

EXHIBIT KK

CQ Congressional Transcripts

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Oct. 18, 2017 - Revised Final

LIST OF PANEL MEMBERS AND WITNESSES

GRASSLEY:

Attorney General Sessions, welcome. And for all the people in the audience, we welcome you as well. I thank the -- General Sessions for being here for this oversight hearing.

Oversight is just one of the critical functions and constitutional responsibilities of our branch. It's an opportunity for Congress to investigate and question the the policies and actions of any executive branch.

It's an opportunity for the executive branch to take responsibility for any of those policies and actions. And it's an opportunity for Congress to defend its constitutional powers and check any abuses by an overreaching executive branch. And it's been that way for 230 years.

Some have complained that -- that we haven't had an oversight hearing with this attorney general earlier. My reason for deferring was that the attorney general should have his team in place before appearing before us. Certainly, Attorney General Holder and Attorney General Lynch did have their respective teams well in place by the time they appeared here as you are now here.

The other side has been blocking executive nomination for the past 10 months, significantly delaying the Department of Justice's ability to get management in place and things in order. But we're here now and ready to do our oversight.

DOJ and DEA, last year, signed off on this bill. Now, former DEA employees are railing against the law, pointing fingers at lawmakers. If DEA had problems with this bill, they were the ones that could've given -- had the expertise to warn Congress, and they didn't.

The Obama administration actually provided language for the bill and signed it into law. I'm planning on having an oversight hearing that will include your department, General Sessions, to see what, if anything, needs changing.

October 1, this country suffered through the deadliest mass shooting. And I don't need to go through the history of that, but it'll be in my printed statement. And AFT (sic) has recently -- recently briefed the judiciary staff on the add -- addition to guns called bump stocks. We'll be looking more at that issue.

In September, the president announced the wind-down of the Deferred Action against Childhood Arrival Program, DACA for short, with a six-month extension. My office received preliminary data showing 2,021 individuals who had DACA status terminated for criminal gang activity. We want to know who these criminals are, what kinds of crimes they are committing, and if they're with any gangs.

Separately, General Sessions, you announced earlier this year DOJ's recommitment to criminal investigation enforcement; 50 more immigration judges were supposed to be added to the bench this year, and 75 more next year. We need to know what steps DOJ has taken and what still needs to be done to reduce this immigration-court backlog.

There's another issue that I want to address that came up in the news just yesterday. In June 2015, and again last week, I wrote to the Justice

Senator Durbin, and I'll return before Senator Durbin's done here. I'll be out just a minute. Go ahead, Senator Durbin.

DURBIN:

Thank you very much, Mr. Chairman. Attorney General Sessions, welcome back to the committee.

Your positions on immigration, DACA, Dreamers -- well documented. We have all been given many speeches on the floor of the Senate, yourself included, and I think your position in opposition to those programs has been well documented over the course of your Senate career.

I would like...

SESSIONS:

But it may not be quite as simple as you might suggest.

DURBIN:

I'll leave your rationale to you to explain.

SESSIONS:

OK, yeah.

DURBIN:

But I think I know how you voted: consistently against comprehensive immigration reform and any form of the Dream Act.

But let me ask you this: Last month, you announced the Trump administration was terminating the DACA Program. It's my understanding that, according to long-standing Justice Department policy, the Office of Legal Counsel is, quote, "responsible for providing legal advice to the executive branch on all constitutional questions."

OLC issued a 33-page memo on November 19th, 2014, that concludes that DACA is lawful and it's a lawful exercise of executive authority. And, when you go back to the Department of Justice after your hearing today, check your website. That opinion is still on your website, that DACA is lawful.

So could you please tell me whether you consulted with the career attorneys at the Office of Legal Counsel before your announcement that terminated DACA?

SESSIONS:

We did. We talked with a large number of experienced lawyers in the department. Senator Durbin, what I would say to you, and I believe that this is accurate -- that the so-called approval of DACA by OLC, Office of Legal Counsel, was based on the caveat or the requirement that any action that's taken be done on an individual basis.

The court has -- it held (ph) -- that struck down DACA -- that individual decisions were not being made and a blanket policy was, in effect, being carried out onto the DACA or program in reality that was not an individualized basis. And therefore, that's why the court found it unlawful.

DURBIN:

That statement is a departure from what is currently on Department of Justice website, the OLC opinion of 2014. If you have a new OLC opinion that was the basis for your letter to Acting Secretary Duke or your statement terminating DACA, will you provide us with a copy of that opinion?

SESSIONS:

Well, I would be glad to. But I think it is fair to say that the OLC document required and said a DACA program might be legal if it was done on an individualized basis.

The Department of Justice can't just wipe out whole sections of the American law and just say "We're not going to enforce it," after Congress has passed such a law. So I'd be glad to review it, and we'll review...

DURBIN:

I hope you will.

SESSIONS:

... the validity of the whole...

DURBIN:

I hope you will.

SESSIONS:

... OK.

DURBIN:

And for the record, each DACA recipient is individually interviewed, goes through an individual criminal background check, and determines whether there is individual eligibility. So, having said that, I would ask you one last thing.

SESSIONS:

The court found otherwise and I...

DURBIN:

Well, I hope you'll share that OLC opinion.

Did you have any communication with the Texas attorney general or any other attorney general who was threatening to bring a lawsuit to void DACA before the decision was made by the Trump administration?

SESSIONS:

I would just say this, Senator Durbin: That kind of legal discussions, I believe, would be part of the work product of the Attorney General's Office, and I should not reveal it.

DURBIN:

You cannot tell me -- you're saying you are privileged -- that communication's privileged, that you had a communication with the Texas Attorney General about their threatened lawsuit against DACA before the administration's announcement?

SESSIONS:

Even...

DURBIN:

You're saying that's privileged?

SESSIONS:

... well, even the OLC communications we have are, in fact, privileged. So I would say that's correct. I'll review it. If it's something I can feel free -- feel that it's appropriate for me to reveal to you, I will do so.

DURBIN:

I think this would have been just about the moment when Senator Sessions of Alabama would have blown up...

(LAUGHTER)

... if the attorney general said he can't even tell us whether he communicated with another attorney general in another state.

(CROSSTALK)

DURBIN:

I take you (ph) to one part of your statement here that I take personally, because I happen to represent the city of Chicago, and I'm honored to represent that city.

SESSIONS:

I know you are.

DURBIN:

What happened in Las Vegas was tragic and awful and heartbreaking: 59 people killed, over 500 wounded by gunshots in just a brief period of time, with some military-type weapon. It was just awful, horrific and disgusting.

Having said that, so far this year, 3,000 people have been injured by gunshot in the city of Chicago, and over 500 have been killed. This is not something that is a political debate in my heart. It breaks my heart to think what the families are going through in the city that I represent.

The superintendent of police, who's worked there -- and you gave credit to local law enforcement, I'm glad you did. I join you in that. He's worked in that police department for 30 years. I want to read to what he said.

"The federal government's plans, the terminating of Byrne grant funds, will hamper community policing and undermine the work our men and women have done to reduce shootings by 16 percent so far this year."

Well, in this new, fast-paced world, with technology, perhaps there are needs to update it. And I would be pleased to work with you.

KLOBUCHAR:

I appreciate that, Attorney General. Thank you very much.

SESSIONS:

Thank you.

GRASSLEY:

Senator Cruz.

CRUZ:

Thank you, Mr. Chairman. General Sessions, welcome back.

SESSIONS:

Thank you.

CRUZ:

We miss you on this side of the dais. We've spent a lot of time in this hearing room together. And thank you for your good and honorable service as attorney general and the many positive things that have happened at the Department of Justice in the last nine months.

I want to talk with you about an issue that is near and dear to your heart, which is immigration. And I want to cover a couple of areas. Let's start with DACA. I want to commend you; I want to commend the president. We're doing the right thing, terminating President Obama's illegal executive amnesty program.

It was contrary to federal law. It was contrary to the president's responsibility under Article II of the Constitution, to take care that the laws be faithfully

executed. And it directed federal law enforcement officers to disregard binding federal law. So I commend you for announcing the suspension of that program.

As you know, the president has indicated that it is now for Congress to legislate a program addressed to those DACA recipients. And there are, right now, considerable ongoing debates and discussions within Congress about how -- if and whether to do so, and if so, how.

My first question is, does the Department of Justice have a position on whether Congress should legislate a new amnesty program for DACA recipients?

SESSIONS:

The department has not taken a position formally on that. The president has certainly left the door wide open and indicated that he would favor something like that. And it certainly would be a lawful and proper thing for Congress to do.

CRUZ:

So my understanding is, as of September of 2017, there are 689,800 individuals currently with a DACA registration. There have been estimates done that there are nearly 2 million potentially eligible DACA recipients in the country.

In your personal judgment, should those nearly 2 million people here illegally in this country be eligible for United States citizenship?

SESSIONS:

My best judgment that I've expressed over the years -- that someone who enters a country unlawfully, if they're given some sort of legal status -- a normal legal status -- should not get everything that would flow to people who

properly wait their time and enter lawfully. So I'm not taking a position that would support citizenship for those who have entered illegally.

CRUZ:

Well, certainly, as a senator on the side of the dais, I think you have, multiple times, spoken with great passion on the issue. As attorney general, do you have any view on whether those here illegally should be eligible for U.S. citizenship?

SESSIONS:

Well, I haven't changed my view at this point.

CRUZ:

Let me ask you, as attorney general, if those some 2 million people here illegally that are potential DACA recipients were granted green cards and, ultimately, U.S. citizenship, do you have concerns about the next step of chain migration of those individuals then bringing in potentially 3, 4, 5 million relatives as the second step of an amnesty program?

SESSIONS:

Yes. It needs to be evaluated. And when you use the figure 2 million, it just raises the question that we should think carefully about, like, who would qualify for a DACA program, if one were to be carried out.

And the president has made clear, and I think he's -- he's -- he cares about this -- that he cares about young people who came here at a young age, but he also believes that the nation should have a immigration policy that serves the national interest, and that it should not be -- it should be a more merit-based policy, like Canada. And that's something I have believed in for a number of years.

CRUZ:

And you -- let me ask a different question. In your personal judgment, should those here illegally be made eligible for public welfare and for billions in both federal and state and local funds to provide for their various needs?

SESSIONS:

If people are here unlawfully, it -- which -- it strikes me as -- that the last thing you would want to do is subsidize that unlawfulness. And you would not -- should not be normally eligible for benefits.

And maybe some -- the things we will do -- no doubt about it. But still, fundamentally, a person should not be attracted to enter the country unlawfully and then demand lawful benefits.

CRUZ:

Let me shift to a different topic under immigration, which is border security. I want to commend the administration. Early on, we saw dramatic decreases in illegal crossings, in the neighborhood of a decrease of two-thirds in the opening months of the administration. I commend you for that.

I will say I am concerned by reports I'm hearing from the border. I'm concerned -- according to the public numbers, in August of this year, Customs and Border Protection saw a 22 percent increase in apprehensions and inadmissible persons at ports of entry.

I had a conversation recently with a rancher in South Texas, who described to me how -- he said, early in the year, the number of illegal crossings had dropped significantly.

But throughout this summer, he's seen those numbers spiking up again. He was very concerned that it was returning to levels that we saw earlier. Are you

TILLIS:

We can -- we can cite -- we can work with people back in North Carolina and people I've heard from across the country. And it really probably needs to go down to the name of the people who are not paying attention to what the leadership has told them to do.

And if they don't change their behavior, we need to shed light on those individuals. And to the extent they can be terminated for that behavior, I'm going to push every button that I can to make sure that happens. They need to follow their leadership.

Now, I want to ask you to respond to a question that I get from citizens. Does anybody really want to throw out good, educated and accomplished young people who have jobs, some serving their country, brought to this country through no fault of their own? We're talking about the DACA recipients. What do you say to that citizen?

SESSIONS:

I say that it cannot be the policy of the United States that one can bring a young person in the country and they can't be deported. That's not a sustainable policy overall. However...

TILLIS:

I agree with that.

SESSIONS:

... all right, so however...

TILLIS:

But you realize that that's a statement from a citizen who also happens to be United States president, tweeted on September the 14th? So what do you say to him when he says that to you directly in the Oval Office?

SESSIONS:

The president has made clear that he would like to deal compassionately with people, young people, who came here and who have been here a long time and who have had -- and performed well in our country. And he would like to have reform in that area. But he wants some other things that are essential, to go with it, as I think you do.

TILLIS:

Do you -- I do -- I do. And again, I should've mentioned that I always appreciated your chairmanship in the Immigration Subcommittee. I always characterized it as a debate club, because you and I got a little bit of difference in position (ph)...

(CROSSTALK)

SESSIONS:

Well, you -- you were an active and valuable participant.

TILLIS:

You were a great leader.

I want to ask another question about DACA. It's your opinion that that's an executive branch overreach?

SESSIONS:

Exactly.

TILLIS:

So it would -- it would also be your opinion that, every day that the president has delayed until May the 5th, that he's actually condoning an executive branch overreach; that, in an ideal world, he would've just ended the program and caused Congress to do their job back on September 5th?

SESSIONS:

The Department of Homeland Security has committed a lot of effort to start that program, and they need some time to wind it down. I think this is an appropriate -- the program...

TILLIS:

But why not January?

SESSIONS:

... well, we think...

TILLIS:

Or Christmas?

SESSIONS:

... that's what they requested and they feel is appropriate. And I believe it's appropriate to wind down the program.

TILLIS:

What you think the president -- I'm sorry, because I'm running out of time and I do have to preside -- what you think the president meant in a tweet back in early September, when he said, "We have six months to legalize DACA -- six months to legalize DACA or I will revisit the issue"? Would you -- would you advise him that he has no administrative authority to revisit this issue?

SESSIONS:

I'm not sure what the president meant, exactly, in these short statements on. But I know that he wants to fix this problem, as you do.

TILLIS:

I do. And you were in the Senate for 20 years, is that right?

SESSIONS:

That's correct.

TILLIS:

How many successful outcomes for immigration reform did you observe over 20 years?

