

Deposition of Brandon Prelogar

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PATRICK SAGET,) Case No.
et al.,) 18-cv-01599-WFK-ST
Plaintiffs)
vs.)
DONALD TRUMP, President)
of the United States,)
et al.,)
Defendants)

Videotaped Deposition of Brandon Prelogar
Washington, D.C.
December 18, 2018
9:59 a.m.

Reported by: Bonnie L. Russo
Job No. 448917

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1 Videotaped Deposition of Brandon Prelogar held
2 at:

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Mayer Brown, LLP

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1999 K Street, N.W.

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Washington, D.C.

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19 Pursuant to Notice, when were present on behalf
20 of the respective parties:

21

22

1 APPEARANCES:

2 On behalf of the Plaintiffs:

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16 MIRIAM R. NEMETZ, Esq., Mayer Brown, LLP
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17 Kevin Snell, Department of Justice, Federal
Programs Branch
18 Liza Shah, United States Citizenship
Immigration Services, Department of Homeland
19 Security
David Voigtsberger, Videographer
20
21
22

1 C O N T E N T S

2	EXAMINATION OF BRANDON PRELOGAR	PAGE
3	BY MR. CONNELLY	10

4

5

6 EXHIBITS

7

8	Exhibit 60 E-Mail Chain	75
	dated 2-28-17	
	DPP_00006091-6094	

9

10	Exhibit 62 E-Mail Chain	92
	dated 4-13-17	
	DPP_00018941	

11

12	Exhibit 64 E-Mail Chain	213
	dated 10-23-17	
	CP_00015826-829	

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1 PREVIOUSLY MARKED EXHIBITS:

2

Exhibit 1 Section 1254a

3

Temporary Protected Status

4

Exhibit 2 Extension and Redesignation
of Haiti for Temporary
Protected Status
5-19-11

6

Exhibit 2A Extension and Redesignation
of Haiti for Temporary
Protected Status
1-21-10

8

9

Exhibit 5 Extension of the Designation
of Haiti for Temporary
Protected Status
10-1-12

10

11

Exhibit 6 Extension of the Designation
of Haiti for Temporary
Protected Status
3-3-14

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Exhibit 7 Extension of the Designation
of Haiti for Temporary
Protected Status
8-25-15

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16

Exhibit 8 Temporary Protected Status:
Calendar Year 2016 Annual Report
DPP_00000395-436

17

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Exhibit 9 Haiti: TPS Addendum
2-7-17
DPP_00008521-523

19

20

Exhibit 11 E-Mail Chain
dated 4-3-17

21

22

1 PREVIOUSLY MARKED EXHIBITS (CONTINUED):
2 Exhibit 12 E-Mail Chain
dated 3-29-17
3 CP_00012164-165
4 Exhibit 15 E-Mail Chain
dated 4-27-17
5 DPP-00003286-3296
6 Exhibit 16 E-Mail Chain
dated 4-14-17
7 DPP_00018751
8 Exhibit 17 E-Mail Chain
dated 4-19-17
9 DPP_00005153
10 Exhibit 18 E-Mail Chain
dated 4-30-17
11 Attachment
DPP_00006080-082
12
Exhibit 21 E-Mail Chain
13 dated 5-8-17
CP_00007859-872
14
Exhibit 25 E-Mail Chain
15 dated 5-20-17
CP_00008090-8097
16
Exhibit 27 Extension of the Designation
17 of Haiti for Temporary
Protected Status
18 5-24-17
19 Exhibit 28 E-Mail Chain
dated 5-25-17
20 CP_00009691-693
21 Exhibit 29 E-Mail Chain
dated 6-7-17
22 DPP_00010924-926

1 PREVIOUSLY MARKED EXHIBITS (CONTINUED):
2 Exhibit 30 E-Mail Chain
dated 6-7-17
3 CP_00020560-563
4 Exhibit 36 E-Mail Chain
dated 10-13-17
5 DPP_0003323-3329
6 Exhibit 37 E-Mail Chain
dated 10-13-17
7 CP_00003462-3468
8 Exhibit 38 E-Mail Chain
dated 10-13-17
9 DPP_00021118
10 Exhibit 40 E-Mail Chain
dated 10-22-17
11 DPP_00003336
12 Exhibit 41 E-Mail Chain
dated 11-2-17
13 DPP_00022248-249
14 Exhibit 42 E-Mail Chain
dated 11-20-17
15 DPP_00011273-274
16 Exhibit 43 Press Release
dated 11-20-17
17 DPP_00019502-03
18 Exhibit 44 Termination of the Designation
of Haiti for Temporary
19 Protected Status
1-18-18
20
21
22 (Exhibits included with transcript.)

1 P R O C E E D I N G S

2

3 THE VIDEOGRAPHER: Good morning. We
4 are now on the record.

5 This begins Videotape No. 1 in the
6 deposition of Brandon Prelogar in the matter of
7 Patrick Saget, et al., versus Donald Trump,
8 President of the United States, in the United
9 States District Court for the Eastern District
10 of New York.

11 Today's date is December 18, 2018,
12 and the time on my video screen is 9:59 a.m.

13 This deposition is being taken at
14 1999 K Street, Northwest, Washington, D.C., at
15 the request of Mayer Brown.

16 The videographer today is David
17 Voigtsberger of Magna Legal Services and the
18 court reporter today is Bonnie Russo of Magna
19 Legal Services.

20 Will counsel please introduce
21 yourselves and who you represent.

22 MR. CONNELLY: I'm Vincent Connelly

1 of the firm of Mayer Brown. I represent the
2 plaintiffs.

3 MS. WEBB: Brantley Webb from Mayer
4 Brown.

5 MS. NEMETZ: Miriam Nemetz from
6 Mayer Brown on behalf of the plaintiffs.

7 MR. CHO: Good morning. James Cho
8 with the U.S. Attorney's Office on behalf of
9 the government.

10 MR. SNELL: Kevin Snell from the
11 Division of Federal Programs Branch on behalf
12 of the government.

13 MS. SHAW: Liza Shah with United
14 States Citizenship and Immigration Services on
15 behalf of the government.

16 THE VIDEOGRAPHER: Will the court
17 reporter please swear in the witness.

18 BRANDON PRELOGAR,
19 Being first duly sworn, to tell the truth, the
20 whole truth and nothing but the truth,
21 testified as follows:

22 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

1 BY MR. CONNELLY:

2 Q. Would you tell us your name and
3 spell the last name for the sake of the
4 reporter.

5 A. Sure. Brandon Prelogar, last name
6 is P as in Peter, R-E-L-O-G-A-R.

7 Q. Have you been deposed previously?

8 A. No.

9 Q. Let me go through a little bit of
10 the broad overview of what we expect today and,
11 you know, the courtesies we will try to provide
12 to you.

13 This deposition is largely going to
14 be about your duties and responsibilities in
15 2017, although we will go backwards a little
16 bit in time to get started. I will try to keep
17 it chronological, largely that will be the
18 case.

19 A fair amount of the deposition will
20 just be asking you to comment and review
21 contemporaneous documents that were made and
22 either sent by you or to you in 2017.

1 Anytime that I ask a question that
2 is confusing or you are uncertain, just tell
3 me. I'm not trying to create awkward
4 questions, although frequently, I will do that,
5 so don't hesitate to ask me to reword the
6 question or explain what it is about a question
7 that you don't understand.

8 The -- you can take a break
9 absolutely at any time you want, consult with
10 your attorney anytime you want. Because this
11 is being videoed, my understanding is we will
12 probably be taking short breaks about every
13 hour or so, so that that machinery can be
14 refreshed.

15 I think by way of background, that
16 probably covers the territory, although should
17 you have any questions during the course of the
18 deposition, you're free to consult with your
19 attorney privately, you know, if you have any
20 reason that you are concerned about answering.

21 Let's see. Let's start a little bit
22 with your education and your work history.

1 Where did you go to college?

2 A. Dartmouth.

3 Q. And did you go -- did you have
4 graduate education after your undergraduate
5 degree?

6 A. I did.

7 Q. What was that?

8 A. I got a master's in international
9 relations.

10 Q. From what institution?

11 A. Yale.

12 Q. When did you receive your master's?

13 A. 2003.

14 Q. All right. Did you start your
15 employment history after getting the master's?

16 A. Shortly after.

17 Q. Why don't you -- I don't need a lot
18 of detail but why don't you march me through
19 it.

20 A. My employment history?

21 Q. Your employment history starting in
22 2003.

1 A. It started in 2004, January, at U.S.
2 Citizenship and Immigration Services, Office of
3 Refugee, Asylum and International Operations as
4 a presidential management fellow. That was a
5 two-year program.

6 Q. Where was that? Where were you
7 located?

8 A. I was located here in Washington,
9 D.C., and sent out on details sort of all over
10 the place.

11 Q. And that you said was two years, so
12 that extended through 2006?

13 A. Yeah, 2006.

14 Q. Give me some sense of being sent all
15 over the place, where did you go?

16 A. I went on training detail to
17 Georgia, the state, I did an asylum detail
18 working in an asylum office in San Francisco, I
19 did a refugee detail in Kenya, Uganda and
20 Ethiopia, where I processed refugee cases for
21 the U.S. Government. I processed adoption
22 cases in Guatemala. I think that about covers

1 it.

2 Q. All right. And now, what was the
3 next job that you held?

4 A. I converted into a refugee officer
5 in the Refugee Affairs Division of RAIIO, same
6 overall office.

7 Q. That was also in D.C.?

8 A. That was also in D.C.

9 Q. How long did you hold that position?

10 A. A -- probably a couple of years,
11 although during at least I think half of that,
12 I was detailed to headquarters, DHS policy,
13 where I transitioned to a permanent position
14 working for the special advisor for refugee and
15 asylum affairs.

16 And I subsequently took that
17 position on in an acting capacity and then in a
18 formal full-time permanent capacity.

19 Q. Where is headquarters located?

20 A. Here in Washington, D.C., at
21 Nebraska Avenue.

22 Q. So help me out, once you took on

1 these responsibilities, am I right, they start
2 basically in 2006, more or less?

3 A. Headquarters was probably 2007,
4 summer I believe.

5 Q. How long did you remain --

6 A. I stayed there --

7 Q. -- at headquarters?

8 A. -- until 2011.

9 Q. All right. What happened in 2011?

10 A. I transitioned back to U.S.
11 Citizenship and Immigration Services into the
12 Office of Policy and Strategy.

13 Q. In what capacity?

14 A. As the chief of the international
15 humanitarian affairs division.

16 Q. Briefly, what were your duties and
17 responsibilities once you became the chief of
18 the international humanitarian affairs
19 division?

20 A. So my division essentially oversees
21 the policy-making process, policy for all
22 humanitarian or a large portion of humanitarian

1 protection benefits that USCIS administers. It
2 includes refugee asylum, temporary protected
3 status among others.

4 Q. Does that remain your title and your
5 position?

6 A. It does.

7 Q. Have you -- were there any
8 interruptions between taking on the
9 responsibilities as the chief of that division
10 in about 2011 through the present?

11 A. Yeah, I did two extended details.

12 Q. What were those? Go ahead.

13 A. From -- in 2013, I think maybe
14 February of 2013 through June of 2014, I worked
15 at the National Security Council as a director
16 for human rights and refugee protection.

17 Following that, I came back and I
18 think -- took what -- was back for about a year
19 before I did a second extended detail with the
20 USCIS front office working as a counselor and
21 then as a senior counselor for the director of
22 the agency.

1 Q. When did that occur?

2 A. So I think that that would have been
3 then the summer of 2015, maybe September 2015 I
4 started, through the end of the administration.

5 Q. Let me peel back just slightly.

6 When you with the National Security
7 Council assisting them, where were you located?

8 A. I was in the multilateral affairs
9 and human rights directorate.

10 Q. Here in Washington?

11 A. Sorry, yes, here in Washington, D.C.

12 Q. And briefly, what were your
13 responsibilities when you -- from February of
14 2013 through June of 2013?

15 A. My portfolio comprised human rights
16 issues as well as humanitarian protection and
17 particular refugee protection.

18 Q. And now moving on to September of
19 2015 through -- I think you told me through,
20 what, through the conclusion of the
21 administration --

22 A. That's right.

1 Q. -- you were a senior counselor for
2 the director?

3 A. That's correct.

4 Q. Who was the director at the time?

5 A. Leon Rodriguez.

6 Q. And this is the director of OP and
7 S?

8 A. No, of U.S. Citizenship and
9 Immigration Services, the agency.

10 Q. The director of USCIS?

11 A. Yes.

12 Q. Okay. Help me out a little bit of
13 the organizational chart and you will correct
14 me if I am wrong. The OP&S is a part of USCIS,
15 correct?

16 A. Correct.

17 Q. And under OP&S on the organizational
18 chart, there are various divisions?

19 A. That's correct.

20 Q. Okay. And you've mentioned, you
21 know, that you for a time were the chief of the
22 international humanity affairs division?

1 A. That's right.

2 Q. When I say for a time, I guess for
3 some considerable time, but for these couple of
4 breaks, you have been doing that from 2011
5 through the percent?

6 A. That's correct.

7 Q. How many other divisions are there
8 under OP&S?

9 A. Five or six, of that order.

10 Q. And the -- all of those divisions
11 then ultimately report up to the chief of
12 office of planning and strategy?

13 A. Of policy and strategy.

14 Q. Policy and strategy, I'm sorry.

15 A. Yes, sir.

16 Q. I'm going largely be focusing on
17 2017.

18 Am I right that for a time in 2017,
19 the chief of the office of policy and strategy
20 was acting chief Larry Levine?

21 A. That's correct.

22 Q. And then sometime in the spring of

1 2017, a lady named Kathy Nuebel, N-U-E-B-E-L,
2 Kovarik, K-O-V-A-R-I-K, took over as chief?

3 A. That's correct.

4 Q. All right. Now just keeping --
5 moving up the organization chart, see if I have
6 it correctly, the office of policy and strategy
7 would ultimately report up to the director of
8 CIS?

9 A. Correct.

10 Q. And again, in 2017, for a time was
11 the gentleman James -- I think it's McCament,
12 M-C-C-A-M-E-N-T?

13 A. M as in Mary, McCament.

14 Q. Thank you. Was he the director or
15 acting director for part of 2017?

16 A. Yes.

17 Q. Which?

18 A. He was the acting director. He was
19 never the director.

20 Q. And then was he replaced during 2017
21 by Director Francis Cissna, C-I-S-S-N-A?

22 A. Yes.

1 Q. Then finally now, moving from
2 divisions through the office of policy and
3 strategy, now we are up to the director of CIS.

4 Does the director of CIS ultimately
5 report up to the secretary of the Department of
6 Homeland Security?

7 A. That's correct.

8 Q. All right. And again, just to get
9 our time frames correct, for a portion of 2017,
10 Secretary Kelly headed DHS; is that right?

11 A. That's right.

12 Q. And then when he departed, did the
13 acting secretary -- did Duke become the acting
14 secretary of DHS?

15 A. Yes.

16 Q. And finally -- and correct me if I'm
17 wrong -- was it early 2018 that Secretary
18 Nielsen took over as the -- the head of DHS?

19 I don't really mean to test you --

20 A. It was either --

21 Q. -- on the calendar?

22 A. -- it was either late 2017 or early

1 2018.

2 Q. Okay. Okay. Got it.

3 Let's go back now to your
4 responsibilities as the chief of the
5 International Humanitarian Affairs division.

6 In 2017 what were your
7 responsibilities in that capacity?

8 A. I engaged in policy making for the
9 agency with respect to the standard host of
10 issues that my division covers, including
11 policy relating to temporary protected status
12 programs, refugee, asylum, and a host of -- of
13 other issues, parol -- humanitarian parol, et
14 cetera.

15 Q. Did you supervise anyone in that
16 capacity?

17 A. Yes.

18 Q. How many people did you supervise?

19 A. Between three and five.

20 Q. And what were their duties or
21 titles, broadly speaking?

22 A. To serve as policy analysts. And

1 one as the deputy chief for the division to
2 help manage all the affairs of the division.

3 Q. And was that -- in 2017 was the
4 deputy chief Kathy Anderson?

5 A. Kathryn.

6 Q. Kathryn --

7 A. Uh-huh.

8 Q. -- Anderson. Thank you.

9 A. Except at the very beginning of
10 2017.

11 Q. Was there -- was there someone else
12 who was the deputy chief --

13 A. She was the acting chief until I
14 returned after inauguration.

15 Q. You had been senior counselor at the
16 CIS front office through the end of the Obama
17 administration; and then, with the change to
18 the Trump administration, she had been acting,
19 but then you came back, and then she -- she
20 returned to be deputy?

21 A. She became --

22 Q. Or --

1 A. -- deputy.

2 Q. -- became deputy?

3 A. Uh-huh.

4 Q. Okay. I'm going to show you what I
5 marked as exhibit KA-1. So you understand how
6 this will go today, I'm going to -- I'll hand
7 it to the court reporter. She'll put a label
8 on it and give it to you. I'll give copies to
9 all of your attorneys so that they can follow
10 along.

11 And throughout the day, you are
12 openly invited to fully familiarize yourself
13 with the document in whatever time it takes
14 you.

15 Occasionally I will be focusing on a
16 particular part of the document, and I'll tell
17 you that in advance. But you feel free to stay
18 with the document until you're comfortable, you
19 know, answering question.

20 MR. CHO: Are you using the same
21 exhibits as last week?

22 MR. CONNELLY: I'm -- any time that

1 we have used -- that we're reusing an -- or
2 using a same exhibit, I'm keeping that
3 numbering system. I expect that there'll be a
4 few that we didn't use last week. And in those
5 circumstances, I'm just going to be using
6 numbers, where I'm going to start, I think, in
7 the 60 range. Because we left off somewhere in
8 the 50 range last week.

9 MR. CHO: Okay.

10 MR. CONNELLY: There'll only -- I --
11 I -- I suspect there'll only be a few of those.

12 MR. CHO: All right. The same
13 prefix as last time?

14 MR. CONNELLY: For all -- I'm going
15 to use -- I'm just going to -- yeah. For
16 example, this first document, which was the
17 same first document that we showed Kathryn
18 Anderson last week, I'm going to again call it
19 KA-1 because that's what we used it for last
20 week.

21 MR. CHO: Okay.

22 MR. CONNELLY: So I -- I'm guessing

1 that almost all the prefixes today are also
2 going to be KA, you know, 1 through something.

3 MR. CHO: What about the new ones?

4 MR. CONNELLY: I'm not going to use
5 a prefix. I'm just -- we're just going to
6 use --

7 MR. CHO: Okay.

8 MR. CONNELLY: -- a numbering
9 system.

10 We're doing our best then to --
11 no -- going forwarded to just stay with
12 numbers --

13 MR. CHO: Understand.

14 MR. CONNELLY: -- you know, so
15 that --

16 MR. CHO: Sure.

17 MR. CONNELLY: It's a little -- be
18 -- be easier and -- going back to them once all
19 of these depositions have concluded.

20 MR. CHO: That's fine.

21 BY MR. CONNELLY:

22 Q. KA-is the federal statute more

1 formally known as 8 USC Section 1254a, titled
2 "Temporary Protected Status."

3 Ready for a question?

4 A. Sure.

5 Q. Okay. Are you familiar with this
6 statute?

7 A. I am.

8 Q. And in the course of your duties at
9 CIS, do you work with this statute?

10 A. Yes.

11 Q. Do you regularly make use of it as a
12 part of your CIS duties?

13 A. Yes.

14 Q. If you would go with me to the
15 second page of the statute under -- it's in
16 bold, "(b) Designations."

17 Do you see that section?

18 A. Yes.

19 Q. And then under that section there
20 are further subcategories: (A), (B) and (C).

21 Do you see those?

22 A. Yes.

1 Q. Are you familiar with those sections
2 of this statute?

3 A. Yes.

4 Q. And in your -- in your
5 responsibilities, do you help make
6 determinations on whether, for example, armed
7 conflict or earthquakes or other extraordinary
8 and temporary conditions exist in a foreign
9 state as a part of the process of determining
10 TPS status?

11 MR. CHO: Object to the form.

12 You can answer.

13 THE WITNESS: Yes.

14 BY MR. CONNELLY:

15 Q. This is the Designation section. So
16 I'm going to ask you questions that kind of
17 leaps outside of just the statute.

18 Do you have a role in determining
19 whether foreign countries will be designated
20 for a TPS status?

21 MR. CHO: Object to the form.

22 You can answer.

1 THE WITNESS: Yes.

2 BY MR. CONNELLY:

3 Q. Okay. What role is that?

4 A. My division leads at the working
5 level the TPS policy process, including
6 relating to TPS designations to help inform the
7 decision of -- of more senior leadership,
8 including up to and through the secretary of
9 Homeland Security.

10 Q. Let's go now on Page 3 of this first
11 document. There's another section that begins
12 in bold entitled "Periodic Review,
13 Terminations, and Extensions of Designations."

14 Are you -- are you with me on that?

15 A. Yes.

16 Q. Okay. Similarly, do you play a role
17 in the determination of extensions of TPS
18 status?

19 MR. CHO: Object to the form.

20 Go ahead.

21 THE WITNESS: Yes.

22 BY MR. CONNELLY:

1 Q. And tell me is that -- is that the
2 same, or is it different in some fashion than
3 how you've just described your role in the
4 determination of TPS status?

5 MR. CHO: Object to the form.

6 THE WITNESS: It's the same as I
7 described my role in broad brushstrokes
8 relating to the designation process.

9 BY MR. CONNELLY:

10 Q. Focusing on the extensions of TPS
11 designations, is there a process within CIS to
12 gather information in order to assist the
13 decision maker in deciding whether or not to
14 extend TPS status?

15 A. Yes.

16 MR. CHO: Object to the form.

17 BY MR. CONNELLY:

18 Q. And could you generally describe for
19 me what that information gathering process is
20 and -- and how you fit into it?

21 MR. CHO: Object to the form.

22 Go ahead.

1 THE WITNESS: The process for
2 gathering information to inform decision makers
3 relating to the periodic review for TPS
4 designations to make a determination whether to
5 extend or terminate or in some cases
6 redesignate entails reaching out to a -- the --
7 the RAIIO, Refugee Asylum and International
8 Operations, directorate within USCIS to request
9 a country conditions assessment for the
10 relevant country as well as reaching out to
11 counterparts at the Department of State to
12 initiate their own process of putting together
13 a country conditions assessment and generally a
14 recommendation that is then passed back to my
15 department, my agency and my division.

16 We use the information provided by
17 the research unit in RAIIO as well as the
18 assessment and recommendation provided by the
19 Department of State to then create a decision
20 memo from the director of the agency to the
21 secretary of Homeland Security relating to the
22 TPS designation decision.

1 Q. You mentioned a precondition
2 assessment? Did I get that right? I can't
3 read my own handwriting. I'm sorry.

4 The -- the information that's
5 gathered by RAIIO and by --

6 A. Uh-huh.

7 Q. -- it's counterpart in the state
8 department.

9 A. Country conditions assessment.

10 Q. Is that a written document?

11 A. Yes.

12 Q. And am I correct also that the
13 decision memo that is created and provided to
14 the head of -- the director of CIS, that -- is
15 that also a written document?

