

Nomination of Lee Francis Cissna for Director of United States Citizenship and Immigration Services (USCIS)

Questions for the Record

Submitted May 31, 2017

QUESTIONS FROM SENATOR FEINSTEIN

1. The Homeland Security Act of 2002 requires that the Director of Citizenship and Immigration Services have a minimum of five years of management experience. U.S. Citizenship and Immigration Services (USCIS) is comprised of 223 offices across the world and employs 19,000 government employees and contractors. As the agency responsible for overseeing legal immigration to the United States, USCIS processes millions of immigration applications a year.
 - a. **What management experiences, if any, qualify you to be the Director of U.S. Citizenship and Immigration Services?**

Response:

According to the definition of “management official” at 5 U.S.C. 7103(a)(11), management experience means someone employed in a position “the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency.” Serving as the Director, Acting Director, or Deputy Director of the immigration policy office within the DHS Office of Policy, I have more than five years of experience formulating, determining, or influencing the policy of the Department during both the Bush and Obama administrations.

Throughout my career, I have held various supervisory and managerial positions that satisfy the statutory requirement. A few examples, with details to the best of my recollection, follow.

- I served as the chief of the nonimmigrant visa section at an overseas consulate. Specifically, I supervised a team of up to 7 people dedicated to processing visa applications for students, exchange visitors, specialty occupation workers, intracompany transferees, treaty investors, and all other temporary visa classifications. During the times when the consul was absent I supervised the entire consulate’s staff of approximately 14, including the immigrant visa section, American citizen services section, and social security benefits section.
- During the years I was Director, Acting Director, or Deputy Director of the immigration policy office within the DHS Office of Policy, I supervised an office of approximately 7 people with General Schedule (GS) grades ranging from GS-11 to GS-15. More importantly, however, my duties in these positions required or authorized me to formulate, determine, or influence the policies of the Department for more than a five-year period covering both the Bush and Obama administrations.
- For a period of several months in early 2007, I oversaw the DHS Comprehensive Immigration Reform “War Room,” which was the hub for

the Department’s coordinated effort with the White House and Congress to develop and pass a comprehensive reform bill. I coordinated the work of approximately 20 detailees from across the Department, including attorneys, policy analysts, and operational experts.

- b. For each of the employers identified in the employment record section of your questionnaire, please specify the number of employees you managed or supervised.**

Response:

Please see response to (a). I did not supervise other employees for any of the other employers identified in the employment record section of my questionnaire.

2. As you know, customer service is one of the core functions of U.S. Citizenship and Immigration Services. In fact, one of the agency’s strategic goals is “providing effective customer-oriented immigration benefit and information services.” Additionally, one of USCIS’s core customer service principles is to “approach each case objectively and adjudicate each case in a thorough and fair manner.”

- a. Do you have any experience in customer service?**

Response:

Yes. I spent many years of my professional life working at three different private sector law firms with a variety of different clients, ranging from individuals to large corporations. During the years I spent practicing immigration law in particular, I regularly interacted with individuals and employers representing the entire spectrum of persons and businesses with cases pending before USCIS. Finally, during the years I supervised the nonimmigrant visa section at an overseas consulate, I not only had to interact on a daily basis with the large number of individuals applying for visas, but also manage responses to applicants, their attorneys and employers, and sometimes members of Congress inquiring about a case.

- b. If confirmed as Director, how will you ensure the agency’s customers that the agency will adhere to its core customer service principles – to be objective and assess each case thoroughly and fairly?**

Response:

If confirmed to be the Director of USCIS, I will strive to ensure that the agency carries out its mission in a fair, lawful, efficient, and expeditious manner. This is how I handled all cases when I was adjudicating applications at an overseas consulate and, if confirmed, I would seek in all my interactions with USCIS staff to transmit my commitment to those standards.

3. In January, the President signed an executive order that banned people from seven Muslim-majority countries from entering the country. Shortly after that, the Ninth

Circuit Court of Appeals upheld a temporary injunction against the order, explaining that it did not believe the government would be able to prove that the executive order was lawful. The President then signed a revised executive order that he said would fix the flaws in the original order. This order has also been enjoined.

