessfully pressured Acting Homeland Security Secretary Elaine Duke to reverse a decision she had made to extend the residency permits given to certain Honduran citizens living in the United States under Temporary Protected Status due to conditions in their home country. It is my understanding based on reports that Acting Secretary Duke intends to take additional time to further study the Hondurans' status, and that her decision to do so is within the law and consistent with the statutory authority granted to her as the acting head of DHS.

- a) Do you agree with Acting Secretary Duke's decision?

Given my nomination status, I am not familiar with the specific information Acting Secretary Duke reviewed to arrive at her decision. By law, the decision is within the DHS Secretary's authority and responsibility to make and I have no reason to doubt that she reviewed all appropriate information in accordance with the law in making her decision.

- b) If confirmed, how would you balance the views of the President and his senior staff with your statutory obligations on this matter and others where you might disagree?

I believe it is my duty to always make determinations that are in the best interest of the United States pursuant to the law. As discussed elsewhere, I also believe that it is my duty to give my best advice and counsel to the President and all government officials and to ensure that all decisions of which I am a part are fully informed by facts and made pursuant to the law. Should I be confirmed, I will endeavor to always meet all of the Secretary's obligations to make timely, fact informed and fully considered- including any and all appropriate consultations with stakeholders within the interagency, Congress and the private sector- decisions.

- c) If confirmed, what steps would you take to examine the status of Honduran TPS recipients in the United States, and also that of other TPS recipients from El Salvador and Haiti that you would be required to make decisions on, as well?

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.

- d) If confirmed, how will the ability of TPS-designated countries to absorb TPS recipients who become deportable from the United States factor into your decision to extend or end TPS designations for any given country?

Should I be confirmed, I will assess all facts pursuant to the law.

- e) If confirmed, will you commit to ensuring that TPS recipients who have not committed crimes other than immigration or civil violations will not become ICE enforcement priorities once their designation ends?

It is my understanding that it is current DHS policy that enforcement priorities focus on those here illegally who have committed crimes. I do not intend to change that enforcement priority. Should I be confirmed, I will work with Acting Director Homan to ensure that enforcement priorities are clearly articulated.

2. Are you aware of any plans by any senior DHS officials to leave the Department should you be confirmed?

No.

Senator Thomas R. Carper
Post-Hearing Questions for the Record
Submitted to Kirstjen M. Nielsen

Nomination of Kirstjen M. Nielsen to be Secretary of the Department of Homeland Security
Wednesday, November 8, 2017

1. In your policy questionnaire, in response to a question about the largest number of people that directly reported to you at any one time, you refer to your answers in the majority portion of the questionnaire for your recent role at DHS, and your current role at the White House. Please provide clear answers to the questions for each role. In other words, are we to understand that you had sixty-five direct reports at DHS, and that you oversaw two hundred employees at the White House?

The differences intended between “directly managed,” “directly reported to you,” and “oversight” were not clear. Thank you for the opportunity to clarify.

The DHS Secretary has 27 direct reports. As DHS Chief of Staff, I had approximately 30 direct reports (defined in the next question), directly managed the Office of the Secretary which included approximately 65 people (to include direct reports), had resourcing and budget related decision-making authority and responsibility for the Office of the Secretary and Executive Management, made up of ten offices, 585 personnel and with a budget of \$137 million (FY 2017 enacted). As WH Principal Deputy Chief of Staff, I have 7 direct reports, and directly manage approximately 200 people.

The role of Chief of Staff or Principal Deputy Chief of Staff of a complex organization or entity is the coordinator of all of the supporting staff. An effective COS or PDCOS must encourage all feedback and keep communication open across all levels. He or she must engage with staff at all levels of the organization constantly to identify and address underlying issues. Within a large Department context, the Chief of Staff manages the Department serving as the Executive Officer, ensuring that direction and guidance from the Secretary and Deputy Secretary is executed through a variety of avenues. I have played a similar role at the White House.

As a result, in both my DHS Chief of Staff role and as Principal Deputy Chief of Staff at the WH, I had/have direct reports, those whom I directly managed/manage, and a much larger group of employees of whom I had/have coordination and management oversight and/or budget responsibilities. For the larger group (240,000 in the case of DHS and around 1700 in the case of the Executive Office of the President), I address employee concerns and issues that rise to my attention and/or are brought to my attention and seek to ensure that the organization is optimally structured and operating. For example, in my current role, I address employee matters and concerns related to those within the Executive Office of the President (e.g., travel approvals, resource concerns, process concerns, personnel needs, etc.), and, either direct related actions or make recommendations to the Chief of Staff relating to policy portfolios and the determination of roles and responsibilities of personnel within the Executive Office of the President (regardless of whether or not they are direct (see definition below) or indirect reports or whether I directly manage them.

- a) How do you define “direct” reports?

I would define it as anyone whom I manage directly and/or those who directly provide me with the results of tasks on a semi-regular basis. Additionally, I think of it as anyone who could not be hired, fired, given a pay adjustment or disciplinary action without my personal sign off.

- b) Did you have any indirect reports in your role as DHS Chief of Staff, or as Principal Deputy Chief of Staff at the White House? If so, how many?

Indirect reports are those who report to my direct reports. In my answer above I used the term “directly managed” to include indirect and direct reports. As described above, there is a much larger group of employees of whom I had/have coordination and management oversight and/or budget responsibilities.

2. DHS is a large and complex organization made up of 22 component agencies, with many legacy challenges—including staffing, hiring, training, morale, coordination, communication, contracting, and oversight issues—in addition to the “everyday” challenges of carrying out its critical mission to address an evolving threat landscape and ensuring the security of our homeland against all manner of hazards. DHS and many of its components remain on GAO’s High Risk List, though progress has recently been made. Previous secretaries and even component heads have had extensive experience managing change, instituting reforms, and leading large and complex organizations. At most, you have managed two hundred reports; before this year, you had managed fifteen people.

- a) Please explain your general philosophy toward management, and provide examples of your previous work in similar environments.

As you describe, the role of the Secretary and his or her requisite skills include much more than direct management to include extensive experience in managing change, instituting reforms and leading. In addition to what you suggested, I would also add the following skills and capabilities are needed: communication and outreach skills; ability to optimize organizations to achieve successful mission execution; mentoring and career advancement planning; clearly articulating mission, roles and responsibilities; developing priorities; understanding operational environments (whether they be governmental or private sector); and utilizing metrics to ensure effective execution. For DHS especially, the Secretary must understand risk – how to identify and assess it and how to identify the correct mix of personnel, partnerships, technology, infrastructure, tools, programs, policies, authorities and processes to address it. Finally, the DHS Secretary must be able to coordinate and manage diverse stakeholders from all levels of government and varied sectors who voluntarily- without any applicable command and control management- partner to reach common desired outcomes often with very different and conflicting motivations. I have demonstrated skills and capabilities in all of the above throughout my career in homeland security and without question my homeland security expertise enables me to understand where we have been and where we need to go as a Department with respect to mission, authorities, policy, risk, partnerships, and strengthening security and resilience.

As I noted in my policy questionnaire, I lead by example and always through the promotion of integrity, transparency, compliance with the law, and commitment to mission. I believe in ensuring that the mission is clearly articulated - at every level - and that clear objectives and metrics are agreed upon and assessed. I foster a team approach based on concepts of unity of effort and clearly delineate roles and responsibilities based on the mission. I believe in

performance evaluation and in learning and acting on lessons identified, not just observing or admiring them. I expect to be held accountable and hold others accountable. I also believe it is important to take the time to acknowledge a job well done. I have found that talking to personnel on the frontlines, in the field, at their desks is invaluable to understand operating environments, needs and concerns. I believe in empowering those who work with me and believe it is my duty to ensure that they have the authorities, tools, resources and training needed to perform their jobs. I value dissenting opinions and make every effort to ensure that all voices have a place to be heard, and I strive to maintain an environment of trust and respect.

The environments I have worked in during my time in government service have been very similar environments or indeed have been within the Department itself. I have worked with organizations from their inception through to multiple maturation evolutions. I have created organizations, including my own company, advised start-up companies as a lawyer and consultant and as a federal employee as part of the team that stood up TSA. I have lead interagency policy discussions to address conflicting, overlapping or needed authorities between Departments and Agencies. I have worked as a federal employee within the Executive branch and with Congress, and as a consultant to specifically advise federal entities on optimizing organization, training, resourcing etc. for mission execution. In this Administration, I have been instrumental in identifying areas where additional maturation, clarification and organization change are warranted. I have worked in all sectors and in all roles to build private public partnerships to identify and address the nation's risk, security and resilience challenges.

