

Prepared Statement of

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On

“Development, Relief, and Education for Alien Minors (DREAM) Act of 2011”

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Chairman Durbin, Ranking Member Cornyn, and distinguished Members of the Subcommittee, my name is Margaret Stock. I am honored to be here to provide my testimony as an expert in the fields of national security, immigration, and citizenship law and to discuss S. 952, the Development, Relief, and Education for Alien Minors (DREAM) Act of 2011.

I am a retired Lieutenant Colonel in the Military Police Corps, US Army Reserve. I am currently Of Counsel in the Anchorage, Alaska office of the law firm Lane Powell PC. I also teach on a part-time basis in the Political Science Department at the University of Alaska Anchorage, and I previously taught at the United States Military Academy, West Point, New York, for nine years (five years on a full-time basis, four years on a part-time basis). My professional affiliations include membership in the Alaska Bar Association, American Bar Association (where I am a member of the Commission on Immigration), the American Immigration Lawyers Association, the Federalist Society for Law and Public Policy, the

Republican National Lawyers Association, and other civic and professional organizations. As an attorney and a graduate of the Harvard Law School, I have practiced in the area of immigration law for more than fifteen years. I have written and spoken extensively on the issue of immigration and national security. I have represented hundreds of businesses, immigrants, and citizens seeking to navigate the difficult maze of the US immigration system. In 2009, I concluded work as a member of the Council on Foreign Relations Independent Task Force on US Immigration Policy, which was headed by Jeb Bush and Thomas F. “Mac” McLarty III. Finally, prior to my transfer to the Retired Reserve in June 2010, I worked for several years on immigration and citizenship issues relating to military service while on temporary detail to the US Army Accessions Command, the Assistant Secretary of the Army for Manpower and Reserve Affairs, and United States Special Operations Command. The opinions I am expressing today are my own.

I am honored to be appearing before you this morning to discuss the DREAM Act and to underscore the reasons why Congress should pass this Act because it benefits America. This hearing could not be more important or timely because in the midst of an ongoing war that has pushed our nation’s military to its limits, our country faces a demographic and social crisis with regard to immigration. The DREAM Act is part of a comprehensive and bipartisan solution to that crisis. As the Council on Foreign Relations Independent Task Force on US Immigration Policy explained when endorsing the DREAM Act,

“The DREAM Act is no amnesty. It offers to young people who had no responsibility for their parents’ initial decision to bring them into the United States the opportunity to earn their way to remain here.”¹

More particularly, by allowing young people to remain in the U.S., the DREAM Act will enhance America’s future ability to obtain high-quality recruits for the United States Armed Forces.

¹ Council on Foreign Relations Independent Task Force on US Immigration Policy, Report: US Immigration Policy, Independent Task Force Report No. 63 (July 2009), page 96.

To understand why the DREAM Act is so important, one must understand the reality of our nation's broken immigration system. Today's legal immigration system is dysfunctional and irrational, and the situation only promises to get worse without comprehensive action by Congress. Many years ago, former Immigration & Naturalization Service (INS) spokesperson Karen Kraushaar said that US "immigration law is a mystery and a mastery of obfuscation." The system she described has deteriorated since then. Our nation's ever more complex and restrictive legal immigration system makes it very difficult for many people to immigrate to the United States legally.

This reality has led to the growth in the United States of a very large population of persons who have no means of obtaining lawful permanent residence here, even if they have lived in America for decades, paid taxes, and committed no crimes. Many of these individuals are legally in the US in some status that falls short of lawful permanent residence, but some 12 million are unauthorized, including an estimated 2.1 million youth and young adults.² Despite the fact that many of these undocumented young people have grown up in the U.S., attended our schools, and demonstrated a sustained commitment to this country by learning English and succeeding in our educational system, US immigration laws provide no avenue for them to obtain any legal status. Many were brought to the U.S. by their parents at an age when they were too young to understand the legality of their arrival, let alone take action to rectify this decision. Now that they are approaching adulthood, their only choice is to hide in the shadows or leave the United States—but their departure from the US will leave most of them unable to return to the United States for at least ten years,³ even in the highly unlikely event that they manage to qualify to return as legal immigrants.

² Migration Policy Institute, *DREAM v. Reality: An Analysis of Potential DREAM Act Beneficiaries* (July 2010).

³ US immigration law provides for a ten-year bar to readmission for anyone who has departed the United States for any reason after being in the US unlawfully for more than a year. See INA §212(a)(9)(B)(i)(II). Undocumented young people (and their parents) who trigger this bar are typically not eligible for any waiver of this provision, even if they qualify for an immigrant visa through a family relationship or employment. There are no waivers of this provision for the sons or daughters of undocumented immigrants, or for the parents of an immigrant or US citizen. The parents of a DREAM Act beneficiary, for example, are not eligible for a waiver of this bar.