SESSIONS:

Not many.

TILLIS:

Or any?

SESSIONS:

Well, I saw some bad things happen.

TILLIS:

OK. Well, that...

SESSIONS:

But anything that -- my little line has always been, any time you brought up anything in this body on immigration that would actually work, that would reduce lawlessness, it never passed.

TILLIS:

So, General Sessions, if we go down the path of -- if -- you know, there are two extremes in this debate. There is the -- there are "We don't need borders, we need bridges." They're wrong. We have the other group that says, "They entered this country illegally; even if they were minors, they all need to go home."

If we allow either of those two ends of the spectrum to dominate the debate, where do you think we're going to be 20 years now on immigration reform?

SESSIONS:

I think that's probably not a -- really a fair analysis of it. I think the American people are prepared -- what the American people want and what I'd like to see is us end the lawlessness. Does anybody advocate allowing people to enter the country unlawfully? I think not...

TILLIS:

Absolutely not. And I got to finish at the second mark. What I'd like, because you are the attorney general -- but you and a number of years under of your staff are actively engaged in the immigration reform strategy.

And I would ask people to think reasonably about how we can go about taking care of every layer of issues that we have there, whether it's the DACA population, the work visa programs, the abuses of our visa waiver programs or visa programs and then the illegally present.

Until we get sane people coming in a room and recognizing we're not going to get it all done in one bill -- hadn't even been done when the Democrats had supermajorities -- then we've got to have people getting into a constructive dialogue and take these as chunks, or people who will be here 20 years from

now -- I won't be one of them -- are going to be guilty of the same failure of the last 20 years.

And I look forward to working with you and having people in your office productively engage in something that produces an outcome. Thank you.

SESSIONS:

Thank you. We have an opportunity, Senator Tillis, right now.

GRASSLEY:

Before we break for lunch, if Senator Franken's here (OFF MIKE) I want to say something that Senator Feinstein and I know, that maybe, Senator Franken, you don't know, that may bring some understanding. So I want to read here (ph) -- Mr. Comey briefed Ranking Member Feinstein and me about the Russia investigation back in March. He provided some specific information that I think would resolve Senator Franken's concerns about the attorney general.

Unfortunately, we were not at liberty to say something that was given to us in a secure briefing, but after that briefing, the ranking member and I wrote to the FBI and requested that the FBI give the full committee -- all 20 members of this committee -- to know what the two of us know from that briefing.

The FBI did not do that, and, now that we have conflicts -- and now we have conflicts that I think could have been avoided if the FBI would just have been more transparent with the oversight of this committee. We'll adjourn now for...

FEINSTEIN:

No, no -- Senator Hirono hasn't had an opportunity.

GRASSLEY:

No, two of them haven't. I announced that we were going to...

all your equipment, bring anything you want." And took us weeks to make up our mind to do it. Any reason for that?

SESSIONS:

I would say to you that I would consider your concerns.

LEAHY:

Well, I've had, now going into the nature of the briefings -- I've had enough briefings on this, have yet to see any evidence that Cuban government was responsible. If there is, have somebody meet with me in the skiff. They can tell me. Will you do that?

SESSIONS:

We will evaluate that. Yes.

LEAHY:

Now, is citizenship a reliable indicator of terrorist threat?

SESSIONS:

I'm not -- I don't know exactly what you mean by that.

LEAHY:

Well, it forms the basis of the president's latest travel ban. And both the former Director Comey and John Kelly said that citizenship is not a reliable indicator. But I'll ask you one last question. Feel free to answer any way you want.

When you're talking about DACA, in your statement announcing the end of DACA, you argue that was an example of Obama's failure to enforce laws. You then claim failure to enforce the laws has put our nation risk of crime, violence and even terrorism. How many DACA recipients have been involved in terrorism?

SESSIONS:

Mr. Chairman, I think in the previous hearing, you ask one of my attorneys from the Department of Justice about that. And I believe you were incorrect in the quote to him, and I...

LEAHY:

I asked him if he can provide a single example of a DACA recipient involved in terrorist activity and he said he was not aware of any examples. Is that inaccurate?

SESSIONS:

Most importantly, I want to correct that my comments did not focus solely on DACA recipients. It was on others that entered the country unlawfully.

LEAHY:

Well that's...

SESSIONS:

I believe that's a correct summary of the matter.

LEAHY:

Well, I ran it back through your civil division chief and he did not know of a single example of a DACA recipient involved in terrorist activity.

SESSIONS:

Well, we know there are 2,000 that have already been taken off as DACA recipients for serious criminal -- crimes...

(CROSSTALK)

SESSIONS:

... drugs and capital murder and rape.

LEAHY:

The Cato institute has found that DREAMers are less likely to be incarcerated than native-born Americans with the same age, education, profiles. And the Cato Institute is not some left-wing group by any means.

SESSIONS:

Well, they believe in open borders.

GRASSLEY:

Senator Durbin?

DURBIN:

Thank you, Mr. Chairman.

Two thousand out of 780,000 DACA applicants were found to have disqualifying criminal records, is that what you're saying?

SESSIONS:

I'm saying after they were accepted into the DACA program -- actually accepted, 2,000 have been removed as a result of serious criminal...

DURBIN:

Two thousand out of 780,000?

SESSIONS:

I think that's the correct number, over a fairly short period of time.

DURBIN:

How many people have been...

SESSIONS:

I'm not contending that there's any disproportionate amount of crime among that group, although we are seeing young gang members being infiltrated, but they've come in after the deadline for DACA, so they wouldn't be in that group.

DURBIN:

So -- I want to make sure I'm clear, they are escaping the criminal background check, fingerprinting requirements of DACA and they have criminal records and they're getting through anyway?

SESSIONS:

No. No, no, what I was saying was, after they've done a background check, been approved for DACA, I believe 2,000 have subsequently been convicted of some sort of serious offense.

DURBIN:

Out of 800,00...

SESSIONS:

...and are being removed out of it.

DURBIN:

And we've had -- 100,000 people have been turned down buying -- trying to buy guns because they had felony records. I don't think people are talking about ending the sale of guns because of the likelihood that a felon would buy it.

SESSIONS:

Well, that's not the basis, as you know, for our DACA difficulties. It was a legal matter, from our perspective, and I do think, Senator Durbin, I know you care about it, if people could seize this opportunity some good things might happen.

DURBIN:

I hope they will. I want to make sure I understand the guidance that you've released from your department when it comes to LGBTQ rights and religious freedom. Under the guidance which you've released to all the federal ministry of agencies and executive departments on religious liberty, let me ask you this question. Could a Social Security Administration employee refuse to accept to process spousal or survivor benefits paperwork for surviving same-sex spouse?

SESSIONS:

That's something I've never thought would arise, but I would have to give you a written answer to that, if you don't mind.

DURBIN:

I'd like to have that. A federal -- could a federal contractor refuse to provide services to LGBTQ people, including in emergencies, without risk of losing federal contracts?

SESSIONS:

Likewise. But I would say to you, are you citing Title VII for this or the guidance that we...

DURBIN:

The guidance.

SESSIONS:

I'm not sure that that's covered by it, but I will look.

HIRONO:

Yes. And so you would acknowledge...

SESSIONS:

And to stop (ph) the entire process. And I think these judges need to be careful that they're not just setting policy and using their power to...

HIRONO:

Well, let me get to one more, then clarify...

SESSIONS:

...block the president's ability to protect America.

HIRONO:

My time, you're...

SESSIONS:

Just let me finish.

HIRONO:

I know. We heard you. I heard you, the -- when you gave your explanation. But clearly, all district court judges that can issue injunctions can issue rulings that impacts the entire state -- entire country.

Because that happened in the Texas situation, where the Texas district judge prevented the implementation of President Obama's DACA expansion and DAPA. So you're not saying that district judges do not have that authority?

SESSIONS:

Under the current law, they do. It's been going on for quite a number of years.

HIRONO:

Yes.

SESSIONS:

It's picked up some speed, it's subject to criticism and judges need to be careful before they do that.

HIRONO:

Let's say that they are. Regarding the U.S. attorneys, who was involved in the decisions to dismiss all of the U.S. attorneys without any warning and why was it done when it was done?

SESSIONS:

The -- we had gone for a number of months, about half of the United States attorneys in the country had already resigned. It's traditional that they're replaced by the next administration and President -- I believe President Clinton did the same, issued a single order, which precedent was -- there's precedent for it, to complete the process of changeover.

HIRONO:

So it was totally President Trump who made that decision? You were not involved in that decision?

SESSIONS:

I believe the responsibility is the president's.

HIRONO:

You were not involved in that...

SESSIONS:

Actually...

HIRONO:

...decision to fire them all?

SESSIONS:

Actually, I think the -- I can't -- I can't believe I can't remember that. But it -- it's an important issue. The president appoints United States attorneys and it was appropriate, I thought at that time, to make the change.

HIRONO:

So you were involved?

SESSIONS:

Yes, I was involved.

HIRONO:

I have a question about DACA. When the young people signed up for DACA, they were relying on the -- I supposed that they've -- what they were told or given information, that the information they provided would not be used to target them for deportation.

And now there are at least three pending law suits to -- I believe in New York and one in California. And the basis of the law suit is that there are due process concerns about the -- the president's action to end DACA as a bait and switch, due process concerns.

Did you consider the bait and switch problem in issuing your later (ph) of opinion on the legality of DACA?

SESSIONS:

I believe it was known and considered. Obviously, it's the Department of Homeland Security that decides how to administer and gather evidence and what cases to make priorities...

HIRONO:

Except that you were the one who said that DACA is unconstitutional and illegal. That was your opinion.

SESSIONS:

Yes.

HIRONO:

That you issued.

SESSIONS:

Right.

HIRONO:

So did you consider the -- any due process considerations, bait and switch considerations when you issued that letter opinion that it was unconstitutional?

SESSIONS:

I don't believe there was any explicit discussion of that. Anything in -- any documents from the Department of Justice. But it's a valid issue that needs to be discussed and considered.

HIRONO:

Yes. It will be.

SESSIONS:

You're right to raise it. And I don't think Homeland Security has any policy to do as you suggest.

HIRONO:

Well, there number of DACA recipients who have renewed their DACA status for two years and -- and they have different expiration times for when their DACA status ends. What happens to the recipients of the DACA -- if DACA ends in five months, for example?

Or if these three pending cases determines that DACA is in fact unconstitutional, what happens to these DACA recipients who are -- whose DACA status has not expired, but if the court says that they are -- that this is a based on unconstitutional law, what happens to these people?

GRASSLEY:

Senator Sessions, before you answer that, you'll be done when you get two more questions from Senator Blumenthal. He wanted a third round and that'll be the last one. Then we're going to go vote anyway. So go ahead and answer Senator Hirono, and then Senator Blumenthal can ask you his questions.

SESSIONS:

All right. So you were asking?

HIRONO:

If -- if DACA ends in five months and the Congress has not acted and all these...

SESSIONS:

Yes.

HIRONO:

...DACA recipients are still DACA recipients. Or if a court, because there are three pending court cases. If the courts decide that this is unconstitutional, what happens to all these people?

SESSIONS:

The answer to that is in your hands. Congress has the ability to deal with this problem in any number of ways. The president has indicated he's willing to support reform.

And -- and -- and be -- try to work the fix this problem and help these young people that justify help, if Congress so decides. And I think we need to get on with it. It's not going to work with just simply an amnesty without any improvement in the loopholes and problems and we've got in immigration. But if we work together, something can be done on that. As...

(CROSSTALK)

HIRONO:

It all depends on whether DACA is constitutional or not. Thank you...

GRASSLEY:

We've got to let him ask his questions. Go ahead Senator Blumenthal.

SESSIONS:

I was disoriented thinking I had to face Senator Blumenthal a third time.

Forgive me.

BLUMENTHAL:

Thank you for answering all our questions today, Mr. Attorney General. I -- I want to ask you -- first of all, just to say I think that many of my colleagues and I

communication by others, is simply my opinion. I have no knowledge of it and -- and -- and don't believe it happened.

GRASSLEY:

I didn't hear you when you asked for a minute to respond to Senator Hirono. If you remember what she asked you and you want to respond to that at this point.

SESSIONS:

No, I think I'm fine.

GRASSLEY:

OK. Once again, thank you very much for accommodating us for five hours. Thank you very much.

SESSIONS:

Thank you, sir.

List of Panel Members and Witnesses

PANEL MEMBERS:

SEN. CHARLES E. GRASSLEY, R-IOWA CHAIRMAN

SEN. ORRIN G. HATCH, R-UTAH

SEN. LINDSEY GRAHAM, R-S.C.

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The White House

Office of the Press Secretary

For Immediate Release

October 08, 2017

President Donald J. Trump's Letter to House and Senate Leaders & Immigration Principles and Policies

President Donald J. Trump's Letter to House and Senate Leaders:

I am pleased to transmit to you my Administration's principles for reforming our Nation's immigration system. In 2012, after the Congress rejected legislation offering legal status and work permits to illegal immigrants, the previous Administration bypassed the Congress and

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granted those same benefits unilaterally. These actions threatened Congress's status as a coequal branch of Government and have resulted in a surge of illegal immigration.

As President, I took an oath to uphold the Constitution, which makes clear that all legislative powers are vested in the Congress, not the President.

I, therefore, tasked the relevant executive departments and agencies to conduct a bottom-up review of all immigration policies to determine what legislative reforms are essential for America's economic and national security. Rather than asking what policies are supported by special interests, we asked America's law enforcement professionals to identify reforms that are vital to protect the national interest. In response, they identified dangerous loopholes, outdated laws, and easily exploited vulnerabilities in our immigration system – current policies that are harming our country and our communities.

I have enclosed the detailed findings of this effort. These findings outline reforms that must be included as part of any legislation addressing the status of Deferred Action for Childhood Arrivals (DACA) recipients. Without these reforms, illegal immigration and chain migration, which severely and unfairly burden American workers and taxpayers, will continue without end.

Immigration reform must create more jobs, higher wages, and greater security for Americans -- now and for future generations. The reforms outlined in the enclosure are necessary to ensure prosperity, opportunity, and safety for every member of our national family.

