

Questions Of Senator Patrick Leahy (D-VT)

Chairman, Senate Judiciary Committee

Sarah R. Saldana, Nominee for Director of Immigration and Customs Enforcement

November 19, 2014

- 1. The National Intellectual Property Rights Coordination Center (IPR Center), led by ICE, is a strong model for interagency cooperation in combatting intellectual property theft, including copyright piracy and the distribution of counterfeit pharmaceuticals and other products.**

These crimes threaten consumer health and safety and harm our Nation's security, defense readiness, and competitiveness. If you are confirmed as ICE Director, how do you plan to build on the successes of the IPR Center? What would be your personal level of involvement with the IPR Center's work?

It is vital for the ICE Director to continue to support and oversee, along with ICE senior management, the operation of the IPRC. Last year, I met the Director of the IPRC when we spoke at the same IP Theft conference and found him to be highly capable and well-versed in the challenges presented by the efforts of federal agencies in trade enforcement. If confirmed, I will review the operation of the IPRC early on and meet regularly with the Director to ensure that he has the tools and staff to build on the successes of the IPRC to date. I will also meet with the leadership of our federal law enforcement partners involved with the IPRC and will continue to encourage the involvement of our international partners as well.

- 2. IPR Center partner agencies currently include numerous international law enforcement agencies, such as EUROPOL, INTERPOL, the Royal Canadian Mounted Police, and the Mexican Revenue Service. Intellectual property crimes have global impact, so it is encouraging to see these partnerships with major trading partners. What is your assessment of the level of international cooperation that has been achieved through the IPR Center? Do you plan to bring other overseas law enforcement agencies on board?**

My understanding is that the level of international cooperation achieved through the IPRC is significant and highly beneficial to the interests of the United States. I look forward to becoming involved with the IPRC's efforts to foster these vital relationships with our trading partners and will explore the possibility for inclusion of other overseas law enforcement agencies in the effort.

- 3. Many of the IPR Center initiatives depend on active cooperation and support from the private sector, including from Internet intermediaries such as Internet service providers, search engines, domain name registrars and registries, and payment processing services. What would you do to continue to build upon the existing levels of cooperation?**

As U.S. Attorney, I have organized and participated in a number of meetings to bring private sector representatives and the investigative arms of our federal agencies to the table to discuss the advantages of cooperation between the two. The Dallas-Ft. Worth area is the home of a number of corporate headquarters and I have encouraged our agencies to make themselves available to those companies in order to explain and demystify how we go about our business. I myself have spoken to the General Counsel Forum, which has the legal counsel of many of these companies among its members, to explain our mission and the necessity for maintaining a communication pipeline. If confirmed, I will continue these efforts through the relationships I have already established and work towards expanding them nationally.

- 4. License plate reader technology is now ubiquitous, with private companies teaming with law enforcement agencies to collect millions and potentially billions of records on Americans' travel habits. Earlier this year, ICE considered and ultimately withdrew a bid to create a massive National License Plate Recognition Database. Since then, media reports indicate that ICE field offices have nonetheless contracted with commercially run databases without consulting with the Department's privacy office or waiting for the results of a privacy impact statement.**

As a citizen of a state that values privacy, I am concerned any time law enforcement attempts to indiscriminately sweep up the personal information of American citizens not suspected of any wrongdoing. This specific form of bulk collection is particularly troubling, as there is no public accountability about how data is collected, what it can be used for, and how long it is retained. Can you assure me that under your leadership ICE, including ICE field offices, will refrain from entering into these contracts without a thorough and fair assessment of the privacy implications and without meaningful restrictions in place to prevent abuse?

I am very mindful of the importance of safeguarding the privacy rights of our nation's citizens where the federal government comes into possession of their personal information during the course of our efforts to ensure the public's safety. I assure you that, if confirmed, I will review the agency's operations with an eye toward ensuring a thorough and fair assessment of privacy implications and appropriate safeguards to prevent abuse, consistent with current law.

5. In response to news regarding ICE's plans to construct a 2,400-bed family detention facility in Dilley, Texas, I, along with several other Senators, sent a letter to Secretary Johnson expressing deep concerns about the Department of Homeland Security's decision to make permanent and greatly expand family detention. I am particularly concerned with the ongoing detention of the women and children fleeing Central America who have established credible fear of return to their home countries. Vulnerable asylum seekers should not be treated like criminals.

- a. It is my understanding that ICE attorneys are seeking extremely high bond amounts or opposing bond entirely in these cases, arguing, across the board, that release of these women and children is a threat to national security. The general application of this rationale contravenes the traditional practice of providing individualized review for bond determinations, in which the primary considerations are whether an individual poses a danger to the community or is a flight risk. If confirmed, will you commit to reviewing this practice and limiting its application to cases where there is evidence that a specific individual may pose a threat to national security?**

I agree that, as a general rule, ICE attorneys should be making their recommendations regarding detention on a case-by-case basis after a careful review of the facts and circumstances pertinent to the specific individuals involved. I commit to reviewing the agency's practices and policies in this regard to ensure that recommendations made to the court are based on evidence supporting them and with the overall purpose of addressing national security and public safety concerns.

- b. I was also troubled to learn that the agency contracted with Eloy, Arizona, a city nearly 931 miles away from Dilley, Texas, to run the facility and that it would be managed by Corrections Corporation of America, a private prison company. In addition to the unusual management terms of this contract, I am concerned with the selection of the Corrections Corporation of America to run a facility housing such a vulnerable population given past and present litigation concerning abuse. If confirmed, how will you ensure greater accountability and transparency in the contracting process and the safe and secure management of this facility?**

If confirmed, I intend to review all the agency's contracting policies, practices and procedures to assess their effectiveness and ability to ensure accountability. All staff, including those of agency contractors, must be trained properly and held to standards which will ensure secure management of any facility and particularly that required for vulnerable individuals, such as children.

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

I. General

- 1. Do you have any previous immigration experience? If so, please explain. If not, what do you think qualifies you for this position?**

I do. I had primary responsibility for the entire immigration docket in the Dallas Office for the first three years of my tenure with the USAO, tapering off thereafter over the next two years or so. While it is not a legal requirement for the job (I am not sure if previous Assistant Secretaries for ICE have prosecuted such cases), I do believe that this experience has significantly prepared me to lead the federal law enforcement agency charged with managing immigration enforcement.

For the last 10 years, I have worked for the U.S. Department of Justice in the U.S. Attorney's Office. In each of the two positions I have held (Assistant U.S. Attorney and U.S. Attorney), my responsibilities involved enforcement of federal laws – both civil and criminal – and the pursuit of the best interests of the United States. As U.S. Attorney, I have been responsible for the enforcement of the entire spectrum of federal law, including immigration matters, visa/identity/benefit fraud, trademark infringement, intellectual property (IP) and trade secret theft, terrorism, customs violations, human trafficking, child exploitation, human smuggling, drug and gun laws, organized crime, gangs, fraud, public corruption, cybercrime and related matters. I have also prosecuted a number of these cases as Assistant U.S. Attorney. I have managed a staff of over 200 employees and tackled difficult personnel and budget issues. As Deputy Criminal Chief over Major Fraud and Public Corruption, I supervised and prosecuted the most complex and sensitive cases in the U.S. Attorney's Office. I believe all of this experience will serve me well if I am confirmed as the head of ICE.

- 2. What have you done since President Obama nominated you to prepare yourself for this position?**

I have continued to work full-time in my current position as U.S. Attorney for my 100-county district, including all the responsibilities stated above. I have kept up my study of the agency through readings of pertinent materials and periodicals. I have received a series of briefings from national DHS/ICE representatives regarding the responsibilities of the agency and continue to meet with local Homeland Security Investigations and Enforcement and Removal officials to confer and collaborate regarding issues of concern to them in their work with my office.

3. In what ways, if any, would you depart from former Assistant Secretary John Morton in managing the agency?

I am not personally familiar with Mr. Morton's management style or specific efforts he made throughout his lengthy tenure in the position. My own management style is collaborative whereby I surround myself with outstanding senior leadership upon which I have been able to rely to improve the efficiencies of my office and to raise the standard of performance by all personnel. If confirmed, in my first few weeks as Assistant Secretary, I will meet with ICE employees and review current policies and practices in place. If confirmed, I intend to review agency priorities with the assistance of key staff, and to determine whether resources are currently allocated to reflect those priorities. There is no substitute for oversight and inquiry to ensure resources continue to be spent consistent with such priorities. It is my understanding that the agency continues to improve in this area, a trend I intend to maintain.

