Question#:	1
Topic:	DACA Authority
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Did your Department obtain a legal opinion from the Office of Legal Counsel or anyone else in the administration about your legal authority to implement the Deferred Action for Childhood Arrivals? Please provide copies of any documentation, including any and all legal opinions, memoranda, and emails, that discusses any authority you have or do not have to undertake the program.

Response: The Department of Homeland Security is fully committed to ensuring that its policies, practices, and procedures – including the Deferred Action for Childhood Arrivals process – comply fully with all relevant constitutional and statutory requirements. As a general matter, however, the Department does not disclose what confidential legal advice has been provided or what legal questions may have been presented to the Office of the General Counsel or to the Department of Justice for consideration.

Question#:	2
Topic:	DACA processing
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Are officers being instructed to approve or pressured to "get to a yes" on DACA applications? Is there guidance to officers that Requests for Evidence (RFEs) not be issued, or to be issued only in extremely rare circumstances?

Response: No. Officers are not being instructed to approve or pressured to "get to a yes" on DACA requests. Nor are officers being instructed to issue requests for evidence (RFE) only in extremely rare circumstances. USCIS officers are instructed to issue an RFE, as necessary, to provide requestors an opportunity to submit additional evidence to support their request prior to USCIS issuing a final decision. As of February 14, 2013, the RFE rate is 22 percent, which is consistent with other USCIS programs that generally issue an RFE prior to final adjudication.

Question#:	3
Topic:	background checks (DACA)
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Describe what databases are queried as part of the applicant's background check and what government agency maintains the database. Does the database have audit qualities to determine date, location, and name of official performing the query?

Response: U.S. Citizenship and Immigration Services (USCIS) performs background and security checks for all individuals who request deferred action as a childhood arrival. All deferred action requestors will be subject to a TECS query, and those requestors 14 years of age and older will also be subject to a Federal Bureau of Investigation (FBI) fingerprint check. Both TECS and the FBI fingerprint identification system have logs that can be used to determine the date, location, and name of the user performing a query. TECS is maintained by U.S. Customs and Border Protection (CBP).

Question: Describe what type of queries are being conducted and the information that is provided as a result of the search (i.e. NCIC queries provide a description of the applicant's criminal history).

Response: TECS is a border enforcement system that, among other functions, supports the screening of travelers entering the United States and the screening requirements of other federal agencies. USCIS has access to all wants, warrants, and lookouts listed in TECS and certain files within the National Crime Information Center (NCIC) database through TECS, as well as files which include wants/warrants, foreign fugitives, missing persons, registered sex offenders, deported felons, supervised releases, protection orders, terrorist organization members, and violent gang members.

The FBI Fingerprint Check provides summary information regarding an individual's administrative and/or criminal record within the United States.

Question: Does USCIS receive assistance from any other government agencies when conducting background checks on applicants? If so, what is the extent of this assistance?

Response: USCIS submits biometric data to the FBI for a comparison of FBI records. When the result is a match to an IDENT fingerprint record, the FBI provides USCIS with details of the requestor's arrest history.

When a TECS query results in a match, USCIS contacts the agency/office that entered the relevant record to obtain additional information and to verify that the record relates to

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Topic:	background checks (DACA)
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the requestor. If the requestor has more than one record, it may be necessary to contact multiple agencies/offices.

Question: Is the Intelligence Community provided the names of the applicant's to cross check with their databases? If not, why not?

Response: All deferred action requestors are subject to a TECS query. When this query returns a positive match against the system's records, USCIS, through its FDNS officers, coordinates closely relevant information with the Intelligence Community to ensure information is shared between USCIS and the pertinent Intelligence Community agency to ensure national security interests are served.

Question: At what stage of the background check is the Fraud Detection and National Security (FDNS) unit at USCIS consulted?

Response: Any background check hits indicating immigration fraud, criminal activity, public safety concerns, or national security concerns are referred to FDNS.

Question: If an applicant does not provide the designated background documents are they allowed to submit additional documents in their place?

Response: If the supporting evidence filed with Form I-821D is deemed insufficient, USCIS will generally issue a request for additional evidence. A list of possible supporting documents can be found on the form instructions.

Question: Are the applicants allowed to present a character reference to verify their identity? If so, are these references verified?

Response: No. An individual requesting consideration of deferred action for childhood arrivals may not present a character reference to verify his or her identity. Requestors are informed before attending the biometrics appointment about which documents are needed to establish identity.

Question: Is FDNS reviewing approved applications for quality assurance? If not, why not?

Response: Each deferred action request forwarded to FDNS as a fraud referral is reviewed to verify the evidence or suspicion of fraud. In addition, USCIS is implementing a process to select a random sample of DACA cases for review and analysis. This will include a pre-adjudication file review as well as a post-adjudication

Question#:	3
Topic:	background checks (DACA)
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follow up to ensure USCIS effectively forwards cases with fraud indicators to FDNS and correctly adjudicates all cases.

Question: Is the Department requiring in-person interviews? If so, under what circumstances? If not, why not?

Response: USCIS will conduct DACA interviews to verify and potentially expand upon the representations a requestor makes in the adjudications process.

Question: Does USCIS have a sufficient number of employees to process the background checks for the large volume of applicants? Is USCIS currently hiring employees or have any vacancies for these positions? If so, how many?