Having been a relatively junior employee at TSA in its earliest days, a White House official working with and coordinating policy related to the Department and its people from outside the Department, and the Chief of Staff of the Department have given me a unique set of perspectives on DHS. I think I understand more about what makes for effective management and leadership in the Department having been one who has led from within and without, and who has consulted from the outside. Having been one who worked with its people and leaders from within the White House and the private sector, I think I also better understand the multi-faceted role of a Secretary. As I said in my responses in the hearing, I do believe leadership and management principles are scalable if applied correctly. I recognize how large this Department is, and agree with your comments during the hearing that it would not be an easy job for anyone, no matter their experience or the number of people they previously managed.

- b) Please describe the management challenges facing DHS. What will be your first priority if confirmed as Secretary?

Should I be confirmed, as I noted in part in the Policy Questionnaire, one of the greatest management challenges and opportunities is in the area of human capital management at DHS, and that is to ensure that the fine men and women of DHS have clarity of mission, are empowered to perform their duties, have all the necessary tools to do their jobs and are both held accountable and acknowledged for their performance. I see these actions as essential to strong job satisfaction and high employee morale. Another principal challenge is improving our ability to recruit, hire and retain talented people. We need to adapt our hiring systems to meet a rapidly changing hiring environment and identify innovative ways to attract key skill sets- such as those needed for the cybersecurity mission. If confirmed, I look forward to

working with the Under Secretary of Management to align human capital objectives across components, the Chief Human Capital Officer and Department leadership as well as OPM, OMB and Congress on creative solutions. Finally, as I referenced in the hearing, I agree with the recent OIG report that DHS must do more to create and enforce strong internal controls and do more to ensure that DHS operates as on team through unity of effort and other initiatives.

- c) What is some of the advice you have received for the job that you intend to follow if confirmed?

I have received a lot of helpful advice including from many former senior officials who encouraged me to accept the nomination. To put Constitution and Country and mission first in all decisions. To fulfill my duties with dedication, determination and resolve and to not worry about the politics or press clippings if I believe in what I/we are doing is best for the country and if in compliance with the law. To embrace the reality that we unfortunately will never be 100% effective 100% of the time in stopping threats but to always keep striving for that anyway. To honor and support the men and women who work every day to keep our country secure. To empower senior officials and to refrain from micro-managing. To “be yourself” and continue leading with my principles of by example and with integrity, transparency, accountability and acknowledgement and to work as a team and not apologize for doing my job. To get out, talk to employees and “kick the tires”. To listen to and engage often with stakeholders. To continue to recognize as I have often said that no one entity has all of the capabilities, capacity and authorities to address all of the risk alone- we must continue to strengthen partnerships across levels of government and sectors.

- d) DHS’s website shows that fifteen of over 40 senior management roles are vacant or occupied by “acting” officials. What qualities and characteristics will you look for in working to fill those roles? Do you believe your advice will be heeded by the White House in selecting nominees? *I will look for those who share my leadership principles (described above) and who are competent, have relevant expertise and who are otherwise qualified for the job for which they are considered. I have built strong relationships with the White House, am very familiar with the personnel processes and do believe the WH will heed my advice in selecting nominees.*

3. Who are your some of your professional mentors and role models, and how have they influenced you over your career?

I have had the benefit of a number of professional mentors and role models to include a college professor and a law professor both of whom encouraged me to speak my mind, always seek the truth, take the time to gather and review facts and perform a systematic assessment before making decisions, to be decisive, to lead by example and to always stay true to my principles and sense of mission. I would also reference what I have learned from having the privilege of working with General Kelly whose unwavering sense of dedication, right and wrong, the importance of speaking truth to power, duty and service to country and mission are not only greatly inspiring but an important reminder of why I left the private sector to again serve the country in government. Such a leader brings out the best in others and can inspire aspects of leadership that will cause those who follow to move mountains in service of others.

4. If confirmed, will you commit to speaking with previous DHS officials from administrations of both parties in order to understand the challenges facing DHS and its components, and to seeking their recommendations for addressing some of those challenges?

Of course. I know well and have already spoken with some who have served in DHS from both the Obama and Bush Administrations. I look forward to talking to many more and commit to getting their perspectives and advice on the many challenges facing DHS and the many threats facing the homeland. I have found that institutional memory and a lessons learned perspective on what has been previously tried, what worked and what didn't work can be invaluable.

5. In the past several years DHS has received poor scores when it comes to overall morale among large agencies in the Federal Employee Viewpoint survey administered by the Office of Personnel Management. However, we've seen some progress in terms of employee morale and engagement across DHS as reported in the *two most recent* Federal Employee Viewpoint Surveys.

- a) What do you believe are metrics that should be used to monitor employee satisfaction and engagement across DHS?

As I understand it, DHS currently uses the Employee Engagement Index (EEI) as its metric for tracking progress on employee engagement. The EEI is an index provided by the Office of Personnel Management, used government wide, and is based on the Federal Employee Viewpoint Survey (FEVS) results.

I also understand that the EEI is comprised of 15 questions that OPM has determined most exemplify "an employee's sense of purpose that is evident in their display of dedication, persistence, and effort in their work or overall attachment to their organization and its mission".

I believe it is important to have metrics that allow us to consistently measure employee satisfaction and engagement from year to year within DHS and to allow us to compare our progress to other cabinet agencies who in turn are also using a consistent metric. It allows DHS to note developments and trends beyond just the most recent year's top level FEVS score. For example, I was thrilled to note that DHS had the largest year to year increase in EEI of any cabinet-level agency from 2016-2017, four percent. USCIS and USCG each had EEI rates higher than any of the cabinet-level agencies at 74%. If confirmed I look forward to discussing with the Under Secretary for Management whether there are additional metrics we are, or should be, using.

- b) From your perspective, what are the key drivers of improving employee morale across DHS?

The short answer is I think more people in the Department today understand their role in enforcing the laws and feel empowered to do it. I believe that morale relates directly to cohesion and cooperation, and those flow from a mutual, clear understanding of mission and risk-based priorities, clearly articulated roles and responsibilities, accountability and acknowledgement, support for the enforcement of our laws, and having the tools and resources needed to do one's job. Ensuring that voices can be heard in an environment of trust and respect is vital. I think some progress we have made in these areas is driving the improvement in morale. I also believe it is important for employees who professionally and effectively conduct their congressionally mandated missions to be confident that the Secretary will support them in the face of public, media and other criticism.

- c) If confirmed, how will you work to continue the progress made as reported in the most recent surveys?

As previously mentioned, I was thrilled to learn that DHS employee satisfaction scores rose 6 percent in the most recent FEVS survey. During my service as the Department's Chief of Staff, we initiated a leadership employee listening tour by the DHS Deputy Secretary. This tour reinforced the need for Department leadership to clearly articulate objectives, hold people accountable and acknowledge success. In addition to the FEVS metrics DHS also uses, under the chairmanship of the Under Secretary for Management, an Employee Engagement Steering Committee (EESC). Through the EESC, DHS component agencies have made concerted efforts to improve their approaches to employee engagement and address workforce issues. For example, Components now create and implement employee engagement action plans. The EESC serves as a forum to both ensure accountability to these plans and to share best practices emerging from them across the Department. I also believe unity of effort and the belief that DHS is one team is essential. If confirmed, I look forward to fully re-engaging in these initiatives to identify what the Department has learned and to develop specific implementation steps the Department can take on issues identified.

6. In the past, DHS has utilized special hiring authorities to onboard individuals in areas where the agency has mission critical skills gaps such as in information technology, specifically, the cybersecurity workforce.
 - a) In your view, what are the primary barriers to recruiting and retaining qualified individuals for occupations at DHS facing skills gaps, and, if confirmed, what steps will you take to address these barriers?

