

EXHIBIT 18

KATHY NUEBEL KOVARIK - 08/03/2018

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

- - - - -x
CRISTA RAMOS, et al., :
Plaintiffs, : Case No.
v. : 3:18-cv-1554-
KIRSTJEN NIELSEN, et al., : EMC
Defendants. :
- - - - -x

VIDEOTAPED DEPOSITION OF
U.S. DEPARTMENT OF HOMELAND SECURITY
By and Through Its Corporate Designee
KATHY NUEBEL KOVARIK
Washington, D.C.
Friday, August 3, 2018
9:35 a.m.

Job No.: LA-185448
Pages 1 - 289
Reported By: Joan V. Cain

1 currently in the review process by the magistrate 10:14:31
2 judge and have been part of ongoing discussions with 10:14:36
3 opposing counsel, but we certainly have reviewed the 10:14:39
4 letter and -- and take the concerns expressed into 10:14:43
5 account. 10:14:47

6 BY MS. MACLEAN: 10:14:54

7 Q Did you prepare any notes in preparation 10:14:54
8 for your deposition today? 10:14:57

9 A During conversations yesterday and on 10:15:02
10 Wednesday, I did take notes to remind myself of 10:15:04
11 certain facts regarding the four TPS designations at 10:15:09
12 hand. 10:15:17

13 Q Did you bring those with you today? 10:15:18

14 A I do not have them. 10:15:20

15 Q In total how long have you spent preparing 10:15:48
16 for today's deposition? 10:15:50

17 A I'd say approximately ten hours. 10:16:08

18 Q How would you define that time -- divide 10:16:12
19 that time? 10:16:14

20 MR. TYLER: Objection, vague. 10:16:14

21 THE WITNESS: How would you like me to 10:16:21
22 define that time? 10:16:23

23 BY MS. MACLEAN: 10:16:23

24 Q Well, you spent -- just to be clear, you 10:16:24
25 spent a few hours in deposition prep I guess over a 10:16:26

1 couple of days, and then it sounds like you may have 10:16:30

2 spent maybe three or four hours reviewing documents. 10:16:32

3 Is that accurate? 10:16:36

4 A Maybe six or seven with counsel and maybe a 10:16:37

5 few hours on my own looking at my own notes, talking 10:16:43

6 to myself. 10:16:48

7 Q Great. Thank you. 10:16:51

8 MS. MACLEAN: So we'll mark the letter that 10:16:56

9 has been discussed that was sent by Rhett Martin to 10:17:01

10 Sean Commons as Exhibit 2 for the record. 10:17:06

11 (Deposition Exhibit 2 was marked for 10:17:08

12 identification.) 10:17:18

13 BY MS. MACLEAN: 10:17:18

14 Q What is your current position at USCIS, 10:17:19

15 Ms. Nuebel Kovarik? 10:17:23

16 A I am chief of the Office of Policy and 10:17:25

17 Strategy. 10:17:29

18 Q And when did you begin that position? 10:17:29

19 A I was appointed to that position on April 10:17:30

20 2nd of 2017. 10:17:32

21 Q What was your position before that? 10:17:34

22 A I was special advisor to the secretary. 10:17:38

23 Q When did you begin that position? 10:17:41

24 A Around January -- it might have been on 10:17:43

25 January 26, 2017. 10:17:46

1 Q Did you have any informal role with the -- 10:17:56
2 with the department or with the administration 10:17:59
3 prior -- prior to January 26, 2017? 10:18:02

4 MR. TYLER: Objection, vague. 10:18:06

5 THE WITNESS: Define informal role. 10:18:08

6 BY MS. MACLEAN: 10:18:10

7 Q Were you serving on any of the transition 10:18:10
8 committees or providing information to the secretary 10:18:18
9 or to the administration prior to that date? 10:18:23

10 A I volunteered on the transition team. 10:18:26

11 Q When did you volunteer on the transition 10:18:28
12 team? 10:18:32

13 A I don't know the exact date. Up until -- 10:18:32
14 until the inauguration, but I don't remember the 10:18:36
15 start date. 10:18:39

16 Q Okay. And what did you do during the time 10:18:40
17 that you were volunteering? 10:18:44

18 A I discussed immigration policies with the 10:18:54
19 transition team and prepared for the 10:18:56
20 President-elect's first 100 days in office. 10:19:04

21 Q Approximately how much time did you devote 10:19:12
22 to that volunteer role? 10:19:15

23 A I don't recall. 10:19:19

24 Q Could you give me your best guess? 10:19:21

25 A Given that I don't know when I started, I 10:19:25

1 would say it was a couple of hours during the week. 10:19:27

2 I had a full-time job on top of that. 10:19:35

3 Q Were you part of an immigration committee 10:19:42

4 or an immigration group? 10:19:45

5 A It wasn't an immigration group. I don't 10:19:47

6 know if it had a formal name. 10:19:49

7 Q Who else was part of that group? 10:19:51

8 A There were several dozen or more 10:19:54

9 individuals. 10:19:57

10 Q Can you recall as many as possible? 10:19:58

11 A Well, okay. So on the transition team, a 10:20:17

12 number of people volunteered: Kate Laborde, 10:20:18

13 L-A-B-O-R-D-E; Andrea Loving; George Fishman; 10:20:26

14 Tiffany Cissna; Gene Hamilton; Jon Feere; John 10:20:35

15 Zadrozny; Lee Francis Cissna; Lora Ries; Tracy 10:20:47

16 Short. I'm blanking on other names. 10:21:23

17 Q Was Dimple Shah a part of that? 10:21:26

18 A Dimple Shah. 10:21:29

19 Q Was Stephen Miller part of that? 10:21:30

20 A I don't recall if he was. I never saw him. 10:21:33

21 Q Was Jeff Sessions involved in that group? 10:21:36

22 A I don't -- I don't know. 10:21:39

23 Q Was Steve Bannon? 10:21:45

24 A I don't know. 10:21:46

25 Q What were you involved with particularly -- 10:21:56

1 workers?