Response: Yes, USCIS does have a sufficient number of employees to process the background checks for the large volume of DACA applicants. USCIS has proactively hired staff from the onset of DACA in order to handle the new workload generated from the program. The DACA hiring process is still on-going. USCIS intends to hire 746 positions within the Agency's Service Center Operations Directorate that will support the DACA process, in addition to other Service Center Operations workloads. Approximately 70% of those hires will be adjudicatory staff while the remaining 30% will consist of support and clerical staff. To date, USCIS Service Center Operations has hired 426 positions associated with the expected DACA-related workload increase – 316 of those positions are adjudicatory staff. An additional 196 hiring actions are pending; thus, a total of 622 DACA related hiring actions have been initiated through USCIS Service Center Operations to-date. Further, as is the case with any newly created process, there are additional positions that will be hired outside of the adjudicatory staff to support and maintain all other agency responsibilities. For the DACA program, the total number of hires will be approximately 1,422 positions. This total number of staffing includes more than 130 positions for FDNS as well as additional staff at the National Benefits Center to process existing workloads that were internally shifted in order to free up capacity at USCIS Service Centers. Finally, some additional hires will also occur within the USCIS Management Directorate to support the increased staffing numbers within the agency.

Question#:	4
Topic:	DACA fraud and abuse
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: What steps has the administration taken to review and ensure that fraudulent documents are not submitted in support of applications for deferred action?

Response: ICE and USCIS will deploy their considerable fraud prevention resources to guard against fraud in this process – and to take strong action against any individuals who engage in fraud. In addition, USCIS has developed training and various resource guides offering exemplars of documents that may be submitted in support of DACA requests. Initial training for officers reviewing DACA requests—including anti-fraud training—occurred in September 2012. Fraud Detection and National Security (FDNS) continues to supplement this initial training with targeted anti-fraud training. USCIS is also working with U.S. Immigration and Customs Enforcement's (ICE) Forensic Laboratory and other federal, state, and foreign government officials for the purposes of building a repository of government issued documents (e.g., passports, birth certificates, and transcripts). These documents are shared with officers and FDNS personnel and are used as an aid in verifying information provided by the DACA requestor.

Question: What types of fraud detection mechanisms have been used? Which have been successful? Which have not been so successful?

Response: USCIS has made clear in its public guidance that if individuals knowingly make a misrepresentation, or knowingly fail to disclose facts, in an effort to have their case deferred or obtain work authorization through this process, they will be treated as an immigration enforcement priority to the fullest extent permitted by law, and be subject to criminal prosecution and/or removal from the United States. USCIS is utilizing the existing Fraud Detection Standard Operating Procedures (SOP) and is incorporating a data-driven approach to further facilitate the identification of potential fraud. The anti-fraud strategy focuses on gathering and managing data, developing strategies, and taking appropriate action on all fraud related issues (e.g., denial and referral to ICE for removal). TECS and fingerprint checks will provide information on individuals who may pose national security or public safety risks as well as indicators of potential fraud. Requestors with positive criminal history results, substantiated findings of fraud, or public safety or national security concerns will be handled under the current Notice To Appear (NTA) policy. If the evidence establishes that an individual has a felony conviction, a significant misdemeanor conviction, three or more non-significant misdemeanor convictions, has attempted to defraud USCIS, or is otherwise a threat to national security or public safety, USCIS will deny the deferred action request unless exceptional circumstances apply.

Question#:	4
Topic:	DACA fraud and abuse
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
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The DACA-specific anti-fraud detection strategy is based on USCIS's identification and analysis from observed trends and USCIS's ability to gather and manage data obtained from and in cooperation with law enforcement, the intelligence community, and other government and institutional partners and to take appropriate action when fraud is discovered. When multiple DACA requests are identified that demonstrate similar indicators of potential fraud, USCIS analyzes the noted requests and conducts additional research and coordination with other U.S. Government entities as appropriate. USCIS then works to validate and develop additional indicators which are disseminated on a broader basis to the adjudicative workflow.

One particular fraud indicator developed using this strategy is the list of suspect schools maintained by USCIS to notify USCIS officers of educational institutions that do not exist or are otherwise suspected of providing fraudulent educational documents. USCIS has noted and acted upon submissions of educational documents that do not appear to have been issued by legitimate schools.

Question: How have the veracity of affidavits been assessed?

Response: For most of the guidelines, affidavits are not sufficient on their own as evidence submitted with a request for deferred action for childhood arrivals. However, affidavits may be used to support meeting the following guidelines, if documentary evidence is unavailable:

- A gap in the documentation demonstrating the five year continuous residence requirement; and
- A shortcoming in documentation with respect to the brief, casual and innocent departures during the five years of required continuous presence.

However, if USCIS determines that the affidavits are insufficient to overcome the unavailability or the lack of documentary evidence with respect to either of these guidelines, it may issue a request for evidence indicating that further evidence must be submitted to demonstrate that the person meets these guidelines.

USCIS will not accept affidavits as proof of satisfying the following guidelines:

- The person is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development certificate, or is an honorably discharged veteran from the U.S. Coast Guard (USCG) or Armed Forces of the United States;

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- The person was physically present in the United States on June 15, 2012;
- The person came to the United States before reaching his or her 16th birthday;
- The person was under the age of 31 on June 15, 2012; and
- The person's criminal history, if applicable.

Question: In what circumstances does an individual receive a notice of intent to deny and a denial of deferred action?

Response: USCIS officers will not defer removal under the DACA process for requestors who do not meet the guidelines set forth in the Secretary's memorandum. Where evidentiary deficiencies are identified, USCIS officers are instructed generally to issue a request for evidence (RFE) or notice of intent to deny (NOID), as necessary, to provide requestors an opportunity to submit additional evidence to support their request prior to USCIS issuing a final decision. USCIS will issue a denial if the requestor does not provide sufficient evidence to satisfy the guidelines. In some instances an outright denial may be issued without first issuing an RFE or NOID. For example, if the record contains irrefutable evidence that a requestor was age thirty-one or older on June 15, 2012 or did not arrive in the United States before his or her sixteenth birthday, USCIS will issue a straight denial because the requestor is unable to satisfy the guideline.