As I noted in the hearing, hiring and retention overall is something that would be at the top of my priority list, should I be confirmed. Some Senators have mentioned, for example, very specific concerns and difficulties we have in hiring for certain geographies. Cybersecurity is an example of a particular area where we have difficulty in not only hiring but retaining qualified people within the Department but it's not the only one. We need to look at recruiting and retaining qualified individuals holistically and across the federal civilian and law enforcement interagency. The hiring system needs to keep up with the times. When I was Chief of Staff, I had conversations with the Deputy Secretary specifically about how DHS advertises, the way we do recruiting, the way in which we're allowing people to apply, what we pay compared to the private sector for employees with certain skills, how long it takes from application to hire, how cumbersome our background investigation process is, etc. We need to take the recruiting to the potential recruits and make the ask accessible to a wide array of potential applicant pools. From a holistic human resources perspective, we've got to have the internal controls in place to ensure we are effective in hiring through the cycle of training, career path planning, professional development and retention,. If confirmed I look forward to digging into these issues, because the Department is ultimately only as good as its people.

7. DHS's Headquarters Consolidation project at St. Elizabeths is the largest construction project on the books in the federal government. To date, the project has received over \$2.3 billion dollars, or nearly two-thirds of the \$3.7 billion the previous Administration estimated was needed to complete the project.
 - a) What is your vision for the DHS Headquarters consolidation project at St. Elizabeths?

I know from firsthand experience that the significant and far-flung number of locations where DHS personnel work is a challenge to unity of effort, leveraging DHS capabilities across components, and to headquarters and leadership coordination and management. As such, the DHS Headquarters consolidation will provide greater opportunities for collaboration and enhance mission effectiveness.

- b) Do you believe, as your predecessor did, that the project is an operational necessity that will promote the unity of effort initiative and enhance mission effectiveness?

I do believe that maximizing collocation will facilitate unity of effort and enhance mission effectiveness.

- c) The Fiscal Year 2018 budget request proposed \$135 million for GSA but did not seek new DHS development funding for St. Elizabeths. Do you believe that this funding request will keep the project on track for the previous administration's estimated completion date of 2021?

If confirmed, I commit to assessing the latest plan for DHS Headquarters consolidation and, working with GSA, OMB and the Congress to take appropriate steps on this important project.

- d) In August 2017, DHS wrote to Congress noting that the agency is working aggressively to validate/update the previous Administration's consolidation plan and that DHS and GSA would be happy to brief the Committee once the updated plan is complete. If confirmed, will you commit to providing members of this Committee with an update on the consolidation plan as soon as possible?

Yes.

8. According to media reports, several White House staffers used personal e-mail accounts to conduct government business during your tenure at the White House. In your policy questionnaire, you state that you oversee two hundred White House employees as White House Deputy Chief of Staff.
- a. Please describe your role in ensuring compliance with presidential recordkeeping rules as White House Deputy Chief of Staff.

There are a number of people and organizations within the Executive Office of the President who share responsibility for staff compliance with the recordkeeping rules. I received the policies and guidance on presidential recordkeeping rules when I joined the White House, I ensured that I abided by them and that they were in turn promulgated to those who worked for me. I also asked the WH General Counsel to issue any needed clarifications and to send out a White House wide email reminder of the rules and policies. I also asked the General Counsel to brief senior staff (Assistants to the President), which he did and in conjunction with the Counsel's office we briefed the Deputy Assistants to the President.

9. The National Protection and Programs Directorate at DHS currently employs fewer than ten cybersecurity advisors, whose function is to provide a point of contact at DHS for private sector companies in order to share cybersecurity best practices, conduct security assessments, and advise companies on how to avoid, prepare for, and respond to a breach.

- a) Do you believe DHS needs additional resources in order to carry out its cybersecurity mission?

I look forward, if confirmed, to assessing what additional resources are needed and where/how to more effectively carry out the Department's cybersecurity missions and will continually reassess whether we are both effectively allocating the resources we do have and to balance those resources between 'the field' and NPPD HQ.

- b) If so, if confirmed, are you prepared to advocate strongly for the resources and authorities DHS needs in order to carry out its critical cybersecurity mission?

I am committed to educating OMB and the Congress on any unmet needs or resources I believe that DHS needs to carry out its cybersecurity missions, and all of its missions.

10. Do you believe that renaming NPPD to the Cybersecurity and Infrastructure Protection Agency, or CIPA, would be helpful in fostering a sense of mission among the directorate's employees, and in the directorate's efforts to recruit and hire qualified cybersecurity professionals?

I do not have a particular name in mind for such a reorganization but believe it is important that it denote clearly the cybersecurity, risk, resilience and infrastructure aspects of its mission and would look forward, if confirmed, to working with Congress and other stakeholders to ensure the most effective name to support morale, our recruitment and retention and mission.

11. Do you believe that NPPD should be an operational component of DHS, rather than a directorate within DHS headquarters?

If confirmed, I would like the opportunity to review the details and discuss with NPPD leadership, but yes as I stated in the policy questionnaire, and during the hearing, I believe it should be an operational component to more effectively carry out its mission rather than be treated as a headquarters element.

12. If confirmed, will you commit to working with members of congressional committees on a bipartisan basis to pass legislation authorizing restructuring of NPPD in order to elevate cybersecurity at DHS, eliminate unneeded silos, and to better address the cybersecurity threat?

I do.

13. In your meeting with Senator Carper, you stated that you supported U.S. investment to address the root causes of migration from the Northern Triangle countries of Central America, but that you would want to come back to Congress in a year or so and be able to point to results for the money spent. Plan Colombia, which provided the initial model for the U.S. Strategy for Engagement in Central America, involved a sustained investment over twenty years.

- a) How long, in your mind, should it take to address corruption, violence, and lack of opportunity in countries with endemic corruption and some of the worst violence outside of active war zones?

I cannot answer how long it should or might take, the conditions are complex, different between the countries and evolving. But I agree that it would likely be a sustained multiyear investment that is needed to deliver the level of results that we would hope for. To be clear this investment in time and/or resources must be provided through the federal government and the

private sector. While DHS provides some of that assistance this is a much bigger interagency question involving the State Department, the Department of Defense, the Department of Justice, USAID and others as well as the Congress.

- b) If confirmed, would you commit to working with Secretary Tillerson and bipartisan members of relevant Congressional committees in order to review the status of current U.S. efforts to address the root causes of migration from the Northern Triangle countries of Central America?

I have a close working relationship today with Secretary Tillerson and would, if confirmed, work with him and his team as well as Congress to review these important capacity building efforts in Central America to address not only the root causes of migration but of destabilization and transnational criminal organizations.

- c) Will you work with the heads of CBP and relevant component agencies to ensure that efforts to address root causes are well understood, and accounted for, among leadership as part of efforts to secure the southern border, including in staffing, resource, and budgeting models?

I will.

14. In your policy questionnaire, you state that former Secretary Kelly's knowledge of and commitment to the region [of Central and South America] were of great benefit to you in understanding the drivers of migration into the U.S. Migration from the Northern Triangle of Central America accounts for almost all of the undocumented flow into the United States. If confirmed as Secretary, whose advice and knowledge will you seek out on questions regarding U.S. policy toward Central America and the Northern Triangle, if anyone's?

As mentioned above, I would certainly consult with DHS leadership, Secretary Tillerson and the State Department, Members of Congress, the intelligence community, other federal law enforcement partners, the Department of Defense, NGO's, and of course the leaders of those countries.

15. President Trump has issued an executive order calling for the construction of a wall along the entire border between the US and Mexico. Every estimate agrees that such an undertaking would cost several billion dollars; in your confirmation hearing, you acknowledged that construction of a wall from sea to shining sea was not likely to occur. Additional wall construction could sever wildlife habitat and irreparably damage numerous national parks, wildlife refuges, forests and wilderness areas that are found along our border. Wall construction could also have severe negative consequences for important regional ecotourism economies. For example, a wall through the Santa Ana National Wildlife Refuge would cut the Refuge off from its visitor center.

- a) Should any portion of wall construction move forward, if you are confirmed as Secretary, what will you do to minimize and mitigate damage to wildlife and related ecotourism economies?

If confirmed, I will review current policies. I believe DHS, CBP and the Army Corps of Engineers in previous border construction projects sought to mitigate environmental impacts to wildlife and habitat on public lands wherever possible and worked with stakeholders to do so, including the Department of the Interior and wildlife management officials.

16. Is CBP currently conducting preparation or construction activities for wall or physical barrier construction in the Santa Ana National Wildlife Refuge? Please describe what activities are underway, and the authority under which those activities are taking place.

I am currently unfamiliar with the status of activities and plans by CBP in this area. If confirmed I will ask to be briefed on plans in the area of the Santa Ana Wildlife Refuge.