10:28:38

2 A Well, the H-1B Visa program, is one program
3 in particular that is rife with fraud and abuse, and
4 there are a number of legislative changes that need
5 to be made. We were looking at what could be done
6 administratively to protect U.S. workers. We had an
7 interest in making sure that foreign workers as well
8 as U.S. workers were protected and that employers
9 were living up to their obligation to pay the wages
10 that they claimed to pay and to ensure that
11 employers were not benching U.S. citizen workers to
12 get around worker protections under the statute.

10:28:41

10:28:47

10:28:52

10:28:54

10:28:58

10:29:07

10:29:10

10:29:15

10:29:18

10:29:26

10:29:29

13 Q So after your time with the transition
14 team, you became a special advisor to DHS Secretary
15 John Kelly. How -- how did you initiate that role?

10:29:45

10:29:48

10:29:52

16 A It was a logical outgrowth of I guess the
17 transition team. I had applied, like everybody else
18 did, on the Whitehouse.gov web site to be involved,
19 and at the time they were looking for people to
20 start immediately upon inauguration and -- and there
21 was a group of people that started right away, also
22 known as the beachhead team. We went in
23 immediately, and I believe everyone was given the
24 same title of special assistant or special advisor
25 to the secretary.

10:29:58

10:30:00

10:30:08

10:30:14

10:30:17

10:30:24

10:30:29

10:30:32

10:30:34

10:30:39

1 Q Who else was part of that beachhead team? 10:30:41

2 A There's some overlap with a lot of the 10:30:48
3 transition team members, but there are many 10:30:50
4 transition team members that did not. I don't 10:30:53
5 recall exactly who started, but I can tell you 10:30:58
6 around the inauguration time, Gene Hamilton, Lora 10:31:00
7 Ries, Jon Feere, Julie Kirchner was part of the 10:31:11
8 beachhead, and I forgot she was on the transition 10:31:20
9 team, but I never communicated with Julie on the 10:31:23
10 transition team. That's why I left her out. Tracy 10:31:25
11 Short I believe started almost after the 10:31:30
12 inauguration. There were other members of the -- of 10:31:33
13 the, quote, homeland security beachhead team. 10:31:49

14 Q And what was your role during those first 10:31:53
15 three months before you took the position of chief 10:31:57
16 of the Office of Policy and Strategy? 10:32:02

17 A There were two other individuals within the 10:32:10
18 U.S. Citizenship and Immigration Service that were 10:32:15
19 also on this beachhead team that were not on the 10:32:18
20 transition team, and so I worked with those two 10:32:20
21 individuals. 10:32:23

22 Q Who were those individuals? 10:32:23

23 A Craig Symons and Carl Risch. 10:32:24

24 Q Carl Risch? 10:32:29

25 A Yeah. 10:32:29

1 documents, review anything -- any material that 10:46:17
2 comes before us. 10:46:21

3 Q So Mr. Prelogar has been with the 10:46:22
4 administration -- been -- been with the department 10:46:24
5 since 2008? 10:46:26

6 A At least. 10:46:27

7 Q Ms. Hamilton, how long has she been with 10:46:28
8 the department? 10:46:32

9 A She served in the INS, so she's been there 10:46:32
10 for a while. 10:46:35

11 Q Okay. And Mr. Law? 10:46:36

12 A He started approximately in October of 10:46:41
13 2017. 10:46:42

14 Q Where had he been before? 10:46:46

15 A Federation for -- I don't know the acronym, 10:46:48
16 but it's FAIR. 10:46:56

17 Q Is it Federation for American Immigration 10:46:57
18 Reform? 10:47:00

19 A Sure. 10:47:01

20 Q And what was his role there? 10:47:01

21 A I think he was a policy advisor. He may 10:47:08
22 have been a registered lobbyist. I -- I don't know 10:47:11
23 his exact title. 10:47:13

24 Q Am I missing anyone who had been involved 10:47:22
25 with the TPS? I think not. 10:47:24

1 A To make it clear, Jacob Stubbs receives 10:47:26
2 material because when things come through our 10:47:30
3 executive secretariat Jacob works with them, and so 10:47:35
4 he may touch material. He doesn't advise me on 10:47:41
5 these issues. He does like to do research on 10:47:43
6 country conditions, but he really more deals with 10:47:47
7 the paperwork. 10:47:51

8 Q Mm-hmm. Just to clarify, Mr. Levine had 10:47:52
9 been an advisor to the prior chief as well you had 10:48:06
10 said, right? 10:48:10