Question: In what circumstance is an individual who is denied deferred action placed in removal proceedings?

Response: If USCIS decides not to defer action in a particular case, USCIS will apply its existing policy guidance governing the referral of cases to ICE and USCIS' issuance of Notices to Appear (www.uscis.gov/NTA).

Question: Please explain the applicable confidentiality provisions. At what point in the process does confidentiality attach? Is confidentiality protected no matter the case, or is previous fraud, criminal behavior or national security concerns being raised with other law enforcement?

Response: Information provided in a request is protected from disclosure to ICE and U.S. Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to U.S. Immigration and Customs Enforcement under the criteria set forth in USCIS's Notice to Appear guidance (www.uscis.gov/NTA). Individuals whose cases are deferred pursuant to the consideration of deferred action for childhood arrivals process will not be referred to ICE. The information may be shared with national security and law

Question#:	4
Topic:	DACA fraud and abuse
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
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enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of deferred action for childhood arrivals request, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. The above information-sharing policy covers family members and guardians, in addition to the requestor.

Question: What sort of punishment will be sought for aliens who commit fraud or material misrepresentation? Please elaborate if any punishments have been imposed.

Response: USCIS is committed to safeguarding the integrity of the immigration process. If individuals knowingly make a misrepresentation, or knowingly fail to disclose facts, in an effort to have their case deferred or obtain work authorization through this process, they may face significant consequences. They will be treated as an immigration enforcement priority to the fullest extent permitted by law, and be subject to criminal prosecution and/or removal from the United States.

Question#:	5
Topic:	DACA Data
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Please provide the following detailed data, as requested by Chairman Smith and myself on September 20, 2012:

Question a: The number of submitted Form I-821Ds (applications for deferred action)

Question a-i: received

Response: As of March 14, 2013; USCIS has accepted approximately 480,231 DACA requests at the intake lockbox facilities.

Question a-ii: approved

Response: As of March 14, 2013; USCIS has approved approximately 252,193 DACA requests.

Question a-iii: denied

Response: Generally speaking, USCIS first accepts or rejects filings at a Lockbox facility for intake and, within days, issues a receipt notice. Within the next two weeks, individuals are scheduled for their biometrics services appointments, which in turn, are set two to three weeks in advance to allow individuals to adjust their schedule or arrange transportation to appear in person for biometrics collection. After the appointment, biometric and biographic checks are run through various databases before a case is considered adjudication ready. Cases yielding hits are sent first to specialized units to resolve the matter in question and provide definitive information before a case proceeds to adjudication. Consistent with standard practice, officers reviewing cases who identify a deficiency in the facts or evidence presented generally will first issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) before denying the case. Each of these avenues provides the requestor an opportunity to address the deficiency in their request. The agency provides a standard time period of 84 days to respond to an RFE and 30 days to respond to a NOID. If the requestor's response to an RFE or NOID does not adequately address the area of concern, the case will be denied. At present, given that the process has been just over six months in existence, approximately 1,102 cases have reached the stage where they have been denied.

Question a-iv: approved despite a criminal conviction

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Topic:	DACA Data
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Response: USCIS does not have these statistics.

Question a-v: approved despite a pending criminal charge

Response: USCIS does not have these statistics.

Question a-vi: approved despite a juvenile criminal conviction

Response: USCIS does not have these statistics.

Question a-vii: denied for suspicion of fraud or on the basis of fraud. Of those, how many have been referred for prosecution or removal, and how many have been prosecuted or removed for such cause?

Response: Since the implementation of DACA, approximately 1,102 denials have been issued. None have been denied for fraud. However, USCIS currently has pending cases that have not yet been decided that are under active investigation for fraud.

Question a-viii: containing fraud indicators

Response: As of March 14, 2013; approximately 2,466 cases have been referred to the Center Fraud Offices (Fraud Detection and National Security) for fraud verification/investigation. The Center Fraud Offices have returned approximately 656 of those cases where fraud was not substantiated. The remaining approximate 1,810 cases are still pending with the Center Fraud Offices for verification and investigation.

Question b: The number of submitted Form I-765s (applications for work permits) submitted along with an I-821D

Question b-i: received

Response: As of March 14, 2013; USCIS has accepted approximately 457,550 I-765 Applications filed concurrently with DACA requests at the intake lockbox facilities.

Question b-ii: approved

Response: As of March 14, 2013; USCIS has approved approximately 254,626 I-765 Applications that were filed concurrently with DACA requests.

Question b-iii: Denied

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Topic:	DACA Data
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Response: As of March 14, 2013; USCIS has denied approximately 1,165 I-765 Applications that were filed concurrently with DACA requests.

Question b-iv: granted a fee waiver.

Response: As of March 14, 2013; USCIS has granted approximately 76 fee exemptions. Fee waivers are not available for DACA requests.

Question c: The number of individuals granted deferred action under the DACA policy who

Question c-i: have applied for advanced parole

Response: As of February 28, 2013; USCIS has received approximately 124 DACA related applications for advance parole.

Question c-ii: have been granted advance parole

Response: As of February 28, 2013; USCIS has approved approximately 77 DACA related applications for advance parole.

Question c-iii: have been granted advanced parole, traveled, and been paroled back into the United States and subsequently been granted lawful permanent residency.

Response: USCIS does not keep these statistics.

Question c-iv: have been granted lawful permanent residency under any other means.

Response: USCIS does not keep these statistics.