17. In January, the President issued an executive order mandating that CBP hire 5,000 additional Border Patrol agents, about a twenty five percent increase over the current force, citing a need for additional agents. CBP is currently unable to hire and retain the 21,370 Border Patrol agents it is required to under law.

- a) Do you believe that a rapid increase of five thousand Border Patrol agents as directed by the President, during a period of historically low apprehensions at the border, is consistent with a risk-based approach?

Threat, risk, and need are primary considerations in staffing and resource decisions at CBP. I understand that DHS and CBP jointly use numerous methodologies to identify and validate border security initiatives and investment, including additional personnel. The USBP continues to refine its staffing methodology to determine its requirements to conduct border enforcement operations. I understand these methodologies are described in more detail in the soon to be released Border Security Improvement Plan.

To determine a comprehensive staffing plan we first must understand the requirements of our leaders and operators in the field. I understand the Border Patrol is currently working on a decision support tool which will support a staffing model with a combination of existing data and field input. While apprehensions may be at historically low levels, our border is not yet secure to the levels the American people expect and additional resources are required.

- b) If confirmed as Secretary, would you advocate for returning to a risk-based approach, including use of CBP's Workload Staffing Model?

Overall, as mentioned in other responses I have given to the Committee, I believe strongly in basing the Department's staffing and resourcing decisions on evaluations of risk. I understand, CBP's workload staffing model has been used successfully, particularly at the ports of entry as a tool for projecting staffing needs. However, should I be confirmed I would seek to better understand the model. As I understand it now, it is not risk-based as it does not tie staffing models to threats but is driven by factors such as projected increases in flow of legitimate passengers and cargo.

18. Last spring, the CBP Integrity Advisory Panel found that the agency needs to improve accountability among its law enforcement workforce.

- a) If confirmed as Secretary, will you work with Acting Commissioner McAleenan to implement the recommendations made by the Integrity Panel, including incorporating additional random polygraph examinations for current Border Patrol agents?

Yes, if confirmed I would work with CBP leadership to implement. I am not currently familiar with the specific Panel findings and I would want to understand the specific recommendation and its basis and also to gather information on best practices from other federal agencies that

use in service random polygraphing of employees to determine how to best incorporate such practices into the workforce.

- b) If not, what alternative or additional accountability and integrity measures do you intend to implement?

N/A

19. The H-2B visa program plays an important role in providing a safety net for small and seasonal businesses to supplement their year round workforce when necessary. Congress has set the cap of available H-2B visas at 66,000 per fiscal year. However, earlier this year the Administration drastically lowered the number of H-2B visas available for seasonal workers during the summer, affecting employers throughout the country who rely on these workers to keep their businesses going.

- a) What are your views on the need for H-2B and J-1 visas? If confirmed, will you work with Congress to ensure that sufficient numbers of H-2B visas are provided in a timely manner?

The Department of State maintains the J visa program. The J visa program can serve a valuable purpose and is broad in scope – applicants include au pairs to physicians to students.

The H-2B program allows U.S. employers who meet specific requirements to bring foreign nationals to the U.S. to fill temporary non-agricultural jobs. In past years, I understand Congress has provided for temporary measures to allow “returning workers” to qualify for H-2B visas. From my time as DHS Chief of Staff, I also understand some late-season industries argue that the dates of the two cap openings (i.e., October 1 and April 1) prevent them from obtaining H-2B workers. Under current regulations, USCIS cannot accept an H-2B petition unless it is filed with an approved temporary labor certification (TLC) issued by the Department of Labor. DOL regulations, in turn, provide that an employer cannot apply for a TLC with the DOL until 90 days before the start date of work to ensure that no U.S. workers are able and available to perform the proffered temporary jobs. If confirmed, I look forward to working with Congress on any improvements that can be made to the interagency process for administering these temporary worker programs to meet the goal of providing needed workers in various industries while reducing any opportunities for fraud and abuse and ensuring that the processes to protect American workers are followed.

- b) If confirmed, will you work with USCIS and Congress to come up with a permanent solution for H-2B visas in order to provide predictability to our seasonal businesses?

If confirmed, I look forward to working with Congress on any improvements that can be made to the interagency process for administering these temporary worker programs to meet the goal of providing needed workers in various industries while reducing any opportunities for fraud and abuse and ensuring that the processes to protect American workers are followed.

20. On September 5, 2017, the Trump Administration announced it was rescinding the Obama Administration memorandum creating the Deferred Action for Childhood Arrivals (DACA) program, effectively ending the program and creating an elevated level of uncertainty for the hundreds of thousands of young men and women, known as Dreamers, who were brought to this country as children. In your confirmation hearing, you stated that you agreed that legislation must be

passed in order to solve this problem.

- a) If confirmed, will you commit to actively working with Congress to pass a law providing a permanent fix for Dreamers?

As I also addressed in the hearing and my policy questionnaire, if confirmed, I will stand ready to work with Congress to provide any technical assistance needed towards a permanent, legal solution for DACA recipients and towards enacting measures that enhance border security, interior enforcement, and our immigration system generally.

- b) If confirmed, will you issue clear guidance to ICE and CBP ensuring that Dreamers are not treated as enforcement priorities?

As I responded to similar questions in the hearing, DHS has established enforcement priorities that target criminal aliens, persons who pose a threat to national security or public safety or those who have a final order of removal. All other categories of removable aliens would be a lower enforcement priority. If confirmed, I will work with ICE and CPB leadership to review enforcement priorities and ensure that guidance is clearly articulated.

21. In your policy questionnaire, you stated that “I believe in performance evaluation and acting on lessons identified, not just observing or admiring them.” On January 27, 2017, President Trump signed Executive Order #13769, banning travel to the United States from seven majority-Muslim countries effective immediately. During the campaign, the president had called for a “total and complete shutdown of Muslims entering the United States.” Then-Secretary Kelly publicly took responsibility for the ban’s chaotic rollout; at the time, you were his chief of staff.

- a. Please describe your role in the development and issuance of the travel ban.

I have been advised that because your question relates to the subject of ongoing litigation, it would not be appropriate for me to comment at this time.

- b. What lessons did you learn from the ban’s rollout, and how did you act on lessons identified in the rollout of the second version of the travel ban, signed March 9, 2017?

Orderly and comprehensive rollouts of Executive Orders and policy are vital to their effective implementation. DHS worked to ensure that the March EO rollout was comprehensive and orderly. I have been advised that because your question relates to the subject of ongoing litigation, it would not be appropriate for me to further comment at this time.

22. The President in late September issued a proclamation implementing a travel ban affecting eight countries, six of which are Muslim-majority. According to the administration, the restrictions imposed under the proclamation are based on findings from a “worldwide review” of foreign countries’ security, information sharing, and other practices conducted by the Secretary of Homeland Security. Parts of this report were shared with foreign governments. However, administration officials have informed congressional staff that the DHS products cited in the proclamation, and used to inform and develop the travel ban, will not be provided to Congress.

- a. Please describe what role, if any, you played in the worldwide review and in development of the proclamation, directly or indirectly.

As Principal Deputy Chief of Staff, I participated in early interagency policy meetings prior to my nomination. I have been advised, that because your question relates to the subject of ongoing litigation, it would not be appropriate for me to further comment.

- b. Will you commit to provide any documents DHS developed as part of the travel ban review to Congress? Will you commit to doing so within 120 days of taking office? If not, why not?

I highly value the role Congressional oversight committees play and if confirmed, I commit to respond appropriately to all reasonable requests from Congress within a reasonable time frame. I do not know at present the details of what these described documents entail and which, if any of them, may be the subject of ongoing litigation.

- c. Section (j) of the September 24th Presidential proclamation states, “Section 2 of this proclamation describes some of the inadequacies that led me to impose restrictions on the specified countries. Describing all of those reasons publicly, however, would cause serious damage to the national security of the United States, and many such descriptions are classified.”
- ii) Do you agree that providing the reasons that restrictions were imposed on the specified countries to members of relevant oversight committees of Congress would not damage national security?

I highly value the role Congressional oversight committees play and recognize that information can be provided at the classified level as appropriate. If confirmed, I will work with DHS leadership to ensure that needed information is provided to aid in oversight duties.

- iii) Do you agree that Congress can receive classified information?

Yes. Persons with a clearance and a need to know are eligible to receive classified information as long as they ensure that the information is handled properly and not publicly disclosed.

- iv) If confirmed, will you commit to providing relevant information in response to requests from members of Congress?

