

USCIS Needs Direct Access to Law Enforcement Power to Curb Rampant Immigration Fraud

By Center for Immigration Studies, May 6, 2019

As told to the Center for Immigration Studies by an active-duty Department of Homeland Security officer who requested anonymity.

It now appears that L. Francis Cissna, director of U.S. Citizenship and Immigration Services (USCIS), dodged a bullet and remained in office following the recent purge of Department of Homeland Security (DHS) leadership.

According to many in USCIS, Cissna has been the best director in the agency's 16-year history. If some of President Trump's critics see him as not aggressively pursuing the president's immigration agenda, USCIS sees that as far from the truth. Cissna has made a true impact. That said, I believe it is time for Cissna to make a bold statement in this way: Force a memorandum of understanding (MOU) with the investigative arm of DHS that will require prosecution of immigration fraud.

But why would USCIS need an MOU on a process that is already supposed to happen automatically?

How USCIS Ended Up Doing Key Homeland Security Work with No Enforcement Teeth, Begging that Cases Be Investigated

Immigration fraud prosecution is not happening as widely as it should. Let me explain, starting with a little history.

In 1933, by way of an executive order, the now-defunct Immigration and Naturalization Service (INS) was founded, bringing together the Bureau of Immigration and the Bureau of Naturalization, which trace their roots back to the Immigration Act of 1891. The INS was under the Department of Justice and enforced every aspect of U.S. immigration law.

After 9/11, new legislation was enacted.

The Homeland Security Act of 2002 disbanded INS on March 1, 2003. Its constituent parts and duties were spread among three new federal agencies under the newly formed DHS: Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and USCIS. CBP's mission is to prevent inadmissible persons and goods from entering the country. ICE enforces criminal and civil laws governing customs, trade, and immigration.

USCIS adjudicates immigration applications and oversees the naturalization of new American citizens.

After INS was divvied up among the new agencies, the "deep-state" of the time was able to separate immigration enforcement (leading to prosecutions for immigration fraud) from the civil-type immigration adjudications done by USCIS.

That left USCIS, the agency that approves or denies every immigration benefit, with no teeth in the form of a law enforcement capability when fraud is detected.

The closest thing they have to enforcement is the Fraud Detection and National Security Directorate (FDNS). This is a group of officers who gather evidence, investigate immigration crimes, write up the findings, and then plead with ICE to advance cases to the U.S. Attorney to seek prosecution against the perpetrators. But despite this important homeland security work, FDNS officers still have no arrest authority and don't carry firearms. In the meantime, ICE is pretty busy with its own workload.

To keep things in perspective, even the U.S. Post Office has federal agents with arrest authority.

Immigration Enforcement Is an Unwanted Step-Child Adopted by No One

To make matters worse, in 2010, under President Barack Obama, ICE was divided into two directorates, Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI). [ERO's mission statement](#) is:

To identify, arrest, and remove aliens who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise undermine the integrity of our immigration laws and our border control efforts. ERO upholds America's immigration laws at, within and beyond our borders through efficient enforcement and removal operations.

ERO does not investigate immigration crimes, it only removes those who are convicted. It is the duty of HSI to be the investigative arm of ICE and [their mission statement](#) is "Protecting America from transnational criminal organizations at home and abroad that threaten our borders, national security and public safety."

There is no mention of immigration enforcement.

In June 2018, a [letter from 19 HSI special agents in charge](#) to the Homeland Security secretary was leaked to the press. The agents asked for HSI to be removed from the umbrella of ICE, stating that "HSI's investigations have been perceived as targeting undocumented aliens, instead of the transnational criminal organizations that facilitate cross border crimes impacting our communities and national security." The letter also stated that "HSI has become the U.S. Government's 'Transnational Investigative' agency, plugging the gap between more domestically-focused federal law enforcement and the international sources and methods of crime that significantly impact the U.S."

A recent [Los Angeles Times article](#) lists HSI's investigative areas as "narcotics, child exploitation, money laundering, airport and seaport operations, export violations, computer crimes and trade fraud". There is no mention of immigration

fraud. The article quotes Jennifer Reyes, HSI assistant special agent in charge and organizer of the L.A. citizens academy: "If we're in an operation and we're doing a criminal search warrant and there's somebody at a location and we read their name and they have a deportation order for a violent offense, we're not going to walk away from it. We're going to arrest that person. But that's not our primary goal. Our primary goal is criminal enforcement."

Apparently Reyes doesn't think immigration fraud is criminal.

HSI spends its time going after violators of U.S. customs laws, including human traffickers, child pornographers, drug cartel leaders, and manufacturers of counterfeit brand-name goods, not immigration fraud.

A Quick, Legal Fix that Will Make America Safer and More Lawful Immediately

To sum up: There is currently no federal agency with arrest authority dedicated to investigating and seeking prosecution for violating federal immigration laws. The agency responsible for investigating immigration crimes such as marriage fraud, employment fraud, asylum fraud, and investor visa fraud changed its mission in 2010 and left those "not so sexy" crimes behind.

Due to USCIS's mission of adjudicating every immigration application, immigration fraud is first discovered in its world. Under the current climate, Director Cissna should be able to force HSI to commit to an MOU requiring at least one HSI special agent to be assigned on a part-time basis to work with USCIS FDNS immigration officers in every USCIS field office. FDNS officers are specialists in immigration laws and HSI special agents are specialists in investigative tactics. With this collaborative effort, immigration fraud cases that would normally go unpunished will be developed and presented to the Department of Justice for prosecution. In April 2017, former Attorney General Jeff Sessions [signed a memorandum](#) demanding federal prosecutors prioritize criminal immigration enforcement.

Director Cissna has a unique window to correct the mistake of the Homeland Security Act of 2002 and join immigration enforcement with immigration adjudications.