



WRITTEN STATEMENT OF  
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

**“Addressing the Immigration Status of Illegal Immigrants Brought to the United States as Children”**

**Submitted to the U.S. House Committee on the Judiciary  
Immigration and Border Security Subcommittee**

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Chairman Gowdy, Ranking Member Lofgren, and Members of the Subcommittee on Immigration and Border Security:

The American Civil Liberties Union (“ACLU”) commends the Subcommittee on Immigration and Border Security for conducting a hearing on a pathway to citizenship for aspiring Americans who came to the U.S. as children, popularly known as DREAMers. The ACLU is a nationwide, non-partisan organization of more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to enforcing the fundamental rights of individuals under the Constitution and laws of the United States. The Immigrants’ Rights Project of the ACLU engages in a national program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of immigrants.

Addressing the legal status of DREAMers is an important, but insufficient response to the need for immigration reform. This statement discusses additional reforms that are necessary to give DREAMers the equal protection of our Constitution and a fair chance to fulfill their American dream.

**I. To guarantee full equality and inclusion for DREAMers and U.S. citizen children in mixed-status families, immigration reform legislation must include a fair pathway to citizenship for aspiring Americans as well as due process reforms.**

Irrespective of their immigration status, all children suffer when their parents and siblings are living in the shadows.<sup>1</sup> Undocumented people are vulnerable to exploitation by employers, which has serious economic consequences for their families. Millions of DREAMers, other immigrants, and U.S. citizens live daily with the fear that their parents and siblings will be detained and deported.<sup>2</sup> High school DREAMers wonder whether their parents will be there to see them graduate and to move onto higher education. Any immigration reform legislation, therefore, must include a fair path to citizenship that keeps families together.

In addition, immigration reform must address the systemic due process problems that have long plagued our immigration detention and deportation system. Almost 205,000 parents of U.S. citizen children were deported between July 2010 and September 2012.<sup>3</sup> In far too many cases, immigration judges do not even have the authority to consider whether parents can remain with their children in the U.S. Convictions for an “aggravated felony”—a misnomer which includes misdemeanors, no contest pleas, non-

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<sup>1</sup> See HIROKAZU YOSHIKAWA & JENYA KHOLOPTSEVA, MIGRATION POLICY INSTITUTE, UNAUTHORIZED IMMIGRANT PARENTS AND THEIR CHILDREN’S DEVELOPMENT (2013), available at <http://www.migrationpolicy.org/pubs/COI-Yoshikawa.pdf>.

<sup>2</sup> Over five million children—eight percent of all children in the U.S.—have at least one parent who is an undocumented immigrant. *Id.* at 3.

<sup>3</sup> Seth Freed Wessler, *Nearly 205K Deportations of Parents of U.S. Citizens in Just Over Two Years*, COLORLINES (Dec. 17, 2012, 9:45 AM), [http://colorlines.com/archives/2012/12/us\\_deports\\_more\\_than\\_200k\\_parents.html](http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html).

violent offense, and even decades-old convictions—lead automatically and categorically to deportation, with only the narrowest of exceptions.<sup>4</sup> In aggravated felony cases, the immigration judge is not permitted to take family relationships into account, notwithstanding the hardship that deportation would cause to a U.S. citizen child or family member.

We urge the House of Representatives to recognize the contributions that the DREAMers and their families have made and will continue to make to this country. Relegating millions of aspiring Americans to a permanent “underclass,” in which they work and pay taxes, but are denied the opportunity to become citizens, as well as their basic rights to family unity, is counter to our American ideals of fundamental fairness.

## **II. Immigration reform legislation must provide a fair and expeditious path to citizenship and must clarify that DREAMers are “lawfully present.”**

Any immigration reform should include a generous, fair, and expeditious pathway to citizenship for DREAMers, without prohibitive fees or unreasonable eligibility criteria. Additionally, legislation should remove key barriers that currently keep DREAMers from realizing their full potential and giving back to our communities.

Fair eligibility criteria for DREAMers include the elimination of any upper age cap, so that *all* DREAMers who came to the United States as children and satisfy the eligibility requirements are not arbitrarily barred from the path to citizenship, due to delays in passing immigration reform legislation. Moreover, educational requirements should be reasonable and responsive to the financial barriers that DREAMers must overcome to pursue higher education.<sup>5</sup>

Furthermore, immigration reform legislation should clarify that beneficiaries of Deferred Action for Childhood Arrivals (“DACA”) and DREAMers legalized under forthcoming legislation, are treated as “lawfully present” in the U.S. as they proceed along the path to citizenship. Recent experience with the DACA program makes the need for such clarification all too clear. Notwithstanding clear guidance from the federal Department of Homeland Security that DACA recipients are lawfully present and authorized to live and, in most cases, work in the U.S., a few states have opted to deny DREAMers basic rights and privileges based on the states’ wrongful conclusions that DACA recipients are not authorized to be in the U.S. For example, Arizona has denied drivers’ licenses to DREAMers based on its own erroneous determination that DACA recipients are not federally “authorized” to be in the U.S.,<sup>6</sup> and Georgia has denied DREAMers admission to five state universities based on its conclusion that DACA

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<sup>4</sup> 8 U.S.C. § 1101(a)(43).

<sup>5</sup> DREAMers are ineligible for federal financial aid, including work-study and loans. See Catherine Eusebio & Fermín Mendoza, *The Case for Undocumented Students in Higher Education*, EDUCATORS FOR FAIR CONSIDERATION 2 (2013), available at [http://www.e4fc.org/images/E4FC\\_TheCase.pdf](http://www.e4fc.org/images/E4FC_TheCase.pdf). In most states, DREAMers must pay out-of-state tuition rates at four-year universities. See *infra* notes 10-12.

