

**Senate Committee on the Judiciary**  
**Questions for the Record from Senator Grassley**  
**To Ms. Sarah Saldaña**  
**Nominee for Assistant Secretary, U.S. Immigration and Customs Enforcement**

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Before I ask my questions in follow up to your responses to my earlier questions, I want to express disappointment in some of your answers. Too often you merely stated that you were unfamiliar with the topic areas and issues I addressed, and promised to look into it only after confirmation. I expect nominees to take the time to review the issues I addressed, and respond more adequately. Additionally, many of your answers were vague when I asked you to be specific. I want nominees to develop an open and complete dialogue with me. Your answers make me question what kind of responses I will get if you are confirmed and I send you questions and seek information in my oversight capacity. I want to give you another chance to address some issues that are important to me. Since I sent you my questions, I hope you have taken the initiative to research the issues I asked about, and have come to some conclusions. If not, I hope you will take the time to research these issues to provide real answers to my questions.

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Before I attempt to answer your additional questions, I regret that my previous responses disappointed you. I will do my best once again to provide as complete a response as I can to each of your questions.

1. General

- a. In several questions I sent you, I asked whether you would depart from former Assistant Secretary John Morton in managing the agency. You answered that you were not familiar with Mr. Morton's style, or what policies he implemented. Since you answered my questions, have you done any research into the policies Mr. Morton implemented while Assistant Secretary? If so, have you discovered any policies that Mr. Morton implemented that you would overturn?

I have continued to review a number of ICE's current policies, including some attributable to former director Morton, since the time of my last responses and I am aware that some of those same policies continue to evolve. Before making a decision to overturn any policy, I try to be responsible in my consideration of it, which includes meeting with staff to elicit their views, reviewing all relevant materials pertaining to the subject and taking sufficient time for deliberation. This simply could not be completed properly before I would arrive at ICE. Therefore, I believe it would be irresponsible of me to represent to you at this time that I would overturn a specific policy or policies without further study from within. However, I commit to you that I will review the policies Mr. Morton implemented with an eye toward what may need to be changed.

- b. In response to my question on whether you found any current policies objectionable, you wrote that you could not give a fully informed response until after you were confirmed and had an opportunity to become more familiar with agency operations. I would hope that you have been using this interim time to become familiar with agency operations and meeting with personnel. In fact, many of your answers suggest that you have met with ICE personnel and have been informed on many issues. I would also hope you have some ideas on which policies you intend to keep and which you find objectionable. Based on these conversations or any research you've done, please explain what policies you find objectionable, if any, and why.

Please see my response to 1.a. above.

2. The President's Executive Actions on Immigration

- a. I asked you whether you believed the President had legal authority to take executive action and defer deportations for an untold number of individuals in the country illegally. You responded that you believed that the President had such authority. How is the President able to stay within the bounds of prosecutorial discretion, which requires discretion only on a case-by-case basis, and yet grant deferred action to millions of people?

My understanding is that the President's executive action contemplates a case-by-case consideration of each individual's situation, as reflected in his/her application and through background checks, before any deferred action is granted. I believe that is the basis on which the Justice Department's Office of Legal Counsel found the actions to be legally permissible.

- b. I appreciate your general answer to my questions on how you would manage the ICE; however, I wanted to know more specifically how you would manage the agency under the President's executive order, which prevents ICE from fulfilling its mission of finding and removing persons illegally in the United States.

ICE's principal mission is to protect national security, public safety and the integrity of the nation's borders through the enforcement of federal law governing border control, customs, trade and immigration. This is a vital, broad and substantial mission and the executive actions set enforcement priorities and provide temporary relief from deportation to criminal background checks and will enhance ICE's ability to execute its missions. With respect to the unauthorized immigrant population, it appears to me to be highly prudent to focus ICE's resources toward those persons in the country who represent a threat to national security, border security, and public safety. The exercise of such prosecutorial discretion is critically important to carrying out ICE's public safety mission in a prudent and responsible way.

