

Questions from Senator Orrin Hatch to USCIS Nominee Leon Rodriguez

Question #1:

The current R-1 process is painfully slow and creates inconvenience and hardship. The average processing time is about five months.

In my view, a two-month processing time where site visits have previously been done would be a reasonable solution for petitioners known to be non-fraudulent.

If confirmed, would you consider waiving the petition process for religious organizations with well-established missionary programs and an objective history of compliance?

If confirmed, I commit to reviewing this program, including on-site inspections, to determine whether it is consistent with the USCIS standards of efficiency, security and integrity. As I will with all USCIS benefit areas, I will work to make the Agency's processes as efficient as possible. It is my understanding that in 2008 USCIS revised the religious worker regulations to improve DHS's ability to detect and deter fraud and other abuses of the religious worker program.

Question #2:

I am concerned about those who change from F-1 to R-1 status. Sometimes R-1 visa petitions are denied because by the time USCIS adjudicates these petitions (usually about five months after filing), the school has had to terminate them in the Student and Exchange Visitor Information System.

Can I get your commitment that you will work to address this issue?

If confirmed, I certainly commit to a careful study of this issue to determine how to most appropriately address and resolve these concerns. I understand that USCIS has regular monthly meetings with Immigration and Customs Enforcement (ICE) Student Exchange and Visitor Program (SEVP) and I support continued coordination with SEVP.

Question #3:

I am concerned about travel for foreign religious authorities who are living in the United States but need to travel abroad frequently.

In particular, after applying to adjust their U.S. immigration status, these non-U.S. national religious leaders cannot travel abroad for 90 days. If they do not get advance parole before traveling, USCIS deems their applications to be abandoned.

Would you consider treating applicants in R status like those in L and H status, who can travel freely without getting advance parole?

If confirmed, I commit to carefully studying the travel parameters for those in R status to determine the most appropriate steps, including exploring possible regulatory actions, to address this issue. I understand that departures from the U.S. have different effects depending upon which section of law the foreign national is applying for adjustment of status.

Question #4:

Last summer, USCIS decided to allow eligible applicants to file their I-601 waiver through the Nebraska Service Center.

For those whose waivers are approved it has significantly shortened the time that they need to be outside of the United States while processing their immigrant visas. This has greatly reduced the time that families are separated and consequently suffer all of the difficulties associated with long separations. If confirmed, will you ensure that this process continues under your leadership?

If confirmed, I will carefully study this matter to ensure that we can continue to provide the most appropriate support for this process.

###

Senator Dianne Feinstein
Written Questions to Leon Rodriguez, Nominee to be Director of the
U.S. Citizenship and Immigration Services

Backlogs of Family-Based Petitions

USCIS is currently taking an average of 10 months to process the family-based I-130 petitions that U.S. citizens and lawful permanent residents must file to sponsor their relatives for lawful permanent resident status. The processing time for such cases is normally approximately five months.

I understand that USCIS has been routing some cases to less busy processing offices known as “regional centers” to reduce the backlog, and anticipates getting their processing times back to normal by May 2014.

- Should you be confirmed, will you commit to reducing the processing times for family-based petitions so that families may be reunited as soon as possible?**

If confirmed, I can commit to continuing the policy for the agency to process petitions in a timely and efficient manner that ensures a fair and accurate adjudication. I understand from USCIS, that they are working to get the processing times in I-130 immediate relative petitions back down to their processing time goal by this summer.

###

Senator Charles E. Grassley
Questions for the Record for Leon Rodriguez
Nominee for Director of U.S. Citizenship and Immigration Services,
U.S.D.H.S.

- 1. If confirmed as Director of U.S. Citizenship and Immigration Services (USCIS), you will be responsible for ensuring that foreign nationals receive only the benefits to which they are entitled under the immigration laws. Do you have any background or leadership experience in the area of immigration law or immigration policy?**

My background in immigration law and policy runs through my entire educational and professional background. As a law student at Boston College Law School, I was the coordinator in my second and third-years of the Holocaust/Human Rights Research Project (H/HRRP). The project sponsored both scholarship and an annual conference on the precedential value of legal proceedings against alleged Nazi war criminals for other instances of mass violation of human rights. During my tenure, we were particularly focused on the legal issues surrounding de-naturalization and deportation proceedings against Nazi war criminals. In recognition of my leadership with H/HRRP, I received the Susan Grant Desmarais Award for Public Service, the highest award for public service given by the law school.

From 1994 to 1997, I served as a prosecutor with the U.S. Department of Justice Civil Rights Division. A significant portion of my docket involved human trafficking cases, including ones involving alien smuggling and other violations of the immigration laws. In particular, I was the lead prosecutor in the case of U.S. v. Flores, a case involving the enslavement of Mexican and Guatemalan nationals who had been smuggled from border areas in Arizona to farms in South Carolina and Florida.

As County Attorney for Montgomery County, Maryland I was called upon on several occasions to advise our County Executive, Chief of Police and the Director of our Department of Corrections and Rehabilitation on various issues related to the relationship between immigration issues and law enforcement. The issues involved both the County's participation in the Criminal Alien Program and Secure Communities Program. Among the issues on which I worked was the development in cooperation with the Chief of Police and the State's Attorney was the development of criteria, including an expanded list of criminal offenses, upon which arrestees would be referred to Immigration and Customs Enforcement.

During my work on the Obama-Biden transition team, I was assigned to review various immigration-related functions of the Department of Justice, including the immigration courts.

Finally, as Chief of Staff and Deputy Assistant Attorney General in the Department of Justice Civil Rights Division, I was responsible for overseeing the Office of Immigration-Related Unfair Employment Practices, which enforces the laws prohibiting discrimination in employment based on immigration status or national origin against individuals legally entitled to work in the United States. The cases handled by this office required an understanding of the various categories of immigration status that afforded individuals employment eligibility. Several of the cases handled by this office involved the e-verify system and required an understanding of the significance of temporary non-confirmations and final non-confirmations under the E-verify system. Additionally, during my tenure in the Civil Rights Division, I was designated by the Deputy Attorney General to serve on a panel interviewing candidates for the immigration courts.

I would also note my background as a fraud, organized crime and money laundering prosecutor. For example, as the First Assistant United States Attorney in Pittsburgh, I was the lead prosecutor in the case of U.S. v. John Gardner Black, which involved the successful prosecution of an investment adviser who had defrauded Pennsylvania school districts of \$60 million public funds. Such experiences have prepared me to oversee the national security and anti-fraud aspects of USCIS's work.

2. In what ways, if any, would you depart from former Director Alejandro Mayorkas' policies?

As a nominee, I do not have the opportunity to fully evaluate USCIS's policies and procedures as I would as a sitting director. As such, I would not pre-judge at this time whether, in the hopeful event of my confirmation, I would change any policies or procedures that existed under former Director Mayorkas.

3. Do you find any of former Director Mayorkas' actions, or any current DHS policies, to be objectionable? If so, what? What would you do differently?

It is my general view that former Director Mayorkas is an exemplary public servant, who was an effective leader of USCIS. I am not aware of specific policies that existed under his tenure that I would deem objectionable or would seek to change in the hopeful event of my confirmation. Having said that, I am always prepared to take a fresh look at the agency's policies and practices based on feedback offered by the Senator and others.

- 4. During your confirmation hearing, I asked you if you would expand the Deferred Action for Childhood Arrivals (DACA) program. However, you did not answer. Please explain what actions you may take regarding the program, if confirmed.**

I am committed to following and executing the laws of the United States, and leading all of the operations of USCIS in the most efficient and fair manner possible. However, it would be impossible for me to predict what action I would take with respect to a policy like DACA prior to my confirmation.

- 5. The previous Director of USCIS implemented DACA without requiring the payment of a fee to cover the cost of the actual adjudication of the DACA application. The fee that DACA applicants currently pay is only the fee covering the adjudication and processing of the Employment Authorization Document and related biometrics collection fee. USCIS adjudicatory resources had to be reallocated to handle the hundreds of thousands of DACA cases and, as a result, processing of family-based immigrant visa petitions filed by U.S. citizens on behalf of foreign relatives has stretched from 5 to as many as 15 months.**

- a. Do you support the previous Director's decision to not charge a substantive adjudication fee for DACA applications?**

If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward, including any possible changes to address this matter.

- b. If confirmed, do you intend to repeat the error of the previous USCIS Director and not charge a fee for the DACA applications when processing the upcoming wave of DACA renewal applications, thus causing further harm to U.S. citizens who have filed family-based petitions?**

If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward, including any possible changes to address this matter.