Question d: The number of parents of applicants for DACA who have

Question d-i: requested prosecutorial discretion
Question d-ii: received prosecutorial discretion
Question d-iii: been denied prosecutorial discretion.

Response: There is no process for parents whose children are granted deferred action to be considered under the deferred action for childhood arrivals initiative unless they independently satisfy the guidelines. Other individuals may, on a case-by-case basis,

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Topic:	DACA Data
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
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request deferred action from USCIS or ICE in certain circumstances, consistent with longstanding practice.

Question e: The number of applications that have been received for individuals in removal proceedings, and the number of deferred action or work permit applications that have been approved for individuals in removal proceedings.

Response: USCIS does not keep these statistics.

Question f: The number of DACA applicants who have been denied deferred action who have been:

Question f-i: placed in removal proceedings

Response: As of February 21, 2013; USCIS has not placed any DACA requestor in removal proceedings. ICE does not track these statistics, as ICE only handles DACA requests from aliens held in ICE custody. ICE does not have any mechanisms in place to identify when a USCIS denial of a DACA application results in ICE placing the alien into removal proceedings.

Question f-ii: denied due to ineligibility

Response: As of March 14, 2013; USCIS has denied approximately 1,102 DACA requests.

Question f-iii: denied due to fraud or other violation of the immigration law

Response: Out of the approximate 1,102 denials to date, none have been denied for fraud. USCIS currently has pending cases that have not yet been decided that are under active investigation for fraud.

Question f-iv: denied due to criminal history

Response: USCIS does not have statistics on how many requests were denied because of criminal history.

Question f-v: deported from the United States.

Response: DHS does not keep these statistics.

Question#:	6
Topic:	Denials
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: How many DACA applications have been denied? What is the process for an adjudicator to deny an application? For what reasons have DACA applications been denied? Please break down the number of applications denied and from which service center they originate.

Response: Individuals who do not satisfy the guidelines, or who USCIS adjudicators determine should not receive an exercise of prosecutorial discretion, will be denied. USCIS officers are instructed generally to issue a request for evidence or notice of intent to deny, as necessary, to provide requestors an opportunity to submit additional evidence in support of their request prior to USCIS issuing a final decision. As of March 14, 2013, USCIS has denied 1,102 requests.

Question#:	7
Topic:	financial health (DACA)
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Is there any concern about the fiscal health of the agency in charge of DACA – the U.S. Citizenship and Immigration Service? Is the current amount being charged for DACA covering all related costs, including processing, background checks, and fraud prevention efforts? Is there any discussions taking place about increasing the application costs for DACA?

Response: All individuals that submit a request for Deferred Action for Childhood Arrivals (DACA) must pay a fee of $380 for Form I-765, *Application for Employment Authorization* (which is filed concurrently with Form I-821D, *Consideration of Deferred Action for Childhood Arrivals*, and is processed concurrently with that form as part of an integrated process) and an $85 biometric processing fee for a total of $465. There are no fee waivers available for employment authorization requests filed in connection with DACA, although fee exemptions are permitted in very limited circumstances. Since August 15, 2012, USCIS has been closely monitoring fee receipts associated with DACA and the costs to the agency for processing the request including background checks, and fraud prevention efforts. Revenues have been sufficient to cover all costs to the agency for the DACA process. USCIS will continue to carefully monitor and track revenues from the program to ensure they fully cover costs. USCIS will examine the cost of the DACA program along with all other agency workload processes as part of its 2014-2015 Biennial Fee Review (as required by the CFO Act of 1990) to determine if a fee adjustment is warranted.

Question#:	8
Topic:	Luis Abrahan Sanchez Zavaleta 1
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Regarding the Luis Abrahan Sanchez Zavaleta case, you said at the hearing, "I did not learn about it until January [2013] and nor did my aides." However, all Republican members of the Senate Judiciary Committee sent you a letter on December 19, 2012, regarding the matter.

Would you like to correct the record with the Committee regarding when you first learned of the Sanchez Zavaleta case, or do you stand by your statement that you did not learn of the case until January 2013?

When was the first time the case was raised with anyone else at DHS headquarters? What was the context? What action was taken in response?

Response: At the hearing before this Committee, I misspoke as to the date of the Associated Press (AP) article on the case. I stated at the hearing that the AP ran a story in January. In fact, that AP story ran in December, and that is when I learned of this matter.

However, DHS staff was made aware of this matter prior to then, and assisted in facilitating coordination between USCIS and ICE, and arranged notification to Senator Menendez's office after Mr. Zavaleta was apprehended. To my knowledge, decisions on the merits of this case were made by USCIS and ICE. DHS headquarters did not make those decisions.

Question#:	9
Topic:	deferred action
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: On the application for Deferred Action for Childhood Arrivals (DACA), Form I-821D, question 1 of Part 3 asks, "Have you ever been arrested for, charged with, or convicted of a felony or misdemeanor in the United States?" Question 5.d of Part 3 asks if the respondent has ever had "any kind of sexual contact or relations with any person who was being forced or threatened." Sanchez Zavaleta answered no to both questions, despite having been arrested for aggravated sexual assault on October 11, 2009.

However, Elliot Williams, ICE Assistant Director for the Office of Congressional Relations, informed Senate Judiciary Committee staff in a February 4, 2013, briefing that lying on a DACA application was not considered a crime.

h. Why is it not a crime to lie on a DACA application?

i. When false information is provided on a DACA application, how should USCIS deal with such a situation?

j. If there are no consequences for lying on a DACA application, please explain how this is not an invitation to lie to the federal government on a DACA application.

