

Senate Judiciary Committee

Hearing on “Keeping Families Together: The President’s Executive Action on Immigration and the Need to Pass Comprehensive Reform”

Responses to Senator Franken’s Questions for the Record

Christopher Schroeder, Professor, Duke University School of Law

Mr. Schroeder, I am very concerned about the welfare of children and other vulnerable populations in the immigration system. Often, in immigration proceedings, children are left to represent themselves in court, without access to counsel. They are detained in poor conditions for far longer than necessary, because our courtrooms are saddled with a record backlog. According to immigration lawyers in my state, a candidate for asylum will not be able to get a hearing until fall of 2016, given the current backlog.

When these children finally do receive a hearing, Immigration Judges are so overworked that they don’t have enough time to carefully consider cases. This leads to the unfortunate reality that Judges likely miss out on potential candidates for asylum, and may be sending children back to danger in their own countries.

These problems in our Immigration Courts are inexcusable. The bipartisan Senate immigration bill would address this issue head-on, by providing children with access to counsel, keeping them out of solitary confinement, and allowing judges to have time to hear their cases.

1. Given your background in the Department of Justice, what are the challenges facing our Immigration Courts, both for children and the general population?

Schroeder Response: The system for adjudicating immigration cases and appeals has been overworked for years. This past summer, pending cases reached an all time high. Over 40,000 of the 375,000 pending cases were children’s cases, including many who had been picked up at the border during the summer. These backlogs work hardships on everyone who is caught up in the slow moving pipeline. At the same time, measures to reduce the backlog need to recognize and provide for due process protections for all, and to avoid sacrificing these protections in the name of expediency.

2. How does executive action address this issue?

Schroeder Response: Secretary Johnson’s November 20, 2014 Memorandum instructs ICE and CBP to examine the situations of both persons in custody and persons involved in pending removal cases to identify individuals that meet the memorandum’s criteria for deferred action. To the extent that such individuals can be removed from the system during their period of deferred action, these steps will relieve some of the backlog pressure on the immigration judges, and should be a positive step in improving the processing of those cases that remain.

3. What further steps are needed through comprehensive legislative reform?

Schroeder Response: The steps taken in the bipartisan Senate immigration bill will definitely be steps in the right direction to improve the situation. Beyond this, I have not studied the details of the current immigration system to provide fine-grained suggestions for improvement. I will defer to my former colleagues at the Department of Justice who have been working on this and other immigration issues for years, and who I know are eager to collaborate with the Congress in constructing common sense measures in this area of immigration reform, as well as others.