- 6. Aside from charging an adjudication fee for DACA applications, what other steps, if confirmed, would you immediately take to restore processing times for immediate relative petitions to their pre-DACA periods?**

If confirmed, I can commit to continuing the policy for the agency to process petitions in a timely and efficient manner that ensures a fair and accurate adjudication. I understand from USCIS, that they are working to get the processing times in I-130 immediate relative petitions back down to their processing time goal by this summer.

- 7. The previous Director of USCIS required that all potential denials of DACA cases be sent to headquarters for review. Will you continue this practice, or will you allow adjudicators in the field to make these decisions in a non-political manner?**

If confirmed, I will carefully study this matter to ensure that we can continue to provide the most appropriate support for our adjudicators.

- 8. Whistleblowers have informed me that USCIS refuses to share information related to DACA applicants with U.S. Immigration and Customs Enforcement (ICE) officials. Will you commit to improving information sharing with other law enforcement officials so that we can better protect the homeland and ensure that only those eligible are receiving immigration benefits, including DACA?**

If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward.

- 9. What actions would you consider taking to root out fraud and abuse in the DACA program? Specifically, what actions do you plan to take with regard to diploma mills?**

As a former federal fraud prosecutor, I take any fraud against the United States quite seriously. If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward, including any possible changes to address this matter and reviewing this process to ensure it remains consistent with the USCIS standards of efficiency, security and integrity.

10. At your hearing, Senator Durbin asked for your view on whether prosecutorial discretion exists in the context of immigration that he believes justifies the use of Executive Order to circumvent the proper constitutional process to modify the law: a bill signed into law after passing both the Senate and the House of Representatives. In your response, you acknowledged your view that prosecutorial discretion exists in the immigration enforcement context. But you also said that such power is “not unlimited” and is “not uncabined.”

- a. Based on your experience, what is the proper role of prosecutorial discretion in the criminal context? What are its proper limitations, if any?**

In my experience, prosecutorial discretion, which is well-recognized in American jurisprudence, enables law enforcement authorities, in criminal and other cases to prioritize cases based on principled criteria in light of the resources made available for enforcement. A broad range of factors can be considered in determining how to prioritize enforcement, such as the resources available to a law enforcement authority, the level of seriousness of an offense and other considerations of fairness and public interest. That discretion is limited by the basic duty to faithfully execute applicable laws and any other specific limitations on that discretion that may exist under the Constitution and statute.

- b. In your view, what is the proper role of prosecutorial discretion in the immigration enforcement context? What are its proper limitations, if any?**

It is my general understanding that the role of prosecutorial discretion is broadly speaking similar in the criminal and immigration contexts. As noted, prosecutorial discretion must be exercised as appropriate in light of the relevant laws and factors for any particular situation.

- c. How would you describe the differences in the proper limitation of prosecutorial discretion between the criminal and immigration enforcement contexts?**

It is my general understanding that the limitations on prosecutorial discretion are broadly speaking the same in the criminal and immigration contexts, and as noted prosecutorial discretion should be exercised in light of the relevant laws and factors for any particular context.

d. Can an Executive Order overstep your view of the proper bounds of prosecutorial discretion in the immigration enforcement context?

As I acknowledged during my confirmation hearing, prosecutorial discretion exists in the immigration enforcement context, but that power is “not unlimited” and is “not uncabined.”

e. If confirmed, what will you do if you are instructed by the Administration to follow an Executive Order that you believe exceeds the limitations of exercising prosecutorial discretion in immigration enforcement?

I am committed to faithfully executing the laws of the United States and to providing sound advice to the Administration. I would not discharge my office in any way that I thought to be impermissible under the law.

11. If USCIS denies an immigration benefit to an individual in the country, and that person does not have legal authority to remain, will you, if confirmed, require that USCIS turn over all documentation and proactively cooperate with ICE to initiate removal proceedings?

If confirmed, I commit to uphold the law and carefully review this issue to ensure it remains consistent with the USCIS standards of security and integrity.

12. In the more than four years that she served as Secretary of the DHS, Secretary Napolitano never met with employees representing either the USCIS or ICE unions. There was a lot of discontent amongst the thousands of adjudicators and agents in the field who worked hard every day to adjudicate petitions and applications, and to enforce the laws. The National Citizenship and Immigration Services Council represents 12,000 agency employees. This union represents staff within USCIS who doesn't agree with the administration's plan to grant legal status to people here illegally. These officers also feel pressured to approve petitions and applications and fear retaliation if they do not "get to a yes." Will you meet with representatives from the National Citizenship and Immigration Services Council before you are confirmed so you understand their concerns?

If confirmed, I would welcome meeting with these and other CIS employees and would want to spend a great deal of time meeting with and working with the agency's employees.

13. Serious national security issues have come to light in recent months with respect to the EB-5 Regional Center program, which allows foreign nationals to obtain a green card if they invest in certain investment projects in the United States. In December 2013, the Homeland Security Inspector General identified concerns with USCIS's management of the Program. The OIG concluded that USCIS cannot administer and manage the EB-5 Regional Center program effectively, and that there's no evidence that there's an economic benefit to the country. In an internal memo to the DHS Secretary, ICE identified several vulnerabilities with the EB-5 program, including economic espionage, use by foreign governments for espionage purposes, use by terrorists, and money laundering. ICE's principal recommendation was that the EB-5 program be terminated. Other countries have similar concerns. Canada ended their investor visa program and the UK is likely to put severe restrictions on their own, including doubling the investment amount.

a. Do you concur that more needs to be done to reduce national security risks and to prevent fraud and abuse in the program?

I understand that USCIS has made substantive changes and improvements within the EB-5 program to date, including assigning FDNS officers to work within the program office to ensure proper security screening and background checks are administered on each of the application types associated with the program to prevent fraud and national security risks. Furthermore, I have also been advised that USCIS recommended certain improvements to the program, and that these are reflected in S. 744. If confirmed, I will review the program to ensure that that USCIS's existing high standards of integrity and security are maintained.

b. Do you have any plans to administratively improve the program?

If confirmed, I will review the program to ensure it remains consistent with CIS's high standards of security and integrity.

c. Would you support increasing the minimum EB-5 investment amount – something that would be within your authority to accomplish by regulation? If not, why not?

If confirmed I will commit to review this issue.

d. Will you make it a priority to reform the program if you are confirmed?

If confirmed, I will commit to review the program for any additional improvements.

e. Would you consider placing a moratorium on the program if you determine, after being confirmed, that there are significant and serious national security issues?

If confirmed I will commit to reviewing the program and take any appropriate action within my authority.

14. E-Verify has been an effective tool for employers to determine if they have a legal workforce. This program will be critical if an immigration bill moves forward in Congress because it will very likely be made mandatory for all businesses.

a. Do you support making E-Verify permanent and mandatory for all employers?

I do support the enhancements to E-Verify as part of bipartisan efforts to enact common sense, comprehensive immigration reform. Several E-Verify provisions, including phasing in mandatory employer use of E-Verify were included in S.744.

b. Do you have any plans to change the E-Verify program absent an act of Congress?

No. It is my understanding that the E-Verify program currently in effect has worked well and has a relatively low error rate.

15. If confirmed, it will be your job to help implement our nation’s immigration laws. The administration is publicly pushing an immigration bill that *grants legal status to people who are in the country illegally*. Do you agree with the administration’s support for Senate Bill 744?

I do agree with the administration’s support for Senate Bill 744, which was also supported by a majority of the Senate. I do not believe that there is much dispute that our immigration system is broken. Like many law enforcement, business, labor and faith leaders, I believe that Senate Bill 744 provides a path toward an immigration system consistent with the national interest, including its provisions that bring undocumented persons out of the shadows, require them to pay a penalty, and to take their proper place in line before they earn citizenship.

16. Should people here illegally be eligible for immigration benefits, including legal status? If so, should those individuals be responsible for all costs associated with it? Should taxpayers shoulder any of the burden?

I support the framework for addressing these issues that is contained in S.744, which includes provisions requiring individuals to pay fees that cover the costs of applying for legal status.

17. Should people here illegally who are in removal proceedings be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a “yes” or “no”. I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744.

18. Should people who are subject to an order of removal from the United States be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a “yes” or “no”. I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744. I support the framework for addressing these issues that is contained in S.744.

19. Should an illegal immigrant convicted of a felony criminal offense be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a “yes” or “no”. I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744.

20. Should an illegal immigrant convicted of multiple misdemeanors be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a “yes” or “no”. I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744.

21. Should an illegal immigrant with even a single sex-related offense be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a “yes” or “no”. I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744.

22. Should an illegal immigrant with even a single drunk driving offense be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a “yes” or “no”. I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744.