16 A. Yes.

17 Q. Is a part of the process in
18 gathering this information an effort to
19 determine the -- the current conditions in a
20 country that is being considered for an
21 extension?

22 MR. CHO: Object to the form.

1 You can answer.

2 THE WITNESS: Yes.

3 BY MR. CONNELLY:

4 Q. And who -- or how -- how is it
5 determined what aspects of a country's
6 condition are considered or found to be
7 relevant as far as determining whether an
8 extension should be granted?

9 MR. CHO: Object to the form.

10 THE WITNESS: Can you repeat the
11 question.

12 BY MR. CONNELLY:

13 Q. Sure.

14 Travel with me. Here's where I'm
15 at. I'm -- I'm at the earliest stage of the
16 process, which, if I understand from you, RAIO
17 and its equivalent state department
18 counterpart, they are kind of most ground level
19 in terms of gathering information about country
20 conditions.

21 Am I -- am I right about that?

22 MR. CHO: Object to the form.

1 THE WITNESS: That's correct. RAIIO
2 provides a -- an independent country conditions
3 assessment. State department, we reach out to
4 counterparts there who, in turn, reach out to
5 the regional bureau and post to gather country
6 conditions information that they then use in --
7 in -- along with the -- the statute to provide
8 an assessment about the country conditions and
9 whether the statutory conditions continue to be
10 met with respect to a TPS designation.

11 BY MR. CONNELLY:

12 Q. And my question now is, for those
13 folks, to the extent, you know what are the
14 type of country conditions that they look at,
15 that that they consider, you know, relevant in
16 order to help the decision makers decide on
17 whether or not to grant an extension?

18 MR. CHO: Object to the form.

19 THE WITNESS: They look at country
20 conditions that would appear to be most
21 relevant to the statutory conditions that we
22 are required to look at under INA Section 244.

1 BY MR. CONNELLY:

2 Q. Does your office ever make an
3 independent assessment of a country's current
4 conditions beyond the information that has been
5 provided to it by RAIIO or the -- or the state
6 department equivalent?

7 MR. CHO: Object to the form. Calls
8 for speculation.

9 You can answer.

10 THE WITNESS: Yes.

11 BY MR. CONNELLY:

12 Q. How does that work?

13 MR. CHO: Object to the form.

14 THE WITNESS: At times leadership of
15 the office has conducted or asked others to
16 conduct independent country conditions research
17 that is then included in the decision
18 memoranda.

19 As well, there have been occasions
20 where -- where we, within my division, have dug
21 in a little bit deeper into country conditions
22 research.

1 With that said, on the whole, our
2 practice has been to -- to rely upon the
3 information provided by the country conditions
4 experts within RAIIO and also obviously the
5 assessment provided by state.

6 BY MR. CONNELLY:

7 Q. And then am I correct, if I
8 understand what you've told me so far, that
9 whether relying -- relying upon RAIIO and state
10 or perhaps adding, you know, additional efforts
11 within your own office, that comes together as
12 a decision memo that moves up to the director
13 of CIS?

14 A. That's correct.

15 MR. CHO: Object to the form.

16 BY MR. CONNELLY:

17 Q. Let me ask just about just a few
18 other entities that you can help educate me on
19 what -- what role, if any, they might have in
20 the process considering an extension of TPS for
21 a country.

22 What about -- the acronym is IHAD.

1 You can help me out with that.

2 It's a -- it's a USCIS, I think,
3 office?

4 A. That's my division, the
5 International Humanitarian Affairs Division.

6 Q. That's easy. Thank you. I --
7 because I'm not as familiar with it as you are,
8 I -- it -- it didn't -- it didn't immediately
9 click. All right. So we've covered that.

10 What about the SCOPS?

11 A. The service center operations
12 directorate. They're the operational
13 directorate that -- that adjudicates the TPS
14 application and associated EAD application.

15 Q. Explain that a little bit to me.

16 What do you mean by that they
17 adjudicate it?

18 A. So while we conduct policy for the
19 program, we don't adjudicate individual
20 applications for immigration benefits within
21 USCIS. Operational components within USCIS,
22 including RAIIO, SCOPS, and then the field

1 office directorate conduct the actual
2 adjudications of applications and petitions for
3 immigration benefits that the agency
4 administers.

5 Q. And occasionally I've seen in some
6 contemporaneous 2017 e-mails a reference to
7 Neufeld's office, N-E-U-F-E-L-D-S.

8 I'm guessing that that's a reference
9 to someone who perhaps is in charge of SCOPS in
10 2017?

11 A. That's correct. He's in charge of
12 SCOPS.

13 Q. What -- what's his first name?

14 A. Don.

15 Q. And did he remain in charge
16 throughout 2017?

17 A. Yes.

18 Q. Do you know whether the role of --
19 of SCOPS regarding the 2017 decision making
20 regarding extension of the Haiti TPS status,
21 whether the role of SCOPS increased or
22 decreased as -- as compared to its role in

1 similar extensions?

2 MR. CHO: Object to the form.

3 THE WITNESS: Whether its role with
4 respect to the --

5 BY MR. CONNELLY:

6 Q. The -- the decision to extend and
7 let -- the 2017 decisions regarding Haiti,
8 which I'll represent was first an extension and
9 later a termination?

10 MR. CHO: Object to the form.

11 THE WITNESS: SCOPS has generally
12 played the same role with respect to TPS
13 determination, which has generally been
14 confined to providing an operational
15 perspective on the impact of potential TPS
16 decisions.

17 BY MR. CONNELLY:

18 Q. And to your observation, did it play
19 the same role?

20 And again, I'm just focusing on
21 Haiti.

22 A. It played the same role.

1 Q. In 2017 has it had in --

2 A. It provided operational
3 considerations and input, as it had in the
4 past.

5 Q. All right. How about RAI0, R-A-I-O;
6 was its analysis on the Haiti situation in
7 2017, to your observation, treated at --
8 similarly to how that analysis had been treated
9 in the past in the -- in this decision making
10 process for extensions?

11 MR. CHO: Object to the form.

12 THE WITNESS: No.

13 BY MR. CONNELLY:

14 Q. What was the difference?

15 MR. CHO: Same objection.

16 Go ahead.

17 THE WITNESS: In my view,
18 historically greater deference was given to the
19 report provided by the research unit.

20 BY MR. CONNELLY:

21 Q. Greater deference had been given
22 prior to 2017?

1 MR. CHO: Object to the form.

2 THE WITNESS: Yes.

3 BY MR. CONNELLY:

4 Q. What about -- were there Department
5 of State recommendations in 2017 regarding the
6 TPS status of Haiti?

7 MR. CHO: Object to the form.

8 THE WITNESS: Were there
9 recommendations?

10 MR. CONNELLY: Yes.

11 THE WITNESS: Yes.

12 BY MR. CONNELLY:

13 Q. And to your best recollection, were
14 those recommendations followed or ignored;
15 or -- or perhaps some were followed, and some
16 were ignored?

17 MR. CHO: Object to the form.

18 THE WITNESS: Were they followed. I
19 -- it's -- it's a -- that's difficult for me to
20 answer because just because a decision was
21 consonant with a state department
22 recommendation doesn't necessarily mean to me

1 that that recommendation was followed, per se.

2 BY MR. CONNELLY:

3 Q. Is there -- what's your best
4 recollection in 2017 whether the decisions that
5 were made regarding Haiti were consonant with
6 Department of State recommendations?

7 MR. CHO: Object to the form.

8 There were two decisions in 2017.

9 Do you want to clarify --

10 MR. CONNELLY: Fair --

11 MR. CHO: -- which one you're
12 referring to?

13 MR. CONNELLY: Fair point.

14 BY MR. CONNELLY:

15 Q. Will that -- maybe that will make it
16 easier for you. So let's break that up.

17 Was the decision in May of 2017 to
18 extend Haiti's TPS status, was that consonant
19 with DOS recommendations at the time?

20 MR. CHO: Object to the form.

21 THE WITNESS: I believe it was. I'm
22 responding tentatively only because I know that

1 their recommendation was to extend at least up
2 until the time when the secretary made the
3 decision to extend.

4 We received a formal assessment
5 recommendation subsequent to that decision
6 being made. And I believe it was also to
7 extend. But I cannot remember with 100 percent
8 certainty. It wasn't relevant at that point.

9 BY MR. CONNELLY:

10 Q. Do -- do -- was -- are you able to
11 recollect -- in the fall of -- of 2017, when
12 ultimately a decision was made to terminate, do
13 you recollect what the Department of State
14 recommendation was at that time?

15 MR. CHO: Object to the form.

16 THE WITNESS: Yes.

17 BY MR. CONNELLY:

18 Q. What was that?

19 A. I believe it was to terminate.

20 Q. Okay. So your best recollection is
21 Department of State had recommended
22 extending -- and -- and I'll -- I'll put it in

1 the May 2017 time range -- and then by the fall
2 of 2017 it recommended terminating?

3 MR. CHO: Object to the form.

4 THE WITNESS: Yes.

5 BY MR. CONNELLY:

6 Q. I'm going to ask you -- we're not
7 going to go into any detail. But again, I'm
8 just getting an overview with you and some of
9 the other decision makers.

10 In -- in 2017 did you ever have any
11 conversations with chief of OPS Kathy Nuebel
12 Kovarik about the TPS status of Haiti?

13 MR. CHO: Object to the form.

14 You can answer.

15 THE WITNESS: Yes.

16 BY MR. CONNELLY:

17 Q. Did you ever have any conversations
18 in 2017 with Robert Law on the same topic?

19 MR. CHO: Object to the form.

20 THE WITNESS: Yes.

21 BY MR. CONNELLY:

22 Q. What was Robert Law's position in

1 2017?

2 A. He serves as a counselor advisor to
3 the chief of the office of policy and strategy.

4 Q. Did he -- did he join CIS in 2017?

5 A. Yes.

6 Q. Did you have any -- I'll -- I'll
7 take them in order.

8 Did you have any conversations with
9 Secretary Kelly in 2017 regarding Haiti's TPS
10 status?

11 A. No.

12 MR. CHO: Object to the form.

13 BY MR. CONNELLY:

14 Q. Okay. And how -- any conversations
15 with his successor Acting Secretary Duke?

16 MR. CHO: Object to the form.

17 THE WITNESS: About Haiti --

18 BY MR. CONNELLY:

19 Q. About Haiti's --

20 A. -- TPS?

21 Q. -- yeah, TPS. Right.

22 A. No.

1 Q. And finally -- perhaps it would have
2 been -- this would have -- perhaps be in late
3 2017 or early 2018.

4 Any conversations was Secretary
5 Nielsen --

6 MR. CHO: Object to the form.

7 BY MR. CONNELLY:

8 Q. -- about TPS -- the TPS status of
9 Haiti?

10 MR. CHO: Object to the form.

11 THE WITNESS: No.

12 BY MR. CONNELLY:

13 Q. Finally, just broadly in terms of
14 conversations, did you ever have any
15 conversations with anyone from the White House
16 in 2017 about the TPS status of Haiti?

17 MR. CHO: Object to the form.

18 THE WITNESS: Yes.

19 BY MR. CONNELLY:

20 Q. And who did you have conversations
21 with?

22 MR. CHO: Object to the form.

1 THE WITNESS: Personnel from the
2 national security counsel as well as the
3 domestic policy counsel, perhaps others within
4 the umbrella of the White House.

5 BY MR. CONNELLY:

6 Q. I don't want to go into the content
7 of the conversations, but your best
8 recollection. I'll take them separately.

9 How often did you speak with anyone
10 at the National Security Council in 2017 about
11 Haiti?

12 And as best you can tell, when would
13 those conversation have occurred?

14 MR. CHO: Object to the form.

15 THE WITNESS: With some degree of
16 regularity, meaning perhaps something in the
17 order of monthly.

18 BY MR. CONNELLY:

19 Q. And would -- were -- were monthly
20 meetings with the National Security Council
21 personnel unusual, or was that a standard part
22 of your process that occurred even prior to

1 2017?

2 MR. CHO: Object to the form.

3 THE WITNESS: They weren't monthly
4 meetings. There were meetings, but largely it
5 was more like touching base through e-mail and
6 phone conversations.

7 BY MR. CONNELLY:

8 Q. And I'm just trying to find out if
9 there -- if that was different or the same, as
10 far as the process goes, as -- as touch points
11 to the National Security Council.

12 Were those about the same or
13 different in the amount of occurrence in 2017
14 compared to earlier years?

15 MR. CHO: Object to the form.

16 THE WITNESS: It's varied. But it
17 was about the same.

18 BY MR. CONNELLY:

19 Q. Do you recall who the people from
20 the National Security Council were that you
21 would have had conversations or -- or points of
22 contact in 2017?

1 MR. CHO: Object to the form.

2 THE WITNESS: Yes.

3 BY MR. CONNELLY:

4 Q. Who are they?

5 A. This is at the National Security
6 Council.

7 Q. Yes.

8 A. A gentleman named Scott Oudkirk.

9 Q. Maybe you could spell that for the
10 reporter or give it a best try.

11 A. I'll give it a best try. I think
12 it's S-C-O-T-T, O-U-D-K-R-I-R-K --
13 O-U-D-K-I-R-K.

14 Q. What's his position or title?

15 A. He was a director within the trans
16 border directorate of the National Security
17 Council. It's called something else now. I
18 think BIT may be the acronym.

19 Q. How long had he been with the
20 National Security Council in 2017?

21 A. He started there in 2017.

22 Q. Anybody else that you recall having

1 contact within the National Security Council --

2 A. Yes.

3 Q. -- in 2017?

4 Go ahead.

5 A. Melissa Bishop.

6 Q. Okay. How long had she been there?

7 A. I don't know. But I think -- I do
8 not know.

9 Q. What's her position?

10 A. I believe she was also a director.

11 Q. Okay. Anyone else at the National
12 Security Council?

13 A. Yes.

14 Q. Who is that?

15 A. Jill St. John.

16 Q. And -- and what -- what is her
17 position, and how long, to your knowledge, was
18 she at the National Security Council?

19 A. She was also a director, I believe.
20 And I also don't know how long she was there,
21 but I think it predated 2017.

22 Q. Anyone else at the National Security

1 Council?

2 A. Yes. One other gentleman whose name
3 I can't recall for sure who was heading up --
4 was serving as the -- I believe a director for
5 Canada.

6 Q. Do you know how long he --

7 A. Do not.

8 Q. -- had been serving at the National
9 Security Council?

10 You don't know? Okay.

11 Does that presently exhaust your
12 recollection of the people at the National
13 Security Council that you had communications
14 with in 2017?

15 A. I -- I -- yes. There were others
16 present at some of these meetings who were
17 clearly also from the NSC. But I don't recall
18 who they were.

19 Q. All right. Now let's switch to the
20 Domestic Policy Council.

21 Give me a little description of
22 that.

1 What -- what is that organization?

2 MR. CHO: Object to the form.

3 You can answer.

4 THE WITNESS: It is also a component
5 of the White House. It historically is more
6 focused on domestic policy, while the NSC tends
7 to be more outwardly focused. And -- and also
8 has a -- has -- has been heavily involved in
9 policy making relating to immigration-related
10 matters.

11 BY MR. CONNELLY:

12 Q. And I hope this is implicit, but let
13 me make it explicit.

14 Absent my saying to the contrary,
15 all of my questions are related to Haiti.

16 A. Got it.

17 Q. So, for example -- but I -- so I'll
18 make it explicit once again.

19 With -- in 2017 did you have
20 conversations or -- or communications with
21 people on the -- I think you told me --
22 Domestic Policy Council regarding Haiti?

1 MR. CHO: Object to the form.

2 And with the caveat do not reveal
3 any substantive conversations that you had.
4 With that instruction, you can go ahead and
5 answer.

6 THE WITNESS: They were -- at least
7 one individual from DPC was involved in a
8 Haiti-related conversation.

9 BY MR. CONNELLY:

10 Q. Who was that individual?

11 MR. CHO: Object to the form.
12 You can answer.

13 THE WITNESS: Veprek.

14 BY MR. CONNELLY:

15 Q. I'm sorry?

16 A. Veprek.

17 Q. Could you spell that name?

18 A. V-E-P-R-E-K, I believe.

19 Q. What was that person's
20 responsibility at the Domestic Policy Council?

21 MR. CHO: Object to the form.

22 THE WITNESS: I don't know what his

1 position was. He was serving on detail,
2 working as a -- on immigration related matters,
3 among others.

4 BY MR. CONNELLY:

5 Q. Do you remember when this -- was it
6 a conversation?

7 What -- what was the point of
8 contact with Mr. Veprek?

9 MR. CHO: Object to the form.

10 THE WITNESS: He was at one of the
11 NSC meetings I attended.

12 BY MR. CONNELLY:

13 Q. Okay. Do you recall approximately
14 when that occurred?

15 A. It occurred between the May decision
16 and the November decision.

17 Q. So it occurred sometime between the
18 May decision to extend Haiti and the November
19 decision to terminate Haiti.

20 A. That is correct.

21 Q. Okay. Historically had you ever had
22 any communication or contact with anyone at the

1 Domestic Policy Council prior to 2017?

2 MR. CHO: Object to the form.

3 Without going into any substance,
4 you can go ahead and answer.

5 THE WITNESS: Yes.

6 BY MR. CONNELLY:

7 Q. Can you give -- could you give me an
8 example of some earlier time when you had had
9 contact with the DPC?

10 MR. CHO: Object to the form.

11 You can answer.

12 THE WITNESS: Sure. Throughout the
13 last administration in various capacities I had
14 contact, sometimes ongoing contact, with
15 members of DPC. In particular, when I was
16 working at the National Security Council, we
17 worked hand in glove on any number of matters.

18 BY MR. CONNELLY:

19 Q. Okay. I guess maybe I should have
20 been a little more careful in my questioning.

21 Aside from when you were, you
22 know -- when you were off on that assignment.

1 I was really speaking in terms of when you were
2 serving in your, you know, current capacity --

3 A. Uh-huh.

4 Q. -- as chief of one of the divisions.

5 MR. CHO: Object to the form.

6 THE WITNESS: Did I have contact
7 with members of DPC? And are we again cabining
8 this to Haiti TPS Haiti related?

9 MR. CONNELLY: No, no.

10 THE WITNESS: No.

11 MR. CONNELLY: More broadly.

12 MR. CHO: Object to the form.

13 Again, we are here on Haiti. So I
14 would instruct that you do limit your answer to
15 Haiti.

16 MR. CONNELLY: You know what?

17 Actually, it's probably a better question.

18 Yeah. I'll -- I'll -- I'll -- let's -- let's
19 start fresh.

20 BY MR. CONNELLY:

21 Q. Let's -- let's limit it to -- I'm
22 just trying to find out, in your capacity as

1 chief, prior to 2017 had you had contact with
2 anyone at DPC regarding Haiti?

3 MR. CHO: Object to the form.

4 You can answer.

5 THE WITNESS: Yes.

6 BY MR. CONNELLY:

7 Q. Can you tell me roughly when that
8 would have occurred?

9 MR. CHO: Object to the form.

10 Again, without going into any
11 substance, you can answer.

12 THE WITNESS: During the course of
13 the Obama administration.

14 BY MR. CONNELLY:

15 Q. Next I'm going to show you what was
16 previously marked, so we will continue to mark
17 it as KA-2A.

18 I only have a few questions that are
19 really quite broad in nature. But let me know
20 when you're comfortable having reviewed the
21 document.

22 A. I'm familiar with the document.

1 Q. And this document is -- on its face
2 is -- references 75 FR 3476-02. And then a
3 little further in the -- in the heading, it
4 says: "Designation of Haiti for Temporary
5 Protected Status, Thursday, January 21st,
6 2010."

7 Is -- is this document what is, you
8 know, frequently, you know, shortened as -- as
9 far as jargon to -- referred.

10 To inside of CIS as an FRN?

11 A. Yes.

12 MR. CHO: Object to the form.

13 Q. Okay. And are you familiar with
14 this particular FRN from January of 2010?

15 A. I am.

16 Q. Okay. As a matter of calendar
17 logic, this -- this document was generated
18 prior to your taking over as chief, correct?

19 A. Yes.

20 Q. Okay. In the course of your duties
21 as chief from 2011 through the present, were
22 there times when you, you know, made use of or

1 referenced this particular document?

2 A. Yes.

3 Q. Okay. And I'm going to be showing
4 you a series of these documents.

5 If you would turn to Page 3 of this
6 particular document, there's a -- a bolded
7 section of: "Why is the secretary designating
8 Haiti for TPS?"

9 Do you see that?

10 A. Yes.

11 Q. And again, I'm -- I'm -- I'm jumping
12 ahead a little bit, but I'm guessing that
13 you'll be able to tell me.

14 Is -- is that format something that
15 repeats in -- in subsequent FRN documents?

16 A. Yes.

17 Q. And so just using this as -- for a
18 -- a general question, once you become chief --
19 and we'll get to the -- the other documents --
20 do you have any input into the content of the
21 section titled "Why is the secretary
22 designating Haiti for a TPS?"

1 MR. CHO: Object to the form.

2 THE WITNESS: Yes.

3 BY MR. CONNELLY:

4 Q. Okay. And what -- what is your
5 input into the content that follows that title?

6 MR. CHO: Object to the form.

7 Is there a specific time period
8 you're referring to?

9 BY MR. CONNELLY:

10 Q. You know, after you're chief in
11 2011.

12 A. Yes. My offices played a role in
13 either drafting or revising the content put
14 into that section.

15 Q. I'm going to show you a series of
16 these -- these documents and probably have the
17 same few questions for each of them. The next
18 one is marked KA-2.

19 Am I correct that this is the FRN
20 for the Haiti extension on May 19th, 2011?

21 MR. CHO: Object to the form. The
22 document speaks for itself.

1 You can answer.

2 BY MR. CONNELLY:

3 Q. You can answer.

4 A. Yes.

5 Q. I -- I just want to make sure that
6 on the record it's clear we're talking about
7 the same document. Okay.

8 And I know you became chief in 2011,
9 but I don't know, you know, exactly what time.

10 So tell me were you -- were you the
11 chief at the time that this FRN was generated?

12 A. No. I was still at headquarters.

13 Q. Let's go to the next one then, KA-5.

14 Is this the FRN for the extension of
15 TPS status for Haiti on October 1, 2012?

16 A. Yes.

17 Q. Now at this time, you are the chief
18 of IHAD, correct?

19 A. That's correct.

20 Q. Did you have any input into the
21 information that follows the question: "Why is
22 the secretary extending the TPS designation for

1 Haiti for TPS through July 22, 2014," which
2 begins on the bottom of Page 3 and extends
3 through -- it appears it extends through, I
4 guess Page 5 of the document.

5 MR. CHO: Object to the form.

6 THE WITNESS: Yes, I believe so.

7 BY MR. CONNELLY:

8 Q. And what was your involvement in
9 generating that information?

10 A. I think that my division, working
11 with counterparts in USCIS, drafted it.

12 Q. Do you then review their draft?

13 A. Yes.

14 Q. Is that how it works? Okay.

15 And you are free, I take it, to make
16 edits or suggestions prior to the decision memo
17 moving on up to the chief of OP&S?

