

Senator Dick Durbin
Written Questions for Francis Cissna, Vishal Amin, and Stephen Boyd
May 31, 2017

For questions with subparts, please answer each subpart separately.

Questions for Francis Cissna

1. In response to my questions during your confirmation hearing, you testified that as a volunteer with the Trump transition office you offered your expertise in immigration policy and operations on “a variety of different immigration-related matters and proposals that were being considered.” However, you declined to specify what immigration proposals you worked on, saying, “it’s not appropriate for me to discuss internal deliberative policy discussions within the transition office”

a. **Why do you believe it is not appropriate for you tell the Committee what issues you worked on as a volunteer with the Trump transition office?**

Response:

I do not believe it is appropriate for a volunteer with the Transition Office to discuss publicly the internal policy deliberations of the Transition Office. I believe the appropriate people to discuss such matters are official representatives of the Transition Office, or its successor entity.

b. **Did you make the decision yourself not to provide information to the Committee about what policies you worked on with the Trump transition office, or did you consult with others on this matter?**

Response:

I did consult with the Office of the White House Counsel regarding whether legal counsel had been previously provided on similar questions, as well as with the team at DHS helping to prepare me for this hearing, but in the end it was my own determination that it would be inappropriate to discuss the internal policy deliberations of the Transition Office.

c. **If you consulted with others on this matter, with whom did you consult?**

Response:

See answer to (b).

2. **How do you view the role of transparency in government, and what would you do, if confirmed, to promote greater transparency at USCIS?**

Response:

I am strongly committed to transparency in government. If confirmed, I would consult with the professionals at USCIS regarding ways to improve transparency at the agency,

including through publication of a broader range of statistics relating to USCIS adjudications.

3. Will you commit to vigorously protecting the rights of whistleblowers at USCIS if you are confirmed, even if the whistleblowers disagree with the policy views of the Director and other Administration officials?

Response:

If confirmed, I would ensure that USCIS continues to scrupulously enforce the protections of the Whistleblower Protection Act. It is my understanding that USCIS employees, like all other DHS employees, must complete training every two years on their rights and remedies available under the anti-discrimination, retaliation and whistleblower protection laws. In addition, the Office of Inspector General's Whistleblower Protection Ombudsman is a resource for employees regarding whistleblower issues.

4.
 - a. Is it appropriate for a USCIS employee to provide advice or technical assistance to Members of Congress or Congressional staff without the knowledge or consent of USCIS leadership?

Response:

Consistent with our right to exercise freedom of speech, I believe it is appropriate for *any* citizen to provide advice or technical assistance to a Member of Congress or that Member's staff in his/her personal capacity. I believe a USCIS employee should not be prohibited from offering advice or technical assistance to a Member of Congress or that Member's staff in his or her private capacity, provided the employee does so on his or her own time, and is not representing or purporting to represent the agency when doing so or otherwise breaking the law or agency policy.

- b. Is any adverse action warranted in such circumstances, and based on what criteria?

Response:

If a USCIS employee is offering technical assistance to a congressional office while falsely claiming to represent the agency, then that employee should be subject to whatever appropriate adverse action is permissible under existing agency policy and applicable law.

- c. Is it appropriate for a USCIS employee to provide internal agency information or deliberations to Members of Congress or Congressional staff without the knowledge or consent of USCIS leadership?

Response:

I believe USCIS employees should comply with all agency policies and applicable law regarding the appropriate handling of internal agency information.

- d. Is any adverse action warranted in such circumstances, and based on what criteria?

Response:

If a USCIS employee unlawfully provides internal agency information to Members of Congress or Congressional staff, then that employee should be subject to whatever appropriate adverse action is provided for under existing agency policy and applicable law.

5. The Homeland Security Act of 2002 requires that the USCIS Director possess a minimum of five years of management experience.

- a. What is the largest budget you have ever directly managed, and for how many years did you manage that budget?

Response:

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

As a career civil servant serving on the staff of large offices where the budget was appropriated at the top line, I have not directly managed such a top line from an appropriated budget. That said, like many of my career civil servant colleagues, I have been responsible for the day to day budgetary responsibilities for things like expenses and travel authorizations, etc. for years.

- b. What is the maximum number of personnel you have directly supervised at any of your previous positions?

Response:

Approximately 14.

- c. Please provide a breakdown of the number of people you have directly supervised at each of your previous employment positions since graduating from law school.

