

Questions for the Record

July 11, 2012 Nominations Hearing

Senator Mike Lee

Questions for Mr. Orrick

- 1. You supervised the Department of Justice’s district court litigation against Utah, Arizona, Alabama, and South Carolina for implementing immigration enforcement provisions. In a speech at a conference for the ICE Office of Principal Legal Advisors, you said, “We have relied on cooperation from state and local law enforcement to do our job. But cooperation with the preeminent authority means that the states have to act in concert with federal priorities.”**

- a. Who determines what the federal priorities for immigration enforcement are?**

Response: Federal priorities for immigration enforcement are set pursuant to Congressional enactments, such as the Immigration and Nationality Act, the relevant implementing regulations, and the Department of Homeland Security, which is vested with significant discretion in the aforementioned laws and regulations.

- b. If Congress passed legislation outlining enforcement priorities, would the President be authorized to ignore that legislation and create priorities of his own?**

Response: This is an issue which may come before me if I am fortunate enough to be confirmed, and I am reluctant to comment on it. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

- c. If the President attempted and failed to pass legislation establishing enforcement priorities, should he be authorized to establish an enforcement scheme adopting those priorities?**

Response: Again, this is an issue which may come before me if I am fortunate enough to be confirmed, and I am reluctant to comment on it. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

- 2. In the speech at the ICE conference you said that “the prosecutorial discretion decision is about doing justice and maintaining the credibility and integrity of the immigration system.”**

a. To what decision were you referring?

Response: I was referring to the decision made by ICE to exercise or not exercise prosecutorial discretion in an individual immigration proceeding.

b. Do you believe the prosecutorial discretion directives outlined in the recent ICE memorandum, allowing for deferred action on the “Dream Act” population, maintains the credibility and integrity of the immigration system?

Response: As a current employee of the Department of Justice and a prospective federal judge, I do not believe it would be appropriate for me to express any personal views on Secretary Napolitano’s recent memorandum entitled “Exercising Prosecutorial Discretion With Respect To Individuals Who Came To The United States As Children.”

c. Do you believe that a President should be able to enact under the label of prosecutorial discretion that which he could not pass through Congress?

Response: As I indicated above, this is an issue which may come before me if I am fortunate enough to be confirmed, and I am reluctant to comment on it. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.