



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

Statement of the American Immigration Lawyers Association

**Submitted to the
Committee on the Judiciary of the U.S. Senate**

Hearing on January 10, 2017

Nomination of Sen. Jeff Sessions for Attorney General

The American Immigration Lawyers Association (AILA) is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has over 14,000 attorney and law professor members nationwide.

Senator Sessions' record as a U.S. senator and federal prosecutor raises serious concerns that he would be unwilling or unable to interpret the U.S. Constitution in a fair and neutral manner or exercise balanced judgment on immigration law as is required of the Attorney General. AILA urges the Senate Judiciary Committee to ask the following questions of Sen. Sessions and to insist on forthright responses demonstrating he would faithfully execute his duties consistent with the Constitution before voting to confirm him.

- Will Sen. Sessions uphold and defend the 14th Amendment to the Constitution and its guarantee that individuals born in the United States are entitled to citizenship regardless of their parentage, ethnicity, or race?
- Will Sen. Sessions guarantee that people facing removal will receive due process and a hearing before an impartial judge? Will he ensure that the immigration court system has adequate budget and resources to operate effectively and that it will be protected from political interference?
- Will Sen. Sessions uphold his duty as Attorney General to enforce civil rights and anti-discrimination laws, and commit to prosecuting states and localities that engage in practices such as the unconstitutional profiling, arrest and detention of immigrants? Will Sen. Sessions intervene to stop state legislation like Arizona's "show me your papers" law, SB 1070, struck down by the Supreme Court as unconstitutional?
- Will Sen. Sessions adopt a humane and reasonable approach to the young DREAMERS brought here as children who received protection under the DACA initiative and others who have lived here for years who have families and jobs but do not have legal status?

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Sen. Sessions has opposed the 14th Amendment’s guarantee of birthright citizenship.

As the country’s top lawyer and highest-ranking law enforcement official, the Attorney General (AG) has broad authority over the application and interpretation of immigration law as well as the fundamental responsibility to uphold and defend the Constitution. Startlingly, Sen. Sessions rejects the view that children born in this country are U.S. citizens, a direct challenge to the Constitution’s fundamental protections under the 14th Amendment. He has proposed the extreme position that children born in the United States are not U.S. citizens if their parents were citizens or subjects of another country at the time of the child’s birth.¹

The Citizenship Clause of the 14th Amendment states: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”² The Citizenship Clause makes clear that citizenship based on place of birth is a fundamental right inextricably tied to our liberty and equal rights, and that each person is born equal with no disadvantage or exalted status arising from the circumstance of their parentage.³ Any restrictions on the rights of citizenship guaranteed in the 14th Amendment would offend this country’s most sacred values and Constitutional principles. Sen. Sessions has proposed re-establishing the very same discriminatory exclusion that the 14th Amendment was intended to remedy, and he should be called upon to disavow proposals to strip people born in the United States of the right to citizenship.

Sen. Sessions must pledge to ensure the immigration court system is given the resources it needs to operate effectively and is protected from political interference.

Our nation’s immigration system cannot function effectively without a fair and efficient immigration court system that can manage the high volume of cases involving people seeking relief from removal. The Attorney General oversees the immigration court system, including the courts and the Board of Immigration Appeals (BIA). Immigration judges are chosen by the DOJ’s Executive Office for Immigration Review, which also sets standards and instructions for how judges should interpret immigration law. The Obama administration recently hired 61 immigration judges, bringing the total to 294. But Congress has authorized 374 judge positions leaving 78 open slots. In addition many judges are expected to retire in the next few years. In short, as Attorney General he will have the opportunity to fill dozens of new judge positions.

¹ Katie Connolly, *Row over US-born Immigrant Children Heats Up*, BBC NEWS, Aug. 2010, <http://www.bbc.com/news/world-us-canada-10874090>; See also, Manu Raju and Scott Wong, McCain backs Citizenship Hearings, POLITICO, Aug. 2010, <http://www.politico.com/story/2010/08/mccain-backs-citizenship-hearings-040589>.

² U.S. Const. amend. XIV, § 1.

