

## **Jeh Charles Johnson**

December 12, 2013

The Honorable Charles Grassley  
United States Senate  
Washington, DC 20510

The Honorable Orrin Hatch  
United States Senate  
Washington, DC 20510

The Honorable Jeff Sessions  
United States Senate  
Washington, DC 20510

The Honorable John Cornyn  
United States Senate  
Washington, DC 20510

The Honorable Michael S. Lee  
United States Senate  
Washington, DC 20510

The Honorable Ted Cruz  
United States Senate  
Washington, DC 20510

Dear Senators Grassley, Hatch, Sessions, Cornyn, Lee and Cruz:

I write in response to your November 15 letter. I note that your letter contains about 57 specific questions including subparts. Respectfully, given that I am a nominee and private citizen, and not part of DHS, I am unable to respond to your letter question-by-question, but can instead provide you with my more general views, as they exist at this stage. My experience in and out of public office teaches me that, when and if confirmed, my knowledge and points of view on these topics will evolve, become more sophisticated, and may change.

### **GENERAL**

Below are the priorities I anticipate pursuing if confirmed.

First, the centerpiece of homeland security is counterterrorism, and that will continue to be the case if I am confirmed as Secretary. From my four-year experience as the senior lawyer for the Department of Defense dealing with the weighty legal issues associated with counterterrorism, I became very familiar with the terrorist threats we face. I believe we have crossed into a new phase in the terrorists threats we face, but we must remain vigilant. We found bin Laden, we have degraded al Qaeda's core, but in my time at DoD we saw the rise of al Qaeda affiliates who attempted on numerous occasions to export terrorism to the homeland. The terrorist threat against the United States has become even more diffuse and harder to detect; it is not limited to those who follow conventional al Qaeda chains of command, or train at overseas al Qaeda camps, like the underwear bomber from Christmas Day 2009. We see more cases of self-radicalization. If confirmed, I intend to remain vigilant in detecting terrorist threats against the homeland.

Second, border security: I welcome the doubling of the number of Border Patrol agents from 10,000 to 20,000 since 2004 and the deployment of proven, and effective

technology tailored to the operational needs of its agents on the ground. As the U.S. economy improves, I recognize the need to continue to improve border security. I will work to continue to secure the land and maritime borders, strengthen and improve infrastructure at ports of entry, and expand smart enforcement efforts in partnership with border communities and law enforcement.

Third, safeguarding and securing cyberspace: From my experience as General Counsel of the Department of Defense, I am acquainted with the cyber threats to our Nation, and our own government's cyber capabilities to respond. The cybersecurity threat is real. DHS coordinates the protection, prevention, mitigation, and recovery from cyber incidents in both the .com and .gov worlds. If confirmed, I pledge to be a visible leader in this effort.

Fourth, responding effectively to disasters. I am familiar with FEMA's role as coordinator of the U.S. response to disasters. I understand the importance to the American public of a government that can respond quickly and effectively to their urgent needs in times of a disaster. Under the leadership of Administrator Craig Fugate, I believe FEMA has come a long way from the days of Hurricane Katrina in its ability to coordinate the government's response to natural disasters. If confirmed, a priority for me will be to continue this progress.

Fifth, as explained in more detail below, I support common-sense immigration reform. I support S. 744, which has passed the Senate.

There are also immediate management-related priorities that I recognize must be addressed at DHS. As I stated at my confirmation hearing, there is a leadership vacuum within DHS of alarming proportions. Morale is low in many parts of the Department. If confirmed, I will push to continue the progress toward resolving the issues cited by GAO in its February 2013 "High Risk Series" report. I will work toward a more mature and effective procurement process, identify inefficiencies in headquarters functions, and better integrate the 6 different accounting systems within DHS. If confirmed, I will devote time and energy to these matters, by drawing upon best practices at other agencies, and, in some cases, from the private sector.

If confirmed, I also pledge transparency and candor with Congress. Members and staff from both the House and Senate Armed Services Committees know my track record for open dialogue with them, in a bipartisan way, and I expect to continue this practice. I believe strongly that the department of which I hope to become a part should be responsive to congressional requests, in a timely manner.

You also ask about whistleblowers. I know from my experience as General Counsel of the Department of Defense that whistleblowers enjoy certain statutory protections, and that agencies, particularly in national security, must be extremely sensitive to dealing with a whistleblower who wants to bring information to the attention of Congress. My attitude is that any effort to prevent such a thing may have larger repercussions than the underlying matter. Whistleblowers must be treated fairly, and be

perceived as having been treated fairly. Having said that, it is my view that those who make unauthorized disclosures of classified information are not and should not properly be called “whistleblowers.” They are in effect taking the law into their own hands. Those entrusted with classified information must respect their legal and contractual obligations, and be held accountable when they do not.