18 MR. CHO: Objection to form.

19 THE WITNESS: Yes.

20 MR. CHO: I'm sorry. To clarify,
21 you are referring to FRN or the decision memo?

22 MR. CONNELLY: No, I think -- I was

1 referring to the decision memo.

2 MR. CHO: Okay.

3 BY MR. CONNELLY:

4 Q. As best you are able to recall, is
5 the information that's contained on Pages 3
6 through 5 of this FRN accurate?

7 MR. CHO: Object to the form.

8 THE WITNESS: Yes.

9 BY MR. CONNELLY:

10 Q. I have a few more of these. Next
11 one is KA-6.

12 Am I correct that this is the FRN
13 for the Haiti extension on March 3, 2014?

14 A. Yes.

15 Q. And again, did you have some role in
16 pulling together the information that is
17 contained under the section entitled: "Why is
18 the secretary extending the TPS designation for
19 Haiti through January 22, 2016?"

20 A. Can you repeat the question.

21 Q. Sure. Why don't I have the reporter
22 read it back.

1 THE WITNESS: Please read it back.

2 (The record was read as requested.)

3 MR. CHO: Objection to form.

4 THE WITNESS: Yes.

5 BY MR. CONNELLY:

6 Q. And again, take your time if you
7 would like.

8 To the best of your recollection, is
9 the information contained in that section of
10 this document?

11 A. No, I apologize. No.

12 Q. Okay. Help me out.

13 MR. CHO: Just so the record is
14 clear, what question are you responding to?

15 THE WITNESS: Whether I had a role
16 in the information that was put together for
17 this section.

18 BY MR. CONNELLY:

19 Q. Okay. I'm going to help you a bit.
20 I'm going to suggest something but you're going
21 to get this straightened out.

22 Is this -- might have been, is this

1 a possibility this was a time when you were off
2 on an interim assignment?

3 A. That's right. I was at NSC during
4 this time.

5 Sorry. I thought it was -- I was
6 thinking of 2013 and for the extensive period
7 leading up to that, I would have had a role,
8 but given that's 2014, that was a full year
9 after I was at NSC, I would say I had no role.

10 Q. All right. Let's do one more
11 document which is a logical break anyway, and
12 then the videographer wants us to stop talking.

13 MR. CHO: Just so the record is
14 clear, are you redrawing your question about
15 whether the FRN is accurate?

16 MR. CONNELLY: Yes.

17 MR. CHO: Okay. Just so it's clear.

18 BY MR. CONNELLY:

19 Q. I will give you KA-7. And I'll
20 represent as you're going to review it, this is
21 August 25, 2015, so you will think back in
22 terms of whether you are back in your chief

1 capacity or not.

2 Is this the FRN for the extension of
3 TPS status for Haiti as of August 25, 2015?

4 A. Yes.

5 Q. And going back to my notes, am I
6 correct, you would have been serving as chief
7 of IHAD through August, at least through and
8 beyond August of 2015?

9 A. Correct.

10 Q. I guess just slightly beyond, in
11 September, you took another leave; is that
12 right; in 2015?

13 A. I believe I started right at the
14 start of September. There was a bit of a
15 handoff period in late August.

16 Q. Okay. Have I given you enough time
17 to review the document?

18 A. Yes.

19 Q. Again, on, you know, similarly
20 formatted on Pages 4 and 5 of this document,
21 the question is posed: "Why is the secretary
22 extending the TPS designation for Haiti through

1 July 22, 2017?"

2 Do you see that?

3 A. Yes, sir.

4 Q. And to your best recollection, is
5 the information that is contained under that
6 section for the next two pages accurate?

7 MR. CHO: Objection to form.

8 THE WITNESS: Yes, it's accurate.

9 MR. CONNELLY: Okay. At the
10 videographer's request, let's take a quick
11 break.

12 THE VIDEOGRAPHER: Going off the
13 record at 11:00.

14 (A short recess was taken.)

15 THE VIDEOGRAPHER: We are back on
16 the record at 11:08.

17 MR. CONNELLY: I have provided the
18 witness with a document marked KA-8, which is
19 -- appears to be a Temporary Protected Status:
20 Calendar Year 2016 Annual Report to Congress.

21 BY MR. CONNELLY:

22 Q. I am only going to be asking you a

1 question about its general format and then the
2 Haiti information on Pages 24 and 25. In case
3 that helps you better acclimate yourself to the
4 document.

5 MR. CHO: I'm going to object to the
6 introduction of the exhibit. It is marked DPP,
7 indicating that it contains deliberative
8 process material, but since it was used at the
9 prior deposition, I will allow questions about
10 the exhibit.

11 I will note as counsel noted last
12 time, that the first page does say insert date
13 on the cover, suggesting that it was possibly a
14 draft document.

15 You can go ahead and answer
16 questions about the document, Mr. Prelogar.

17 BY MR. CONNELLY:

18 Q. Let me ask first: Do you have any
19 role in generating the information that is
20 contained in this document?

21 A. Yes.

22 Q. What role is that?

1 A. We were SCOPS team, that's the other
2 office, drafts -- drafts these initially, and
3 then I believe they pull content from, for
4 these sections on the designations that largely
5 we were responsible for.

6 Q. And your lawyer very correctly
7 points out that there is no date on the front
8 of this document.

9 I will represent to you that it's my
10 good-faith belief that a document -- a more
11 final documents of this type was generated on
12 January 27, 2017, but you don't have to accept
13 that as factually accurate.

14 Let me ask you a question: To your
15 recollection, was there a calendar year 2016
16 annual report like this provided to Congress
17 regarding temporary protected status?

18 A. Yes.

19 Q. Do you know whether there was also
20 -- whether there was one in the following year,
21 in other words, was there a calendar year 2017
22 annual report that presumably would have been

1 provided sometime near the early part of 2018?

2 A. Yes.

3 Q. For the document that you have
4 before you, KA-8, if you will go to Page 24 on
5 to 25, do you see that that section appears to
6 be about Haiti?

7 A. Yes.

8 Q. And there is a bold observation near
9 the top of the page which I will quote: "The
10 information below describing the reasons for
11 the extension of Haiti's TPS designation has
12 been excerpted from the August 25, 2015 Federal
13 Register notice that announced the extension."

14 And does that comport -- if you know
15 at all, is that then what follows for the next
16 two pages, a portion of what had been in the
17 previous FRN notice on August 25, 2015?

18 MR. CHO: Object to the form.

19 You can answer.

20 Do you want him to compare the two
21 documents?

22 BY MR. CONNELLY:

1 Q. If that's helpful, you are welcome
2 to. The other document was the one that I just
3 showed you, KA-7.

4 A. Yes.

5 Q. And whose office -- I think you may
6 have already told me, but whose office is it
7 that pulls together this information for this
8 annual report? Is that SCOPS?

9 A. Yes.

10 Q. I'm going to hand you KA-9 which is
11 titled: "Haiti TPS Addendum, last updated
12 February 7, 2017, Hurricane Matthew."

13 MR. CHO: Same objection. Again,
14 this document is Bates-numbered DPP, suggesting
15 that it contains deliberative process material.

16 Again, I'm going to allow the
17 witness to answer questions about this exhibit
18 though.

19 BY MR. CONNELLY:

20 Q. Can you tell me, is this a public
21 document?

22 A. I can. It's not.

1 Q. It's not. So who is this -- who
2 generates this document and for what purpose?

3 A. The research unit within RAIIO
4 generated this document to be included in our
5 Haiti determination, TPS determination process
6 in 2017.

7 Q. I am not certain the date that this
8 document was generated, at least there is not a
9 date on it although obviously, from some of the
10 internal information, we can roll in and out
11 the general time frame.

12 Do you know with any precision
13 exactly when this document was generated?

14 MR. CHO: Object to the form.

15 You can answer.

16 THE WITNESS: Yes, I believe it was
17 generated after the inception of the new
18 administration, current administration, and I
19 believe in February.

20 BY MR. CONNELLY:

21 Q. All right. Did you have any role at
22 all in generating the document?

1 MR. CHO: Object to the form.

2 THE WITNESS: Yes.

3 BY MR. CONNELLY:

4 Q. What was your role?

5 A. We directed generating the document,
6 my division.

7 Q. When you say, "directed," you mean
8 you requested the RAI0 research unit to work up
9 the information that is contained in the
10 document?

11 A. That's correct.

12 Q. All right. And then the subhead
13 line on this is Hurricane Matthew.

14 Am I correct, I mean, obviously,
15 take a chance to read it, but is this document
16 largely about Hurricane Matthew and what effect
17 it might have on Haiti and therefore, what
18 effect it might have on the TPS status of
19 Haiti?

20 MR. CHO: Object to the form.

21 THE WITNESS: Yes.

22 BY MR. CONNELLY:

1 Q. Did you review the document before
2 it was finalized?

3 MR. CHO: Object to the form.

4 THE WITNESS: No.

5 BY MR. CONNELLY:

6 Q. Am I correct that Hurricane Matthew
7 was an event that occurred sometime around
8 October 2016 and therefore was considerably
9 after the Haitian earthquake of January 2010?

10 MR. CHO: Object to the form.

11 THE WITNESS: Yes.

12 BY MR. CONNELLY:

13 Q. Was Hurricane Matthew in your
14 estimation, was that a current condition in
15 Haiti that might be of some relevance in
16 determining Haiti's TPS status?

17 MR. CHO: Object to the form.

18 THE WITNESS: Yes.

19 BY MR. CONNELLY:

20 Q. This is a document not used last
21 week, so let's just label this Exhibit 60.

22 (Deposition Exhibit 60 was marked

1 for identification.)

2 BY MR. CONNELLY:

3 Q. Please familiarize yourself as you
4 need to, but I will review for you that I'm
5 going to be asking you about your e-mail on the
6 bottom of the second page, Tuesday, February
7 28, at 6:09 p.m., and then the two e-mails that
8 are on the front page of the document.

9 MR. CHO: Again, I'm going to object
10 to the use of Exhibit 60 on the grounds that
11 it's Bates-numbered DPP, suggesting that it
12 contains deliberative process material, but I
13 will allow the witness to answer questions
14 about the e-mail.

15 I also object on the grounds that it
16 seems like this e-mail refers to El Salvador
17 and not Haiti, so this e-mail is beyond the
18 scope of this litigation as well.

19 BY MR. CONNELLY:

20 Q. Are you ready for me to ask you a
21 question?

22 A. No.

1 Q. Okay. Let me know.

2 A. Great.

3 Q. Okay. I would like to direct you to
4 the -- your e-mail that is on the bottom of the
5 second page which bears a Bates number of 6092,
6 and your e-mail went out on Tuesday, February
7 28, 2017, to a Josie, J-O-S-I-E, Graziadio,
8 G-R-A-Z-I-A-D-I-O.

9 Who is that person?

10 A. She was an individual in our office
11 who managed traffic from the executive
12 secretary.

13 Q. And it also went out to Kathryn
14 Anderson who at the time was your deputy chief?

15 A. Correct.

16 Q. And it's regarding the El Salvador
17 TPS; is that correct?

18 A. Yes.

19 Q. Your observation, a portion of your
20 observation is: "Wow, did we just get this?!
21 How absurd." And then it goes on: "KA will
22 call you in a bit to discuss and figure how to

1 handle."

2 What was it that you found absurd?

3 MR. CHO: Object to the form.

4 Object on the grounds that this e-mail

5 obviously reflects internal government

6 deliberations.

7 You can go ahead and answer.

8 THE WITNESS: Just the short

9 turnaround time, I believe, as well as what is

10 typical in assignments coming down from

11 executive secretariat, where there is little in

12 the way of a description provided for the

13 subject matter of the meeting beyond a title,

14 making it difficult to figure out how best to

15 respond with content that would be helpful.

16 BY MR. CONNELLY:

17 Q. All right. And if you will go to

18 the first page of the document and to the

19 letter -- I'm sorry, to the e-mail written by

20 Samantha D-E-S-H-O-M-M-E-S to you and others on

21 February 28 at 7:48 p.m.

22 Do you see that?

1 A. Uh-huh.

2 Q. And near the end of her e-mail, I
3 will pick up and read her -- the last -- the
4 last sentence of the second paragraph: "We
5 suspect that despite OGC preparing a legal memo
6 for S1, that this notice is purely operational
7 and not changing status to extend the period to
8 apply for TPS extension. This may be an
9 attempt by the new advisors to air concerns
10 about TPS in general," followed by three dots
11 and I'll close the quote on that.

12 First, can you tell me, OGC, is that
13 Office of General Counsel?

14 A. Yes.

15 Q. For Department of Homeland Security?

16 A. Yes.

17 Q. And then the reference to S1, who is
18 that?

19 A. The secretary.

20 Q. So that would be at the time
21 Secretary Kelly?

22 A. Correct.

1 Q. And now, the last of the e-mails on
2 the chain, the top one is from you a couple of
3 minutes later, and you say: "KA and I had the
4 same thoughts and conjecture."

5 What were those thoughts and the
6 conjecture that you are referencing there?

7 MR. CHO: Object to the form.

8 THE WITNESS: The thoughts and
9 conjecture that I can be certain we were
10 referring to were at a minimum, the suspicion
11 that the El Salvador EAD extension notice was
12 likely the catalyst for leadership to call the
13 meeting.

14 BY MR. CONNELLY:

15 Q. Could you also -- I'm sorry.

16 I should have brought this up
17 earlier, but in Samantha's e-mail, she makes
18 reference to -- and I quoted this sentence
19 already: "New advisors."

20 Do you recall that?

21 A. Uh-huh.

22 Q. Do you know who that was in

1 reference to?

2 MR. CHO: Object to the form.

3 Answer if you know.

4 THE WITNESS: I have a suspicion but
5 I can't say with certainty.

6 BY MR. CONNELLY:

7 Q. Well, could you give me your best
8 estimation of who it was, understanding with
9 the qualification that you are not certain.

10 MR. CHOP: Object to the form.

11 You can answer.

12 THE WITNESS: My suspicion would be
13 that it refers to Gene Hamilton among others.

14 BY MR. CONNELLY:

15 Q. Okay. Who is Mr. Hamilton?

16 A. Gene Hamilton ended up serving as a
17 senior level and the primary advisor to
18 Secretary Kelly and then Secretary Duke on all
19 matters immigration-related. I don't know if
20 the scope of his duties extended beyond that.

21 Q. When you say, "senior level," was he
22 a part of CIS?

1 A. No, DHS headquarters, the
2 secretary's front office.

3 Q. All right. And when did Mr.
4 Hamilton join DHS if you know?

5 A. I don't know.

6 Q. Was he a newcomer with the Trump
7 Administration in 2017?

8 A. Yes.

9 Q. I'm going to give you KA-11, which
10 is a fairly lengthy e-mail chain. And I'll
11 point out to you, the only e-mail that I'm
12 going to be questioning you on, and perhaps
13 that will help you in your review of that.

14 A. Okay.

15 Q. I'm only going to ask you questions
16 about the e-mail that is on the page, who on
17 the far bottom right says 16, so it's the
18 second to the last page and it's the e-mail on
19 March 2 at 3:46 p.m.

20 MR. CHO: I'm going to object to
21 Exhibit KA-11 on the grounds that it contains
22 internal government deliberations but I will

1 allow questions regarding this document.

2 THE WITNESS: Okay.

3 BY MR. CONNELLY:

4 Q. And this e-mail which I have already
5 described as having been -- well, it says it's
6 from USCIS REGS.

7 Do you know what that is a reference
8 to?

9 A. Yes, that's the regulatory
10 coordination division.

11 Q. On March 2, 2017, at 3:46 p.m.

12 Let me read -- a portion of that
13 e-mail reads as follows, in the center, first
14 in bold letters, summary, and then: "The USCIS
15 recommendation memo discusses relevant country
16 conditions in Haiti and explains USCIS's
17 recommendation that the secretary extend the
18 TPS designation of Haiti. Following a decision
19 by the secretary, the FRN would alert the
20 public that the designations were for TPS of
21 Haiti is being extended effective July 23rd,
22 2017 through January 22nd, 2019."

1 And then there -- there's further
2 information in the e-mail.

3 A. Uh-huh.

4 Q. So I'd -- I'd simply like to learn
5 from you do you have any role at all in
6 directing or writing or reviewing the USCIS
7 recommendation memo that's referenced here?

8 A. Yes.

9 MR. CHO: Object to the form.

10 BY MR. CONNELLY:

11 Q. And tell me about that. Just the
12 process. Not the -- not the content.

13 Just tell me the process of -- of
14 what your role is.

15 A. We -- we wrote the initial draft.

16 Q. "We" being IHAD?

17 A. That's right.

18 Q. Okay. And in your initial draft,
19 was it your recommendation that the extension
20 of the TPS status for Haiti go for another 18
21 months?

22 A. Yes.

1 MR. CONNELLY: Let's go off the
2 record for just a second.

3 THE VIDEOGRAPHER: We're going off
4 the record at 11:33.

5 (A short recess was taken.)

6 THE VIDEOGRAPHER: We're back on the
7 record at 11:34.

8 MR. CONNELLY: I handed the witness
9 KA-12, which is a e-mail chain ending on March
10 29th, 2017.

11 BY MR. CONNELLY:

12 Q. I am only going to be asking you
13 questions about your e-mail on the bottom of
14 the first page from March 24th, 2017, at 4:21
15 p.m.

16 MR. CHO: We object to KA-12 on the
17 grounds that it contains internal governmental
18 deliberations.

19 But I will allow questions regarding
20 this e-mail chain.

21 BY MR. CONNELLY:

22 Q. Ready for a couple of questions?

1 A. Almost.

2 Great. Yes.

3 Q. Okay. As I said, I'd like to direct
4 you to your e-mail on the first page on Friday,
5 March 24th, at 4:21 p.m. And the subject of
6 this memo is "The TPS Haiti memo," correct?

7 A. Yes.

8 Q. And then on the first -- well, let's
9 -- let's -- let's just walk through this a bit.

10 Your memo starts out with: "Hey,
11 Mark. Thanks for shepherding the TPS memo to
12 SCOPS," S-C-O-P-S, "and OCC for clearance upon
13 completion of the new draft."

14 Tell me who Mark is.

15 A. He is a -- one of the -- he's a
16 colleague within the -- the regulate --
17 regulation and coordination division --
18 regulatory coordination division.

19 Q. His last name, for the record, is
20 B-O-I-V-I-N?

21 A. Yes. Boivin.

22 Q. Okay. When -- and you -- when you

1 say "Thanks for shepherding the TPS memo," is
2 that -- the reference to "TPS memo" there, is
3 that the same as in the subject line where you
4 reference "TPS Haiti memo"?

5 A. Yes.

6 Q. And what -- what memo is that?

7 A. This is referring to the revised
8 Haiti decision memo that we put together
9 following a meeting at headquarters.

10 Q. And the memo goes to -- according to
11 your e-mail, it goes to SCOPS and OCC?

12 A. That's right.

13 Q. And so, in the usual -- is that the
14 usual procedure of memos of this type --

15 A. Yes.

16 Q. -- that that's who they would travel
17 through?

18 A. Uh-huh.

19 Q. Correct?

20 A. Correct.

21 Q. Okay. And from there, again, just
22 as a general procedural matter, not necessarily

1 in this memo, ordinarily then after SCOPS and
2 OCC look at it, where -- what becomes of the
3 memo? Where does it -- where does it next
4 travel?

5 MR. CHO: Object to the form.

6 You can answer.

7 THE WITNESS: After they review it
8 and we incorporate any edits or any inputs they
9 have, the memo would then be ready to move
10 forward to the front office at USCIS.

11 BY MR. CONNELLY:

12 Q. Who was it who had requested the
13 refashioning of the initial memo into this
14 revised memo?

15 MR. CHO: Object to the form.

16 THE WITNESS: Gene Hamil --

17 MR. CHO: Again, you can -- you can
18 testify to the extent it doesn't reveal
19 internal government communication or
20 deliberations.

21 Go ahead.

22 BY MR. CONNELLY:

1 Q. Go ahead.

2 MR. CHO: I think you already
3 answered, but go ahead.

4 BY MR. CONNELLY:

5 Q. Who was it who had -- who had
6 requested the refashioning of the memo?

7 MR. CHO: Object to the form. Same
8 instruction.

9 THE WITNESS: Gene Hamilton.

10 BY MR. CONNELLY:

11 Q. To your best recollection, is this
12 the first time that Mr. Hamilton had requested
13 the refashioning of any of the TPS memos --

14 MR. CHO: Object to the form.

15 BY MR. CONNELLY:

16 Q. -- that -- that were being generated
17 by CIS?

18 MR. CHO: Object to the form.

19 You can -- again, to the extent
20 there are any communications that touch on
21 internal governmental deliberations, you can go
22 ahead and answer without revealing those

1 communications.

2 THE WITNESS: To my knowledge, yes.

3 BY MR. CONNELLY:

4 Q. And then I'm going to quote you.

5 Your third paragraph starts: "Ultimately we
6 are (USCIS) still going to assess that
7 conditions continue to be met and extension is
8 warranted (we hope), so think an extension FRN
9 is the appropriate one to go" with -- "to go up
10 with the package."

11 I just would like to find out a few
12 things from -- from that sentence.

13 When you say in the second
14 parenthetical "we hope," who is the "we" a
15 reference to?

16 A. My division.

17 Q. And am I correct that this
18 essentially says that your division believes
19 that an extension of the FRN for Haiti is the
20 appropriate recommendation to go up with the
21 package?

22 A. No. I'm sorry. That's not --

1 that's not an accurate --

2 Q. Okay.

3 A. -- statement.

4 Q. Could -- could you tell me then
5 what -- what -- what was inaccurate about -- or
6 how I characterized it?

7 A. Well, the extension FRN isn't a
8 recommendation. It accords with the
9 recommendation.

10 Q. I see. All right.

11 Next I'm going to quote your next
12 sentence: "Also, our thinking is we should try
13 to avoid getting in the business of sending up
14 a buffet" -- "buffet of FRNs even if we're
15 including options in TPS decision memos going
16 forward."

17 When you say "our thinking," whose
18 thinking are you referencing?

19 A. Again, my division.

20 Q. And -- and then you say right
21 afterwards: "Our thinking is we should try to
22 avoid."

1 Is the "we" also a reference to your
2 division?

3 A. Yes.

4 Q. Okay. And the reference to a buffet
5 of FRNs, what does that mean?

6 A. Numerous FRNs to accord with various
7 potential decision outcomes.

8 Q. Is that a practice that you had
9 previously engaged in, sending up numerous FRNs
10 as opposed to just an FRN?

11 MR. CHO: Object to the form.

12 THE WITNESS: No.

13 BY MR. CONNELLY:

14 Q. And then finally I'd just like -- I
15 just want to find out who these -- by name who
16 these folks are.

17 The rest of your e-mail make a
18 reference to "S1's senior counselor."

19 Who is that?

20 A. Gene Hamilton.

21 Q. And S1, that would have been
22 Secretary Kelly?

1 A. Correct.

2 MR. CONNELLY: I'm going to have to
3 retreat a little bit later in my -- in my
4 questions. Because I'm -- my documents are
5 scrambled slightly. But rather than slow down,
6 for the moment I'm just going to jump ahead,
7 and I'll -- I'll figure that out maybe over the
8 lunch break.