4. Do you find any current policies at ICE to be objectionable? If so, please explain.

Until I am confirmed and have a full opportunity to become more familiar with agency operations and to ask questions of ICE leadership and career employees as the confirmed Director in place, I am unable to give a fully informed response to this question. However, I am aware of some of the concerns you are expressing, as outlined in this set of questions. I would certainly draw on these concerns as a means to guide my fact-finding during my initial weeks at ICE. If confirmed, I intend to review agency priorities with the assistance of key staff, and to determine whether resources are currently directed to those priorities. There is no substitute for oversight and inquiry to ensure resources continue to be spent consistent with such priorities.

II. Oversight and Whistleblower Protections

You promised in your testimony before the Senate Homeland Security and Governmental Affairs Committee to cooperate and be transparent with Congress. I really appreciate this commitment. I take seriously my role of oversight of issues and am frustrated that this administration takes months to respond to my letters and requests for information. I get equally frustrated when responses are inadequate and unresponsive. I hope you will be different.

- 1. Will you pledge to cooperate with congressional oversight efforts and be responsive to all congressional requests for information in a timely manner?**

Yes.

- 2. Do you believe whistleblowers who know of problems with matters of national security should be prevented from bringing that information to Congress?**

No, whistleblowers should not be prevented from bringing true matters related to national security to the attention of Congress and other appropriate authorities and I will make every effort to ensure that employees are aware of my views in this regard. I also hope to encourage employees to bring issues of concern to them to the attention of management.

- 3. Will you commit to ensuring that every whistleblower is treated fairly and that those who retaliate against whistleblowers are held accountable?**

Yes.

III. The President's Executive Actions on Immigration

The President has announced that he will take unilateral executive action to defer deportations of thousands, if not millions, of individuals in the country illegally. Not only is a mass legalization program contrary to the rule of law, but it's an abuse of executive power that does not solve the problem. The President does not seem interested in working with Congress to truly reform our laws and pass legislation that would secure the borders or improve legal immigration channels.

- 1. Do you believe the President has the legal authority to take Executive action and defer deportations for an untold number of individuals in the country illegally?**

I believe that the President of the United States, as others before him, has legal authority to take Executive action to address areas within the purview of the Executive branch. It is my understanding that the recently announced Executive actions pertaining to immigration were reviewed, shaped and considered by a number of people in whom I have great confidence, including Secretary of Homeland Security Jeh Johnson and Attorney General Eric Holder. I also understand that the Office of Legal Counsel has issued a formal opinion explaining the established legal authority for setting enforcement priorities and using prosecutorial discretion.

- 2. If confirmed, how will you manage the principle agency in charge of enforcement of our immigration laws?**

As Assistant Secretary for ICE, I would be exercising the same type of leadership skills as I have as U.S. Attorney. Every organization, large or small, needs someone who: (1) is the face of the office, setting a tone for excellence and integrity; (2) has good judgment and common sense; (3) surrounds herself with good managers and staff; (4) is timely but deliberative in her decision-making; and (5) communicates with all stakeholders, employees and other interested partners. I have shown such skills while leading not only 200 employees in the USAO, but all federal law enforcement officers, in coordination with state and local officers, in each of the 100 counties, covering 97,000 square miles, in the Northern District of Texas. I recognize that the larger the organization, however, the more layers of management are required. I believe that an effective and efficient leader should only manage a smaller number of direct reports, the senior leadership of the agency, which is the case in my office currently.

- 3. What message will you have for agents in the field who are being asked to turn a blind eye to people in the country illegally? How will you ensure that the morale of agents entrusted with protecting the homeland is not damaged?**

It appears to me that the agency is being buffeted by the demands and criticisms of so many different constituencies that it makes what is already a difficult job even more so. This has an adverse impact on employee morale which, in turn, adversely affects the agency's ability to accomplish its goals. If confirmed, I will make every effort to improve the operation of the agency and to continue to foster an expectation of excellence throughout ICE's offices and personnel. I also intend to work on the morale challenges I have read and heard about, particularly with respect to front-line employees, and to communicate clearly the vital role each employee plays in carrying out ICE's mission.

IV. Release of Convicted Criminals from ICE Custody

The administration has acknowledged that 36,007 convicted criminal aliens were released from ICE custody in Fiscal Year 2013. Too many of these convicted criminals were guilty of heinous crimes, including homicide, sexual assault, abduction, aggravated assault, robbery, and treason. I believe dangerous aliens should not be released under any circumstances.

1. What position do you take in this matter?

I share your concern regarding the release of dangerous aliens into our communities. While I am not familiar with all of the facts and circumstances regarding this specific release, I have been apprised of the issue by ICE staff and am familiar with media coverage regarding it. In general, I believe that any releases of previously detained immigrants must be done solely on the basis of applicable law and specific relevant facts, on a case-by-case basis, pursuant to appropriate priorities.

2. What considerations would you take into account if required to release illegal aliens from ICE custody?

In general, any releases of previously detained immigrants must be done solely on the basis of applicable law and specific relevant facts, on a case-by-case basis, pursuant to appropriate priorities. Of course, I would ensure that any court-ordered releases are complied with, after due consideration of any appropriate appellate relief.

3. For non-mandatory releases, what considerations would you take into account if presented with the decision to detain or release aliens convicted of homicide, sexual assault, abduction, aggravated assault, robbery, or treason? Specifically, what factors, if any, would sufficiently weigh against the deportation of aliens convicted of these crimes?

As noted above, any decision to seek to detain or release immigrants in ICE's custody must be done solely on the basis of applicable law and specific relevant facts, on a case-by-case basis, pursuant to appropriate priorities.

4. For aliens who are convicted of another criminal offense subsequent to their release from ICE custody, what factors, if any, would sufficiently weigh against the deportation of aliens convicted of these crimes?

See IV.2 and 3 above. ICE may seek criminal prosecution for the new offense, depending on its gravity.

5. **If confirmed, will you commit to keep Congress and the public apprised of (i) criminal aliens who are released rather than deported; (ii) criminal aliens who violate their conditions of release; and (iii) criminal aliens who are rearrested or convicted of another offense following release? Will you commit to keep Congress and the public apprised of this information before that information outlives its usefulness in ensuring public safety and national security?**

I recognize the importance of keeping Congress and our law enforcement partners apprised of decisions of this nature on a timely basis. I commit to responding to any request for information from Congress.

6. **Since *Zadvydas v. Davis*, 533 U.S. 678 (2001), Congress has attempted to pass legislation that would amend the Immigration and Nationality Act to authorize DHS to detain criminal aliens beyond six months. Would you support such legislation? Please explain.**

Before being able to comment on my support of prospective legislation pertaining to *Zadvydas*, I would need to carefully review it. That said, if confirmed I look forward to working with Congress to craft legislation that provides greater flexibility to ICE personnel in carrying out the agency's paramount mission of national security and public safety, including any appropriate legislation on *Zadvydas*-related issues.

7. **If confirmed, will you commit to providing the committee with data on recalcitrant countries so we know who is cooperating with the United States in taking back their citizens?**

Yes.

V. Prosecutorial Discretion

I appreciate your testimony on September 17 before the Senate Homeland Security and Government Affairs Committee, especially what you told Senator Coburn about prosecutorial discretion. You said, "I believe that you've got to assess every case. And here's where process and systems that are in place are the most important thing, because you've got to be able to assure the public that you're looking at every case on the merits, on the facts, and on the law. ... This is what I would do as one of my first things if this Senate were to confirm me, is to look at the processes in place to determine, to make that very assessment. But it's got to be on a case-by-case basis. It can't be by categories necessarily."

I agree that prosecutorial discretion should be used in limited circumstances after considering the specific details surrounding a case. However, the President has taken prosecutorial discretion to a new level, legalizing thousands in the country under the guise of such discretion rather than a case-by-case basis. It is an abuse of executive power.

1. Can you elaborate on your views with regard to prosecutorial discretion?

I believe that the use of prosecutorial discretion is an important management and law enforcement tool. As U.S. Attorney, I, along with all law enforcement, exercise prosecutorial discretion to ensure the most effective allocation of resources balanced against the public safety needs of our communities. Properly managed, the exercise of such discretion ensures that limited dollars are used in a manner which has the greatest impact on a community's public safety needs.

2. Do you believe that prosecutorial discretion and case-by-case analysis are necessary with respect to the deportation of aliens convicted of homicides, sexual assaults, abduction, aggravated assault, robbery, or treason? If so, what factors do you believe would sufficiently weigh against the deportation of aliens convicted of these crimes?

The use of prosecutorial discretion requires a case-by-case review. In cases involving serious criminal conduct, such as those mentioned above, the exercise of prosecutorial discretion would be very rare and require compelling and exceptional circumstances.

3. If confirmed, will you push for changes or block further policies that abuse prosecutorial discretion authority granted to the Executive Branch?