Sincerely,

Donald J. Trump

IMMIGRATION PRINCIPLES & POLICIES

1. BORDER SECURITY

A. Border Wall. Our porous southern border presents a clear threat to our national security and public safety, and is exploited by drug traffickers and criminal cartels. The Administration therefore proposes completing construction of a wall along the southern border of the United States.

- i. Ensure funding for the southern border wall and associated infrastructure.
- ii. Authorize the Department of Homeland Security (DHS) to raise, collect, and use certain processing fees from immigration benefit applications and border crossings for functions

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related to border security, physical infrastructure, and law enforcement.

iii. Improve infrastructure and security on the northern border.

B. Unaccompanied Alien Children. Loopholes in current law prevent “Unaccompanied Alien Children” (UACs) that arrive in the country illegally from being removed. Rather than being deported, they are instead sheltered by the Department of Health and Human Services at taxpayer expense, and subsequently released to the custody of a parent or family member—who often lack lawful status in the United States themselves. These loopholes in current law create a dramatic pull factor for additional illegal immigration and in recent years, there has been a significant increase in the apprehensions of UACs at our southern border. Therefore, the Administration proposes amending current law to ensure the expeditious return of UACs and family units.

i. Amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVRPA) to treat all UACs the same regardless of their country of origin, so long as they are not victims of human trafficking and can be safely returned home or removed to safe third countries.

ii. Clarify that alien minors who are not UACs (accompanied by a parent or legal guardian or have a parent or legal guardian in the United States available to provide care and physical custody) are not entitled to the presumptions or protections granted to UACs.

iii. Terminate the Flores Settlement Agreement (FSA) by passing legislation stipulating care standards for minors in custody and clarify corresponding provisions of the TVPRA that supersede the FSA.

iv. Amend the definition of “special immigrant,” as it pertains to juveniles, to require that the applicant prove that reunification with both parents are not viable due to abuse, neglect, or abandonment and that the applicant is a victim of trafficking. The current legal definition is abused, and provides another avenue for illicit entry.

v. Repeal the requirement that an asylum officer have initial jurisdiction over UAC asylum applications to expedite processing.

C. Asylum Reform. The massive asylum backlog has allowed illegal immigrants to enter and stay in the United States by exploiting asylum loopholes. There are more than 270,000 pending cases in the asylum backlog before USCIS, and approximately 250,000 asylum cases before EOIR. Therefore, the Administration proposes correcting the systemic deficiencies that created that backlog.

i. Significantly tighten standards and eliminate loopholes in our asylum system.

ii. Elevate the threshold standard of proof in credible fear interviews.

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- iii. Impose and enforce penalties for the filing of frivolous, baseless, or fraudulent asylum applications, and expand the use of expedited removal as appropriate.
- iv. Close loopholes in the law to bar terrorist aliens from entering the country and receiving any immigration benefits.
- v. Clarify and enhance the legal definition of “aggravated felony” to ensure that criminal aliens do not receive certain immigration benefits.
- vi. Expand the ability to return asylum seekers to safe third countries.
- vii. Ensure only appropriate use of parole authority for aliens with credible fear or asylum claims, to deter meritless claims and ensure the swift removal of those whose claims are denied.
- viii. Prevent aliens who have been granted asylum or who entered as refugees from obtaining lawful permanent resident status if they are convicted of an aggravated felony.
- ix. Require review of the asylee or refugee status of an alien who returns to their home country absent a material change in circumstances or country conditions.

D. Ensure Swift Border Returns. Immigration judges and supporting personnel face an enormous case backlog, which cripples our ability to remove illegal immigrants in a timely manner. The Administration therefore proposes providing additional resources to reduce the immigration court backlog and ensure swift return of illegal border crossers.

- i. Seek appropriations to hire an additional 370 immigration judges.
- ii. Establish performance metrics for immigration judges.
- iii. Seek appropriations to hire an additional 1,000 U.S. Immigration and Customs Enforcement (ICE) attorneys, with sufficient support personnel.
- iv. Ensure sufficient resources for detention.

E. Inadmissible Aliens. The current statutory grounds for inadmissibility are too narrow, and allow for the admission of individuals who threaten our public safety. Therefore, the Administration proposes expanding the criteria that render aliens inadmissible and ensure that such aliens are maintained in continuous custody until removal.

- i. Expand the grounds of inadmissibility to include gang membership.
- ii. Expand the grounds of inadmissibility to include those who have been convicted of an aggravated felony; identity theft; fraud related to Social Security benefits; domestic

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violence; child abuse; drunk driving offenses; failure to register as a sex offender; or certain firearm offenses, including the unlawful purchase, sale, possession, or carrying of a firearm.

iii. Expand the grounds of inadmissibility to include former spouses and children of individuals engaged in drug trafficking and trafficking in persons, if the official determines the divorce was a sham or the family members continue to receive benefits from the illicit activity.

F. Discourage Illegal Re-entry. Many Americans are victims of crime committed by individuals who have repeatedly entered the United States illegally, which also undermines the integrity of the entire immigration system. Therefore, the Administration proposes increasing penalties for repeat illegal border crossers and those with prior deportations.

G. Facilitate the Removal of Illegal Aliens from Partner Nations. Current barriers prevent the Federal Government from providing assistance to partner nations for the purpose of removing aliens from third countries whose ultimate intent is entering the United States. Therefore, the Administration proposes authorizing DHS to provide foreign assistance to partner nations to support migration management efforts conducted by those nations. This will allow DHS to improve the ability of Central and South American countries to curb northbound migration flows and to interrupt ongoing human smuggling, which will also substantially reduce pressures on U.S. taxpayers.

H. Expedited Removal. Limited categories of aliens are currently subject to expedited removal, which erodes border integrity and control by impeding the ability of the Federal Government to efficiently and quickly remove inadmissible and deportable aliens from the United States. The Administration seeks to expand the grounds of removability and the categories of aliens subject to expedited removal and by ensuring that only aliens with meritorious valid claims of persecution can circumvent expedited removal.

2. INTERIOR ENFORCEMENT

A. Sanctuary Cities. Hundreds of sanctuary jurisdictions release dangerous criminals and empower violent cartels like MS-13 by refusing to turn over incarcerated criminal aliens to Federal authorities. Therefore, the Administration proposes blocking sanctuary cities from receiving certain grants or cooperative agreements administered or awarded by the Departments of Justice and Homeland Security

i. Restrict such grants from being issued to:

a. Any state or local jurisdiction that fails to cooperate with any United States government entity regarding enforcement of federal immigration laws;

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- b. Any entity that provides services or benefits to aliens not entitled to receive them under existing Federal law; and
- c. Any state or local jurisdiction that provides more favorable plea agreements or sentencing for alien criminal defendants for the purpose of immigration consequences of convictions.
- ii. Clarify ICE's detainer authority, and States' and localities' ability to honor that authority, so that States will continue to detain an individual pursuant to civil immigration law for up to 48 hours so that ICE may assume custody.
- iii. Provide indemnification for State and local governments to protect them from civil liability based solely on compliance with immigration detainers and transportation of alien detainees.
- iv. Require State and local jurisdictions to provide all information requested by ICE relating to aliens in their custody and the circumstances surrounding their detention.
- v. Clarify the definition of a criminal conviction for immigration purposes, to prevent jurisdictions from vacating or modifying criminal convictions to protect illegal immigrants, and roll back erosion of the criminal grounds of removal by courts under the "categorical approach."

B. Immigration Authority for States and Localities. The prior Administration suppressed cooperative partnerships between the Federal Government and State or local governments that wanted to help with immigration enforcement, undermining the security of our communities. Therefore, the Administration proposes enhancing State and local cooperation with Federal immigration law enforcement in order to ensure national security and public safety.

- i. Clarify the authority of State and local governments to investigate, arrest, detain, or transfer to Federal custody aliens for purposes of enforcing Federal immigration laws when done in cooperation with DHS.
- ii. Authorize State and local governments to pass legislation that will support Federal law enforcement efforts.
- iii. Incentivize State and local governments to enter into agreements with the Federal Government regarding immigration enforcement efforts.
- iv. Provide the same extent of immunity to State and local law enforcement agencies performing immigration enforcement duties within the scope of their official role as is provided to Federal law enforcement agencies.

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C. Visa Overstays. Visa overstays account for roughly 40 percent of illegal immigration. The Administration therefore proposes strengthening the removal processes for those who overstay or otherwise violate the terms of their visas, and implementing measures to prevent future visa overstays which may account for a growing percentage of illegal immigration.

- i. Discourage visa overstays by classifying such conduct as a misdemeanor.
- ii. Require that all nonimmigrant visas held by an alien be cancelled when any one nonimmigrant visa held by that alien is cancelled, to ensure that if an alien abuses one type of visa, he cannot circumvent the immigration system by then relying on another type of visa to enter the United States.
- iii. Bar all visa overstays from immigration benefits for a certain period of time with no waiver.
- iv. Clarify that the government does not bear any expense for legal counsel for any visa overstay in removal or related proceedings.
- v. Require DHS to provide all available data relating to any deportable alien to the Department of Justice's National Crime Information Center for purposes of that alien's inclusion in the Immigration Violators File, with the exception of aliens who cooperate with DHS on criminal investigations.
- vi. Enhance the vetting of bond sponsors for those aliens who enter without inspection, to ensure that bond sponsors undergo thorough background checks prior to being eligible to post or receive a bond.
- vii. Permit the Department of State to release certain visa records to foreign governments on a case-by-case basis when sharing is in the U.S. national interest.
- viii. Permit the Department of State to review the criminal background of foreign diplomats or government officials contained in the National Crime Information Center database before visa adjudication, regardless of whether the applicant's fingerprints are in the database.

D. Necessary Resources. The relatively small number of ICE officers is grossly inadequate to serve a nation of 320 million people with tens of millions of tourists and visitors crossing U.S. ports of entry every year. Therefore, the Administration proposes providing more resources that are vitally needed to enforce visa laws, restore immigration enforcement, and dismantle criminal gangs, networks and cartels.

- i. Seek appropriations to hire an additional 10,000 ICE officers.

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ii. Seek appropriations to hire an additional 300 Federal prosecutors to support Federal immigration prosecution efforts.

iii. Reforms to help expedite the responsible addition of new ICE personnel.

E. Detention Authority. Various laws and judicial rulings have eroded ICE's ability to detain illegal immigrants (including criminal aliens), such that criminal aliens are released from ICE custody into our communities. Therefore, the Administration proposes terminating outdated catch-and-release laws that make it difficult to remove illegal immigrants.

i. Ensure public safety and national security by providing a legislative fix for the Zadvydas loophole, and authorizing ICE, consistent with the Constitution, to retain custody of illegal aliens whose home countries will not accept their repatriation.

ii. Require the detention of an alien: (1) who was not inspected and admitted into the United States, who holds a revoked nonimmigrant visa (or other nonimmigrant admission document), or who is deportable for failing to maintain nonimmigrant status; and (2) who has been charged in the United States with a crime that resulted in the death or serious bodily injury of another person.

F. Legal Workforce. Immigrants who come here illegally and enter the workforce undermine job opportunities and reduce wages for American workers, as does the abuse of visa programs. Therefore, the Administration increasing employment verification and other protections for U.S. workers.

i. Require the use of the electronic status-verification system ("E-Verify") to ensure the maintenance of a legal workforce in the United States.

ii. Preempt any State or local law relating to employment of unauthorized aliens.

iii. Impose strong penalties, including debarment of Federal contractors, for failure to comply with E-Verify.

iv. Increase penalties for any person or entity engaging in a pattern or practice of violations.

v. Require the Social Security Administration to disclose information to DHS to be used in the enforcement of immigration laws.

vi. Expand the definition of unlawful employment discrimination to include replacement of U.S. citizen workers by nonimmigrant workers or the preferential hiring of such foreign workers over U.S. citizen workers.

vii. Strengthen laws prohibiting document fraud related to employment or to any other immigration benefit.

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G. Deportable Aliens. The categories of aliens that currently qualify for deportation are insufficiently broad to remove aliens who pose a threat to the security of the American public. Therefore, the Administration proposes expanding and clarifying the type of aliens who present a danger to Americans and should therefore be removable on an expedited basis.

- i. Expand grounds of deportability to explicitly include gang members.
- ii. Expand the grounds of deportability to include those convicted of multiple drunk driving offenses or a single offense involving death or serious injury.
- iii. Expand the grounds of deportability to include those who fail to register as a sex offender.
- iv. Clarify the technical definition of “aggravated felony” by referring to “an offense relating to” each of the categories of crimes, rather than specifying the crimes themselves. This will ensure certain kinds of homicide, sex offenses, and trafficking offenses are encompassed within the statutory definition.

H. Gang Members. Today, known gang members are still able to win immigration benefits despite the dangers they pose to American society. As such, the Administration proposes implementing measures that would deny gang members and those associated with criminal gangs from receiving immigration benefits.

I. Visa Security Improvements. Without sufficient resources, the State Department is hindered from adequately vetting visa applicants. As such, the Administration proposes enhancing State Department visa and traveler security resources and authorities.

- i. Expand the Department of State’s authority to use fraud prevention and detection fees for programs and activities to combat all classes of visa fraud within the United States and abroad.
- ii. Ensure funding for the Visa Security Program and facilitate its expansion to all high-risk posts.
- iii. Increase the border crossing card fee.
- iv. Grant the Department of State authority to apply the Passport Security Surcharge to the costs of protecting U.S. citizens and their interests overseas, and to include those costs when adjusting the surcharge.
- v. Strengthen laws prohibiting civil and criminal immigration fraud and encourage the use of advanced analytics to proactively detect fraud in immigration benefit applications.