9 So I'm going to show you Exhibit 62.

10 (Deposition Exhibit 62 was marked
11 for identification.)

12 MR. CHO: Again, I'm going to object
13 to Exhibit 62 on the grounds that it contains
14 internal government deliberations and
15 deliberative process materials. It's also
16 Bates No. DPP 18941.

17 But I will allow the witness to
18 answer questions about the e-mails.

19 BY MR. CONNELLY:

20 Q. Are you ready?

21 A. I am.

22 Q. Great. Okay.

1 The first of the two e-mails on this
2 page comes from a gentleman named Leroy Potts,
3 who's title is given on his e-mail.

4 He's the chief of RAIIO directorate;
5 is that right?

6 Chief of research, I guess.

7 A. Yes, sir.

8 Q. Okay. Is Mr. Potts someone that you
9 would have known for some time prior to April
10 13th of 2017?

11 A. He is.

12 Q. And his subject is "Haiti TPS,"
13 correct?

14 A. Yes.

15 Q. And then part of his e-mail says:
16 "For now I'm hoping you can give me your take
17 on the Haiti TPS decision? I'd like to know a
18 little bit more about how it was decided
19 current conditions," and then quotes within the
20 e-mail, "'don't merit ongoing TPS designation'
21 and when the current designation will come to
22 an end."

1 Is your best recollection that a
2 decision had been made by April 13th of 2017
3 regarding the TPS designation for Haiti?

4 MR. CHO: Object to the form.

5 You can answer.

6 THE WITNESS: No. A decision had
7 not been made by then.

8 BY MR. CONNELLY:

9 Q. And you respond to Mr. Potts's
10 e-mail --

11 A. I'm sorry. That's --

12 Q. Go ahead.

13 A. I need greater precision to your
14 question to be able to answer that.

15 What do you mean a decision made?
16 On -- on the designation?

17 Q. Let's -- well, let's -- let's try
18 and stay within -- within Mr. Potts's e-mail.

19 When he references the Haiti TPS
20 decision, do you recall what it was that he
21 was -- he was referencing by that observation?

22 MR. CHO: Object to the form.

1 THE WITNESS: I believe he was
2 referencing the recommended decision in the
3 USCIS memo to the secretary.

4 BY MR. CONNELLY:

5 Q. And was that -- was -- did that
6 recommendation -- was that the recommendation
7 of your division?

8 A. No.

9 Q. Whose recommendation was it?

10 A. The acting director's.

11 Q. And who was that?

12 A. James McCament.

13 Q. Okay. Was -- was that decision
14 contrary -- or let me -- let's ask this: Had
15 your division made a recommendation?

16 A. Yes.

17 MR. CHO: Object to the form.

18 BY MR. CONNELLY:

19 Q. Am I correct that your recommend --
20 your division's recommendations was to extend
21 the TPS status for Haiti?

22 MR. CHO: Again, I'm going to object

1 on the grounds that this touches on internal
2 government deliberations.

3 But I will allow the witness to
4 answer.

5 THE WITNESS: Yes.

6 BY MR. CONNELLY:

7 Q. Do you recall for how long -- what
8 -- how long the extension was that you
9 recommended?

10 MR. CHO: Same objection.

11 BY MR. CONNELLY:

12 Q. 6 or 12 or 18 months or something
13 other than any of those?

14 A. Yes.

15 Q. How --

16 A. 18.

17 Q. 18. Okay.

18 So you get back to Mr. Potts inside
19 -- in a little more than 30 minutes.

20 And I'll quote a portion of your
21 e-mail to him: "I don't think it was RU's fine
22 work on the country conditions nor our original

1 presentation of them in the decision memo we
2 drafted, that didn't make the cut and lead to
3 the conclusions USCIS should recommend
4 termination."

5 The -- what is the reference to RU's
6 fine work?

7 A. To their country conditions report.

8 Q. Do you recall -- does R -- does RU
9 make a recommendation at all regarding
10 extension, or do they simply provide factual
11 information?

12 A. The latter.

13 Q. Okay. And were you being facetious
14 or sincere in -- in -- in referring to that
15 work as fine work?

16 A. Sincere.

17 Q. Okay. And that -- the RU is the --
18 is the area where many Potts worked, correct?

19 A. Yes.

20 Q. All right.

21 A. He's in charge of the division.

22 Q. Okay. And then you -- when you go

1 on to say "nor our original presentation," is
2 that a reference to the decision memo that you
3 and your colleagues had sent out recommending
4 an extension?

5 MR. CHO: Object to the form.

6 THE WITNESS: Yes. To the portion
7 of it that presented country conditions
8 information.

9 BY MR. CONNELLY:

10 Q. And when you say "that didn't make
11 the cut," is that a reference to some portion
12 of your decision memo?

13 A. No.

14 Q. Okay. What does that -- what does
15 that refer to?

16 A. That refers to the decision memo as
17 it was amended and the decision to amend the
18 memo to reflect a different recommendation.

19 Q. Prior to this incident, do you
20 have -- do you have a recollection of any --
21 while you're the chief, up through April of
22 2017, of your decision memos getting amended

1 after they moved on from your office?

2 MR. CHO: Object to the form. I'm
3 gong to instruct the witness not to answer that
4 question because it goes beyond the scope of
5 what's contained in this e-mail and also to the
6 extent that it touches on topics other than
7 Haiti TPS.

8 BY MR. CONNELLY:

9 Q. Am I correct that you're -- are you
10 going to follow your lawyer's advice not to
11 answer?

12 A. Yes.

13 Q. Okay. Am I correct that you and
14 your division had on prior occasions sent up
15 decision memos not unlike this decision memo
16 regarding Haiti in April 2017?

17 A. That we sent up decision memos not
18 unlike that one?

19 Q. Yeah.

20 When I say "not unlike," I just mean
21 in form, not in content.

22 A. Yes.

1 Q. Okay.

2 A. We sent up decision memos for TPS
3 decisions including Haiti TPS prior to April
4 13th, 2017.

5 Q. And can you give me a rough estimate
6 of, you know, how many decision memos your
7 division would have sent up prior to April of
8 2017 regarding either designations or
9 extensions for a TPS status for countries?

10 A. Dozens.

11 Q. Okay. Had -- had any of those
12 decision memos -- had there -- had -- had there
13 been any cuts or exclusions from your decision
14 memos prior to this particular memo on April
15 13th that -- that's referenced on April 13th of
16 2017?

17 MR. CHO: Object to the form.

18 Again, that goes to internal governmental
19 deliberations.

20 You can answer with that caveat in
21 mind.

22 THE WITNESS: The decision memos

1 that we drafted and sent forward, to some
2 degree or another, have frequently been subject
3 to amendment as they work through the clearance
4 process within USCIS and beyond.

5 BY MR. CONNELLY:

6 Q. So would you characterize, you know,
7 how this process played out on this particular
8 memo as being, you know, consistent with the
9 process in general?

10 MR. CHO: Object to the form.

11 You can answer.

12 THE WITNESS: No.

13 BY MR. CONNELLY:

14 Q. How was it not consistent?

15 MR. CHO: Object to the form.

16 THE WITNESS: Amendments of the
17 magnitude that took place with this decision
18 memo without any consultation on the matter
19 were not something that I previously
20 experienced.

21 MR. CONNELLY: KA-16.

22 MR. CHO: Again, for the record, I'm

1 objecting to KA-16 on the grounds that it
2 contains internal government deliberation.
3 It's also Bates No. DPP 18751.

4 But I will allow the witness to
5 answer questions regard this -- these e-mails
6 exchanges.

7 BY MR. CONNELLY:

8 Q. I'm going to be focused on the top
9 e-mail. But obviously all of this only covers
10 a page. So I'll let you review it.

11 A. Okay.

12 Q. All right. And you were the
13 recipient -- let -- no. Let's see. You were
14 carbon copied on Kathryn Anderson's April 14,
15 2017 e-mail to Mr. Potts with the subject
16 remaining "Haiti TPS."

17 The -- I'm going to quote from
18 Kathryn Anderson in her e-mail when she states:
19 "We can share more when we talk. But the short
20 answer is that the decision was a political one
21 by the FO and S1's advisors."

22 First, the FO is a reference to

1 field off -- front office?

2 A. Front office.

3 Q. That would be the front office of
4 CIS or DHS?

5 MR. CHO: Object to the form.

6 BY MR. CONNELLY:

7 Q. If -- if there's a difference.

8 A. There is a difference.

9 Q. Okay.

10 A. She -- I read this as suggesting our
11 front office at USCIS. It could have meant
12 both.

13 Q. All right. And who was the
14 reference to S1's advisors?

15 Who are those folks?

16 MR. CHO: Object to the form.

17 Again, testify to what you know.

18 THE WITNESS: The advisors for the
19 secretary, including at the least Gene
20 Hamilton.

21 BY MR. CONNELLY:

22 Q. Am I correct that the -- this --

1 this e-mail -- the context of this e-mail is
2 still the same topic area as -- as the Exhibit
3 62, which I just showed you, which involves the
4 decision -- the apparent decision to terminate
5 Haiti's TPS status?

6 A. The decision memorandum recommending
7 that --

8 Q. Yeah.

9 A. -- termination. Yes.

10 Q. Okay. So that -- in -- in the
11 second line of Kathryn Anderson's e-mail
12 when -- when there's "But the short answer is
13 that the decision was a political one by the FO
14 and S1's advisors," what did you understand her
15 to be referencing when she said "the decision"?

16 MR. CHO: Object to the form.

17 THE WITNESS: The decision to
18 recommend termination of Haiti's TPS
19 designation.

20 Q. Okay. And what -- what did you
21 understand her to be saying when she said it
22 was a political -- quote/unquote political one?

1 MR. CHO: Object to the form.

2 THE WITNESS: That the decision
3 didn't accord with -- with her and my -- our
4 division's view of what the country conditions
5 married up against the statute -- statute
6 required.

7 MR. CONNELLY: KA-17.

8 MR. CHO: Again, I'm going to object
9 to KA-17 on the grounds that it contains
10 internal government deliberations and material.
11 It's also Bates No. DPP 5153.

12 But I will allow the witness to
13 answer questions regarding this e-mail.

14 BY MR. CONNELLY:

15 Q. Okay?

16 A. Uh-huh.

17 Q. All right. The earlier e-mail was
18 from a gentleman named Ebony, E-B-O-N-Y, Turner
19 T-U-R-N-E-R.

20 Who is -- well, and -- and his
21 title -- it's a male?

22 A. She's a she.

1 Q. She? It's a she? Okay. Thank you.

2 Okay.

3 So her title is community relations
4 officer at USCIS?

5 A. Yes.

6 Q. Okay. And she is asking several
7 people, yourself included, what were -- what --
8 was there a change in the Haiti recommendation.

9 She also references that: "I was
10 out of the office and missed the TPS WG call
11 last week."

12 What is -- what is the TPS WG call?

13 A. TPS working group call.

14 Q. Is that -- is that an -- is -- is
15 that a regularly scheduled call?

16 A. Yes.

17 Q. I don't want to know any of the
18 content of what the working group does.

19 But what's -- what's the nature of
20 the call?

21 Who was involved in it?

22 A. It's a very working level call

1 within USCIS that includes participants from
2 various parts of USCIS who work on Temporary
3 Protected Status programs essentially to
4 coordinate action relating to the
5 administration of the programs.

6 Q. Is that a -- is that what --
7 regularly scheduled, is that a -- a weekly or
8 how -- what determines how often the call is
9 made?

10 A. It's either weekly or biweekly.

11 Q. And in -- in the organizational
12 chart, who's the most senior person within CIS
13 or Department of Homeland Security who would
14 ordinarily be a part of this working group
15 call?

16 A. A policy analyst.

17 Q. I'm sorry?

18 A. A policy analyst or, you know, their
19 equivalent in operations and, you know, their
20 equivalent in -- in counsel's office.

21 Q. So I take it, from what you just
22 told me, that ordinarily you would not be a

1 part of the call?

2 A. No. I don't generally join the
3 call.

4 Q. Okay. And then the -- in the top
5 e-mail from Guillermo, G-U-I-L-L-E-R-M-O
6 Roman-Riefkohl, R-O-M-A-N, hyphen,
7 R-I-E-F-K-O-H-L.

8 First let me ask you -- it looks
9 like Guillermo has -- has some responsibility
10 within USCIS; is that right?

11 A. Yes.

12 Q. What was -- what was his position?

13 A. He's within the service center
14 operations directorate --

15 Q. Okay.

16 A. -- and helps manage the TPS
17 portfolio.

18 Q. Okay. And that service center
19 operations role is captured in his -- in his
20 e-mail signature, correct?

21 A. That's right.

22 Q. Okay. And he -- he replies to Ebony

1 by saying: "Yes. The termination of the TPS
2 designation."

3 And again jumping out of his quote,
4 but this is still -- by -- from the subject
5 line, is the Haiti TPS recommendation that's
6 under the conversation here, right?

7 MR. CHO: Object to the form.

8 THE WITNESS: Correct.

9 BY MR. CONNELLY:

10 Q. Okay. And then, to pick it up again
11 or to repeat, he -- he says: "Yes.
12 Termination of the TPS designation. I have
13 attached the recommendation memo for
14 convenience."

15 What recommendation memo is that?

16 MR. CHO: Object to the form.

17 THE WITNESS: The recommendation
18 memo from the director to the secretary on
19 Haiti's TPS designation recommending
20 termination.

21 BY MR. CONNELLY:

22 Q. And that's the -- that's the same

1 recommendation memo that you had referenced,
2 you know, a few minutes ago in -- as you
3 explained the process; is that right?

4 This -- this is the -- what I'll --
5 what I'll describe as a -- as -- as a memo
6 basically from Hamilton, to the best of your
7 knowledge?

8 MR. CHO: Object to the form. That
9 mischaracterizes prior testimony. He hasn't
10 mentioned any memo from Hamilton.

11 BY MR. CONNELLY:

12 Q. I think you're allowed to answer
13 though.

14 A. It's the same memo from James
15 McCament, who was serving as the acting
16 director of USCIS to Secretary Kelly.

17 MR. CONNELLY: Let me look to the
18 videographer.

19 Are we okay?

20 THE VIDEOGRAPHER: Another half
21 hour.

22 MR. CONNELLY: KA-15.

1 MR. CHO: I'm going to object to
2 KA-15 on the grounds that the e-mails contain
3 internal government deliberations. The first
4 page is Bates-numbered DPP 3286 but I will
5 allow the witness to answer questions regarding
6 these e-mail exchanges.

7 BY MR. CONNELLY:

8 Q. I will let the deponent know, I'm
9 going to be asking about the first in sequence
10 and therefore last on these -- on this long
11 e-mail string, the very last e-mail on Page
12 3296, and then the very first e-mail which is
13 on Page 3286, which heads the chain and
14 therefore is the latest in time.

15 Have you had a chance to review it?

16 A. I did. Thank you.

17 Q. Okay. If we could go to the last
18 page which is an e-mail from Kathy Nuebel
19 Kovarik on April 7, 2017. That was sent to you
20 and to Kathryn Anderson and to a gentleman
21 named Mark Phillips.

22 Can you tell me who Mark Phillips

1 was?

2 A. Mark Phillips is chief for the
3 residence and naturalization division within
4 OP&S, a sister division of my division.

5 Q. Do you know, is Mr. Phillips
6 ordinarily involved in assisting at all in
7 making decisions about either terminations or
8 extensions of TPS status for countries?

9 A. No, he is not.

10 MR. CHO: Object to form.

11 THE WITNESS: No.

12 BY MR. CONNELLY:

13 Q. And the subject is: "TPS data."

14 Do you know whether this was -- from
15 having reviewed the full e-mail chain, was --
16 what -- the request from Kovarik, and I'll read
17 it in a moment.

18 Was it limited to -- well, first of
19 all, let me ask: Was the request focused on
20 gathering information about Haiti?

21 A. Yes.

22 Q. Was it strictly Haiti or was it

1 Haiti plus other countries, best you recall?

2 A. Strictly Haiti.

3 Q. Okay. Now I'll quote from her
4 e-mail: "Hey there. I am hoping you guys can
5 help pull some data to the extent possible by
6 the end of the day. Aside from that chart
7 already provided with the country/year/number
8 of TPS holders, here is what I need."

9 Let me stop right there. TPS
10 holders, is that -- are those also sometimes
11 referred to as TPS beneficiaries?

12 A. Yes.

13 Q. And are those -- essentially, are
14 those people -- well, let's use -- we'll use
15 Haiti as an example.

16 They are Haitians who by and large
17 are not living in Haiti and they are allowed to
18 remain outside of Haiti because of the TPS
19 status?

20 MR. CHO: Object to the form.

21 THE WITNESS: Allowed to remain
22 outside of Haiti because of TPS?

1 BY MR. CONNELLY:

2 Q. Well, I just -- let me break that
3 down a little bit.

4 Is TPS holders -- is the synonym for
5 TPS holders, TPS beneficiaries?

6 A. Yes.

7 Q. Okay. Whichever phrase you use, why
8 don't you explain rather than I presume, who
9 are those people?

10 A. TPS beneficiaries are individuals
11 who have applied for and been granted temporary
12 protected status by the U.S. Government, and by
13 attaining that status, they are able to remain
14 in the United States during the duration of the
15 designation.

16 Q. In April of 2017, can you give me a
17 ballpark estimate of approximately how many TPS
18 beneficiaries were in the United States at that
19 time?

20 MR. CHO: Object to the form.

21 THE WITNESS: Tens of thousands.

22 There were something of the order of 58,000

1 some-odd, 59,000 Haiti TPS beneficiaries. I
2 think that based on some of the statistics that
3 we gather regarding advance parole and travel,
4 that based on those numbers alone and with some
5 assumptions built in, it's safe to say that
6 easily tens of thousands.

7 BY MR. CONNELLY:

8 Q. All right. And then picking up
9 again in Kathy Nuebel Kovarik's e-mails, after
10 she says here is what I need, there are five
11 bullet points and I'll read them. "Details on
12 how many TPS holders are on public and private
13 relief," and the next: "Any demographic data,
14 including how many with TPS are school-aged
15 kids."

16 Third point: "How many have been
17 convicted of crimes of any kind (any
18 criminal/detainers that you can find.) Next:
19 "How often do they travel back and forth to the
20 island," and then finally: "Remittances" --
21 R-E-M-I-T-T-A-N-C-E-S "data."

22 So Kathy Nuebel Kovarik is asking

1 you and your -- and the other people on this
2 e-mail to see what you could do as far as
3 providing her with this information, correct?

4 MR. CHO: Objection to form. Also
5 object on the grounds that this contains
6 internal government deliberations, but the
7 witness can answer the question.

8 THE WITNESS: Yes.

9 BY MR. CONNELLY:

10 Q. Okay. Had you ever previously been
11 asked or on your own initiative pulled
12 information on the details on how many TPS
13 holders were on public and private relief in
14 the United States?

15 MR. CHO: Again, object on the
16 grounds that that is touching upon internal
17 government deliberations, but the witness can
18 answer if he can.

19 THE WITNESS: No. I had not been
20 asked that before.

21 BY MR. CONNELLY:

22 Q. Had you ever been asked before about

1 any demographic data including how many with
2 TPS are school-aged kids?

3 MR. CHO: Same objection on the
4 grounds of internal government deliberations
5 but the witness can answer.

6 THE WITNESS: I have not been asked
7 -- I had not been asked before on demographic
8 data that included how many TPS beneficiaries
9 for a certain country were school-aged
10 children.

11 BY MR. CONNELLY:

12 Q. Had you ever been -- previously been
13 asked how many TPS holders had been convicted
14 of crimes of any kind?

15 MR. CHO: Same objection.

16 You can answer.

17 THE WITNESS: No.

18 BY MR. CONNELLY:

19 Q. Had you ever been -- previously been
20 asked how often TPS holders traveled back and
21 forth to the island, presumably that's Haiti?

22 MR. CHO: Same objection again.

1 These are internal government deliberations but
2 the witness can answer.

3 THE WITNESS: No.

4 BY MR. CONNELLY:

5 Q. And finally -- first tell me, do you
6 have an understanding of what is the phrase
7 remittances data, what does that convey?

8 A. I understand that to convey the
9 amount of money the Haitian diaspora is sending
10 back to Haitians in country.

11 Q. Prior to the request by Kathy Nuebel
12 Kovarik in April of 2017, had you ever been
13 asked to gather that type of data before?

14 MR. CHO: Again, just to clarify,
15 are your questions related just to Haiti or --

16 MR. CONNELLY: Just to Haiti.

17 MR. CHO: Same objection as well.

18 Again, these are internal government
19 deliberations but the witness can answer.

20 THE WITNESS: No.

21 BY MR. CONNELLY:

22 Q. Would any of these five requests by

1 Kathy Nuebel Kovarik, would that information
2 have anything to do with the current conditions
3 on the island of Haiti?

4 MR. CHO: Object to the form.
5 Vague. Again, also calls for internal
6 government deliberations but you can answer if
7 you can.

8 THE WITNESS: Would this
9 information --

10 BY MR. CONNELLY:

11 Q. Yes.

12 A. -- have anything to do with --

13 Q. The current conditions.

14 A. -- current conditions in Haiti?

15 Q. Yes.

16 A. Yes.

17 MR. CHO: Same objection.

18 BY MR. CONNELLY:

19 Q. How so?

20 MR. CHO: Same objection. Again,
21 you can answer the question, but I object on
22 the grounds that this is internal government

1 deliberations. Go ahead.

2 THE WITNESS: I think that it's
3 possible that the amount of relief individuals
4 here in the United States are receiving could
5 have an impact on the amount of assistance they
6 could provide to family members back home.
7 Demographic information could give you some
8 idea of how many individuals here would be, for
9 instance, of productive working age were they
10 back in Haiti.

11 How often people travel back and
12 forth to the island could have some
13 relationship to conditions back home.
14 Remittance data is clearly relevant to
15 conditions back home, given the percent of the
16 Haitian GDP that is composed of remittances.

17 BY MR. CONNELLY:

18 Q. If you will go to the very first
19 e-mail in this chain, it is again from Kathy
20 Nuebel Kovarik and she says to a number of
21 people: "All. Thanks so much for your help on
22 these data requests. I do want to alert you

1 all however that the secretary is going to be
2 sending a request to us to be more responsive."

3 Is the reference to secretary, would
4 that be Department of Homeland Security
5 Secretary Kelly?

6 MR. CHO: Object to the form.

7 THE WITNESS: Yes.

8 BY MR. CONNELLY:

9 Q. And then she goes on: "I know that
10 some of it is not captured but we will have to
11 figure out a way to squeeze more data out of
12 our systems so we may as well get started.
13 Thanks again."

14 What did you understand her to be
15 requesting when she said, "we will have to
16 figure out a way to squeeze more data out of
17 our systems?"