- c. In response to my question on building morale in the agency, you stated that you would “foster an expectation of excellence throughout ICE’s offices and personnel,” and would address the concerns of the front-line employees. The Agency has such a low morale because former Assistant Secretary Morton issued policies and memoranda that prevented ICE agents from doing their job. Will you remove these policies, and allow ICE agents to fulfill their mission of removing people who enter our country illegally?

Please see my response to 1.a. above regarding the overturning of current ICE policies. I certainly intend to meet with ICE personnel to explore and identify the root causes of any low employee morale. In that process, I intend to make clear the vital role each employee plays in carrying out the agency’s critically important mission which continues to be national security and public safety.

3. Release of Convicted Criminals from ICE Custody

I found your responses to my questions on the release of convicted criminals unclear and unhelpful. I want to know what factors and considerations you find important in releasing convicted criminals. Please answer the following questions.

- a. You said you believe aliens should be released “on the basis of applicable law, and specific relevant facts, on a case-by-case basis, pursuant to appropriate priorities.” Does this mean that you believe there are circumstances wherein a dangerous criminal should be released? Please explain.

I am concerned about the release of any dangerous criminal to our communities and will do all that I can to ensure this does not happen in those circumstances where the agency actually has control. I qualified this answer because there are instances in which the courts may order the release of certain individuals with criminal records despite the agency’s opposition.

- a. If your answer to the previous question is yes, what considerations would you take into account in making such a determination? What factors do you think are important in releasing dangerous persons?

See my response to 3.a. above.

- b. What factors, if any, would sufficiently weigh against the deportation of aliens convicted of another criminal offense subsequent to their release from ICE custody?

Since I believe that any release of unauthorized immigrants must be done solely on the basis of applicable law and specific relevant facts, on a case-by-case basis, it is difficult to respond to this question with a bright-line rule, but some factors might include, for example, the nature and circumstances of the offense or the age of the individual. Of critical importance in this process is determining if maintaining custody of one criminal would

prevent us (for resource or other reasons) from maintaining custody of another individual who is more dangerous to national security, public safety or border security.

- c. **I would like you to clarify another point you make. You promised to keep Congress apprised of (i) criminal aliens who are released rather than removed, (ii) criminal aliens who violate conditions of release, and (iii) criminal aliens who are rearrested or convicted of another offense following release, by stating you would respond to Congressional requests for information. Will the above information only be provided upon request, or will you commit to provide that information regularly to Congress without request?**

I am committed to responding to requests made and I am very amenable to doing so on an agreed-upon regular schedule as well.

4. **Deferred Action for Childhood Arrivals (DACA)**

**I do not agree with you that DACA is a lawful use of prosecutorial discretion. DACA is a broad deferral of action toward a class of persons, not individual persons. Additionally, with DACA being extended under the President's recently announced executive action, even more people will qualify for DACA, and it will be impractical for USCIS to truly make a case-by-case determination for each and every applicant. Not only must prosecutorial discretion be on a case-by-case basis, but it must also be based on past conduct, not prospective conduct.**

- a. **How do you reconcile these conflicts between prosecutorial discretion and DACA?**

I do not see a conflict between the two. Deferred action under the DACA program is granted by immigration officials only after there has been an individualized assessment of the applicant's eligibility in light of clearly articulated criteria, and is in this way a case-by-case exercise of prosecutorial discretion.

**While I disagree with the lawfulness of DACA, the administration is nevertheless moving forward under it. Therefore, I have a few questions on how you will operate under this program.**

- b. **The Office of Legal Counsel argues that DACA is legal because immigration agents will have discretion on an individual, case-by-case basis. Will you guarantee that there is real discretion by ensuring that ICE agents will not need to fear reprisal if they initiate removal proceedings against a person who would qualify for DACA, but the ICE agent feels that the person should be removed?**

I believe that in the case of an individual who truly qualifies for DACA, it would be unlikely to find compelling circumstances for removal, particularly in light of severely limited enforcement resources. For example, one of the criteria for DACA eligibility is that the individual has not been convicted of certain crimes and does not otherwise pose a threat to national security or public safety. But deferred action decisions are always made on a case-by-case basis. My experience with ICE personnel in the North Texas area is that their recommendations regarding removal are based on the specific facts and circumstances

pertaining to each individual case they deal with. As with any organization, I would expect all personnel to comply with their office's regulations and policies.