3. MERIT-BASED IMMIGRATION SYSTEM

A. Merit-Based Immigration. The current immigration system prioritizes extended family-based chain migration over skills-based immigration and does not serve the national interest. Decades of low-skilled immigration has suppressed wages, fueled unemployment and strained federal resources. Therefore, the Administration proposes establishing a merit-based immigration system that protects U.S. workers and taxpayers, and ending chain migration, to promote financial success and assimilation for newcomers.

i. End extended-family chain migration by limiting family-based green cards to spouses and minor children and replace it with a merit-based system that prioritizes skills and economic contributions over family connections.

ii. Establish a new, points-based system for the awarding of Green Cards (lawful permanent residents) based on factors that allow individuals to successfully assimilate and support themselves financially.

iii. Eliminate the “Diversity Visa Lottery.”

iv. Limit the number of refugees to prevent abuse of the generous U.S. Refugee Admissions Program and allow for effective assimilation of admitted refugees into the fabric of our society.

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The New York Times | <https://nyti.ms/2y5qOWr>

POLITICS

White House Makes Hard-Line Demands for Any 'Dreamers' Deal

Leer en español

By MICHAEL D. SHEAR OCT. 8, 2017

WASHINGTON — The White House on Sunday delivered to Congress a long list of hard-line immigration measures that President Trump is demanding in exchange for any deal to protect the young undocumented immigrants known as Dreamers, imperiling a fledgling bipartisan push to reach a legislative solution.

Before agreeing to provide legal status for 800,000 young immigrants brought here illegally as children, Mr. Trump will insist on the construction of a wall across the southern border, the hiring of 10,000 immigration agents, tougher laws for those seeking asylum and denial of federal grants to “sanctuary cities,” officials said.

The White House is also demanding the use of the E-Verify program by companies to keep illegal immigrants from getting jobs, an end to people bringing their extended family into the United States, and a hardening of the border against thousands of children fleeing violence in Central America. Such a move would shut down loopholes that encourage parents from Guatemala, El Salvador and Honduras to send their children illegally into the United States, where many of them melt into American communities and become undocumented immigrants.

“Now is the time for Congress to adopt these immigration priorities,” Marc Short, the president’s legislative director, told reporters during a conference call on Sunday night. Otherwise, he added, illegal immigration “will likely increase.”

While it is unclear whether Mr. Trump views the demands as absolute requirements or the beginning of a negotiation, the proposals, taken together, amount to a Christmas-in-October wish list for immigration hard-liners inside the White House. Immigration activists have long opposed many of the proposals as draconian or even racist.

The demands were developed by a half-dozen agencies and departments, officials said. But among the officials behind the demands are Stephen Miller, the president’s top policy adviser, and Attorney General Jeff Sessions, both of whom have long advocated extremely aggressive efforts to prevent illegal entry into the country and crack down on undocumented immigrants already here.

The demands represented a concerted effort to broaden the expected congressional debate about the Dreamers to one about overhauling the entire American immigration system — on terms that hard-line conservatives have been pursuing for decades.

In a letter to lawmakers, Mr. Trump said his demands would address “dangerous loopholes, outdated laws and easily exploited vulnerabilities” in the immigration system, asserting that they were “reforms that must be included” in any deal to address the Dreamers.

Democratic leaders in Congress reacted with alarm, saying the demands threaten to undermine the president’s own statements in which he had pledged to work across the aisle to protect the Dreamers through legislation.

“The administration can’t be serious about compromise or helping the Dreamers if they begin with a list that is anathema to the Dreamers, to the immigrant community and to the vast majority of Americans,” Senator Chuck Schumer of New York and Representative Nancy Pelosi of California, the Democratic leaders in the Senate and the House, said in a joint statement.

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White House Makes Hard-Line Demands for Any 'Dreamers' Deal - The New York Times

Mr. Schumer and Ms. Pelosi, who declared after a White House dinner last month that they had reached a deal with Mr. Trump to protect Dreamers, denounced the president's demands as failing to "represent any attempt at compromise." They called it little more than a thinly veiled effort to scuttle negotiations even before they begin in earnest.

"If the president was serious about protecting the Dreamers, his staff has not made a good-faith effort to do so," they added.

Last month, the president abruptly ended an Obama-era policy called Deferred Action for Childhood Arrivals, or DACA, in which former President Barack Obama had used his executive authority to protect about 800,000 of the young immigrants from the threat of deportation and provide them work permits.

Even as Mr. Trump kept his campaign promise to halt what he had described as "one of the most unconstitutional actions ever undertaken by a president," he quickly added that he would work with Democrats in Congress to replace the executive policy with legislation, giving them six months to do so. But a White House official said on Sunday that Mr. Trump was not open to a deal that would eventually allow the Dreamers to become United States citizens.

"The president's position has been that he's called on Congress to come up with a permanent solution and a fix to this process," Sarah Huckabee Sanders, the White House press secretary, said last week.

Immigration advocates will most likely urge Democratic leaders to refuse a deal that includes the president's proposals. But immigration and human rights advocates are also under pressure to do something for the Dreamers, thousands of whom will begin, by March, losing permission to work and protection from deportation if a deal is not reached.

Privately, many advocates have acknowledged that a negotiated deal with the Republican president is likely to include some immigration changes.

Administration officials responsible for securing the border and enforcing the nation's immigration laws told reporters on Sunday night that the changes requested

by the president were essential to protecting American workers from unfair competition and deterring what they described as a never-ending flow of illegal immigrants into the country.

On the president's wish list is a long-sought Republican goal of stopping American residents from sponsoring the arrival of extended family members. His demand would limit residents to bringing only spouses and children.

Also central to the effort, officials said, are legal changes that would strip away the rights of illegal immigrants to claim asylum or make another case to stay in the United States, allowing federal officials to more quickly deport them.

"We cannot have true border security if we don't change federal laws to ensure that people who are apprehended are removed," said Ron Vitiello, the acting deputy commissioner for Customs and Border Protection.

Thomas D. Homan, the acting director of Immigration and Customs Enforcement, said a vast increase in the number of agents and other federal resources would allow for a crackdown on immigration violators that had been difficult in the past.

Another key part of that crackdown would be on tens of thousands of children who have surged across the border with Mexico during the past several years, many of them seeking to escape gang-related violence in Central American countries. This year, about 38,500 children have been apprehended at the border without their parents.

Administration officials say the children — many of whom are sent to live with a cousin, aunt, uncle or sibling in the United States — must be turned back or quickly deported once they arrive. Under current law, many of them remain in the United States for years during legal proceedings to evaluate their asylum or refugee claims.

If the children are not deported quickly, officials say, many will never leave, eventually becoming a new population of sympathetic young immigrants who seek amnesty. That could create lasting cycles in which illegal immigrants demand to be given a legal status, the officials say.

The president's demands include new rules that say children are not considered "unaccompanied" at the border if they have a parent or guardian in the United States. They also propose treating children from Central America the same way they do children from Mexico, who can be repatriated more quickly, with fewer rights to hearings.

Mr. Trump is also calling for a surge in resources to pay for 370 additional immigration judges, 1,000 government lawyers and more detention space so that children arriving at the border can be held, processed and quickly returned if they do not qualify to stay longer.

Critics say the focus on deporting unaccompanied children is heartless and impractical. They say many were sent by their parents on long, dangerous treks in the hopes of avoiding poverty, hunger, abuse or death by gangs in their home countries.

Advocates acknowledge that more resources are necessary to speed up those hearings. But they argue that White House efforts to demand quick decisions are likely to merely result in many children being sent back to places where they are raped, beaten or killed.

Sending the children back with just a cursory hearing is "a recipe for disaster in terms of returning people to danger," said Wendy Young, the president of Kids in Need of Defense, a group that aids young refugees.

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A version of this article appears in print on October 9, 2017, on Page A1 of the New York edition with the headline: President Issues Terms of a Deal Over 'Dreamers'.

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MARTIN JONATHAN BATALLA VIDAL v ELAINE C. DUKE

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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 MARTIN JONATHAN BATALLA)
 VIDAL, et al.,)
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 Plaintiffs,)
) Case No.
 v) 1:16-CV-04756 (NGG) (JO)
)
 ELAINE C. DUKE, Acting)
 Secretary Department of)
 Homeland Security)
 JEFFERSON BEAUREGARD)
 SESSION III, Attorney)
 General of the United)
 States, and DONALD J TRUMP,)
 President of the UNITED)
 STATES,)
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 Defendants.)
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Deposition of DONALD NEUFELD

Washington, DC

Wednesday, October 18, 2017

9:16 a.m.

Job No.: 37566

Pages: 1 - 211

Reported by: Donna Marie Lewis, RPR, CSR (HI)

DONALD NEUFELD

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1 **Q So you did not ask what should be done**
2 **with these late filings until after October 5?**

3 A I was aware that the agency had
4 communicated in some way. I don't remember seeing
5 the actual communication that we would consider
6 late filed requests from Puerto Rico and the
7 Virgin Islands. I don't know -- I don't -- I
8 don't recall whether we had conversations or not
9 about how that process would work. But when they
10 were received then it became -- I needed to know
11 so that's when I asked for sure. Not saying that
12 there weren't any conversation before that, but
13 they weren't decisive if there were any.

14 **Q Prior to October 5 did you participate**
15 **in any discussions about how to handle late filed**
16 **applications?**

17 A As I said there were meetings in which
18 the topic of late filed applications was
19 discussed. I wouldn't necessarily call it being
20 consulted. There was awareness that that would
21 happen.

22 **Q And you participated in those meetings?**

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MARTIN JONATHAN BATALLA VIDAL v ELAINE C. DUKE

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1 A Yes.

2 Q Do you know if -- do you know if DHS
3 considered waiving or extended the October 5
4 deadline for other applicants outside of Puerto
5 Rico and the U S Virgin Islands?

6 A I do not know.

7 Q Do you know who would?

8 A Whoever -- no, I don't know that they
9 happened so I don't know who would.

10 Q In those meetings that you just referred
11 to in which you discussed how to handle U S Virgin
12 Islands and Puerto Rico applications did you --
13 were you aware of discussions of late -- how to
14 handle late applications from other locations?

15 A No.

16 Q Were you ever aware of -- were you ever
17 aware of considering extending or waiving the
18 October deadline -- October 5 deadline for people
19 living in Houston or Florida who were affected by
20 the hurricanes?

21 A No.

22 Q Were you ever aware that extending --

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MARTIN JONATHAN BATALLA VIDAL v ELAINE C. DUKE

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1 deadline for October 5 for those individuals was
2 ever considered?

3 A No.

4 Q Do you know why DHS did not extend the
5 October 5 deadline for other applicants besides
6 those living in Puerto Rico and the U S Virgin
7 Islands?

8 A No.

9 Q Did you ever inquire about why the
10 October 5 deadline was not extended for other
11 applicants?

12 A No.

13 Q Were you ever concerned that it was not
14 extended for other applicants?

15 MR. TYLER: Objection. Vague.

16 THE WITNESS: My only concern is to
17 understand how I'm supposed to process cases that
18 are filed.

19 BY MR CHEN:

20 Q To your knowledge how many eligible
21 individuals submitted their DACA renewal between
22 September 5 and October 5, 2017?

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1 A I don't know.

2 Q Did you receive any reports about how
3 many eligible individuals submitted their DACA
4 renewal applications?

5 A I have received email messages that --
6 indicating a number that are eligible and have not
7 filed.

8 Q Do you know what that number -- do you
9 recall what that number was?

10 A The last number I saw was like 22,000.

11 Q Do you remember when was that you
12 received that last communication?

13 A Either Friday or Tuesday.

14 Q Of this week?

15 A Of this week, yes. And Friday of last
16 week.

17 Q Between September 25 and October 5, 2017
18 are you aware of any errors SCOPS made in
19 processing individual DACA renewals?

20 MR. TYLER: Objection. Vague.

21 THE WITNESS: I'm not aware of any
22 errors.

1 A That primary way is to look at the
2 number of cases that are completed and the
3 investment of officer hours that was required to
4 achieve that number of completions.

5 Q So in the context of -- sorry. Are we
6 still on the record? Okay. Sorry.

7 So in the context of DACA specifically
8 how did you measure -- how did you measure
9 efficiency of the implementation of the program?

10 A From an efficiency perspective again, it
11 was what level of resources were invested to
12 achieve the completions that we did.

13 Q Were there any other sort of operational
14 measurements done on the implementation of DACA?

15 MR. TYLER: Objection. Vague.

16 BY MS. KHAN:

17 Q You can still answer it.

18 A Can you repeat the question?

19 Q Sure. Were there any operation -- on
20 the operational measurements or metrics used on
21 the implementation of DACA?

22 A Certainly. So that weekly report that I

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1 discussed previously gives a lot of like I said
2 different data points. And among them are -- is
3 an identification of the number of cases and
4 waiting for a particular action and how long they
5 have been waiting for that action to occur.

6 Q Are there any -- are there any analyses
7 or data collection done -- strike that actually.

8 Is there any data collection done as to
9 the demographics of the DACA applicants?

10 MR. TYLER: Objection. Vague.

11 BY MS. KHAN:

12 Q You can answer.

13 A I think I can answer this way. That the
14 office -- let me get this straight. The Office of
15 Performance and Quality produces -- I think it's a
16 quarterly report that gives some demographic
17 characteristics of the filing population.

18 Q Who sees that quarterly report?

19 A It's published on the website.

20 Q So I'm going to go down a list of
21 specific types of data and I just want to know if
22 any of these types of data were ever compiled by

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1 your team. So specifically were there any -- was

2 there any data or analyses done as to how many

3 DACA grantees are federal government employees?

4 A Not by my team.

5 Q Was there any data analyses done as to

6 how many DACA grantees are small business owners?

7 A Not by my team.

8 Q Was there any data analyses compiled as

9 to the average income of DACA grantees?

10 A Not by my team.

11 Q The same question for how many DACA

12 grantees are home owners?

13 A Not by my team.

14 Q How many DACA -- the same question for

15 how many DACA grantees are in the military?

16 A Not by my team.

17 Q Same question for DACA grantees who are

18 doctors?

19 A Not by my team.

20 Q Same question for DACA grantees who are

21 teachers?

22 A Not by my team.

1 Q Was there any analysis done as to the
2 impact of the rescission of DACA on the operational
3 aspect of your -- of what you oversee?

