



Testimony of

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U.S. Department of Homeland Security

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Dream Act Testimony before the Senate Judiciary Subcommittee on Immigration, Refugees, and Border Security, June 28, 2011

Chairman Durbin, Ranking Member Cornyn, and members of the Subcommittee: Thank you for this opportunity to testify about how the Development, Relief, and Education for Alien Minors Act, or “DREAM Act,” would promote the Department of Homeland Security’s (DHS) security mission. The Administration strongly supports the DREAM Act.

Last year, in the closing days of the 111th Congress, the President and I, along with several members of the Cabinet, urged Congress to pass the DREAM Act. It passed the House with bipartisan support, and fell just a few votes short in the Senate despite receiving support from both Democrats and Republicans. In his statement following the Senate’s vote, the President stated that passage of the DREAM Act “is not only the right thing to do for talented young people who seek to serve a country they know as their own, it is the right thing for the United States of America. Our nation is enriched by their talents and would benefit from the success of their efforts.” I am pleased that the Senate has not given up on this important bill. I commend Senator Durbin for reintroducing the DREAM Act last month, and those 34 co-sponsors who have signed onto the bill thus far.

Passage of this bill is important for our country in many regards, including the ways that it would benefit our economy and our Armed Forces. However, from the perspective of DHS, I can also add to those important arguments, the important ways that the DREAM Act would further our mission to enforce and administer our Nation’s immigration laws.

The DREAM Act should be seen in the broader context of this Administration’s comprehensive approach to border security and immigration enforcement, which has achieved important and historic results.

Over the past two years, we have focused enforcement resources on identifying criminal aliens and those who pose the greatest security threats to our communities. The DREAM Act supports these important priorities because only individuals of good moral character who have not committed any crime that would make them inadmissible to the United States would be eligible for DREAM Act relief. Only young people who have met requirements regarding moral character and criminal records, and who are poised to contribute to our country, would be eligible. These individuals do not represent a risk to public safety or security. Yet as long as there are no legal options available for them to adjust their immigration status, they will be part of the population subject to immigration enforcement under the law. As a result, even though they pose no threat to public safety and do not meet our enforcement priorities, ICE resources may still be expended processing their cases. As the President has said, it makes no sense to be using our enforcement resources against young people who have known no other country but this one, and who have shown their desire to study and serve.

This is a major reason I urge Congress to pass the DREAM Act: to allow the Department to devote a greater portion of limited DHS resources to removing individuals who actually pose a risk to public safety or security.

Though the focus of this hearing is the DREAM Act, it is important that the record reflect the unprecedented resources this Administration has devoted to Southwest border security and immigration enforcement, and the historic results that have been achieved. My statement will illustrate these efforts, and then discuss how the DREAM Act supports DHS' public safety and security missions.

Southwest Border Enforcement

In March 2009, the Obama Administration launched the Southwest Border Initiative to bring focus and intensity to Southwest border security, coupled with a reinvigorated, smart and effective approach to enforcing immigration laws in the interior of our country. We are now more than two years into this strategy, and based on previous benchmarks set by Congress, it is clear that this approach is working.

Under the Initiative, DHS has increased the size of the Border Patrol to more than 20,700 agents, which is more than double the size it was in 2004. We have doubled personnel assigned to Border Enforcement Security Task Forces, which work to dismantle criminal organizations along the border. We have increased the number of ICE intelligence analysts along the border focused on cartel violence. In all, a quarter of ICE's personnel are now in the region, the most ever. We have quintupled deployments of Border Liaison Officers to work with their Mexican counterparts, and we are now screening all southbound rail traffic and a random number of other vehicles for illegal weapons and cash that are helping fuel the cartel violence in Mexico.

In terms of border infrastructure, we have constructed a total of 650 miles of fencing out of nearly 652 miles where Border Patrol field commanders determined it was operationally required, including 299 miles of vehicle barrier and 351 miles of pedestrian fence. The remaining two miles will be completed by this fall. With \$600 million provided in the 2010 Emergency Border Security Supplemental Appropriation Act, we are adding more technology, manpower, and infrastructure including 1,000 new Border Patrol Agents by the end of FY 2011; 250 new CBP officers at ports of entry; and 250 new ICE special agents investigating transnational crimes.

We are also improving our tactical communications systems, adding two new forward operating bases and two more CBP unmanned aircraft systems. For the first time, we now have

Predator Unmanned Aircraft System coverage along the Southwest border from California to Texas. These investments are augmenting the additional non-intrusive inspection systems, Remote Video Surveillance Systems, thermal imaging systems, radiation portal monitors, mobile license plate readers, and other technologies that we have deployed to the Southwest border over the past two years along with the mobile surveillance equipment that will be purchased with FY 2011 funding.

