
INTERNATIONAL AND NATIONAL SECURITY LAW

THE DREAM ACT: TAPPING AN OVERLOOKED POOL OF HOME-GROWN TALENT TO MEET MILITARY ENLISTMENT NEEDS

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Participants at the third annual Marine Advanced Technology Education Center's Remotely Operated Vehicle (ROV) Competition were shocked when four illegal aliens from Mexico—part of an ill-funded high school team from a rundown Hispanic neighborhood in West Phoenix, Arizona—beat sophisticated competitors from the Massachusetts Institute of Technology (MIT) and several other U.S. colleges to win a national competition to build the best underwater robot.¹ Luis Aranda, Cristian Arcega, Lorenzo Santillan, and Oscar Vasquez—all of whom had been living in the United States illegally since they were children—won not only the overall award, but also the design award and the technical writing award. Judges, including one from the U.S. Navy's Office of Naval Research (ONR), were so impressed by the team's accomplishments that they created a special judge's recognition award for the four young men.

Winning this prestigious technical competition, however, could not help these talented high school students with a greater problem: Because of their lack of immigration documents, these young men are unlikely to benefit the United States with their technical abilities. Although they have been educated at taxpayer expense in American public secondary schools, none of these young men can attend a U.S. college or even legally get a job in the United States. In fact, despite his Junior ROTC experience and obvious smarts, when Oscar Vasquez tried to enlist in the U.S. military, he was told that his illegal alien status barred him from joining.²

Experts estimate that there are currently more than half a million young men and women in this same situation, and more than 65,000 more graduate each year from U.S. high schools.³ Under current U.S. immigration law, they have no means of legalizing their status. To allow America to benefit from the talents of those like Oscar Vasquez and his teammates, in 2003, Senator Orrin Hatch (R-UT) introduced the "Development, Relief, and Education Act for Alien Minors" ("the DREAM Act").⁴ The DREAM Act would legalize young undocumented aliens who have been present in the United States since childhood, graduated from a U.S. high school, and stayed out of trouble with the law. Although the DREAM Act failed to pass during the 108th Congress because of election year concerns, many of its sponsors continue to push the bill, and it will likely be re-introduced in a future legislative session. The concept has bipartisan support, and has attracted more than two hundred cosponsors from both sides of the political aisle.

Although opponents of the DREAM Act have argued that it is a "sugar-coated amnesty" rewarding those who have violated U.S. immigration laws, passage of the DREAM Act would be highly beneficial to the United States military.

The DREAM Act promises to enlarge dramatically the pool of highly qualified recruits for the US Armed Forces. In a time when several military services are experiencing difficulties recruiting eligible enlisted soldiers, passage of this bill could well solve the Armed Forces' enlisted recruiting woes, and provide a new source of foreign-language qualified soldiers. Because the DREAM Act requires no change to military rules for enlisting recruits and allows the military to tap into an overlooked pool of home-grown talent, the Department of Defense should support passage of the DREAM Act.

America's news media have recently reported the heartbreaking stories of potential DREAM Act beneficiaries. In addition to reports about the winners of the ROV contest, the media have reported on such illegal residents of the United States as Kamal Essaheb, a 24-year-old Fordham Law honors student from Morocco whose parents overstayed their visas when he was eleven;⁵ Alan Morales, a California high school honors student and varsity volleyball player who has been in the United States since he was ten months old;⁶ Marie Gonzalez, a 19-year-old Costa Rican resident of Missouri who came to the U.S. at the age of five and was recently named one of the top ten women of the year by *Latina* magazine;⁷ and Griselda Lopez Negrete, a 16-year-old Presidential Scholar from South Carolina who has been here since she was two.⁸ These are just a few of the hundreds of stories about potential DREAM Act beneficiaries reported in the media in the past few years.

According to the Pew Hispanic Center, more than 750,000 such young people are residing in the United States today, many of them brought here by parents or smugglers when they were infants or toddlers.⁹ Although the United States Supreme Court, in the case of *Plyler v. Doe*,¹⁰ said that illegal alien children present in the United States have a Constitutional right to attend American public schools until high school graduation, these children cannot expect to hold a job or go to college after they complete their taxpayer-funded education. Instead, if they are discovered by the Department of Homeland Security, DHS will deport them to their "home" country, even if it is a country they cannot remember and where they have no friends, family members, or support network.

Recognizing that it makes little sense to deport these American-educated children to countries where they have no memories or ties, Senator Hatch and others proposed the DREAM Act. To qualify for benefits under the DREAM Act, an alien must have come to the United States while under the age of fifteen (15), and must have lived here for at least five (5) years. A DREAM Act beneficiary must of "good moral character" and must have completed high school in the United

States.¹¹ Upon applying for benefits under the DREAM Act, an alien will be granted six years of “conditional lawful resident” status; during that time, the alien must (1) graduate from a two-year college; (2) complete at least two years towards a four-year college degree; or (3) serve honorably in the United States military for at least two years.¹² At the end of the six years, if the alien has continued to show “good moral character,” the alien will be granted permanent lawful resident status without conditions.¹³ Because attending college is a very expensive proposition, the third option—joining the U.S. Armed Forces—is a likely option for many of the affected young people, hundreds of whom have already demonstrated an interest in joining the U.S. military.

