

The DREAM Act

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by Steven A. Camarota, Ph.D.
Director of Research
Center for Immigration Studies
1522 K St. NW, Suite 820
Washington, DC 20005
(202) 466-8185
fax: (202) 466-8076
sac@cis.org
www.cis.org

Introduction

The recently introduced DREAM Act, (S. 952) attempts to deal with one of the more vexing issues in immigration. The act offers permanent legal status to illegal immigrants, up to age 35, who arrived in the United States before age 16, provided they complete two years of college or serve two years in the “uniform services.” These individuals are one of the most compelling groups of illegal immigrants because their situation is generally not their fault. In most cases their parents created their predicament. However, the DREAM Act as currently written would create a number of significant problems. In my testimony I will highlight several of the most serious problems with S.952, and suggest possible remedies.

Problem with S.952

Costs to State and Local Governments. The DREAM Act would grant permanent residence to those who complete two years of college. Completing a degree is not required. Under the act, beneficiaries would receive in-state tuition. (A small number, perhaps 50,000, are also expected to go into the military.¹) Given the low income of illegal immigrants, most can be expected to attend state-supported schools. In a study done by the Center for Immigration Studies, we estimated that the costs to tax payers would be nearly \$6,000 for each year an illegal immigrant attends a public institution of higher learning. We estimate a total cost in tuition subsidies of about \$12 billion for the roughly one million illegal immigrants expected to attend state universities or community colleges. This is obviously a significant cost for tax payers in high illegal immigration states to absorb.² These figures do not include the estimated 60,000 currently enrolled in public colleges.³

In addition to the costs to taxpayers there is the related issue of crowding out U.S.-citizens and legal immigrants from cash-strapped public institutions of higher learning. It is important to remember that the illegal-immigrant population is not evenly spread throughout the country. Many public institutions of higher learning in the states with the most illegal immigrants are already reeling from overcrowding and budget cuts.

¹ See “DREAM vs. Reality: An Analysis of Potential,” *Migration Policy Institute*, July 2001. The MPI found that less than 1 percent of age-eligible Hispanics (18 to 44) were active enlisted military members in 2008. However, they make “a generous assumption” that 5 percent of the roughly 2 million potential beneficiaries would use the military option under the DREAM Act. This comes to about 50,000 individuals (page 15).

² See “Estimating the Impact of the DREAM Act,” *Center for Immigration Studies*, <http://www.cis.org/DREAM-act-costs>

³ Based partly on reported numbers from the states that provide in-state tuition, the Federation for American Immigration Reform has estimated 60,000 illegal immigrant students enrolled in public institutions of higher learning. See page 52 of “The Fiscal Burden of Illegal Immigration on United States Taxpayers,” http://www.fairus.org/site/DocServer/USCostStudy_2010.pdf?docID=4921.

Advocates of the DREAM Act argue that it will significantly increase tax revenue in the long run because once they have a college education recipients will earn more and pay more in taxes over their lifetime. However, several factors need to be considered when evaluating this argument: First, any hoped-for tax benefit will come in the long term and will not help public institutions deal with the large influx of new students the act would create in a relatively short period of time. Given the limited space at public institutions, the DREAM Act will almost certainly cause some crowding out of legal immigrants and U.S. citizens, reducing their lifetime earnings and tax payments. Further, because the DREAM Act requires nothing more than two years of college, the income and resulting tax revenue will be small. Census Bureau data show that the income gains for having some college, but no degree, is modest.⁴ Also, because college dropout rates are high for all students, many illegal immigrants who enroll at public institutions will not complete the two years the act requires. In such cases taxpayers will bear the tuition expense without the hoped-for fiscal benefit.

Possible Remedies The most direct response to this problem would be for the DREAM Act to provide additional funding to state universities and community colleges to cover the costs it will create. If the idea behind the DREAM Act has merit—which I think it does—then acknowledging these costs and including them in the law would make sense. Of course, this would not be cheap. But by providing the money upfront, Congress could avoid creating enormous strains on local institutions that are already overcrowded. If advocates of the DREAM Act are right, the hoped-for long-term tax benefits will eventually compensate federal coffers. Providing money to state and local schools would not only be honest, it would also help reduce the crowding out that would almost certainly come from adding nearly a million a new students to taxpayer-subsidized institutions in the top states of illegal-immigrant settlement.

Lack of Immigration Enforcement. Whenever there is an amnesty for illegal immigrants, there is always the concern that it will encourage more illegal immigration in the future. On the understandable assumption that their children might benefit from some future legalization, more people may settle in our country illegally if the DREAM Act passes. We all agree that we do not wish to encourage illegal immigration. But S.952 has no provision to discourage future illegal immigration.

Possible Remedies Full implementation of the U.S. Visit program, which tracks the arrival and departure of visitors at all border crossings and airports, would help reduce future illegal immigration. So would a federal requirement that all employers use the E-Verify system to verify the legal status of new hires. A more rapid implementation of the Secure Communities program and additional funding of the 287g program should also be included. While any legalization would tend to encourage more illegal immigration, implementation of these basic enforcement tools would all help to discourage illegal immigration in the future.