I would most certainly object to and work to eliminate any abuse of prosecutorial discretion. Such a determination can only be made after an analysis of the circumstances of each case.

VI. Deferred Action for Childhood Arrivals (DACA)

In June 2012, Secretary Napolitano issued a memorandum ordering the implementation of the Deferred Action for Childhood Arrivals (DACA) program. In June of this year, Secretary Johnson announced the process for individuals to renew their status under DACA. Under the guise of prosecutorial discretion, U.S. Citizenship and Immigration Services (USCIS) is implementing the program.

- 1. Do you believe the President had the legal authority to implement DACA? Do you believe that the President has the legal authority to expand DACA through executive, regulatory or policy prerogatives?**

I believe that the President of the United States, as others before him, has the legal authority to take action to address areas within the purview of the Executive branch. It is my understanding that the recently announced expansion of DACA was reviewed, shaped, and considered by a number of people who found these actions to be within the confines of the President's legal authority. As U.S. Attorney, I am governed by the rule of law, which I view as paramount to our country's system of justice. If confirmed, I will continue to abide faithfully by the rule of law in executing my duties as Assistant Secretary for ICE.

- 2. Do you agree that DACA goes beyond the extent of prosecutorial discretion?**

No. I have discussed my view of prosecutorial discretion above and I see nothing in DACA which is inconsistent with that view. Determinations with respect to the exercise of prosecutorial discretion in DACA are made on a case-by-case basis. Moreover my understanding is that the actions pertaining to immigration enforcement taken by this Administration to date have undergone substantial scrutiny and have been determined to be within the scope of the Executive Branch's existing legal authority.

- 3. USCIS Director Leon Rodriguez informed me that 113 DACA cases had been terminated, as of September. Of these 113, only 21 persons had been removed from the United States. Out of the remaining 92 persons still in the country, 59 of these individuals were awaiting a final order, 7 had final orders or removal, and 21 still had no action taken. Will you ensure that persons who have DACA terminated are more quickly processed and removed?**

If I am confirmed, I will commit to looking very closely at the entire process pertaining to removals - including when they involve an individual for whom deferred action under DACA has been revoked, with an eye toward greater efficiencies on the agency's part. Of course, this process is in large part within the purview of the immigration court system which has its own set of issues and challenges. While I cannot commit to the specific removal of any individual without having the opportunity to review his/her case, I do believe that enforcement and removal efforts should be targeted on those individuals who pose the greatest national security, border security and/or public safety threat to our country.

VII. Removal of Illegal Aliens

A Center for Immigration Studies (CIS) report issued in October 2014 had some troubling news about the number of removals conducted by ICE in 2014. Its report shows that deportations of aliens have decreased by 34 percent since 2013, and deportation of criminals has decreased by 23 percent in that same time period. While the number of removals has decreased, the number of aliens with final orders of removal has increased to a significantly high number of 897,572. Of those aliens with final orders, 174,258 are criminal convicts, according to CIS. More disturbing is that only 4 percent of those criminal convicts are allegedly in ICE custody, meaning 167,000 convicted criminals are roaming our communities illegally. Please answer the following questions.

- 1. Have you read this report? If so, what are your thoughts? Are you concerned by this report?**

No, I have not yet read the report but will do so.

- 2. If confirmed, what will you do to ensure that those ordered removed are actually removed?**

If confirmed, I look forward to reviewing all the removal procedures of the agency, with an eye towards creating greater efficiencies on the agency's part. I will meet with senior management in an effort to determine the causes of any delays in the process and will work closely with them to devise strategies and changes to address those causes.

- 3. The CIS report indicated that ICE agents have said that deportations in the United States have decreased because of policies, such as those under the Morton memo, that require an alien to be convicted of a crime before removal proceedings may be initiated. Will you continue this flawed practice, or will you make it clear to your agents that they may initiate removal proceedings of an alien that is deportable, whether or not they have been convicted of a crime?**

As the chief federal law enforcement officer in the Northern District of Texas, I too am concerned about any and all potential and actual threats to public safety. Before making a decision to change any current policy of ICE, if confirmed, I would want to study the policy and get a full understanding of its history, suitability and scope. I would also want to hear from all staff as to the wisdom of any policy and take all of this into consideration before making a change. I commit to reviewing all the removal procedures of the agency, with an eye towards creating greater efficiencies on the agency's part. Prosecutorial discretion must be properly exercised and guided by the need to obtain the greatest public safety impact with dwindling resources.

- 4. The CIS report further elaborated on interior enforcement activities, including encounters, arrests, detainers issued, and charging documents issued, saying such activities have declined. Does this concern you? If so, do you have any thoughts about how you will change the agency's policies to effectuate change?**

I look forward to reviewing this report and to exploring the possible causes of the decline in the numbers, as represented. As the chief federal law enforcement officer in the Northern District of Texas, I am concerned about any and all potential and actual threats to public safety. Before making a decision to change any current policy of ICE, however, I would want to study the policy and get a full understanding of its history, suitability and scope. I would also want to hear from all staff as to the wisdom of any policy and take all of this into consideration before making a change.

VIII. ICE Detainers

Several states, counties and local jurisdictions have been threatened with lawsuits if they continue to cooperate with ICE, and have moved to obstructing federal agents when asked to detain illegal aliens or when issued with ICE detainers. Major cities such as New York, Los Angeles, and Washington, D.C., have all enacted ordinances to prevent cooperation with ICE and now refuse to honor ICE detainers. This has trickled down to local jurisdictions, raising concern that criminals will be released into communities without fear of removal. It is alarming that officials within ICE have condoned this non-cooperative behavior and have actually told states and local jurisdictions that they do not have to abide by detainers.

1. Do you believe ICE detainers are discretionary?

Based on the briefings I have received and the information that I have reviewed, it is my understanding that detainers are discretionary.

2. Do you support state and local law enforcement's decision to ignore ICE detainers? If so, why? If not, what will you do, if confirmed, to effectuate a change in their attitude and actions?

I think that the goal of the Secure Communities program – to more effectively identify and facilitate the removal of criminal aliens in the custody of state and local law enforcement agencies - is important. I understand that ICE is seeking to re-build the Secure Communities program to support community policing and lend itself to effective cooperation with state and local law enforcement. I have been briefed that the priority enforcement program is intended to enhance this collaboration so that ICE receives notification of individuals that meet enforcement priorities and ICE is able to issue detainers where appropriate. If I am confirmed, I will ensure that this program effectively identifies and facilitates the removal of those that pose threats, consistent with the enforcement priorities.

3. What actions do you think ICE can do to better protect the community from dangerous illegal aliens who are caught by local law enforcement?

I am still on the outside of the agency but obviously protection of our communities is one of my top prosecution priorities as U.S. Attorney and it will continue to be a priority at ICE, if I am confirmed. As U.S. Attorney, my office targets dangerous illegal aliens, including those involved in drug and other organized crime, for prosecution and seeks maximum sentences from the courts where warranted. I would seek the same result at ICE.

IX. 287(g) Program

On December 21, 2012, ICE announced that it will not renew any of its agreements with state and local law enforcement agencies that operate task forces under the 287(g) program, stating that “other enforcement programs, including Secure Communities are more efficient use of resources.” However, Secure Communities serves a completely separate and distinct function. The 287(g) program trains local officers to determine whether an individual is lawfully present, including those with no prior contact with immigration services. Secure Communities allows local law enforcement to identify illegal aliens only after they have been booked into jail and if their fingerprints are already in immigration databases. Moreover, ICE’s own website touts the 287(g) programs as “one of ICE’s top partnership initiatives.” The website, at one time, advertised the success of the program: “Since January 2006 the 287(g) program is credited with identifying more than 304,678 potentially removable aliens – mostly at local jails.” Such statistics appear to have since been removed. This program has served a valuable tool, and local and state law enforcement officials have requested cooperative agreements with ICE since its creation in 1996. If confirmed, will you commit to making sure the 287(g) program is available to state and local law enforcement?

If confirmed, I look forward to the opportunity to more carefully review this program, including its benefits and concerns within ICE and those raised by state and local law enforcement agencies. I agree that state and local law enforcement plays a vital role in the effective enforcement of the laws. In these days of tight budgets and increasing security threats, coordination between and among all law enforcement agencies is vital. While federal authorities have primary responsibility for the enforcement of immigration laws, state and local authorities can be important partners. Although I appreciate the desire of state and local law enforcement to serve as a force multiplier in this area, we do need to ensure that we have clear standards and priorities when we look for force multipliers and continue to enhance trust between law enforcement and communities.