Response: It is false to say there are no consequences for lying on a DACA application. A DACA requestor is required to declare under penalty of perjury that the information provided to support his or her request is true. Lying on a DACA request is a crime and DHS will treat it as such. If false information is provided in a DACA request, that information may be shared with national security and law enforcement agencies, including ICE and CBP, for the investigation or prosecution of a criminal offense, to identify or prevent fraudulent claims, or for national security purposes. USCIS has made clear in its public guidance that if individuals knowingly make a misrepresentation, or knowingly fail to disclose facts, in an effort to have their case deferred or obtain work authorization through this process, they will be treated as an immigration enforcement priority to the fullest extent permitted by law, and be subject to criminal prosecution and/or removal from the United States.

Question#:	10
Topic:	Union concerns
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: When was the last time you met with the head of each union to discuss concerns by agents?

Response: The American Federation of Government Employees, AFL-CIO (AFGE), is the certified representative of the nationwide bargaining unit that includes U.S. Immigration and Customs Enforcement (ICE) officers and agents involved in customs enforcement. AFGE has delegated most of the representation functions for this bargaining unit to National Immigration and Customs Enforcement Council 118 (C118), which comprises 26 union locals. Most of ICE's 24 field office directors meet regularly with the union local presidents and their executive board. Although the C118 president elected to discontinue participation in the national ICE labor management relations forums (LMRF), union local presidents continue to participate in local LMRF meetings.

All of ICE's field offices established ICE-LMRFs in early 2011 and, except for those few local presidents who elected not to participate or to discontinue participation in the ICE-LMRFs, ICE field office directors conduct monthly or quarterly LMRF meetings with local presidents and local union officers.

ICE senior leadership, including Director John Morton, has met with C118 as follows:

- January – March 2013 – Executive Associate Director Radha Sekar and Human Capital Officer Kim Bauhs had a series of ongoing briefing regarding Sequestration, Budget and Furlough issues.

- April 2013 – Kim Bauhs meet with C118 regarding Federal Viewpoint Survey and a series of other topics raised by the council. Kim requested additional future meetings regarding issues of common interest.

- February 2012—Director Morton met with the C118 President and John Gage, then AFGE National President, regarding upcoming negotiations concerning the ICE Collective Bargaining Agreement. Negotiations were held in the summer of 2012. A senior advisor to Director Morton served as the chief negotiator.

- November 2011—ICE reached out to the C118 President as part of a study to improve ICE's Labor Relations Program and interactions with the Council. After initial discussions, C118 declined further participation.

Question#:	10
Topic:	Union concerns
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

- June 2011—Director Morton and ICE senior leadership participated in mediation with C118 led by the Federal Mediation and Conciliation Service (FMCS). Through structured interaction, both parties were able to discuss specific problem areas and identify possible means to resolve the issues. While some matters were addressed through those discussions, areas of disagreement remained. FMCS recommended sessions targeted at improving the nature of the relationship and interactions between labor and management; however, C118 declined to participate.

- March 2011—Per Executive Order 13522, "Creating Labor-Management Forums to Improve the Delivery of Government Services," Director Morton hosted a labor forum with C118 during which numerous issues were discussed of interest to the Council. The Department of Homeland Security (DHS) has also sponsored DHS-wide forums during which ICE senior leadership and C118 have participated. Although C118 initially declined further involvement in the forums, recently, C118 has begun to participate occasionally.

Gary Mead, Executive Associate Director (EAD), ICE Office of Enforcement and Removal Operations (ERO), has also hosted regular opportunities for pre-decisional involvement with C118 about topics as diverse as agent and officer uniforms, parameters for a single agent and officer career path, opportunities for a peer support program, and other issues. Additionally, last year, Director Morton accompanied EAD Mead to many town halls with ICE personnel held across the country and during those trips, met with local union leadership to discuss concerns, mission, and strategy.

Question: How do you respond to the ICE union's complaint that they are handicapped from fulfilling their missions?

Response: The performance of ICE officers has allowed ICE to achieve record-setting results in 2012, demonstrating they are successfully fulfilling the ICE mission.

Overall, in FY 2012, ERO removed 409,849 individuals. Of these individuals, approximately 55 percent, or 225,390 of the people removed, were convicted of felonies or misdemeanors—almost double the removal of criminals in FY 2008. This includes removal of 1,215 aliens convicted of homicide; 5,557 aliens convicted of sexual offenses; 40,448 aliens convicted for crimes involving drugs; and 36,166 aliens convicted for driving under the influence.

ICE continues to make progress with regard to other categories prioritized for removal. In 2012, 96 percent of all of ICE's removals fell into a priority category—a record high.

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Thus, far from being handicapped in fulfilling the ICE mission, the performance of ICE officers and agents has been record-setting in 2012.

Question: Do you have plans to meet with either union in the near future?

Response: ICE's Office of Human Capital officials have made offers to reconstitute the ICE Level LMRF or some method of regular scheduled LMR communications and we are awaiting a positive response from the Council 118 President. ICE has indicated that it would like to reinstate the LMRFs as part of our renewed efforts to establish effective means of constructive dialogue with the national union. Local managers continue to hold LMRF meetings with the local union presidents.

Of note, on March 5, 2013, the C118 president attended the most recent Department of Homeland Security LMRF.

Question#:	11
Topic:	Future guest workers
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Why is the President's plan silent on the need for future guest workers, particularly low-skilled workers? Do you believe that a new legal avenue for low-skilled workers is needed in order to stem the flow of illegal immigration?

Response: The manner in which legislation deals with the potential need for future temporary workers is an important part of immigration reform. We are open to seeing how any proposal from the Senate or House proposes to address future temporary worker programs so that it both protects workers, including immigrant workers, and is based on data-drive workforce needs, and will work with Congress on any such proposals.