23. Should illegal immigrant gang members be eligible for immigration benefits, including legal status?

Given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that this question can be answered with a “yes” or “no”. I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. I support the framework for addressing these issues that is contained in S.744.

24. If an illegal immigrant provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions? If an illegal immigrant provides information in an application that clearly renders him ineligible and commits a serious crime that would warrant his immediate removal, shouldn't the government be able to use that information to place him in removal proceedings?

If confirmed I will work to ensure the safety and security of the United States and uphold current laws.

25. Should people here illegally be required to submit to an in-person interview with adjudicators when applying for immigration benefits, including legal status? Would you not agree that, at a minimum, any illegal immigrant with a criminal record should be required to be interviewed as part of any sort of legalization process?

If confirmed, I certainly commit to review current procedures, and where needed, improve areas to address any security/fraud concerns.

26. Should people here illegally that have been denied legal status be placed in immigration proceedings and removed? If not, why not?

If confirmed, I commit to uphold the law and carefully review this issue to ensure it remains consistent with the USCIS standards of security and integrity.

27. If the Secretary of Homeland Security must revoke a visa for someone on U.S. soil, should that decision be reviewable in the U.S. courts?

The scope of judicial review over immigration decisions would not be within my jurisdiction, if confirmed as Director of USCIS.

28. As a result of some of the actions taken by Secretary Napolitano, particularly her Directive entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” several ICE agents, including the President of the ICE agents and officers union, the National ICE Council, Chris Crane, filed a complaint against Secretary Napolitano stating that “the Directive commands ICE officers to violate federal law . . . violate their oaths to uphold and support federal law, violates the Administrative Procedure Act, unconstitutionally usurps and encroaches upon the legislative powers of Congress, as defined in Article I of the United States Constitution, and violates the obligation of the executive branch to faithfully execute the law, as required by Article II, Section 3, of the United States Constitution.” Moreover, Kenneth Palinkas, the president of the National Citizenship and Immigration Services Council, has likewise charged that USCIS employees are required by the agency “to grant immigration benefits to those who, under law, are not properly eligible.” In short, the administration’s policies have caused a great deal of discontent among immigration officers and agents, to say the least. Accordingly, if confirmed, what will you do to improve the morale of immigration officers who are concerned about these non-enforcement protocols issued by the administration?

Having served in four other government leadership positions, each of which involved staff involved in making decisions of an adjudicatory nature, I know how important it is that staff trust in the integrity of its leadership. One of the most important ways to earn that trust is to genuinely listen to your staff, including when their views may be contrary to your own or to the existing practices of your agency. If confirmed, I will engage with staff and their labor representatives on any and all concerns they may have about their mission.

- 29. All federal employees take an Oath, codified at 5 U.S.C. § 3331, to “support and defend the Constitution of the United States ... and that [they] will well and faithfully discharge the duties of the office on which [they] about to enter.” How can an employee fulfill his or her oath if such an employee is threatened with reprisal for executing the laws enacted by Congress to which they are entrusted to administer, and for not complying with an administratively-created command to the contrary?**

As I indicated above, the exercise of prosecutorial discretion has been well-recognized in American jurisprudence. In my long experience as a prosecutor and in other law enforcement environments, it is my view that the application of prosecutorial discretion is appropriate to the proper operation of a law enforcement organization. The articulation of the agency’s enforcement priorities for use of its available resources, and setting of criteria for the exercise of discretion rests with the leadership of the agency. Ordinarily, employees are expected to abide by lawful decisions as to how an agency will prioritize its use of resources, including through the appropriate use of prosecutorial discretion.

- 30. In January 2012, the DHS Inspector General released a report criticizing USCIS for pressuring its employees to rubberstamp applications for immigration benefits. In that report, nearly 25 percent of USCIS officers surveyed said supervisors had pressured them to approve applications that should have been denied.**

- a. Do you believe that current USCIS screening procedures are sufficient to prevent fraud and threats to public safety and national security?**

If confirmed I will review the current policies and procedure for fraud prevention and national security, and if needed I will make improvements.

- b. If confirmed, would you change these policies? If so, how?**

If confirmed I will review the current policies and procedure for fraud prevention and national security, and if needed I will make improvements.

- c. Will you commit to ensuring that USCIS background checks for every applicant for immigration benefits are properly and effectively conducted?**

If confirmed I will review the current policies and procedure, and if needed I will make improvements.

d. Should employee performance evaluations at USCIS be linked to the number of applicants for benefits approved, or adjudicated?

I understand that USCIS has already addressed this issue in coordination with Union officials.

31. Do you believe it is appropriate for the Director of USCIS to personally intervene in a specific case and overrule line adjudicators at a Service center?

As the leader of USCIS, the Director is responsible for all of its actions and decisions, including its adjudications. While it would not be possible or appropriate for the Director to intervene in all adjudications, it is appropriate, indeed incumbent upon him, to do so in limited situations, such as when the outcome of adjudication is wrong, or when adjudication may present a legal, factual or policy issue of broad application. I would note, however, that regardless of which USCIS official decides a case, it is of paramount importance that cases be decided according to the facts and the law, and nothing else.

32. To what degree should the Director of USCIS ever become personally involved in drafting adjudicatory decisions?

As the leader of USCIS, the Director is responsible for all of its actions and decisions, including its adjudications. While it would not be possible or appropriate for the Director to intervene in all adjudications, it is appropriate, indeed incumbent upon him, to do so in limited situations, such as when the outcome of adjudication is wrong, or when adjudication may present a legal, factual or policy issue of broad application. I would note, however, that regardless of which USCIS official decides a case, it is of paramount importance that cases be decided according to the facts and the law, and nothing else.

33. Recently, the U.S. arrested a legal immigrant in Illinois who had been convicted and served ten years in an Israeli prison for her role in two terrorist bombings. According to press reports, she was able to obtain both a green card (in 1995) and citizenship (in 2004) by simply omitting her conviction on her applications. She continued to live in the U.S. for years despite the fact that the conviction was public knowledge. Are you confident that the current processes for screening applicants for immigration benefits are able to identify and keep out criminals and individuals who pose a threat to national security?

I understand that USCIS screens all applicants (including those applying for naturalization and lawful permanent residence) against terrorism information, including Terrorist Screening Database (TSDB) records in TECS, and currently requires a final query of terrorism-related information immediately prior to adjustment of status or the naturalization ceremony. I also understand that USCIS relies heavily on our law enforcement and intelligence community partners for uncovering indicators of potential national security concern posed by applicants and petitioners. If confirmed, I commit to reviewing this process to ensure it remains consistent with the USCIS standards of integrity, security and efficiency.

34. DHS currently receives a portion of funds from each H-1B and L-1 visa application, deposited into the H-1B and L Fraud Prevention and Detection Account, and provides these funds to USCIS for fraud and abuse prevention efforts. ICE has a responsibility to investigate and prosecute the cases but does not receive any of these funds. Will you commit to ensuring that funding from the H-1B and L Fraud Prevention and Detection Account is properly shared among DHS components for both fraud prevention and for prosecution of employers who misuse the program?

It is my understanding that the DHS share of these funds is used for fraud prevention activities, as directed by statute. USCIS antifraud work depends upon the availability of fee-based funding, as opposed to the appropriated funds provided to ICE. I look forward if confirmed to working with other DHS components on issues of mutual interest, including combatting suspected fraud.

35. Oversight conducted by several Senate Committees has revealed that DHS is not enforcing the law prohibiting the admission into the country of those who would be a public charge. This has been confirmed by ICE and USCIS officers and data on both admissions and removals. Oversight also discovered a number of administration activities, including advertisements in immigration materials and at foreign embassies, encouraging foreign nationals to use federal welfare programs. Can you please describe, in detail, how you would restore vigorous enforcement of the public charge law to protect taxpayers, including what efforts you would undertake to reduce noncitizen enrollment in means-tested welfare programs? Please be specific in your answer.

It is my understanding that the U.S. Department of Health and Human Services and other benefit administering agencies, determine the eligibility for an individual to receive any means-tested benefits in light of applicable laws. I understand that USCIS assists benefit granting agencies by verifying through the Systematic Alien Verification for Entitlements (SAVE) Program with determinations of immigration status. If confirmed, I will ensure that USCIS is following the law.

36. Are you aware of any discussions within the Department to establish a program for Syrian nationals to obtain a special “parole” status to live and wait – potentially for many years -- for their immigrant visas while in the United States? If so, can you please provide any details? Regardless of your knowledge of such discussions, if such a program were to be done, would you believe it to constitute an overreach of Executive authority that not only circumvents the Immigration and Nationality Act’s numerical caps but also circumvents standard refugee processing protocols?

