

## SASSE AMENDMENT SA 4839

### TEXT OF AMENDMENT

**SA 4839.** Mr. SASSE submitted an amendment intended to be proposed to amendment SA 4685 proposed by Mr. SHELBY (for himself and Ms. MIKULSKI) to the bill H.R. 2578, making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2016, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

Sec. \_\_\_\_ (a) Congress finds the following:

(1) On May 19, 2016, United States district court judge Andrew Hanen issued an order finding that Department of Justice lawyers made a number of intentionally false statements to defend the Accountability Immigration Executive Action of the President.

(2) Judge Hanen stated the lawyers lied to the court 3 distinct times:

(A) LIE #1.—On December 19, 2014, Department of Justice lawyers asked to push a hearing back to January, assuring the court that no applications to the Deferred Action for Childhood Arrivals program (in this section referred to as “DACA”) program would be approved. (“This was not a curve ball thrown by the Government; this was a spitball which neither the Plaintiff States nor the Court would learn of until March 3, 2015.”. *Texas v. United States*, Civil No. B-14-254, 2016 WL 3211803, at \*5 (S.D. Tex. May 19, 2016).)

(B) LIE #2.—In January 2015, Department of Justice lawyers told the court no applications for DACA would be accepted until February 18, 2015, and no action would be taken on them until March 4—meanwhile 100,000 applications had already been approved.

(C) LIE #3.—On February 23, 2015, a week after an injunction was issued, Department of Justice lawyers filed a brief stating that DACA applications were set to begin on March 3, despite the fact that the Department of Homeland Security started processing them in late November 2014. (“Yet counsel, who knew of the DHS activity, were not only silent, but their motion was certainly calculated to give the impression that nothing was happening or had happened pursuant to the 2014 DHS Directive—when, in fact, by that time over 100,000 applications had already been granted.” *Id.* at \*7.)

(3) Judge Hanen drew the following conclusions:

(A) “[T]he Justice Department lawyers knew the true facts and misrepresented those facts to the citizens of the 26 Plaintiff States, their lawyers and this Court on multiple occasions. . . . Such conduct is certainly not worthy of any department whose name includes the word ‘Justice.’ ”. *Id.* at \*3.

(B) “The United States Department of Justice . . . has now admitted making statements that clearly did not match the facts. It has admitted that the lawyers who made these statements had knowledge of the truth when they made these misstatements.”. *Id.* at \*1.

(C) “These misrepresentations will be discussed in more detail below; but suffice it to say the Government’s attorneys effectively misled the Plaintiff States into foregoing a request for a temporary restraining order or an earlier injunction hearing. Further, these misrepresentations may have caused more damage in the intervening time period and may cause additional damage in the future. Counsel’s

misrepresentations also misdirected the Court as to the timeline involved in the implementation of the 2014 DHS Directive, which included the amendments to the Deferred Action for Childhood Arrivals ('DACA') program." Id. at \*2.

(D) "The Government's attorneys knew since late-November of 2014 that the DHS was issuing three-year deferrals under the 2014 DHS Directive. Whether it was one person or one hundred thousand persons, the magnitude does not change a lawyer's ethical obligations. The duties of a Government lawyer, and in fact of any lawyer, are threefold: (1) tell the truth; (2) do not mislead the Court; and (3) do not allow the Court to be misled. The Government's lawyers failed on all three fronts. The actions of the DHS should have been brought to the attention of the opposing counsel and the Court as early as December 19, 2014. The failure of counsel to do that constituted more than mere inadvertent omissions—it was intentionally deceptive. There is no de minimis rule that applies to a lawyer's ethical obligation to tell the truth." Id. at \*7 (citation omitted).

(E) "The failure of counsel to inform the counsel for the Plaintiff States and the Court of the DHS activity—activity the Justice Department admittedly knew about—was clearly unethical and clearly misled both counsel for the Plaintiff States and the Court." Id. at \*9.

(F) "This Court finds that the misrepresentations detailed above: (1) were false; (2) were made in bad faith; and (3) misled both the Court and the Plaintiff States." Id. at \*10.

(G) "In fact, it is hard to imagine a more serious, more calculated plan of unethical conduct." Id. at \*11.

(b) It is the sense of Congress that the conduct of the Department of Justice lawyers is unbecoming of representatives of the highest-ranking law enforcement officer in the United States.