Question#:	12
Topic:	Legalization program details
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Should people here illegally who are in removal proceedings be allowed to benefit from a legalization program? Should people that have ignored the government's orders to leave the United States – after a thorough legal proceeding—be allowed to benefit from a legalization program?

Response: The Administration has made clear that any immigration reform package must include a legal way for undocumented immigrants to earn citizenship that will encourage them to come out of the shadows so they can play by the same rules as everyone else, including paying their taxes. Under any earned citizenship plan, immigrants living here illegally must be held responsible for their actions by passing national security and criminal background checks, paying taxes and a penalty, going to the back of the line, and learning English before they can earn their citizenship.

Question: Should an alien convicted of a felony criminal offense or multiple misdemeanors be allowed to benefit from a legalization program?

Response: The Administration has made clear that any immigration reform package must include a legal way for undocumented immigrants to earn citizenship that will encourage them to come out of the shadows so they can play by the same rules as everyone else, including paying their taxes. Under any earned citizenship plan, immigrants living here illegally must be held responsible for their actions by passing national security and criminal background checks, paying taxes and a penalty, going to the back of the line, and learning English before they can earn their citizenship.

Question: Should gang members be allowed to benefit from a legalization program?

Response: The Administration has made clear that any immigration reform package must include a legal way for undocumented immigrants to earn citizenship that will encourage them to come out of the shadows so they can play by the same rules as everyone else, including paying their taxes. Under any earned citizenship plan, immigrants living here illegally must be held responsible for their actions by passing national security and criminal background checks, paying taxes and a penalty, going to the back of the line, and learning English before they can earn their citizenship.

Question: If an alien provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions?

Question#:	12
Topic:	Legalization program details
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Response: The manner in which legislation deals with the confidentiality of information submitted as part of an earned legalization program is an important part of immigration reform. We look forward to seeing how any proposal from the Senate or House proposes to address this issue, and will work with Congress on any such proposals.

Question: Should people here illegally be given probationary status, or legal status, without a background check done first? Should there be a time limit imposed for federal agents with regard to background checks on aliens who apply for legalization?

Response: The Administration has made clear that any immigration reform package must include a legal way for undocumented immigrants to earn citizenship that will encourage them to come out of the shadows so they can play by the same rules as everyone else, including paying their taxes. Under any earned citizenship plan, immigrants living here illegally must be held responsible for their actions by passing national security and criminal background checks, paying taxes and a penalty, going to the back of the line, and learning English before they can earn their citizenship.

Question: Should aliens (rather than taxpayers) who benefit from a legalization program pay for all costs associated with it?

Response: An earned legalization program should include the payment of fees and penalties to offset the costs of administration.

Question: Should people that apply for legalization be required to submit to an in-person interview with adjudicators?

Response: The manner in which legislation deals with how applications should be processed is an important part of immigration reform. We look forward to seeing how any proposal from the Senate or House proposes to address this issue, and will work with Congress on any such proposals.

Question: Should people that have been denied legalization be placed in immigration proceedings and removed?

Response: The manner in which legislation deals with individuals whose applications for legalization have been denied is an important part of immigration reform. We look forward to seeing how any proposal from the Senate or House proposes to address this issue, and will work with Congress on any such proposals.

Question#:	12
Topic:	Legalization program details
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: If the Secretary of Homeland Security must revoke a visa for someone on U.S. soil, should that decision be reviewable in the U.S. courts?

Response: The manner in which legislation deals with judicial review as part of a visa program is an important part of immigration reform. We look forward to seeing how any proposal from the Senate or House proposes to address this issue, and will work with Congress on any such proposals.

Question#:	13
Topic:	Entry/exit system
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Until immigration reform is passed by Congress, what will your Department be doing to comply with the 1996 law that requires the Executive Branch to implement a biometric entry and exit system?

Response: As required by the FY2012 Appropriations Act, DHS provided to the House and Senate Appropriations Committees a Comprehensive Biometric Air Exit Plan in May 2012. In that plan, DHS explained that it will continue to pursue research and development into a biometric air exit plan, led by the DHS Science and Technology Directorate (S&T), while enhancing the existing biographic air exit system that DHS uses today to identify and sanction those who have overstayed their authorized period of admission to the United States. Given the concerns with earlier biometric air exit pilots conducted between 2004 and 2009, DHS S&T will work with subject matter experts from U.S. Customs and Border Protection (CBP) and the National Institute of Standards and Technology (NIST) in order to evaluate recent private sector and international technology deployments to determine additional operational models for a biometric air exit program. Our first step is to identify technology that is viable and not cost-prohibitive before proceeding with a pilot program. The plan also described how the Department will continue to enhance its existing exit system using biographic data between now and 2014, which will:

- Significantly enhance our existing capability to identify and target for enforcement action those who have overstayed their authorized period of admission and who represent a public safety and/or national security threat;
- Establish an automated entry-exit capability that will produce information on individual overstays and determine overstay percentages by country;
- Allow us to take administrative action against confirmed overstays by providing the State Department with information to support visa revocation, prohibiting VWP travel, and placing individuals on lookout lists, in accordance with existing federal laws;
- Establish greater efficiencies to our Visa Security Program, allowing for research and analytic activities to be carried out in the United States and investigative and law enforcement liaison work overseas; and
- Provide the core components of an entry-exit and overstay program that will incorporate and use biometric information, as technologies

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mature and DHS can implement an affordable biometric air exit system.