18 MR. CHO: Object to the form.

19 THE WITNESS: Clear more complete
20 information directly responsive to the data
21 inquiries.

22 BY MR. CONNELLY:

1 Q. And what, if anything, did you do in
2 response to that request from her?

3 MR. CHO: Object to the form.

4 THE WITNESS: I don't recall any
5 further immediate action responsive to that
6 statement.

7 BY MR. CONNELLY:

8 Q. KA-18.

9 MR. CHO: Again, I object to KA-18
10 on the grounds that it contains internal
11 government deliberations. It's also
12 Bates-numbered, first page, DPP 6080, but the
13 witness can answer questions regarding this
14 e-mail exchange.

15 BY MR. CONNELLY:

16 Q. To give you a heads up while you're
17 reviewing, I am simply going to be asking you
18 about your observation which is the top memo.

19 Ready?

20 A. I'm ready.

21 Q. And so for the record, most of this
22 document is a New York Times editorial piece

1 about Haiti and its TPS status.

2 I just would like to understand what
3 you are -- when you state: "Right? Give me a
4 break."

5 In your Sunday, April 30, 2017
6 e-mail to Kathryn Anderson with the subject of
7 that e-mail being: "The New York Times
8 Editorial," what did you mean by making those
9 observations?

10 MR. CHO: Object to the form.

11 THE WITNESS: I was expressing
12 agreement with Kathryn's observation in the
13 e-mail preceding it and some degree of
14 incredulity.

15 BY MR. CONNELLY:

16 Q. So by way of context, the e-mail
17 that preceded yours from Kathryn to you --
18 well, it took you about 20, 25 minutes to
19 respond, but her e-mail to you was: "I
20 especially appreciated that they noted, the
21 memo did cite a bunch of horrible conditions
22 but then somehow reached the wrong conclusion."

1 And was that -- was that also your
2 belief that the memo referenced -- the internal
3 memo referenced the New York Times article, did
4 cite a bunch of horrible conditions, but at the
5 same time concluded that the TPS status for
6 Haiti should be terminated?

7 MR. CHO: Object to the form. Also
8 on the grounds it's internal government
9 deliberations, but you can answer.

10 THE WITNESS: Yes.

11 BY MR. CONNELLY:

12 Q. And to be clear, am I right that
13 your observation: "Give me a break," was
14 essentially a way of conveying that you also
15 disagreed with the conclusion to terminate the
16 TPS status for Haiti?

17 MR. CHO: Object to the form. It
18 touches on government -- internal government
19 deliberations, but also mischaracterizes entire
20 testimony and facts not in evidence.

21 I think you might want to rephrase
22 your question. The way that's phrased, it's

1 not correct in terms of the termination of
2 Haiti's TPS as of April 2017.

3 BY MR. CONNELLY:

4 Q. I will be happy -- if you have
5 trouble answering the question, I will be happy
6 to rephrase it. I don't mean to go over your
7 attorney, but it's most important, you know, if
8 you have difficulty with a question, I am glad
9 to rephrase it. Do you need it rephrased? If
10 not, you can answer the question.

11 A. I think that I probably heard the
12 question as you had intended it rather than as
13 you said it. Do you mind --

14 Q. No.

15 A. -- restating the question?

16 Q. No, no. Not at all, not at all.

17 Did you -- was it your belief that
18 it was a wrong conclusion to terminate the TPS
19 status of Haiti?

20 MR. CHO: What time period are you
21 referring to?

22 BY MR. CONNELLY:

1 Q. In -- as of April 30, 2017.

2 MR. CHO: Again, object to the form.

3 Those are facts not in evidence, but I don't
4 know if you are misunderstanding time period,
5 but Haiti termination -- TPS for Haiti was not
6 terminated in April 2017.

7 MR. CONNELLY: I understand. All
8 right.

9 BY MR. CONNELLY:

10 Q. I am really referencing the -- what
11 the memo suggested that it should be
12 terminated.

13 A. Yes.

14 Q. And you disagreed with the
15 conclusion of that memo, correct?

16 MR. CHO: Object to the form.
17 Again, those are internal government
18 deliberations but you can answer if you can.

19 THE WITNESS: Correct.

20 BY MR. CONNELLY:

21 Q. And is that what you were -- and is
22 your observation, give me a break, tell me what

1 that means if anything as far as your views on
2 the conclusion reached in the memo cited in the
3 New York Times.

4 MR. CHO: Objection. Asked and
5 answered.

6 He already answered that question
7 about five minutes ago. He can answer again if
8 he can.

9 THE WITNESS: Yeah, I think it's
10 largely expressive of my -- my contention that
11 the country conditions and the statutory
12 requirements suggested a different decision.

13 BY MR. CONNELLY:

14 Q. And in your view, that different
15 decision would have been to extend the TPS
16 status, correct?

17 MR. CHO: Objection. It'd be --

18 BY MR. CONNELLY:

19 Q. Correct?

20 MR. CHO: Object to the question
21 also on the grounds that this is again internal
22 government deliberations.

1 But you can answer within the
2 confines of this e-mail, KA-18.

3 THE WITNESS: Yes. That is
4 consistent with what's expressed here.

5 MR. CONNELLY: I am looking to the
6 videographer.

7 Are we closing in on another change?
8 I'm sorry?

9 THE VIDEOGRAPHER: Yes. This is
10 time.

11 MR. CONNELLY: Okay. So let's go
12 off the record.

13 And then I'll let you guys -- do you
14 guys want to break for lunch? You want to --
15 you want to go a little bit and then -- and
16 then --

17 MR. CHO: What is your preference?
18 Where are you --

19 MR. CONNELLY: Really, really, you
20 guys -- I -- I want to really -- genuinely, I
21 want to accommodate you guys. Whatever you'd
22 prefer to do. I don't know what your, you

1 know, body clocks say.

2 You want to confer and think about
3 it and let me know? I -- whatever -- whatever
4 you like.

5 MR. CHO: How much more do you have?

6 THE VIDEOGRAPHER: We're going off
7 the record at 12:35.

8 (A short recess was taken.)

9 THE VIDEOGRAPHER: We're back on the
10 record at 1:30.

11 MR. CONNELLY: All right. I'm going
12 to give the witness KA-21. It's an -- which is
13 an e-mail string ending on May 8th, 2017, his
14 e-mail to Kathryn Anderson.

15 BY MR. CONNELLY:

16 Q. It runs several pages. I'm only
17 going to be asking you questions about the
18 first page.

19 MR. CHO: I think I'm going to
20 object to KA-21 that these e-mail exchanges
21 contain internal government deliberations, but
22 will allow the witness to answer questions

1 regarding the e-mail.

2 BY MR. CONNELLY:

3 Q. Are you ready to answer some
4 questions?

5 A. Yes.

6 Q. Okay. Well, as I mentioned, I'm
7 just going to have you focus on the first page
8 of this chain e-mail and first direct your
9 attention to the e-mail from Leroy Potts on May
10 1, 2017, at 3:40 p.m., to you and others with
11 the subject line being: "TPS's data."

12 He then indicates: "Unfortunately,
13 conditions in Haiti remain difficult. Please
14 see below," and then provides five different
15 bullet points.

16 You've had a chance to review those
17 bullet points?

18 A. Yes.

19 Q. Okay. And are those -- are those
20 observations made by Mr. Potts, are those
21 consistent with your understanding at least as
22 of May 1 of 2017, what the current conditions

1 in Haiti were?

2 MR. CHO: Object to the form.

3 THE WITNESS: Yes.

4 BY MR. CONNELLY:

5 Q. And then the top e-mail, which is
6 written by you to Kathryn Anderson on May 8,
7 2017. Because I deposed Ms. Anderson last
8 week, I already have some understanding of this
9 memo I think, but I'm going to make sure that
10 I, you know, see if I have it right.

11 First of all, when you begin the
12 memo, "Roy/Tom," I take it Roy was probably
13 Leroy Potts; is that correct?

14 A. Yes.

15 Q. And then Tom is who?

16 A. Tom Perkowski.

17 Q. What role does Mr. Perkowski have
18 regarding TPS status?

19 A. He works for Roy and he covers the
20 region that includes Central America and the
21 Caribbean.

22 Q. All right. Am I correct that the --

1 this is a -- your e-mail is a draft e-mail that
2 you were planning on sending to Roy and Tom,
3 but initially, you are sending it to Kathryn
4 Anderson to get some input from her?

5 A. Yeah. It looks like we met with
6 Kathy and she had conveyed instruction orally,
7 and so I am flipping it to Kathryn to make sure
8 that it, you know, fairly encapsulates what
9 Kathy's instructions to us were.

10 Q. Do you know, did you eventually send
11 out -- obviously, this goes to Kathy, not to
12 either Roy or Tom, but do you know whether you
13 ultimately sent out an e-mail or somehow
14 conveyed the information in this e-mail to Roy
15 and Tom?

16 A. Yes.

17 Q. I don't have that e-mail.

18 Is your best recollection that the
19 final e-mail to these two gentlemen was largely
20 consistent with what is in this draft?

21 MR. CHO: Object to the form.

22 THE WITNESS: I am confident of

1 that, yes.

2 BY MR. CONNELLY:

3 Q. In your -- in the e-mail that we are
4 looking at, the third numbered point in the
5 last information in your draft e-mail, I'll
6 quote: "No. 3, information regarding the
7 reconstruction of the presidential palace and
8 what that suggests regarding the government of
9 Haiti post-earthquake recovery and capacity."

10 Do you see that?

11 A. I do.

12 Q. Was that an information item that
13 your team had been asked to look into by Kathy
14 Nuebel Kovarik?

15 MR. CHO: Object to the form.
16 Object on the grounds that it seeks information
17 relating to internal government deliberations,
18 but the witness can answer limited to what is
19 contained here in the e-mail.

20 THE WITNESS: I believe the answer
21 to that is yes, that that was an addition
22 requested by DHS headquarters that was conveyed

1 either directly to us with Kathy looped in as
2 well, or more likely directed to Kathy directly
3 who then passed it along to us.

4 BY MR. CONNELLY:

5 Q. And as far as taking a look at
6 current conditions in Haiti for this decision
7 memo, can you tell me, you know, what
8 significance, if any, there would be to
9 understanding current conditions by focusing on
10 the reconstruction of the presidential palace?

11 MR. CHO: Object to the form on the
12 grounds that it seeks internal government
13 deliberations but the witness can answer based
14 on what is contained here in the e-mail.

15 THE WITNESS: The question is what
16 relevance -- what relevance I think
17 reconstruction of the presidential palace has
18 in evaluating country conditions in Haiti?

19 BY MR. CONNELLY:

20 Q. Yes. And let me refine that
21 slightly just to say, what level of relevance
22 if any?

1 MR. CHO: Same objection. Also, it
2 calls for a legal conclusion.

3 But the witness can answer if he
4 can.

5 THE WITNESS: When I wrote this
6 e-mail, I didn't have a firm notion of what
7 relevance or -- I suppose most accurately, I
8 questioned the relevance of reconstruction of
9 the presidential palace as a salient and
10 relevant country condition.

11 But also thought it worth seeking
12 the opinion of our research experts as to what
13 they believed one might be able to infer about
14 Haiti's earthquake recovery and capacity from
15 the reconstruction of the presidential palace.

16 BY MR. CONNELLY:

17 Q. KA-25.

18 MR. CHO: I'm going to object to
19 KA-25 on the grounds that these e-mail chains
20 contain internal government deliberations.
21 Notwithstanding that objection, the witness can
22 answer questions regarding this exhibit.

1 BY MR. CONNELLY:

2 Q. I am only going to be focused on
3 your e-mail which begins at the very bottom of
4 the first page, giving us that it is your
5 e-mail to Kathryn Anderson and then the short
6 e-mail itself which is on the top of the second
7 page, which is Bates-stamped 8095.

8 MR. CHO: In case I haven't, I do
9 object on KA-25 again on the deliberative
10 process privilege. These e-mail exchanges do
11 contain internal government deliberations, but
12 the witness may answer questions about the
13 e-mail just so the record is clear.

14 THE WITNESS: Okay.

15 BY MR. CONNELLY:

16 Q. All right. Let me -- first, I'm
17 going to be asking you about a series of dates
18 that are close in time to Saturday, May 20,
19 2017, which is the last on the e-mail chain.

20 First, the next document I am going
21 to show you is the FRN for Haiti, which I will
22 represent to you was published on Wednesday,

1 May 24. So that is a few days after Saturday,
2 May 20.

3 Do you recall, prior to the actual
4 publication of the FRN, was there a public
5 announcement preceding the publication of the
6 FRN that the Haiti's TPS status was going to be
7 extended for six months?

8 A. Yes, announcement preceded FRN.

9 Q. Do you remember when that
10 announcement was made?

11 A. The exact date?

12 Q. Yeah. Well -- or more specifically,
13 whether before or after, right now, I have got
14 you bracketed Saturday, May 20, and four days
15 later, Wednesday, May 24, is the FRN.

16 I don't know if that helps you in
17 terms of your best recollection of when the
18 public announcement was made.

19 A. My best recollection is that the
20 public announcement was made that Monday,
21 because I think this followed the -- I think we
22 made the first announcement on a Monday,

1 because we did a press call following the
2 weekend when I was away.

3 Q. When you say you did a press call, I
4 have become familiar with the concept of an
5 embargoed media call.

6 Is that a phrase that has meaning to
7 you?

8 A. Yes.

9 Q. What is an embargoed media call?

10 A. A call with standard media outlets,
11 the information from which may not be used or
12 released until a certain time that takes place
13 after the meeting or call.

14 Q. Is your best recollection that the
15 embargoed media call regarding the decision on
16 Haiti would have been made, what, slightly
17 before the public announcement?

18 A. Yes.

19 Q. And again, any -- just a best
20 recollection, I am just trying to get general
21 time frames.

22 Can you tell me was it at or near

1 Monday, May 22, when the media call would have
2 been made then followed by the announcement?

3 A. I think that's right. I think we
4 did the media call in the morning. I think it
5 was a Monday and then the announcement followed
6 thereafter.

7 Q. Did you frequently -- whether it was
8 for Haiti or any other country, which would be
9 either there was a determination of a TPS
10 status or an extension of a TPS status, did you
11 frequently take part in embargoed media calls
12 prior to the public announcements?

13 A. No.

14 Q. Maybe another way that I might come
15 at it, how unusual was it to have an embargoed
16 media call when there was an upcoming extension
17 decision for a TPS status?

18 MR. CHO: Objection. Object to the
19 form.

20 THE WITNESS: It was unusual.

21 BY MR. CONNELLY:

22 Q. Had you done one previously?

1 MR. CHO: Object to the form.

2 THE WITNESS: An embargoed media
3 call prior to an announcement relating to?

4 BY MR. CONNELLY:

5 Q. TPS status.

6 A. A TPS submission?

7 MR. CHO: Object to the form.

8 BY MR. CONNELLY:

9 Q. Whether a designation or an
10 extension.

11 A. I don't believe so.

12 Q. Was that call made at your
13 initiative, or did you participate in the call
14 at the request of someone?

15 MR. CHO: Object to the form.

16 THE WITNESS: At the request of
17 someone.

18 BY MR. CONNELLY:

19 Q. Who requested that you participate?

20 MR. CHO: Object to the form.

21 THE WITNESS: DHS headquarters, OPA.

22 BY MR. CONNELLY:

1 Q. Do you recall the particular person?

2 MR. CHO: Object to the form.

3 THE WITNESS: I think David Lapan or
4 Lapron.

5 BY MR. CONNELLY:

6 Q. That's, I think, L-A-P-I-N?

7 A. L-A-P-A-N, L-A-P-L-A-N.

8 Q. All right.

9 A. Wanted subject matter experts
10 present.

11 Q. And what's your best recollection of
12 who on the government side participated in the
13 embargoed media call?

14 A. Kathryn and I did, I think Angela
15 Hirsch for USCIS, David did, is it -- Joanne
16 Talbot maybe and David Lapan.

17 Q. Who is -- what part of the
18 organization is Talbot with?

19 A. I think she was OPA, public affairs
20 headquarters as well.

21 Q. I don't know -- I do not want to
22 know the content but, do you have a

1 recollection, was there some type of a
2 preparation session by you and the others who
3 eventually were a part of the embargoed media
4 call?

5 MR. CHO: Objection to form. Also
6 calls for internal government deliberations,
7 but the witness can answer subject to those
8 limitations.

9 THE WITNESS: Yes.

10 BY MR. CONNELLY:

11 Q. And who was a part of that
12 preparation process beyond the folks that you
13 -- if anyone, beyond those folks that you've
14 already mentioned to me.

15 MR. CHO: Same objection.

16 You can answer.

17 THE WITNESS: A number of people
18 were involved in preparing for the call from
19 DHS headquarters as well as USCIS.

20 BY MR. CONNELLY:

21 Q. Was there -- was that a single
22 preparation session or more than one?

1 A. As I recall, we prepared -- we
2 worked on talking points, essentially, you
3 know, a script and responses to anticipated
4 questions, over the course of -- which is
5 standard for preparing for calls with the
6 media, over the course of largely, the Sunday
7 and maybe Monday morning in advance of the
8 call, you know, and then as well as a brief
9 pre-meet before the call took place itself.

10 Q. And is it fair to conclude that by
11 Saturday, May 20th, you were aware of the plan
12 to extend the TPS status of Haiti for another
13 six months?

14 MR. CHO: Object to the form.

15 THE WITNESS: Yes.

16 BY MR. CONNELLY:

17 Q. And I'm going to ask you, then we
18 will get to the document finally. My
19 understanding is that on Friday, May 19,
20 Kathryn Anderson had a meeting that included
21 Deputy Secretary Duke and others.

22 Were you a part of that meeting?

1 A. No.

2 Q. Now, focusing on KA-25 and in
3 particular, the part of the e-mail string which
4 is your e-mail on Saturday, May 20, at 9:58
5 a.m., subject line is: "Haiti Comms,"
6 C-O-M-M-S.

7 What is C-O-M-M-S?

8 A. Comms. The communications material
9 and plan relating to the Haiti decision.

10 Q. All right. And a portion of your
11 short e-mail reads: "Bummer phone call. These
12 people need a helping hand out. So deeply
13 distraught to hear this pillar of normality
14 (our trustee second in charge) was anything
15 but. It looks like there are whack jobs
16 everywhere. Even the civil service."

17 What is the reference to "bummer
18 phone call?"

19 MR. CHO: Object to the form.

20 THE WITNESS: I think it's a
21 reference to a phone call that I had with
22 Kathryn in the wake of the Friday meeting,

1 either Friday or Saturday, probably Friday.

2 BY MR. CONNELLY:

3 Q. And could you help me understand the
4 next sentence: "These people need a helping
5 hand out."

6 Who are "these people" and what were
7 you conveying by saying, "need a helping hand
8 out?"

9 MR. CHO: Object to the form.

10 THE WITNESS: I don't know recall.
11 That could mean a couple of different things.
12 I'm not -- I don't recall.

13 BY MR. CONNELLY:

14 Q. Next you say: "So deeply distraught
15 to hear this pillar of normality (our trusty
16 second in charge) was anything but."

17 Who is the reference to the second
18 in charge?

19 MR. CHO: Object to the form.

20 THE WITNESS: Our deputy secretary,
21 acting deputy secretary.

22 BY MR. CONNELLY:

1 Q. That would be Duke?

2 A. Yes.

3 Q. Okay. And what were the --

4 A. I don't remember whether she was
5 acting or not at the time.

6 Q. Okay. But are you comfortable with
7 your -- I mean, the reference was to Duke?

8 A. To Elaine Duke, yeah.

9 Q. And what were you conveying when it
10 appears -- if you just slightly rework the
11 subject of the verb, that you were distraught
12 to hear that the Acting Secretary Duke was
13 acting anything but normal?

14 MR. CHO: Object to the form and to
15 the extent that it seeks information relating
16 to internal deliberations but the witness can
17 answer.

18 THE WITNESS: I think that I am
19 referring to the impression that I had based on
20 the readout of the call, that the deputy
21 secretary was -- seemed to be in alignment with
22 some of the perspectives on temporary protected

1 status that were being advanced by parties with
2 whom we disagreed.

3 BY MR. CONNELLY:

4 Q. I don't want to hear about the
5 conversations but what were the topics with
6 which you recall disagreeing with?

7 MR. CHO: Object to the form.

8 Again, calls for information relating to
9 internal government deliberations but you can
10 answer given the caveats articulated by the
11 attorney.

12 THE WITNESS: The standing Temporary
13 Protected Status designations, how they were
14 wrought, how decisions were made regarding
15 their extension or termination historically.

16 BY MR. CONNELLY:

17 Q. Did you find that there was a
18 contrast between how the decisions had been
19 made historically as compared to the decision
20 that was being made in May of 2017 regarding
21 the extension of the Haiti TPS status?

22 MR. CHO: Object to the question.

1 Again, seeks information relating to internal
2 government deliberations.

3 I would ask the attorney to rephrase
4 the question.

5 MR. CONNELLY: Well, do you have
6 trouble following the question?

7 MR. CHO: Well, I am objecting based
8 on the way the question is phrased, because
9 asking specific questions about internal
10 government deliberations, so I'd ask that you
11 rephrase the question.

12 MR. CONNELLY: Well, I don't -- I am
13 not -- don't go ahead of me, I'm sorry. I just
14 want to make sure that I understand.

15 BY MR. CONNELLY:

16 Q. Do you have difficulty understanding
17 the question?

18 A. I don't know that I have difficulty
19 understanding the question, although it doesn't
20 naturally follow from what I was just
21 suggesting by way of my interpretation in my
22 response.

1 Q. Was there -- and again, I don't want
2 deliberations with anyone else on this.

3 Was there some disconnect in your
4 mind in terms of how the Haiti situation was
5 being handled in May 2017 as compared to your
6 reference to historical antecedents to this
7 decision?

8 MR. CHO: Again, objection. Also,
9 that question is vague.

10 Is it confined to prior TPS
11 determination relating to Haiti or something
12 else?

13 MR. CONNELLY: We can confine it to
14 Haiti.

15 MR. CHO: Okay. Again, also I
16 object on the grounds that it seeks internal
17 government deliberations but the witness can
18 answer if he can.

19 THE WITNESS: Yes, I think Haiti was
20 handled differently.

21 BY MR. CONNELLY:

22 Q. You had mentioned -- and I'm sorry I

1 didn't write it down because I wanted to stay
2 in the flow of the conversation we were having,
3 I thought you had mentioned somehow, you were
4 referencing back to a -- I think you said a
5 call.

6 I don't think you said a recorded
7 call but I just didn't capture your phrase, but
8 that you thought that you were referring to
9 some earlier call that prompted these
10 observations?

11 A. Yes.

12 Q. What was that? I don't want the
13 content. I just need an understanding of --

14 A. I think it was a call that I had
15 with Kathryn following this meeting.

16 Q. Okay.

17 A. During which she just gave me a
18 readout of the meeting.

19 Q. So to summarize, make clear for
20 someone who is not in the room for us, you
21 think you -- it was apparently was a reference
22 to, you had a call with Kathryn sometime after

1 her Friday, May 19, meeting, a meeting that you
2 did not attend?