4 MR. TYLER: Objection. Vague.

5 BY MS. KHAN:

6 Q You can still answer.

7 A I don't -- can you restate?

8 Q Yeah, I can restate it. So were there
9 any analyses done as to the economic impact of the
10 rescission of DACA by your team?

11 MR. TYLER: Same objection. Vague.

12 THE WITNESS: Economic impact on what?

13 BY MS. KHAN:

14 Q On your -- on the operational aspect of
15 your team?

16 MR. TYLER: Still vague. Objection.

17 BY MS. KHAN:

18 Q Okay. Let me start over. So --

19 A Maybe I can say it this way. I don't do
20 economic analysis of the costs of the programs
21 that we administer. That would be done by the
22 chief financial officer.

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1 Q Right. I apologize. I think this is --
2 this is on me. The economic -- so you talked
3 earlier about the costs of the database change,
4 the costs of creating a new system for renewal
5 notices. Is that correct?

6 A Yes.

7 Q Okay. So would you measure that as an
8 economic cost in the context of the operational
9 system of the implementation of DACA?

10 A I wouldn't. Like I said, ultimately the
11 CFO would look to all of the costs of
12 administering the program.

13 Q So what analyses were done with regard
14 to the DACA program?

15 MR. TYLER: Objection. Lack of
16 foundation. Vague.

17 BY MS. KHAN:

18 Q You can still answer.

19 A Yeah, but I don't understand what you
20 are asking.

21 Q Okay. That's a valid point. Were there
22 any analyses done as to the efficacy of DACA --

1 strike that.

2 Give me one second.

3 So were you ever questioned about the
4 potential operational impact of the termination of
5 DACA?

6 MR. TYLER: Objection. Vague.

7 BY MS. KHAN:

8 Q You can still answer if you understand
9 it.

10 A I don't know what you mean by
11 operational impacts.

12 Q How it would -- I'm asking were you ever
13 asked about how the rescision of DACA would impact
14 your job, for example?

15 A No.

16 Q Okay. Were you asked about how it would
17 impact the service centers?

18 A No.

19 Q Were you asked about how the rescision of
20 DACA would impact anyone that you -- that you
21 supervise?

22 MR. TYLER: I'll object on the grounds

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1 of vagueness.

2 THE WITNESS: I was not asked about how
3 ending of DACA would impact the people that I
4 supervise.

5 BY MS. KHAN:

6 Q Okay. Moving on. Are you aware of the
7 information sharing policies with regard to DACA
8 applications and grantees?

9 A I'm aware that there are some. I
10 don't -- I don't know the ins and outs
11 specifically what is allowed and what is not
12 allowed.

13 Q What are you aware of?

14 A That there is a -- somewhere near where
15 the requester signs there is a statement that
16 spells out what the policies are.

17 Q And were you ever asked about those
18 policies when they were being formulated?

19 MR. TYLER: Objection. Vague.

20 THE WITNESS: I wasn't asked about them,
21 no. There were discussions early on in that 60
22 day period, again, as to what that language should

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1 be. I don't recall specifics of those
2 conversations other than that they happened.

3 BY MS. KHAN:

4 Q Okay. So are you aware of what the
5 current policy is with regard to information
6 sharing of DACA applicants or grantees?

7 A Again, I have a general awareness that
8 there are restrictions on the proper use of it.
9 But I wouldn't want to say specifically because I
10 will get it wrong.

11 Q Okay. So it's safe to say that you are
12 not aware of any change in policy on that front?

13 A That's correct.

14 Q Did you provide any sort of statistical
15 information with regard to -- strike that.

16 Were you asked to provide any
17 statistical information in the context of the DACA
18 program with regard to the recision?

19 MR. TYLER: Objection. Vague.

20 THE WITNESS: Do you mean the
21 termination? I'm not --

22

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1 your -- being able to put your finger on a case,
2 pull it, and review it now versus somebody
3 remembering that they adjudicated this case. Both
4 you can say -- the case could have been
5 adjudicated but the fact that we can't identify it
6 now in the stack of 800,000 is the difference I'm
7 talking about.

8 Q Did anyone ask -- did anyone at USCIS or
9 DHS ask to review your declaration that you
10 submitted on January 30, 2016?

11 MR. TYLER: Objection. Lack of
12 foundation.

13 THE WITNESS: Nobody asked me to review
14 my declaration.

15 BY MR. VENTRESCA:

16 Q Do you know if anyone at DHS reviewed
17 that declaration in the preparation of this
18 recision memorandum?

19 A I do not know.

20 Q Just a couple more questions. We'll
21 switch -- switch topics. You recently testified
22 about that immigration advocacy groups that you

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1 had met with them about the change in the
2 processing times. Is that right?

3 A No. The purpose of the meeting was for
4 them to convey their desire that the processing
5 times be quicker.

6 Q Are you aware if immigration advocacy
7 groups were consulted with respect to the rescision
8 of DACA?

9 A I'm not aware.

10 Q And you are aware that DACA recipients
11 serve in the military?

12 A I'm aware of that, yes.

13 Q Are you aware of whether of any of their
14 supervising officers were contacted with respect
15 to the rescision of DACA?

16 A I'm not aware.

17 Q And are you aware that DACA recipients
18 are students at schools and universities?

19 A Yes.

20 Q Are you aware of whether those
21 universities were contacted with respect to the
22 rescision of DACA?

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1 A I'm not aware.

2 Q And are you aware that DACA recipients
3 are employers?

4 A I believe so.

5 Q Do you know if any of the employees of
6 DACA recipients have been contacted with respect
7 to the rescission of DACA?

8 A I'm not aware.

9 Q And one kind of final set of questions.
10 Have you overseen deferred -- other deferred
11 action programs besides DACA?

12 A Program is a word that has different
13 meanings, but within -- the SCOPS portfolio of
14 benefit adjudications includes requests under the
15 Violence Against Women Act, VAWA, and T's and U's,
16 nonimmigrants. And as I recall -- I don't recall
17 the specifics. All three of those I think have
18 some of those requests can result in deferred
19 action being authorized.

20 Q Okay. For ease I'll refer to them as
21 deferred action programs here.

22 MR. TYLER: I will object to counsel's

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1 characterization of them as programs.

2 BY MR. VENTRESCA:

3 Q Have you overseen deferred action
4 programs that have ended, as in they have
5 terminated or lapsed?

6 A Not that I recall and I don't believe
7 so.

8 Q Are you aware of any discussions with
9 respect to terminating the deferred action
10 requests that you have discussed, the Violence
11 Against Women Act and the T and U visas -- of any
12 discussions to termination those programs due the
13 litigation risk?

14 A Not that I'm aware of.

15 Q Have you -- are you aware of any
16 discussions to terminate those programs due to
17 their illegality?

18 MR. TYLER: I again object to counsel's
19 mischaracterization of these as programs.

20 THE WITNESS: I'm not aware of any
21 discussions to change the way deferred action is
22 handled for those programs for any reason.

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1 MR. VENTRESCA: Okay. That's all I
2 have.

3 (Court reporter request.)

4 THE VIDEOGRAPHER: We are going off of
5 the record. The time is 2:05 p.m.

6 (Whereupon, the proceeding recessed from
7 2:05 p.m. to 2:16 p.m.)

8 THE VIDEOGRAPHER: We are back on the
9 record. This is the beginning of media unit
10 number 4. The time is 2:16 p.m.

11 EXAMINATION ON BEHALF OF DEFENDANTS

12 BY MR. NEWMAN:

13 Q Hello, sir. My name is Michael Newman
14 from the California Attorney General's Office on
15 behalf the state of California. Thank you very
16 much. I have a few additional questions.

17 A Sure.

18 Q Is it accurate to say that you stated in
19 your earlier testimony that you had 4,000
20 applications received at the lockbox after October
21 5 of this year?

22 A What I said was Tracy Renaud indicated

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REPORTER'S CERTIFICATE

I, DONNA M. LEWIS, RPR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness, Donald Neufeld,
was put under oath by me;

That the testimony of the witness, the
questions propounded and all objections and
statements made at the time of the examination
were recorded stenographically by me and were
thereafter transcribed;

I declare that I am not of counsel to
any of the parties, nor in any way interested in
the outcome of this action.

As witness, my hand and notary seal this
19th day of October, 2017.



Donna M. Lewis, RPR
Notary Public

My Commission expires:
March 14, 2018

EXHIBIT OO

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

MARTÍN JONATHAN BATALLA VIDAL,
ANTONIO ALARCON, ELIANA FERNANDEZ,
CARLOS VARGAS, MARIANO
MONDRAGON, and CAROLINA FUNG FENG,
on behalf of themselves and all other similarly
situated individuals, and MAKE THE ROAD
NEW YORK, on behalf of itself, its members, its
clients, and all similarly situated individuals,

Plaintiffs,

v.

ELAINE C. DUKE, Acting Secretary, Department
of Homeland Security, JEFFERSON
BEAUREGARD SESSIONS III, Attorney General of
the United States, and DONALD J. TRUMP,
President of the United States,

Defendants.

Case No. 16-cv-4756 (NGG)(JO)

**DEFENDANTS' OBJECTIONS
AND RESPONSES TO
PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO
DEFENDANTS**

(Garaufis, J.)
(Orenstein, M.J.)

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York, in accordance with the Order of the Honorable James Orenstein, U.S. Magistrate Judge, dated September 27, 2017, Defendants, by and through counsel, provide the following Objections and Responses to Plaintiffs' First Set of Interrogatories. Defendants' objections and responses are based on information known to Defendants at this time, and are made without prejudice to additional objections should Defendants subsequently identify additional grounds for objection, or should additional or different information become available. The information submitted herewith is being provided in accordance with the Federal Rules of Civil Procedure, which generally permit discovery of matters not privileged that are relevant to the claims or defenses in this civil action

memorandum dated September 5, 2017 to James W. McCament, Acting Director, U.S. Citizenship and Immigration Services (USCIS), Thomas D. Homan, Acting Director U.S. Immigration and Customs Enforcement (ICE), Kevin K. McAleenan, Acting Commissioner, U.S. Customs and Border Protection (CBP), Joseph B. Maher, Acting General Counsel, Ambassador James D. Nealon, Assistant Secretary International Engagement, and Julie M. Kirchner, Citizenship and Immigration Services Ombudsman, regarding *Rescission of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children"* ("DACA Rescission Memorandum"), which is publicly available and included in the certified Administrative Record filed in this action on October 6, 2017. The Administrative Record also contains non-privileged information actually considered by the Acting Secretary in connection with that decision.

Interrogatory No. 2

Please state the reason or reasons for Defendants' decisions (a) to terminate the DACA program on September 5, 2017; (b) to set March 5, 2018, as the end date for renewals; (c) to set October 5, 2017, as the deadline for renewal applications; and (d) to stop accepting initial applications or renewal applications, from DACA recipients whose status expired by September 5, 2017, as of September 5, 2017.

Objections to Interrogatory No. 2

1. Defendants incorporate by reference the above objections which apply to all interrogatories as well as the objections to the definitions and instructions.
2. Defendants object to Interrogatory No. 2 to the extent that the request seeks (a) attorney work product; (b) communications protected by the attorney-client privilege, (c) information protected by the deliberative-process privilege, the joint defense privilege, common interest privilege, or law enforcement privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; (e) information protected by any form of executive privilege, including the presidential communications privilege; or (f) any other applicable privilege or protection.

3. Defendants object to Interrogatory No. 2 as containing four discrete subparts, as labeled (a) through (d). To the extent possible based on a reasonable review of their records and consistent with the above objections, Defendants will provide a non-privileged answer to each of these four sub-parts, but will treat them as separate interrogatories for the purpose of Plaintiffs' total limit on interrogatories.

Response to Interrogatory No. 2

Subject to these objections, Defendant DHS incorporates by reference herein its response to Interrogatory Number 1 in response to part (a) of this Interrogatory. Defendant DHS further states in response to part (a) that upon receiving the Attorney General's September 4, 2017 letter concluding DACA to be unlawful, Defendant DHS acted quickly to comply with the law by rescinding DACA and to mitigate litigation risk presented by Texas and the other plaintiff-states' assertion that they would amend the complaint in *Texas v. United States* to challenge DACA. Defendant DHS also incorporates by reference its response to Interrogatory 1 in response to parts (b), (c) and (d) of this Interrogatory and further states that the Acting Secretary, in considering both the Attorney General's advice regarding the unlawfulness and litigation-related vulnerabilities of DACA, as well as the complexities associated with winding down the policy, determined to provide a limited window in which USCIS will adjudicate certain requests for DACA and associated applications meeting certain parameters, as described in the DACA Rescission Memorandum. The deadlines referenced in parts (b), (c) and (d) of this Interrogatory were selected in order to facilitate the orderly wind-down of DACA without suddenly terminating deferred action for all DACA recipients.

The Acting Secretary decided to stop accepting initial DACA request or renewal requests from DACA recipients whose DACA expired before September 5, 2017, as of September 5, 2017, in accordance with the Acting Secretary's decision to rescind the DACA policy as of that date. Initial and renewal DACA requests already received by USCIS as of September 5, 2017, continue to be adjudicated.

October 5, 2017 was selected as the deadline for DHS acceptance of renewal requests for DACA grants set to expire between September 5, 2017 and March 5, 2018, in order to provide a limited grace period for such DACA recipients to properly file their renewal requests. The October 5 deadline was selected in order to not disadvantage DACA recipients with DACA grants set to expire between September 5, 2017, and March 5, 2018, who had not yet sought renewal, as compared with DACA recipients with DACA grants set to expire between September 5, 2017, and March 5, 2018, who had already submitted renewal requests as of September 5, 2017. The six-month timeframe was also selected in part because it is consistent with USCIS's prior practice of sending DACA recipients reminder notices approximately 180 days in advance of expiration encouraging those recipients to request renewal 150 to 120 days in advance of expiration of their current period of deferred action under DACA. October 5, 2017 was further selected as the deadline for submitting renewal requests for DACA grants set to expire between September 5, 2017 and March 5, 2018, due to operational considerations, in order to provide USCIS with sufficient time to adjudicate the majority of renewal requests before March 5, 2018.