I am not aware of such discussions. I would not offer a view on this issue without a full opportunity to review the facts and circumstances and applicable legal provisions.

37. On February 27, 2014, the Government Accountability Office (GAO) released its report on the Department of Homeland Security's (DHS's) management of the Optional Practical Training (OPT) program – an immigration benefit that allows foreign students to obtain temporary work in their major area of study during and after completing an academic program in the United States. The GAO report reveals extensive and alarming DHS mismanagement of the OPT program, proving serious program integrity issues that bring to light potential risks to national security. The report says (1) foreign students, sometimes aided by school officials, are currently abusing the OPT program to acquire unauthorized employment in the United States, and (2) due to lack of oversight by DHS, no one in the Federal Government presently knows where tens of thousands of these foreign students are located, who they are working for, how much they are being paid, or what they are doing while staying in the United States. While Immigration and Customs Enforcement has direct supervision over the OPT program, USCIS does approve OPT work authorizations upon the recommendation of Designated School Officials (DSOs). The use of OPT has increased dramatically over the years, and vulnerabilities in the program threaten the homeland. What steps will you take, if confirmed, to overhaul the program and improve oversight of those who apply or receive OPT?

If confirmed I will review USCIS' authority and obligations in this program and make improvements where necessary.

38. Every year, members of Congress introduce private relief bills for individuals who may have exhausted all administrative remedies to remain in the United States. Upon introduction, Immigration and Customs Enforcement does a report for Congress on the individual. If confirmed, will you commit to providing all members of the Judiciary Committee with the individual's A-file and any other documentation retained by the agency so that the private relief bill can be properly reviewed and considered?

I have been informed that ICE has jurisdiction over DHS reports relating to private bills and that USCIS provides appropriate information on an individual's immigration history to ICE. If confirmed, I will uphold the law and provide information as allowed under the Privacy Act and applicable Departmental policies.

39. The Senate Judiciary Committee has heard testimony from individuals who have been defrauded by foreign nationals who have utilized the VAWA self petitioning process to obtain legal status in the country. Individuals have claimed that foreign spouses will fraudulently marry and falsely claim abuse in order to obtain a green card. Many of these defrauded Americans say their side of the story was never heard by USCIS. If confirmed, will you commit to reviewing the process? Will you consider requiring USCIS adjudicators to gather evidence from and interview the accused spouse and other witnesses?

If confirmed, I certainly commit to a careful review of this issue to determine if any changes need to be made to the process while protecting the confidentiality, potential safety concerns and sensitivities associated with VAWA petitioners.

40. In the Fiscal Year 2015 DHS budget, the administration requests \$3 million to create a nonprofit entity called the “U.S. Citizenship Foundation.” This Foundation would be aimed at “expanding instruction and training on citizenship rights and responsibilities” and “promote the importance of United States citizenship.”

a. Do you think it is necessary, in these difficult budget times, to use taxpayer dollars to create a nonprofit citizenship foundation?

I understand that the Fiscal Year 2015 DHS Budget requests authority to use \$3 million of USCIS premium processing fee collections and that USCIS believes that this Foundation could be self-sufficient after three years. If confirmed I will carefully study this proposal.

b. Do you believe the creation of this Foundation can only be done by statute? In other words, if confirmed, will you create this Foundation even if Congress does not appropriate funding for the project?

If confirmed, I will review this proposal and the funding capabilities of USCIS and look at the most appropriate steps forward and what USCIS may do under existing authorities.

41. During your hearing, I asked you questions about a booklet entitled “Warning! Protect Yourself From Immigration Raids!” published by CASA de Maryland while you were still a board member.

- a. During the questioning, you said that you were unaware of that specific publication until I mentioned it during the hearing, despite the booklet receiving considerable press coverage at the time. To the best of your recollection, is that still true: that you were unaware of that booklet until your hearing?**

To the best of my recollection, I was not aware of the booklet until my hearing.

- b. The booklet encouraged undocumented workers to not to give law enforcement a name, even while acknowledging that it is a crime in some jurisdictions. Do you believe that such advice is sound?**

As a law enforcement official myself, I do not condone violation of the law. Without the benefit of having reviewed the booklet in its totality, I would not comment on the soundness of any advice it offers.

42. Also while you were a member of the board, CASA de Maryland was very vocal in expressing its outrage towards some citizens who recorded their observations of local congregating places of day laborers. I am not interested in debating the appropriateness of the Maryland minutemen's actions nor of the merits of a measured response. My concern is with the official statements made by CASA de Maryland on what I find to be a troubling escalation of the conflict. In response to the Minutemen's actions, the then-executive director stated that CASA de Maryland would "picket their houses, and the schools of their kids, and go to their work." The official CASA de Maryland spokeswoman defended these statements saying "it's perfectly legitimate of us to go to the Minutemen's homes and also protest."

a. At the time did you think it was acceptable for protestors to target unsuspecting children at their schools or homes?

As a father myself, I would never condone the intimidation of children as a method of protest. To my knowledge, no person affiliated with CASA de Maryland ever engaged in protests at the homes or workplaces of Maryland minutemen or at their children's schools or otherwise targeted the children of the Minutemen. As I understood the statements by CASA executive leadership at the time, they did not represent an imminent intention to protest at the described locations, but rather were meant to underscore what was seen as the intimidating nature of the actions taken by the Maryland Minutemen with respect to CASA clients and staff.

b. If not, did you personally say anything publicly to contradict these official CASA de Maryland threats?

For reasons stated in my response to 42a, I did not publicly contradict the CASA de Maryland's executive leadership.

c. If you did not, do you believe you should have?

For the reasons stated in my response to 42a, I do not believe that any action would have been warranted on my part at the time.

43. If I were a line immigration adjudicator or enforcement official and I learned about certain aspects of your record (e.g., you oversaw an organization that encouraged undocumented workers to break the law, opposed a lawful and common sense solution to strengthen national security in the form of the REAL ID Act, and threatened to target children in retaliation over the actions of some citizens concerned about unlawful immigration). I would be very hesitant to trust that this new leader would help and support me to carry out successful immigration enforcement. How do you plan to convince over 18,000 employees that you, as their new leader, will be one hundred percent supportive of their efforts to lawfully enforce federal immigration law and change any perception or preconceived notions these agents and employees might otherwise have formed about you?

As a former state and federal prosecutor, and as a government executive in several different legal and law enforcement environments, an allegiance to enforcement of the law has been one of the hallmarks of my career. As I indicated in response to the question about my experience with immigration law and policy, I have engaged in scholarly activity in support of denaturalization and deportation proceedings against human rights violators, have criminally prosecuted human traffickers, and supported the Montgomery County, Maryland Police Department in developing policies for communicating relevant law enforcement information to applicable federal authorities.

If confirmed as USCIS director, I believe my mission to be to extend a warm hand of welcome to those entitled to be in the United States, and to make sure that those who are not entitled to admission to the United States, particularly those who mean harm to the American people, do not get to enter or remain here. I would communicate this basic philosophy about USCIS' mission to the staff at every opportunity, and would emphasize my long professional history defending exactly these principles.

44. Do you believe whistleblowers who know of problems with matters of national security should be prevented from bringing that information to Congress?

No. Applicable laws must be observed.

45. Will you commit to ensuring that every whistleblower is treated fairly and that those who retaliate against whistleblowers are held accountable?

It is my view that both the law and good government require fair treatment of whistleblowers. I will make sure that whistleblowers are not subjects of retaliation and will make sure that the laws that protect whistleblowers are followed.

46. At your hearing, we discussed the existence of emails between career prosecutors and leadership concerning the Department's declination to prosecute in the New Black Panther Party case. You acknowledged, as Chief of Staff, that you were part of the team that helped prepare Assistant Attorney General Thomas Perez for his testimony before the U.S. Commission on Civil Rights. During your hearing, your testimony on this point was somewhat unclear.

- a. Were you aware, prior to Assistant Attorney General Perez's testimony before the U.S. Commission on Civil Rights that there was correspondence between political leadership and career attorneys about the declination to prosecute?**

I was generally aware that there was correspondence between Departmental leadership offices and career attorneys about the decisions made to modify relief against two defendants in the New Black Panther Party case and to dismiss the case against the national party and its president. Although I do not believe that I reviewed any of that correspondence, it was my understanding at the time that the nature of that correspondence was to keep political leadership informed about the status of the case and the decision being made by the career leadership of the Civil Rights Division.

- b. Did you make Mr. Perez aware of this correspondence prior to his testimony?**

I did not communicate with Mr. Perez about this correspondence prior to his testimony.