- a. **The Trump Administration maintains that the original executive order, even as applied to legal permanent residents and valid visa holders, was lawful. Do you agree?**

Response:

As the legality of the original and revised executive orders is the subject of ongoing litigation, I do not believe it appropriate to comment at this time.

- b. **Do you believe the revised executive order is lawful?**

Response:

As the legality of the original and revised executive orders is the subject of ongoing litigation, I do not believe it appropriate to comment at this time.

- c. **Do you believe that it is lawful to discriminate against immigrants seeking entry into the country based on their religion?**

Response:

I do not believe people should be denied entry to the United States based solely on their religion.

- 4. Did you at any point contribute to the planning, drafting, review, or implementation of any of the following executive orders? If so, please provide a detailed description of your involvement.
 - a. **Executive Order: Border Security and Immigration Enforcement Improvements (January 25, 2017)**
 - b. **Executive Order: Enhancing Public Safety in the Interior of the United States (January 25, 2017)**
 - c. **Executive Order: Protecting the Nation From Foreign Terrorist Entry Into the United States (January 27, 2017)**

Response:

(a)–(c): These three Executive Orders were products of work undertaken by the Presidential Transition Office and the new Administration. I do not believe it appropriate for me, who served only as a volunteer in the Transition Office, to comment on work that was done on those orders, or related internal deliberative policy discussions, within the Transition Office. But in general, the expertise that I offered during the time I volunteered with the campaign was principally related to employment-based visa policy.

(a): I participated, in my current capacity within the DHS Office of Policy, in an initial meeting with other DHS staff in March 2017 regarding the initiation of a review of Department parole policies, as required by section 11(d) of E.O. 13767.

- d. Executive Order: Protecting The Nation From Foreign Terrorist Entry Into the United States (March 6, 2017)**

Response:

I did not contribute to the planning, drafting, review, or implementation of Executive Order 13780.

- e. Presidential Executive Order on Buy American and Hire American (April 18, 2017)**

Response:

I did not contribute to the planning, drafting, or review of E.O. 13788, aside from the review of the E.O. done by my office at DHS when it was formally circulated for review throughout the entire Department by the DHS Executive Secretary shortly before the E.O.'s publication. I have also been indirectly involved, in my current capacity in the DHS Office of Policy, with (i) the review of existing regulations and policies to protect the interests of United States workers and prevent fraud or program abuse and (ii) the review of the H-1B program directed by sections 5(a) and (b), respectively, of E.O. 13788.

- 5. President Trump's executive order on refugees and travel suspension from certain countries has been enjoined by the courts, permitting U.S. Citizenship and Immigration Services (USCIS) to continue operating the refugee program. Despite this, I have heard reports that USCIS has halted refugee interviews and is not re-running security checks that have expired.**

- a. Do you believe these courses of action are appropriate? If so, why?**

Response:

I do not know the details of the current state of USCIS refugee processing in light of the injunctions. If confirmed, I will request to be briefed on the current situation in order to determine the appropriate course of action.

- b. If confirmed as USCIS Director, would you advise the agency's employees to resume refugee interviews, security checks, and adjudications in compliance with these court orders?**

Response:

See response to (a).

- 6. In answers to your questionnaire, you noted that, in September 2016, you started volunteering with the Trump campaign. Prior to that, did you volunteer with any other**

presidential campaign?

Response:

No.

7. During the presidential campaign, then-candidate Trump released a plan titled “Immigration Reform that Will Make American Great Again.” As part of your volunteer experience on the Trump campaign, did you provide assistance in executing any components of that plan? If so, what aspects of the plan did you contribute to, and what type of assistance did you provide?

Response:

During the time that I volunteered with the campaign I offered my expertise in immigration-related policy and operations on a wide variety of projects, principally relating to employment-based visa policy. My volunteer work with the campaign related to transition planning; I was not involved with drafting speeches or platforms, or other functions usually associated with political campaign staff.

8. On February 28, 2017, in remarks in a Joint Address to Congress, President Trump noted: “It’s a basic principle that those seeking to enter a country ought to be able to support themselves financially. Yet, in America, we do not enforce this rule, straining the very public resources that our poorest citizens rely upon.” Do you agree with that statement?