Similarly, March 5, 2018 was selected as the end date for renewals in order to facilitate an efficient and orderly wind-down of DACA without suddenly terminating deferred action for all DACA recipients.

Interrogatory No. 3

Please identify the date, location, participants, and subject of any meetings or conversations among staff of the Department of Justice, Department of Homeland Security, and Executive Office of the President between January 20, 2017, and September 5, 2017, during which a decision was made on continuing or terminating the DACA program.

Objections to Interrogatory No. 3

1. Defendants incorporate by reference the above objections which apply to all interrogatories as well as the objections to the definitions and instructions.
2. Defendants object to Interrogatory No. 3 to the extent that the request seeks (a) attorney work product; (b) communications protected by the attorney-client privilege, (c) information protected by the deliberative-process privilege, the joint defense privilege, common

Interrogatory No. 5

Please identify the date, location, participants, and subject of any meetings or conversations that Defendants conducted between June 1, 2017 and September 5, 2017, with representatives or staff of a state that participated in the *Texas v. United States* litigation, regarding the decision whether to continue or terminate the DACA program.

Objections to Interrogatory No. 5

1. Defendants incorporate by reference the above objections which apply to all interrogatories as well as the objections to the definitions and instructions.

2. Defendants object to Interrogatory No. 5 to the extent that the request seeks (a) attorney work product; (b) communications protected by the attorney-client privilege, (c) information protected by the deliberative-process privilege, the joint defense privilege, common interest privilege, or law enforcement privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; (e) information protected by any form of executive privilege, including the presidential communications privilege; or (f) any other applicable privilege or protection.

3. Defendants object to Interrogatory No. 5 as vague and overbroad to the extent it seeks information about meetings or conversations with individuals, the identity of which or whom is immaterial to the claims in this litigation, and because the burden of responding is disproportionate to the needs of this case.

4. Defendants object to Interrogatory No. 5 to the extent it seeks information from Civil Division litigation counsel, as retrieving any such information would be overly broad and unduly burdensome due to the nature of the Civil Division's representation of the interests of the United States.

5. Defendants object to Interrogatory No. 5 as seeking information that is not relevant because the legal validity of DACA does not depend on the details of any particular litigation, including the details of the *Texas v. United States* litigation, but rather, to legal principles set forth by the judiciary in its rulings.

6. Defendants object to Interrogatory No. 5 as containing four discrete subparts: (1) “identify the date . . . of any meetings . . .”; (2) “identify the . . . location . . . of any meetings . . .”; (3) “identify the . . . participants . . . of any meetings . . .”; and (4) “identify the . . . subject of any meetings . . .” To the extent possible based on a reasonable review of their records and consistent with the above objections, Defendants will provide a non-privileged answer to each of these four sub-parts, but will treat them as separate interrogatories for the purpose of Plaintiffs’ total limit on interrogatories.

7. Defendants object to Interrogatory No. 5 as overbroad to the extent that “a state that participated in” includes all 26 plaintiff states and over fifteen states that participated as amici. Defendants also object to Interrogatory No. 5 as vague and overbroad to the extent that “representatives or staff of a state” could be interpreted to encompass any state employee or any other person “represent[ing]” any of the numerous states that “participated in” the *Texas v. United States* litigation. This overbroad request would thereby seek records of every meeting or discussion held between Defendants and hundreds of thousands of individuals who constitute “staff” or “representatives” of the more than 40 states that “participated” in some way in the litigation. Accordingly, Defendants will construe “representatives or staff of a state” to be limited to those persons known to have authority to represent the plaintiff states in high-level decision-making regarding the litigation.²

Response to Interrogatory No. 5

Subject to these objections, Defendant DOJ has identified the following meetings and conversations between officials of the Department of Justice and state officials with authority in the *Texas v. United States* litigation:

<i>Date</i>	<i>No. of Mtgs.</i>	<i>Location</i>	<i>Participant Names and Titles</i>	<i>Meeting Subject</i>
Summer 2017	Multiple	Telephone	- Career attorneys in the Civil Division, U.S. Dep’t of Justice	Future proceedings in <i>Texas v. United States</i> litigation

² Pursuant to Defendants’ prior reservation of the right to make additional objections should they subsequently identify additional grounds for objection, this objection has been added to Defendants’ previous objections on October 16, 2017.

			- Counsel for plaintiff-states	
June 29, 2017 (approximate)	1	Telephone	- Chad Readler, Assistant Attorney General (Acting), U.S. Dep't of Justice - Scott Keller, Solicitor General, Texas	Forthcoming correspondence in <i>Texas v. United States</i> litigation
Aug. 17, 2017	1	Telephone	- Chad Readler, Assistant Attorney General (Acting), U.S. Dep't of Justice - Scott Keller, Solicitor General, Texas	Responses to pending motions and possibility of staying <i>Texas v. United States</i> litigation
Late Aug., 2017	1 or 2	Telephone	- Chad Readler, Assistant Attorney General (Acting), U.S. Dep't of Justice - Scott Keller, Solicitor General, Texas	Future proceedings in <i>Texas v. United States</i> litigation and United States plans for a decision regarding DACA policy
Late Aug. 2017 Or early Sept. 2017	1	Telephone	- Chad Readler, Assistant Attorney General (Acting), U.S. Dep't of Justice - Danielle Cutrona, Counselor to AG Sessions - Scott Keller, Solicitor General, Texas	Future proceedings in <i>Texas v. United States</i> litigation and United States plans for a decision regarding DACA policy
Week preceding Sept. 5, 2017	1	Telephone	- Jefferson B. Sessions, III, Attorney General of the United States - Chad Readler, Assistant Attorney General (Acting), U.S. Dep't of Justice - Jesse Panuccio, Principal Deputy Associate Attorney General, U.S. Dep't of Justice - Danielle Cutrona, Counselor to Attorney General Sessions - Ken Paxton, Attorney General, Texas - Other Texan attorneys	Proceedings in <i>Texas v. United States</i> litigation

Additionally, Defendant DHS states, on behalf of itself:

<i>Date</i>	<i>No. of Mtgs.</i>	<i>Location</i>	<i>Participant Names and Titles</i>	<i>Meeting Subject</i>
Aug. 8, 2017	1	Telephone	- Gene Hamilton, Senior Counselor to Acting Secretary - Michael Toth, Representative of the Texas Attorney General's Office	The June 29, 2017 letter from Texas Attorney General Ken Paxton to United States Attorney General Jefferson B. Sessions, requesting the Secretary of DHS phase out and rescind DACA by September 5, 2017.
Aug. 28, 2017 (approximate)	1	Telephone	- Gene Hamilton, Senior Counselor to Acting Secretary - Michael Toth, Representative of the Texas Attorney General's Office	Possible follow-up call regarding same subject.

Defendants reserve the right to supplement this response with any additional relevant, responsive, non-privileged information that is within its possession, custody, or control and capable of being ascertained with reasonable diligence.

Interrogatory No. 6

Please identify any and all Department of Homeland Security, Department of Justice, or other White House staff who were consulted for, participated in, or contributed to analysis of the lawfulness of the DACA program; the decision whether to continue or terminate the DACA program; or any decision regarding the nature of the DACA termination between January 20, 2017 and September 5, 2017.

Objections to Interrogatory No. 6

1. Defendants incorporate by reference the above objections which apply to all interrogatories as well as the objections to the definitions and instructions.

2. Defendants object to Interrogatory No. 6 to the extent that the request seeks (a) attorney work product; (b) communications protected by the attorney-client privilege, (c) information protected by the deliberative-process privilege, the joint defense privilege, common interest privilege, or law enforcement privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; (e) information protected by any form of executive privilege, including the presidential communications privilege; or (f) any other applicable privilege or protection.

3. Defendants object to the interrogatory to the extent that it purports to require the identification of White House staff who were consulted for, participated in, or contributed to the analysis of the issues that are subject to this request. *See Cheney v. U.S. District Court*, 542 U.S. 367, 388 (2004).

4. Defendants object to Interrogatory No. 6 as vague and overbroad to the extent it seeks information about persons who “were consulted for, participated in, or contributed to analysis...” to the extent it seeks information about individuals with mere peripheral involvement, as the identity of such individuals is not relevant, such individuals are unlikely to have relevant information, and identifying all such individuals would be excessively burdensome and disproportionate to the needs of the case. Defendants will construe Interrogatory No. 6 to seek information about non-White House individuals who participated materially in the subject of this Interrogatory.

5. Defendants object to Interrogatory No. 6 as vague and overbroad to the extent it seeks information about “any decision regarding the nature of the DACA termination.”

Defendants will construe Interrogatory No. 6 to seek information about the decisions challenged in this litigation.

6. Defendants object to Interrogatory No. 6 as containing three discrete subparts regarding: (1) “analysis of the lawfulness of the DACA program”; (2) “the decision whether to continue or terminate the DACA program”; or (3) “any decision regarding the nature of the DACA termination.” To the extent possible based on a reasonable review of their records and consistent with the above objections, Defendants will provide a non-privileged answer to each of these three sub-parts, but will treat them as separate interrogatories for the purpose of Plaintiffs’ total limit on interrogatories.

Response to Interrogatory No. 6

Subject to these objections, Defendants have identified to date the following individuals as having consulted for, participated in, or contributed to the topics listed in the sub-parts of the interrogatory:

NAME	TITLE
DOJ	
Chad A. Readler	Assistant Attorney General (Acting), Civil Division
Curtis E. Gannon	Assistant Attorney General (Acting), Office of Legal Counsel (OLC)
Daniel L. Koffsky	Deputy Assistant Attorney General, OLC
Danielle Cutrona	Counselor to the Attorney General
Edwin Kneedler	Deputy Solicitor General
Henry C. Whitaker	Deputy Assistant Attorney General, OLC
Jefferson B. Sessions, III	Attorney General
Jeffrey B. Wall	Principal Deputy Solicitor General
Jeremy Bylund	Deputy Associate Attorney General
Jesse Panuccio	Principal Deputy Associate Attorney General
Jody Hunt	Chief of Staff to the Attorney General
Laura E. Heim	Attorney-Adviser, OLC
Noel Francisco	Solicitor General
Rachael Tucker	Counsel to the Attorney General
Rachel Brand	Associate Attorney General
Rosemary Hart	Special Counsel, OLC
Scott G. Stewart	Counsel to the Assistant Attorney General, OLC
Zack Tripp	Assistant to the Solicitor General

DHS³	
Adam V. Loiacono	Deputy Principal Legal Advisor for Enforcement and Litigation, ICE
Ben Cassidy	Assistant Secretary, DHS Office of Legislative Affairs (OLA)
Chad Wolf	Acting Chief of Staff to the Acting Secretary
Craig Symons	USCIS Chief Counsel
Dimple Shah	Deputy General Counsel
Donald Neufeld	Associate Director, Service Center Operations Directorate
Elaine Duke	Acting Secretary of Homeland Security
Elizabeth Neumann	Deputy Chief of Staff to the Acting Secretary
Ernest DeStefano	Chief, Office of Intake and Data Production (Acting Deputy Associate Director, Service Center Operations Directorate July 8, 2017 – September 8, 2017)
Gene Hamilton	Senior Counselor to the Acting Secretary
Gillian Christensen	Senior Advisor, Office of External Affairs
James D. Nealon	Assistant Secretary for International Engagement
James W. McCament	Deputy Director (then Acting Director) of USCIS
Jennifer Higgins	Associate Director, Refugee, Asylum and International Operations Directorate (then Acting Deputy Director)
John Feere	Senior Advisor, ICE
Joseph B. Maher	Acting General Counsel
Joseph Moore	Chief Financial Officer
Julie Koller	Deputy Associate Chief Counsel, Enforcement and Operations, CBP Office of the Chief Counsel
Kathy Nuebel-Kovarik	Chief of the USCIS Office of Policy and Strategy
Lora Ries	Acting Chief of Staff (August 28, 2017 to the present)
Michael Dougherty	Assistant Secretary for Border, Immigration and Trade Policy
Nader Baroukh	Associate General Counsel
Thomas D. Homan	Acting Director of U.S. Immigrations and Customs Enforcement (ICE)
Todd Hoffman	Executive Director, Admissibility and Passenger Programs, Office of Field Operations
EXECUTIVE OFFICE OF THE PRESIDENT	
Andrew Bremberg	Assistant to the President and the Director of the Domestic Policy Council for President Trump
Donald McGahn	White House Counsel and Assistant to the President
Gregory Katsas	Deputy Assistant and Deputy Counsel to President Trump

³ The USCIS personnel listed below were aware of, participated in meetings and/or conversations, and or provided operational information related to DACA rescission or wind-down before September 5, 2017.

John Bash	Special Assistant and Associate Counsel
John Kelly	White House Chief of Staff
Kirstjen Nielsen	Principal Deputy White House Chief of Staff
Marc Short	White House Director of Legislative Affairs and Deputy Assistant to the President
Mick Mulvaney	Director, Office of Management and Budget
Rick Dearborn	White House Deputy Chief of Staff for Legislative, Intergovernmental Affairs and Implementation
Robert Porter	White House Staff Secretary
Stephen Miller	Senior Advisor for Policy

Defendants reserve the right to supplement this response with any additional relevant, responsive, non-privileged information that is within its possession, custody, or control and capable of being ascertained with reasonable diligence.

Interrogatory No. 7

Please state the number of DACA recipients who are eligible to apply for DACA renewal between September 6, 2017 and October 5, 2017, both nationally and for each state. Please also state the number of DACA recipients who have applied for DACA renewal since September 5, 2017, broken down by date (both the date the application was received and the date a decision was made), and the total number that were granted, rejected on the merits, returned without adjudication on the merits due to the date the renewal application was received, or denied for any other reason (broken down by the reason for denial).

