



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 03 2018

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Chad Readler, Acting Assistant Attorney General for the Civil Division, before the Senate Judiciary Committee on October 3, 2017, at a hearing entitled "Oversight of the Administration's Decision to End Deferred Action for Childhood Arrivals."

Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

A handwritten signature in black ink, appearing to read "Prim F. Escalona", written in a cursive style.

Prim F. Escalona
Principal Deputy Assistant Attorney General

Enclosure

cc: The Honorable Dianne Feinstein
Ranking Member

Questions for the Record

**Chad Readler
Acting Assistant Attorney General
Civil Division
U.S. Department of Justice**

Before the Senate Judiciary Committee

**Hearing Entitled
“Oversight of the Administration’s Decision to End Deferred Action for Childhood Arrivals”**

October 3, 2017

QUESTIONS FROM SENATOR GRASSLEY

Immigration Judges

This April, Attorney General Sessions announced the Department of Justice’s (Department) renewed commitment to criminal immigration enforcement and revealed the Department’s decision to add 50 more immigration judges to the bench this year, and 75 more in 2018. The President’s border security proposal also include calling for more immigration enforcement personnel, including immigration judges.

1. How many immigration court judges does the Department estimate it would need in order to effectively reduce the immigration court backlog to historically normal levels?

Response: The President has recommended hiring up to 370 additional immigration judges in order to effectively reduce the backlog. Further, as articulated below, the President has also conveyed changes to existing law that would further facilitate the delivery of efficient and timely processes in the immigration courts.

2. Are there additional immigration court reforms that the Department of Justice can institute on its own that would help reduce the current backlog?

Response: The Department is committed to reducing the current backlog in immigration courts. As part of a comprehensive plan to reduce the backlog, the Department is reviewing all of its regulations and internal guidance to determine ways in which cases may be addressed more efficiently without compromising due process.

3. In addition to authorizing and funding more immigration judges, are there additional immigration court reforms that Congress should consider enacting as part of any legislation to normalize the status of DACA recipients?

Response: The Department welcomes the opportunity to work with Congress on this important issue. The President's Immigration Principles & Policies outline a series of legislative proposals to ensure the lawful admission of aliens, to defend the safety and security of the United States, and to protect American workers and taxpayers. These proposals will help restore the rule of law to our immigration system.

QUESTIONS FROM SENATOR COONS

4. One concern expressed by many Senators during the hearing is that information individuals submitted in DACA applications may now be used by other governmental agencies, such as U.S. Immigration and Customs Enforcement, to facilitate deportations. The testimony provided indicated that the current policy is not to share DACA recipients' information with ICE. Have you received assurances that the information DACA applicants shared with the federal government will not be used to facilitate enforcement proceedings against DACA applicants or their families in the future, and that this policy will not change during the Trump administration?

Response: The Department of Justice defers to the Department of Homeland Security on questions regarding information sharing, immigration enforcement, and the DACA policy.

5. DACA applicants pay filing and administrative fees associated with an application (\$495 per person). The Institute on Taxation and Economic Policy estimates that DACA-eligible individuals pay over \$2 billion per year in state and local taxes, and that revoking temporary legal status from these individuals would result in a loss of over \$800 million per year in state and local taxes. CATO estimates that the cost of deporting DACA recipients would be \$60 billion in upfront costs to the government and a further reduction in economic growth of \$280 billion over the next decade.
 - a. Has the administration performed any analysis of the economic impact of ending the DACA program on the U.S. economy? If so, please provide this analysis.
 - b. Has the administration performed any analysis of the economic impact of ending the DACA program on the families of recipients who will no longer be eligible for legal work permits? If so, please provide this analysis.

Response: Because of the ongoing litigation over the DACA rescission, the

Department of Justice cannot comment beyond what has been stated in our public filings.

6. When announcing that the DACA program was being rescinded, Attorney General Sessions stated that DACA “put our nation at risk of crime, violence and even terrorism.” Do you have any data supporting Attorney General Sessions’ claim that DACA puts our nation at risk of crime, violence, and/or terrorism?

Response: The Attorney General stated, in context, that “[w]e are a people of compassion and we are a people of law. But there is nothing compassionate about the failure to enforce immigration laws. Enforcing the law saves lives, protects communities and taxpayers, and prevents human suffering. Failure to enforce the laws in the past has put our nation at risk of crime, violence and even terrorism.”