Response:

It seems that that statement may be referring to public charge inadmissibility under section 212(a)(4) of the Immigration and Nationality Act, and related grounds for removal. I do agree that the intent of this provision is to encourage those coming to America to be able to support themselves financially, but I do not know the details of how these provisions are currently enforced to be able to comment further.

9. As you know, section 235 of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) provides that asylum officers shall have initial jurisdiction over asylum claims filed by unaccompanied minors. The intent in creating this provision was to give vulnerable children who have fled their home countries and seek asylum in the U.S. an opportunity to present their case for relief in a non-adversarial setting. In 2013, U.S. Citizenship and Immigration Services (USCIS) published a memo providing updated procedures consistent with this statutory requirement.

- a. **Will you commit to fully enforcing the statutory requirements under section 235 of the TVPRA of 2008?**

Response:

If confirmed, I commit to faithfully administering and enforcing the immigration laws under USCIS’ jurisdiction.

- b. **Will you commit to retaining the 2013 USCIS memo on updated procedures?**

Specifically, will you commit to retaining current policy, which provides that asylum offices adopt a determination made by ICE or CBP about whether a child is a UAC, without conducting a separate factual inquiry?

Response:

I am not familiar with the details of the 2013 memo. If confirmed, I will ask to be briefed on the matter.

10. Earlier this year, President Trump signed an executive order on “Enhancing Public Safety in the Interior of the United States.” Section 14 of this executive order states that “Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.”

- a. **Do you believe the executive order gives U.S. Citizenship and Immigration Services (USCIS) the authority disclose or share personally identifiable information with a third party, Immigration and Customs Enforcement, or Customs and Border Protection? If so, under what circumstances?**

Response:

If confirmed, I would consult with USCIS legal counsel and privacy experts to ensure that such information sharing, if any, is in compliance with the law and DHS policy.

- b. **What “applicable laws” limit the extent to which USCIS can enforce this provision of the executive order?**

Response:

See response to (a).

11. On January 13, 2017, the Obama Administration proposed rules to improve federal oversight of the EB-5 program and curb some of the worst abuses within it (82 Fed. Reg. 4738 et seq.). These proposed rules will soon be finalized and implemented by USCIS. However, as *The Washington Post* and others have reported, large real estate developers – including those with ties to Jared Kushner’s family business – actively oppose these rules. This raises the concern that USCIS could face pressure from the White House to dilute or alter the proposed rules. On May 24, 2017, during your nomination hearing before the Senate Judiciary Committee, you committed to finalizing and implementing the proposed EB-5 rules. If confirmed as Director of USCIS, will you stand by that commitment, regardless of any external political pressure to do otherwise?

Response:

If confirmed, I commit to finalizing the proposed EB-5 rules according to the process set forth in the Administrative Procedure Act and related DHS and OMB guidance.

12. There are concerns that President Trump’s border and interior enforcement executive

orders make immigrant victims susceptible to detention and removal, and could lead to violations of essential protections provided under the Violence Against Women Act (VAWA) and Trafficking Victims Protection Act (TVPA). There are also disturbing reports that the personally identifiable information of victims and witnesses who have petitioned for U visas, T visas, and protection under VAWA has been disclosed on DHS's VINE database.

- a. **If confirmed as Director, will you commit to fully enforcing privacy and confidentiality protections in U visa, T visa, and VAWA cases?**

Response:

If confirmed, I commit to faithfully administering and enforcing the privacy provisions provided under the law for T, U, and VAWA cases.

- b. **In what circumstances do you believe it is appropriate to disclose information relating to a U visa, T visa, or VAWA petitioner to a third party?**

Response:

See response to (a).

- c. **If confirmed as Director, will you commit to engage in outreach efforts and meet with organizations that advocate on behalf of sexual and domestic violence survivors to discuss immigration issues affecting their clients?**

Response:

If confirmed, I and my staff would meet, as appropriate, with the public to receive input on various immigration issues, including VAWA and TVPRA related matters.

