



WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

Laura W. Murphy
Director, Washington Legislative Office

Joanne Lin
Legislative Counsel

BEFORE THE
SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND BORDER SECURITY
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

AT A HEARING ON
“S. 952, DEVELOPMENT, RELIEF, AND EDUCATION FOR ALIEN MINORS (DREAM)
ACT OF 2011”

JUNE 28, 2011

Chairman Schumer, Ranking Member Cornyn, and members of the Subcommittee:

The American Civil Liberties Union (ACLU) commends the Subcommittee for conducting a hearing on S.952, the “Development, Relief, and Education for Alien Minors (DREAM) Act of 2011.” We respectfully submit this statement for the record to express our support for this legislation.

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 individuals under the Constitution and laws of the United States. The Immigrants’ Rights Project (IRP) 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.

The ACLU supports the bill’s provisions which grant conditional permanent residency to certain highly-qualified young people who possess limitless potential to contribute to our society, and provide them with a path to citizenship after higher education or military service. Immigrants who have lived in the United States since their youth can acquire legal status by working hard and maintaining good moral character: nothing could be more consistent with American values.

In addition, the ACLU has fought consistently to preserve the option for states to grant all their resident students, regardless of immigration status, the right to attend public universities at an affordable rate. This bill would play a critical role in promoting fundamental fairness in access to public higher education by clarifying that states have the right to establish the conditions students must meet to qualify for in-state tuition rates.

In this statement, we focus on two major reasons to support the DREAM Act: (1) the imperative of protecting the rights of vulnerable immigrant communities; and (2) the importance of access to higher education.

I. The DREAM Act provides opportunities for the growing population of undocumented youth, without which they risk becoming a vulnerable underclass.

Currently, almost one-third of immigrant children covered by the DREAM Act who are still in school live below the federal poverty line.¹ The inability of immigrants to obtain lawful status creates an “underclass” subject to exploitation, often unable or afraid to assert civil and constitutional rights. This is particularly dangerous for children who enter the country at a young age. In the words of the Supreme Court, “the illegal alien of today may well be the legal alien of tomorrow [W]ithout an education, these undocumented children, [a]lready disadvantaged as a result of poverty, lack of English-speaking ability, and undeniable racial prejudices, . . . will

¹ Jeanne Batalova & Margie McHugh, Migration Policy Institute, *DREAM v. Reality: An Analysis of Potential DREAM Act Beneficiaries* (July 2010), at 8, available at <http://www.migrationpolicy.org/pubs/DREAM-Insight-July2010.pdf>.

become permanently locked into the lowest socio-economic class.”² Allowing this large and growing group of individuals to remain in poverty without access to higher education is wrong for America.

Many of the approximately 11 million undocumented individuals currently living in the United States have lived here for years or decades and have deep ties to this country. Particularly for those who were brought to the United States when they were children, these ties are often much stronger than those – if they exist at all – to their country of origin. In addition, demographic data estimate that 53% of the undocumented population lives in so-called “mixed” families where at least one member is a U.S. citizen or legal resident. These members of our communities are extremely vulnerable. They face daily reluctance to contact police and public safety officials; exposure to private exploitation and abuse; diminished or non-existent workplace safeguards; exclusion from public health programs; and fear of asserting their basic legal rights and protections.

Given this situation, the future is bleak for those brought to the United States as children by their parents without proper documentation. Current laws ensure that their dreams will always remain out of reach. Unlike the classmates they have grown up next to, pursuing a college education and/or military service aren’t just a matter of working hard and achieving. Instead, they face many roadblocks in their path to success: crushing financial burdens, discriminatory enrollment policies, the inability to work, and the constantly-looming threat of deportation.

The DREAM Act would protect these morally blameless young people from having their careers and lives stunted by their legal disabilities. The legislation creates a powerful imperative for recipients of conditional lawful status either to pursue a college education or join the military. It also encourages immigrant children now enrolled in elementary or secondary school to obtain a high-school diploma and further education. Thus, the DREAM Act will significantly ameliorate the costly economic and social detriments associated with maintaining a large population of individuals in the United States who are part of our communities but prevented from using their talents fully to serve our country.

By encouraging high-achieving young people to focus on their studies and/or serve the United States military, the legislation will allow these individuals who are part of our communities’ fabric to regularize their status and thereby benefit our economy and national security.

II. States must have autonomy to recognize the value of higher education for all of their residents.

Higher education is critical for young people to achieve their fullest potential. Immigrant students covered by the DREAM Act have limitless potential. They are often talented high achievers who grew up in the United States and overcame challenging odds to graduate from high school and secure admission to a public university. However, financing a college education is particularly difficult for undocumented youth because they are ineligible to receive federal financial aid or loans under current federal law. Even at relatively affordable public universities,

² *Plyler v. Doe*, 457 U.S. 202, 207-08 (1982).

undocumented students in most states are often charged out-of-state tuition rates, which are prohibitively expensive for most immigrant families. This effectively blocks many undocumented youth from all higher education other than community or junior colleges, leading to serious inequality of educational opportunities.

Several states³ have enacted laws which make public universities equally accessible to all students graduating from their secondary schools. In enacting equal education laws, these states remove economic impediments to high school graduates pursuing higher education and decline to penalize children who were brought to the United States at a young age by their parents. In addition, these states recognize that a well-educated population leads to increased earning power which then generates higher income, sales, and property taxes. This in turn stimulates economic growth for all participants in the states' economies, while increasing the nation's competitiveness in the global economy.

Despite their manifold benefits, tuition equality laws have been subject to unsuccessful legal challenges. IRP and ACLU affiliates have been involved in defending these laws in both federal and state courts. In December 2007, the U.S. Court of Appeals for the Tenth Circuit dismissed a challenge to a Kansas law on procedural grounds,⁴ and the Supreme Court denied certiorari.⁵ In November 2010, the California Supreme Court unanimously upheld California's law.⁶ That case, *Martinez v. Regents of the University of California*, is the first state supreme court decision to address challenges to tuition equality laws on the merits.⁷

The DREAM Act would clarify that states are entitled to decide for themselves whether to provide in-state tuition to undocumented students. Because the DREAM Act will ensure that states have this option without encumbrance, the ACLU supports its passage.

III. Conclusion

Talented, motivated young people who wish to serve their communities, join our armed forces, and build a future in the United States that has been their long-term home should be permitted to do so, in order to benefit them and all Americans. The ideals of fairness and equal opportunity on which this nation has thrived are on the side of the DREAM Act, which offers DREAMers a chance to harness their capabilities to endeavors and achievements that will help our nation grow.

³ California, Illinois, Kansas, Nebraska, New Mexico, Texas, Washington, Utah, New York, Wisconsin, and Maryland.

⁴ *Day v. Bond*, 500 F.3d 1127 (10th Cir. 2007).

⁵ *Day v. Bond*, 128 S. Ct. 2987 (2008).

⁶ *Martinez, et al. v. Regents of the University of California*, 198 P.3d 1 (Cal. 2008).

⁷ Certiorari was recently denied. *Martinez, et al. v. Regents of the University of California*, 563 U.S. ___, 79 U.S.L.W. 3494 (U.S. June 6, 2011).