In the past two years, DHS has worked to better detect and deter those who overstay their authorized period of admission through implementation of the enhanced biographic program. As part of Phase I of this effort, in May 2011, Department components began a coordinated effort to vet all potential overstay records against intelligence community and DHS holdings for national security and public safety concerns. In total, Department components reviewed the backlog of 1.6 million unvetted potential overstay records based on national security and public safety priorities. The resulting individuals of concern were forwarded to U.S. Immigration and Customs Enforcement (ICE) for further investigation, and the remaining records are being manually reviewed by ICE to determine overstay status and will be pursued by ICE in accord with the Administration's enforcement priorities. Phase II of this effort includes automating connections between data sources, allowing the Department's Arrival-Departure Information System, which tracks overstays for the Department, to use additional USCIS data useful to determining overstays, and refining ICE's ability to more effectively target and prioritize overstay leads of concern. This phase was deployed on April 9, 2013.

DHS is also following through on Phase III of the enhanced biographic exit plan. This includes database modernization, further investments in targeting and prioritization capabilities, increased functionality between biometric and biographic repositories, as well as document validation, which will dramatically improve the ability to successfully match entry and exit records biographically. In addition to improving existing biographic capabilities, DHS is finding low cost ways to eliminate existing gaps in data. DHS has partnered with Canada to develop an exit program on the common land border of both countries. Beginning June 30, 2013, each country will exchange entry records on third-country nationals and permanent residents, with the other, such that an entry into one country will be an exit from the other. Thus, DHS will have a functioning biographic land border exit system on the northern border by mid-2013, in addition to the biographic air/sea exit system already in place.

When fully implemented, the biographic program will eliminate backlog of unreviewed overstays, and allow DHS to prioritize and take action on overstays, focusing on national security and public safety, and serve as a solid foundation as DHS continues to research additional methods of collecting biometric data at the point of departure for foreign nationals.

Question#:	14
Topic:	Cook County
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: There has been a lot of discussion about the ordinance in place in Cook County, Illinois. Despite the strong stance taken by you and Director Morton, nothing has changed and the safety of the public is still at risk. Please provide an update on what options are being discussed on how to deal with the ordinance and its impediment on ICE's mission. Also, please outline what discussions have taken place with the Department of Justice about withholding SCAAP funds for places like Cook County.

Response: The Department of Homeland Security and U.S. Immigration and Customs Enforcement (ICE) are committed to ensuring the safety of American communities and will continue to consider options to encourage Cook County officials to honor ICE detainers. ICE has engaged with the Cook County Board of Commissioners about this issue. To address Cook County's concerns, ICE has discussed several alternatives regarding the ordinance.

On September 21, 2012, ICE sent a letter to the Bureau of Justice Assistance, within the Office of Justice Programs at the Department of Justice (DOJ), indicating that ICE had completed its review of the fiscal year (FY) 2012 State Criminal Alien Assistance Program (SCAAP) funding requests. The letter informed DOJ that the agency's ability to accurately verify the immigration status of criminal aliens detained by jurisdictions that restrict ICE's access to information and persons who may be in the country unlawfully is undermined. Accordingly, while ICE did complete its review of all FY 2012 SCAAP requests received from DOJ, ICE was not able to verify submissions from Cook County, Illinois, and Santa Clara County, California.

Question#:	15
Topic:	detention standards
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Last February, ICE announced changes to its detention standards, providing more accommodations and benefits to illegal aliens. The manual says that transgender detainees who were already receiving hormone therapy when taken into ICE custody shall have continued access. Does that mean taxpayers will be paying for these therapies, or will the costs of the therapy be the burden of the detainee? To date, have taxpayers paid for these therapies? If so, what has been the cost to taxpayers?

Response: U.S. Immigration and Customs Enforcement's (ICE) new standard governing access to hormone therapy mirrors the policy of the Department of Justice, Bureau of Prisons (BOP). Under ICE policy, detainees who are already receiving hormone therapy when taken into ICE custody are provided continued access to such therapy, and all transgender detainees in ICE custody have access to transgender-related medical care and medications based on medical need. Similar to BOP policy on Gender Identity Disorder (GID), ICE policy requires that inmates diagnosed with GID receive all medically necessary treatment to achieve physical and mental stability, including hormone therapy, regardless of whether or not they had already been receiving such treatment prior to being taken into custody.

All necessary medical care in detention facilities is funded by ICE or the local government entity operating the facility rather than by individual detainees; however, the costs of providing hormone therapy are modest, ranging from approximately $11-35/month for male-to-female hormone treatment, and approximately $15-30/month for female-to-male hormone treatment. In addition, ICE's policy is consistent with medical and legal findings that abrupt termination of hormone therapy can result in adverse, severe medical reactions, treatment of which may cause the government to incur significant medical expenses.

Question#:	16
Topic:	Visa Security Program
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: What is the status of the Visa Security Program, specifically how many units are deployed and where are they deployed? Do you believe that the Visa Security Program should be expanded to all 57 visa-issuing posts determined to be high risk by DHS and the Department of State? If so, how much would it cost to expand the VSP to all high-risk posts? Why haven't you asked Congress for that amount as part of your proposed budget?

***** Law Enforcement Sensitive *****

Response:

Question#:	16
Topic:	Visa Security Program
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

***** Law Enforcement Sensitive *****

Question#:	17
Topic:	Morton Memoranda
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: In 2011, ICE Director John Morton issued two memoranda that outlined priorities for prosecutorial discretion. I was troubled by the issuance of those memoranda and I remain troubled by their implementation.

Chris Crane, a witness on the second panel here today, submitted written testimony for today's hearing detailing disturbing accounts of the implementation of this prosecutorial discretion directive. Specifically, he recounts the experience of three ICE agents in Salt Lake City, Utah, who arrested an individual after he admitted in open court that he was in the country illegally. The ICE Field Office Director, however, ordered that all the charges be dropped and that the ICE agents be placed under investigation for making the arrest. I understand that this is just one of many instances in which agents' ability to arrest offenders has been restricted.