X. Foreign Students

- 1. The Student and Exchange Visitor Program (SEVP), operated by ICE, allows educational institutions to receive foreign students. Today, about 10,000 schools are enrolled in the program. However, the Government Accountability Office found major problems with the SEVP program, exposing sham schools and serious vulnerabilities to our national security. The GAO found that ICE could take steps to close loopholes, however, it remains to be seen if everything possible is being done to improve the program. For example, under ICE regulations, a school need not be accredited and school officials need not undergo a background check. Will you commit to changing ICE regulations to incorporate these two changes as well as additional recommendations proposed by Congress and the GAO?**

It appears to me that there may be some vulnerabilities in SEVP that need to be addressed, although I understand that ICE is already trying to do a better job of tracking those individuals. Given the nature of student visas, however, ICE appears to rely heavily on the information pertaining to students provided by universities. I plan on reviewing the program and determining if there is a gap between the universities and ICE, and if so, what can be done to fix that in order to protect national security. I am certainly interested in looking carefully at GAO and congressional recommendation on these issues.

- 2. In 1996, after the 1993 World Trade Center attack, Congress mandated that the immigration service, with cooperation from schools and universities, collect information on foreign students. This system took years before it was created, and unfortunately, was not in place on September 11, 2001. While it is operational today, there is still work to be done to make that system effective. If confirmed, will you make SEVIS upgrades a priority?**

Yes, based on what I have learned in my preliminary briefings, I believe that SEVIS upgrades should be a priority.

- 3. The Optional Practical Training (OPT) was created unilaterally by the Executive Branch to provide foreign students the opportunity to obtain temporary work in their major area of study during and after completing an academic program in the United States. A 2014 GAO report found extensive and alarming DHS mismanagement of OPT. The GAO reported that ICE cannot fully ensure that foreign students working under OPT are maintaining their legal status in the United States. ICE does not consistently collect the information it needs to oversee OPT requirements, such as where and for whom the students are working. Furthermore, ICE does not monitor whether foreign students' employment complies with ICE regulations. The GAO cited many cases of students working in fields outside their major areas of study (e.g., computer science majors working in retail) as well as instances of students and schools knowingly misreporting that students were fulfilling their visa requirements. In addition, the GAO reported that tens of thousands of students were exceeding the lengths of stay authorized by OPT regulations. What will you do if confirmed to**

address these serious concerns? 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?

At this time, I do not have enough information on OPT and its issues to provide an informed response to this specific question. However, if I am confirmed, you have my commitment that I will review the GAO report and its recommendations as an early priority and am open to any potential fix that is appropriate.

XI. EB-5 Program

At the Senate Homeland Security and Governmental Affairs Committee nomination hearing, Senator Coburn raised the EB-5 Regional Center program with you. As he mentioned, an internal ICE memo raised significant national security issues concerning the EB-5 program. One section of the memo outlines “concerns that this particular visa program [EB-5] may be abused by Iranian operatives to infiltrate the United States . . .” I was disappointed by your answer that you were unfamiliar with this report and the facts and surrounding circumstances of this grave threat to our national security. Since your confirmation hearing, please summarize what you have learned about this issue and how you plan to work with ICE’s sister agency, USCIS, to make sure that ICE’s recommendations are taken seriously and that the EB-5 program does not expose a threat to our security.

I gave a candid answer regarding the EB-5 program during my HSGAC hearing and look forward to becoming more familiar with all the initiatives and responsibilities of ICE. Since the hearing, I have received one additional briefing from ICE on the EB-5 program. As you know, the program is run by USCIS, but ICE has investigative authority. I share your concern that we need to address any vulnerabilities that may be created in any type of immigration program. It appears that the program provides significant benefits to the U.S. economy. That said, we must address any national security vulnerabilities. If I am confirmed, I commit to making the EB-5 program a priority and will work closely with USCIS to ensure that ICE recommendations are understood and addressed by that agency. In my work as U.S. Attorney, I collaborate with many different agencies and believe strongly that communication between us is key.

XII. Visa Security Program

The DHS Inspector General issued a report in September of this year that found several flaws with the Visa Security Program run by ICE. It found that the program had not developed measurements to assess effectiveness of the program, and was consistently late in issuing its reports to Congress. Congress has been open to expanding this program. I would like your input on how the visa security program could be enhanced and how we can better allocate resources to make it more effective. I would also appreciate assurances that ICE management will provide timely reports to Congress on programs under its jurisdiction.

I am not familiar with the specific criticisms in this report, and the data reporting methodologies ICE uses. But I believe careful tracking of metrics is important for any law enforcement agency. If confirmed, I would work to ensure that ICE's statistical reporting is consistent with best practices so that the agency's results are clear, timely and well understood by Congress and the public. If confirmed, I will carefully review this program, including the allocation of resources to make it more effective, and examine the need for potential enhancements.

XIII. Unaccompanied Alien Minors

A major issue facing ICE right now is the increase in the number of unaccompanied alien children that have been crossing our borders in recent years. Please summarize your thoughts on the best course of action to deal with the surge of individuals and the ways we can stem the flow.

The increase in the number of unaccompanied alien minors crossing our border is of great concern, though it is my understanding that the number is the lowest now than it has been in two years. The facts and circumstances of this issue cross a spectrum of laws and Federal agencies. In terms of ICE's role in this process, however, my initial thought is that, if I am confirmed, I would want to ensure coordination and collaboration so that we can appropriately deal with the minors in accordance with U.S. law.

XIV. Immigration Policy

If confirmed as the Assistant Secretary for ICE, you will be responsible for the enforcement of the country's immigration laws. Therefore, I would like to know your position regarding the following issues:

- 1. 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? Should taxpayers shoulder any of the burden?**

I believe that there may be some individuals now in the country without status who, depending on the facts and circumstances related to their presence here, may have immigration options. I understand that, generally, individuals who may be eligible for legal status submit applications to USCIS with requisite fees that cover all of the costs for adjudicating those applications. I do not believe that taxpayers should shoulder the burden of costs associated with an individual's application for relief.

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

Individual cases must 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.

- 3. 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?**

Individual cases must 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.

- 4. Should an illegal immigrant convicted of a felony criminal offense be eligible for immigration benefits, including legal status?**

No, individuals with serious criminal convictions who fall under the enforcement priorities for removal should not be eligible for relief.

- 5. Should an illegal immigrant convicted of a felony criminal offense be eligible for immigration benefits, including legal status?**

No, individuals with serious criminal convictions who fall under the enforcement priorities for removal should not be eligible for relief.

6. Should illegal immigrant gang members be eligible for immigration benefits, including legal status?

No. Generally, individuals with serious criminal convictions who fall under the enforcement priorities for removal should not be eligible for relief.

7. If an illegal immigrant provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidential provisions? If an illegal immigrant provides information in an application that clearly renders him ineligible and commits a serious crime that would warrant his immediate removal, should the government be able to use that information to place him in removal proceedings?

As a general rule, I support information being shared with national security and law enforcement agencies, including ICE, for national security purposes or to investigate or prosecute a criminal offense.

8. 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, I defer to its leadership on questions of interviews for benefits. Should I be confirmed, I would work collaboratively with USCIS on enforcement-related issues that arise during its adjudication process.

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

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

10. Beginning in 2010, DHS has included in its statistics for ICE removals the number of illegal immigrants apprehended by the Border Patrol and then transferred to ICE for processing. Do you support this policy?

Yes.

11. Do you support making E-Verify permanent and mandatory for all employers?

Yes. E-Verify should be mandated in a responsible manner as part of broader, comprehensive immigration legislation.

12. After being criticized by certain special-interest groups, the administration essentially halted all worksite enforcement actions. According to the non-partisan Congressional Research Service, in 2011, worksite enforcement actions resulted in the arrest of 1,471 illegal workers out of an estimated 8 million – .0001percent. If confirmed, will you commit to reinstating worksite enforcement, including enforcing immigration law with respect to illegal alien employees?

As a general principle, I believe it is egregious for employers to establish a business model that relies on an unauthorized work force. If confirmed, I would target ICE resources to employers who exploit and abuse workers.

XV. National ICE Council

The actions of former Assistant Secretary Morton has caused a great deal of discontent among immigration agents. Because of the lack of will to enforce the laws on the books, the National ICE Council, the union that represents more than 7,000 agency employees, cast a unanimous “Vote of No Confidence” in Assistant Secretary Morton on June 25, 2010. Immigration agents have said their voices have not been heard, and that they’re being handicapped from doing their jobs. If confirmed, will you meet with representatives from the National ICE Council as soon as possible?

Yes. I will meet as soon as practicable with the Council.

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

1. President Obama has announced that he will unilaterally grant legal residence and work authorizations to up to 5 million individuals illegally in the country.

a. Do you reject this action?