Objections to Interrogatory No. 7

1. Defendants incorporate by reference the above objections which apply to all interrogatories as well as the objections to the definitions and instructions.
2. Defendants object to Interrogatory No. 7 to the extent that the request seeks information protected by the law enforcement privilege; material the disclosure of which would

07/05/17	0	0	0	0	7	0	1,535	0	228	1,770
07/06/17	0	0	0	0	0	0	0	0	64	64
07/07/17	0	0	0	0	0	0	0	0	1,186	1,186
07/10/17	0	0	0	0	0	0	1,757	1,885	1,142	4,784
07/11/17	0	0	0	0	3	0	6	0	1,250	1,259
07/12/17	0	0	0	0	3	11	1	2	1,535	1,552
07/13/17	0	0	0	0	0	0	0	0	119	119
07/14/17	0	0	0	0	0	0	0	0	201	201
07/15/17	0	0	0	0	0	0	0	0	1,901	1,901
Total	1	1	1	1	13	920	34,239	52,906	112,496	200,578

Dated: October 16, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

BRIDGET M. ROHDE
Acting United States Attorney

BRETT A. SHUMATE
Deputy Assistant Attorney General

JENNIFER D. RICKETTS
Director

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2017, I caused to be served the foregoing DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANTS via e-mail upon:

Lourdes Rosado	lourdes.rosado@ag.ny.gov
Diane Lucas	diane.lucas@ag.ny.gov
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Alexa Schapira	Alexia.Schapira@maketheroadny.org
Justin Cox	cox@nilc.org

/s/ Brad P. Rosenberg
BRAD P. ROSENBERG

VERIFICATION

Based on information that I obtained in the course of my official USCIS duties, I declare under penalty of perjury that the substance of the USCIS narrative responses to these Interrogatories are true and correct.

DATE: October 16, 2017

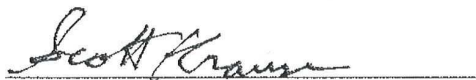
SIGNATURE:

James W. McCombs

VERIFICATION

I, Scott Krause, am the Executive Secretary of the United States Department of Homeland Security (DHS). Based on information that I obtained in the course of my official DHS duties, I declare under penalty of perjury that the substance of the DHS Headquarters narrative responses to these Interrogatories are true and correct.

Executed on October 16, 2017.

A handwritten signature in cursive script, reading "Scott Krause", is written over a horizontal line.

Scott Krause

EXHIBIT PP

CQ Congressional Transcripts

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LIST OF PANEL MEMBERS AND WITNESSES

JOHNSON:

Good morning. This hearing of the Senate Committee on Homeland Security and Government Affairs -- committee is called to order. This is our annual threats to the homeland hearing. I want to welcome our witnesses.

I'd like to start, though, by acknowledging the victims of hurricanes in Houston, Texas; in Florida; throughout the Caribbean, but in particular, Puerto Rico. I'm sure we'll be discussing that quite a bit.

Maybe it wasn't contemplated when we first set up this -- and scheduled this hearing on the other enormous threats. But there's real threats to human life occurring now throughout our nation. And we'll certainly acknowledge that. They're -- all those individuals are in our thoughts and prayers. I'm sure everybody on this committee joins me in that.

We are pleased to welcome the acting secretary of the Department of Homeland Security; Elaine Duke, the director of the Federal Bureau of Investigation, Christopher Wray; the director of the National Counterterrorism Center, Nicholas Rasmussen.

I believe that this committee has done a great job of conducting congressional investigations when we have found that there are Americans who are at risk of harm and violence. And so, on this matter, I would ask that we do a similar investigation.

JOHNSON:

Request noted.

HARRIS:

Thank you.

On the issue of DACA, Secretary Duke, September 5th, you issued a memo rescinding the original June 15th, 2012 memo which established DACA. And, in making the decision to rescind DACA, you indicated that recipients will have some period of time in order to apply.

I'm told by folks who are working with renewal on the ground that they have seen a slowdown in DACA recipients reapplying. Are you prepared to extend the amount of time that they will have?

DUKE:

We have had no requests -- we -- I did talk to one senator about a potential need for an extension, but we have had no indication from DACA recipients that they are having trouble. We did check the system to make sure it is a easy system to reapply, and they do not have to reproduce their documents.

HARRIS:

Have you convened, or had a meeting at all -- and input from the community folks that -- who are working on the ground, to get information from them? And, if not, I request that you do that, so you can get a complete picture of what is actually happening on the ground.

But I will tell you, from the perspective of California, these young people are terrified. They are terrified. They were told by your agency that, if they submitted this comprehensive information about their background and their status to apply for DACA, that that information would not be shared with ICE.

I've asked you. I asked the former secretary. Are you willing to keep America's promise to these young people and not share their information with ICE? Can you answer that question, finally? It has not been answered the many times I've asked.

DUKE:

I think -- I can't unequivocally promise that, no. But I do know...

HARRIS:

So we will not keep our promise to these children and these young people?

DUKE:

I don't -- I'm not familiar with the promise that was made to these children. But I do know that having them on two-year, nonrenewable, you know, suspensions is not the right answer. And I look forward to working with the Congress on coming up with a better solution.

HARRIS:

OK (ph), and I'll submit for the record and I will give you a copy of the document where the United States government told these young people, when they applied for DACA status, that we would not share their information with ICE. You've not seen this document?

DUKE:

No, I have not.

HARRIS:

(OFF MIKE)

OK. I will give a copy to you. I have it here, and I will give you a copy. I think I presented to you, and certainly your -- the person that you succeeded, before.

DUKE:

OK, and I will get you an answer.

HARRIS:

And I'd like that answer before the end of the week, please.

And you also indicated, when you last testified before us, that in terms of the seven new enforcement priorities -- that they were of -- in descending level of priority. Following your testimony before this committee, the former secretary said that there was no priority in terms of that list.

So which is the policy of your agency? And how have you instructed the people on the ground about what are the enforcement priorities of your agency?

DUKE:

Those are enforcement priorities. However, an ICE agent is not restricted from apprehending anyone who is in violation of law.

HARRIS:

There are seven enforcement priorities. Have you instructed the agents on the ground about which are the highest enforcement priorities, versus the lowest, given that, with all agencies, and certainly yours, you have limited resources?

DUKE:

Yes.

HARRIS:

Can you give that information to me, please?

DUKE:

Yes.

HARRIS:

Now?

DUKE:

Now? We have the DHS policy, and then we have the ICE policy, and they all say that these are the priorities for enforcement. If there's any targeted enforcement, they're against the priorities.

However, if an ICE agent encounters someone that isn't a priority, but is still an illegal immigrant, then they would be apprehended also, using the discretion of the ICE agent.

HARRIS:

Mr. Chairman, I see my time is up. I'll resume this with the second round, thank you.

JOHNSON:

OK. Thank you.

And, just real quick, following up on your request in terms of investigation on white supremacists and domestic terrorists, I met with the -- Director Wray prior to this meeting -- or prior to this hearing. And just confirm this: You said about 100 -- about 1,000 active investigations on, basically, white supremacists, domestic terrorists; about 1,000, ISIS-related. Just kind of confirm that that was accurate.

But also, is there -- do you take the threat of white supremacist terrorists or violent extremists any less seriously than you do those perpetrated by -- potentially by ISIS?

WRAY:

No, we do not. We take both of them very, very seriously. Our focus is on violence and threats of violence against the people of this country, and that's

up owning these responsibilities, can count on the best possible input from the intelligence community.

We are going to forever be limited by the amount of information we have available to us, and so we are going to be in a constant effort to try to increase the pile of information that we're relying on to provide that input.

CARPER:

All right. And I would just say, in conclusion -- thank you for your responses, but it seems peculiar to me -- interesting, at least. Peculiar, maybe -- that countries that have never apparently posed a threat to us, in terms of a threat on the homeland -- we're going to say, for whatever purpose, "You can't come here. We're not going to allow you to travel to our nation for school, for other reasons," and yet there are other countries that have posed a real danger -- still do -- and that they are free to come and go. It's just seems peculiar.

Thank you, Mr. Chairman.

JOHNSON:

Senator Harris.

HARRIS:

Secretary Duke, I -- you know, I actually -- I asked one of my team members to just go quickly to the U.S. Citizenship and Immigration Services website, to make sure it was still there, and it is, on page 6 of 27 of the FAQs.

And the question, because it is a frequently asked question, is, "Will the information I share" -- this is the DACA applicant. "Will the information I

share in my request for consideration of DACA be used for immigration enforcement purposes?"

And they are told in the answer, in this document, "Individuals whose cases are deferred pursuant to DACA will not be referred to ICE- ."

I also have a two-page letter signed by Jeh Johnson on December 30th, 2016, where he indicated, "since DACA was announced in 2012, DHS has consistently made clear that the information provided by applicants would be safeguarded from other immigration-related purposes."

So I would ask you to familiarize yourself with these documents, because we are talking about 700,000 young people in this country right now who are in utter fear about their future, about their lives right now. Their families are. Their employers are. Their friends are.

And you have a responsibility to be clear about what your agency is doing as it relates to keeping a promise to these young people and thinking about their situation right now and their future.

I would also point out to you that I asked you six months ago during your confirmation hearing about this document, which was a memo, Homeland Security, indicating there were seven new priority enforcement areas.

And the seventh, which reads, "In the judgment of an immigration officer, they may have enforcement responsibilities in their -- if, in their judgment, that person poses a risk to public safety or national security."

I asked you then, what are the factors for consideration, and how are you training your agents on how they should exercise that judgment, knowing that you have limited resources and they are potentially a lot of people that

could fall in that category. You indicated to me would get back to me on how those agents are being trained, and you've not done that.

On a separate matter, you have indicated on September 5th that DACA would be rescinded, and that these individuals would have until October 5th to reapply. Otherwise, they would fall out of status.

And my question to you is did your agency directly notify the DACA recipients that they will be eligible to renew their applicants? Did you notify them directly? Or was this is just through the press?

DUKE:

We have not contacted each individual directly.

HARRIS:

And you've given them a month from the time that that word went out, one month only, to apply to renew their status, which requires them to submit many forms and fill out the information in those forms. It requires them, by October 5th, to also provide a \$495 application fee.

(CROSSTALK)

HARRIS:

Within one month, it requires them to supply two passport photographs. Passport photographs cost between about \$15 and \$20. Last time I looked, federal minimum wage is about \$7.25 an hour.

And I'm -- so my question to you is, given the responsibilities that they are required to meet to apply before October 5th, given also -- and we've talked

about it in this hearing -- the impact of Harvey and Irma and Maria, will you consider extending the deadline beyond October 5th for these kids to apply?

DUKE:

I am just as passionate as you are about doing the right thing by people in America, and I commit to working with Congress to do the right thing. An unconstitutional program that only keeps them in two-year limbo status is not the right answer for these...

(CROSSTALK)

HARRIS:

So are you willing to extend the deadline that you've already set...

DUKE:

We will look at...

(CROSSTALK)

HARRIS:

... given the circumstances of these natural disasters that have also occurred in the interim?

DUKE:

... we have not been notified by anyone that natural disasters have affected. I have looked into the process. It is a -- there is a money issue; I agree with you there. But the process itself is very simple.

So we will do what's right. It is an unconstitutional program, so that is constraining, and I -- and I hope that we can come up with a better solution through Congress.

HARRIS:

Are 700,000 young people supposed to suffer because you didn't figure out how to implement this program properly? Are 700,000 young people supposed to be terrified because they can't come up with a lot of money within one month?

DUKE:

It's not my position to come up with a statute. That would be Congress's responsibility.

HARRIS:

Who came up with the decision that it would be -- they would be given one month from September 5th to October 5th?

DUKE:

That is something that we came up with to end the program in a compassionate manner.

HARRIS:

I'd ask you to consider extending that deadline.

JOHNSON:

Thank you, Senator Harris.

commitment you've made to this nation. It's a 24/7 job, every last one of your positions here. It's an enormous responsibility, and this committee thanks you sincerely for doing that.

With this, the hearing record will remain open for 15 days, until October 12th, 5 p.m., for the submission of statements and questions for the record. This hearing is adjourned.

List of Panel Members and Witnesses

PANEL MEMBERS:

SEN. RON JOHNSON, R-WIS. CHAIRMAN

SEN. JOHN MCCAIN, R-ARIZ.

SEN. ROB PORTMAN, R-OHIO

SEN. RAND PAUL, R-KY.

SEN. JAMES LANKFORD, R-OKLA.

SEN. MICHAEL B. ENZI, R-WYO.

SEN. JOHN HOEVEN, R-N.D.

SEN. STEVE DAINES, R-MONT.;

SEN. CLAIRE MCCASKILL, D-MO. RANKING MEMBER

SEN. THOMAS R. CARPER, D-DEL.

SEN. JON TESTER, D-MONT.

SEN. HEIDI HEITKAMP, D-N.D.

SEN. GARY PETERS, D-MICH.

SEN. MAGGIE HASSAN, D-N.H.

SEN. KAMALA HARRIS, D-CALIF.

WITNESSES:

ELAINE C. DUKE, ACTING SECRETARY OF HOMELAND SECURITY

CHRISTOPHER A. WRAY, DIRECTOR, FBI

NICHOLAS J. RASMUSSEN, DIRECTOR, NATIONAL
COUNTERTERRORISM CENTER, OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE

Testimony & Transcripts

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EXHIBIT QQ

9/15/2017

Fact Sheet: Rescission Of Deferred Action For Childhood Arrivals (DACA) | Homeland Security

 Official website of the Department of Homeland SecurityU.S. Department of
Homeland Security

Fact Sheet: Rescission Of Deferred Action For Childhood Arrivals (DACA)

Release Date: September 5, 2017

On June 15, 2012, then-Secretary of Homeland Security Janet Napolitano issued a memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” creating a non-congressionally authorized administrative program that permitted certain individuals who came to the United States as juveniles and meet several criteria—including lacking any current lawful immigration status—to request consideration of deferred action for a period of two years, subject to renewal, and eligibility for work authorization. This program became known as Deferred Action for Childhood Arrivals (DACA).

The Obama administration chose to deploy DACA by Executive Branch memorandum—despite the fact that Congress affirmatively rejected such a program in the normal legislative process on multiple occasions. The constitutionality of this action has been widely questioned since its inception.