3 A. Right.

4 Q. Okay. When you stated in your
5 e-mail: "Looks like there are whack jobs
6 everywhere," who were you referring to?

7 MR. CHO: Objection to form.

8 You can answer.

9 THE WITNESS: I think I was
10 referring to senior DHS officials including the
11 deputy secretary.

12 BY MR. CONNELLY:

13 Q. And when you said, "even the civil
14 service," is that really -- am I really asking
15 you the same question?

16 What did you mean by that?

17 MR. CHO: Objection to form.

18 THE WITNESS: Yeah, senior DHS
19 officials including but not limited to those
20 who came from the civil service.

21 BY MR. CONNELLY:

22 Q. And differentiate for me. Can you

1 tell me, again, I don't want any conversations,
2 I just would like to know labeling, who were
3 the senior officials who came from the civil
4 service versus those who had not?

5 MR. CHO: Objection to form.

6 THE WITNESS: You know, Deputy
7 Secretary Duke is -- I understood it here, and
8 I think as I still understand it, came from the
9 civil service. Others in the front office
10 personnel, including Gene Hamilton, did not
11 come directly from civil service into their
12 politically-appointed positions.

13 BY MR. CONNELLY:

14 Q. KA-27. I will represent that this
15 is the FRN of May 24, 2017, regarding the
16 extension of the TPS designation for Haiti, and
17 I am only going to be asking you questions
18 regarding the information under the same rubric
19 that had been used in similar FNRs: "Why is
20 the secretary extending the TPS designation for
21 Haiti through January 22, 2018."

22 Are you ready to respond?

1 A. I am.

2 Q. Okay. Am I correct that this is the
3 FRN for the extension of the TPS status for
4 Haiti that was issued on Wednesday, May 24,
5 2017?

6 A. That's right.

7 Q. And in reviewing the various items
8 that are contained under this section: "Why is
9 the secretary extending the TPS designation for
10 Haiti through January 22, 2018," are those --
11 is that summary of the current conditions in
12 Haiti consistent with your recollection of what
13 the relevant factors were and why the secretary
14 extended the designation?

15 MR. CHO: Objection to form. Calls
16 for a legal conclusion.

17 But you can answer the question.

18 THE WITNESS: Yes, actually.

19 BY MR. CONNELLY:

20 Q. And just for the record -- so, I
21 mean, it's a longer summary than what I am
22 about to say, but among the factors that were

1 mentioned as to why the secretary extended,
2 they included Hurricane Matthew, April 27,
3 2017, the flooding and landslide and an ongoing
4 cholera epidemic, among other things; is that
5 right?

6 MR. CHO: Again, the document speaks
7 for itself.

8 You can answer.

9 THE WITNESS: Yes.

10 BY MR. CONNELLY:

11 Q. Were there any current conditions
12 that are not included in this explanation of
13 why the secretary extended, that you wished to
14 have included?

15 MR. CHO: Objection to form. Seeks
16 information relating to the deliberative
17 process. I will allow the witness to answer
18 based what is contained here in the FRN.

19 THE WITNESS: I can't say for sure
20 at the time that this was written that I didn't
21 think that there were some omissions, but in
22 reading it now, it's a fairly good summation of

1 what I believed to be relevant country
2 conditions in support of an extension for
3 Haiti's TPS designation.

4 MR. CONNELLY: KA-28.

5 MR. CHO: The government objects to
6 KA-28 on the grounds that these e-mail
7 exchanges also contain internal governmental
8 deliberations. And the subject line also notes
9 that these are draft responses.

10 With that in mind, the witness can
11 answer questions relating to this e-mail.

12 BY MR. CONNELLY:

13 Q. And then, as I've done in the past,
14 I will, you know, obviously invite you to read
15 the entire chain. I think I'm only going to be
16 asking you questions about the e-mail that's
17 contained on the first page from USCIS
18 executive presumably secretary SEC on Tuesday,
19 May 23rd.

20 A. Okay.

21 Q. All right. So to get our time
22 frames in order, the memo that I'm asking you

1 to look at on the first page of this document
2 was Tuesday, May 23rd, 2017, which would have
3 been the day before the formal publication of
4 the FRN extending Haiti's TPS status for
5 another six months, correct?

6 A. That's right. Uh-huh.

7 Q. Okay. And in the middle of that
8 memo, I'll quote "DCOS comments" -- let's stop
9 there.

10 Who's DCOS?

11 A. Deputy chief of staff.

12 Q. Who was that?

13 A. I can't say with 100 percent
14 certainty, but I want to say Chad Wolf.

15 Q. And this would have been the deputy
16 chief of staff to the secretary of the
17 Department of Homeland Security?

18 A. That's how I read it.

19 Q. Okay. And it goes on. This quote
20 is within the document itself: "For S1"...

21 Is your best understanding that
22 would be a reference to then Secretary Kelly?

1 A. Yes. S1 is always a reference to
2 the person who is currently the secretary.

3 Q. Of the Department of --

4 A. Of the Department --

5 Q. -- Homeland Security.

6 A. -- of Homeland Security.

7 Okay. I'll -- I'll start again:

8 "For S1 letters on Haiti TPS, he wants a
9 stronger response beginning to build a case for
10 not extending."

11 It further goes on: "From S1, make
12 the case as such" colon.

13 And then there are two bulleted
14 matters, which I'll read: "Highlight temporary
15 nature." Then a semicolon.

16 And the second bullet point: "2010
17 earthquake is the only reason for TPS being
18 granted. Not based on hurricane or current
19 economic conditions. Not based on cholera
20 epidemic.

21 "Suggested language: 'As you know,
22 granting TPS was based solely on 2010

1 earthquake that ravaged Port Au Prince.
2 Primarily localized damage in capital region of
3 Port Au Prince. Recovery slow but steady, UN
4 has determined their stabilization force is no
5 longer needed. Decision to rebuild palace
6 shows economic is recovering."

7 The portion that I've just read to
8 you, starting with the "2010 earthquake"
9 through the "decision to rebuild the palace
10 shows economic is recovering," does that little
11 summary accurately describe the current
12 conditions in Haiti as of May 23rd, 2017?

13 MR. CHO: Object to the form.

14 THE WITNESS: The portions of it
15 that relate to country conditions, in my view,
16 are perhaps not totally accurate
17 representations and perhaps not the most
18 relevant to a future determination, although I
19 note that much of this material does not
20 actually encapsulate a -- or directly represent
21 a country condition, per se.

22 BY MR. CONNELLY:

1 Q. And I'll just ask you one further
2 question on this document. And -- and drawing
3 your attention to the observation made in the
4 USCIS executive secretary memo where it states:
5 "Not based on cholera epidemic."

6 Do you see that phrase?

7 A. I do.

8 Q. And if you could just go back to the
9 document that I just showed you, which was the
10 official FRN, which is KA-27, the document that
11 comes out in print one day later on May 24th,
12 2017.

13 Am I correct that one of the reasons
14 it is stated in that document why the secretary
15 is extending the TPS designation, one of the
16 things that's mentioned is the ongoing cholera
17 epidemic.

18 MR. CHO: Object to the form.

19 BY MR. CONNELLY:

20 Q. Is that right?

21 MR. CHO: Object to the form.

22 Again, the documents speak for

1 themselves.

2 THE WITNESS: I think that's
3 correct.

4 BY MR. CONNELLY:

5 Q. KA --

6 A. But --

7 Q. -- 20 -- I'm sorry. Did you -- did
8 you -- I -- I didn't mean to cut you off.

9 As I -- as I encouraged you, you
10 know, at the very top of this whole process, I
11 want to make sure that you're --

12 A. It's just that --

13 Q. -- you answer as fully --

14 A. That -- that --

15 Q. -- as you like?

16 A. -- that bullet by the -- is
17 purported as being the -- the comment from the
18 deputy chief of staff just doesn't -- doesn't
19 wholly make sense insofar as the -- the
20 relevant designation was the 2011 designation,
21 the redesignation in 2011, not -- not the 2010
22 designation.

1 The 2010 designation, the reasons
2 for it were folded into the 2011 redesignation.
3 The 2011 redesignation included other things,
4 including cholera.

5 MR. CONNELLY: We'll go to KA-29.

6 MR. CHO: Same objection to KA-29,
7 Bates No. DPP 10924. This e-mails contains
8 internal deliberative communications and is
9 subject to the deliberative process privilege.

10 But I will allow the witness to
11 answer questions relating to this e-mail
12 exchange.

13 BY MR. CONNELLY:

14 Q. Unlike the -- some of the earlier
15 e-mail chains, I'm -- I'm probably going to
16 walk you through, you know, a fair amount of
17 this one.

18 A. Okay.

19 Q. In case that makes any difference in
20 how you review it before answering questions.

21 A. Is it all right if I grab a little
22 sparkling water?

1 Q. Oh, sure. Any time. Take -- take
2 whatever break you need.

3 A. I'm ready whenever.

4 Q. All right. The first e-mail in this
5 chain, which is on the last page, appears to
6 come from Tina Wimbush W-I-M-B-U-S-H, who is a
7 writer-editor in the office of the executive
8 secretariat at USCIS, correct?

9 A. Yes.

10 Q. And again, for the record, it's
11 not -- it's not identical, but a portion of her
12 e-mail picks up on the same language that I had
13 just shown you in the previous document, KA-28.

14 Quoting: "From Sl," meaning
15 Secretary Kelly, "make" such -- "make case as
16 such: Highlight temporary nature." Then it
17 goes on to talk about the 2010 earthquake and
18 -- and other suggested language.

19 I'm not going to -- you don't have
20 to review it. I just -- I'm just trying to
21 acclimate you to the start of this chain.

22 A. Yes.

1 Q. All right. And then I don't have
2 any questions until we go a few e-mails further
3 when Kathryn Anderson, on Wednesday June 7th,
4 at 2:38 p.m., sends you an e-mail that's on
5 the -- that's on the middle page of this
6 document.

7 Do -- do you have that in front of
8 you?

9 A. I do.

10 Q. And she states: "This is
11 ridiculous."

12 What did you understand her to be
13 referencing with that comment?

14 MR. CHO: Object to the form.

15 You can answer.

16 THE WITNESS: I think she was
17 referencing the -- the chain of events wherein
18 we initially received the instruction to
19 incorporate those points into congressional and
20 other external responses that we drafted on
21 Haiti TPS.

22 We drafted a response and sent it

1 forward and then got back a subsequent
2 reissuance of the same instruction. And I
3 think I read -- I read her -- her first comment
4 as an expression of discontent with our having
5 to take another run at incorporating that
6 material.

7 BY MR. CONNELLY:

8 Q. And -- and let's go to the first
9 page for a moment. I know I'm taking you
10 slightly out of sequence. But the first page
11 appears to be a -- a draft of a letter by you,
12 which begins with the title "Your eminence."

13 Do you see that?

14 A. Uh-huh.

15 Q. Who --

16 A. I do.

17 Q. Who was that -- am I right that this
18 is a draft of what, you know, was -- was
19 planned to be some kind of a letter or response
20 to someone?

21 A. That's right.

22 Q. Okay. Who is -- who is it that the

1 letter was being drafted to?

2 MR. CHO: Again, we object on the
3 grounds that this draft is obviously a draft
4 and touches on internal government
5 deliberations.

6 But the witness can answer.

7 THE WITNESS: I think it was to --
8 was Cardinal Joseph Tobin perhaps.

9 BY MR. CONNELLY:

10 Q. Would you spell the last name for
11 me.

12 Tobin, T-O-B-I-N?

13 A. Yeah. Yes.

14 Q. And --

15 A. T-O-B-I-N.

16 Q. Is he a U.S. cardinal?

17 A. I -- to the best of my recollection.

18 Q. And -- and am I correct -- I'm just
19 trying to get an overall sense of this e-mail
20 chain.

21 Do you think this -- I mean
22 obviously this was chained together.

1 Is -- is the -- the general thrust
2 of this e-mail chain a request that you or
3 someone on your team generate a response to a
4 request by Cardinal Tobin?

5 MR. CHO: Object to the form.

6 THE WITNESS: I'm sorry. Is the --
7 can -- can you repeat the question.

8 MR. CONNELLY: Yeah.

9 THE WITNESS: I apologize.

10 BY MR. CONNELLY:

11 Q. I'm just trying to get an overall
12 sense of the e-mail chain.

13 And I'm wondering whether it's a
14 fair characterization that -- that basically
15 the chain is that you or a member of your team
16 is -- is be -- is -- has been requested to
17 provide a response to some type of an inquiry
18 from Cardinal Tobin.

19 A. Yes. That's correct.

20 Q. And again --

21 A. The --

22 Q. Go ahead.

1 A. -- instruction is -- is general to
2 all S1 letters relating to Haiti TPS. We
3 understood it to be that way. This is the
4 instance -- immediate instance at hand.

5 Q. Okay. And indeed, if we could get
6 there on the first page internally to your
7 draft response. It says: "Thank you for your
8 April 21st, 2017 letter."

9 Do you see that?

10 A. I do.

11 Q. Which -- which would suggest that
12 Cardinal Tobin sent a letter sometime around
13 April 21st, and then this was going to be an
14 effort to respond to his letter, correct?

15 A. Yes.

16 MR. CHO: Object to the form.

17 BY MR. CONNELLY:

18 Q. Do you happen to remember did -- I
19 mean I don't have Cardinal Tobin's letter.

20 Do you happen to remember the gist
21 of his letter or what it was that he would like
22 to have someone get back to him on?

1 MR. CHO: Object to the form.

2 THE WITNESS: I can infer it.

3 MR. CHO: Again, don't guess. If
4 you know, testify to what you know on your --
5 based on your own personal knowledge.

6 THE WITNESS: This letter regarded
7 Haiti TPS and perhaps other kinds of TPS.

8 BY MR. CONNELLY:

9 Q. So now let's go back into the
10 sequencing.

11 You've just told me about Kathryn
12 Anderson's e-mail to you on Wednesday, June
13 7th.

14 And then you respond to her e-mail
15 fairly promptly, less than five minutes later.
16 And you say: "I'll just pull some stuff from
17 his statement. Unreal."

18 When you say "I'll just pull some
19 stuff from his statement," are you referring to
20 a statement made by Secretary Kelly?

21 A. Yes.

22 Q. And -- and what -- do you remember

1 what statement was it where you were -- would
2 have the ability to pull up something that he
3 had -- had said?

4 A. His statement announcing the
5 extension of the TPS designation for Haiti.

6 Q. Okay. What did you mean by using
7 the word "unreal"?

8 A. It's was an expression of
9 exacerbation with the exercise.

10 Q. Next, Kathryn Anderson gets back to
11 you, again in very short order, a few minutes
12 later, and says: "Did you see the suggested
13 language? It's amazing (and mostly incorrect).
14 This idea of localized damage from the
15 earthquake is insane."

16 When -- what did you understand her
17 to be referencing when she asked if you had
18 seen the suggested language?

19 MR. CHO: Object to the form.

20 THE WITNESS: I understood it to be
21 referencing the language at the end of the
22 directive regarding points that we were to make

1 in letters for -- from the secretary on Haiti
2 TPS following the phrase "suggested language."

3 BY MR. CONNELLY:

4 Q. And her next observation: "It's
5 amazing (and mostly incorrect.)"

6 Do you have an understanding that
7 that -- that was also referring to the
8 directive?

9 A. Yes.

10 Q. Do you know what was mostly
11 incorrect in that direct -- in that directive?

12 MR. CHO: Object to the form.
13 Again, objection on the grounds that it touches
14 on internal government deliberations.

15 But you can answer based on what's
16 contained here in the e-mail.

17 A. Yes.

18 BY MR. CONNELLY:

19 Q. Then she goes on to make the
20 observation: "This idea of localized damage
21 from the earthquake is insane."

22 Did you agree with that observation?

1 MR. CHO: Object to the form. And
2 again, object based on the internal government
3 deliberations components of this e-mail.

4 But you can answer if you can.

5 THE WITNESS: Yes.

6 BY MR. CONNELLY:

7 Q. And then you get back to her, again
8 very quickly, a few minutes later, and say: "I
9 know. We saw it before and noted the same
10 thing. I'm torn between taking a first run at
11 saying not untrue things and just quoting
12 Secretary Kelly saying untrue things from the
13 get-go."

14 What were you referencing when you
15 referenced quoting Secretary Kelly saying
16 untrue things?

17 MR. CHO: Again object to the form.
18 And object on the grounds that this contain
19 internal government deliberations.

20 But the witness may answer as to his
21 understanding.

22 THE WITNESS: Aspects of the

1 statement announcing the extension of Haiti's
2 TPS designation with which I took issue.

3 BY MR. CONNELLY:

4 Q. Do you remember more specifically
5 what one or more things in that statement you
6 thought were untrue?

7 MR. CHO: Object to the form. Also
8 object on the grounds of internal government
9 deliberations.

10 But the witness may answer.

11 THE WITNESS: Yes. I believe there
12 were -- was an element to the statement that
13 was suggesting enthusiasm from the Haitian
14 government to receive its people back. The
15 characterization of the trajectory of the
16 country's improvement. And some of the other
17 aspects which I then maybe folded into this
18 letter.

19 BY MR. CONNELLY:

20 Q. Going to the first page, the draft
21 that you pulled together on Wednesday, June
22 7th, at 3:35 p.m.

1 Before we go to content, do you have
2 a recollection -- ultimately did -- did the
3 draft become a final that went to Cardinal
4 Tobin?

5 A. Did this draft as it's written
6 become final and go to Cardinal Tobin --

7 Q. Well --

8 A. -- as its written?

9 Q. No. Not necessarily as it's
10 written. I -- I -- although I -- I can get to
11 that.

12 But let -- well, why don't you go
13 ahead and answer that question first. Yeah.

14 A. I don't know.

15 Q. Okay.

16 A. I can't -- I can't recall.

17 Q. Was -- was a letter sent to Cardinal
18 Tobin?

19 Do you -- do you recall that?

20 MR. CHO: Object to the form.

21 THE WITNESS: I -- in my capacity, I
22 wouldn't know -- I wouldn't know with certainty

1 whether any letter is actually sent out of the
2 department after we've drafted it. That's --
3 that happens after we have hands on it.

4 BY MR. CONNELLY:

5 Q. Where -- where would your draft go
6 in the department for further, you know, review
7 or determination whether or not to send it?

8 A. Through --

9 MR. CHO: Object to the form.

10 THE WITNESS: Through the executive
11 secretary's formal clearance channels to
12 offices deemed relevant for review and
13 clearance, and then eventually to the
14 individual, or I suppose a designee, but I
15 think probably to -- to the individual who's
16 intended to be the sender of the letter for
17 signature.

18 MR. CONNELLY: KA-30.

19 MR. CHO: The government objects to
20 KA-30 again on the ground that these e-mails
21 contain internal government deliberations.

22 But the witness may answer questions

1 limited to what's contained here in the e-mail.

2 BY MR. CONNELLY:

3 Q. I'm only going to be asking you
4 about the first page of this e-mail string.

5 A. Okay.

6 Q. This -- this picks up basically on
7 the same topic. And there are two additional
8 e-mails on KA-30 that were not on KA-29.

9 Let's -- let's first go to your
10 e-mail that's Wednesday, June 7th, at 4:59 p.m.
11 to Kathryn Anderson where you say: "Thanks.
12 I'll admit, once I thought about elaborating on
13 TPS's inherently temporary nature, it got me
14 sort of enthused to spin that out. The INA is
15 so instructive. Safe travels."

16 What is the INA?

17 A. The Immigration and Nationality Act.

18 Q. And when you said it got you
19 enthused to spin that out, what -- what did you
20 mean by that?

21 A. Senior level officials in this
22 administration had spoken a great bit about the

1 inherently temporary nature of TPS and seemed
2 to suggest that there was something about the
3 nature of -- of the benefit that was inherently
4 bounded in the sense that an extension could
5 not go on too long just by dint of the passage
6 of time.

7 We had not, I think, before been
8 placed in a position where we were in need of
9 analyzing fully the extent of how exactly TPS
10 is temporary under INA Section 244.

11 But the statute does speak about
12 time-bound periods. And those are in the form
13 of how long initial designations may be made
14 for, how long extension may be made for, when
15 periodic reviews must take place.

16 And so I was enjoying the exercise
17 of crystallizing exactly how it is that the
18 statute dictates the temporary nature of TPS.

19 Q. When you say "the statute," you're
20 referring to the INA statute?

21 A. Yes.

22 Q. Which is different -- I -- I'm

1 guessing, but you tell me.

2 That's different than the statute
3 that I -- we started this deposition off with
4 that I showed you in KA-1?

5 A. No. It's the same.

6 Q. Same one. That --

7 A. Uh-huh.

8 Q. Okay. So that -- that's a reference
9 to the statute KA-1 that you were shown at the
10 top of the deposition?

11 A. Yes.

12 Q. All right. Did -- did your review
13 of INA -- was it consistent with what the
14 senior officials thought the temporary nature
15 of -- of the TPS status --

16 MR. CHO: Object to the --

17 BY MR. CONNELLY:

18 Q. -- permitted?

19 MR. CHO: Object to the form. Calls
20 for speculation. And also seeks information
21 relating to internal government deliberations.

22 I ask the attorney to rephrase that

1 question because it's asking this witness to
2 contemplate what some other person is thinking.

3 MR. CONNELLY: Yeah. No.

4 BY MR. CONNELLY:

5 Q. I don't -- I don't want what any --
6 what anyone else was thinking.

7 I just wanted to find out from you
8 if what -- whatever was, you know, said to you
9 about the -- what some of the senior officials
10 thought the temporary nature of the TPS statute
11 was, whether that understanding was consistent
12 or inconsistent with your review of the INA
13 which, by your own words, you found
14 instructive?

15 MR. CHO: Again, same objection.

16 Also Calls for a legal conclusion.

17 This witness can testify to his own
18 personal knowledge but not those of some other
19 official.

20 MR. CONNELLY: Right. I -- I agree
21 with that -- that -- that qualification.

22 MR. CHO: Answer if you can.

1 THE WITNESS: Based on the
2 conversations I was a part of and other forms
3 of communication regarding the views --
4 reflecting the views or -- or directly passing
5 along -- purporting to pass along the views of
6 senior level officials, this encapsulation here
7 is mostly consistent with theirs, perhaps with
8 some exception to the bit about there being no
9 limit on the number of times a designation may
10 be extended.

11 BY MR. CONNELLY:

12 Q. When you say "this encapsulation
13 here," are you referring to the content of your
14 draft letter to Cardinal Tobin?

15 A. Yes.

16 Q. Okay. And when you say "this
17 encapsulation here is mostly consistent
18 with" -- I don't have -- I don't have a
19 photographic memory.

20 But you seem to say this
21 encapsulation seem -- is consistent with at
22 least some senior staff people's views on the

1 temporary nature of TPS?

2 MR. CHO: Object to the form. Also
3 mischaracterizes his prior testimony.

4 THE WITNESS: It is insofar as I
5 don't think -- I feel as though many of the
6 more senior level officials understood these
7 elements of the statute or didn't quibble with
8 our representation of them.