No. I believe that the President of the United States, as others before him, has legal authority to take Executive action to address areas within the purview of the Executive branch. It is my understanding that the recently announced Executive action pertaining to immigration was reviewed, shaped and considered by a number of people in whom I have great confidence, including Secretary of Homeland Security Jeh Johnson and Attorney General Eric Holder. I also understand that the Office of Legal Counsel at the Department of Justice has published an opinion explaining in great detail the legal authority and precedents for the President's actions concerning enforcement prioritization and deferred action. Unless and until the President's action is invalidated or withdrawn, I am bound to faithfully execute applicable laws, regulations and policy.

b. Do you agree that such an action will invite a flood of new illegal immigration?

No. The use of deferred action in the President's announcement is limited to persons who entered the United States before January 1, 2010.

2. In 2012, the Obama administration made the unprecedented decision not to enforce this country's immigration laws against a broad category of immigrants who are otherwise subject to removal. If confirmed, you will be charged with enforcing this country's immigration laws.

a. Will you commit that, if confirmed, you will faithfully execute all immigration laws, including those laws that you or the President disagree with?

Yes.

- b. Do you agree that if the President were to fully enforce the laws as written that would result in significant improvement not only in our immigration system but in the safety and security of the nation as a whole?**

My own experience in making tough prosecutorial decisions for my 100-county district clearly precludes the idea that I can fully enforce all the thousands of federal statutes and regulations on the books for which I am responsible. I believe that the use of prosecutorial discretion is an important management and law enforcement tool. As U.S. Attorney, I, along with all law enforcement, exercise prosecutorial discretion to ensure the most effective allocation of resources balanced against the public safety and national security needs of our communities. Properly managed, the exercise of such discretion ensures that limited dollars are used in a manner which has the greatest impact on a community's public safety needs.

- 3. Article II, Section 3 of the Constitution specifies that the President "shall take care that the laws be faithfully executed."**

- a. In your view, what does this section of the Constitution require of the President with regard to our nation's duly enacted immigration laws?**

The President must ensure that such laws are faithfully executed as well. With respect to immigration enforcement, "faithful execution of the laws" means to me that the President must judiciously allocate limited enforcement resources to best meet the Nation's needs. Those resources, in my opinion, should be dedicated to the greatest degree possible to ensure public safety and national security.

- b. Is it consistent with this clause for the President to decline to enforce a statute because it is unconstitutional?**

It can be, depending on the applicable facts and circumstances. Throughout U.S. history, there have been instances where Presidents have declined to enforce laws that they understood to be unconstitutional.

- c. Is it consistent with this clause for the President to decline to enforce a statute because he lacks adequate clarity as to what the statute requires?**

No.

- d. **Is it consistent with this clause for the President to decline to enforce a statute because he believes the statute is not as important as other statutes?**

It can be, depending on the applicable facts, circumstances and the availability of resources. Whether the tension arises between statutes, or between parts of statutes, the concept of Prosecutorial Discretion does involve prioritizing some activities over others.

- e. **Is it consistent with this clause for the President to decline to enforce a statute because he believes said statute is unjust or the case law thereunder leads to unjust results?**

It can be, depending on the applicable facts and circumstances. A number of considerations enter into the calculus of prosecutorial discretion. Certainly history is replete with instances where prosecutorial discretion has been utilized in situations that would otherwise lead to unjust results.

- f. **Is it consistent with this clause for the President to decline to enforce a statute because he disagrees with the policy?**

Absent other factors, more than a mere policy disagreement would be required to justify a decision not to enforce a statute.

4. **In your own personal view, does the President have the sole authority to establish a uniform rule for naturalization and laws governing immigration under the Constitution, does Congress have the sole authority, or do Congress and the President share that authority?**

My view is that the overall authority in making the laws is that of the Congress and the responsibility to ensure their faithful implementation is that of the President.

5. **Under President Obama, DHS has repeatedly issued memoranda that govern the use of "prosecutorial discretion" to determine which immigrants who entered the country illegally will be deported and which will be allowed to stay in the country without the possibility of being deported.**

- a. **You have served as a prosecutor. How do you define the term "prosecutorial discretion"?**

Prosecutorial Discretion is an important management and law enforcement tool. As U.S. Attorney, I, along with all law enforcement personnel, exercise prosecutorial discretion to ensure the most effective allocation of resources balanced against the public safety and national security needs of our communities. Properly managed, the exercise of such discretion ensures that limited dollars are

used in a manner which has the greatest impact on a community's public safety needs.

- b. What, in your opinion, has been the historical role of prosecutorial discretion in view of the separation of powers contemplated by the Constitution?**

I believe that, historically, prosecutorial discretion has been an important tool for the branch charged with faithfully executing the laws to make its best efforts to do so within the constraints it faces.

- c. As a prosecutor, do you believe there is a limit as to how broadly or often prosecutorial discretion can be used without undermining the rule of law? If so, at what point do you consider the use of prosecutorial discretion harmful?**

Yes, there are limits to the application of prosecutorial discretion. If abused or taken to an extreme, prosecutorial discretion can amount to an abdication of the duty to faithfully execute the laws.

- d. What limits does the Constitution's separation of powers impose on the use of prosecutorial discretion, if any?**

I believe that the Constitution imposes reasonable limits on the use of any authority and precludes its extreme or abusive exercise. Admittedly, it is difficult to define a bright-line rule applicable to all circumstances, but one clear principal that must be employed is the availability (or unavailability) of adequate resources to enforce the laws.

- e. Assuming the constitutionality of a statute has been upheld or its constitutionality has not been challenged, would it be a proper use of prosecutorial discretion for an executive agency to decline to prosecute any offense under or otherwise refuse to enforce an entire title of the United States Code?**

While I have not studied every title of the U.S. Code, it is unlikely that proper exercise of prosecutorial discretion contemplates ignoring a statute in its entirety. It certainly can be appropriate to decline to prosecute an individual for certain offenses, as determined on a case-by-case basis, something which we at the U.S. Attorney's Office do every day.

- f. Making the same assumptions as in part (d), would it be proper for an executive agency to decline to prosecute any offense under or otherwise refuse to enforce an entire section of the United States Code?**

See my answers to (d) and (e) above.

- g. Making the same assumptions as in part (d) and (e), would it be proper for an executive agency to define and create a class of persons against whom it will decline to enforce an entire title of the United States Code?**

See my answers to (d) and (e) above. It could well be proper if exercised on a case-by-case basis, which considers the facts and circumstances applicable to each individual in that class, the availability of limited enforcement resources, and the national security and public safety priorities of the Department.

- h. Making the same assumptions as in part (d), (e), and (f), would it be proper to define and create such a class against whom an agency would decline to enforce a discrete section of the United States Code?**

It could be, if individual determinations are made on a case-by-case basis. See my answers to (d), (e), (f) and (g) above.

- i. On June 15, 2014, a program known as Deferred Action for Childhood Arrivals was created by executive memorandum. That program grants certain immigrants who entered the country illegally work authorization and permission to remain in the country under a formal grant of "deferred action."**

- 1. Do you think it was a proper use of prosecutorial discretion to allow broad categories of individuals who are not in lawful immigration status to remain in the country without an explicit statutory authority? If so, what limits does this authority have?**

I believe that the President of the United States, as others before him, has the legal authority to take action to address areas within the purview of the Executive branch, on a case-by-case basis. Any limits must be reasonable and must conform to focusing on those individuals who pose the greatest national security and/or public safety threat to our country. It is my understanding that the DACA program has not been determined to be invalid by any court of law. I also understand that courts have long supported the proposition that the Executive branch can designate classes of persons for prosecutorial discretion, so long as decisions in individual cases are made on a case-by-case basis. As U.S. Attorney, I am governed by the rule of law, which I view as paramount to our country's system of justice.

2. **Do you think the Immigration and Nationality Act authorizes the grant of work authorization to immigrants who are not in lawful status? If so, please explain your analysis and the statutory basis for the power. If not, do you consider it a proper use of the Executive Branch's authority to issue such work authorizations?**

Yes. See my answer to (1) above. My understanding is that the actions pertaining to immigration enforcement and prosecutorial discretion, including deferred action, taken by this Administration to date have undergone substantial scrutiny and have been determined to be within the legal scope of the President's authority.

6. **In your own view and irrespective of how courts have interpreted the law or constitution, is there a limit on how much Congressional power can be exercised by an executive agency, even if Congress has delegated such powers to such agency?**

While I am not a constitutional scholar, I believe that the courts would interpret agency authority in a manner which would set reasonable limits on the agency, depending on the facts and circumstances.

7. **Last year, information became public revealing I.C.E. released 36,007 criminal illegal immigrants in 2013.¹**

- a. **Do you think it is good policy, in general, to release people who have committed criminal offenses after entering or remaining in the country illegally?**

No, not in general, but I understand many of these releases were mandated by the immigration laws, the Supreme Court's decision in *Zadvydas*, or as a result of decisions by immigration judges.