11 A Yes. 10:48:11

12 Q Can you describe your job responsibilities 10:48:11
13 generally? 10:48:13

14 A Sure. As chief I oversee subject matter 10:48:17
15 experts in all areas of immigration under the 10:48:26
16 portfolio of USCIS. Our office oversees the policy 10:48:29
17 manual, policy memorandum, guidance, Federal 10:48:38
18 Register Notices. It is our job to review all 10:48:50
19 documents related to policy generally, and my job is 10:48:51
20 also to advise the director on issues related to 10:48:57
21 policy. I work with operators and counsel. 10:49:00

22 Q Sorry. When you say operators and counsel, 10:49:11
23 what do you mean? 10:49:14

24 A I work with other directorates that have 10:49:14
25 adjudicatory responsibilities. 10:49:17

1 Q Okay. What is your decision-making 10:49:19

2 authority at USCIS? 10:49:29

3 MR. TYLER: Objection, vague. 10:49:31

4 THE WITNESS: My decision-making 10:49:39

5 authorities, can you clarify? What I make decisions 10:49:41

6 on? 10:49:45

7 BY MS. MACLEAN: 10:49:45

8 Q Yes. What you have the -- the authority 10:49:45

9 within the department to make decisions on. 10:49:47

10 A Most of what we do is ultimately approved 10:49:53

11 by the front office, or we -- my office does a lot 10:49:54

12 of things. I have decision-making authority over 10:50:05

13 our budget, travel, salaries, personnel issues. 10:50:09

14 Q Other matters or policy or practice where 10:50:15

15 you have decision-making authority? 10:50:19

16 A Only insofar as what may go into a decision 10:50:29

17 memo, but ultimately that's not my -- my 10:50:32

18 decision-making authority. 10:50:35

19 Q Who do you communicate with most in your 10:50:38

20 current role? 10:50:40

21 A My Deputy Nathan Stiefel, my senior advisor 10:50:45

22 Robert Law. 10:50:49

23 Q I'm sorry. Was Nathan -- how long has 10:50:54

24 Nathan Stiefel been at the department? 10:50:56

25 A He was recently selected this year, so in 10:51:03

1 the last six months has he been deputy. 10:51:05

2 Q And where was he before that? 10:51:09

3 A He was in the Office of Citizenship within 10:51:15
4 USCIS. 10:51:18

5 Q For -- for approximately how long, to the 10:51:18
6 extent that you know? 10:51:22

7 A Years. It may have been before 2008. 10:51:22

8 Q Okay. You'd mentioned in response to my 10:51:32
9 question about who you communicate with most Mr. Law 10:51:33
10 and Mr. Stiefel. Are there others? 10:51:36

11 A I communicate with them all. I communicate 10:51:39
12 with them all. 10:51:47

13 Q How often when Mr. Kelly was the DHS 10:51:48
14 secretary, did you communicate with the DHS 10:51:54
15 secretary in your current role? 10:51:56

16 A Infrequently. 10:51:58

17 Q How would you define infrequently? 10:52:00

18 A I don't recall a time when I directly 10:52:04
19 communicated with him. 10:52:06

20 Q And with -- when Acting Secretary Duke was 10:52:09
21 acting secretary, how often did you communicate with 10:52:17
22 her? 10:52:21