9 BY MR. CONNELLY:

10 Q. And I -- okay.

11 And from that I'd just like the find
12 out -- since you reference this -- this -- this
13 encapsulation here was consistent with their
14 views, I'd like to find out, particularly in
15 light of -- if you took a look back at the INA,
16 whether the encapsulation was consistent with
17 your views.

18 MR. CHO: Object to the form.
19 Again, seeks information relating to internal
20 government deliberations.

21 But you can answer based on what's
22 contained here in the e-mail.

1 THE WITNESS: This encapsulation
2 perfectly reflects my view. I wrote it
3 intending it to perfectly encapsulate my view
4 and my understanding of what the INA requires
5 in Paragraph 2, I believe.

6 BY MR. CONNELLY:

7 Q. Let me ask about Kathryn Anderson's
8 e-mail to you on Wednesday, June 7th, at 4:54
9 p.m. where she states: "That's the best
10 possible combo of true things from you and
11 quotes of not true things from SK."

12 "SK" being Secretary Kelly; is that
13 right?

14 A. Yes.

15 Q. Okay. Close quote.

16 And if you look at your draft,
17 you -- the first paragraph doesn't quote
18 anything from Secretary Kelly, nor does the
19 second, nor the third, which is just one
20 sentence.

21 Fourth paragraph, which begins
22 "States currently receiving protection," there

1 is a quote at the end from Secretary Kelly.

2 The fifth paragraph, beginning "The
3 secretary elaborated on Haiti's progress,"
4 there is a -- a lengthy quote from Secretary
5 Kelly."

6 And I believe those are the only
7 quotes, although guide me if there's anything
8 else that just doesn't happen to have quotation
9 marks on it.

10 But is -- if -- if I'm correct that
11 the fourth and fifth paragraph are the quotes
12 from Secretary Kelly, can you tell me what part
13 of those quotes you thought not to be true?

14 MR. CHO: Object to the form.
15 Object to the fact that the document also
16 speaks for itself.

17 When you refer to fourth and fifth
18 paragraph, I just want to make sure we're
19 referring to the same paragraph. Because we
20 count them slightly different than you do.

21 MR. CONNELLY: Okay.

22 BY MR. CONNELLY:

1 Q. Well, the paragraphs that I'm
2 referring to are the ones that start -- I'm
3 calling the fourth paragraph the one that
4 starts with "States currently receiving
5 protection under Haiti's designation?"

6 And I'm calling the fifth paragraph
7 the one obviously that follows it: "The
8 secretary elaborated on Haiti's progress,
9 noting:" and then a quote that precedes for
10 the remaining five --

11 A. I think there's just a formatting
12 error. The sentence from the first page is the
13 start of the third paragraph. "Haiti was
14 initially designated for TPS on January 21st,
15 2010, with almost 60,000 Haitians in the United
16 States currently" --

17 Q. I see. I see. Okay. Well, all
18 right.

19 A. So --

20 MR. CHO: Maybe break down your
21 question so it's a little more clear as to what
22 you're referring to.

1 BY MR. CONNELLY:

2 Q. Okay. I'm referring to the
3 paragraph that begins on the bottom of the
4 first page that says: "Haiti was initially
5 designated for TPS."

6 We'll -- we'll call that -- thanks
7 to your observation, we'll call that a third
8 paragraph of your draft. And there is a quote
9 from Secretary Kelly in that paragraph.

10 The next paragraph, which we'll now
11 renumber four -- and for the record, we'll
12 describe it starting with: "The secretary
13 elaborated on Haiti's progress, noting:" And
14 then there is a quote that extends for the
15 entire remainder of that paragraph.

16 What I'd like to know is, in that
17 quoted material, what did you conclude was
18 untrue?

19 MR. CHO: Object to the form of the
20 question. Also mischaracterizes prior
21 testimony.

22 But you can answer if you can.

1 THE WITNESS: I think that I thought
2 it was untrue that, if Haiti's recovery from
3 the 2010 earthquake continued at the pace of
4 recovery that was taking place at the time,
5 that that would render it in a state where it
6 didn't warrant further TPS extension beyond
7 January 2018.

8 BY MR. CONNELLY:

9 Q. Anything else in those quoted
10 materials that you at the time thought was
11 untrue?

12 MR. CHO: Object to the form. Also
13 mischaracterizes prior testimony.

14 But you can answer.

15 THE WITNESS: I'm not sure that I
16 agree that the economy was recovering or
17 growing or at least not in a meaningful sense.
18 I didn't agree with the characterization of the
19 state of the displaced, although the actual
20 statements about the camps closing is right,
21 and I also questioned whether stated plans by
22 the government to rebuild the Haiti

1 presidential residence at the national palace
2 was indicative of Haiti's success in recovering
3 from the earthquake.

4 And also some question about whether
5 the withdrawal of MINUSTAH was wholly
6 indicative of its success in recovering from
7 the earthquake.

8 THE VIDEOGRAPHER: We are going off
9 the record at 2:49.

10 (A short recess was taken.)

11 THE VIDEOGRAPHER: We are back on
12 the record at 3:00.

13 BY MR. CONNELLY:

14 Q. During the break, I was reminded
15 that I had failed to ask a question on a
16 particular topic a little bit earlier, so we're
17 going to go out of sequence just momentarily,
18 and I'd ask the witness to go back to KA-21
19 which is an e-mail sequence that ends with his
20 e-mail on May 8, 2017, at 6:48 p.m.

21 Do you have that document in front
22 of you?

1 A. I do.

2 Q. If you would go to about five pages
3 in, the Bates number on the bottom is 7864, and
4 this is a Kathy Nuebel Kovarik e-mail on April
5 25, 2017, at 12:13 p.m.?

6 A. Yes.

7 Q. I'm going to ask you -- I'm going to
8 read into the record the portion that I wanted
9 to ask you a question about, and it's a
10 separate portion of her e-mail under the
11 heading: "Remittances."

12 It reads: "According to the World
13 Bank, Haiti received an estimated 2.19 billion
14 in remittances in 2015. Of this amount, an
15 estimated 1.34 billion were from the United
16 States. Total remittances to Haiti accounted
17 for approximately 25 percent of Haiti's GDP in
18 2015 (total GDP equaled \$8.77 billion).
19 Remittances from the United States accounted
20 for approximately 15 percent of Haiti's GDP in
21 2015."

22 First, do you know what the acronym

1 GDP stands for?

2 A. Yes.

3 Q. What's that?

4 A. Gross domestic product.

5 Q. And do you have an informed basis
6 for knowing, you know, comparative to other
7 countries, whether the remittances accounting
8 for 25 percent of Haiti's GDP in 2015 was a
9 significantly larger amount of money than makes
10 up the GDP of most countries?

11 MR. CHO: Object to the form.

12 Vague. Overbroad.

13 Perhaps you can rephrase your
14 question or if you are able to answer the
15 question, go ahead.

16 BY MR. CONNELLY:

17 Q. Are you able to answer?

18 A. I have a strong feeling that I know
19 the answer to that question but no, not with
20 certainty, I'm not an expert in that.

21 Q. But again, I appreciate it. I don't
22 want -- if you have raw speculation, but if you

1 have -- I'm not asking for your expertise, I am
2 just asking for your, you know, your
3 informational knowledge.

4 A. I would say that 25 percent of GDP
5 being composed of remittances is high.

6 Q. Okay. And again, last question on
7 this, just based on your experience in the work
8 you do, is a high percent of a country's GDP
9 being based on remittances, is that a sign of
10 good financial circumstances of a country,
11 maybe it's a sign of nothing or maybe it's a
12 sign of poor financial circumstances in the
13 country. Can you --

14 A. Yes, I think we generally look at
15 that as a sign of poor financial circumstances
16 in a country.

17 Q. Now we will chronologically get back
18 on track and I will give you KA -- I think it's
19 36.

20 MR. CHO: The government objects to
21 KA-36 based on Bates No. DPP 3323 which is the
22 first page, again on the grounds that this

1 e-mail exchange contains internal government
2 deliberations.

3 Given that caveat, the witness can
4 answer questions about this exhibit.

5 BY MR. CONNELLY:

6 Q. This is a reasonably lengthy e-mail
7 chain and so with no question pending, I will
8 just inform the witness that I'm only going to
9 be asking him about the e-mails on the first
10 page and additionally, so that you can puzzle
11 through this as you are reviewing the entirety
12 of the chain, there is a reference at least in
13 some of the e-mails to three memos.

14 I'm going to be asking you what that
15 is, so with those two filters, please spend as
16 much time as you want reviewing the document
17 before I ask you any questions.

18 A. Okay. Thank you.

19 Okay.

20 Q. All right. On the first page of
21 this long e-mail chain, you have an e-mail on
22 October 13, 2017, at 8:30 a.m., to Laurence

1 Levine and Kathy Nuebel Kovarik, and in your
2 e-mail, you reference -- you say: "Send to us
3 the three memos with the right docs to include
4 to provide the country conditions and analysis
5 on the available options."

6 Can you tell me what those three
7 memos were?

8 MR. CHO: Object to the form. That
9 is requesting information relating to internal
10 government deliberations, but you can answer
11 with respect to what is contained in those
12 e-mails.

13 THE WITNESS: I think the three
14 memos I am referencing are the draft decision
15 memos for the three Central American countries
16 that were designated for TPS, El Salvador,
17 Honduras and Nicaragua.

18 BY MR. CONNELLY:

19 Q. We won't spend much time on this
20 since it is not directly related to Haiti, but
21 I will ask you then to -- let's go to the last
22 memo, the top memo from Kathy Nuebel Kovarik to

1 you and others, on October 13, 2017, at 8:52
2 a.m.

3 She says: "I am going to send you a
4 revision of all three memos by 10 a.m."

5 So let me stop there for a second.

6 As best you are able to remember, this now
7 being more than a year ago, do you remember,
8 did your team generate drafts of three decision
9 memos for Kathy Nuebel Kovarik to consider?

10 MR. CHO: Object to the form.

11 THE WITNESS: Yes.

12 BY MR. CONNELLY:

13 Q. And when she says: "I'm going to
14 send you a revision of all three memos," what
15 did you understand by that?

16 MR. CHO: Object to the form.

17 THE WITNESS: I understood it to
18 mean that she would be sending back the memos
19 that we had drafted, edited by her and other
20 senior leadership.

21 BY MR. CONNELLY:

22 Q. Okay. Then she goes on to say: "We

1 don't need them finalized but in good shape for
2 Director Cissna before he meets with Secretary
3 Duke at 4:30 p.m."

4 She continues: "The problem is that
5 it reads as though we'd recommend an extension
6 because we talked so much about how bad it is,
7 but there is not enough in there about positive
8 stuff that has been taken since its
9 designation."

10 What did you understand her to mean
11 by talking about there is not enough in there
12 about positive steps?

13 MR. CHO: I'm going to object to
14 that question. Obviously, as to form, but also
15 to the extent that seeks information relating
16 to internal government deliberations.

17 As this witness testified, these
18 memos had nothing to do with Haiti, and as
19 counsel identified as well, this is beyond the
20 scope of this litigation as well, so I'm going
21 to instruct him not to answer that question as
22 beyond the scope of this litigation as well.

1 MR. CONNELLY: All right. Although
2 I do think that, generally, broadly speaking in
3 depositions, anything that is -- that could
4 lead to useful or relevant information is
5 generally considered to be fair game.

6 And so I would suggest again,
7 particularly given the limited nature of what I
8 am asking, I don't think I am looking for any
9 deliberative process here, I am just trying to
10 have an understanding of what Kovarik was
11 conveying to him on decision memos that are
12 being made contemporaneously with a decision
13 memo on Haiti, so I think that's close enough
14 to have relevance in this case.

15 MR. CHO: That's a slightly
16 different question. You know, again, this
17 e-mail is referring to -- and as this witness
18 identified, three other Central American
19 countries other than Haiti.

20 Now, if your question is relating to
21 Haiti, that would be permissible, but that's a
22 separate question that you've asked.

1 BY MR. CONNELLY:

2 Q. Did you get any requests by
3 secretary -- I'm sorry, not secretary, by Kathy
4 Nuebel Kovarik or anyone else senior within the
5 Department of Homeland Security from you to
6 indicate that there weren't -- there wasn't
7 enough positive -- about the positive steps
8 that were being taken in Haiti during the fall
9 deliberations in 2017 regarding its continued
10 TPS status?

11 MR. CHO: Again, object to the form
12 of the question. And again, the document
13 that's in front of this witness now is KA-36.
14 He can respond in connection with what is
15 contained here in the exhibit.

16 You can go ahead and answer.

17 THE WITNESS: There is nothing in
18 this exhibit that I take to be referring to the
19 presentation of country conditions in a Haiti
20 decision memo.

21 BY MR. CONNELLY:

22 Q. Last question that I have on this,

1 and then we can move to the next set of
2 documents.

3 Do you recall -- I don't want
4 content, but do you recall, did your team
5 provide revised decision memos for these three
6 countries after Kathy Nuebel Kovarik made this
7 request?

8 MR. CHO: Objection to form.

9 You can answer.

10 THE WITNESS: I believe that we did.

11 BY MR. CONNELLY:

12 Q. Let's go to KA -- KA-37. I think
13 this simply adds the top e-mail to the chain
14 that we just looked at and I need some
15 clarification in terms of some of the terms.
16 That's what I will be asking about, but it's
17 only your memo at 8:59 a.m. on October 13.

18 MR. CHO: And before we get to that,
19 the government objects to KA-37 on the grounds
20 that these e-mail chains contain deliberative
21 information and is subject to the deliberative
22 process privilege, but the witness is permitted

1 to answer questions regarding these e-mail
2 exchanges.

3 BY MR. CONNELLY:

4 Q. Again, with the understanding of the
5 concerns and cautions that your lawyer has
6 raised, this is about three Central American
7 countries that are not Haiti. Buried in this
8 e-mail chain, there is a reference to Haiti but
9 let's leave that to the side for the moment. I
10 am trying to get some terminology down.

11 In your October 13, 2017, 8:59 a.m.
12 memo back to Kathy Nuebel Kovarik and others,
13 you say: "We can comb through the country
14 conditions to try to see what else there might
15 be, but the basic problem is that it is bad
16 there, WRT, all of the standard metrics."

17 Is WRT shorthand for with regard to?

18 A. Yeah, with regard to, with respect
19 to.

20 Q. And when you reference standard
21 metrics, what is that a reference to?

22 A. All of the standard sorts of country

1 conditions and measurements of a country's
2 well-being that we look at.

3 Q. So is that a -- when you use
4 standard metrics, does that same analysis or
5 application apply when you are looking at Haiti
6 as opposed to looking at the three Central
7 American countries?

8 MR. CHO: Objection to form.

9 THE WITNESS: Yes. All I'd want to
10 say by way of caveat is, of course, different
11 bases for different temporary protected status
12 designations, different events that prompt
13 different designations, obviously impact
14 countries in different ways, so it's, you know,
15 sort of the same basket, full basket of metrics
16 that one might draw from, but some might not be
17 wholly relevant in one context versus another,
18 say depending on whether you are talking about
19 a TPS designation based on an ongoing armed
20 conflict versus environmental disasters or
21 something different.

22 With that caveat though, yes, we try

1 to look in like situations with the same sort
2 basket of metrics.

3 BY MR. CONNELLY:

4 Q. Or even -- let's stay within
5 environmental conditions, purely hypothetical
6 question on my part, but might the standard
7 metrics be somewhat different if a trigger
8 event in a country was an earthquake where the
9 ground opened, buildings fall and bridges
10 collapse, let's say versus a flood, which
11 obviously also creates great damage, but in a
12 different format, is -- are you saying given,
13 you know, those -- the differences in those
14 trigger events, the manner in which standard
15 metrics are applied may -- will be adjusted
16 according to the circumstances?

17 MR. CHO: Objection. Calls for --
18 it's a hypothetical. It's calls for
19 speculation. Object to the form.

20 You can answer.

21 THE WITNESS: Yes.

22 BY MR. CONNELLY:

1 Q. Okay. Then lastly, then we will
2 move on. I will quote a portion of your
3 e-mail.

4 You say: "We can work with RU to
5 try to get more and/or comb through the country
6 conditions. We are again -- looking for
7 positive gems, but the conditions are what they
8 are."

9 RU is the research unit; is that
10 correct?

11 A. Correct.

12 Q. KA-38.

13 MR. CHO: The government objects to
14 KA-38 again based on the DPP 21118 on the
15 grounds that this e-mail exchange contains
16 internal government deliberations and is
17 subject to deliberative process privilege, but
18 given that caveat, the witness is able to
19 testify as to this information contained in the
20 e-mail exchange.

21 THE WITNESS: Okay.

22 BY MR. CONNELLY:

1 Q. And I would like to direct your
2 attention to your e-mail of this two-way e-mail
3 document on Thursday, October 12, 2017, 10:10
4 p.m., to Kathy Nuebel Kovarik, where you state:
5 "Kathryn and I have completed a draft Haiti TPS
6 decision memo (attached). In short, based on
7 our review of country conditions, we have
8 written it so that it could support either
9 extension or termination but left the
10 recommendation blank pending further
11 discussion."

12 Was it unusual to write a decision
13 memo that left the recommendation blank?

14 MR. CHO: Object to the form. Is
15 your question confined to Haiti or --

16 MR. CONNELLY: Yes, to Haiti.

17 MR. CHO: Okay. You can go ahead
18 and answer, again subject to the deliberative
19 process privilege but you can still answer.

20 THE WITNESS: With regard to Haiti,
21 I think that it was unusual in the sense that
22 it wasn't what had been done with regard to

1 nearly any of the past draft decision memos.

2 BY MR. CONNELLY:

3 Q. Do you recall who it was who asked
4 you to draft leaving the recommendation blank?

5 MR. CHO: Object to the form. Also,
6 object on the grounds that that question seeks
7 information relating to the government --
8 internal government deliberations and is beyond
9 the scope of what is contained in this e-mail.
10 I suggest that counsel rephrase the question.

11 MR. CONNELLY: I'm sorry. I don't
12 know -- well, I guess I can always rephrase
13 the question, but it seems like my question is
14 appropriate, but I will ask if not again, could
15 you answer this question.

16 BY MR. CONNELLY:

17 Q. Did someone ask you to leave the
18 recommendation blank?

19 A. No.

20 Q. And so when you say: "We have
21 written it so it could support either extension
22 or termination," and you tell me that it was

1 unusual, how did it come about that you
2 provided this unusual document to your
3 superior, Kathy Nuebel Kovarik?

4 MR. CHO: Object to the form. Also,
5 the question calls for internal government
6 deliberations but the witness can answer.

7 THE WITNESS: I don't -- I just want
8 to say I don't think that the document or the
9 format that it took was generally unusual, with
10 respect to past decision memos for Haiti TPS,
11 in reflecting on them, I think all the drafts
12 or almost all the drafts had a recommendation
13 already baked in before we elevated it for
14 review.

15 This memorandum took on this format
16 based on consultation between Kathryn and me on
17 what we thought was the best approach at this
18 stage of the decision making process.

19 BY MR. CONNELLY:

20 Q. All right. And I will not encroach
21 upon you as far as the rest of those
22 conversations, because I think that might --

1 well, reveal some deliberations, you know, at
2 your team level, so I will forego that
3 question.

4 And ask you now to look at KA-40.

5 One last question on this document.
6 Had you been asked by anyone before submitting
7 a draft that didn't have a recommendation, had
8 you been asked to provide a recommendation?

9 MR. CHO: Object to the form.
10 Again, that question calls for testimony
11 relating to internal government deliberations,
12 but the witness can answer.

13 THE WITNESS: I cannot recall with
14 perfect clarity, but I do not think so.

15 BY MR. CONNELLY:

16 Q. KA-40.

17 MR. CHO: The government objects to
18 KA-40 based on DPP 3336, again on the grounds
19 that this e-mail chain contains internal
20 government deliberations but the witness can
21 answer questions about the e-mail.

22 BY MR. CONNELLY:

1 Q. Let me before -- because I have --
2 again, I have thought of a final question that
3 I wanted to ask about the previous document,
4 KA-38, before we go there.

5 This is the document where you left
6 the recommendation blank.

7 What was the reason that you left
8 the recommendation blank?

9 MR. CHO: Object to the form. The
10 question calls for testimony relating to
11 internal government deliberations, but based on
12 what is contained in KA-38, you can go ahead
13 and answer.

14 THE WITNESS: We thought that
15 including upfront a recommendation to extend
16 would likely leave our reviewers in a state
17 less amenable to considering that
18 recommendation.

19 That is, we thought that it helped
20 to impress upon them the disinterested nature
21 of our analysis.

22 BY MR. CONNELLY:

1 Q. I rarely reach for analogies, but
2 I'm to go ahead, I can't help myself.

3 So effectively, were you putting
4 yourself in a role of a parent who deliberately
5 does not suggest what college their child
6 should go to, believing that just by suggesting
7 it, you're likely not to get the results you
8 want?

9 MR. CHO: Objection to form. Calls
10 for speculation. It's a hypothetical.

11 You can answer if you are able to.

12 THE WITNESS: My children are still
13 very young. So I'm not sure I'm in best
14 position to speak to the analogy.

15 But as I understand it, I think it
16 suffices to say that we felt the odds of our
17 preferred course being taken were improved by
18 leaving that out.

19 Q. And I think you were now -- you were
20 reviewing -- do you have KA-40 --

21 A. I do.

22 Q. -- in front of you? Okay.

1 MR. CHO: If I haven't raised it
2 already -- I think I did -- but the government
3 objects to KA-40 on the grounds that the e-mail
4 contains internal government deliberations.

5 Given that objection, the witness
6 can answer questions about the e-mail.

7 BY MR. CONNELLY:

8 Q. Are you ready?

9 A. I am.

10 Q. Okay. The earlier e-mail is from
11 you to Kathy Nuebel Kovarik on October 12th at
12 10:11 p.m. And the top e-mail in this -- well,
13 I guess there's -- there -- there's two more
14 e-mails.

15 The next longer e-mail is ten days
16 later from Robert Law to Kathy Nuebel Kovarik
17 on October 22nd where he writes: "The draft is
18 overwhelmingly weighted for extension, which I
19 did not think is the conclusion we are looking
20 for. The memo seems to dismiss or downplay the
21 positive developments that would suggest
22 reauthorization is inappropriate. The memo

1 also makes no mention of the substantial amount
2 of foreign aid the U.S. and charities have
3 invested in Haiti since the earthquake, another
4 relevant factor to indicate that Haiti" is
5 no -- "that Haiti no longer meets the
6 definition of TPS."

7 And this is -- the subject line on
8 Robert Law's e-mail and your e-mail is "Haiti
9 draft TPS memo."

10 So first let me ask is the Haiti
11 draft TPS memo, is that another way of talking
12 about the -- a draft of a decision memo coming
13 from your team, you know, moving up to Kathy
14 Nuebel Kovarik and then beyond, as you
15 previously explained --

16 A. Yes.

17 Q. -- the process? Okay. Okay.

18 Were you -- and you're not -- you're
19 not copied on the Robert Law memo that I've
20 just read to you.

21 Do you -- were you informed that
22 Robert Law was taking exception to your draft

1 decision memo?