Furthermore, President Obama authorized the temporary deployment of up to 1,200 National Guard personnel to contribute additional capabilities and capacity to CBP while additional agents were hired and trained. That support is enabling us to bridge the gap and hire the additional agents to support the Southwest Border that Congress provided through the FY 2010 Southwest Border Supplemental.

Earlier this month, the Administration extended the temporary deployment of National Guard personnel along the Southwest border through September 30, 2011. In the meantime, DHS and CPB are continuing efforts to actively hire and train new personnel and implement new technology to enhance our border security architecture.

To support jurisdictions along the border, DHS has directed a record \$123 million in Operation Stonegarden funds in 2009 and 2010 to state, local and tribal law enforcement agencies in Southwest border states. Operation Stonegarden pays for overtime costs and other border-related expenses.

As we have taken all of these steps to enhance border security, we are also bringing greater fiscal discipline to our operations. The *SBI^{net}* program began in 2005 as an attempt to provide a single one-size-fits-all technology solution for the entire Southwest border. Throughout

its existence, this program was consistently over budget, behind schedule, and simply did not provide the return on investment needed to justify it.

Last year, I directed an independent, quantitative assessment of the *SBI_{net}* program, which combined the input of Border Patrol agents on the front lines with the Department's leading science and technology experts. This assessment made clear that *SBI_{net}* could not meet its original objective of providing a one-size-fits-all border security technology solution. As a result, earlier this year, I directed CBP to redirect *SBI_{net}* resources to other, proven technologies – tailored to each border sector – to better meet the operational needs of the Border Patrol. This new border security technology plan – which is already well underway – will provide faster deployment of technology, better coverage, and a more effective balance between cost and capability. It includes non-intrusive inspection equipment at the ports of entry and tested, commercially available technologies for immediate use between the ports.

Results

Taken as a whole, the additional manpower, technology and resources we have added over the past two years represent the most serious and sustained action to secure our border in our Nation's history. And it is clear from every measure we currently have that this approach is working.

Illegal immigration attempts, as measured by Border Patrol apprehensions, have decreased 36 percent in the past two years, and are less than one third of what they were at their peak. We have matched decreases in apprehensions with increases in seizures of cash, drugs, and weapons. In fiscal years 2009, 2010, and the first half of 2011, CBP and ICE have seized 75 percent more currency, 31 percent more drugs, and 64 percent more weapons along the

Southwest border as compared to the last two and a half years of the previous administration. As we have worked to combat illegal crossings, violent crime in U.S. border communities has remained flat or fallen in the past decade. Indeed, four of the biggest cities in America with the lowest rates of violent crime – San Diego, Phoenix, Austin, and El Paso – are on or near the border. Violent crimes in Southwest border counties have dropped by more than 30 percent and are currently among the lowest per capita in the Nation. Crime rates in Arizona border towns have remained essentially flat for the past decade, even as drug-related violence has dramatically increased in Mexico.

Strong, Strategic Enforcement of Our Immigration Laws

Security along our borders is inseparable from immigration enforcement in the interior of our country, and both are critical to an effective immigration system.

In this period of constrained fiscal resources, DHS – like all federal agencies – must set clear priorities. Our approach to immigration enforcement is guided by a common-sense premise based on sound prosecutorial practice: implement the measures that best protect public safety and produce the most significant results.

DHS has worked to develop enforcement strategies that focus on identifying criminal aliens and those who pose the greatest threat to our communities, and prioritizing them for removal. We also have worked to ensure that employers have the tools they need to maintain a legal workforce, and face penalties if they knowingly and repeatedly violate the law.

Our interior enforcement efforts are achieving unprecedented results. More than half of those removed last year – upwards of 195,000 – were convicted criminals, the most ever removed from our country in a single year. Between October 2008 and October 2010, the

number of convicted criminals that ICE removed from the United States increased 71 percent, while the number of non-criminals removed dropped by 23 percent.

Secure Communities is an important tool to ensure that the limited enforcement resources of the federal government are used in the most effective possible way to improve public safety. ICE receives an annual appropriation from Congress sufficient to remove a limited number of the more than 10 million individuals estimated to be in the U.S. who lack lawful status or are removable based on their criminal history. Given this reality, ICE has set clear and common-sense priorities for immigration enforcement focusing on criminal aliens and those who pose a threat to public safety. Secure Communities is a critical part of this approach.