The DREAM Act would allow young people who have grown up in this country, graduated from high school, been acculturated as Americans, and have no serious criminal record to go to college or serve in the military and thereby legalize their immigration status.⁴ Those who oppose the DREAM Act often mistakenly repeat the popular misconception that these young people should just “get in line like everyone else.” But without the DREAM Act, there is no line in which they can wait.

The inability of this large group of young people to obtain any legal status has far-ranging social and economic impacts, not least of which is an obvious impact on the qualified manpower available for the US Armed Forces. Currently, unauthorized young people are barred from enlisting in the US military. The current military enlistment statute requires enlisted personnel to be US nationals or lawful permanent residents, and contains few exceptions to that requirement. The only exception that might apply to an undocumented person is one that would allow enlistment where a Service Secretary has determined that a person’s enlistment is “vital to the national interest.”⁵ While persons lacking familiarity with today’s military enlistment process might believe that it is possible for the military Services to enlist undocumented immigrants under the “vital to the national interest” prong of 10 USC §504, in reality this is not the case. The military Services do not have the legal or administrative ability to enlist an undocumented immigrant who has no record with the Department of Homeland Security and no valid Social Security number permitting employment in the United States. Furthermore, such persons cannot gain legal status through military service except when an Executive Order is in effect allowing them to apply for citizenship under 8 USC §1440. The military Services further lack the immigration law expertise and resources to screen unauthorized immigrants for immigration violations. For these reasons, as a practical matter, the Services cannot use 10 USC §504 to enlist undocumented immigrants.

In contrast, the Department of Homeland Security has the institutional expertise and

⁴ Contrary to what opponents of the DREAM Act frequently state, not all undocumented youth will be eligible to gain legal status under the DREAM Act. Roughly 38% of potential beneficiaries are expected to meet the law’s stringent requirements—which means that about 62% will likely fail to do so. See Migration Policy Institute, *DREAM v. Reality: An Analysis of Potential DREAM Act Beneficiaries* (July 2010).

⁵ See 10 USC §504(b)(2).

processing systems required to take applications from unauthorized immigrants, fingerprint them, collect their filing fees, vet them against complex inadmissibility and removability law criteria, create "Alien files" on them, assign them Alien numbers, and otherwise process them for temporary residence. Under the DREAM Act, this process will happen before these young people appear at a military recruiting station and seek to enlist. The DHS process will be a first gate to screen out persons who are unsuitable for military service as a result of having serious immigration or criminal violations. Under the DREAM Act, DHS will be required to screen out anyone who has a felony or two misdemeanor violations, as well as persons who have no criminal convictions but who have serious immigration law violations, are a security risk to the United States, or lack good moral character. The DREAM Act design appropriately assigns to DHS the role of accepting DREAM applications and conducting this immigration law vetting process before any DREAM applicant is given the Conditional Lawful Resident status that would permit enlistment.

Under the DREAM Act, all DREAM Act beneficiaries who attempt to enlist will have Conditional Lawful Permanent Residence, a status that is already recognized in existing enlistment statutes and military regulations. While some have suggested that the Department of Defense create a "military only" DREAM Act, such a program would present a greater security risk to DOD, would flood military recruiters with unqualified applicants for enlistment, and would require significant changes in military enlistment regulations and recruiting resources. A "military only" DREAM Act would also contradict the fundamental premise of the All Volunteer Force, as many DREAM Act beneficiaries would be motivated to join the military out of a desperate desire to legalize their status, and not because they are truly interested in military service.

A misguided criticism of the DREAM Act is that it discriminates against US citizens and green card holders with regard to military enlistment. In fact, the opposite is the case—DREAM Act beneficiaries will be subject to the same statutory or contractual obligations that all other military enlistees incur, but will be ineligible for any military job requiring a security clearance, will be unable to accept an officer commission, will not be able to sign an ROTC contract or obtain an ROTC scholarship, will be barred from attending the US Service Academies, and will

face a lengthy term of service before they can naturalize as US citizens. While DREAM Act beneficiaries may be eligible to apply for a lifting of the conditions on their Conditional Lawful Permanent Residence after a period of two years of military service, their military service will not end in two years. First, very few military enlistment contracts offer only a two-year active duty period of service,⁶ and even two-year active duty enlistments require a person to continue with Reserve service until a full statutory enlistment period is fulfilled (in the case of the Army, that statutory period is eight years of total service). This statutory minimum period of military service is not changed by the DREAM Act. Thus, DREAM Act beneficiaries will have the same statutory and contractual enlistment obligations as all other military personnel; the only difference is that DREAM Act beneficiaries will be unable to naturalize through military service until they have lifted the conditions on their Conditional Lawful Permanent residence status, a process that is likely to take about seven years in most cases. A typical DREAM Act beneficiary who joins the Army will therefore obtain US citizenship at about the same time that he or she meets the eight-year statutory obligation that he or she incurred by enlisting. In contrast, a non-citizen who joins the US Armed Forces but who is not a DREAM Act beneficiary can naturalize immediately in wartime⁷ or—if he or she has Lawful Permanent Residence—at the end of one year of service⁸ when the President has declared an end to the current hostilities.