13. In 2010, the Department of Homeland Security (DHS) announced designation of Temporary Protected Status (TPS) to Haitian nationals as a result of the devastating earthquake that affected Haiti. In 2015, DHS extended this designation, and recently, it once again extended this designation through July 23, 2017. As the Trump administration reached a critical decision on whether to once again extend TPS designation to Haiti, it was reported that top immigration officials at U.S. Citizenship and Immigration Services (USCIS) were seeking unusual information. These top political advisors instructed non-political officials to extract information from the agency's data systems to ascertain the number of Haitian immigrants convicted of crimes, as well as those on public benefits. As you know, these are not factors that Congress outlined in the statutory scheme for determining whether to grant TPS designation to nationals of a specific country.

- a. **Do you think it was appropriate to seek information on individuals convicted of crimes? Do you think it was appropriate to seek information on the number of individuals availing themselves of public benefits? If confirmed,**

is this information you would advise the Secretary of Homeland Security to take into account in making decisions on TPS designation in the future?

Response:

I am not sufficiently aware of the details of the request you reference to comment on the appropriateness of or reasons for the request. As I understand the law, the Secretary may, in considering whether to designate or extend the designation of a country for TPS, assess whether permitting the aliens to remain temporarily in the United States is “contrary to the national interest of the United States.”

- b. Have you advised the Secretary of Homeland Security on the status of TPS designation for other countries? If so, what recommendations have you provided?**

Response:

I have not advised the Secretary on the status of TPS designations for other countries.

- 14. In 2014, the Departments of State and Homeland Security established the Central American Minors (CAM) in-country refugee/parole program in order to provide a safe and legal alternative to children seeking to flee Honduras, El Salvador, and Guatemala. In 2016, the U.S. Citizenship and Immigration Services (USCIS) Ombudsman noted that the “dual refugee/parole framework strengthens the program’s effectiveness as an orderly and legal alternative to hazardous journeys to and across the U.S. border.”

- a. Do you believe there is a need to provide legal and safe alternatives for young children fleeing Central America?

Response:

I believe any young child from Central America who is present or arriving in the United States and who has been persecuted or has a well-founded fear of persecution on account of a protected ground should apply for asylum, as provided for under existing law.

- b. Do you believe that the CAM program constitutes proper use of parole authority under Section 212(d)(5)(A) of the Immigration and Nationality Act? If not, why not?

Response:

Section 11(d) of Executive Order 13767 directs the Secretary of Homeland Security to “take appropriate action to ensure that parole authority under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) is exercised only on a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole.” I understand that the agency, in consultation with the Secretary’s Office, is currently in the process of reviewing the use of parole authority. If confirmed, I would ensure that USCIS provides appropriate counsel to the Secretary during this extensive review to ensure that the law is faithfully executed.

- c. If confirmed as Director of USCIS, how do you intend to work in collaboration with the State Department and other federal agencies to address migration from Central America?

Response:

If confirmed, I would certainly be open to working with any federal agency to develop ways to address this problem.

15. Section 212(d)(5)(A) of the Immigration and Nationality Act grants the Secretary of Homeland Security the authority to parole certain individuals into the United States on a discretionary basis. In the past, this discretionary authority has been exercised by U.S. Citizenship and Immigration Services with respect to the Haitian Family Reunification Parole Program, Filipino World War II Veterans Parole Program, Cuban Family Reunification Program, and for family members of active duty military personnel, veterans, and enlistees. Do you believe that these past uses of parole authority have been appropriate? If not, why not?

Response:

See response to 14(b), above.

16. For many immigrants, obtaining American citizenship is critical to full integration into American society. According to the Department of Homeland Security’s Office of

Immigration Statistics, there are more than 8 million legal permanent residents who are eligible for naturalization.

- a. **If confirmed as Director of USCIS, what would you do to promote naturalization among eligible immigrants?**

Response:

I agree that naturalization is critical to full integration into American society. If confirmed, I would request to be briefed on work the agency already does to promote naturalization, and integration more generally, in order to better determine what, if any, improvements could be made to the agency's efforts.

- b. **In your assessment, what are some of the barriers that put naturalization out of reach for eligible immigrants? If confirmed as Director of USCIS, do you intend to address these barriers? If so, how?**

Response:

I do not know all the details about how naturalization is promoted and administered by USCIS to be able to answer. If confirmed, I would ask to be briefed on this issue and how USCIS is dealing with any such barriers.