23 A Not frequently. I would say a handful of 10:52:21
24 times. 10:52:23

25 Q When you communicated with then Acting 10:52:24

1 I have a standing meeting every other week 11:03:20

2 with my managers, all the chiefs of the divisions. 11:03:22

3 I have a standing meeting -- I have standing 11:03:35

4 meetings depending on if there are PCCs at the White 11:03:37

5 House. Those might be standing, you know, every 11:03:46

6 month. 11:03:49

7 Q Sorry. What is PCC? 11:03:49

8 A I'm sorry. I don't even know what it 11:03:50

9 stands for. Policy coordinating committee. It's an 11:03:52

10 interagency meeting. 11:03:56

11 Q Who attends those meetings? 11:04:00

12 A It could be a variety of staff depending on 11:04:01

13 the topic. Those were in place before this 11:04:04

14 administration. It's a way to bring the 11:04:06

15 interagencies together to talk about certain issues, 11:04:08

16 and then there's a standing meeting on Fridays -- 11:04:11

17 Q Sorry. Just to be clear, the PCC meetings 11:04:16

18 will have sort of different agenda items -- 11:04:19

19 A Yes. 11:04:21

20 Q -- and then depending on what the agenda 11:04:21

21 item is, different people will come? 11:04:24

22 A Right. And then we do an immigration 11:04:26

23 meeting at the Executive Office Building or the 11:04:35

24 White House on Fridays. 11:04:40

25 Q Who attends that meeting? 11:04:41

1 A It's myself -- U.S. Citizenship and 11:04:43

2 Immigration Services could be represented by myself, 11:04:48

3 Craig Symons, or Robert Law. 11:04:51

4 Q And who else attends? 11:05:03

5 A There are officials from the Domestic 11:05:04

6 Policy Council as well as Department of Justice. 11:05:06

7 Q Who from the Domestic Policy Council 11:05:08

8 attends? 11:05:11

9 A Well, it has varied over time because staff 11:05:11

10 come and go, but John Zadrozny, Theo Wold -- 11:05:14

11 Q Sorry. Theo Wold? 11:05:20

12 A Wold, W-O-L-D. Morgan Hunter. There's 11:05:22

13 been a variety. I mean, a number of staff. 11:05:32

14 Q And who from the Department of Justice is 11:05:41

15 usually there? 11:05:45

16 A Dave Whetstone, Chad Mizelle. 11:05:46

17 Q Mizelle or Yizelle? 11:05:55

18 A Mizelle. There are other Department of 11:05:59

19 Homeland Security directorates. I should note that 11:06:13

20 the Immigration Customs Enforcement as well as 11:06:15

21 Office of Policy within the Department of Homeland 11:06:16

22 Security also attends at times. And potentially the 11:06:18

23 Department of State may have a represent- -- 11:06:23

24 representative. 11:06:25

25 Q Mm-hmm. Does anyone come from the White 11:06:25

1 House besides the Domestic Policy Council? 11:06:28

2 A Aside from -- well, Stephen Miller will 11:06:37

3 attend. 11:06:39

4 Q Regularly? 11:06:40

5 A Pretty regularly. 11:06:44

6 Q Anyone else? 11:06:50

7 A Not that I can think of. I think they all 11:06:51

8 work for the Domestic Policy Council. 11:06:54

9 Q Okay. Has TPS ever come up in that White 11:06:56

10 House immigration meeting? 11:07:00

11 A If anything, it's mentioned in passing that 11:07:01

12 decisions are coming up, but we don't discuss TPS 11:07:03

13 normally. These are -- 11:07:06

14 Q Are -- 11:07:11

15 A These are issues that we discuss with the 11:07:12

16 Department of Justice. 11:07:14

17 Q Sorry. The issues at the White House -- 11:07:15

18 immi- -- at the White House immigration meeting are 11:07:19

19 issues that you discuss with Department of Justice 11:07:21

20 or you discuss TPS with Department of Justice? 11:07:24

21 A No. It's issues normally that involve both 11:07:27

22 homeland and the Department of Justice. 11:07:31

23 Q Okay. Which of your standing meetings 11:07:33

24 would be -- if -- if any of your standing meetings 11:07:44

25 would be meetings where TPS was discussed, which 11:07:50

1 know, policy and practice has been when a country 11:16:35
2 that has already been designated for TPS is up for 11:16:37
3 review in these periodic reviews, what would you 11:16:42
4 look to to determine whether the TPS should be 11:16:46
5 extended, terminated, or no decision would be made? 11:16:50

6 A I think to answer that question, you need 11:16:55
7 to understand the processes, and that includes 11:16:56
8 the -- the research done by USCIS as well as the 11:17:02
9 Department of State. The criteria used are the 11:17:07
10 legal standards under the statute, and the best 11:17:13
11 evidence is what is in those decision memos and 11:17:17
12 research. 11:17:19

13 Q Were you given any guidance when you 11:17:35
14 started at USCIS with regard to how TPS periodic 11:17:38
15 reviews are conducted? 11:17:43

16 A There's no standard policy, no written 11:17:45
17 policy or guidance, and no training. 11:17:47

18 Q Do you know if there ever has been any 11:17:59
19 standard written policy guidance? 11:18:02

20 A Not that I'm aware of. 11:18:02

21 Q Any training that has taken place with 11:18:08
22 regard to TPS periodic reviews? 11:18:10

23 A Not that I'm aware of. 11:18:14

24 Q When you started in your current position 11:18:29
25 as chief at USCIS, you got into the weeds in TPS 11:18:30

1 very quickly. Were you given any directives or 11:18:34
2 guidance from the secretary or the -- I think then 11:18:37
3 acting director about how you should move forward 11:18:42
4 with regard to TPS? 11:18:46

5 A Not to kick start our interagency review 11:18:47
6 process. I -- for that process I deferred to my 11:18:50
7 staff who had been there, the subject matter experts 11:18:53
8 to kick start that process. 11:18:55

9 Q Were you given any guidance about any -- 11:18:56
10 beyond kick starting the process, but how you from 11:19:05
11 your position as chief and how CIS would look at TPS 11:19:07
12 periodic reviews and determinations? 11:19:12

13 A Not that I recall. 11:19:13

14 Q What do you understand about the intents -- 11:19:25
15 and I think just a few more questions and then we 11:19:27
16 can take a break. 11:19:29

17 What do you understand about the intents of 11:19:31
18 the TPS statute beyond what's written on the paper? 11:19:32

19 MR. TYLER: Objection, vague. Calls for a 11:19:34
20 legal conclusion. 11:19:42

21 THE WITNESS: You want me to opine on 11:19:42
22 the -- the legality or the -- 11:19:45

23 BY MS. MACLEAN: 11:19:45

24 Q No. 11:19:45

25 A -- the purpose behind what Congress was 11:19:47

1 intending?

11:19:49

2 Q Yes, not the legality of it, but the -- the
3 purpose. What do you understand that the TPS
4 statute is intended to achieve?

11:19:50

11:19:53

11:19:56

5 MR. TYLER: I'll object. This goes beyond
6 the 30(b)(6) scope. You're asking this question of
7 her as a fact witness, if you will, asking her
8 opinion.

11:20:02

11:20:05

11:20:07

11:20:10

9 BY MS. MACLEAN:

11:20:14

10 Q What is the agency's position about the
11 intent of the statute?

11:20:14

11:20:16

12 MR. TYLER: I'll object to that as beyond
13 the scope of the 30(b)(6) notice. She's speaking as
14 a fact witness now, speaking to her own opinion.

11:20:17

11:20:19

11:20:24

15 THE WITNESS: The temporary protected
16 status was created by Congress in order to give
17 temporary relief to individuals in the United
18 States.

