

## The New Yorker Q. & A.

# A Former Immigration Official on How Much Harm Trump Could Do

By Isaac Chotiner April 9, 2019

On Sunday, President Trump forced out the secretary of Homeland Security, Kirstjen Nielsen, and, on Monday, the White House announced that the Secret Service director, Randolph Alles, would leave his position. These decisions are reportedly the beginning of a purge of top D.H.S. officials, as Trump grows increasingly angry about the limits of his authority at the southern border. This past week, he cut off hundreds of millions of dollars in aid to El Salvador, Guatemala, and Honduras, threatened to close the border, and rescinded the nomination of Ron Vitiello to lead Immigration and Customs Enforcement, saying, “We’re going in a tougher direction.” Now there are reports that he intends to fire L. Francis Cissna, the longtime head of U.S. Citizenship and Immigration Services, and to reinstate a child-separation policy at the border.



*Doris Meissner, a former immigration official, says that this Administration’s attitude toward asylum seekers has worsened problems at the southern border.* Photograph by Tony Gutierrez / AP

What might Trump be able to accomplish with new people in charge? To discuss this question, I recently spoke by phone with Doris Meissner, who ran the Immigration and Naturalization Service under President Bill Clinton, and is currently the director of the U.S. immigration policy program at the Migration Policy Institute. During our conversation, which has been edited for length and clarity, we also discussed how Trump has worsened problems at the border, what immigration hard-liners in the bureaucracy have already done, and her biggest concern about the President's latest moves.

**Trump is clearly frustrated with his own immigration record. Do you think he will be able to accomplish more of his goals with different people, or does the problem for him lie elsewhere?**

It's hard to know what different people would do differently, because where he is really being stymied is by the other branches of government—the courts and the Congress—and, to some extent, public opinion. He can put other people into those jobs, but they will have very little added moving room, given what he is demanding.

**Trump seems to already be pushing against the legal limits imposed on him. Have there been issues on which the White House wants something legal, and people refuse to carry it out, or is it, rather, that people have not done illegal stuff?**

The latter. From everything that we can see, that is reported, and that we know is happening, Nielsen and others in D.H.S. have been aggressive in implementing the policies that he has called for, but he wants them to go much further, and, when they tell him that they are constrained by statutes or by court rulings, he doesn't want to hear that. He wants them to figure out some other way or just do what he says. And they either can't or won't because they legally can't.

It does seem that when they offer other ideas that might comply with laws—regulations, court rulings, etc.—he doesn't want to hear them. This idea that he doesn't want to be lectured to seems to underscore that

point. He wants what he wants, and he doesn't want to hear anything else. That seems to be the case all the way through.

**How important is it that D.H.S. function somewhat independently from the White House, and is that something you are concerned about going forward?**

Yes, it is. We have always had the strong tradition that the Department of Justice, for instance, needs to be devoted to the rule of law, and that nobody is above the law, including the President. And, to some extent, that principle applies in the areas of intelligence and foreign policy as well. The Department of Homeland Security is still a relatively new entity within the government, but it is at the intersection of those two traditions and agencies, the D.O.J. on the one hand, and the foreign-affairs apparatus and military on the other. So, while the D.H.S. role and culture is not as fully developed as well as those other agencies, it certainly fits within those categories.

And so the idea that a President or even a national-security adviser or domestic-policy council adviser would reach in, in the ways we have seen in this Administration, that is uncharacteristic. Now, for this Administration, the President has kept immigration as a centerpiece issue. When you have a President who is especially devoted to a particular issue, you have to expect, regardless of those traditions, that there is going to be more visibility and more attention paid at the most senior levels, politically, to the issue. But, nonetheless, the ways in which policymaking has worked in the past have not been evident here at all. One very important question is whether this President understands how to work your will when you have a policy agenda. He is impatient with those processes, but he isn't very adept at them.

## **The asylum system seems overwhelmed. How much of that is owing to Trump's own policies?**

The asylum system was overwhelmed when he came into office. That dates back a couple of years to parallel, to a considerable extent, the change in the flows across the southwest border from primarily a Mexican flow to a Central American flow.

However, Trump came into office, and Senator [Jeff] Sessions came into the job of Attorney General, having strong objections to the legitimacy of the asylum system where Central Americans were at all concerned. Sessions knew much more clearly and fully, probably, than Trump did what the issues in the asylum system were, and had this very strong antipathy to the asylum system where people from Central America were concerned. So the Attorney General was already a man with a mission when he came into the Justice Department, in terms of narrowing access to the asylum system. But the Administration overall rejected the idea that the asylum system was pertinent to these flows. So they have tried everything they can, largely through the Justice Department, initially, to narrow access to the asylum system, narrowing the definitions of what conditions could lead to a grant of asylum, and that has really worsened what was already an overwhelmed asylum system.