2 MR. CHO: Object to the form. Also
3 to the extent it calls for internal government
4 deliberations.

5 But you can answer.

6 A. Not at this time but later.

7 BY MR. CONNELLY:

8 Q. Okay. How much later?

9 Before the decision was made to
10 terminate Haiti --

11 MR. CHO: Object to the --

12 BY MR. CONNELLY:

13 Q. -- of the TPS -- of its status?

14 MR. CHO: Again, object to the form.

15 And object on the grounds that that question
16 request internal government deliberation
17 information.

18 But you can answer.

19 THE WITNESS: Yes.

20 BY MR. CONNELLY:

21 Q. Do you recall, after whatever format
22 your draft decision memo was in, in -- on

1 October 12th, do you know whether your team
2 was -- continued to be engaged in the process
3 of drafting the decision memo for Haiti's TPS
4 status?

5 A. I'm sorry. After this point,
6 October --

7 Q. Yeah.

8 A. -- 22nd?

9 Q. Well -- or let's take -- well, why
10 don't we jump into -- to -- after October 22nd,
11 yeah.

12 MR. CHO: Object to the form. And
13 also to the extent it calls for internal
14 government deliberations, but with regard to
15 that document the witness can answer.

16 THE WITNESS: Yes. Because we got
17 back redlines from Rob.

18 BY MR. CONNELLY:

19 Q. I'm sorry.

20 Your -- your team got back redlines?

21 A. Yes.

22 Q. And do you know where those redlines

1 came from?

2 A. From Rob.

3 Q. Who is Robert Law?

4 A. He's a -- her senior counsel or
5 advisor. Something of that sort.

6 Q. To CIS?

7 A. No. To Kathy.

8 Q. Okay. So for -- to OPS.

9 A. Yes.

10 Q. Was he a -- a -- an appointment that
11 came in with the new administration in 2017?

12 A. Yes.

13 Q. I'd like to ask -- he makes
14 reference to the amount of foreign aid the U.S.
15 and charities have invested in Haiti since the
16 earthquake and -- and further says that
17 another -- and then goes on to talk about
18 another relevant factor, which, as a matter of
19 semantics, would -- would seem to suggest that
20 he thought that foreign aid the U.S. and
21 charities have invested in Haiti is a relevant
22 factor in the TPS process.

1 Is -- is that a factor that you
2 traditionally had considered when determining
3 whether a country should either be given or
4 extended TPS status?

5 MR. CHO: Objection. Calls for a
6 legal conclusion. Also calls for information
7 relating to internal government deliberations
8 and processes.

9 But you can answer if you can.

10 THE WITNESS: Yes. We have looked
11 at foreign aid and, in particular, the extent
12 to which that foreign aid translated into
13 projects that resulted in improved conditions.

14 MR. CONNELLY: Let's take a short
15 break.

16 MR. CHO: Sure.

17 MR. CONNELLY: I think I'm getting a
18 sugar low.

19 These -- these documents can't be
20 as -- as slightly mismatched as I think they
21 are. So I'd like -- I'm going to take a quick
22 restroom break and then sit down and get them

1 reorganized.

2 And -- and for all of your sakes,
3 you know, how long is this guy going to take.
4 There's maybe -- I -- I think there's about
5 five documents, to give you a general sensing
6 of --

7 MR. CHO: Sure.

8 MR. CONNELLY: -- where we're at.

9 THE VIDEOGRAPHER: Okay. We're
10 going off the record at 3:38.

11 (A short recess was taken.)

12 THE VIDEOGRAPHER: We are back on
13 the record at 3:45.

14 (Deposition Exhibit 64 was marked
15 for identification.)

16 MR. CONNELLY: I have handed the
17 deponent Exhibit 64, which is an e-mail chain
18 dated Monday, October 23rd, 2017, at 5:56 p.m.

19 MR. CHO: The government objects to
20 Exhibit 64 on the grounds that the e-mail
21 contains internal government deliberations.

22 But the witness can answer questions

1 about these e-mails.

2 BY MR. CONNELLY:

3 Q. I am only going to be asking you
4 about your top e-mail.

5 A. All right.

6 Q. Okay. The last e-mail in this chain
7 is from you to several people on October 23rd,
8 2017, at 5:56 p.m. And you begin out by
9 saying: "All good by us, Sam."

10 Is Sam a reference to Samantha
11 Deshommes, D-E-S-H-O-M-M-E-S?

12 A. Yes.

13 Q. And you go on to say: "We knew of
14 the desire for interagency/WH input."

15 What is the reference to
16 "interagency WH" input?

17 A. Interagency/White House input,
18 meaning other departments and agencies and the
19 White House.

20 Q. This was input regarding the FRNs
21 that would be coming out for several countries
22 regarding terminating their TPS status?

1 MR. CHO: Object to the form.

2 THE WITNESS: No. Not on the FRNs.

3 BY MR. CONNELLY:

4 Q. Where was the -- what was the input
5 going to be used for?

6 MR. CHO: Object to the form.

7 And again, just to clarify, this
8 e-mail chain relates to Central American TPS
9 countries, not Haiti, which include El
10 Salvador, Honduras and Nicaragua. So certainly
11 questions outside of Haiti are beyond the scope
12 of this litigation.

13 But the witness can go ahead and
14 answer if you're able to.

15 THE WITNESS: Interagency and White
16 House input on the decisions relating to those
17 countries' TPS designations.

18 BY MR. CONNELLY:

19 Q. And it's accurate -- I think
20 accurate, but you can confirm this, point it
21 out.

22 This e-mail chain relates to the

1 three Central American countries of El
2 Salvador, Honduras, and Nicaragua; is that
3 correct?

4 A. Yes.

5 Q. And then finally, you -- you were --
6 going back to your e-mail, I quote: "Both our
7 notes reflected KNK's" -- that would be Kathy
8 Nuebel Kovarik, correct?

9 A. Yes.

10 Q. -- "KNK's parting words on the TPS
11 FRNs were to go ahead and draft them as
12 terminations with placeholders for delayed
13 effective date, but limit to USCIS parties for
14 review."

15 Did I read that correctly?

16 A. Yes.

17 MR. CONNELLY: And we're going to go
18 -- oh. Let's make this 41.

19 MR. CHO: Is this KA-41 or --

20 MR. CONNELLY: I'm sorry. K --

21 MR. CHO: Okay.

22 MR. CONNELLY: You're -- you're

1 correct. KA-41.

2 MR. CHO: Thank you.

3 The government objects to KA-41 on
4 the grounds that this e-mail results or
5 contains internal government deliberations
6 which are protected by deliberative process
7 privilege.

8 But the witness is able to answer
9 questions regarding this e-mail.

10 BY MR. CONNELLY:

11 Q. And essentially I'm just going to be
12 asking you to zone in on the numerical sixth
13 point that is made in the final e-mail from
14 Kathy -- Kathryn Anderson on November 2nd at
15 7:14 a.m. to you.

16 A. Okay. All right.

17 MR. CONNELLY: I don't know how
18 sensitive our audio equipment is. But it may
19 be that a outside car alarm is going to be
20 underscoring the question and answer for just a
21 short time.

22 THE WITNESS: I thought it was just

1 in my head.

2 BY MR. CONNELLY:

3 Q. So in Kathryn Anderson's top e-mail
4 on November 2nd to you, she makes reference
5 early in -- in -- in it to saying: "Read them
6 all this morning."

7 What -- what -- what is your
8 understanding of what she had been reading that
9 morning?

10 MR. CHO: Object to the form.

11 You can answer if you know.

12 THE WITNESS: Yeah. This is the
13 material from the state department relating to
14 the three central American countries and Haiti.

15 BY MR. CONNELLY:

16 Q. And is that -- s that -- that
17 material is -- is strictly generated by the
18 state department as opposed to being generated
19 in some fashion by your team?

20 A. That's correct.

21 Q. Okay. And when she gets down to --
22 I mean I quote her last point, which is

1 numbered 6, says: "Don't know whether you read
2 Haiti, but it looks like one of our messes.
3 The country conditions cited completely support
4 an extension, not the stated conclusion of
5 termination."

6 First of all let me ask you: Had
7 you read the state department's summary of
8 Haiti that she's referencing here?

9 A. At the moment when I received her
10 e-mail, did I read it the night before I went
11 -- when I went to sleep? I --

12 Q. Whether -- whether you read it prior
13 to this time or later, I just want to get an --
14 have an understanding if you have in mind, you
15 know, what -- in -- at least generally what the
16 state department --

17 A. Yes, I read it. I can't tell from
18 the e-mail --

19 Q. That's fine.

20 A. -- chain whether I read it --

21 Q. I -- I don't care about exactly when
22 you read it.

1 So -- and that helps me though then
2 formulate the next question, which is, when she
3 references that the state department memo in
4 Haiti "looks like one of our messes," do you
5 have an understanding of what she was telling
6 you?

7 MR. CHO: Object to the form. Calls
8 for speculation.

9 But you can answer if you can.

10 THE WITNESS: I read that as
11 relating to various instances of -- and -- and
12 a couple of very specific instances of decision
13 memoranda that we had drafted that included,
14 either initially or even in final form, a
15 fairly extensive accounting of country
16 conditions we thought to be supportive of
17 extension but where the recommended course was
18 termination.

19 BY MR. CONNELLY:

20 Q. And are those -- are those examples
21 that you just gave me, was that particular just
22 to Haiti, or is that a reference to memos that

1 had recommended extensions but the conclusion
2 was to terminate for countries beyond Haiti?

3 MR. CHO: Object to the form,
4 specific to the extent it seeks information
5 relating to countries other than Haiti.

6 But you can answer.

7 THE WITNESS: I took it to be a
8 reference to the -- the broader set.

9 BY MR. CONNELLY:

10 Q. Beyond just Haiti.

11 A. Yes.

12 MR. CHO: Same objection.

13 BY MR. CONNELLY:

14 Q. And what -- what -- what -- in -- in
15 the time -- if there is a time frame, did you
16 have an understanding of this broader set of
17 memos where country conditions cited --
18 supported an extension but the stated
19 conclusion was termination -- was that broader
20 set of memos, was that all within 2017, or were
21 some of those memos -- did those occur in
22 earlier administrations?

1 MR. CHO: Object to the form. Same
2 objection. Also to the extent it seeks
3 information relating to internal government
4 deliberations.

5 Perhaps counsel can clarify the
6 question. Is he referring to countries other
7 than Haiti or just Haiti?

8 MR. CONNELLY: Well, because, see, I
9 -- I -- I -- I don't think it'd be a fair
10 question for me to just narrow in on Haiti.
11 Because he was saying that the -- the
12 observation that was made was for a broader set
13 of countries than just Haiti.

14 So I'd like --

15 MR. CHO: Okay.

16 MR. CONNELLY: I'd like him to
17 clarify, if he can, just to let me know -- I --
18 I just want a time frame.

19 MR. CHO: Sure. Same objection.

20 The witness can answer if you're
21 able to.

22 THE WITNESS: 2017.

1 MR. CONNELLY: KA-42.

2 MR. CHO: The government objects to
3 KA-42, Bates No. DPP 11273, and following the
4 document on the grounds that these e-mail
5 chains also contain internal government
6 deliberations.

7 But the witness is permitted to
8 answer questions regarding the e-mail itself.

9 MR. CONNELLY: And I'm going to --
10 I'm going to simultaneously give you KA-43.
11 Going to ask you to compare them.

12 MR. CHO: Thank you.

13 The government also objects to
14 KA-43 -- again, that's Bates No. DPP 19502 --
15 to the extent this is a draft of a final
16 release.

17 Subject to that limitation, the
18 witness can answer questions relating to this
19 exhibit.

20 BY MR. CONNELLY:

21 Q. Okay?

22 A. (Witness nodding head.)

1 Q. Let's go to the second document
2 first, KA-43, which is entitled "Acting
3 Secretary Elaine Duke announcement of temporary
4 protective status for Haiti, release date
5 November 20th, 2017," and then followed by "For
6 immediate release, office of the press
7 secretary." Gives a contact number.

8 To your best recollection, is this
9 the -- the actual press announcement that went
10 out on November 20th regarding the change in
11 the TPS status for Haiti?

12 MR. CHO: Object to the form.

13 THE WITNESS: This document?

14 BY MR. CONNELLY:

15 Q. KA-43, yes.

16 A. Without com -- I -- I did a very
17 quick comparison. It looks to be identical to
18 this. The document -- the -- the -- the
19 copy-and-paste that's in my e-mail is the -- I
20 have more confidence in saying is what was
21 released.

22 Q. Okay. All right. That's fine.

1 Okay.

2 So you're -- you're confident that
3 the Elaine Duke announcement contained in
4 KA-42, which is a part of an e-mail chain, was
5 the actual announcement, correct?

6 MR. CHO: Object to the form.

7 THE WITNESS: Correct. I think
8 they're the same.

9 MR. CONNELLY: Yeah.

10 THE WITNESS: But I mean I didn't do
11 a review.

12 BY MR. CONNELLY:

13 Q. I happen to believe that, too. I
14 mean, obviously, anybody can do the comparison,
15 but, you know, my good-faith effort to compare,
16 they appear to be identical.

17 A. Okay. Good.

18 Q. I just asked about the freestanding
19 one in case it made it any easier. Apparently,
20 we can move beyond that concern.

21 So let me -- let's use -- because
22 it's, you know, the freestanding document, stay

1 with KA-43 for a minute.

2 Did you or your team have any role
3 in drafting this public announcement by Acting
4 Secretary Elaine Duke?

5 A. In drafting it?

6 Q. Yes.

7 A. I'm sorry, it's a bit of a difficult
8 question to answer. But I think the answer is
9 no.

10 Q. Did you or your team have a role in
11 providing information, you know, prior to this
12 public release going out, that you were asked
13 to provide to assist in pulling together this
14 public release?

15 MR. CHO: Object to the form.

16 THE WITNESS: Some of the
17 information contained in here is content that
18 draws upon some bits of language that we may
19 have included in material that we had produced.

20 BY MR. CONNELLY:

21 Q. You will see in the second full
22 paragraph, I'm reading from, partially from the

1 sentence of the release: "Acting Secretary
2 Duke determined that those extraordinary but
3 temporary conditions caused by the 2010
4 earthquake no longer exist."

5 Did you agree with that assessment?

6 MR. CHO: Object to the form. Also,
7 objection to the extent it calls for internal
8 government deliberations.

9 You can answer the question based on
10 the document in front of you.

11 THE WITNESS: I did not agree that
12 the extraordinary and temporary conditions
13 relating to the 2010 earthquake no longer
14 exist.

15 BY MR. CONNELLY:

16 Q. Let's go now to KA-42, which in
17 large measure is that press release, is the
18 first of the few e-mails on this two-page
19 document, and then you have an e-mail to
20 Kathryn Anderson on November 20 at 8:28 p.m.,
21 where you said: "Just read, worth a good
22 collective read and chuckle in the morning.

1 How dense are these folks?"

2 What did you mean by posing the
3 question: "How dense are these folks?"

4 MR. CHO: Object to the form.

5 You can answer.

6 THE WITNESS: I think that I was --
7 I was commenting on various aspects of the
8 statement that I thought were reflective of a
9 misunderstanding of the statute, poor grammar,
10 other irrelevant content, generally insensitive
11 syntax, and other elements I found sloppy or
12 unimpressive.

13 BY MR. CONNELLY:

14 Q. Okay. Could you take a moment and
15 just give me, by way of example, where you
16 thought that within the press release, there
17 was a misconstruction or misunderstanding of
18 the statute?

19 MR. CHO: Object to the form. Calls
20 for a legal conclusion but you can answer if
21 you can.

22 THE WITNESS: Sure. They refer to

1 extraordinary but temporary conditions that
2 prevented Haiti from adequately handling the
3 return of their nationals, the extraordinary
4 and temporary conditions which is a third basis
5 for designation for TPS, and preventing a
6 country from being able to adequately handle
7 the return of its nationals is relevant to the
8 second basis for designation for TPS, which is
9 environmental. It's whether nationals can
10 return in safety that is relevant to
11 extraordinary and temporary conditions.

12 And then it includes the phrase, "as
13 required by statute," which is ironic because
14 it misconstrues what the statute requires. It
15 also -- that's it.

16 BY MR. CONNELLY:

17 Q. You also said that there was some
18 irrelevant content in the press release.

19 Could you give me an example of
20 that?

21 MR. CHO: Objection to form.

22 You can answer.

1 THE WITNESS: That the acting
2 secretary met with the Haitian foreign minister
3 and the Haitian ambassador recently in
4 Washington to discuss the issue.

5 That we conducted extensive outreach
6 to Haitian communities throughout the country.

7 That Haiti is able to safely receive
8 traditional levels of return citizens.

9 Are you asking me to --

10 BY MR. CONNELLY:

11 Q. No, no. If you have completed your
12 answer, I'm sorry, I was getting ready for my
13 next question.

14 Have you completed your answer?

15 A. I can't remember whether you --

16 Q. I was asking you for examples of
17 what you perceived to be irrelevant content.

18 A. Those examples.

19 Q. And then after your observation, how
20 dense are these folks, Kathryn Anderson got
21 back to you shortly, 15 minutes later, and
22 said: "Brilliant. How did we end up with a

1 department of dunces?"

2 And then you follow up with the last
3 of the e-mails about an hour later, and simply
4 say: "Unbelievable."

5 What were you intending to convey
6 with the word "unbelievable?"

7 MR. CHO: Objection to form.

8 You can answer.

9 THE WITNESS: That an announcement
10 by the secretary that in my view was riddled
11 with errors of various sorts would be released.

12 BY MR. CONNELLY:

13 Q. I think the last document I have to
14 show you is KA-44, which I will indicate it
15 appears to be the FRN for the Haiti TPS status
16 issued on Thursday, January 18, 2018.

17 A. All right.

18 Q. All right? And was I correct that
19 this is the FRN for January 2018 terminating
20 the TPS status of Haiti?

21 A. Yes.

22 Q. And if you will go with me to the

1 fourth page, again, formatting being very
2 similar to prior FRNs, you see the section
3 under the bolded question: "Why is the
4 secretary terminating the TPS designation for
5 Haiti as of July 22, 2019."

6 A. I do.

7 Q. Did your team provide any input in
8 order to assist in the information that answers
9 that question and that is contained, you know,
10 for several paragraphs on Page 4?

11 MR. CHO: Object to the form.

12 You can answer.

13 THE WITNESS: Yes.

14 BY MR. CONNELLY:

15 Q. Was all of your team's input
16 included in the information contained on Page 4
17 answering the question why the secretary
18 terminated?

19 MR. CHO: Object to the form, to the
20 extent it calls for information related to the
21 internal government deliberations, but the
22 witness can answer.

1 THE WITNESS: I do not think so.

2 BY MR. CONNELLY:

3 Q. If you would just momentarily go
4 back to where you compare and contrast, if you
5 could go back to a document KA-27, which was
6 the May 24 FRN extending Haiti's TPS status for
7 six months, and if you go with me to Page 4 on
8 to Page 5, with that document, where the
9 explanation is provided to the recurring
10 question: "Why is the secretary extending the
11 TPS designation for Haiti through January 22,
12 2018?"

13 Do you have that before you?

14 A. Yes.

15 Q. Would you agree, obviously, you
16 know, anybody can read, but given your
17 particular position and experience, would you
18 agree that the information contained on the May
19 2017 extension is not the same information
20 that's contained on the January 2018
21 termination?

22 MR. CHO: Object to the form. The

1 document speaks for itself.

2 The witness can answer.

3 THE WITNESS: Yes.

4 BY MR. CONNELLY:

5 Q. Did you think, going to the last
6 document that I have shown you, the January
7 2018 termination FRN, did you think that
8 current conditions in Haiti warranted a
9 termination of its TPS status?

10 MR. CHO: Object to the form to the
11 extent it calls for information relating to
12 internal government deliberations, but the
13 witness can answer.

14 THE WITNESS: My assessment of
15 country conditions in Haiti, given the
16 statutory requirements was that extension was
17 warranted. A view that I passed along.

18 BY MR. CONNELLY:

19 Q. Passed along to your superiors?

20 A. Yes.

21 MR. CHO: Object to the form.

22 MR. CONNELLY: Those are all the

1 questions that I have.

2 MR. CHO: Okay. I have raised a
3 number of objections today. To the extent
4 counsel believes that we need to contact the
5 Court to address any objections I have raised
6 today, we'd certainly invite counsel to do so,
7 but we are not going to bring Mr. Prelogar back
8 for a second day of deposition.

9 With that understanding, do you need
10 to reach out to the Court at this time or reach
11 out to the Court today?

12 MR. CONNELLY: I'm sorry. I heard
13 you until the very end and I just made a
14 last --

15 MR. CHO: Right. So as you know,
16 the Court is on standby to the extent we need
17 to address the objections I raised today.

18 MR. CONNELLY: Right. No, no. I
19 don't think there is anything that occurred in
20 today's deposition that would require the Court
21 to give us direction.

22 MR. CHO: Okay. Very well.

1 So we will read and sign the
2 transcript. Thank you.

3 THE VIDEOGRAPHER: The deposition is
4 concluded.

5 We're going off the record at 4:26.

6 (Whereupon, the proceeding was
7 concluded at 4:26 p.m.)

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22 DEPOSITION ERRATA SHEET

1 Our Assignment No. 448924

2 Case Caption: Saget

3 vs. Trump

4

5 DECLARATION UNDER PENALTY OF PERJURY

6 I declare under penalty of perjury that I have

7 read the entire transcript of my Deposition

8 taken in the captioned matter or the same has

9 been read to me, and the same is true and

10 accurate, save and except for changes and/or

11 corrections, if any, as indicated by me on the

12 DEPOSITION ERRATA SHEET hereof, with the

13 understanding that I offer these changes as if

14 still under oath.

15

16 Signed on the _____ day of _____,

17 2018.

18

19 _____
Brandon Prelogar

20

21

22 DEPOSITION ERRATA SHEET

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20 SIGNATURE _____ DATE: _____

21 Brandon Prelogar

22 DEPOSITION ERRATA SHEET

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20 SIGNATURE: _____ DATE _____

21 Brandon Prelogar

22 CERTIFICATE OF NOTARY PUBLIC

1 I, Bonnie L. Russo, the officer before
2 whom the foregoing deposition was taken, do
3 hereby certify that the witness whose testimony
4 appears in the foregoing deposition was duly
5 sworn by me; that the testimony of said witness
6 was taken by me in shorthand and thereafter
7 reduced to computerized transcription under my
8 direction; that said deposition is a true
9 record of the testimony given by said witness;
10 that I am neither counsel for, related to, nor
11 employed by any of the parties to the action in
12 which this deposition was taken; and further,
13 that I am not a relative or employee of any
14 attorney or counsel employed by the parties
15 hereto, nor financially or otherwise interested
16 in the outcome of the action.

17

18

Notary Public in and for

19

the District of Columbia

20

21

My Commission expires: June 30, 2020

22