11:20:32

11:20:35

11:20:37

11:20:43

19 BY MS. MACLEAN:

11:20:43

20 Q When you read that, I noticed that you
21 emphasized temporary. Was there -- is that correct?

11:20:44

11:20:46

22 A Temporary -- it -- it does say temporary,
23 yes. I emphasized it.

11:20:48

11:20:53

24 Q And is there a reason that you emphasized
25 temporary?

11:20:55

11:20:58

1 A Because it's not a long-term legal status. 11:20:58

2 It's a temporary status. There's no reason I -- 11:21:01

3 Q Is that the agency's position as well 11:21:14

4 that -- that there's an emphasis and importance on 11:21:19

5 the temporary nature of the status? 11:21:21

6 MR. TYLER: Objection. It is beyond the 11:21:24

7 30(b)(6) scope. You are asking these questions of 11:21:25

8 this witness now as a fact witness. She can only 11:21:29

9 provide her own individual opinion. 11:21:31

10 THE WITNESS: I emphasized temporary 11:21:37

11 because I think Congress intended to provide 11:21:45

12 temporary relief to individuals who are in the 11:21:47

13 United States and to protect them if there was an 11:21:49

14 event or a reason for their not being able to 11:21:58

15 return. 11:22:01

16 BY MS. MACLEAN: 11:22:01

17 Q Have you had conversations with people in 11:22:01

18 the department about the fact that the -- the 11:22:06

19 temporary nature of TPS status should be emphasized 11:22:12

20 or prioritized? 11:22:17

21 MR. TYLER: Same objection. Beyond the 11:22:18

22 scope of the 30(b)(6). 11:22:20

23 THE WITNESS: The one time I recall 11:22:32

24 emphasizing temporary would be in communicating our 11:22:32

25 decisions to the public that it was a temporary 11:22:41

1 international operations directorate, also known as 12:18:31
2 RAIIO. This evaluation team consists of maybe a 12:18:37
3 dozen people that do -- their job is to do country 12:18:40
4 condition reports for their directorate and for the 12:18:43
5 work that they do, and we utilize them to provide 12:18:45
6 country conditions on particular countries. So we 12:18:49
7 reach out to them and ask for their input. 12:18:55

8 We also -- my staff reaches out to the 12:18:59
9 State Department to get their -- to get them to 12:19:01
10 consider a country condition assessment. 12:19:06

11 Q Sorry. Around what time do you reach out 12:19:08
12 to the State Department? 12:19:10

13 A It could be any time in advance of the 60 12:19:11
14 days. It most likely could be six months in 12:19:13
15 advance. Enough time to do the research, to compile 12:19:19
16 it, and to present it in a decision memo draft. 12:19:21

17 My staff begins to write the -- to write 12:19:27
18 the draft decision memo with that input. It is 12:19:31
19 then -- 12:19:41

20 Q Sorry. Who from your staff writes that 12:19:41
21 decision memo? 12:19:44

22 A It could be one of my two or three subject 12:19:44
23 matter experts, Brandon, Kathryn. Yeah. 12:19:48

24 Once they are done writing a draft -- I 12:19:54
25 should note that they also reach out to other -- 12:19:57

1 maybe our Office of Performance and Quality that -- 12:19:59
2 that tracks data. They reach out to our service 12:20:05
3 center operations. They adjudicate TPS requests as 12:20:11
4 well as adjudicate employment authorization 12:20:18
5 documents that go along with it, and they may 12:20:20
6 provide input as to the number of people who 12:20:22
7 register and apply for EADs, employment 12:20:25
8 authorization documents. 12:20:34

9 The team may also reach out to other 12:20:34
10 components within Department of Homeland Security, 12:20:37
11 including the Office of Immigration Statistics, who 12:20:39
12 keeps all statistics for the department on 12:20:43
13 immigration. They may reach out to Immigration and 12:20:47
14 Customs Enforcement to get a better understanding 12:20:51
15 and data on removals to that country. 12:20:56

16 So all of that research is compiled into a 12:21:11
17 decision memo. That decision memo then is drafted 12:21:12
18 for my review, although my senior advisor may look 12:21:16
19 at it and may have edits and return it back to the 12:21:20
20 subject matter experts to make those edits. 12:21:23

21 Q Sorry. Who would -- who would make edits? 12:21:27

22 A My senior advisor Robert Law. Generally, I 12:21:30
23 like to meet with my staff to go over their first 12:21:35
24 draft to get briefed on the country conditions, to 12:21:37
25 understand the history of the designation. At which 12:21:41

1 together data from various different sources within 12:24:24
2 the Department of Homeland Security? 12:24:27

3 A They rely on the research unit. They may 12:24:28
4 receive data from other -- other sources that they 12:24:32
5 talk to our research unit about to verify. There 12:24:35
6 may be statistics or -- or information provided by a 12:24:39
7 stakeholder group or maybe it's included in a 12:24:42
8 letter. They may look at that and ask the research 12:24:45
9 unit to verify, and that may be included in the 12:24:48
10 research. 12:24:50

11 Q And then the subject matter experts are 12:24:54
12 ultimately responsible for drafting the memo that 12:24:57
13 then goes to you and your senior advisor? 12:25:00

