

United States Senate

WASHINGTON, DC 20510

April 21, 2010

Secretary Janet Napolitano
Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano:

We respectfully request that you grant deferred action to individuals who would be eligible for cancellation of removal or a stay of removal under S. 729, the DREAM Act, bipartisan immigration reform legislation that we have introduced.

As you know, the DREAM Act would provide immigration relief to a select group of students who arrived in the U.S. when they were 15 or under, have lived in the U.S. for at least five years, have good moral character, are not inadmissible or removable under a number of specified grounds, have graduated from high school or obtained a GED, and attend college or serve in the military for two years.

At a hearing of the Senate Judiciary Committee on May 6, 2009, you testified, “the Dream Act is a good piece of legislation and a good idea.” We greatly appreciate your support for the DREAM Act. However, pending enactment, individuals who would be eligible for the DREAM Act are subject to removal, and such cases are currently handled on an ad hoc basis.

Though they are technically out of status, DREAM Act students should not be removed from the United States. The DREAM Act is narrowly tailored to assist only a select group of young people, many of whom came here with their parents at an age when they were too young to understand the consequences of their actions.

Deferred action for DREAM Act students would conserve limited enforcement resources. DREAM Act students are not, and should not be, an enforcement priority for DHS. As then-INS Commissioner Doris Meissner explained in a November 17, 2000 memorandum on “Exercising Prosecutorial Discretion”:

Like all law enforcement agencies, the INS has finite resources, and it is not possible to investigate and prosecute all immigration violations. ... As a general matter, INS officers may decline to prosecute a legally sufficient immigration case if the Federal immigration enforcement interest that would be served by prosecution is not substantial.

The Meissner memorandum suggests developing a list of “triggers” to “identify cases at an early stage that may be suitable for the exercise of prosecutorial discretion.” A number of these factors apply to DREAM Act students, including “Juveniles,” “Aliens with lengthy presence in United States,” and “Aliens present in the United States since childhood.”

Deferred action for DREAM Act students would not apply to a large number of individuals. Based on information gathered by Senator Durbin's office over the last several years, only a small number of DREAM Act students are placed in removal proceedings. This is probably because these students are well integrated into American society and do not typically engage in behavior that makes them an enforcement priority for DHS.

The current leadership at Immigration and Customs Enforcement has been very helpful in addressing individual DREAM Act cases that have come to our attention. However, deferred action for DREAM Act students would be more efficient than the existing ad hoc system. The decision to grant deferred removal in a DREAM Act case is frequently made shortly before the removal date. This is an inefficient use of limited resources. As the Meissner memorandum states:

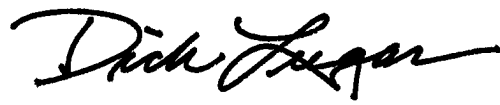
As a general matter, it is better to exercise favorable discretion as early in the process as possible, once the relevant facts have been determined, in order to conserve the Service's resources and in recognition of the alien's interest in avoiding unnecessary legal proceedings.

There is a recent precedent for deferred action for DREAM Act students. In June 2009, DHS granted deferred action to widows of U.S. citizens who were married for less than two years prior to their spouses' death. As you said at the time, "Smart immigration policy balances strong enforcement practices with common-sense, practical solutions to complicated issues." The situation of DREAM Act students is just such a complicated issue which requires the common-sense, practical solution of deferred action.

Thank you for your support of the DREAM Act and for considering our request that you grant deferred action to individuals who would be eligible for the DREAM Act.

Sincerely,


Senator Dick Durbin


Senator Richard Lugar