Response:

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

- **I served as the chief of the nonimmigrant visa section at an overseas consulate. Specifically, I supervised a team of up to 7 people dedicated to processing visa applications for students, exchange visitors, specialty occupation workers, intracompany transferees, treaty investors, and all other temporary visa**

- classifications. During the times when the consul was absent I supervised the entire consulate's staff of approximately 14, including the immigrant visa section, American citizen services section, and social security benefits section.
- During the years I was Director, Acting Director, or Deputy Director of the immigration policy office within the DHS Office of Policy, I supervised an office of approximately 7 people with General Schedule (GS) grades ranging from GS-11 to GS-15. More importantly, however, my duties in these positions required or authorized me to formulate, determine, or influence the policies of the Department for more than a five-year period covering both the Bush and Obama administrations.
 - For a period of several months in early 2007, I oversaw the DHS Comprehensive Immigration Reform "War Room," which was the hub for the Department's coordinated effort with the White House and Congress to develop and pass a comprehensive reform bill. I coordinated the work of approximately 20 detailees from across the Department, including attorneys, policy analysts, and operational experts.

I did not supervise other employees for any of the other employers identified in the employment record section of my questionnaire.

6. Section 452 of the Homeland Security Act states that it shall be the function of the Citizenship and Immigration Services Ombudsman:
- 1) To assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;
 - 2) To identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and
 - 3) To the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).
- d. **How do you envision the role of the Citizenship and Immigration Services Ombudsman and the relationship of the USCIS Director with the Ombudsman?**

Response:

With respect to the role of the Ombudsman, I think the summary of work provided on the Ombudsman's DHS website gives the best description of its role: The Office of the Ombudsman is "dedicated to improving the quality of citizenship and immigration services delivered to the public by providing individual case assistance, as well as making recommendations to improve the administration of immigration benefits by U.S. Citizenship and Immigration Services."

I believe the USCIS Director and the Ombudsman should maintain an independent, yet respectful and cooperative relationship, as both should share the goal of

improving USCIS. I am aware of the USCIS Director’s statutory obligations under section 451(a)(3)(E)-(F) of the Homeland Security Act to “meet regularly with the Ombudsman . . . to correct serious service problems identified by the Ombudsman” and to “establish procedures requiring a formal response to any recommendations submitted in the Ombudsman’s annual report to Congress within 3 months after its submission to Congress.”

- e. **In your view, can an individual or employer who has “problems in dealing with” USCIS include a person or entity who is not an applicant, petitioner, beneficiary, or their representative?**

Response:

I do not possess sufficient expertise in either the jurisdiction of the Ombudsman’s Office, or the manner in which it carries out its work, to be able to provide an answer.

7. For the last decade, Chairman Grassley and I have introduced legislation to end the use of the H-1B visa for outsourcing American jobs and require employers to hire American workers first.

In March, I sent President Trump a letter calling for him to immediately revamp the annual distribution of H-1B visas, which is currently done by random lottery, to instead prioritize the highest-paid workers and top graduates of American schools. This would make it much more difficult for outsourcing companies to game the lottery, which currently results in these companies obtaining tens of thousands of additional visas every year.

However, in contrast to his aggressive approach on other immigration issues, the President issued an executive order on H-1Bs only after the annual lottery in April and this order simply calls for an interagency review of the program.

- a. **Do you support the President’s tentative approach to H-1B reform?**

Response:

I strongly support the various H-1B program improvements already announced by USCIS in April, including the establishment of the email address/hotline dedicated to receiving information about suspected H-1B fraud or abuse (ReportH1BAbuse@uscis.dhs.gov) and expansion of H-1B site visits.

Furthermore, as you state, the President directed in section 5(b) of Executive Order 13788 that, “[i]n order to promote the proper functioning of the H–1B visa program, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security shall, as soon as practicable, suggest reforms to help ensure that H–1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.” If confirmed, I commit to implementing the President’s order by continuing a thorough review of the H-1B program and implementing

recommended reforms, even those that may require changes to regulations and therefore take some time to implement.

- b. Are you participating in the interagency review of H-1B visas that the President has ordered?

Response:

I have been indirectly involved with the ongoing H-1B review directed by E.O 13788 in my current capacity within the DHS Office of Policy. USCIS is leading the review.

- c. If so, what recommendations will you make for the interagency review?