7. Was your Department consulted before the release of the White House’s “Immigration Principles & Policies” memorandum on October 8, 2017 (hereinafter the “Immigration Principles & Policies memo”)? If yes, is the memo consistent with your Department’s policy and enforcement priorities?

Response: The President’s Immigration Principles & Policies outline a series of legislative proposals to ensure the lawful admission of aliens, to defend the safety and security of the United States, and to protect American workers and taxpayers. These proposals will help restore the rule of law to our immigration system. The Department of Justice provided input on the proposals, and they are consistent with Department policy.

8. The White House discusses nine reforms in the “Asylum Reform” section of the Immigration Principles & Policies memo. The stated purpose is to “correct[] the systemic deficiencies that created that backlog [of asylum applications].” Bullet i. reads “Significantly tighten standards and eliminate loopholes in our asylum system.”
 - a. What “standards” do you suggest tightening, and what “loopholes” do you suggest eliminating?
 - b. What protections do you support to ensure that immigrants with meritorious asylum claims are protected from unlawful removal?

Response: The President’s Immigration Principles & Policies outline a series of legislative proposals that strengthen standards for asylum claims, close loopholes that have led to abuse of the credible fear and asylum systems, and address fraud in the asylum process. The Department respectfully defers to the White House on the details of the President’s legislative proposals.

9. In the “Expedited Removal” section of the Immigration Principles & Policies memo,

the White House calls for expedited removal for all aliens except those with “meritorious valid claims of persecution.”

- a. In this context, what criteria will the government consider in determining whether a claim is a meritorious valid claim of persecution?
- b. How will the administration ensure that sufficient time is afforded for investigation and adjudication of legal remedies during expedited removal proceedings?
- c. It is settled law that undocumented immigrants physically in the United States have due process rights. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). How does a widespread expansion of expedited removal comport with due process if almost all immigrants would be denied a hearing before immigration judges or other due process to explain their presence?

Response: The President’s Immigration Principles & Policies outline a series of legislative proposals that strengthen the ability of the Federal Government to efficiently remove inadmissible and deportable aliens from the United States and reduce abuse of the credible fear process so that only aliens with viable claims of persecution can circumvent expedited removal. The Department respectfully defers to the White House on the details of the President’s legislative proposals.

QUESTIONS FROM SENATOR HIRONO

10. When registering for DACA, DREAMers provided information to the government that could now be used to target them for deportation. The federal lawsuits challenging the Trump Administration’s decision to end DACA argue that using this information that had been provided by DREAMers in good faith and in compliance with the law amounts to a “bait and switch.” I agree. This is not only unjust, but I believe risks violating the Constitution’s due process clause.
 - a. What steps is DHS taking to avoid this “bait and switch” problem and protect the people who applied for DACA?
 - b. Will you commit not to using information obtained in the DACA registration process to further or execute any deportations of people who have applied for DACA registration?
 - c. How will you wall all of this information to ensure it is not used for these purposes?

- d. What steps is DOJ taking to ensure that DHS does not violate constitutional due process rights stemming from the decision to end DACA?
- e. Did the Attorney General consider this “bait and switch” problem in issuing his letter opinion on the legality of DACA? To what extent did due process enter into the Attorney General’s decision at all?

Response: The Department of Justice defers to the Department of Homeland Security regarding the implementation and wind-down of the DACA policy. As the conclusion of the DACA policy is the subject of ongoing litigation, it would not be appropriate to comment further.

11. When Attorney General Sessions announced that the Trump Administration had chosen to end DACA, among the debunked right wing talking points he used to justify the decision was that DACA, “denied jobs to hundreds of thousands of Americans by allowing those same illegal aliens to take those jobs.” However, both the Center for American Progress (CAP) and the conservative CATO Institute project that the removal of DREAMers will result in lost jobs at great damage to our Nation’s economy. CAP estimates that the loss of these workers could reduce the national GDP by \$280 billion to \$433 billion over the next decade, costing Hawaii \$28.8 million in GDP every year. CATO estimates that immediately eliminating DACA and deporting its participants will cost the American economy \$283 billion over 10 years.