### **How so?**

Because a part of this flow are legitimate asylum seekers. And if they had made efforts to focus on the asylum system, to allocate resources somewhat differently, to make administrative changes to the priority granted to these cases, and simply decided cases from the beginning, when the flows were not nearly what they are now, they could have started to put into place an asylum system that was beginning to work itself out of its trouble, by granting some cases but then returning people that were not eligible. You have to do it in a timely fashion, and the message then gets back so that the system has a way of being self-

correcting. If it is working, it discourages people from applying who do not have strong claims.

**Is there a solution to the issue of migration and asylum that does not involve aid to Latin America?**

Not that we know of. [Laughs.] You have to be very cognizant of the circumstances that are driving these flows, and now a dynamic has set in of “migrate while you can,” because U.S. policy is so uncertain. It didn’t have to be that way, and it wasn’t that way two years ago. Nonetheless, these conditions in Central America have been there for a long time, with the violence and the cartels and the narco business, and they not only take a long time to address but they are also fuelled by markets in the United States for these drugs. So any reasonable policymakers are charged with the responsibility of looking at the bigger picture and putting policies into place that address a whole set of parts of the problem. There is no single answer.

**How significant is Cissna leaving, if he is? He had been known as a very effective and cagy immigration hard-liner. Do you understand his departure, from the Trumpian point of view?**

He is not departing, is he?

**There are rumors Trump wants him gone.**

There are rumors, but there are people jumping to his defense.

**Hard-liners.**

Right.

**Why is that? What has he done?**

He is very experienced. It is interesting: so many of these people in the immigration field were career, experienced people, including Cissna. He knows the law in and out, and has worked for several other

Administrations and worked on the hill, and he has been effective with different masters and under varying political circumstances. He has definitely carried out the [Trump] Administration's over-all efforts to be as tough as possible. He has probably the biggest regulatory toolkit in D.H.S. because he is responsible for all of the functions that govern legal immigration, all the different visa categories, and he also has responsibility for the asylum and refugee system. Starting the very first week Trump was in office, when he put in the Muslim ban, which has to do with visas and admissions, Cissna has been at the table, and his agency has been issuing all these regulations and policy changes, and so many of them are technical, under-the-radar things. They are not splashy, visible things like separation of families. But they really matter.

**If Trump really wants to put some version of child separation back into action, what might that look like in practice, given that he signed an executive order outlawing the practice?**

I am assuming that he undoes his executive order. He can undo an executive order just as easily as he can issue one. There is something that has been out there for a while, which the soon-to-be acting secretary has spoken about, which is called the binary choice, which would allow parents to choose to be separated from their child or be in detention with their child. And, from what we can tell, there is a little room for that to be implemented, legally. There is not an injunction of any time that covers that. The difficulty is that, most likely, most of the people that would be given the choice would choose to have their children stay with them, and the issue of facilities would become an issue really quickly. But, you know, appropriate facilities could probably be stood up pretty quickly as well. I don't want to supply the answers to you, frankly, so I am going to stop.

**Is this your biggest concern about this next phase at D.H.S.?**

I think it is a very serious concern to have an agency as important and large and as in the spotlight almost entirely in the hands of leadership that is "acting." An acting secretary, an acting deputy secretary, an

acting head of ICE. You are going to have an acting head of the Secret Service. This is not a good recipe for managing a very complex set of functions at a very large agency. The civil service that works for these people will constantly be wary and holding back because they don't know whether their leadership is going to be with them in another two weeks. These acting people will have a very hard time building relationships with their congressional committees, and congressional committees will have a hard time trusting what they have to say. It is hard to explain why that is so important, but having Senate-confirmed officials, where the legislative branch has basically bought in, is very critical to government functioning. That is now all missing.

**You are making a generic good-government point, which, of course, I agree with. Given that Trump is President, is that your biggest concern? Or is it that we get Kris Kobach or someone at D.H.S., because we should accept the former problem as a reality? Not accept it—**

Recognize it, yeah. I think one feeds the other. I think they are both a concern. But the reality of what might come next is certainly a major concern, partly because it is unclear who can be attracted to come into these positions, and it is unclear how confirmable they will be. Which is exactly part of the loop on how you actually govern under these circumstances. The situation we have at the southwest border is serious now; it is extremely serious. We need people that can talk to Mexico and work out issues with Central American countries and governors and mayors. And all of that is now at risk.