³ See, AILA: Really? Birthright Citizenship Is the ‘Immigration’ Issue Congress Wants to Take Up?, (Apr. 28, 2015), http://www.aila.org/advo-media/press-releases/2015/birthright-citizenship-issue-congress?utm_source=aila.org&utm_medium=InfoNet%20Search; Wendy Feliz, American Immigration Council, *Birthright Citizenship: What It Is and Why We Need to Preserve It*, <http://immigrationimpact.com/2015/08/21/birthright-citizenship-what-it-is-and-why-we-need-to-preserve-it/>.

In the past the immigration court system has been criticized for its lack of independence, particularly since it functions fully under the authority of the Attorney General. In 2007, an investigation was conducted regarding the political nature of hiring and firing decisions implemented by then-Attorney General Alberto Gonzales.⁴ The investigation resulted in a temporary freeze on the hiring of immigration judges and members of the BIA as well as the subsequent resignation of Mr. Gonzales.⁵ Sen. Sessions should pledge that he will protect the immigration court system from political and ideological interference.

Sen. Sessions must pledge to stop abusive civil rights violations against immigrants like those committed by Arizona Sheriff Joe Arpaio.

As a U.S. Attorney for the Department of Justice (DOJ) in Mobile, Alabama, Sessions used his position to wrongly prosecute African-American voting rights activists in Alabama's Black Belt. In 1985, he filed dozens of counts of voter fraud and related charges against Albert Turner, an advisor to Martin Luther King, Jr.; his wife, Evelyn; and a colleague, Spencer Hogue—known as the “Marion Three”—who were assisting elderly citizens with absentee ballots. The judge dismissed more than half of the charges for lack of evidence, and the jury acquitted the Marion Three of all remaining charges after only three hours of deliberation. The case is widely acknowledged as a gross abuse of prosecutorial authority. One year later, Sen. Sessions' nomination for a federal judgeship was rejected by the Senate at least in part due to his prosecution of the Marion Three.

A chief responsibility of the Department of Justice is to intervene and prosecute states and localities that engage in racial, ethnic or nationality-based profiling, arrest or detain immigrants without due process of law, or commit other violations of the Constitution or federal law. Yet Sen. Sessions has called for states and localities to enforce immigration law in an aggressive manner that will almost certainly result in the kind of harassment and civil rights abuses that the Department of Justice is charged with preventing.

For example, Sen. Sessions has called for expansive enforcement of federal immigration law by states and localities by giving them broad authority and responsibility for investigating, identifying, apprehending, and detaining individuals suspected of being undocumented. See the Homeland Security Enhancement Act (HSEA) of 2003, the HSEA Act of 2005 and the Michael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act (“Davis and Oliver Act”).⁶

⁴ An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General, U.S. Dep't of Justice, July 28, 2008,

<https://www.justice.gov/sites/default/files/opr/legacy/2008/07/28/goodling072408.pdf>.

⁵ Alberto Gonzales, Resignation Letter to President G. W. Bush, Apr. 26, 2007,

<http://online.wsj.com/public/resources/documents/gonzales-08272007.pdf>

⁶ Homeland Security Enhancement Act of 2003, S. 1906, 108th Cong. (2003); Homeland Security Enhancement Act of 2005, S. 1362, 109th Cong. (2005); Michael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act, S. 1640, 114th Cong. (2015).

Sen. Sessions has called for local law enforcement authorities to enforce federal immigration law with apparent disregard to constitutional protections. Under his Davis and Oliver Act, he would penalize localities whose law enforcement officials have chosen to detain noncitizens only where there is probable cause to detain. Courts have concluded that detention for longer periods violates the Constitution's right to due process.⁷ Rather than acknowledge that detainers must satisfy Constitutional requirements, Sen. Sessions' bill attempts to summarily cloak all federal immigration detainers with probable cause, as if the underlying facts have no bearing on the application of the Fourth Amendment. In short, Sen. Sessions' proposals call for states and localities to engage in practices that endanger the Constitution's fundamental protections. In addition, local law enforcement agencies inclined to commit such abuses will likely feel emboldened if Sen. Sessions becomes Attorney General, and the country would see increases in practices like those used by Sheriff Joe Arpaio who notoriously applied discriminatory tactics targeting immigrant communities. The Department of Justice Civil Rights Division initiated prosecution against Sheriff Arpaio for precisely these civil rights violations, and in October 2016, a federal judge found him in criminal contempt.