I highly value the role Congressional oversight committees play and if confirmed, I commit to respond appropriately to all reasonable requests from Congress within a reasonable time frame.

23. Please describe your understanding of why Chad was included in the latest travel ban, and why Sudan was removed.

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

24. The President's executive orders of January 27th, March 6th, and September 24th, by his own words, are geared toward barring Muslims from entering the United States. Later in summer, after the Supreme Court allowed much of the revised travel ban to proceed, the administration initially issued guidance interpreting the order to allow immediate family but not grandparents from countries named in the order, though the Court's ruling appeared to require no guidance. Later, the administration revised the guidance to allow grandparents as a bona fide connection.

- a) Please describe DHS's role, if any, in determining that grandparents specifically should be blocked from entry, including any risk assessments conducted by DHS that concluded that grandparents pose a greater threat than other extended family members.

I am not familiar with DHS' role as described above.

- b) Please describe your role, if any, in coordinating with the Departments of Justice and State in issuing the administration's guidance.

I did not play a role in issuing the guidance described.

25. In general, do you believe that requests for information from members of Congress regarding DHS's role in developing or informing Executive Orders 13769 and 13780, and the Presidential Proclamation issued on September 24th, fall into the category of "reasonable requests," for the purposes of your willingness to respond to such requests in a timely manner?

I am not familiar with all previous requests and which of them may cover matters under ongoing litigation or to which DHS may have responded. If confirmed, I commit to respond appropriately to all reasonable requests from Congress within a reasonable timeframe.

26. Do you support the President's Fiscal Year 2018 budget proposal to cut FEMA preparedness grants to states and localities? What analysis or evidence, if any, informs your position?

While the federal government should continue to support states and localities through preparedness grants and other assistance, the Fiscal Year 2018 budget reflects difficult budget choices balancing addressing various risks and available federal resources with expectations that state and local authorities are today able to shoulder more of the responsibility given the considerable federal investment made in recent years in preparedness, response, and resilience capabilities.

27. In your policy questionnaire, you note that your role as Special Assistant to the President for Preparedness and Response during Hurricane Katrina response was to "direct traffic," answer questions, and include requests for assistance and additional requests for information. In addition to a plethora of other findings describing what went wrong, the Katrina reports issued by both the House and Senate include findings that information sent to the White House was not getting to where it needed to be. Please respond to those findings and provide any additional information you think is relevant.

I worked to clarify roles within the WH for incident management support, the gathering and transmission of requests for assistance and requests for information and communication and outreach to and from government officials, stakeholders, and citizens. My goal was to have one WH office communicate with one entity at DHS as much as possible to reduce potential overlap and double tasking and to ensure that needed attention was not unnecessarily diverted

from response and recovery operations. Upon receiving situation reports from DHS and interagency partners, HSC sent a situation report to relevant WH offices to provide collated information collected from the interagency.

28. To whom did you report during your tenure as Special Assistant to the President for Preparedness and Response?

I served as a Special Assistant to the President and Senior Director for Prevention, Preparedness and Response. As I stated in the Policy Questionnaire, I reported to Fran Townsend, the Homeland Security Advisor.

29. At any time during Hurricane Katrina, did you advise President Bush or other White House officials with relevant decision-making authority that he should make a public statement regarding the ongoing crisis, or that he should visit the affected area?

I can say that my role on the Homeland Security Council at the time did not involve advising the President directly on his public statements or travel. However, in light of the confidentiality interests that attach to Executive Branch decision-making, I am unable to reveal the substance of conversations I may have had with other presidential advisors during the course of my time at the White House or what pre-decisional advice I may have provided. It is critically important, in my view, that the President is able to receive confidential advice without concern that the advice might later be divulged. I have always been honest and candid in my interactions with the President and will continue to do so as the Secretary of Homeland Security, if confirmed.

30. On Thursday, November 2nd, 43 days after landfall, FEMA approved permanent work designations C-G for Puerto Rico, through the FEMA 428 program. Officials in Puerto Rico have raised concerns about the use of this program, given that damage assessments on the island are ongoing, power is not yet restored to many parts of the island, and hazardous conditions in many areas threaten to worsen the current damage.

- a) Please describe your understanding of the FEMA 428 alternative procedures program. Is it appropriate to apply these procedures to the entire island while response is still under way?

Even as Puerto Rico, FEMA, and other federal partners continue to sustain response activities to stabilize the island, it is appropriate to begin to plan for and look forward to the long road to recovery ahead. As I understand it, alternative procedures, as authorized by section 428 of the Stafford Act, enable FEMA to work with the Commonwealth to consolidate projects at a sector level, and to operate using capped, fixed estimates for projects rather than having thousands of individual projects that could drag out recovery for many years. Alternative procedures also provide financial incentives and disincentives for the timely and cost-effective completion of projects with FEMA assistance, such as allowing cost underruns to be utilized to fund mitigation projects and overruns not being reimbursed by the Federal government. As I understand it, the alternative procedures and permanent work designations were agreed to by the Governor after in depth discussions with the federal government.

I believe that FEMA also plans to use the alternative procedures to support Puerto Rico in providing appropriate project management and fiscal oversight infrastructure to protect the significant Federal investment we are poised to make towards Puerto Rico's recovery. We are

unable to take this step under standard procedures in the way we can when we use Section 428. As I understand the situation and considering the magnitude of the damage, alternative procedures is an appropriate approach to guide FEMA funded recovery efforts by providing Puerto Rico the flexibility to drive its recovery with less administrative burden, and FEMA the appropriate controls to protect the taxpayers' investment.

- b) In Texas and the U.S. Virgin Islands, designations C through G were approved ten days and two weeks, respectively, after storms made landfall.
- i) Please explain why Puerto Rico's designation took so much longer than the others.

As we know from all the public reporting, the challenges in responding to the immediate impacts of Hurricane Maria in Puerto Rico were significant. Efforts to stabilize the island through life saving and life sustaining response activities extended far beyond the time in which similar actions were required in either Texas or the USVI. During this time I am told, category A and B provided FEMA and Puerto Rico all the authority and funding required, and category C through G authorities were not needed. In addition, the magnitude of the damage required thoughtful consideration of how to approach recovery, while continuing to maintain response activities. The timeframe for approval of categories C through G for Puerto Rico did not limit ongoing response activities nor slow or otherwise impact the pace of recovery for Puerto Rico. If confirmed, I look forward to being briefed on any lessons learned from this timeline, on the invocation of the various authorities, and as to whether there would be any reason to do so differently in future situations.

- ii) Please explain why cost sharing was approved for Texas and USVI, but not Puerto Rico.

As I understand it presently, just as in Texas and USVI, on November 2 the Administration approved an adjustment to the cost share for Public Assistance Category C through G to a 90% federal cost share. Previously, the President established a cost share of 100% for Category A and B work for a period of 180 days.

- 31. Evidence shows that investments in pre-disaster mitigation save roughly \$4 for every \$1 spent. You have described yourself as a proponent of risk-based investments. Do you believe that investment in PDM should be increased or decreased?

As noted, pre-disaster mitigation (PDM) has a high return on taxpayer investment. And PDM can be targeted to projects that have the greatest likelihood to reduce risk to a community. By reducing risks prior to a disaster, communities and taxpayers will lower their financial exposure and enhance their resilience. This will benefit the community and federal taxpayers alike. I believe we should do more with PDM if possible.

- 32. What was your role, if any, in reviewing or developing the President's FY18 budget request for DHS?

As Chief of Staff, I supported then-Secretary Kelly in his decision-making process and as decisions were made within the Administration to finalize the President's Budget Request.

33. On September 11, 2017, GAO issued a report which found that TSA needs to evaluate the cost and effectiveness of all of its passenger aviation security countermeasures in order to determine whether its investments in various areas, including the FAMS and BDO programs and other layers of security, are yielding results.

a) Are you familiar with this report?

I am not familiar with that particular report at this time.

b) If confirmed, will you work with Administrator Pekoske to review GAO's findings, and to develop a plan to address them?

I will.

c) According to media reports, in 2015, internal testing of TSA's ability to detect prohibited items produced a 95% failure rate. Following these leaks, Vice Admiral Peter Neffenger was confirmed to lead the TSA. Administrator Neffenger implemented a series of initiatives to improve screening performance and processes through training improvements, management reforms, and other steps, but substantial challenges remain.

i) If confirmed, will you work with Administrator Pekoske to review these reforms, and to continue them where needed?