<sup>6</sup> <http://www.aclu.org/immigrants-rights/arizona-dream-act-coalition-et-al-v-brewer>

recipients are not “lawfully present.”<sup>7</sup> DREAMers should not be denied the basic rights and privileges they need to function in everyday life and to pursue their educational and career goals. Immigration reform legislation that gives DREAMers a pathway to citizenship and clarifies that they are lawfully present will help protect DREAMers from such discrimination by state entities.

### **III. Immigration reform legislation must remove the barriers that unfairly exclude DREAMers from educational and career opportunities.**

Under current law, prohibitive state tuition rates and arbitrary state licensing restrictions prevent many DACA beneficiaries and DREAMers from pursuing their educational and career goals. Immigration reform legislation must include a repeal of 8 U.S.C. § 1623, which forbids states from providing undocumented students postsecondary education benefits “on the basis of residence,” unless the same benefit is available to out-of-state U.S. citizens or nationals.<sup>8</sup> For many DREAMers, the dream of attending college is limited to state public colleges, which are much more affordable than private colleges. Unfortunately in many states, undocumented DREAMers attending public colleges are charged out-of-state tuition rates even though those DREAMers attended secondary school in the state. The practical reality is that for most immigrant families, the costs of out-of-state tuition are prohibitively expensive,<sup>9</sup> and out-of-state tuition rates effectively block many DREAMers from all higher education institutions, other than community or junior colleges.

In response to this problem, 15 states have enacted laws that extend in-state tuition to all students graduating from state high schools, thereby making public colleges and universities more affordable—and thus more accessible—to students regardless of immigration status.<sup>10</sup> These states allow students who meet specific requirements, regardless of their immigration status, to pay in-state tuition rates at public postsecondary schools: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Mexico, New York, Oklahoma, Oregon, Texas, Utah, and Washington. Some of these state tuition equality laws have been subject to legal challenges—all unsuccessful—under 8 U.S.C. § 1623.<sup>11</sup> Immigration reform legislation should repeal 8 U.S.C. § 1623 to clarify that all states are free to choose to provide in-state tuition to undocumented students, DACA recipients, and DREAMers who are on the pathway to citizenship.

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<sup>7</sup> <http://www.acluga.org/news/2013/03/06/aclu-georgia-sends-letter-board-regents-asking-they-lift-ban>

<sup>8</sup> See, e.g., *Day v. Bond*, 500 F.3d 1127 (10<sup>th</sup> Cir. 2007); *Martinez, et al. v. Regents of the University of California*, 198 P.3d 1 (Cal. 2008).

<sup>9</sup> *Map: State Laws & Policies on Access to Higher Education for Immigrants*, NATIONAL IMMIGRATION LAW CENTER (May 25, 2013), <http://www.nilc.org/eduaccess toolkit2.html#maps>.

<sup>10</sup> Eighteen states have laws or university system policies that grant in-state tuition to undocumented students: California, Colorado, Connecticut, Illinois, Hawaii, Kansas, Maryland, Michigan, Minnesota, Nebraska, New Mexico, New York, Oklahoma, Oregon, Rhode Island, Texas, Utah, and Washington. See *id.*

<sup>11</sup> See, e.g., *Day v. Bond*, 500 F.3d 1127 (10<sup>th</sup> Cir. 2007); *Martinez, et al. v. Regents of the University of California*, 198 P.3d 1 (Cal. 2008).

Finally, immigration reform legislation should guarantee that DREAMers and other work-authorized immigrants have equal access to professional, commercial, and business licenses. Providing access to professional licenses is necessary to ensure that DREAMers can pursue careers in medicine, law, science, and a host of other fields.<sup>12</sup> Indeed, without this clarification in the law, DREAMers will be cut off from pursuing their career and vocational goals, since they will be blocked from obtaining the requisite license to practice in their field of training. Moreover, eliminating barriers to professional, commercial, and business licenses for these talented individuals will enrich the economy and benefit all Americans. We are all worse off when talented immigrants are blocked from careers based on arbitrary licensing restrictions.

We commend the Subcommittee for recognizing the need for a pathway to citizenship for DREAMers. The criteria for legalization should be fair, without prohibitive fees or any age cap that would arbitrarily exclude some DREAMers. Once they are on the path to citizenship, DREAMers should be given the same basic rights and privileges as other lawfully present aspiring Americans. Legislation must also remove the barriers that unfairly exclude DREAMers from educational and career opportunities, so that DREAMers have equal access to affordable higher education and professional licenses.

Most importantly, legislation should recognize that DREAMers' undocumented families and neighbors also dream of coming out of the shadows and participating fully in our economy and communities. Without a path to citizenship and equal due process protections for all undocumented immigrants, DREAMers and U.S. citizen children in mixed-status families will still be denied the equal protection of our laws, and our Constitution's promises of fairness and equal opportunity will remain unfulfilled. We urge the Subcommittee to promote equality and family unity by considering a comprehensive approach to immigration reform, including due process reforms and a pathway to citizenship for all undocumented immigrants.

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<sup>12</sup> Over 800 different occupations require a license, and approximately 30 percent of all workers nationwide must have a license as a condition of employment. MORRIS M. KLEINER, LICENSING OCCUPATIONS: ENSURING QUALITY OR RESTRICTION COMPETITION? 5 (W.E. Upjohn Institute, 1st ed. 2006). ALAN B. KRUEGER, *Do You Need a License to Earn a Living? You Might Be Surprised at the Answer*, N.Y. TIMES, March 2, 2006, <http://www.nytimes.com/2006/03/02/business/yourmoney/02scene.html>.