- c. **Will you ensure there is no reprisal should ICE agents initiate removal proceedings against a person who is in DACA, yet agents feel that the person should be removed, even if that person does not fall under the three priorities listed under the President's executive action?**

See my response to 4.b. above.

- d. **Under the President's executive action, DACA can be terminated. Will you ensure persons whose DACA application is terminated are removed, even if they do not fall under the three priorities listed under the President's executive action?**

I will work to ensure that determinations regarding the removal of any persons, including those who were previous DACA applicants, will be made on the basis of applicable law, policy and specific relevant facts and circumstances, on a case-by-case basis.

5. **Removal of Illegal Aliens**

- a. **I asked you if you had read a CIS report issued in October 2014 regarding the number of removals conducted by ICE in 2014. You informed me that you had not, but would read that report. Since then, have you read that report? If so, what are your thoughts?**

I have read the report. It is interesting and provides information which I would like to explore further. As stated previously, I share your concerns regarding any actual and potential threats to public safety. I will review the agency's policies to ensure that they minimize such threats.

- b. **Do you believe that only persons who have been convicted of a crime are deportable?**

No.

- a. **If not, do you think it is good policy to prohibit ICE agents from initiating removal proceedings on persons who have not been convicted a crime?**

I understand that there are certain grounds under the immigration laws that allow the removal of an individual who has not been convicted of a crime. ICE should be able to initiate removal proceedings consistent with the law and the agency's priorities.

6. ICE Detainers

Under the President's announced executive Action, Secretary Johnson has announced the end of Secure Communities program and replaced it with a new program called Priority Enforcement Program. Under this new program, ICE will only rarely issue ICE detainers to local law enforcement agencies. Further, ICE will only seek requests for notification when an alien falls under one of the three priorities outlined in the President's new executive plan. While I agree with the policy that ICE should inform the local law enforcement agencies with its reasons for probable cause to detain the person, it is a grave mistake for ICE to abandon such a useful and lawful tool.

- a. **Is it your understanding that local law enforcement agencies can rely on the probable cause determinations of ICE agents in detaining a person under a detainer?**

It is my understanding that the Priority Enforcement Program is still being developed and this program will lay out the standards for issuing detainers, such as probable cause.

- b. **Is it your understanding that detainers are a useful tool that permits ICE to expand its reach in finding and removing aliens who are committing crime?**

Detainers are useful tools for ensuring that those who pose a danger to our nation's safety or security are transferred into ICE custody.

- c. **Is it your understanding that detainers should not be limited to only aliens who fall under the three priority categories? Please explain.**

Yes. Immigration detainers should be sought whenever the subject of the detainer presents a threat to public safety consistent with the priorities laid out in Secretary Johnson's directives, so that a determination is being made as to whether that person is subject to removal from the United States, under current law and policy.

- d. **If you agree that detainers should be issued on aliens who fall outside the three priority categories, what factors and considerations do you think are appropriate in determining when to issue a detainer?**

See my response to 6.c. above.

7. Foreign Students

- a. **Have you reviewed the GAO report and recommendations on the Student and Exchange Visitor Program (SEVP) that I referenced in my last set of questions? If so, will you commit to changing ICE regulations to incorporate the two changes that would close loopholes, specifically to require that schools be accredited and undergo a background check, as well as other recommendations by the GAO?**

I have reviewed the 2012 GAO report on the SEVP. I plan on reviewing this program in its entirety and will carefully consider all GAO and congressional recommendations regarding it, including accreditation and background check requirements.