- c. Were you present when Mr. Perez testified before the Commission?**

No.

- d. Did you take any steps to correct the record at any point after he provided his testimony?**

No. I did not and do not have any reason to believe that the testimony required correction.

47. At your hearing, you assured me that your view of Congressional Oversight was that there needed to be a strong flow of communication between your agency and the Congress. Should you be confirmed, how will your approach to responding to requests from Congressional Members and Committees differ than the approach used by DOJ while you were there?

As I stated at the hearing, it is my view that good government dictates that open communication between an agency and Congress be the norm. I am not in a position to speak to the approach used across all components in the Department of Justice, but if confirmed, I would work diligently to timely provide Congress the information that it needs.

###

Senator Charles E. Grassley
Questions for the Record for Leon Rodriguez

Nominee for Director of U.S. Citizenship and Immigration Services, U.S.D.H.S.

Resubmission of Selected Questions

In a number of your responses to my previous submission, you replied that, if confirmed, you would look into the matter. The implication is that you are not able to be informed of these matters until you are confirmed. Yet, it is clear that you are able to get the necessary information from USCIS to answer specific answers to my questions (see e.g., your responses to Questions 6, 13.a., 30.d., 33, and 40.a.). Using the resources that are clearly made available to you, please respond to my earlier questions to which you often just repeated the same answer with little variation.

The questions in the first section are numbered to correspond with the original questions I submitted for the record. Occasionally, an additional question or two has been inserted that accompanies the related original question. Following these resubmitted questions is a series of follow up questions.

Introduction/Response to the above statement:

I appreciate and respect your request for further information regarding my views and perspectives. Within the parameters of my current position as a nominee I have attempted to provide additional information.

Having twice before taken over the helm of government agencies, and on two other occasions assumed a position as a senior agency leader during periods of transition, experience has taught me that the most important and dispositive input on operational and policy issues comes from being in an agency itself. In particular, having the expert input of seasoned staff and stakeholders and having the benefit of information held by the agency form the basis of thoughtful decisions. The questions that you raise are very important and essential to any form of effective enforcement and administration of the immigration laws.

I firmly believe that the nominee to such an important position of public trust should be a person who will commit to do their very best. I do so commit to you that if I am confirmed as Director I will do my very best—to study the law, analyze the policies, understand the operational factors, review the praise and criticism, weigh the pros and cons, and come to an informed understanding. I believe I should do so before making either insubstantial promises or an uninformed or under-informed decision that could affect the lives of millions of people now and in the future. Only when I am in the position to avail myself of all of the relevant information would I be able to make the needed smart, informed decisions based on the law and all of the relevant factors. I therefore provide the responses below with this understanding as the nominated, but not confirmed, Director of USCIS.

I would like, as part of this response, to underscore my professional experience as a state and federal prosecutor and public servant, working on a wide range of cases including health care

fraud, organized crime, and street crime. My commitment to protecting the American public from violence and protecting taxpayers from fraud is as strong now as it has been throughout my career in law enforcement positions. That commitment and the lessons of those professional experiences will undoubtedly inform my decisions and views on many of the issues raised below in the hopeful event of my confirmation.

I look forward to working with you and the Chairman in a productive manner that continues to protect the people of this country while supporting our pledge as a welcoming nation to immigrants.

5. The previous Director of USCIS implemented DACA without requiring the payment of a fee to cover the cost of the actual adjudication of the DACA application. The fee that DACA applicants currently pay is only the fee covering the adjudication and processing of the Employment Authorization Document and related biometrics collection fee. USCIS adjudicatory resources had to be reallocated to handle the hundreds of thousands of DACA cases and, as a result, processing of family-based immigrant visa petitions filed by U.S. citizens on behalf of foreign relatives has stretched from 5 to as many as 15 months.

a. Do you support the previous Director's decision to not charge a substantive adjudication fee for DACA applications?

Your answer: If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward, including any possible changes to address this matter.

Further answer: As the nominee, I understand I am not privy to the internal factors upon which USCIS and its leadership base its operational and policy decisions. Nor should I be until such time as I may be confirmed as Director of USCIS.

However, within the parameters of the information available to me as a nominee, I do understand USCIS, as a fee-based agency, balances its need for fiscal operating stability with the need and desire to provide its customers with the greatest accessibility to its services. Based upon the information currently available to me, I believe USCIS appropriately sought to achieve this balance by limiting the fee to the cost of adjudication of the Employment Authorization Document and biometrics.

In addition, where such an evaluation by USCIS results in an impact upon other programs, I further understand USCIS appropriately seeks to reallocate its resources to carry out its mission in a timely manner grounded in core principles of integrity, security and efficiency. With respect to your concern regarding the processing of family-based immigrant visa petitions, it is my understanding USCIS has reallocated resources to rapidly reduce these processing times to previously stated timelines by this summer. If I am confirmed, I will certainly, as previously stated, further study this decision to determine the most appropriate balance for the agency's current and long-term needs.

b. If confirmed, do you intend to repeat the error of the previous USCIS Director and not charge a fee for the DACA applications when processing the upcoming wave of DACA renewal applications, thus causing further harm to U.S. citizens who have filed family-based petitions?

Your answer: If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward, including any possible changes to address this matter.

Further answer: Within the parameters of the information available to me as a nominee, I do understand that as a fee-based agency, USCIS ensures its programs are adequately funded through its fees. I understand that the delays in processing family-based petitions were related to USCIS's overall capacity to process cases and should be addressed by the summer. If I am confirmed, I will certainly, as previously stated, further study this situation to determine the most appropriate balance for the agency's current and long-term needs, including whether or not there should be a separate processing fee for DACA requests.

7. The previous Director of USCIS required that all potential denials of DACA cases be sent to headquarters for review. Will you continue this practice, or will you allow adjudicators in the field to make these decisions in a non-political manner?

Your answer: If confirmed, I will carefully study this matter to ensure that we can continue to provide the most appropriate support for our adjudicators.

Further answer: Within the parameters of the information available to me as a nominee, it is my understanding that in certain instances the review of a case by those in the supervisory chain may extend to the USCIS headquarters in limited circumstances. While I understand as a nominee it is not appropriate for me to opine on the internal adjudicative policies of USCIS, if confirmed I will carefully review such policies. I will do so to ensure USCIS's immigration officers and their leadership receives the most appropriate support to effectively render decisions on cases in a timely manner which supports integrity, security and efficiency. I can assure you that if confirmed, I will take all steps necessary to ensure that decisions made by USCIS are made based on the facts, applicable law, and consistent application of policy, and not on political or other inappropriate considerations. This has been my approach in prior leadership positions and will continue to be my approach if confirmed.

8. Whistleblowers have informed me that USCIS refuses to share information related to DACA applicants with U.S. Immigration and Customs Enforcement (ICE) officials. Will you commit to improving information sharing with other law enforcement officials so that we can better protect the homeland and ensure that only those eligible are receiving immigration benefits, including DACA?

Your answer: If confirmed, I will certainly commit to a careful study of this program to determine any additional appropriate steps forward.

Further answer: As a former federal prosecutor, I am certainly committed to ensuring the appropriate sharing of information with our Department partners in a timely and effective manner to meet our common goal of the integrity of our national security process. If confirmed, I will certainly commit to further study of the nature of our information sharing across all of the USCIS programs to determine in what manner any improvements may be needed.

NOTE: In addition to answering the original question, please also answer these follow up questions as well. If USCIS denies an immigration benefit to an individual in the country, and that person does not have legal authority to remain, will you, if confirmed, require that USCIS turn over all documentation and proactively cooperate with ICE to initiate removal proceedings? If not, please explain the circumstances in which information sharing would not take place.

Response to Note above: As noted above, as the nominee, I understand I am not privy to the internal factors upon which USCIS and its leadership may base its determinations regarding the specific sharing of information. Nor am I currently privy to a complete understanding of the statutory and regulatory framework governing the decisions of USCIS in any of its complex decision making. I further recognize that, absent this information, I cannot make an informed assessment of the parameters of USCIS policy regarding information sharing. In the event of my confirmation, I most certainly will further study the authorities and processes currently in place to determine the most appropriate parameters.

13. Serious national security issues have come to light in recent months with respect to the EB-5 Regional Center program, which allows foreign nationals to obtain a green card if they invest in certain investment projects in the United States. In December 2013, the Homeland Security Inspector General identified concerns with USCIS's management of the Program. The OIG concluded that USCIS cannot administer and manage the EB-5 Regional Center program effectively, and that there's no evidence that there's an economic benefit to the country. In an internal memo to the DHS Secretary, ICE identified several vulnerabilities with the EB-5 program, including economic espionage, use by foreign governments for espionage purposes, use by terrorists, and money laundering. ICE's principal recommendation was that the EB-5 program be terminated. Other countries have similar concerns. Canada ended their investor visa program and the UK is likely to put severe restrictions on their own, including doubling the investment amount.

b. Do you have any plans to administratively improve the program?