- b. **In what circumstances would it be appropriate to release such a person? In what circumstances would it not be appropriate?**

In general, I believe that any releases of previously detained immigrants must be made solely on the basis of applicable law and specific relevant facts, on a case-by-case basis, pursuant to appropriate priorities and the public safety and national security concerns of the nation. Certainly consideration should be given to the full criminal history, number of illegal entries, and other relevant facts pertaining to the immigrant.

¹ Jessica Vaughan, *ICE Document Details 36,000 Criminal Alien Releases in 2013*, May 2014.

c. **In some percentage of these cases, the release was mandated because of the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). As you are doubtless aware, that decision held that detention of deportable immigrants for more than six months is unconstitutional unless the United States can show removal in the foreseeable future or special circumstances, such as the immigrant having a communicable disease or being a national security threat.**

i. **I understand that you would be bound to abide by the Court's opinion were you to be confirmed; however, in your own personal opinion, did the Supreme Court decide the *Zadvydas* case correctly?**

While I am generally familiar with the holding of the case, I have not carefully studied its jurisprudence, nor have I formed an opinion as to the correctness of its holding. As ICE Director, it would be my duty to enforce the law regardless of any personal views.

ii. **If confirmed, would you support legislation that would curtail or limit the impact of the *Zadvydas* decision to the greatest extent possible?**

I would need to carefully review any proposed legislation on *Zadvydas*, so I cannot comment on hypothetical legislation at this time. That said, if confirmed, I look forward to working with Congress to craft legislation that provides greater flexibility to ICE personnel in carrying out the agency's paramount mission of national security and public safety, including any appropriate legislation on *Zadvydas*-related issues.

iii. **The *Zadvydas* opinion created an exception to allow indefinite detention of immigrants who pose a national security threat, such as a terrorist; however, the opinion does not allow an exception for immigrants who pose a threat to public safety, such as violent criminals. If confirmed, would you support legislation that would create an exception for convicted violent criminals?**

I would need to carefully review any proposed legislation on *Zadvydas*, so I cannot comment on hypothetical legislation at this time. That said, if confirmed, I look forward to working with Congress to craft legislation that provides greater flexibility to ICE personnel in carrying out the agency's paramount mission of national security and public safety, including any appropriate legislation on *Zadvydas*-related issues.

iv. Of the 36,000 immigrants with criminal records released, 193 had been convicted of some type of homicide. In response to criticism of the releases, DHS has asserted that around 75% of those with a homicide conviction were released because of a court order.

1. That means that around 25% of these releases were discretionary, does it not?

Yes, based on the numbers presented here. I would need to carefully study the circumstances with respect to these releases before providing a further response to this question.

2. Do you think it is appropriate to release an individual who has been convicted of a homicide offense and who has no legal right to remain in the country? If so, when?

Except for the rare case that presents exceptional and extremely compelling circumstances, no — particularly if the release is discretionary to the agency.

3. If you are confirmed, how will you handle the discretionary release of immigrants who have no right to stay in the country and have been convicted of a homicide offense?

I believe that these cases require very careful review, consistent with the applicable laws, to ensure public safety.

8. If you are confirmed as the director of Immigration and Customs Enforcement, you will answer to Department of Homeland Security Secretary Jeh Johnson. When Secretary Johnson spoke to the United States Council of Mayors in April of 2014, he said that immigrants who entered the country illegally have “earned the right to be citizens.”

a. Do you agree with Secretary Johnson’s statement?

Yes, since I believe that Secretary Johnson was not referring to all immigrants who entered the country illegally, but to those who have been identified as eligible for prosecutorial discretion, such as deferred action.

- b. In the context of immigration reform, there is often discussion of a special path to citizenship for immigrants who entered the country illegally. In your personal opinion, would offering a special path to citizenship to those immigrants who entered the country illegally make it easier or more difficult to prevent illegal immigration in the future?**

It would depend on the way the path is structured. For example, if limited to persons who are already in the country and have been for a certain number of years, it should not serve as an incentive to those not in the country to enter it, thinking they could benefit from the program.

- c. According to ICE's own records, removals from the interior decreased from around 236,000 in 2009 to about 100,000 in 2014. That is decrease of nearly 60% over 6 years. What do you think has caused that decline? Is the population of immigrants who entered the country illegally shrinking quickly?**

I am not familiar with the source of these statistics and it is difficult to give an accurate response to this question from the outside looking in. It is my understanding that there has been a decline in the numbers of immigrants entering the country illegally. I also understand that recent increases in attempted border crossings by immigrants from non-contiguous countries have required ICE to shift detention and removal resources to recent arrivals.

- d. ICE's own metrics show significant decreases in enforcement activity across almost every category from 2013 to 2014:**

- **Encounters (incidents where an ICE agent encounters a person and is able to identify and verify that an immigrant is deportable) went down by 18%;**
 - **How do you explain that decline?**
 - **Do you anticipate trends like that continuing under your leadership, should you be confirmed?**

I can only offer speculation as to any reasons for such declining statistics, which I do not believe would serve you well. If confirmed, I commit to reviewing this and the following three issues thoroughly and to providing you with a response based on all facts available to the agency.

- **Arrests (where an immigrant who has been determined to be deportable is taken into custody, usually only briefly for processing) have gone down 21%;**
 - **How do you explain that decline?**
 - **Do you anticipate trends like that continuing under your leadership, should you be confirmed?**

See above response.

- **The number of detainees issued for illegal immigrants who are in the custody of another government agency (usually a state or local jail or prison), has gone down 24%;**
 - **How do you explain that decline?**
 - **Do you anticipate trends like that continuing under your leadership, should you be confirmed?**

See above response.

- **Issuance of charging documents, which start the deportation process, have gone down 25%**
 - **How do you explain that decline?**
 - **Do you anticipate trends like that continuing under your leadership, should you be confirmed?**

See above response.

- **As of September 20, 2014, around 898,000 immigrants who had been issued a final order of removal but remained in the country. Around 15,000, or 2 to 3 % were detained in ICE custody.**
 - **Do you consider it a problem that nearly 1 million people who a judge has ordered deported remain in the United States?**

Yes, if that is in fact that case.

- **Given that so many of these individuals are not in ICE custody, what do you think is the likelihood of them actually being removed?**

I cannot given an informed opinion on this question without knowing the facts and circumstances pertaining to each case.

- **Do you have specific plans for how you will locate and remove this population?**

If confirmed, I will review this issue with senior staff and review all pertinent documentation relating to it. I would also seek to confer with the staff responsible for the removal of this population of immigrants to ascertain their views of what can be done in this regard.

- **Around 174,000 of these individuals had been convicted of a crime, and only about 7,500 of them were detained. Can you assure us that the 167,000 individuals who have been convicted of crimes but released will be removed by ICE if you are confirmed?**

I commit to following applicable law, regulation and policy in determining the appropriate action to address each case, while at the same time recognizing that much of this is beyond the ICE Director's control.

9. **According to the Texas Department of Public Safety, six of the eight major Mexican drug cartels have command and control networks operating in the State: Los Zetas, the Gulf Cartel, the Sinaloa Cartel, the Beltran Leyva Organization, La Familia Michoacana, and the Juarez Cartel.² Since 2007, arrests of drug cartel members in Texas have included at least 107 from the Gulf Cartel, nine from the Juarez Cartel, 165 from La Familia Michoacana, 80 from Los Zetas, and two from the Sinaloa Cartel.**

- a. **Based on your experience as a Prosecutor in the State of Texas, do you believe there is a substantial and troubling presence of these drug cartels in the state?**

Yes.

- b. **Based on your experience as a prosecutor, have you seen or are you aware of any evidence, anecdotal or otherwise, that these drug cartels do business with or otherwise work with terrorist organizations?**

I am not aware of this in my district nor have I seen evidence of it to date.

- c. **Do you consider the presence of these cartel members in Texas, who use many of the same tactics and weapons in their turf wars that terrorists use in Afghanistan, a serious national security threat?**

Yes.

²*Texas Public Safety Threat*, Feb. 2013.

- d. **Some of these cartel members may be United States citizens, but many are not. If you are confirmed, what specific actions will you take to identify and remove these individuals from the United States, regardless of whether they have been convicted for a crime?**

I will use my authority to the fullest extent under the immigration laws to seek their identification, prosecution and removal.

10. **Special Agent in Charge of the Drug Enforcement Agency Chicago Field Division Jack Riley said that “[i]n Chicago, we’ve got 100,000 documented street gang members who largely make their living putting Mexican cartel heroin on the street.” According to Riley, most of the heroin bound for Chicago crosses the border in El Paso and is being trafficked by the Sinaloa cartel. If confirmed, what do you plan to do to address this situation?**

I will use my authority to the fullest extent under the immigration laws to seek their identification, prosecution and removal.

