



With Nielsen Out, How Much Tougher Can DHS Get?

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It might be difficult to imagine how the Trump administration can adopt a tougher stance on immigration, but in the wake of U.S. Department of Homeland Security Secretary Kirstjen Nielsen's departure, policy analysts say it will likely start by reinstating the practice of separating immigrant families.

Nielsen announced her resignation Sunday, just days after she traveled to the border to preside over her agency's efforts to address a recent surge in family migration. During her tenure, she was charged with implementing a series of hard-line immigration policies — including President Donald Trump's travel ban, restrictions on asylum seekers and prosecutions of unauthorized border crossers — at the direction of the White House.

But Trump has nevertheless signaled recently that he wants to crack down on immigration even further, announcing Friday that he had also withdrawn his nomination for the head of U.S. Immigration and Customs Enforcement to pursue a "tougher direction" for the agency.

David Bier, a policy analyst at the libertarian Cato Institute, said that at the top of the administration's priority list is likely reviving the practice of separating families, which Trump had seen as an effective deterrent to migrants before Nielsen convinced him to reconsider.

"We know that Nielsen was successful in convincing the president to reverse the family separation policy," he said. "It's very clear to me that all of the president's allies think that was a huge mistake and that the only way to stem the tide of asylum seekers to the border is to reinstate that policy and enforce that vigorously."

Nielsen's Legacy

Sarah Pierce, a policy analyst at the Migration Policy Institute, said that Nielsen had presided over some of the Trump administration's most hard-line policies.

With Nielsen's guidance, the administration last year successfully defended before the U.S. Supreme Court its travel ban on citizens of certain countries, a decision that offered a resounding affirmation of the president's broad immigration powers. It also rolled out a "zero tolerance policy," designed by then-U.S. Attorney General Jeff Sessions, that required prosecuting all unauthorized border crossers and, as a result, separating immigrant families.

The administration also sought to prevent immigrants who cross the border between ports of entry from being granted asylum, but a federal court has since blocked the policy.

DHS also began implementing Trump's Migrant Protection Protocols, also known as the "Remain in Mexico" policy, under which migrants looking to enter the U.S. at the southern border are turned back to Mexico while they await decisions on their asylum petitions. Until a federal court blocked it on Monday night, Nielsen was on course to expand the policy across the border at an "impressive pace," Pierce said.

"This administration wants to go harder on immigration," she said. "But it's hard to imagine what else they could be doing on the southern border."

Nielsen's downfall came this spring, when the border became overwhelmed by a spike in family migration and the cracks in the system began to show, said Art Arthur, a resident fellow at the nonprofit Center for Immigration Studies, which advocates for restrictionist immigration policies.

Recent border statistics have indicated a marked increase in families fleeing violence and poverty in Central America who actively present themselves to border patrol agents. A total of 192,000 members of family units were apprehended this fiscal year through March, compared to 23,000 last year, according to the Senate Committee on Homeland Security and Governmental Affairs.

Arthur credited Nielsen for ramping up border enforcement efforts when the apprehension numbers began to spike, but said the department should have been better prepared to detain more migrants, starting preparations a year ago.

"She wasn't aggressive enough, early enough," he said. "This is a results-oriented business, especially right now. It's good to complain about it, but you actually have to do something about it."

Possible Successors

Who will tackle the immigration challenges facing the department remains up in the air, but some names familiar to those involved with immigration policy have already risen to the top of everyone's lists.

Bier said he expects that Nielsen's successor will likely not come from within DHS.

"What happened to Nielsen and what has happened repeatedly in this administration is career administrators being thrown under the bus, and for that reason, it's more likely that they will find someone outside the department," he said.

The administration's political allies are pushing for Kris Kobach, the former Kansas Secretary of State and gubernatorial candidate, to replace Nielsen, according to Bier. He said the administration would likely gravitate toward Kobach for being "ideologically pure" on immigration issues and having some executive experience, albeit at the state level.

Kobach's immigration record goes back to 2001, when he oversaw the U.S. Department of Justice's efforts to create a national database of immigrants from nations deemed to be "high risk." He later joined the Federation for American Immigration Reform, a nonprofit that advocates for restrictionist immigration policies, as an attorney.

He also helped write Arizona S.B. 1070, a state law that allowed police to stop anyone they had "reasonable suspicion" of being an unauthorized immigrant and request their immigration papers. The law also criminalized immigrants who were employed without work authorization or who did not carry their papers with them at all times. The U.S. Supreme Court eventually overturned most of the law in 2012.

Arthur said Kobach would be a great pick, given his background. But he wasn't convinced Kobach would be the administration's choice, as U.S. Customs and Border Protection Commissioner Kevin McAleelan was named to head DHS in an acting capacity, essentially auditioning for the job.

According to Arthur, other candidates could include former ICE acting Director Tom Homan, who is "simpatico with the president when it comes to immigration," and Rick Perry, the current U.S. Secretary of Energy and a longtime Texas governor who "understands border issues." He said that current U.S. Citizenship and Immigration Services Director Francis Cissna should also be considered as the "biggest brain and the guy that gets the big picture."

As to media reports that Cissna may be next to be ousted from his post, Arthur said it would be an "utter error."

"Cissna has literally been doing all that he can with what he's got," he said.

Next Steps at DHS

No matter who gets the nod to head up the agency, Bier said they will likely face pressure to take even tougher stances on immigration matters.

While many in the administration have drawn the line at separating families, Bier said White House senior policy adviser Stephen Miller and the president himself are "aiming to do whatever they can." That may mean the president and DHS would have to publicly renounce their position that the administration will not separate families and challenge a federal court injunction on the matter more vigorously.

"We'll see if they try to challenge that under a new DHS secretary," he said.

Bier said Nielsen's successor will also likely work with the president on further immigration-related executive actions. The travel ban, he noted, was the most successful policy of Nielsen's tenure, and her successor will likely try to build on that success, using the president's immigration powers conferred by the Supreme Court in ways she had not.

He speculated that the president might attempt to tackle what he calls "chain migration," or when U.S. citizens or green card holders sponsor their relatives to immigrate to the U.S. Trump might

be able to tie the policy of letting immigrants in based on family ties to a security concern, Bier said.

Pierce said that the administration might also ramp up interior enforcement of immigration laws, citing recent comments from Miller in which he focused on visa overstays.

But whatever policies the administration decides to focus on, the vacancy Nielsen has left at DHS will leave the department ill-positioned to carry them out, Bier and Pierce said. Pierce noted that the agency is still a couple months away from peak migratory flows, which tend to occur over the summer, and without leadership to handle it.

Bier said Nielsen's sudden departure has created chaos at the agency, which will delay the implementation of any policy.

"Overturning the entire immigration leadership is really not a strategy to make quick and decisive actions on what the administration considers to be a crisis," he said.