Others have criticized the DREAM Act by opining that it is unnecessary because the Armed Forces currently are meeting their enlistment goals: This also is a misinformed opinion. The current beneficial recruiting climate is a direct result of the poor state of the US economy.⁹ As the US economy recovers from the current recession and our population continues to age, the Armed Forces will face a very difficult recruiting climate. Three years ago, before the economy soured, the US Armed Forces struggled with a serious recruiting crisis, a crisis that evaporated temporarily only because of the economic downturn. It is no secret that several of the military

⁶ The Army currently does not offer any two-year active duty enlistment contracts; the shortest current enlistment contract is three years plus training time, due to the demands of the Army's wartime operational tempo.

⁷ See 8 USC § 1440 (requiring an Executive Order for naturalization of persons during wartime).

⁸ See 8 USC §1439 (peacetime military naturalization statute).

⁹ See US Government Accountability Office, *Military Recruiting: DOD and Services Need Better Data to Enhance Visibility over Recruiter Irregularities* (Aug. 2006) (“Service recruiting officials stated that the economy has been the most important factor affecting recruiting success”).

services expect to experience difficulties in recruiting eligible enlisted soldiers in future years. Population changes will likely result in a 10% decline in military enlistments by 2015.¹⁰ In 2008, Dr. Clifford Stanley's predecessor, Dr. David Chu, testified before Congress regarding the grim statistics facing future military recruiters: Only about three in ten Americans of military age can meet the standards for military service.¹¹ Some 35% are medically disqualified, 18% are barred due to a record of abusing drugs or alcohol, 5% have serious conduct or criminal problems, 6% have too many dependents, and 9% score in the lowest aptitude category on the enlistment test.¹² The DREAM Act can alleviate this coming crisis.

The DREAM Act promises to enlarge dramatically the pool of highly-qualified recruits for the United States Armed Forces. The DREAM Act also requires no change to military rules for enlisting recruits, does not require the military to lower enlistment standards, and allows the US military to tap into an overlooked and unused pool of homegrown talent. As discussed above, the DREAM Act legalizes high quality, Americanized young people who will have passed a rigorous set of criteria and Department of Homeland Security background and biometrics checks before they will be eligible to enlist.

Military officials are fully aware of the potential posed by DREAM Act beneficiaries, because many potential DREAM beneficiaries have sought to enlist in the US Armed Forces but have been turned away because they lack the necessary legal immigration status. Although they lack the legal immigration status necessary for enlistment, these individuals often do meet other military enlistment requirements. The strict DREAM Act criteria mean that once these young people are temporarily legalized under the DREAM Act, they will be more likely to meet other military enlistment requirements than will the typical native-born American. To give just one example, a native-born American can join the US military despite having a felony criminal

¹⁰ RAND study sponsored by Army G-1, Manning the All-Volunteer Force from a Changing Youth Market, May 2005.

¹¹ The future recruiting picture has grown worse since Dr. Chu testified; fewer than 3 in 10 can qualify today, and the number is declining, primarily due to the growing percentage of obese young people. See William H. McMichael, "Most U.S. Youths Unfit to Serve," *Army Times*, Nov. 3, 2009 (quoting Pentagon accessions official Curt Gilroy as saying "the major component of this is obesity. We have an obesity crisis in the country. There's no question about it.").

¹² Otto Kreisher, *Armed Services Having Trouble Finding Qualified Recruits*, *Congress Daily*, March 24, 2008.

conviction, whereas a DREAM Act beneficiary will not get past the first gate at DHS with such a record.¹³ Undocumented persons will be screened out by DHS on multiple grounds before being given any temporary immigration status that would allow enlistment.

As illustrated by the example above, DREAM Act beneficiaries will be of even higher quality than lawful permanent residents and US citizens who are currently permitted to enlist. In addition to being pre-screened for criminality and other disqualifying factors, DREAM Act beneficiaries will have longer residences in the United States than many green card holders and US citizens who enlist today. Finally, DREAM Act beneficiaries must show “good moral character” to obtain temporary status; there is no similar requirement for other non-citizens or US citizens who seek to enlist. In every case, DREAM Act beneficiaries will be held to a higher standard than the typical green card or US citizen enlistee.