11. **During an April 24, 2013 speech to the Mexican American Legal Defense and Education Fund, Attorney General Eric Holder said**

“Creating a pathway to earned citizenship for the 11 million unauthorized immigrants in this country is essential. The way we treat our friends and neighbors who are undocumented – by creating a mechanism for them to earn citizenship and move out of the shadows – transcends the issue of immigration status. This is a matter of civil and human rights.”

President Obama’s Director of Domestic Policy, Cecilia Munoz, and Vice President Biden, have echoed this sentiment.

- a. **Do you believe that if someone enters the country in violation of the laws of the United States and is ordered deported consistent with those laws, that that is a violation of their civil rights?**

I am only generally familiar with the remarks made by Attorney General Holder, DPC Director Munoz, or Vice President Biden, so I cannot speak to what they said or the context in which they made their statements. But generally, if someone is ordered deported consistent with due process and the law, their civil rights have not been violated.

- b. Do you believe that receiving amnesty for violating this country's immigration laws is a civil right? If so, what other violations of law are excusable as a civil right?**

As noted above, I am not sure of the context in which Attorney General Holder, DPC Director Munoz, or Vice President Biden made the statements to which you refer. As to your use of the term "amnesty," there are many different views as to the term's meaning. Certainly having no restrictions or requirements to an undocumented immigrant's path to obtaining permanent residency or citizenship might well be problematic where the immigrant is being rewarded "for violating this country's immigration laws."

- 12. Between 2000 and 2008, ICE and U.S. Customs and Border Protection made great strides in enforcing our nation's immigration laws. One of the key factors was ending "catch and release." Under this administration, however, "catch and release" has been the norm. Do you support ending "catch and release" policies?**

I support the end of catch and release policies and support prioritized enforcement.

- 13. As you are aware, ten ICE officers have filed a lawsuit against your Department alleging that the Obama administration's non-enforcement policies require them to violate the Immigration and Nationality Act and their oaths as law enforcement officers. The officers allege that if they follow the law, they face disciplinary action. This lawsuit is pending before the U.S. Court of Appeals for the Fifth Circuit. Recently, an award-winning, career prosecutor and Chief of the ICE Phoenix field office filed a complaint against DHS Secretary Johnson for retaliation after she resisted orders to release convicted criminal illegal immigrants from custody. Clearly, the number one issue causing the low morale within ICE is that personnel are not allowed to enforce the law as Congress intended. If confirmed, will you permit ICE personnel to enforce all immigration laws as written?**

If confirmed, I will become more familiar with and will study all policies applicable to these concerns. I would also like to meet with personnel that have these concerns to discuss the issues further. As a general proposition, however, prosecutorial discretion is an important management and law enforcement tool. As U.S. Attorney, I, along with all law enforcement agencies, exercise prosecutorial discretion to ensure the most effective allocation of resources balanced against the public safety and national security needs of our communities. Properly managed, the exercise of such discretion ensures that limited dollars are used in a manner which has the greatest impact on a community's public safety needs. This is particularly important when budgets have been decreasing.

14. Last month in California – a sanctuary state – an illegal immigrant shot three sheriff’s deputies, killing two of them, and shot another individual in the head. He has been arraigned on 14 felony charges, including murder, attempted murder, and carjacking. According to reports, the illegal immigrant was first deported in 1997 after being convicted of drug possession in Arizona. He was arrested and deported four years later for another offense. Sanctuary jurisdictions like California refuse to cooperate with ICE, instead releasing hundreds of dangerous criminal illegal immigrants back into communities all across the country.

a. Do you agree that these policies pose a serious threat to public safety?

Yes, they can. If I am confirmed, I will review these policies and work with state and local law enforcement agencies to develop better policies and practices to address these serious public safety and national security concerns.

b. If confirmed, what will you do to deter these policies?

I am concerned about the release of dangerous criminals into the community. If confirmed, I would work with state and local law enforcement agencies to develop better policies and practices to address these serious public safety and national security concerns.

Questions for the Record
Submitted by Senator Al Franken for
Sarah Saldaña, Nominee to be Assistant Secretary for Immigration and Customs
Enforcement, U.S. Department of Homeland Security

1. In December 2006, agents from Immigrations and Customs Enforcement (ICE) carried out enforcement actions on meatpacking plants in six states, including one in Worthington, Minnesota. The raids left numerous children, many of them citizens and legal residents, without their parents and with no way of finding them. During the Senate's consideration of comprehensive immigration reform legislation, I introduced a bipartisan amendment that would ensure that ICE considers the needs of children affected by enforcement actions. While comprehensive legislative reform is ultimately necessary, there are many steps that ICE can take in the interim to improve child welfare in immigration proceedings. If you are confirmed to lead this agency, will you commit to:

- a. Allow detained parents to make free calls to arrange for the care of their children?
- b. Allow children to visit and communicate regularly with their parents while they are in ICE custody?
- c. Consider the best interests of children in detention, release, and transfer decisions affecting their parents?
- d. Provide training for ICE and detention facility personnel on best practices for protecting children?
- e. Take steps to ensure that local schools and child welfare agencies are notified of enforcement actions, so that they may take steps to assist affected children?

(Response to a-e): I too have a great interest in ensuring the safety and security of all persons who come into the custody of ICE and who – like children – are otherwise affected by ICE's actions. If confirmed, I intend to review the practices of the agency in this regard. I trust that the agency does its best to conduct itself in a manner which considers the best interests of affected children (item c) and that appropriate training (item d) is occurring. Certainly each of the other steps you have set forth appears eminently reasonable and I will commit to carrying them out, to the extent feasible.

2. In the past year, the Department of Homeland Security (DHS) has significantly increased its usage of family detention centers, at an anticipated annual cost of \$356 million. Family detention centers often separate parents from their children, and their recent expansion has led to complaints of poor conditions, inadequate services, and physical danger for those detained. Such allegations would suggest that family detention centers pose long-term developmental challenges for immigrant children and families.

- a. What is your view of the current family detention system? Should the use of family detention facilities be expanded or reduced in the future?
- b. What changes would you make to improve the lives of women and children who are currently detained in these centers?
- c. What is your view of proposed alternatives to detention (such as release on recognizance, supervised release, ankle bracelets, and community-based supports) for immigrant families awaiting judicial process?

(Response to a-c): As with your other question about the welfare of children whose parents are taken into ICE custody, I also have a great interest in ensuring the safety and security of all families who come into the custody of ICE. If confirmed, I intend to review the practices of the agency in this regard. I trust that the agency does its best to conduct itself in a manner which is consistent with the standards set forth in the settlements that came out of the *Hutto* and *Flores* agreements (item a). I understand that there are currently several lawsuits pending relating to the detention of families, and if the court determines that the agency must make changes to how it detains these families, I will commit to carrying them out, if confirmed. In addition, if confirmed, I plan on visiting these centers to see the facilities firsthand (item b). With regard to alternatives to detention, I am not as familiar with the effectiveness of such program, but as a general rule, ICE should be making their recommendations regarding detention on a case-by-case basis after a careful review of the facts and circumstances pertinent to the specific individuals involved (item c).

3. Immigration attorneys have reported that ICE lawyers are opposing most, if not all, bond requests on behalf of mothers and their children being held in detention facilities in Artesia, NM and Karnes City, TX. These are individuals who have generally been found by immigration officials to have a credible fear of persecution, should they be deported to their home countries. In other words, many of these individuals likely have valid asylum claims. ICE lawyers reportedly rely on former Attorney General John Ashcroft's decision in *Matter of D-J*¹ to justify their stance, arguing that women and children constitute "national security risks" and therefore should be detained without bond.

a. How would you instruct ICE attorneys to handle such bond requests under your leadership?

I agree that, as a general rule, ICE attorneys should be making their recommendations regarding detention on a case-by-case basis after a careful review of the facts and circumstances pertinent to the specific individuals involved. As the chief federal law enforcement officer in the Northern District of Texas and also as a life-long Texas resident, I am concerned about any and all potential and actual threats to public safety coming through our borders. With that in mind, if confirmed, I commit to reviewing the agency's practices and policies in this regard to ensure that recommendations made to the court are based on evidence supporting them and with the overall purpose of addressing national security and public safety concerns.

¹ *In re D-J*, 23 1&N Dec. 572 (A.G. 2003).