14 A Correct. 12:25:02

15 Q And the senior advisor makes the first set 12:25:02
16 of edits to the -- 12:25:06

17 A Generally. 12:25:07

18 Q Generally. And then it goes back to the 12:25:08
19 subject matter experts? 12:25:10

20 A Yes. I mean, at times they'll share it 12:25:11
21 with me to make sure that I agree with his edits, 12:25:18
22 and most of the time I defer to his edits or -- or 12:25:21
23 ask him to ask the subject matter experts to 12:25:26
24 adjudicate them. 12:25:29

25 Q Okay. And then after the subject matter 12:25:34

1 written in conjunction with Service Center 13:43:48
2 Operations. That draft is provided to my senior 13:43:54
3 advisor. Those comments are adjudicated. Then it's 13:43:57
4 provided to me. 13:44:04

5 Q Just to confirm because you have two senior 13:44:05
6 advisors, the senior advisor is the same Mr. Law who 13:44:08
7 is involved in the Federal Register process? 13:44:13

8 A So my senior advisor -- I have one senior 13:44:16
9 advisor and -- at two different times, so like I 13:44:18
10 said, up until October it was -- it was Lawrence 13:44:23
11 Levine -- 13:44:25

12 Q It was, sorry, who? 13:44:25

13 A Lawrence Levine. 13:44:27

14 Q Okay. 13:44:28

15 A And then after around October it became 13:44:28
16 Robert Law. 13:44:30

17 Q Oh, okay. 13:44:31

18 A So generally it goes through that same 13:44:36
19 review, and we adjudicate comments with our subject 13:44:38
20 matter experts. 13:44:41

21 Q And just so that I don't ask again, 13:44:41
22 whenever you mention senior advisor, you're talking 13:44:44
23 about, depending on the time period, either 13:44:47
24 Mr. Levine or Mr. Law? 13:44:49

25 A That is correct. 13:44:51

1 Q Okay. And then what happens after comments 13:44:52
2 have been adjudicated? 13:44:54

3 A So because the Federal Register Notice 13:44:56
4 impacts other components, including the Service 13:45:00
5 Center Operations which adjudicates the registration 13:45:07
6 in the employment authorization documents, they 13:45:12
7 would review it, but so would our division. It's 13:45:14
8 known as IRIS. The acronym stands for identity and 13:45:16
9 records division. I can't remember what it stands 13:45:20
10 for, IRIS. They do verification issues and would 13:45:27
11 have input as well. 13:45:31

12 And so that Federal Register Notice is 13:45:37
13 circulated in a formal process called the G-1056 13:45:39
14 process, where it goes to the executive secretariat. 13:45:43
15 That executive secretariat tasks each component to 13:45:46
16 review it. The executive secretariat collects those 13:45:49
17 comments and returns it to my subject matter experts 13:45:52
18 to adjudicate those comments. 13:45:57

19 Q Sorry. And who are the comments from? 13:45:58

20 A So all those comments are from agency 13:46:01
21 partners. It could be from the IRIS division, the 13:46:03
22 SCOPS division. It could be from the Refugee and 13:46:07
23 Asylum International Operations unit. It could be 13:46:10
24 from -- it's mostly the chief counsel's office. So 13:46:13
25 all of the comments from the interagency clearance 13:46:23

1 process, that formal clearance are consolidated by 13:46:26
2 the executive secretariat. 13:46:33

3 Q And is that -- is that formal clearance 13:46:37
4 process established somewhere? 13:46:41

5 A It is. It's established within the 13:46:45
6 executive secretariat. 13:46:47

7 Q Is it required for Federal Register Notice 13:46:48
8 or for final decision? 13:46:51

9 A I think it's agency policy. 13:46:54

10 Q Okay. 13:46:55

11 A And then that G-1056 clearance is a normal 13:47:02
12 clearance process that we use for almost everything. 13:47:06

13 Q Okay. So that formal clearance process, 13:47:13
14 what are they formally clearing? Is that a review 13:47:15
15 of the Federal Register Notice? 13:47:22

16 A Exactly. 13:47:24

17 Q And then once that federal -- once that 13:47:25
18 agency -- that G-1056 for the Federal Register 13:47:27
19 Notice is finalized, what's the next step? 13:47:30

20 A Then it would go to the front office for 13:47:32
21 review. So that front office would entail the 13:47:35
22 director senior -- this is USCIS front office. It 13:47:38
23 would entail the senior advisor, the chief of staff, 13:47:42
24 maybe the deputy chief of staff. 13:47:42

25 I'm sorry. It would entail front office 13:47:48

1 review which includes senior advisors, chief of 13:47:49
2 staff, deputy chief of staff, the deputy director, 13:47:52
3 and then ultimately the director. 13:48:01

4 Q And the G-1056 process, is that within the 13:48:08
5 agency or -- 13:48:12

6 A Just within U.S. Citizenship and 13:48:12
7 Immigration Services. 13:48:18

8 Q Okay. And that review within the front 13:48:18
9 office is all those people that you mentioned are 13:48:21
10 also within CIS? 13:48:24

11 A Yes. 13:48:25

12 Q And after that process -- oh, sorry. 13:48:25

13 In the USCIS front office review process, 13:48:27
14 what are they reviewing? 13:48:30

15 A The Federal Register Notice. 13:48:32

16 Q Okay. And then what's the next step after 13:48:34
17 that? 13:48:40

18 A After the director is satisfied with the 13:48:40
19 notice, if he has changes or edits, we adjudicate 13:48:44
20 them, but when he's ultimately happy with it and he 13:48:48
21 clears it, it is transferred by the executive 13:48:52
22 secretariat -- you know what, I misspoke, because 13:48:55
23 there is a process -- a G-1056 process by the 13:49:01
24 executive secretariat, but there's also a process 13:49:03
25 our Regulatory Coordination Division undertakes. 13:49:07