The concept is straightforward: Secure Communities uses fingerprints taken when individuals are booked into state prisons and local jails to identify and remove criminal aliens. When an arrestee's fingerprints are checked against the FBI's criminal databases, they are also shared with ICE and checked against ICE immigration databases to determine whether someone who has been arrested is subject to removal.

Since 2008, ICE has expanded Secure Communities from 14 jurisdictions to more than 1,300 today, including every jurisdiction along the Southwest border. Through April 30, 2011, ICE has removed more than 77,000 criminal aliens — more than 28,000 of whom were convicted of aggravated felonies such as murder, rape, kidnapping and the sexual abuse of children — through Secure Communities. The percentage of removed criminals who have committed serious felonies will only increase with time, as the convicted individuals complete their actual prison sentences and are referred to ICE custody.

Secure Communities is clearly an important and valuable tool to enforce our immigration laws and promote public safety. Nonetheless, no program is perfect, and there is room to

improve Secure Communities. Earlier this month, ICE and the DHS Office of Civil Rights and Civil Liberties (CRCL) announced key improvements to the Secure Communities program designed to improve and clarify its goals to law enforcement and the public.

Moving forward, ICE and CRCL will conduct an ongoing quarterly statistical review of the program to identify effectiveness and any indications of potentially improper use of the program. Statistical outliers in local jurisdictions will be subject to in-depth analysis, and DHS and ICE will take appropriate steps to resolve any issues.

In addition, ICE and CRCL have developed a new training program for state and local law enforcement agencies in to provide information on how Secure Communities works and how it relates to the laws governing civil rights.

At my direction, ICE, in consultation with CRCL, has developed a new policy specifically to protect victims of domestic violence and other crimes and to ensure these crimes continue to be reported and prosecuted. This policy directs ICE officers to exercise appropriate discretion to ensure victims and witnesses to crimes are not penalized by removal. ICE is also working to develop additional tools that will help identify people who may be a victim, witness, or member of a vulnerable class so officers can exercise appropriate discretion. This step will help to prioritize the use of ICE resources on the removal of perpetrators of crimes, rather than victims or witnesses.

ICE also issued a new memo providing guidance for ICE law enforcement personnel and attorneys regarding their authority to exercise discretions when appropriate – authority designed to help ICE better focus on meeting the priorities of the agency, by targeting criminals and those who are a threat to public safety.

ICE has also created a new advisory committee that will advise the Director of ICE on ways to improve Secure Communities. This new advisory committee will comprise chiefs of police, sheriffs, state and local prosecutors, court officials, ICE agents from the field, and community and immigration advocates. The first report will be delivered within 45 days, will provide recommendations on how to mitigate potential impacts on community policing practices, including recommendations for addressing cases where individuals are charged with, but not convicted of, minor traffic offenses but have no other criminal history or egregious immigration violations.

Given the rapid growth of Secure Communities, ICE has taken steps to clarify some matters that have not been clear in the past. For example, ICE has revised the detainer form ICE sends to local jurisdictions to emphasize the longstanding guideline that state and local authorities are not to detain an individual for more than 48 hours. The form also requires state and local law enforcement to provide arrestees with a copy, which includes a number to call if they believe their civil rights have been violated.

Furthermore, ICE and CRCL have created a new complaint system whereby individuals or organizations who believe civil rights violations connected to Secure Communities have occurred can file a complaint.

All of these steps will improve Secure Communities' achievement of important public safety goals.

Worksite Enforcement and E-Verify

In addition to our work with Secure Communities, we have also strengthened worksite enforcement. Last year, DHS arrested and sanctioned a record number of employers who

knowingly hire illegal labor. Since January 2009, ICE has audited more than 4,700 employers suspected of hiring illegal labor, debarred more than 320 companies and individuals, and imposed more than \$64 million in financial sanctions — more than the total amount of audits and debarments than during the entire previous Administration. Last fiscal year, ICE also arrested 196 employers accused of criminal violations related to employment, an agency record.

As a corollary, we have strengthened the efficiency and accuracy of E-Verify – our web-based employment verification system managed by U.S. Citizenship and Immigration Services (USCIS) and designed to assist employers in abiding by the law. As of today, more than 269,000 employers are enrolled in E-Verify, representing more than 903,000 locations. More than 1,300 new employers enroll each week and the number of employers enrolled in E-Verify has more than doubled each fiscal year since 2007. In FY 2010, E-Verify processed 16.4 million employment queries.