⁴ In 2009, foreign-born Hispanic high school graduates earned 77 percent as much as someone who had attended college, but did not receive a degree. Figures are from the March 2010 Current Population Survey public use file. The figures are for foreign-born Hispanics ages 25 to 65. We use this population as a point of comparison because 80 percent of those expected to benefit from the act are Hispanic.

Rewards to Parents. All of us can agree that those brought to this country illegally as children are not to blame for their situation. It is their parents who are responsible for their predicament. The parents, therefore, should not benefit from the DREAM Act. However, the DREAM Act as currently constructed would eventually allow many of the parents who put their children in this situation to get legal status because it puts their children on a path to U.S. citizenship. U.S. citizens can sponsor their parents for green cards.

Possible Remedies The simplest and most direct way to deal with this problem is to change the DREAM Act so that it gives recipients a status other than permanent residence and the eventual citizenship that comes with it. Perhaps a long term non-immigrant visa that is renewable indefinitely, say every 6 years, would be a way of dealing with this problem. This would allow those young people who benefit from the DREAM Act to go on with their lives, but because it would not give them eventual citizenship, they will not be able to sponsor their parents. Another possibility would be to simply end the current practice of giving green cards to the parents of American citizens. This category of immigration is problematic for a number of reasons and doing away with it would also be a way of preventing the parents of DREAM Act beneficiaries from benefiting from their illegal activity.

Affirmative Action. DHS estimates indicate that about 80 percent of illegal immigrants are Hispanic.⁵ All of the available evidence indicates that the overwhelming majority of DREAM Act beneficiaries will be minorities who can benefit from affirmative action programs that are an important part of admissions at colleges and universities. As media reports have noted, this raises the possibility of illegal immigrants receiving preferential access to college.⁶

As Americans we need to consider whether someone who is illegally living in the United States should take an affirmative action slot that was designed to benefit U.S.-born minorities and legal immigrants. It seems hard to argue that such a policy is fair. This problem would be somewhat lessened by the fact that most DREAM Act beneficiaries are expected to attend community colleges. These institutions have more open admission policies; and as a result, affirmative action does not play a very large role in who gets in. However, this is not the case at state universities or private institutions of higher learning. In these more competitive schools, DREAM Act beneficiaries will take affirmative action slots. The same may also happen for scholarship programs for minorities and disadvantaged students. The number of such scholarships is limited. Any discussion of the DREAM Act must include consideration of those who will be harmed if it passes.

Possible Solution I cannot think of any remedy for this problem. Affirmative action programs can be said to run on auto-pilot. Minorities who check the right boxes have their applications treated accordingly. The only way to mitigate this problem is to limit the number of the people who can benefit from the DREAM Act. The smaller the number, the fewer the affirmative action slots and scholarships they will take.

⁵ "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2010," *Office of Immigration Statistics*, U.S.C.I.S., <http://www.cis.org/DREAM-act-costs#12>

⁶ "University Insiders: Illegal Immigrants Get Affirmative Action," Fox News, May 17, 2011, <http://www.foxnews.com/us/2011/05/17/affirmative-action-illegal-immigrants/>

Invitation to Fraud. There are several ways in which the DREAM Act is an invitation to fraud. The three most important are as follows: First, the law prevents prosecution for willfully providing false information. So for example, if it becomes clear in the application process that someone is using another person's identify, the applicant will not be arrested and prosecuted. Second, the law does not provide a clear list of acceptable documents that can be used to determine eligibility. Are we going to use third-party attestations as proof of eligibility, as we did in the 1986 amnesty? This too is an open invitation to fraud. In the 1986 IRCA amnesty an estimated 700,000 illegal immigrants who did not qualify received legal status fraudulently.⁷ Third, as I read the law, anyone can apply. There is no way to preclude even ridiculously inappropriate applications. The law would apply even to someone in removal proceedings who files a DREAM Act application. It might take U.S.C.I.S. two years to determine that someone is not eligible, and during that time their removal proceeding would be stopped. There is every reason for anyone to apply, on the reasonable chance that they would trick immigration authorities and stay in the United States, at least while the application is pending.

The immigration bureaucracy is already overwhelmed. The tsunami of work that will be hitting the immigration system if the DREAM Act passes will make it very difficult to distinguish good applications from bad ones. Given the way the bill is currently structured, we could easily see a repeat of the 1986 amnesty. Studies of that program have shown that between one fourth and one-third of the amnesty recipients had fraudulent applications.

Possible Solution The act should provide more funding to the immigration bureaucracy to process the significant increase in paper work it would create. Only after the staff is hired and trained should the law go into effect. While many applicants may not qualify or complete the requirements, the actual number who will apply could run into the millions, even if there is no fraud. If there is widespread fraud, which seems very likely, the numbers will be even higher. Creating a bureaucracy that can properly handle these applications will not be cheap. Perhaps fees charged to DREAM Act applicants might recoup some of these costs. Anyone found providing fraudulent information must be prosecuted and removed. Moreover, as the bill stands, any information people provide in the application process cannot be used later in an enforcement action, even if the person is found to be ineligible to benefit from the act. This also needs to be addressed. Information provided should be used to find and remove those who are not eligible for the DREAM Act. The act should not encourage those for whom it is not intended to game the system.