1 Q Do you remember what this was in response 14:17:48
2 to? 14:17:49

3 A As I stated, it's probably in response to 14:17:51
4 the secretary wanting the input of other federal 14:17:54
5 agency partners in the review process. 14:18:06

6 Q Yeah. Okay. Thank you for bearing with me 14:18:29
7 with all those names. 14:18:31

8 So I'm not going to make you go through the 14:18:41
9 entire history of -- from 2008 till the present of 14:18:44
10 exactly what that process looks like in as much 14:18:47
11 detail, but I know that you wanted to say something 14:18:51
12 about what the process was and how it differed or 14:18:54
13 didn't differ prior to 2017. 14:18:55

14 A Sure. I think it's important to know that 14:18:58
15 when I came in, again, I deferred to my staff who 14:19:00
16 have done this since about 2008, and so because you 14:19:03
17 had asked about it. The process was regular -- 14:19:06
18 pretty similar. There is a decision memo, there's a 14:19:09
19 Federal Register Notice. However, in the previous 14:19:15
20 administration, a decision memo was written in 14:19:18
21 conjunction at the same time as the Federal Register 14:19:23
22 Notice, and that -- that Federal Register Notice, 14:19:34
23 which was cleared by all the relevant personnel, you 14:19:40
24 know, that I mentioned earlier, but that went to OMB 14:19:45
25 prior to the decision-making. 14:19:48

1 Q Why do you think that process changed? 14:19:58

2 A When I came in as chief, the -- the 14:19:58

3 decision memo was written and because I did not want 14:20:03

4 staff to expend resources to write a Federal 14:20:10

5 Register Notice that went in three or four different 14:20:13

6 directions for every option available, I asked them 14:20:15

7 to withhold writing the Federal Register Notice 14:20:20

8 until a decision was made. 14:20:21

9 Q To make sure I understand correctly, the 14:20:24

10 Federal Register Notice in previous administrations, 14:20:26

11 it was -- what was sent to the OMB before the 14:20:32

12 decision was made was not just one Federal Register 14:20:33

13 Notice, but various drafts of Federal Register 14:20:36

14 Notices? 14:20:40

15 A I don't know how many they sent. Maybe 14:20:40

16 they assumed that they knew what the decision was 14:20:42

17 and they only sent one. If there were options, they 14:20:44

18 may have sent more. It's -- I don't know. But it's 14:20:47

19 during that OMB process where there's input from 14:20:54

20 other agencies during that decision process; 14:20:57

21 whereas, now it's, you know, the decision of the 14:21:00

22 secretary and then it's sent to OMB. 14:21:02

23 Q Okay. In previous administrations when the 14:21:10

24 OMB received the Federal Register Notice or Notices, 14:21:15

25 would they then begin that interagency consultation 14:21:22

1 process prior to -- potentially prior to the 14:21:27
2 decision actually being made? 14:21:29

3 A Yes. 14:21:30

4 Q And what would that consultation process 14:21:31
5 look like, to the extent that you know? 14:21:33

6 A It's the same process I explained before 14:21:37
7 with the Federal Register Notice. That is, it's 14:21:40
8 sent to agency partners that may have a stake in it. 14:21:41
9 Again, it could be the Department of State. It 14:21:44
10 could be the Department of Defense. It could be the 14:21:46
11 Department of Justice. It could be the Department 14:21:48
12 of Health and Human Services if it had to deal with 14:21:54
13 Ebola so -- and also to the executive office. I 14:21:55
14 understand that they're part of the review as well. 14:21:58

15 Q Are there other changes from 2007 -- how 14:22:07
16 the TPS decisions were made from 2007 to the present 14:22:12
17 as compared to prior to 2017? 14:22:15

18 A No. For -- for the most part, because the 14:22:17
19 subject matter experts who were there in the 14:22:21
20 previous administration were also there for the last 14:22:22
21 several decisions, the process mainly remained the 14:22:28
22 same. They shifted slightly, but it had to deal 14:22:33
23 with, you know, what time -- or the timing of a 14:22:35
24 State Department recommendation and assessment, you 14:22:39
25 know, but overall the process was generally the 14:22:46