- b. **I am disappointed that you did not take the time to review the 2014 GAO report on Optional Practical Training (OPT) I referred to in my last set of questions. This has become even more alarming with the President's executive action that will expand OPT and lengthen the amount of time a foreign student can retain OPT status. Please review the report and tell me what you will do if confirmed to address the serious concerns addressed by that GAO report to ensure that the President's expansion and extension of the program does not create further vulnerabilities to our national security? Would you consider placing a moratorium on the OPT program until all vulnerabilities are addressed and the department can locate the foreign students who have OPT status?**

I have reviewed the 2014 GAO report on OPT. As with any outstanding GAO report on ICE's practices and procedures, I plan on reviewing this program in its entirety and will carefully consider all GAO and congressional recommendations regarding it, including whether to impose a moratorium.

10. Immigration Policy

**I was disappointed when I asked you about your position on a number of issues and in response I received nonresponsive answers that are vague calls upon the law. I expect you to enforce the law if confirmed to this position, and apply the law as it is currently enacted. The purpose of my questions is to understand *your* position on immigration and immigration reform. Please answer again the following questions.**

- a. **Should people here illegally be eligible for immigration benefits, including legal status? If so, should those individuals be responsible for all costs associated with it?**

Senator, I assure you that I am committed to enforcing the laws of this country. There are some individuals in the United States who, depending on the facts and circumstances of their situation, may be eligible to apply for temporary immigration relief. I do not believe that taxpayers should shoulder the burden of costs associated with these applications. I understand that individuals seeking relief through the DACA or DAPA programs will submit applications along with fees that cover the cost of adjudicating their requests. This temporary relief does not confer legal status and can be revoked.

- b. **Should people here illegally who are in removal proceedings be eligible for immigration benefits, including legal status?**

Persons “who are in removal proceedings” have, by definition, not had a final order of removal issued against them. Accordingly, individuals in that situation may be reviewed on a case-by-case basis to determine whether they meet the enforcement priorities or have a basis for immigration relief under the law. I understand that the DACA or DAPA programs will not confer legal status and can be revoked.

- c. **Should people who are subject to an order of removal from the United States by the Department of Homeland Security be eligible for immigration benefits, including legal status?**

As stated previously, individual cases must be reviewed on a case-by-case basis to determine whether they meet the enforcement priorities, including whether they pose a threat to our safety or security, or have a basis for immigration relief under the law.

- d. **Should people here illegally be required to submit to an in-person interview with adjudicators when applying for immigration benefits?**

As adjudication of immigration benefits is the primary responsibility of USCIS, not ICE, I defer to its leadership on questions of interviews for benefits. I will work collaboratively with USCIS on enforcement-related issues that arise during its adjudication process.

- e. **Should people here illegally that have been denied legal status be placed in immigration proceedings and removed? If not, why not?**

As stated previously, I understand that USCIS has established policies in place with respect to placing applicants denied legal status. I look forward to learning more about these policies and conferring with the USCIS Director on these matters.



## General follow-up

- a. **You responded to my question regarding whether gang members should be eligible for immigration benefits, including legal status, by stating “No, generally, individuals with serious criminal convictions who fall under the enforcement priorities for removal should not be eligible for relief.” Does this mean that there are occasions when such an individual should be eligible for relief? If so, please explain.**

As a general matter, the answer is no. As Secretary Johnson has explained in guidance to ICE, individuals who are found to have participated in certain criminal gang activity, like other serious criminals and threats, “represent the highest priority to which enforcement resources should be directed.” Additional guidance in that same directive, however, contemplates that prosecutorial discretion may be exercised on a case-by-case basis: “The removal of these aliens must be prioritized unless they qualify for asylum or another form of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief or CBP Director of Field Operations, there are compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority.”

- b. **You also stated that you supported DHS including in its removal statistics people apprehended at the border by CBP and transferred to ICE. However, when reporting to Congress and comparing the number of removals by this administration with the inflated removal numbers with past administrations, which did not include these numbers, it is misleading and prevents Congress from really assessing the successes of ICE. Will you commit to ensure that in future reporting to Congress you will differentiate between people apprehended by CBP and transferred to ICE and people caught by ICE?**

I commit, Senator, to being as responsive as possible to requests from Congress, including presenting information in the manner which is most helpful to its members, to the extent feasible.