Your answer: If confirmed, I will review the program to ensure it remains consistent with CIS's high standards of security and integrity.

Further answer: Within the parameters of the information available to me as a nominee, it is my understanding that USCIS has undertaken significant steps to improve the USCIS ability and expertise needed to manage the complex EB-5 caseload. If confirmed as Director, I will undertake a further review of the EB-5 program to ensure it is operating with the appropriate resources and support to be consistent with the highest standards of security, integrity and efficiency. In addition, I will work diligently to fulfill the commitments it has made to

implement the recommendations of the program made by the Office of the Inspector General in a recent audit.

c. Would you support increasing the minimum EB-5 investment amount – something that would be within your authority to accomplish by regulation? If not, why not?

Your answer: If confirmed I will commit to review this issue.

Further answer: As the nominee, I am not currently privy to a complete understanding of the statutory and regulatory framework as well as operational considerations governing the decisions of USCIS in any of its complex decision making, including the EB-5 program. If confirmed, I will certainly undertake further study of the authorities of USCIS and its capacity to take regulatory action in this and other areas. I recognize that only then may I make a prudent and informed decision in this area.

d. Will you make it a priority to reform the program if you are confirmed?

Your answer: If confirmed, I will commit to review the program for any additional improvements.

Further answer: Within the parameters of the information available to me as a nominee, it is my general understanding that USCIS has undertaken significant steps to administratively improve the USCIS ability and expertise needed to manage the complex EB-5 caseload. If confirmed as Director, I will undertake a further review of the EB-5 program to ensure it is indeed operating with the appropriate resources and support to be consistent with the highest standards of security, integrity and efficiency.

In addition, it is my understanding that USCIS submitted extensive technical assistance to Congress to draft legislation, which was largely incorporated into the Senate-passed S. 744 immigration bill. It is my understanding that these provisions would further bolster USCIS's oversight authorities to: (a) deny or terminate EB-5 Regional Centers and individual petitions based on a discretionary national interest finding; (b) exclude individuals from Regional Center participation who have engaged in fraud, misrepresentation, criminal misuse, or threats to national security; and (c) require Regional Centers to certify their compliance with all applicable securities laws and terminate those not in compliance.

e. Would you consider placing a moratorium on the program if you determine, after being confirmed, that there are significant and serious national security issues?

Your answer: If confirmed I will commit to reviewing the program and take any appropriate action within my authority.

Further answer: As noted above, within the parameters of the information available to me as a nominee, it is my understanding that USCIS has undertaken significant steps to administratively improve the USCIS ability and expertise needed to manage the complex EB-5 caseload. It is further my understanding that USCIS has undertaken significant steps within its own authority to

enhance the national security framework which supports the EB-5 operation working in partnership with other federal and Department partners. If confirmed, I will undertake a careful review of the current national security infrastructure of the program to determine if further steps for improvement are warranted. This review would include whether any adjustments or moratoriums may be warranted.

Questions 17 through 23: In my previous written questions, I asked you a series of questions about whether certain people in the country illegally should be entitled to benefits, including legal status. For almost every question, you answered each one about the complexity of immigration law and that the question could not be answered with a simple “yes” or “no.” You stated that you support how the issues are addressed in S. 744, however, this bill does not prohibit many criminal aliens from accessing benefits or limit their application for legal status. In these instances, please explain when a person here illegally should be eligible for benefits, including legal status.

17. Should people here illegally who are in removal proceedings be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a “yes” or “no”.

I am aware that a wide variety of legal and factual circumstances apply to determine whether an individual in removal proceedings is eligible for immigration benefits. In my position as a nominee I do not have access to all of the information I would need to offer a thoughtful view on this issue prior to my confirmation. I would note my understanding that USCIS would engage in a robust regulatory process to determine how to implement the requirements of any legislation ultimately passed.

18. Should people who are subject to an order of removal from the United States be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a “yes” or “no”.

I am aware that a wide variety of legal and factual circumstances underlie the issuance of orders of removal and eligibility for immigration benefits. In my position as a nominee I do not have access to all of the information I would need to offer a thoughtful view on this issue prior to my confirmation.

19. Should an illegal immigrant convicted of a felony criminal offense be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a “yes” or “no”.

I understand that current immigration laws in this context are very complex, but in most cases, individuals who have been found guilty of a serious crime are not eligible for and should not receive immigration benefits. Accordingly, I support the framework for addressing these issues that is contained in S. 744. If confirmed, I will certainly further review the statutory and regulatory framework regarding the eligibility for immigration benefits.

20. Should an illegal immigrant convicted of multiple misdemeanors be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a “yes” or “no”.

I understand that current immigration laws in this context are very complex, but I do believe that in most cases, individuals who have been found guilty of a serious crime are not eligible for and should not receive immigration benefits. Accordingly, I support the framework for addressing these issues that is contained in S. 744. If confirmed, I will certainly further review the statutory and regulatory framework regarding the eligibility for immigration benefits, including the impact that prior misdemeanor convictions should have on eligibility for immigration benefits. I would note, based on my criminal justice experience that the phrase “multiple misdemeanors” could range from an individual convicted of certain traffic-related offenses to an individual convicted of multiple crimes of violence.

21. Should an illegal immigrant with even a single sex-related offense be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a “yes” or “no”.

I understand that current immigration laws in this context are very complex, but I do believe that in most cases, individuals who have been found guilty of a serious crime, especially one involving sexual assault, should not receive immigration benefits. If confirmed, I will certainly further review the statutory and regulatory framework regarding the eligibility for immigration benefits.

22. Should an illegal immigrant with even a single drunk driving offense be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a “yes” or “no”.

As I have indicated previously, I believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. Given the wide range of circumstances that surround individuals convicted of drunk-driving offenses, I believe that offering an informed view on this question would require further study.

23. Should illegal immigrant gang members be eligible for immigration benefits, including legal status?

As you note above and as I stated before in my original responses to Questions 17 through 23, given the complexity of immigration law and policy, and the unique facts of each case, I do not believe that these questions can be answered with a “yes” or “no”.

I understand that current immigration laws in this context are very complex, but I do believe that in most cases, individuals who have been found guilty of a serious crime should not receive immigration benefits. As a former organized crime prosecutor, I understand that there may be evidence that an individual involved in violent conduct or other criminal activity that is insufficient to sustain criminal conviction, but is sufficient to sustain sanctions in a civil or administrative context. In such circumstances, I do think there may be a basis to withhold immigration benefits. If confirmed, I will certainly further review the statutory and regulatory framework regarding the eligibility for immigration benefits as it affects this question.

24. If an illegal immigrant provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions? If an illegal immigrant provides information in an application that clearly renders him ineligible and commits a serious crime that would warrant his immediate removal, shouldn't the government be able to use that information to place him in removal proceedings?

Your answer: If confirmed I will work to ensure the safety and security of the United States and uphold current laws.

Further answer: I understand that as the nominee I am not privy to the internal factors upon which USCIS and its leadership may base its determinations regarding its adjudicative work. Nor am I currently privy to a complete understanding of the statutory and regulatory framework governing the decisions of USCIS in any of its complex decision making-including the use of information gained from an immigration application benefit.

However, if confirmed, I will commit to you to work to ensure the safety and security of the United States and uphold the law. I will certainly commit to review current procedures, and where needed, improve areas to address any security and fraud concerns.

25. Should people here illegally be required to submit to an in-person interview with adjudicators when applying for immigration benefits, including legal status? Would you not agree that, at a minimum, any illegal immigrant with a criminal record should be required to be interviewed as part of any sort of legalization process?

Your answer: If confirmed, I certainly commit to review current procedures, and where needed, improve areas to address any security/fraud concerns.

Further answer: I understand that as the nominee I am not privy to the internal factors upon which USCIS and its leadership may base its determinations regarding its adjudicative work. Nor am I currently privy to a complete understanding of the statutory and regulatory framework and operational considerations governing the decisions of USCIS in any of its complex decision making-including the eligibility for an immigration benefit.

If confirmed, I will commit to you to work to ensure the safety and security of the United States and uphold the laws. I will certainly commit to review current procedures, and where needed, improve areas to address any security and fraud concerns, including the specific question of where an in-person interview should be required of various categories of individuals applying for immigration benefits.

26. Should people here illegally that have been denied legal status be placed in immigration proceedings and removed? If not, why not?