I will.

d) Administrator Neffenger also implemented a series of initiatives working with the private sector to reduce wait times at airports, and to make needed investments in upgrading screening technology and equipment. These included creating the Innovation Task Force, standing up the Incident Command Center, and others.

i) If confirmed, will you commit to learning about these initiatives and working to ensure that programs to improve screening technologies and reduce wait times are implemented and evaluated appropriately?

I will.

34. Please provide a list of all of your official travel, including dates, with DHS Secretary John Kelly or Acting Secretary Elaine Duke during your tenure as DHS Chief of Staff. Please list whether this official travel was on chartered or military aircraft.

While I was DHS Chief of Staff I never officially travelled on my own or with Deputy Secretary Duke. I did accompany Secretary Kelly multiple times for official travel on the military aircraft typically used by the Secretary. As you know, under OMB Circular A-126 governing "required use" and subsequent guidance issued after DHS was brought into existence, the Secretary of Homeland Security is one of the designated federal cabinet level officials (along with the Secretary of Defense, Secretary of State, and the Attorney General) who is required to utilize military or other government aircraft for travel due to the need for instantaneous, secure emergency communications. Accordingly, the Secretary did not use chartered or commercial aircraft for travel. I have attached a record that DHS was able to produce that summarizes the

dates and locations of travel that Secretary Kelly undertook and which shows me manifested. This chart appears accurate to me matching my own recollection of travel in which I accompanied the Secretary.

35. During the 114th Congress, the Senate voted 91-3 to approve an amendment that would authorize TSA to nearly double the number of Visible Intermodal Prevention and Response, or VIPR teams, following the March attack in the Brussels airport. That amendment ultimately became law (see Subtitle F of P.L. 114-190).

a) Do you agree with the President's FY 18 budget proposal to cut the number of VIPR teams funded from 31 to eight? What analysis or evidence, if any, informs your position?

As I stated in the Policy Questionnaire, I believe it is important that the Department have some specially trained personnel who are deployable anywhere for enhanced deterrence or response to threats against critical mass transportation modes. The Visible Intermodal Prevention and Response (VIPR) teams of TSA serve that role. However, the primary security and law enforcement response at airports around and outside TSA checkpoints is local municipal or transit authority police. For other modes of transportation, the federal government offers support, training, and technical assistance to the local or transit authority or port authority law enforcement agency that has primary responsibility and jurisdiction. To respond to evolving threats, TSA continues to prioritize its canine program – and supports state and local law enforcement with those assets. If confirmed, I will work with Administrator Pekoske to ensure that the resources and means provided by Congress advance the very best security capabilities possible in the protection of our transportation systems.

36. You have indicated that DHS is currently undertaking an ongoing review of terrorism and violent extremism prevention related activities.

a) What are the parameters of this review?

As the nominee, I have not been briefed on the parameters of the review, but if confirmed, look forward to being briefed on this.

b) Which organizations within and outside of DHS are contributing to this review either through the submission of data or through direct discussions of existing programs and recommendations for the future?

As the nominee, I do not yet know exactly which organizations within or outside DHS are contributing but I hope to be full informed soon, if confirmed.

c) What metrics are being used to assess past success or failure, and what metrics will be used to judge future success or failure?

As the nominee, I also do not know the current metrics being used to assess past successes and failures and I am sure those will in turn inform metrics to assess future success, but I look forward to being fully briefed, if confirmed.

37. You have stated that today we are “much more concerned” with addressing the ability of ISIS to inspire lone wolf attacks throughout the world. Please describe the role DHS has in reducing the

ability of ISIS and other extremist groups to inspire lone wolf actors, including new initiatives you are currently considering that are not yet being implemented.

The biggest challenge for DHS and all of the interagency partners from the federal law enforcement and intelligence community is in reducing the ability of extremist groups to inspire lone wolf actors and finding creative ways to reduce the availability and impact of materials that lead to radicalization within the limits of the First Amendment and the realities of the internet. As I responded to a question in the hearing from Chairman Johnson, I would offer that I think we need to have a serious discussion, frankly, in conjunction with the executive branch and the legislative branch to really look at this issue of content intended to radicalize or provide “how to” manuals for conducting attacks to see if we are doing all we can do within Constitutional limits on where we draw the lines on inherently dangerous content. Obviously, our rules and the values that we hold dear enable each one of us to speak freely within this country but we must eliminate the ability of terrorists to direct or inspire others to violence. As a first step, inherently dangerous content may violate the terms of service of the hosting entities. As we have seen, some of the Internet companies responded recently by taking down white supremacist and neo-Nazi sites that violated use policies as they have done previously with terrorist content – it can be done. I do think we have to have that conversation and then work with those who provide and enable that information on the internet to find a way to identify it and remove it, should we determine that it's not appropriate.

38. You have stated the security of our homeland depends on close relationships between law enforcement and the communities in which they serve.

- a) Would you agree that community partnerships are an essential part of countering violent extremism and radicalization? Why or why not?

Both community organizations and local law enforcement play a critical role in helping us to deter, detect and disrupt potential terrorist or extremist activity. They provide tools and resources to those, and in some cases to their families, who are on a path to radicalization offering a different path. They are also the eyes and ears closer to and more attuned to potential warning signs of radicalization in their communities.

- b) Would you agree that providing more resources to the Office of Community Partnerships is vital to building relationships with the communities which law enforcement and DHS serve?

I believe public outreach is a vital DHS role. Should I be confirmed, I will review all outreach focused offices to include the Office of Partnership and Engagement, the Office of Civil Rights and Civil Liberties and the Office of Community Partnerships. I would first, if confirmed, want to ensure we are using existing resources wisely and effectively. If additional resources are needed for their missions, I will work with the Administration and the Congress to ensure they are sufficiently funded.

- c) Do you believe it would be helpful to have specific Congressional authorization for the Office of Community Partnerships at DHS? Why or why not?

If confirmed, I will review the ongoing efforts of the Office of Community Partnerships, as well as its budget and authorities, and if specific authorization would be helpful in ensuring effective mission execution, I will work with the Congress accordingly.

39. After briefly halting the CVE grants program earlier this year, DHS announced a revised list of grant awardees. The new list of grantees did not include any organizations focused on countering violent messages from white supremacist groups.

- a) Do you believe CVE grants should be awarded to groups and organizations that are specifically dedicated to combatting violent messages and actions from white supremacists?

As I understand it, more than half of the grants awarded under the CVE Grant Program were to organizations with proposals to combat all forms of violent extremism, which includes violent white supremacy. As we reviewed this program, it was our belief that any proposal to combat violent extremism, in whatever form, deserved consideration. If confirmed, I will ensure the Department does all that is appropriate and within its authorities working with its interagency partners and State and local law enforcement to help protect Americans from violent white supremacy groups and other violent extremist groups.

- b) To your knowledge, has the threat of violence from white supremacy groups subsided or grown in the past year?

While I do not have a current assessment from DHS or the FBI on specific trends in violent white supremacy, it is clear to me that it is a real and serious threat to our communities, and if confirmed, I will ensure the Department does all that is appropriate and within its authorities to help protect Americans from such violent extremist groups.

- c) Do you consider violence perpetrated by white supremacists or white supremacist groups to be terrorism?

I consider any form of ideologically motivated violence meant to intimidate or coerce the population or to influence government policy to fit within the general definition of terrorism. While domestic terrorism is defined in U.S. law, there are no designated domestic terror groups in the United States and domestic terrorism is not a specifically enumerated crime under federal law.

- d) You have stated that if confirmed you plan to be forward leaning in driving DHS terrorism prevention activities and programs, including through enhanced engagement with at-risk communities targeted by terrorists. Do you believe enhanced engagement is needed with at-risk communities targeted by white supremacist, environmental extremist, and other non-Islamic extremist groups?

We must work to counter all forms of violent extremism. I do think enhanced engagement should be considered with and within such communities, and if confirmed I will ensure our terrorism prevention posture is risk-based and intelligence-driven.

- e) You have stated in response to questions regarding the CVE grants that were awarded to groups countering white nationalist messages by the previous administration, and then subsequently re-awarded to other groups under the Trump administration earlier this year, that you believe all types of violent extremism must be countered and that if confirmed, you plan to assess the effectiveness of CVE grants based on data. How will you assess the effectiveness of DHS grant expenditures aimed at countering white nationalist or white supremacist violent extremism if no such grants exist?