Military officials expect that DREAM Act beneficiaries will be motivated to stay in the military, once they are enlisted. Non-citizens in general have a 36-month retention rate that is 9-20% higher than white US citizens.¹⁴ DREAM Act recruits will have a greater incentive to remain in the US military than any other group, citizen or non-citizen: For them, staying in the military for at least two years and leaving with an honorable discharge will gain them status as Lawful Permanent Residents, putting them in line for US citizenship. If they quit the military early, they will lose their opportunity to legalize their status.

As mentioned above, I am a member of the Retired Reserve of the US Army Reserve. Before being transferred to the Retired Reserve, I served in the US Army Reserve for twenty-eight years. During that time, I learned of many undocumented immigrants who wanted to serve America by joining the All-Volunteer Force. I often had the unpleasant task of explaining to

¹³ For example, Private Steven Green, a US citizen and high school dropout, was able to join the Army despite having three criminal convictions and a history of substance abuse. Private Green was later charged with raping an Iraqi girl and killing four members of her family, as detailed in Jim Frederick’s book, “Black Hearts: One Platoon’s Descent Into Madness in Iraq’s Triangle of Death” (2010). If a DREAM Act applicant had a record like Private Green’s, that person would not be given Conditional Lawful Permanent Residence under the DREAM Act, but would instead be identified by DHS as a criminal alien and processed for deportation.

¹⁴ Anita U. Hattiangadi, Gary Lee, & Aline O. Quester, “Recruiting Hispanics: The Marine Corps Experience Final Report,” CNA Corporation 2004.

these eager, patriotic, and energetic young people that they were barred from enlisting because of their lack of a legal immigration status. As an immigration lawyer, I also had to give them the bad news that US immigration laws completely prevented them from legalizing their status. On a regular basis, my fellow service members would approach me to ask how to get legal status for a promising young person whom they knew, and I had to give them the same bad news. Over and over again, I would hear the comment “Ma’am, this makes no sense. All they want to do is serve the United States. Why don’t we let them?”

Here is an example of two such messages, which come from military members who serve as a Junior ROTC instructors:

“[Jessica] has been one of my cadets in the . . . JROTC program since she was a freshman. She is now a senior. In this time period I have gotten to know her well and learned many things about her. . . She comes from a family of five brothers and sisters . . . She has been an International Baccalaureate Magnet program student for four years. She has been on the honor roll list for three and a half years. She is involved with many extracurricular activities, always setting JROTC as her main priority. She is a member of the female varsity Honor Guard/Color Guard. I can honestly say that I have US citizens in this Corps who do not even come close to loving, respecting, appreciating and valuing this country as much as [Jessica]. She arrived here when she was only one and a half years old. She’s lived here ever since, growing with this great country’s ways and customs. She knows no other home than the US. So I ask: Why can’t she be a US citizen? Please let’s not allow her alien status to prevent this bright young lady from achieving her dreams and goals. She’s hungry for success and wants to serve this country as a citizen. . . Can we find her help please?”

“I’ll admit that I used to be 180 degrees on this issue until last year. I have an outstanding young woman in my unit [who] has a 3.3 GPA, is a really bright young woman, contributed hundreds of hours to community and school service projects, and is a really great young leader whom I selected to assume command of one of our JROTC squadrons. I had been prepping her to attend a four-year state college . . . She finally broke down last month and told me that she was here illegally, but by no fault of her own. Her parents came to the US legally 16 years ago and overstayed their visas. This young woman really has no options. She cannot afford to attend college without financial assistance, but is ineligible for many state aid packages. She also cannot work part-time legally because she does not have an SSN . . . She would join the Air Force in a heartbeat, but because she is here illegally, she cannot enlist in the US military. . . She is in a real quandary, because she’ll just have to become part of the hidden work force. She really needs to be in college. As I mentioned, I was pretty much unsympathetic until one of my best young students was the victim of parental choice.”

It makes little sense to deport these American-educated youth to countries where they have no memories or ties. It is expensive to locate, arrest, imprison, and eventually deport these individuals. They cannot realistically be deported in any large numbers. The absence of any means to obtain legal status will drive these promising young people into an illegal, underground economy; deprive our country of responsible, tax paying citizens; and contribute to the creation of a permanent, furtive underclass. Finally, if deported to countries where they have few ties and no substantial familial support network, they may be vulnerable to recruitment by organizations whose interests are inimical to those of the United States.

In summary, the DREAM Act is good for the United States military and good for the country. Pass the DREAM Act, and let these promising young people serve America.