Your answer: If confirmed, I commit to uphold the law and carefully review this issue to ensure it remains consistent with the USCIS standards of security and integrity.

Further answer: I understand that as the nominee I am not privy to the internal factors upon which USCIS and its leadership may base its determinations regarding its adjudicative work. Nor am I currently privy to a complete understanding of the statutory and regulatory framework governing the decisions of USCIS in any of its complex decision making-including whether to refer an individual for immigration proceedings

It is my general understanding that there is a wide range of circumstances in which individuals may be denied legal status to be present in the United States and that the determination of whether those individuals should be placed in removal proceedings will depend on their specific circumstances and on a variety of other resource considerations. I will commit to studying this issue in the hopeful event of my confirmation.

30. In January 2012, the DHS Inspector General released a report criticizing USCIS for pressuring its employees to rubberstamp applications for immigration benefits. In that report, nearly 25 percent of USCIS officers surveyed said supervisors had pressured them to approve applications that should have been denied.

a. Do you believe that current USCIS screening procedures are sufficient to prevent fraud and threats to public safety and national security?

Your answer: If confirmed I will review the current policies and procedure for fraud prevention and national security, and if needed I will make improvements.

Further answer: As noted above, as the nominee, I understand I am not privy to a complete understanding of the full range of the current USCIS screening procedures-nor the complete results of such efforts. Within the parameters of the information available to me as a nominee, it is my understanding that USCIS actively works across the agency and with its law enforcement partners. In order to ensure that such issues were given utmost consideration, it is my understanding that the prior director established the Fraud Detection-National Security Directorate. It is my further understanding that these efforts by USCIS ensure that its screening procedures effectively prevent fraud and threats to public safety and national security.

If confirmed, I will commit to you to undertake further review of the current procedures, and where needed, improve areas to address any security and fraud concerns and will lead by example with my commitment to public safety and ensuring national security.

b. If confirmed, would you change these policies? If so, how?

Your answer: If confirmed I will review the current policies and procedure for fraud prevention and national security, and if needed I will make improvements.

Further answer: As noted above, if confirmed, I will commit to you to undertake further review of the current procedures, and where needed, improve areas to address any security and fraud concerns and will lead by example with my commitment to public safety and ensuring national security.

c. Will you commit to ensuring that USCIS background checks for every applicant for immigration benefits are properly and effectively conducted?

Your answer: If confirmed I will review the current policies and procedure, and if needed I will make improvements.

Further answer: As noted above, if confirmed, I will commit to you to undertake further review of the current procedures, including USCIS background checks to ensure that they are optimizing our national security and anti-fraud mission. It is my understanding that presently, the vast majority of individuals requesting benefits are subject to biometric checks for this purpose. Where needed, I will certainly undertake to improve areas to address any security and fraud concerns and will lead by example with my commitment to public safety and ensuring national security.

37. While Immigration and Customs Enforcement has direct supervision over the OPT program, USCIS does approve OPT work authorizations upon the recommendation of Designated School Officials (DSOs). The use of OPT has increased dramatically over the years, and vulnerabilities in the program threaten the homeland. What steps will you take, if confirmed, to overhaul the program and improve oversight of those who apply or receive OPT?

Your answer: If confirmed I will review USCIS' authority and obligations in this program and make improvements where necessary.

Further answer: As the nominee, I am not wholly familiar with the full range of benefits and services administered by USCIS. Nor am I wholly familiar with the use of OPT. Within the parameters of the information available to me as a nominee, it is my understanding that you previously expressed concerns to the Government Accountability Office (GAO) regarding the OPT program. It is also my understanding that GAO then released a report on March 7th of this year in which questions were raised regarding current oversight of the OPT program. If confirmed, I will certainly review in depth the findings from this GAO report to determine what appropriate further steps USCIS should take to further improve its partnership in this program.

38. Every year, members of Congress introduce private relief bills for individuals who may have exhausted all administrative remedies to remain in the United States. Upon introduction, Immigration and Customs Enforcement does a report for Congress on the individual. If confirmed, will you commit to providing all members of the Judiciary Committee with the individual's A-file and any other documentation retained by the agency so that the private relief bill can be properly reviewed and considered?

Your answer: I have been informed that ICE has jurisdiction over DHS reports relating to private bills and that USCIS provides appropriate information on an individual's immigration history to ICE. If confirmed, I will uphold the law and provide information as allowed under the Privacy Act and applicable Departmental policies.

Further answer: As a general matter, I stand by my prior answer on this question given that primary jurisdiction over these cases rests with ICE. If confirmed, I will certainly commit to reviewing the applicable Departmental statutory and regulatory framework and policies to understand the circumstances under which such documentation may be shared with the members of the Judiciary Committee.

NOTE: In addition to answering the question above, please answer the following additional question: Also, what privacy rules would limit your ability to share information with Congress about a potential private relief bill recipient?

Further answer: It is my understanding that the Privacy Act applies to records concerning aliens. As noted previously, I have been informed that ICE has jurisdiction over DHS reports relating to private bills and that USCIS provides appropriate information on an individual's immigration history to ICE. If confirmed, I will certainly commit to reviewing the applicable

Departmental statutory and regulatory framework and policies to understand the circumstances under which such documentation may be shared with the members of the Judiciary Committee.

40. In the Fiscal Year 2015 DHS budget, the administration requests \$3 million to create a nonprofit entity called the “U.S. Citizenship Foundation.” This Foundation would be aimed at “expanding instruction and training on citizenship rights and responsibilities” and “promote the importance of United States citizenship.”

a. Do you think it is necessary, in these difficult budget times, to use taxpayer dollars to create a nonprofit citizenship foundation?

Your answer: I understand that the Fiscal Year 2015 DHS Budget requests authority to use \$3 million of USCIS premium processing fee collections and that USCIS believes that this Foundation could be self-sufficient after three years. If confirmed I will carefully study this proposal.

Further answer: Based upon the information available to me as a nominee, it is my understanding that the FY 2015 President’s Budget includes a proposal to establish the United States Citizenship Foundation. It is also my understanding that the FY 2015 Budget also proposes a one-time provision providing USCIS authority to use \$3.0 million of USCIS premium processing fee collections in order to fund the Foundation’s creation and initial three years of operation.

It is also my understanding that the U.S. Citizenship Foundation would function as a charitable and nonprofit corporation authorized to accept private donations to support the purposes of the Foundation, which include expanding instruction and training on citizenship rights and responsibilities, supporting a multi-sector approach to immigrant civic integration in the United States, and promoting the importance of United States citizenship.

Based upon the information I currently have available to me, I understand that there are an estimated 8.8 million permanent residents eligible to apply for naturalization. Accordingly, I believe that the one-time investment in the proposed United States Citizenship Foundation will provide expanded opportunities by leveraging funds from the private sector to complement and further develop immigrant civic integration initiatives.

b. Do you believe the creation of this Foundation can only be done by statute? In other words, if confirmed, will you create this Foundation even if Congress does not appropriate funding for the project?

Your answer: If confirmed, I will review this proposal and the funding capabilities of USCIS and look at the most appropriate steps forward and what USCIS may do under existing authorities.

Further answer: As mentioned previously, if confirmed, I will review this proposal and the funding capabilities of USCIS to better understand whether the Foundation may only be created by statute. Until such time as I may be confirmed, I cannot speak to the full scope of my

authorities to act to create the Foundation under my authority as Director. Accordingly, I will most certainly, as previously noted, undertake a careful study of the most appropriate steps forward and whether USCIS may act under existing authorities.

Additional Questions for the Record

1. In my previous written questions, I asked you about your experience in immigration law. You mentioned that you advised Montgomery County officials about the Criminal Alien Program and Secure Communities Program.

a. Can you be more specific about the advice you gave on those programs and what actions the county took?

Given that the legal advice provided to County government is subject to attorney-client privilege, I am constrained from disclosing that advice. I left County government prior to its implementation of Secure Communities. I am not aware whether and to what extent the County implemented the Secure Communities program.

b. Do you support the programs in their current form?

I do support the expansion of participation in the Criminal Alien Program undertaken by the Montgomery County Police Department, as I believe it promoted public safety in our County. As I am not fully informed about the County's participation in the Secure Communities Program, I am unable to offer a view on this topic.

2. In my previous written questions, I asked you about your experience in immigration law. You mentioned that you worked on the Obama-Biden transition team and assigned to various immigration-related functions of the Department of Justice. Can you elaborate on your work during this transition, including what you did for the immigration courts?