The previous administration did not issue CVE grants – DHS, at the time, issued a press release noting an “intention to issue grants” at some future date. The current administration issued the CVE grants. As noted previously, more than half of the grants awarded under the CVE Grant Program by the current administration were to organizations with proposals to combat all forms of violent extremism, which includes violent white supremacy. If confirmed, I will ensure the Office of Community Partnerships continues with its proposal to comprehensively assess the results of awarded grants, including assessing how the terrorism prevention constructs funded were used—or could be used—to mitigate threats such as violent white supremacy.

40. Do you believe the designation of election infrastructure as critical infrastructure should remain in place? Why or why not?

Yes, because of the importance of election infrastructure to the very foundation of our democratic institutions and its continued vulnerability this designation should absolutely remain in place. I believe the designation of election infrastructure as critical infrastructure serves to underscore and formalize the support, services, and data provided by DHS to its election related partners.

41. Please detail policy recommendations for how DHS, and NPPD specifically as the sector-specific agency, can better inform state and local election officials of the types of guidance and assistance they are eligible to receive and encourage local election officials to take advantage of often free resources provided by DHS to better protect their election infrastructure.

The Election Infrastructure Subsector was established in January of this year. As I understand it, the Election Infrastructure Subsector Government Coordinating Council (GCC) has been established to further the partnership between federal, state and local partners and to develop and strengthen information sharing protocols and processes, including providing Security Clearances to Chief Election Officials. DHS, and NPPD specifically as the sector-specific agency, continues to provide guidance and assistance upon request to state and local election officials. Should I be confirmed, I will work with the leadership of NPPD to ensure that DHS is doing all it can through a variety of outreach mechanisms to inform state and local election officials of the types of guidance and assistance provided by DHS and how to best leverage them.

42. Do you believe DHS needs additional resources or authorities to provide needed resources to states to protect our election critical infrastructure?

As the nominee, I have no reason to believe that at this time. Should I be confirmed, I look forward to working with NPPD leadership to ensure DHS is doing all it can to provide assistance

and support in the protection of our nation's election infrastructure. As I responded during the hearing, the primary role of DHS, as you know, is to respond to requests from those state and local officials, ensure that they have the clearance so that they can receive the information, and then offer a variety of tools to ensure infrastructure protection against supply chain threats all the way through to the dissemination of the voter rolls.

I would also offer that redundancy and the ability to audit are vital. So whether it's paper ballots or whether it's physically moving the ballots as they do in California, as chaperoned by the highway patrol, we need to work to ensure the integrity of our electoral system.

43. What is the role of DHS within the inter-agency in protecting election critical infrastructure? How will DHS leverage the resources of other federate, state, and local agencies to best protect election infrastructure?

Elections are administered by state and local governments. DHS leads federal efforts to share information and provide technical assistance in order to help these officials protect their systems. DHS has created the Government Coordinating Council which I have discussed elsewhere in the Questions for the Record. From a cybersecurity perspective, within DHS's National Protection and Programs Directorate, the National Cybersecurity and Communications Integration Center (NCCIC) serves as a 24/7 cyber monitoring, incident response, and management center and as a national hub of cyber and communications integration. NCCIC operates at the intersection of, and includes representation from, the private sector, state and local governments, federal civilian government agencies, law enforcement, intelligence, defense communities, and international partners. The mission of this civilian hub is to apply unique analytic perspectives, ensuring shared situational awareness, provide technical assistance, and orchestrating synchronized response efforts while protecting the civil liberties and privacy rights of Americans.

In addition to leveraging the expertise within state and local governments and the private sector, DHS works closely with other federal agencies. DHS works closely with the National Institute of Standards and Technology (NIST) on cybersecurity standards and guidelines and the voluntary cybersecurity framework. NIST chairs the Technical Guidelines Development Committee (TGDC). TGDC assists the U.S. Election Assistance Commission (EAC), an independent, bipartisan commission charged with creating Voluntary Voting System Guidelines and operating the federal government's first voting system certification program. Specifically, NIST is working with EAC to develop Voluntary Voting System Guidelines (VVSG). VVSG are a set of specifications and requirements against which voting systems can be tested. Some factors examined include basic functionality, accessibility, and security capabilities. NIST is also conducting an evaluation of independent non-Federal laboratories to carry out the testing of voting systems and to submit recommendations of qualified laboratories to EAC for accreditation. EAC is also responsible for maintaining the National Voter Registration form, conducting research, and administering a national clearinghouse on elections that includes shared practices, information for voters and other resources to improve elections.

In addition to its cyber responsibilities, the Department of Justice Voting Section enforces the civil provisions of federal laws that protect the right to vote. The Department of Defense runs the Federal Voting Assistance Program (FVAP) to ensure military service members, their eligible family members, and overseas citizens are aware of their right to vote and have the resources to do so—from anywhere in the world.

EAC, NIST, DOJ, FBI, and DOD FVAP have been valued partners in guiding DHS through the complex policy environment of State and local elections. These agencies have facilitated opportunities for DHS to connect with chief election officials, to speak at the Technical Guidelines Development Committee, and maintain situational awareness with FBI's Election Crime Coordinators.

44. You have indicated that you have on several occasions led and overseen policy development and implementation related to critical infrastructure. Please detail what, if any, election infrastructure policy recommendations you have made or played a significant role in implementing.

I have had no policy development role with respect to election infrastructure other than recommending to then Secretary Kelly that DHS maintain the designation of election infrastructure as critical infrastructure.

45. DHS has been attempting to strengthen information sharing between DHS and state and local authorities by providing security clearances to select state election officials.
- a) Will you commit to working to ensure that all designated election officials in all states and territories will have a security clearance at least ninety days before the 2018 U.S. Congressional elections?

I understand that the DHS Office of Intelligence and Analysis (I&A) has contacted state chief election officials on behalf of the NPPD-led Election Infrastructure Subsector Sector-Specific Agency (SSA) to begin the security clearance process and 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.

- i) If you encounter delays in achieving this goal, will you commit to advising Congress of the delays, and actions you are taking to address them, in a timely manner?

If confirmed, I am committed to keeping Congress informed regarding the status of providing security clearances to election officials, as well as our broader efforts related to election

security. Safeguarding our elections is a shared responsibility, and we must work together on this important issue.

- b) How will DHS, through I&A, task forces, or other department entities, work to downgrade classified information so it can be expeditiously shared with state and local officials?

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. Through the Office of Intelligence and Analysis and other direct partnerships with other elements of the intelligence community, DHS has extensive experience and commitment to these objectives. Through tear-line processes and other methods, DHS can often provide network defenders with actionable technical information while still protecting sensitive, classified sources and methods.

46. What threshold do you believe DHS and the government as a whole should use when determining what information should be made public about attempted or successful meddling in elections by foreign actors?

I believe that DHS and the government should provide the public with actionable information that enables state and local officials, including network defenders, to better protect their networks and election infrastructure. To the extent that the government is aware of attempts by foreign actors to threaten our election process, the government should make every effort to appropriately declassify and share this information. Often, we can share declassified assessments of threat actors, while still protecting sensitive, classified sources and methods.

- a) Do you believe the public has a right to know if foreign actors are attempting to meddle in our elections?

Our elections are run by state and local governments in thousands of jurisdictions across the country. In order to provide all of them with information necessary to understand and respond to the threat, it is most practical to declassify this information so it can be shared broadly. To the extent that the government is aware of attempts by foreign actors to threaten our election process, the government should appropriately communicate that threat to the public.

47. What changes do you believe DHS needs to make to best position itself to combat foreign interference in our elections?

DHS needs to build upon its partnerships with state and local election officials, including the establishment of formalized information sharing protocols. In so doing, DHS will ensure that threat information reaches appropriate election officials. If confirmed, I will be briefed on all DHS efforts to combat foreign interference in our elections and will work with NPPD and I&A leadership to ensure that DHS is effectively leveraging its capabilities and capacities towards that end.

48. In order for Congress to fulfill its constitutional duty to conduct oversight, members of Congress must be able to receive testimony, briefings and other information from the executive branch upon request. To ensure that you and your agency fulfill its obligation to respond to congressional inquiries in a timely and comprehensive manner, I ask the following:

- a. If confirmed, do you commit without reservation to comply with any request or summons to appear and testify before committees of Congress?

If confirmed, I would comply without reservation to all lawful requests.

- b. If confirmed, do you commit without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, committees of Congress?

If confirmed, I would comply without reservation to all lawful requests.