Finally, you ask about independence. I believe all political appointees of an administration have higher obligations, to the Constitution, the rule of law, and the American people. When I was General Counsel of DoD, my political loyalty was to the President, but my professional obligations as an attorney ran to the Secretary and the Department. On numerous occasions, this required me to advocate the Department views at odds with a White House or interagency position, at the White House and elsewhere. If confirmed, I will continue to provide advice that I believe is in the best interests of the agency I represent, and the Nation. I have done so in the past, and I am pleased that the President has nominated me to a Cabinet-level position, where he knows I will continue this practice in the future.

### **IMMIGRATION**

I support common-sense immigration reform. I support S. 744, which has passed the Senate. I believe reform must be comprehensive and include provisions that allow the federal government to continue efforts to strengthen our border security, target employers who hire undocumented workers, and modernize the immigration system itself. I also believe that, as part of reform, we should provide an earned pathway to citizenship for undocumented immigrants in this country. I am struck by the fact that an estimated 86% of the 11.5 million undocumented immigrants in this country have been here since at least 2004, and that many entered this country as children. I will support continuing efforts to strengthen interior enforcement and focus the Department’s resources on our highest priorities. The Department should also continue to improve the legal immigration system so that it serves individuals, workers, business, families, and others within the confines of the law. Both of these are important goals of the agency that should continue irrespective of the enactment of legislative reform.

I agree that the earned pathway to citizenship should include a background check, learning English, paying taxes, paying a penalty, and getting in line behind everyone who is trying to come to the United States through existing legal processes. I also believe that those who attempt to defraud the federal government, including commit fraud in applying for legal status, should be held accountable.

Furthermore:

- I appreciate the importance of border security along both the Southern and Northern Borders. If confirmed, shortly after taking office I intend to closely inspect the land ports of entry and areas between the ports along

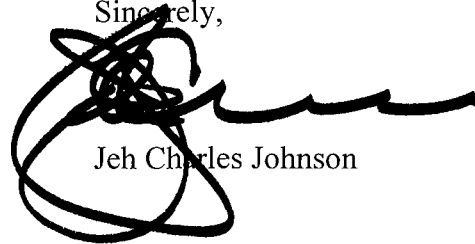
the Southern and Northern Border, and speak with CBP's border security experts about operational improvements.

- I believe prosecutorial discretion is within the lawful authority of those charged with administering and enforcing the immigration laws. I saw prosecutorial discretion at work when I was a federal prosecutor in 1989-1991, and we had to prioritize devoting drug enforcement resources to fighting the crack-cocaine epidemic that hit New York City then. I also believe it is within the legal authority of supervisors to set, administratively, guidelines for subordinates in exercising prosecutorial discretion, and to expect compliance. I also recognize that prosecutorial discretion does not amount to effective abandonment of the enforcement of the law.
- I believe that individuals who pose a threat to national security and public safety, including those convicted of serious crimes, should be subject to removal, and should not be eligible for immigration benefits. I have been advised that S. 744 contains provisions that prohibit individuals who meet these criteria from obtaining legal status. I support these provisions.
- I agree that there should be clear metrics for measuring illegal border crossings. If confirmed, I intend to work with component leadership and others to improve upon existing metrics.
- If comprehensive immigration reform is enacted, and if I am confirmed, a priority for me will be the effective implementation of that reform. I will work to prepare DHS to administer the changes to the law and ensure that DHS has the staff, resources, and capability in place to successfully implement immigration reform.
- I am for effective worksite enforcement. As I understand it, S. 744 includes enhanced criminal penalties against employers who hire undocumented workers. I know also that S. 744 calls for a phased-in approach to the mandatory use of the E-Verify system. I support this course of action as part of a comprehensive approach to reforming our immigration laws.
- I understand the EB-5 program has value, but I agree that we should be vigilant in monitoring it from a security standpoint. I am told that USCIS has identified and worked to remedy vulnerabilities in the program, that USCIS has provided some technical assistance to Senators drafting legislation to strengthen the program, and that this language was included in S. 744. If confirmed, I commit to working with DHS component and program leaders to continue to improve the EB-5 program.
- I am committed to implementing all legislation enacted into law.

- In my view, a biometric entry/exit system that is operationally feasible and cost-effective would be beneficial. I am told that in 2010 Secretary Napolitano directed that DHS move toward an enhanced biographic system, while continuing research and development toward a future biometric exit system. If confirmed, I intend to study the 2009 DHS report referred to in your question.

I hope you find the viewpoints I set forth above informative.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeh Charles Johnson", written over the printed name below it.

Jeh Charles Johnson