Legalization for Serious Offenders. Under the DREAM Act, as presently written, a person convicted of two misdemeanors could still be given legal status. In many states, misdemeanors include drunk driving, assault or even some types of sexual assault. Moreover, it is very common for people to plead to a misdemeanor even though they were charged with a felony.

⁷See "SAWs, RAWs and California's Labor Market," by Professor Philip L. Martin, U.C. Davis, August 1988. Also, in their report for the Ford Foundation, David North and Anna Mary Portz found internal INS statistics that showed that 888,637 legalization applications in both programs had been marked for denials for local office staff, but only 60,020 final denials had been issued. Based on the number of applications that were eventually approved, it was clear that an overwhelming majority of these individuals ultimately received amnesty. See David North and Anna Mary Portz, "The U.S. Alien Legalization Program," *TransCentury Development Associates*, Washington, 1989.

Possible Solution Given that misdemeanors can be serious offenses, it makes sense to make some misdemeanors grounds for exclusion under the DREAM Act. This could include any misdemeanor of a violent or sexual nature, as well as drunk driving. Any individual having even one of these serious misdemeanors should be barred from receiving the DREAM Act legalization. This would insure that permanent residence is not given to anyone who represents a threat to public safety.

A Question of Fairness. It seems to me that the strongest argument for the DREAM Act is a moral one—those who came as children, through no fault of their own, should be allowed to stay. But if the moral argument is correct, why require two years of college? How does the ability to do college-level work give someone a greater moral claim? Someone who came at age 2 and has lived here for 20 years but did not graduate high school, would seem to have a much stronger claim on our conscience than someone who finds college work relatively easy but came at age 14 and has been in the country for only five years. Under the DREAM Act the former would not receive legal status, while the later would be legalized.

Possible Solution As already discussed, the college requirement in the DREAM Act will likely have only a modest impact on earnings. Moreover, it will exclude perhaps half of those who met the residence and age requirement. It would make more sense to drop the college requirement, lower the qualifying age from the current 15 to, say, 10, and then to legalize everyone who came under that age, provided they pass a background check.

Other Issues. I have tried to outline some important areas of concern with regard to the DREAM Act. There are other issues as well. For example, if we give legal status to people who live here illegally, it is necessarily a slap in the face to legal immigrants. It makes those who play by the rules look like dupes for having taken our immigration laws seriously. The above suggestion of giving DREAM Act recipients a long-term renewable, non-immigrant visa would have the advantage of not making those who played by the rules look so foolish. By not putting DREAM Act beneficiaries on a path to citizenship, we would be sending the message that there is a practical as well as a moral difference between obeying the law and violating it.

There is also the question of adding more workers to the legal labor force. Unemployment is very high among those with some college. Unemployment for young (18 to 29) Americans with some college, but not a bachelor's degree, is 11.3 percent. Using the broader measure of unemployment, (referred to as U-6), which includes those who want to work but have not looked recently, the unemployment for this group is 20.2 percent. For U.S.-born African Americans (18 to 29) with some college, the U-6 measure is 29.2 percent. If the act does not pass and the DREAM Act population remains illegal, then they will tend to compete for jobs with less-educated Americans. But unemployment for young less-educated Americans is even higher than for those with some college.⁸

One way to deal with this problem is to reduce legal immigration. Ending the visa lottery and family chain migration as part of a DREAM Act compromise could help reduce job competition in the

⁸ Figures are from the first quarter of 2011. See "A Need for More Immigrant Workers? Unemployment and Underemployment in the First Quarter of 2011," *Center for Immigration Studies*, <http://www.cis.org/no-need-for-more-immigrant-workers-q1-2011>

future. Jobs are not plentiful, but by reducing legal immigration in the future, we can help offset some of the negative effects of allowing the DREAM Act population to stay in the country.

One important administrative issue with the DREAM Act is that there is no time limit on how long after its enactment someone can apply. A person age 25 could wait until age 35 to apply. They only have to show that they arrived before age 15 and lived in the United States continuously for five years. There needs to be a time limit after which the door is closed to new applicants, perhaps three or five year after its enactment.

Conclusion

The idea behind the DREAM Act clearly has merit. While illegal immigrants raised in the United States do not have a right to stay in America, they certainly have a claim on our conscience. We should act on that claim. But we should do so in a manner that makes sense. We must deal honestly with the upfront costs of the DREAM Act, ensuring that if we do add a million new students to our community colleges and state universities, we provide funding so as to not crowd out deserving Americans. We must also do so in a way that guards public safety and enforces the law so as not to encourage more illegal immigration in the future. We must adopt policies that discourage fraud, which has plagued amnesty programs in the past. The college requirement should also be examined. Finally, we should think long and hard about including within the act measures that reduce job competition. This could be accomplished by lowering the number of green cards we issue each year. If we make the right changes, we can have a DREAM Act that would both provide relief to a group of people who clearly need help, while also limiting its unintended consequences.