The Honorable Jeff Flake
Written Questions for Sarah Saldana, U.S. Attorney, Northern District of Texas
Nominee, Assistant Secretary for Immigration and Customs Enforcement
Senate Judiciary Committee
November 17, 2014

1. At your confirmation hearing, you were asked by Senator Coburn how you would handle your investigatory discretion if you were to be confirmed as the Assistant Secretary for Immigration and Customs Enforcement (ICE). In your response, you stated that “you have got to look at what is the biggest threat to the American public . . . I believe you have to assess every case . . . and be able to assure the public that you’re looking at every case on the merits, on the facts and on the law.” You continued that, if confirmed, you would “look at the processes in place, to determine, to make that very assessment, but it’s got to be on a case by case basis, it can’t be by categories necessarily.”

a. If confirmed as Assistant Secretary for Immigration and Customs Enforcement, do you believe it would be your duty to handle cases on an individualized case-by-case basis?

As stated in my prior testimony, yes, in assessing threat to the American public, every case will be looked at on the merits, on the facts and on the law.

b. In your experience as the U.S. Attorney for the Northern District of Texas, the top law enforcement official in your district, do you believe that it would have been ill advised to come out and declare categories of offenders that you would not be prosecuting?

As a general proposition, every law enforcement agency, including U.S. Attorney’s Offices and ICE, exercises prosecutorial discretion, including with respect to categories of individuals. The parameters for this discretion, however, are typically distilled within internal guidelines and such decisions still require case-by-case determinations.

- a. What do you believe would be the consequences of making a policy of not prosecuting certain categories of offenders publically known?**

I cannot generalize with respect to all prosecutorial discretion policies, but there may be some policies that we may not want to publicize outside of the law enforcement community to avoid any adverse impact on the potential for deterrence.

- c. If confirmed, how would you respond to a directive from superiors requiring you to not enforce immigration laws against certain categories of people?**

The use of prosecutorial discretion is an important management and law enforcement tool which I, as a U.S. Attorney, along with all law enforcement, use to ensure the most effective allocation of resources balanced against the public safety needs of our communities. Properly managed, it ensures that limited dollars are used in a manner which has the greatest impact.

- d. In your experience as a law enforcement officer, do you believe this would negatively affect the trust of the citizens you have sworn to protect?**

The purpose of prosecutorial discretion must be effectively explained to the American public. It is an important management and law enforcement tool which is used to ensure the most effective use of our resources so that our communities are safe. This is a priority for law enforcement as well as the public. I believe when properly explained to the American public, most will understand and support prosecutorial discretion policies

- e. Furthermore, in your experience as a law enforcement officer, how do you believe a directive to not enforce the law against certain categories of people would affect the morale of ICE officers you would be leading?**

These priorities and the rationale behind them must be effectively explained to ICE personnel in order to maintain and enhance their morale. I believe most within ICE will understand and support prosecutorial discretion policies when they are properly explained.

2. The U.S. Attorney's Office for Arizona has ordered that prosecutions cease for first-time illegal border crossers unless they have a criminal history beyond their initial illegal crossing or are otherwise a threat to public safety. I find this deeply concerning because, as the *Yuma Sun* previously noted, "the Yuma Sector's border with Mexico has gone from being one of the busiest and most dangerous in the nation to one of the most secure." While these gains in border security are no doubt a result of a number of factors, Operation Streamline undoubtedly played a key part.

a. Given your experience as U.S. Attorney for the Northern District of Texas, do you believe that a program such as Operation Streamline provides a deterrent effect on illegal border crosses?

Although I am a U.S. Attorney in a border state, my district is not a border district such as that of the U.S. Attorney for Arizona, John Leonardo, with whom I serve on the Attorney General's Advisory Committee's (AGAC) Subcommittee on Immigration and Border Issues. I and other U.S. Attorneys are charged with knowing the public safety issues of our districts and with managing those issues within the confines of available resources. If I am confirmed, I look forward to working with the AGAC and this subcommittee of it, which I believe can be a tremendous resource to ICE.

i. In addition, do you believe that ceasing to prosecute first-time illegal border crossers unless they have a criminal history beyond their initial illegal crossing or are otherwise a threat to public safety will result in an increase or decrease in the number of illegal border crossers in the future?

Although I am a U.S. Attorney in a border state my district is not a border district. If confirmed, I intend to become much more familiar with the actual effectiveness of this initiative from ICE's perspective.

ii. What do you believe will be the consequences of making public a policy of not prosecuting certain categories of offenders, such as first time border crossers without criminal histories?

See (i) above.

iii. How does a directive to not enforce the law against certain categories of people affect the morale of the ICE officers you would be leading?

See 1(e) above.

b. More generally, given your experience, do you believe that rolling back Operation Streamline and reducing prosecutions in the Yuma Sector, an area that has shown a significant decrease in border crossing since the implementation of Operation Streamline, is a wise policy?

See 2(a) above.

c. If confirmed as Assistant Secretary, would you support continuing Operation Streamline under a “zero tolerance” approach and prosecute first time border crossers?

If confirmed, I intend to become much more familiar with the actual effectiveness of this initiative from the agency’s perspective in order to be able to provide an informed assessment of it. I would also seek to determine the opinion of the agency’s staff along the border in doing so. I commit to a careful analysis and review of public safety needs and resources to address those needs along the border.

3. In 2013, ICE conducted 133,551 removals of individuals apprehended in the interior of the United States. That number is down 40 percent since 2009. In addition, in 2013, interior removals only made up 36 percent of the 368,644 total removals attributed to ICE.

a. Do you believe these 2013 numbers show an appropriate priority given to interior removals?

I believe that statistics can be a very useful tool in managing any organization's goals and objectives. But statistics must be analyzed in the context of a number of other considerations such as the accuracy of the data, the agency's mission and priorities, the individual circumstances of the individuals subject to removal, etc. If confirmed, I commit to reviewing the entire context of these statistics to be able to provide a more informed opinion as to what they indeed reflect with respect to the prioritization of interior removals.

b. Do you believe that interior enforcement should be a higher ICE priority?
i. If not, why?

See 3(a) above.

4. According to statistics provided by the Administrative Office of the U.S. Courts, the number of defendants prosecuted for immigration offenses increased 60 percent since you started as U.S. Attorney for the Northern District of Texas, from 158 for the 12 months prior to March 2011 to 267 for the 12 months prior to March 2014.

a. What do you believe can be attributed to this increased level of immigration prosecutions in the Northern District of Texas during your tenure as U.S. Attorney there?

I have an aggressive corps of prosecutors who are committed to identifying, pursuing and convicting the worst of the criminal element, despite dwindling resources and uncertainties created by the budget process. While the Administrative Office's numbers here appear to deviate somewhat by those maintained by DOJ's Executive Office for U.S. Attorneys, there has been a significant increase in immigration prosecutions in my district over the course of my tenure. While we have suffered staffing shortages, particularly in our communities in West Texas (San Angelo, Abilene, Amarillo and Lubbock), which we have not been able to fill due to sequestration concerns, I have managed personnel in a manner which has nonetheless allowed us to staff our immigration docket there, including the placement of an Assistant United States Attorney for the first time in Abilene, Texas, which has a significant immigrant presence. I have also agreed with ICE's Chief Counsel in Dallas to have two of his attorneys co-located in my office as Special Assistant U.S. Attorneys to more efficiently handle the overall immigration docket in the Northern District of Texas.

5. In September 2014, the Department of Homeland Security Office of the Inspector General released a report that showed ICE released approximately 600 criminal aliens in February 2013. Though initial reports stated that these criminal aliens only had minor criminal records, the *USA Today* reported in October 2014 that some of illegal aliens who had been released faced far more serious criminal charges, including people charged with kidnapping, sexual assault, drug trafficking and homicide.

a. Are you familiar with this report?

Yes.

b. Can you assure me that if you are confirmed you will make every effort to prevent a similar release of criminal aliens in the future?

Any release of undocumented persons with a criminal history must be carefully assessed, giving due consideration to his/her specific history and requirements imposed by law. I commit to make every effort to doing so.

i. If yes, what efforts would you take to ensure that criminal aliens are not similarly released?

The availability and expenditure of resources requires constant monitoring at the highest level of management, including that of the Assistant Secretary. While I am not familiar with all the specific facts and circumstances surrounding the incident, I think everyone can agree that the release of those convicted of crimes must be carefully reviewed, planned and communicated to local law enforcement to ensure the safety of the American public. If confirmed, I would review the practices and procedures applicable to release determinations and ensure an appropriate and systematic process for such evaluations. I will also ensure that ICE staff are appropriately trained and supervised throughout the process. The management of detention facilities and costs associated with such management is a highly complex challenge which requires year-round planning and oversight, not just for any given fiscal year but future years as well. Funding sources must be reliable and well managed. There should be a process to ensure accurate and meaningful reporting of budget issues to the Department, OMB and the Congress.