1 same. 14:22:48

2 Q Okay. And that shift to sending the 14:22:48

3 Federal Register Notice to the OMB earlier, that was 14:22:55

4 a shift that you initiated? 14:22:57

5 A Yes. 14:22:58

6 Q When did you initiate that? 14:23:00

7 A I -- I believe it -- the first decision 14:23:08

8 that came when I was chief of the Office of Policy 14:23:09

9 was Haiti. I believe that it shifted after that 14:23:12

10 when we weren't sure what the decision was going to 14:23:22

11 be. 14:23:33

12 Q Did there have to be an approval for that 14:23:33

13 decision to not send the Federal Register Notice to 14:23:36

14 OMB earlier? 14:23:39

15 A No. I made that decision. 14:23:40

16 Q Were all stakeholders, including OMB but 14:23:53

17 also the other agencies, consulted at all in that 14:23:57

18 process -- in that shift in process? 14:23:59

19 A Yes. The Office of General Counsel was 14:24:02

20 consulted because they were used to seeing the 14:24:04

21 Federal Register Notice behind the decision memo. 14:24:06

22 Q And when you say Office of General Counsel, 14:24:09

23 do you mean the Office of General Counsel -- 14:24:11

24 A At the department of Homeland Security. 14:24:12

25 Q -- at the Department of Homeland Security? 14:24:14

1 Do you know who Tom B. might refer to? 16:30:17

2 MR. TYLER: Same objections. Outside of 16:30:23

3 scope. She's asked to interpret a communication 16:30:26

4 that she was not part of. You're asking for 16:30:29

5 speculation. 16:30:31

6 MS. MACLEAN: Your objection is noted. 16:30:31

7 THE WITNESS: I can only speculate that Tom 16:30:33

8 B. is Tom Bossert. 16:30:35

9 BY MS. MACLEAN: 16:30:36

10 Q And who is Tom Bossert? 16:30:36

11 A I don't know his official title, but I 16:30:39

12 think he's with the National Security Council. 16:30:42

13 Q And why would you think it's Tom Bossert? 16:30:44

14 A Because I think she had a meeting or 16:30:46

15 conversed with Tom Bossert at some point in time on 16:31:00

16 decisions. 16:31:04

17 Q Why do you think that? 16:31:05

18 A It would not be shocking to seek the advice 16:31:10

19 of National Security Council. 16:31:13

20 Q With regard to TPS, why would it not be 16:31:18

21 shocking to seek the advice of the National Security 16:31:21

22 Council? 16:31:25

23 A Because they are a federal partner. 16:31:25

24 Q Is the National Security Council's advice 16:31:26

25 frequently sought prior to a final decision with 16:31:29

1 BY MS. MACLEAN:

16:54:20

2 Q So you're reading the statute right now.

16:54:20

3 When you read the statute, how do you interpret the

16:54:24

4 sentence that you just read?

16:54:30

5 A The attorney general or the secretary now

16:54:33

6 in order to designate one of the prongs for

16:54:44

7 designation consideration is whether the state is

16:54:47

8 able to adequately return -- adequately handle the

16:54:48

9 return of its aliens.

16:54:52

10 Q You said previously that Ambassador

16:54:57

11 Nealon's memo does not comport with the statute; is

16:55:02

12 that correct?

16:55:04

13 A I would note that even though he tries to

16:55:05

14 make a case that they cannot adequately handle, I

16:55:09

15 think the case as shown that in this sentence in

16:55:13

16 this memo, in the case of Honduras, for example,

16:55:17

17 they received approximately 80,000 returnees in both

16:55:19

18 2015 and 2016. The number of people removed to the

16:55:22

19 northern triangle has been quite large.

16:55:25

20 Q So is it correct to say that you -- you

16:55:36

21 read this as inconsistent with the criterion --

16:55:37

22 sorry -- you read this as Ambassador Nealon raising

16:55:44

23 concerns about the termination that are not relevant

16:55:49

24 under the statute that created temporary protected

16:55:52

25 status?

16:55:56

1 MR. TYLER: Objection, vague. 16:55:57

2 THE WITNESS: You're asking if I consider 16:56:03

3 the points that he raised would be relevant 16:56:04

4 criteria? 16:56:09

5 BY MS. MACLEAN: 16:56:09

6 Q Yes. That's my question. 16:56:09

7 A I think there may be points in here that 16:56:11

8 are not relevant. 16:56:15

9 Q What are the points that are not relevant 16:56:15

10 in here? 16:56:17

11 A Data shows that TPS recipients have a very 16:56:32

12 high workforce participation rate, much higher than 16:56:35

13 the national average is one example. TPS recipients 16:56:40

14 have jobs, have gotten married, have many thousands 16:56:42

15 of American citizen children. Work legally in great 16:56:46

16 numbers. Pay taxes. Own homes. Own businesses and 16:56:54

17 live the American dream minus a path to citizenship. 16:56:57

18 I'll stop there. Those are examples. 16:57:11

19 Q Can you elaborate in the second paragraph 16:57:14

20 and third paragraphs -- and this will be the last 16:57:18

21 point on this document, but what portions of those 16:57:20

22 paragraphs are inconsistent with the statute? 16:57:24

23 MR. TYLER: What paragraphs are you on? 16:57:27

24 MS. MACLEAN: The Working Against Ourselves 16:57:28

25 and Foreign Policy Considerations. 16:57:30

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Joan V. Cain, Court Reporter, the officer
3 before whom the foregoing deposition was taken, do
4 hereby certify that Kathy Nuebel Kovarik personally
5 appeared before me on August 3, 2018 and was duly
6 sworn; that the foregoing transcript is a true and
7 correct record of the testimony given; that said
8 testimony was taken by me stenographically and
9 thereafter reduced to typewriting under my
10 direction; that reading and signing was not
11 requested; and that I am neither counsel for,
12 related to, nor employed by any of the parties to
13 this case and have no interest, financial or
14 otherwise, in its outcome.

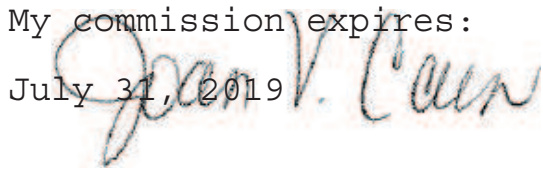
15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my notarial seal this 6th day of
17 August 2018.

18

19 My commission expires:

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21



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