- c. **The 2016 U.S. Citizenship and Immigration Service's Ombudsman's Report noted that naturalization requests suffer from prolonged processing times. If confirmed as Director, how would you address this issue?**

Response:

If confirmed, I would consult with the professionals who manage agency adjudications regarding ways to eliminate, or at least substantially reduce, backlogs across all classes of applications and petitions handled by the agency.

17. Special Immigrant Juvenile (SIJ) status provides an important means of protection for qualifying non-citizen children that have been abused, abandoned, or neglected. In December 2015, U.S. Citizenship and Immigration Service's Ombudsman published a report on "Ensuring Process Efficiency and Legal Sufficiency in Special Immigrant Juvenile Adjudications." The report found that the practical effect of USCIS policy is "*a de novo* review of the State court's process and determinations pertaining to the abuse, neglect, or abandonment of the child." The report further observed that Congress did not charge the agency with this responsibility. Rather, it noted that, "[b]y statute, that is the role of the State court."

- a. If confirmed as Director of USCIS, will you ensure that the agency adheres to Congressional intent with respect to the role of state courts in the SIJ program?

Response:

I do not know all the details about USCIS policy regarding SIJ cases to be able to answer, but, if confirmed, I would ask to be briefed on this issue.

- b. With respect to SIJ cases, do you believe it is appropriate for USCIS adjudicators to review facts that have been evaluated by state courts relating to abuse, abandonment, and neglect?

Response:

See response to (a).

18. The 2016 U.S. Citizenship and Immigration Service’s Ombudsman’s Report noted the problem of visa retrogression for the EB-4 category, which includes SIJ visas. If confirmed as USCIS Director, what will you do to address the problems posed by the inability to adjust status for children with approved special immigrant petitions who are affected by the retrogression? Do you believe these children should be protected from immigration enforcement?

Response:

I do not know all the details about the effect of visa retrogression on SIJs, and how USCIS is currently handling such cases. If confirmed, I would ask to be briefed on this issue as well as the issue of visa retrogression generally, and how USCIS could better work with the Department of State to minimize or eliminate problems with the program to the extent permitted by law.

19. A number of provisions of the Immigration and Nationality Act provide waivers of inadmissibility in cases where denying admission to a non-citizen would result in “extreme hardship” to a qualifying relative, in many cases a family member who is a U.S. citizen or lawful permanent resident (LPR).

- a. What factors and circumstances do you think are appropriate for officers to consider in making an extreme hardship determination?

Response:

I am not sufficiently familiar with the laws, regulations, administrative precedent, and agency guidance governing such determinations to be able to answer, but I look forward to being briefed on this issue by USCIS experts, if confirmed.

- b. Are there particular factors or circumstances that you think should receive more weight in making an extreme hardship determination?

Response:

See answer to (a).

20. Stakeholder engagement and outreach is an important component of U.S. Citizenship and Immigration Service's work. If confirmed as Director, will you commit to meeting with a variety of stakeholders on programs and policies under the agency's purview?

Response:

If confirmed, I would certainly be willing to meet with members of the public about programs and policies under the agency's purview.

21. Freedom of Information Act requests to USCIS are an important tool by which journalists uncover stories in the public interest and lawyers obtain critical data to defend the rights of their clients. However, a May 2017 report by *The FOIA Project* describes how the FOIA request backlog at USCIS has tripled from the end of 2014 to the end of 2016. As USCIS exerts considerable influence over the lives and rights of thousands of individuals, including young children, this backlog is unacceptable.

- a. **If confirmed as Director of USCIS, what specific steps will you take to address this growing backlog of FOIA requests at USCIS?**

Response:

I am not sufficiently familiar with this issue to answer. If confirmed, I would request a briefing on this issue and would thereafter consult with appropriate agency experts regarding ways to reduce the backlog. Agency transparency is important to me.

- b. **If confirmed as Director of USCIS, you will also be responsible for implementing transparency reforms within the FOIA Improvement Act of 2016, signed into law last year. What steps will you take – and what resources will you commit – to implement the new law and generally foster a culture of transparency at USCIS?**

Response:

I am not sufficiently familiar with steps USCIS has taken to date to implement the FOIA Improvement Act. If confirmed, I would request to be briefed on implementation.