- c. If confirmed, do you commit without reservation to respond fully, completely, and promptly to all congressional inquiries and requests for documents, communications, or any other material or information from members of Congress, including request from members in the minority?

If confirmed, I would comply without reservation to all lawful requests.

- d. If confirmed, do you commit without reservation to take all reasonable steps to ensure that you and your agency comply with deadlines established for requested information?

If confirmed, I commit without reservation to taking all reasonable steps to ensure that DHS provides timely information in response to all lawful requests.

- e. If confirmed, do you commit without reservation to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

If confirmed, I would comply without reservation.

- f. Are you aware of any Department policy restricting congressional committees from interviewing DHS personnel below the GS-15 or Senior Executive Service level?

I am not aware of such a policy.

- g. If confirmed, what would DHS's policy be under your leadership regarding the appearance of personnel, at all levels of seniority, to testify before or be interviewed by congressional committees?

If confirmed, my policy would be to cooperate with all reasonable requests for officials at DHS at all levels to provide needed information to Congress.

49. Was anyone who assisted with your nomination process or attended your meetings with Senators during your nomination process a special government employee?

No.

- a) Please provide any legal advice provided by the White House Counsel's Office, the White House Office of Presidential Personnel and/or DHS addressing whether voluntary assistance provided by any individual or entity in your nomination process is consistent with the gift rules and laws applicable to federal employees and the Trump Administration Ethics Pledge.

Proper legal advice was sought through White House Counsel's Office to ensure that any voluntary assistance related to my nomination, as is done for all volunteers who work with the federal government, complies with all applicable legal authorities. I have been advised that given the confidentiality of all WH Counsel legal advice given to WH officials, I am not able to provide additional information.

- b) Please provide any legal advice provided by the White House Counsel's Office, the White House Office of Presidential Personnel and/or DHS addressing whether voluntary assistance provided by any individual or entity in your nomination process is a violation of the Anti-Deficiency Act under 31 U.S.C. § 1342.

Proper legal advice was sought through White House Counsel's Office to ensure that any voluntary assistance related to my nomination, as is done for all volunteers who work with the federal government, complies with all applicable legal authorities. I have been advised that given the confidentiality of all WH Counsel legal advice given to WH officials, I am not able to provide additional information.

- c) Please describe what steps will you take, if confirmed, to ensure that any individual or entity involved in your nomination process will not have greater access to you or undue influence over DHS policy or contracting than any other interest group or constituent?

If confirmed, I will, as I have in previous roles in government comply with all applicable ethics guidelines which ensure that any past relationships by government officials, whether of a personal or professional nature, do not result in greater access or undue influence over any matter.

50. During your time at DHS, did you receive any requests for information from DHS's Office of Inspector General?

- a) If so, please describe those requests and indicate whether you cooperated fully with any such requests. If not, please explain why.

As the DHS Chief of Staff, I met periodically with the IG and the Secretary. The IG and I also had conversations about routine agency oversight matters. To my knowledge, I did not receive any specific requests for information addressed to me.

51. If confirmed, what guidance do you plan to implement to ensure covered employees in DHS are in compliance with all applicable federal recordkeeping laws?

If confirmed, I would ask the Department Office of General Counsel to review current guidance in place from the DHS Office of General Counsel and other Department organizations responsible for assisting in compliance. Further, if the review determined guidance was unclear, not widely circulated, conflicting and/or not complete, I would ask that the guidance be revised

and updated accordingly in order to ensure compliance with applicable recordkeeping requirements.

52. What is your stance on agency and White House compliance with the Federal Records Act and the Presidential Records Act?

I believe it is important to comply with such recordkeeping requirements under law.

53. Are you aware if President Trump is using a secured, encrypted smartphone for his personal use? If so, please indicate when President Trump began using a secure, encrypted smartphone.

In the interests of the security and confidentiality surrounding what devices the President of the United States has access to or their capabilities, I cannot comment.

54. Are you aware of any Department of Homeland Security officials engaging in prohibited political activity under the Hatch Act?

I am only aware of media reporting that alleged possible Hatch Act issues.

55. During your time as Deputy Chief of Staff at the White House, were you aware of any officials engaging in prohibited political activity under the Hatch Act?

I was not.

56. If confirmed, please describe the efforts you will undertake to ensure compliance with the Hatch Act.

If confirmed, I will ask the Department Office of General Counsel to review current guidance in place from the DHS Office of General Counsel and other Department organizations responsible for assisting in compliance. Further, if the review determined guidance was unclear, not widely circulated, conflicting and/or not complete, I would ask that the guidance be revised and updated accordingly to ensure compliance with the Hatch Act.

57. If confirmed, please describe the efforts you will undertake to secure, modernize, and properly resource all ports of entry around the country.

How we resource the ports of entry requires additional focus to more effectively find the “needle” of hidden drugs or other contraband among the “haystack” of huge volumes of legitimate trade and travel. We want to impose greater security without ‘thickening’ the border in a way that is economically damaging. If confirmed, I look forward to reviewing the draft strategic plans to better understand what can realistically be achieved, how quickly, and with what mix of resources to better secure all of our borders in the view of our experts and then working with the Administration and Congress to close any gaps.

58. If confirmed, please describe the efforts you will undertake to secure, modernize, and properly resource the United States Postal Service’s International Service Centers at the airports in New York, Los Angeles, Chicago, Miami, and San Francisco.

I understand that CBP is committed to addressing the growing threat in the international mail environment, with an eye particularly on the growing opioid crisis. CBP is currently working with the U.S. Postal Service to implement electronic systems to locate high risk shipments, targeted by CBP, for inspection. CBP is also looking to increase staffing at the international mail facilities to help address the increased volume of shipments. If confirmed I will ensure CBP and the Department continue these efforts to better secure, modernize and properly resource these facilities.

59. If confirmed, will you pursue further expansions in the TSA-Pre Check and CBP Global Entry Programs? Please discuss in detail.

I believe strongly that these programs have provided significant benefits for DHS and for the traveling public and, if confirmed, I would certainly like to see even greater growth and participation in such trusted traveler programs as they help us focus resources more on the unknown. As I understand it, there are currently more than 5.4 million individuals enrolled in the TSA Pre-Check Application Program. Another 6.7M are enrolled in CBP's trusted traveler programs who are also eligible for TSA Pre-check expedited screening at the airports. The TSA pre-check application program alone is growing by about 1.7M new enrollments per year. Global Entry membership in FY17 over FY16 increased by 25 percent. CBP has projected expectations of Global Entry membership growth in FY18 to exceed 25 percent based upon ongoing and pending negotiations to expand bilateral arrangements with new countries. So, I believe further expansion is well underway already. These programs can also serve as instructive models in other future areas where the Department can both increase security while facilitating and expediting lawful travel and commerce.

60. Since 2012, DHS has received nearly two million DACA applications. Applicants are required to provide DHS with sensitive information such as their address, biometric, and employment information. DHS has previously stated it would not share this information with U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement. If confirmed, will you keep this promise to applicants?

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.

61. Based upon your tenure in the White House during Hurricane Katrina, and your role in the current administration during preparation and response to the most recent storms and wildfires, what is the most significant lesson learned regarding the Federal response to natural disasters that you believe still needs to be implemented? If confirmed, how will you work to implement it?

Should I be confirmed, I look forward to reviewing the lessons learned report and any after action documentation produced by FEMA as part of their standard process post disaster. In general, I

believe as a nation we still need to instill a culture of preparedness in every American. As called for in Katrina Lessons Learned and more recently embraced by Administrator Long, this culture of preparing for man-made and natural disasters takes time and concerted effort. If confirmed, I will ensure DHS, principally through FEMA, will lead an effort to build upon previous efforts through advocacy, stakeholder engagement and partnerships to ensure we as a nation are better prepared for future disasters.

62. In response to former Secretary Johnson's announcement that state election infrastructure would be designated as critical infrastructure, some state election officials expressed concern about potential federal overreach. If confirmed, how will you work to address those concerns?

If confirmed, I will work to reassure state election officials and better inform them that the DHS role, under current authorities and laws, is NOT to "take over" election equipment or processes. The DHS role is to serve as a resource to the state officials who are responsible for elections, to provide them with threat information about vulnerabilities, to offer tools, training and best practices and financial resources in the form of grants. I will strive to better inform them about how the Department can help them, and I will also do my best to assure them that the relationship is a voluntary one, and that DHS will not seek to mandate as a regulator.