DACA’s criteria were overly broad, and not intended to apply only to children. Under the categorical criteria established in the June 15, 2012 memorandum, individuals could apply for deferred action if they had come to the U.S. before their 16th birthday; were under age 31; had continuously resided in the United States since June 15, 2007; and were in school, graduated or had obtained a certificate of completion from high school, obtained a General Educational Development (GED) certificate, or were an honorably discharged veteran of the Coast Guard or Armed Forces of the United States. Significantly, individuals were ineligible if they had been convicted of a felony or a significant misdemeanor, but were considered eligible even if they had been convicted of up to two other misdemeanors.

The Attorney General sent a letter to the Department on September 4, 2017, articulating his legal determination that DACA “was effectuated by the previous administration through

9/15/2017

Fact Sheet: Rescission Of Deferred Action For Childhood Arrivals (DACA) | Homeland Security

executive action, without proper statutory authority and with no established end-date, after Congress' repeated rejection of proposed legislation that would have accomplished a similar result. Such an open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch." The letter further stated that because DACA "has the same legal and constitutional defects that the courts recognized as to DAPA, it is likely that potentially imminent litigation would yield similar results with respect to DACA."

Based on this analysis, the President was faced with a stark choice: do nothing and allow for the probability that the entire DACA program could be immediately enjoined by a court in a disruptive manner, or instead phase out the program in an orderly fashion. Today, Acting Secretary of Homeland Security Duke issued a memorandum (1) rescinding the June 2012 memo that established DACA, and (2) setting forward a plan for phasing out DACA. The result of this phased approach is that the Department of Homeland Security will provide a limited window in which it will adjudicate certain requests for DACA and associated applications for Employment Authorization Documents meeting parameters specified below.

Effective immediately, DHS:

- Will adjudicate—on an individual, case-by-case basis—properly filed pending DACA initial requests and associated applications for Employment Authorization Documents that have been accepted as of the date of this memorandum.
- Will reject all DACA initial requests and associated applications for Employment Authorization Documents filed after the date of this memorandum.
- Will adjudicate—on an individual, case-by-case basis—properly filed pending DACA renewal requests and associated applications for Employment Authorization Documents from current beneficiaries that have been accepted as of the date of this memorandum, and from current beneficiaries whose benefits will expire between the date of this memorandum and March 5, 2018 that have been accepted as of October 5, 2017.
- Will reject all DACA renewal requests and associated applications for Employment Authorization Documents filed outside of the parameters specified above.
- Will not terminate the grants of previously issued deferred action or revoke Employment Authorization Documents solely based on the directives in this memorandum for the remaining duration of their validity periods.
- Will not approve any new Form I-131 applications for advance parole under standards associated with the DACA program, although it will generally honor the stated validity period for previously approved applications for advance parole. Notwithstanding the continued validity of advance parole approvals previously granted, U.S. Customs and Border Protection will—of course—retain the authority it has

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always had and exercised in determining the admissibility of any person presenting at the border and the eligibility of such persons for parole. Further, U.S. Citizenship and Immigration Services will—of course—retain the authority to revoke or terminate an advance parole document at any time.

- Will administratively close all pending Form I-131 applications for advance parole filed under standards associated with the DACA program, and will refund all associated fees.
- Will continue to exercise its discretionary authority to terminate or deny deferred action for any reason, at any time, with or without notice.

It should be noted that DACA was not intended to be available to persons who entered illegally after 2007. Thus, persons entering the country illegally today, tomorrow or in the future will not be eligible for the wind down of DACA.

Topics: [Border Security \(/topics/border-security/\)](/topics/border-security/), [Deferred Action \(/topics/deferred-action/\)](/topics/deferred-action/)

Keywords: [DACA \(/keywords/daca/\)](/keywords/daca/), [Deferred Action for Childhood Arrivals \(/keywords/deferred-action-childhood-arrivals/\)](/keywords/deferred-action-childhood-arrivals/)

Last Published Date: September 5, 2017

EXHIBIT RR

IMPORTANT: This document contains information that is no longer current but remains on our site for reference purposes.

CONSIDERATION of DEFERRED ACTION for CHILDHOOD ARRIVALS



Guidance for Employers

Deferred Action for Childhood Arrivals

BACKGROUND

On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several key guidelines may request consideration of Deferred Action for Childhood Arrivals (deferred action) and are eligible to apply for work authorization. Individuals whose cases are deferred and who are granted work authorization will be issued an Employment Authorization Document (EAD).

All U.S. employers must complete and retain a Form I-9, Employment Eligibility Verification, for each individual they hire for employment in the United States. This includes citizens and noncitizens. This Fact Sheet provides specific guidance to employers on the treatment of EADs issued by USCIS to deferred action recipients and how employers should process Form I-9 in these cases.

GUIDANCE FOR EMPLOYERS OF NEWLY HIRED EMPLOYEES

The EAD that USCIS issues to an eligible deferred action recipient is one of the documents listed as acceptable for the Form I-9. This document establishes both identity and employment authorization under “List A” of the Form I-9.

If a deferred action recipient presents an unexpired EAD to complete the Form I-9, an employer should accept it. The card must reasonably appear to be genuine and relate to the deferred action recipient presenting it. The information will appear on the card as indicated on the image to the right.

The employer must comply with Form I-9 instructions and enter the document title, issuing authority, number, and expiration date in Section 2 under List A. The employer may not request that the employee provide additional proof that his or her case has been deferred or that he or she is authorized to work.

When the validity period of an employee’s Employment Authorization Document expires, the employer must reverify using Section 3 of the Form I-9 (as explained in more detail in the next section) to ensure that the employee is still authorized to work.



1. The document number, which is listed as the CARD# and begins with three letters.
2. The notation “C-33” under “Category.”
3. The expiration date.



**U.S. Citizenship
and Immigration
Services**

GUIDANCE FOR EMPLOYERS OF EXISTING EMPLOYEES

Employers must have a properly completed Form I-9 on file for every employee hired after November 6, 1986. Deferred action recipients who are currently working may provide updated documentation to their employers. An employer receiving updated documentation from an employee should review the employee's previously completed Form I-9 and determine whether to complete a new Form I-9 or only to complete Section 3 of the previously completed Form I-9 based on the guidelines below.

WHEN TO COMPLETE A NEW FORM I-9 FOR EXISTING EMPLOYEES

If any of the following information has changed in Section 1 of the previously completed Form I-9:

- The employee's name
- Date of birth
- Attestation
- Social Security number, if a social security number was provided on the previously completed Form I-9

Then an employer should:

- Complete a new Form I-9
- Write the original hire date in Section 2
- Attach the new Form I-9 to the previously completed Form I-9

WHEN TO COMPLETE SECTION 3 FOR EXISTING EMPLOYEES

If, after review of the previously completed Form I-9, the employer finds:

- The information in Section 1 has not changed; and
- The employee presents a new EAD.

Then the employer should:

- Examine the documentation to determine if it appears to be genuine and to relate to the employee presenting it. Record the document title, document number and expiration date, if any.
- Sign and date Section 3.

If the employer previously completed Section 3, or if the version of the form the employer used for a previous verification is no longer valid, the employer must complete Section 3 of a new Form I-9 using the most current version and attach it to the previously completed Form I-9.

GUIDANCE ON WHEN TO USE E-VERIFY

In the situations described above where the employer completes an entirely new Form I-9, an employer participating in E-Verify should verify the new Form I-9 information through E-Verify. In the situations described above where the employer only completes section 3 of the previous or a new Form I-9 (because the employer had previously completed section 3 of the original Form I-9, or the original Form I-9 had expired), the employer should not conduct a new E-Verify check.

PREVENTING DISCRIMINATION

The Immigration and Nationality Act prohibits employers from discriminating in the Form I-9 process against work-authorized individuals based on their national origin or, under certain circumstances, their citizenship or immigration status.

FOR ADDITIONAL INFORMATION ABOUT DEFERRED ACTION

For information about accepting documents from individuals whose cases have been deferred by DHS, please contact the U.S. Department of Justice (DOJ), Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 1-800-255-8155 or visit the DOJ website at www.justice.gov/crt/osc.



For additional information about deferred action:

- Call the USCIS National Customer Service Center at 1-800-375-5273 or visit the USCIS website at www.uscis.gov/childhoodarrivals.

For additional information about Form I-9 or E-Verify:

- Contact USCIS at 1-888-464-4218 or send us an email at e-verify@dhs.gov. E-Verify website: www.uscis.gov/e-verify
- Visit I-9 Central website at: www.uscis.gov/i-9central



**U.S. Citizenship
and Immigration
Services**


EXHIBIT SS

Office of the Assistant Secretary
U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR: All Employees

FROM: John Morton
Director 

SUBJECT: Secretary Napolitano's Memorandum Concerning the Exercise of
Prosecutorial Discretion for Certain Removable Individuals Who
Entered the United States as a Child

DATE: June 15, 2012

Today the Secretary of Homeland Security issued the attached memorandum concerning the exercise of prosecutorial discretion for certain removable individuals who entered the United States as a child. Effective immediately, ICE agents and officers are instructed to exercise prosecutorial discretion in a manner that aligns with the Secretary's memorandum. The memorandum states that, with respect to individuals who meet the criteria outlined below, ICE agents and officers should immediately exercise their discretion, on an individual basis, in order to prevent these low priority individuals from being placed into removal proceedings or removed from the United States.

An individual is covered by the Secretary's memorandum if the individual—

- came to the United States under the age of sixteen;
- is not above the age of thirty;
- has continuously resided in the United States for at least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- has not been convicted of a felony offense, a significant misdemeanor offense, or multiple misdemeanor offenses; and
- does not otherwise pose a threat to national security or public safety.

ICE has also been directed to apply the Secretary's policy, on a case by case basis, to individuals whose cases are pending before the Executive Office for Immigration Review and can demonstrate that they meet the above noted criteria. To better facilitate this process, ICE has been further directed to implement a process within sixty days that allows individuals whose

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cases are pending before the Executive Office for Immigration Review to request a review of their cases through the ICE Public Advocate.

Additional guidance on the Secretary's memorandum will be issued as soon as possible. In the meantime, if ICE personnel have questions about the exercise of prosecutorial discretion described in the Secretary's memorandum, they should contact their supervisor or local chief counsel's office.

Disclaimer

As there is no right to the favorable exercise of discretion by the agency, nothing in this memorandum should be construed to prohibit the apprehension, detention, or removal of any alien unlawfully in the United States or to limit the legal authority of DHS or any of its personnel to enforce federal immigration law. Similarly, this memorandum, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

EXHIBIT TT

Social Security Number and Card — Deferred Action For Childhood Arrivals



Am I eligible for a Social Security number and card?

If the U.S. Citizenship and Immigration Services (USCIS) approves your request for Deferred Action for Childhood Arrivals and your application to work in the United States, you may be eligible for a Social Security number. After you get your (I-766) Employment Authorization Card, you can apply for a Social Security number.

How do I apply for a Social Security number?

Social Security must interview you in person so you can complete and sign your application. Call your local office, which you can find online at www.socialsecurity.gov/locator. You must bring papers proving you have permission to work in the United States, your immigration status, age and identity.

You Must Show Social Security

You must show us the originals or certified copies of two documents:

1. Form I-766 Employment Authorization Card (EAD, work permit), and
2. Your foreign birth certificate (if you have one or can get one within 10 business days). If you cannot, we may accept your:
 - Foreign passport;
 - U.S. military record; or
 - Religious record showing age or date of birth.

If you do not have or cannot get one of the above preferred papers within 10 business days, we may accept your:

- U.S. driver's license;
- U.S. state-issued identification card; or
- School record (issued five or more years ago) showing age or date of birth.

Please note: While you may have shown USCIS photocopies of the above papers, you must bring Social Security originals or copies certified the agency that issued them. **We cannot accept photocopies or notarized copies.** We must independently verify the documentation you show us.

For more information, visit www.socialsecurity.gov or call toll-free, **1-800-772-1213** (for the deaf or hard of hearing, call our TTY number, **1-800-325-0778**).

EXHIBIT UU



e-Notification of Application/Petition Acceptance

Department of Homeland Security
 U.S. Citizenship and Immigration Services

USCIS
Form G-1145

What Is the Purpose of This Form?

Use this form to request an electronic notification (e-Notification) when U.S. Citizenship and Immigration Services accepts your immigration application. This service is available for applications filed at a USCIS Lockbox facility.

General Information

Complete the information below and clip this form to the first page of your application package. You will receive one e-mail and/or text message for each form you are filing.

We will send the e-Notification within 24 hours after we accept your application. Domestic customers will receive an e-mail and/or text message; overseas customers will only receive an e-mail. Undeliverable e-Notifications cannot be resent.

The e-mail or text message will display your receipt number and tell you how to get updated case status information. It will not include any personal information. The e-Notification does not grant any type of status or benefit; rather it is provided as a convenience to customers.

USCIS will also mail you a receipt notice (I-797C), which you will receive within 10 days after your application has been accepted; use this notice as proof of your pending application or petition.

USCIS Privacy Act Statement

AUTHORITIES: The information requested on this form is collected pursuant to section 103(a) of the Immigration and Nationality Act, as amended INA section 101, et seq.

PURPOSE: The primary purpose for providing the information on this form is to request an electronic notification when USCIS accepts immigration form. The information you provide will be used to send you a text and/or email message.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information may prevent USCIS from providing you a text and/or email message receiving your immigration form.

ROUTINE USES: The information provide on this form will be used by and disclosed to DHS personnel and contractors in accordance with approved routine uses, as described in the associated published system of records notices [[DHS/USCIS-007 - Benefits Information System and DHS/USCIS-001 - Alien File \(A-File\) and Central Index System \(CIS\)](#)], which can be found at www.dhs.gov/privacy. The information may also be made available, as appropriate for law enforcement purposes or in the interest of national security.

Complete this form and clip it on top of the first page of your immigration form(s).

Applicant/Petitioner Full Last Name	Applicant/Petitioner Full First Name	Applicant/Petitioner Full Middle Name
Email Address		Mobile Phone Number (Text Message)