Are you concerned that at some point a specific set of so-called "priorities," when universally enforced in rigid fashion, will essentially amount to the enactment of legislation without bicameralism and presentment?

Response: No, this process is simply smart law enforcement policy that will help U.S. Immigration and Customs Enforcement (ICE) effectuate its priorities and effectively use its immigration enforcement resources. The use of prosecutorial discretion in the immigration context has long been recognized by the Supreme Court, including most recently in *Arizona v. United States*.

Question#:	18
Topic:	workplace enforcement
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: In April 2009, ICE introduced a revised worksite enforcement strategy that prioritizes prosecutions against employers who hire unauthorized workers over the prosecution of unauthorized workers.

Has this shift in priorities measurably reduced the employment of illegal aliens?

Response: DHS neither measures nor is aware of any industry that actively measures this type of data.

U.S. Immigration and Customs Enforcement's (ICE) Office of Homeland Security Investigations believes that our revised strategy utilizing enforcement (criminal arrests of employers), compliance (Form I-9 inspections, civil fines and debarment) and outreach (ICE Mutual Agreement between Government and Employers (IMAGE) program) is more effective in creating a culture of compliance. Since its launch in 2009, the current WSE strategy has resulted in record years in criminal arrest of employers/managers, initiation of WSE investigations, I-9 inspections, suspension and debarment of companies, and finals orders of administrative fines.

Question: In what ways might a bill that requires the use of E-Verify increase ICE's ability to enforce employment laws in the workplace?

Response: The Administration believes that mandated the use of E-Verify, in a phased-in manner, is an important component in an immigration reform bill. E-Verify provides businesses with a clear, free, and efficient means to determine whether their employees are eligible to work in the United States. By helping employers ensure their workforce is legal, electronic verification promotes economic fairness and a level playing field, prevents the illegal hiring that serves as a magnet for further undocumented immigration across our borders, and protects workers from exploitation.

Question#:	19
Topic:	Border control 1
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: In your written statement, you ascribe the four-year decrease in attempts to cross the Southwest border illegally, as measured by Border Patrol apprehensions, to more effective border security.

Are you able to account for the effects of a sluggish economy on the decrease in border crossings over the last four years?

Response: Border security is a shared responsibility, and a concept that doesn't begin or end at the border. To be truly effective, it requires a unity of effort, involving a whole of government approach to include Federal, state, local, tribal, and bi-national partnerships. Although there are various factors that influence apprehension rates, the Department believes that the decline is due in large part to the investments that have been made in border security resources. The Department will continue to maintain and expand upon its successes, by further integrating Federal, state, local, tribal, and bi-national border security efforts and by applying a risk-based strategy, based on information and intelligence while moving towards a more flexible and mobile workforce that can rapidly respond to emerging threats.

Question#:	20
Topic:	Border control 2
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: Last year, you implemented a new index to track the security of the border – one that, remarkably, does not seek to track the number of illegal aliens who succeed in crossing the border.

How can improvements in border security be measured accurately if you have changed the metrics by which you assess security?

Response: Border security is not a simple concept and it cannot be measured in a single metric. Border Patrol officers and agents measure success utilizing dozens of metrics, each of which paints a different portion of the overall border security picture and each of which informs tactical decision making. Amongst others, these metrics include apprehensions, recidivism, and crime rates in border communities. While each metric helps inform the overall state of border security, the relative importance of each metric shifts over time. Because no single metric can measure border security, our focus has been on ensuring that Border Patrol agents have the tools necessary to best secure our borders.

Question#:	21
Topic:	Visa Exit System
Hearing:	Comprehensive Immigration Reform
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: At a full Committee hearing last April, you testified that a biometric visa exit system could be deployed within 4 years. You then submitted your plan to Congress in May. In your written statement for today's hearing, you suggested that the current phase, which involves automating connections between DHS data sources, would be complete sometime this year.

When do you expect the biometric exit system to be fully implemented?

Response: DHS provided to the House and Senate Appropriations Committees a Comprehensive Biometric Air Exit Plan in May 2012. In that plan, DHS explained that it will continue to pursue research and development into a biometric air exit plan, led by the DHS Science and Technology Directorate (S&T), while enhancing the existing biographic air exit system that DHS uses today to identify and sanction those who have overstayed their lawful period of admission to the United States. Given the concerns with earlier biometric air exit pilots conducted between 2004 and 2009, DHS S&T will work with subject matter experts from CBP and NIST in order to evaluate recent private sector and international technology deployments to determine additional operational models for a biometric air exit program. Our first step is to identify technology that is viable and not cost-prohibitive before proceeding with a pilot program.

Question: I believe that increased international tourism could do much more good for our economy than our current system allows. America is still viewed as the top destination for many foreigners who would come and spend a substantial amount of money here. Travel is one of the easiest ways to spur economic growth in our cities, in our national parks, and at our tourist attractions. With a reliable exit system in place, we could do more, legislatively, to encourage international tourism.

What effect do you predict a biometric exit system will have on the visa overstay rate?

Response: A biometric air exit system will have a marginal impact on the visa overstay rate. Biometric air exit data provides additional assurances that an identity departing the United States matches a specific identity that previously entered the United States. While this will provide significant operational benefits to DHS, biometric exit must still be "anchored" by a biographic exit system in order to allow the biometric data to match within the time limits that the entry and exit operational environment requires. Further, biometric air exit does not solve certain data gaps that DHS is addressing elsewhere, such as land border departures.