Our nation needs an Attorney General who is firmly committed to the defending the Constitution and enforcing our laws. Sen. Sessions should not be confirmed unless he pledges to enforce civil rights laws and explains how he will respond when state and local law enforcement agencies engage in such discriminatory practices. In addition, Sen. Sessions should pledge to act against states that pass "show me your papers" laws like Arizona's SB 1070 which was struck down by the Supreme Court⁸ as unconstitutional.

Sen. Sessions should pledge to adopt a humane policy regarding young DREAMERS granted DACA and others who have lived in the United States for years who have families and jobs but do not have legal status.

Sen. Sessions should be asked how he will handle the situation of those who have lived in the United States for years who still do not have legal status. In particular, 750,000 people have been granted temporary reprieve from removal under the Deferred Action for Childhood Arrivals initiative (DACA) and they are now at risk of losing deferred action. President-elect Trump has stated that we will rescind DACA as a program, but he has also indicated a softer position with respect to those who have already been granted DACA.

⁷ *Morales v. Chadbourne*, 793 F.3d 208, 215-16 (1st Cir. 2015). See also *Miranda-Olivares v. Clackamas Cnty.*, No. 3:12-CV-02317-ST, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) (*holding that plaintiff's "continued detention [on an ICE detainer] exceeded the scope of the Jail's lawful authority over the released detainee, constituted a new arrest, and must be analyzed under the Fourth Amendment."*); See *Arizona v. US*, 132 S. Ct. 2492, 2509 (2012) (stating that, "Detaining individuals solely to verify their immigration status would raise constitutional concerns.") (citing *Arizona v. Johnson*, 555 U.S. 323, 333, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009); *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005)).

⁸ *Arizona v. United States*, 567. U.S. ___, 132 S. Ct. 2492 (2012), available at <https://www.supremecourt.gov/opinions/11pdf/11-182b5e1.pdf>.

Sen. Sessions past views suggest he would actively pursue enforcement against anyone without legal status⁹ despite consistent public polling that shows that 75 percent of Americans support legalizing the status of the undocumented and similarly high support for protecting those granted DACA.¹⁰ For example, he has proposed legislation that would criminalize the undocumented and require their prosecution and incarceration. His Homeland Security Enhancement Act of [2003](#) would criminalize all immigration status violations by requiring those who are here without documentation to be prosecuted for a misdemeanor with a maximum sentence of one-year in prison. Similarly the Davis and Oliver Act would criminalize immigrants by authorizing the criminal prosecution and incarceration of any individual who is “unlawfully present.” These bills would result in thousands of arrests not only by federal immigration authorities but by the states and localities who would be empowered to enforce immigration law. In the 2013 debate on the comprehensive immigration reform bill, S.744, he offered amendments which would have eliminated or made unworkable the legalization program for the undocumented.

⁹ See Sen. Sessions’ HSEA Act of 2003 and Davis Oliver Act; Statement of Sen. Sessions, July 27, 2016, <http://www.sessions.senate.gov/public/index.cfm?p=news-releases&id=B762148D-BC48-46BF-899D-C74BEA14FC85>

¹⁰ Bradley Jones, *Americans’ Views of Immigrants Marked by Widening Partisan Generational Divides*, PEW RESEARCH CENTER, Apr. 15, 2016, <http://www.pewresearch.org/fact-tank/2016/04/15/americans-views-of-immigrants-marked-by-widening-partisan-generational-divides/>; Roberta Rampton, *Most Americans Support Obama’s Contested Immigration Plan: Poll*, REUTERS, Jan. 28, 2016, <http://www.reuters.com/article/us-usa-election-immigration-idUSKCN0V617V>.