- a. What was the basis of Attorney General Sessions’ claim that DACA denied hundreds of thousands of jobs to Americans?
- b. What assessment if any did President Trump and the Administration make of the negative economic impact of ending DACA?
- c. Did the Administration take into account the overwhelmingly negative impact on the American economy of ending DACA when it chose to do so, or did they rely solely on the unsupported contentions cited by Attorney General Sessions at his press conference?

Response: The Attorney General’s statement speaks for itself. As the conclusion of the DACA policy is the subject of ongoing litigation, it would not be appropriate to comment further.

12. A 2017 study by the Institute on Taxation & Economic Policy found that the 1.3 million young undocumented immigrants enrolled or immediately eligible for DACA contribute an estimated \$2 billion a year in state and local taxes. Continuing DACA and ensuring

all who are eligible for the program are enrolled would increase estimated state and local revenue by \$425 million, bringing the total contribution to \$2.45 billion, and increasing the effective tax rate for those enrolled to 9 percent.

- a. Doesn't this tell you that, if the Administration was concerned about economic impact, it should be working to improve the implementation of DACA, not end it?
- b. In his press conference announcing the decision to end DACA, Attorney General Sessions claimed that rescinding DACA "protects communities." However, according to the Institute on Taxation & Economic Policy, repealing DACA will reduce estimated state and local revenues by nearly \$800 million, and drop the total contributions to just over \$1.2 billion annually. How does ending DACA benefit our state and local communities economically?
- c. In fact that same study showed that if we went the other direction and passed a path to citizenship instead of merely replacing DACA, we would see even more economic benefits for state and local communities. A path to citizenship could provide nearly \$505 million in additional state and local taxes, increasing total contributions to at least \$2.53 billion a year. To your knowledge, did the Trump Administration consider these economic benefits as part of its decision to end DACA or in support of the statement by Attorney General Sessions that they ended DACA to "protect our communities"?

Response: The Attorney General stated, in context, that "[w]e are a people of compassion and we are a people of law. But there is nothing compassionate about the failure to enforce immigration laws. Enforcing the law saves lives, protects communities and taxpayers, and prevents human suffering. Failure to enforce the laws in the past has put our nation at risk of crime, violence and even terrorism."

As the conclusion of the DACA policy is the subject of ongoing litigation, it would not be appropriate to comment further.

13. After President Trump and Attorney General Sessions decided to end DACA, DHS released a memo outlining how it would conduct an "orderly and efficient wind-down" of the program over the course of six months. Chilling words if I've ever heard them when subjecting 800,000 DREAMers of deportation from the only country they have ever known.
 - a. How will DHS prioritize its immigration priorities as to former DACA recipients?
 - b. Will you conduct sweeps that target DREAMers for deportation?
 - c. What criteria will you use as part of your orderly and efficient wind-down?

Response: The Department of Homeland Security is responsible for immigration enforcement and the wind-down of the DACA policy, and the Department of Justice respectfully defers to the Department of Homeland Security on this question.

14. In his press conference announcing the decision to end DACA, Attorney General Sessions claimed that rescinding DACA “saves lives” and “protects communities.” He said DACA “put our nation at risk of crime, violence and even terrorism.” None of these things are true. DACA recipients undergo extensive background checks and the program has been proven to successfully screen for criminals. The conservative CATO Institute found that DREAMers are less likely to be incarcerated than native-born Americans with the same age and educational profiles.
- a. What information did the Attorney General use as the basis for the statements at his press conference?
 - b. To what extent did Attorney General Sessions’ misguided understanding of the risk posed by DREAMers and DACA recipients influence the Administration’s decision to end DACA?
 - c. If those statements, which, again, have been shown to be inaccurate, played no role in the Administration’s decision, then why did Attorney General Sessions make them at his press conference?
 - d. If the Attorney General and others in the Administration used better/more accurate information, would the decision have been different?
 - e. Aren’t you concerned that the Attorney General’s decision to use his public platform to make baseless statements about the threats posed by DREAMers undermines the legality of the decision to end DACA?

Response: The Attorney General stated, in context, that “[w]e are a people of compassion and we are a people of law. But there is nothing compassionate about the failure to enforce immigration laws. Enforcing the law saves lives, protects communities and taxpayers, and prevents human suffering. Failure to enforce the laws in the past has put our nation at risk of crime, violence and even terrorism.” Additionally, as the conclusion of the DACA policy is the subject of ongoing litigation, it would not be appropriate to comment further.