Response:

It is my understanding the H-1B review is not complete, and deliberations within the Department are still ongoing. If confirmed, I would like to consult with H-1B program experts within USCIS, as well as those within the Departments of State and Labor, regarding any potential reforms I might recommend.

- d. Will you commit that if you are confirmed USCIS will reform the H-1B lottery to make it more difficult for outsourcing companies to game the system?

Response:

If confirmed, I would indeed urge that potential reforms to the H-1B lottery be considered as part of the review directed by E.O. 13788.

8.

- a. How do you see USCIS's role in immigration enforcement?

Response:

While USCIS is not a law enforcement agency, it should not be insulated from immigration enforcement efforts in a way that threatens national security or public safety; it must continue to be a partner to ICE, CBP, and its other sister agencies across the federal government, consistent with all law and Department policy.

- b. When is it appropriate for USCIS to refer information submitted in applications for immigration benefits to ICE or CBP for the purpose of immigration enforcement?

Response:

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

- c. When, if ever, would it not be appropriate for USCIS to refer information submitted in applications for immigration benefits to ICE or CBP for the purpose of immigration enforcement?

Response:

See answer to (b).

9. President Trump and his family businesses have reportedly been users of certain visa programs with a history of fraud and abuse, including the EB-5 investor visa and the H-2B temporary nonagricultural work visa.

For example, President Trump owns companies that have sought to import more than 900 H-2B guest workers, including 64 H-2B workers in Fiscal Year 2017 to work at his Mar-a-Lago resort as housekeepers, servers, and cooks.

If you are confirmed as USCIS Director, how would you ensure that President Trump's family business interests won't affect the adjudication of EB-5, H-2B and other visa applications or the consideration of possible reforms to these programs?

Response:

If confirmed, I commit to enforcing USCIS policies ensuring the integrity of all USCIS adjudications, no matter who the applicant or petitioner is, as well as policy deliberations, including their independence from any inappropriate external influences.

10. USCIS has primary responsibility for deciding whether to admit asylum and refugee applicants. In Fiscal Year 2015, USCIS interviewed and screened 67,000 refugee applicants from around the world, and adjudicated more than 40,000 affirmative asylum applications.
- a. **Will you commit to maintain current levels of staffing and other resources for refugee and asylum processing at USCIS, if you are confirmed?**

Response:

If confirmed, I commit to maintaining each year, to the degree USCIS resources permit, refugee and asylum staff sufficient to process anticipated refugee and asylee applications.

- b. **Can you explain what, if any, changes to asylum and refugee processing have been made so far in this Administration?**

Response:

I am not sufficiently knowledgeable regarding the details of USCIS asylum and refugee processing at this time to be able to give an answer.

- c. **If you are confirmed, do you plan to make any changes to the credible and reasonable fear interview process and standards, including regarding the training of asylum officers and the questions asked of interviewees? If so, what changes?**

Response:

Section 11(b) of Executive Order 13767 directs the Secretary of DHS to “take all appropriate action, including by promulgating any appropriate regulations, to ensure that asylum referrals and credible fear determinations pursuant to section 235(b)(1) of the INA (8 U.S.C. 1225(b)(1)) and 8 CFR 208.30, and reasonable fear determinations pursuant to 8 CFR 208.31, are conducted in a manner consistent with the plain language of those provisions.” If confirmed, I would consult with the subject matter experts at USCIS whether any new guidance for credible fear determinations or asylum-related training may be required to implement section 11(b) of E.O. 13767.

11.

- a. **Have you been satisfied with prior USCIS leadership during your tenure at the Department of Homeland Security and USCIS? Please explain.**

Response:

I have generally been satisfied with USCIS leadership during the years I have worked at USCIS and at DHS headquarters. I think the agency was generally managed well by all the previous directors. From what I observed over the years, all the prior directors clearly prioritized the welfare of agency employees and worked tirelessly to ensure that the agency’s mission was fulfilled.

- b. **If you are confirmed, what, if anything, will you do differently than previous USCIS Directors?**

Response:

Since each new director of USCIS meets different challenges, I don’t think one can easily compare directorships or talk about how a new director would do things the same or differently than previous directors. Throughout the years, I have met with, worked with, or spoken to all the prior USCIS directors. If confirmed, I look forward to working with the staff at USCIS to build on the tradition of leadership that they have set.