

**Question on notice no. 352**

**Portfolio question number: AE21-352**

**2020-21 Additional estimates**

**Legal and Constitutional Affairs Committee, Home Affairs Portfolio**

**Senator Nick McKim:** asked the Department of Home Affairs on 22 March 2021—

How many detainees in APODs are being considered for the US Deal?

- a. Is consideration of acceptance in the US deal a criterion for detention?
  - i. If so, on what basis would it be considered necessary to hold someone in detention while their application to the US Deal is being processed?
- b. What specific criteria determines your detention in or release from an APOD?

**Answer —**

Please see the attached answer.

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ADDITIONAL ESTIMATES  
22 MARCH 2021**

**Home Affairs Portfolio  
Department of Home Affairs**

**Program 1.3: Onshore Compliance and Detention**

**AE21-352 - APOD detainees being considered for US Deal**

Senator Nick McKim asked:

How many detainees in APODs are being considered for the US Deal?

- a. Is consideration of acceptance in the US deal a criterion for detention?
  - i. If so, on what basis would it be considered necessary to hold someone in detention while their application to the US Deal is being processed?
- b. What specific criteria determines your detention in or release from an APOD?

*Answer:*

As at 31 March 2021

- a) Approximately 10 transitory persons residing in Alternative Places of Detention in Australia have received provisional positive United States resettlement outcomes. Many individuals continue to pursue US resettlement.
  - a. No.
    - i. Not applicable
- b) Under section 197AB of the Act, the Minister has the power to make a residence determination for a person in immigration detention, permitting them to reside in the community at a specified address under specified conditions. Under section 195A of the Act, the Minister has the power to grant a visa to a person in immigration detention. The Minister's intervention powers are non-compellable, meaning the Minister is not obliged to exercise or to consider exercising these powers. The Minister exercises these powers if the Minister determines it is in the public interest to do so. What is in the public interest is a matter for the Minister to determine. The Minister's guidelines establish the types of cases that should or should not be referred by the Department to the Minister for consideration under the intervention powers. Only cases which meet the guidelines are referred to the Minister.