In March of this year, USCIS launched the new E-Verify Self-Check feature, an innovative service that allows individuals in the United States to check the accuracy of government records before formally seeking employment. This voluntary, free, fast, and secure service gives users the opportunity to submit corrections of any inaccuracies in their DHS and SSA records before applying for jobs, thereby making the process more efficient for potential employees and employers.

USCIS has continued to improve E-Verify's accuracy and efficiency, enhance customer service, and reduce fraud and misuse in a number of additional ways. To improve E-Verify's accuracy, USCIS reduced mismatches for naturalized and derivative U.S. citizens by adding naturalization data and U.S. passport data to E-Verify. Because of this enhancement, in FY 2010 more than 81,000 queries that previously would have received an incorrect mismatch were

automatically verified as employment authorized. In June 2010, E-Verify launched improved navigational tools to enhance ease-of-use, minimize errors, and bolster compliance with clear terms of use. USCIS also has increased its staffing dedicated to E-Verify monitoring and compliance, adding 80 staff positions since the beginning of FY 2010. Finally, to more effectively address identity theft, USCIS now allows for the verification of passport photos through E-Verify. Other options to minimize identity fraud or theft are currently under study.

How the DREAM Act Supports the DHS Immigration Enforcement Mission

As I have previously stated, the DREAM Act is important for a variety of reasons. But as the person charged with enforcing our immigration laws, it is clear to me that the DREAM Act would also support and build upon DHS progress in achieving its enforcement priorities. Specifically, passage of the DREAM Act would allow us to focus even more attention on true security threats by providing a firm but fair way for individuals brought into our country as children – through no fault of their own – to obtain legal status by pursuing higher education, or by serving in the U.S. Armed Forces for the country where they have grown up and which they consider their home.

As introduced in the Senate, the DREAM Act establishes a rigorous process for those who entered the United States illegally as children to obtain conditional permanent resident status by proving that they meet several strict requirements. Specifically, they must prove that they came to the United States when they were 15 years of age or younger; have been continuously physically present in the United States for at least five years as of the date of enactment; have had good moral character since the date they initially entered the United States; are not inadmissible under certain specified grounds in existing immigration laws, including

criminal and security-related grounds; have graduated from a U.S. high school, obtained a GED, or been admitted to an institution of higher education; and in addition to satisfying the criminal and security-related grounds of removability, have never been convicted of any federal or state offense punishable by a term of imprisonment of more than one year, or three or more offenses where they were imprisoned for an aggregate term of 90 days or more.

Those applying for conditional permanent resident status would also need to submit biometric and biographic data and undergo security and law enforcement background checks and a medical examination. Conditional permanent resident status will be terminated if the individual becomes inadmissible based on criminal activity or other specified grounds, fails to maintain good moral character, or receives a dishonorable or other than honorable discharge from the Armed Forces.

Furthermore, within six years, those individuals with conditional permanent resident status would need to meet additional requirements in order to have the conditional basis of their status removed. Specifically, during the period of conditional permanent resident status, they must not become inadmissible under certain grounds, including criminal and security-related grounds; must acquire a degree from an institution of higher education in the United States or complete at least two years in good standing, or serve in the Armed Forces for at least two years without receiving a dishonorable or other than honorable discharge; must continue to demonstrate good moral character; and must satisfy the English language and civics requirements that apply to applicants for naturalization.

As you can see, the eligibility requirements for the DREAM Act mean that those who qualify do not fall within ICE enforcement priorities. Yet without the DREAM Act, young people will continue to be caught up in the immigration removal system, siphoning resources

away from other, more pressing needs. It does not make sense from a law enforcement or public safety perspective to devote limited enforcement resources on young people who pose no threat to public safety, who were brought to this country illegally by no fault of their own and have grown up here, and who want to contribute to our country by serving in the military or going to college.

Our agency stands ready to implement the DREAM Act. U.S. Citizenship and Immigration Services has 135 application support centers nationwide and the capacity to support the anticipated additional applications that the DREAM Act would generate. Furthermore, the Administration intends to sustain our immigration enforcement efforts for the long term. The DREAM Act will enhance our ability to focus immigration resources where most needed.

Conclusion

Passage of the DREAM Act will neither resolve nor substitute for the need for comprehensive immigration reform. But while the broader immigration debate continues, I urge Congress to pass the DREAM Act. It is common-sense legislation that has been supported by Democrats, Republicans, and Independents. It will assist the Department in fulfilling our security and public safety mission.

Chairman Durbin, Ranking Member Cornyn, and members of the Subcommittee: Thank you again for the opportunity to testify today. I am now happy to answer your questions.