I was assigned to gather information about certain immigration functions of the Department of Justice, including the immigration courts, the Office of Immigration Litigation in the Civil Division, and also issues related to detention and district court capacity for the criminal immigration caseload. With respect to the immigration courts, we were gathering information on staffing levels for the Courts, as well as other issues relating to the quality of adjudication in the immigration courts.

3. In my previous written questions, I asked you if you would expand DACA. You said it would be impossible to predict what action you would take. Given that this program expires in a few short months, it is important to know where you stand on this program and what changes you expect to make.

a. Will you expand the program to encompass more people?

As noted above, as the nominee, I understand I am not privy to all of the internal factors upon which USCIS, DHS as a whole, and its leadership base operational and policy decisions. This includes USCIS determinations regarding the current and future state of USCIS programs, including the DACA program and the upcoming renewal period for recipients of DACA. It is also my understanding that the form for renewal has now been published for public comment. I will commit to further study to better understand the parameters that govern the future operation of the DACA program. I do appreciate the timeframes applicable to the current program, and the need to assess its future operation upon my confirmation.

b. Will you keep the parameters of the program exactly the same?

I will commit to further study to better understand the parameters of the future operation of the DACA program.

c. Will the process for denials (requiring line adjudicators to send potential denials to headquarters) remain the same?

Within the parameters of the information available to me as a nominee, it is my understanding that in certain instances the review of a case by those in the supervisory chain may extend to the USCIS headquarters in limited circumstances. While I understand as a nominee it is not appropriate for me to opine on the internal adjudicative policies of USCIS, if confirmed I will carefully review such policies. I will do so to ensure USCIS's immigration officers and their leadership receives the appropriate support to effectively render decisions on cases in a timely manner which supports integrity, security and efficiency. I can assure you that if confirmed, I will take all steps necessary to ensure that decisions made by USCIS are made based on the facts, applicable law, and consistent application of policy, and not on political or other inappropriate considerations. This has been my approach in prior leadership positions and will continue to be my approach if confirmed to the leadership of USCIS.

d. Please provide any thoughts or discussions you have had pertaining to DACA and the renewal process for those with such benefits.

I have not engaged in any deliberations about the future of the DACA program. I am generally aware of the possible renewal process. Given that I do not presently have access to the internal operational and substantive factors associated with the future of the DACA program, I have otherwise refrained from pre-judging what action if any I would take or what advice I would give to DHS leadership and the administration with respect to the DACA program.

- 4. In my previous written questions, I asked if you would meet with representatives from the National Citizenship and Immigration Services Council before you are confirmed so you understand their concerns. You said you would meet them after your confirmation. Will you commit to meeting with the Council representatives within 60 days after a vote on your confirmation?**

Yes. I look forward to constructive engagement with the National Citizenship and Immigration Services Council.

- 5. In my previous written questions, I asked you about reforming the EB-5 Regional Center program. I understand you support the changes in S. 744 regarding the program. Many of the provisions in S. 744 can be done administratively and do not need to wait for congressional action on legislation. Would you commit to making administrative reforms, including increasing the investment level, changing the formulation of targeted employment areas, increasing background checks and working with other government entities to detect fraud and abuse?**

As previously noted, within the parameters of the information available to me as a nominee, it is my understanding that USCIS has undertaken significant steps to administratively improve the USCIS ability and expertise needed to manage the complex EB-5 caseload. This includes the steps by USCIS to significantly expand security checks to cover Regional Centers and executives participating in the program, thereby closing a significant gap in USCIS vetting. In addition, I also understand that USCIS is strengthening and enhancing its partnership with other government agencies on enforcement, such as initiating interagency review of EB-5 processes and enhancing referral protocols with ICE, the FBI, and SEC.

If confirmed as Director, I will also undertake a further review of the EB-5 program to understand the question you raise with respect to the investment level and the formulation of targeted employment areas to understand the most appropriate next steps to take.

- 6. In my previous written questions, I asked if you thought it appropriate for the Director of USCIS to personally intervene in a specific case and overrule line adjudicators at a Service center. You responded saying it would be “incumbent upon him to do so in limited situations.”**

- a. Can you elaborate on these limited situations?**

As a general matter, intervention would be appropriate in those situations where the decision made is contrary to either the law or facts of the case, is decided contrary to consistently-applied USCIS policy, or presents a novel question of law or policy that needs to be resolved at the leadership level.

- b. What constitutes a “wrong” decision, in your view?**

A wrong decision is one made contrary to either the law or facts of the case, or that is decided contrary to consistently-applied USCIS policy.

c. What would be the process of review if an adjudicator makes the “wrong” decision?

As a nominee, I am not fully knowledgeable about the internal USCIS procedures for review of adjudicator decisions. If confirmed, I do commit to a full review of this process and to making any adjustments to ensure the fairness, integrity and efficiency of the adjudication process.

d. Would you interject in a case if the attorney for the applicant/petitioner claims it is the “wrong” decision?

As stated above, my view is that intervention and/or review is appropriate in those situations where the decision made is contrary to either the law or facts of the case, is decided contrary to consistently-applied USCIS policy, or presents a novel question of law or policy that needs to be resolved at the leadership level.

7. In my previous written questions, I asked about the use of H-1B fraud detection fees. However, your answer was unclear and vague. You implied that USCIS should keep the funding because it is fee based, while ICE receives appropriated dollars. I would ask for you to review the INA Section 287(v)(2)(B). DHS currently receives a portion of funds (as do the Departments of State and Labor) from each H-1B and L-1 visa application, and they are entirely used by USCIS. The law says the funds must be used to prevent and detect fraud, and does not specify that USCIS should retain all of the funds. ICE has a responsibility to investigate and prosecute the cases – which in turn helps deter fraud and abuse -- but does not receive any of these funds. Will you commit to ensuring that funding from this account is shared among DHS components, to include ICE? If you do not agree that ICE should receive this funding, please explain.

As the nominee, I do not, as yet, have a full and complete understanding of the funding authorities under which USCIS operates. While I have not examined the issue in great detail, based on my experience as a public official, I understand there are numerous factors to consider when allocating funding. In this specific example, I understand that both USCIS and ICE have critical roles to perform in preventing and detecting fraud to ensure the integrity of the immigration system. I commit to partnering with the DHS Office of the Chief Financial Officer to examining the issue with ICE.

8. In Question 38, I asked you about abuse in the VAWA self petitioning process. While I understand you will study this issue if confirmed, can you please assure me that you are aware of the potential for abuse in this program? I recommend reading the testimony provided to the Senate Judiciary Committee during reauthorization of the Violence Against Women Act. I would appreciate any thoughts you have on this issue.

I have read the testimonies from the Senate Judiciary Committee hearing including the statement from the retired INS special agent. As a former prosecutor, I have always taken all assertions and allegations of potential fraud or abuse seriously with profound concern, and will do the same for this issue. If confirmed, I will carefully review this issue to determine if any changes need to be made to the process.

9. In your response to Question 47, you pledged to “work diligently to timely provide Congress the information that it needs.” Who determines the information that Congress needs: Congress or the applicable Federal Agency?

It is clearly Congress’ prerogative to determine what information it seeks to discharge its oversight role, and it is the executive branch’s duty to work with Congress in good faith to fulfill its oversight role. The applicable federal agency may also identify additional or different information that it believes will be helpful to Congress in discharging its oversight responsibilities. Optimally, the oversight process is a collaborative process between Congress and the applicable agency that advances the public interest by helping identify the information that is most helpful to Congress in fulfilling its oversight responsibilities.

10. During your tenure on the Board of Directors for Casa de Maryland, the organization funded and was very active in getting day labor centers established throughout the DC metro area. The organization is well known for its ties to day laborers and supporting the employment opportunities of people in the country who do not have proper documentation.

a. Did you support this mission of Casa De Maryland?

I supported CASA de Maryland generally because of its role in assisting and advocating for low-income immigrants in Montgomery County, Maryland. Like many citizens and business leaders in Montgomery County, I believed that in the context of Montgomery County, Maryland, CASA provided a necessary service to those individuals, in a manner that promoted public safety and community stability. It has also been my understanding that the function of the day laborer centers, in facilitating casual labor referrals for these individuals, is consistent with applicable law.

b. During your time on the Board, were you ever vocal against using taxpayer dollars to establish the centers?

For the reasons stated above, I was supportive of the use of local tax resources to support the day laborer centers.

c. How can you assure Congress, and the American people, that you will not use the office to support policies that benefit unauthorized workers in the United States?

My long record as a state and federal prosecutor, and in other law enforcement capacities, evidences my commitment to enforcing the law. That commitment will continue should I be confirmed to serve the American people as USCIS director. I do support S.744 and believe that it offers a strong path to resolving the status of unauthorized workers in the United States.