As discussed above, experts estimate that there are upwards of 750,000 young people in the United States today who may be eligible for benefits if the DREAM Act passes, and about 65,000 are added to the pool every year.¹⁴ They are part of the group of more than eight million undocumented or illegal aliens present in the United States today,¹⁵ of which at least 1.6 million are undocumented children.¹⁶ As young people who have just graduated from high school, DREAM Act beneficiaries are in the age cohort of people whom the Armed Forces seek to recruit.¹⁷

Potential DREAM Act beneficiaries are also likely to be a military recruiter’s dream candidates for enlistment; they are not “bottom of the barrel” recruits even if they have no legal status. They have lived in the United States for at least five (5) years, unlike new lawful permanent residents whom the military current enlists. They have no adult period of residence in a foreign country, which might make a background check difficult for security clearance purposes. They often speak both English and another language fluently. Many have participated in Junior ROTC in high school. They do not have a criminal record or other evidence of bad character. They have graduated from an American high school. If approved as DREAM Act beneficiaries, they will have passed rigorous criminal background and security checks from the Department of Homeland Security. They will have “conditional lawful residence,” a status that is recognized under current military recruiting regulations; thus, the military will not have to change its regulations or process their enlistments differently from other recruits. Finally, they will be motivated to serve the United States so as to be given a chance to stay here:

[They] include honor roll students, star athletes, talented artists, homecoming queens, and aspiring teachers, doctors, and U.S. soldiers. They are young people who have lived in the U.S. for most of their lives and desire only to call this country their home. Even though they were brought to the U.S. years ago as children, they face unique barriers to higher education, are unable to work legally in the United States, and must live in constant fear of detection by immigration authorities.¹⁸

The DREAM Act is a particularly attractive legislative option because several of the military services have experienced difficulty enlisting new soldiers in recent months. In March 2005, the Army reported missing its enlistment goals for the first time in five years, the Marine Corps reported similar troubles, and “five of the six military reserve components failed to meet their recruiting goals for the first four months of” FY2005.¹⁹ These recruiting shortfalls are expected to grow over the coming years, making it particularly important for the U.S. Armed Forces to consider all options to attract qualified recruits. If the DREAM Act passes, the Armed Forces will not need to resort to lowering enlistment standards—as has allegedly happened recently—to meet recruiting goals.²⁰

Interestingly, current laws regarding military enlistment do not prohibit the Armed Forces from enlisting even *illegal* aliens in wartime. Title 10, United States Code, section 3253 states, “*In time of peace*, no person may be accepted for original enlistment in the Army unless he is a citizen of the United States or has been lawfully admitted for permanent residence”²¹ The obvious inference from this statutory language is that qualified aliens of any kind can enlist in the Army in time of war. The Air Force is governed by a similar statute.²² There is no statute limiting enlistment in the Regular Navy and Marine Corps, but those services usually apply the same citizenship requirements as the Army and Air Force.

Congress has also made it clear in other statutes that it expects illegal aliens to serve in the military if necessary. Under the Selective Service law, all male aliens age eighteen (18) to twenty-six (26), including illegal aliens, who reside in the United States, are required to register for Selective Service and subject themselves to the draft, if one is instituted.²³

Finally, Congress long ago also passed another law, section 329 of the Immigration and Nationality Act,²⁴ which gives the President authority to proclaim when the nation is engaged in armed conflict such that any aliens who are serving honorably in the military can obtain their U.S. citizenship, regardless of their immigration status, if they are otherwise qualified. No declaration of war is necessary to invoke this authority. Presidents have long invoked this statute to bestow citizenship benefits on illegal aliens serving in the military in wartime, and President George W. Bush did so on July 3, 2002, when he proclaimed that all aliens who have served honorably in the U.S. Armed Forces after September 11, 2001 shall be eligible to apply for expedited U.S. citizenship, regardless of their immigration status.²⁵ His order covered illegal aliens, several of whom were subsequently naturalized.²⁶

In the Global War on Terrorism, however, military recruiters have only been enlisting illegal aliens who present false papers showing that they are citizens or lawful residents. The Department of Defense appears to be officially unaware that it has statutory authority to enlist all aliens who are qualified, regardless of their immigration status. Recruiters have been turning away even legal aliens who have been

granted asylum in the United States, accepting only those immigrants who have “lawful permanent residence.” It appears that there is a disconnect between the statutory authority given to the Department of Defense and the regulations of the Services, and military recruiters have been following their service regulations. Those regulations do not distinguish between wartime and peacetime. Typical is the Army regulation, AR 601-210, which fails to distinguish between wartime and peacetime, stating only that no one is allowed to enlist in the regular Army unless that person is a lawful permanent resident, a U.S. national, a U.S. citizen, or a citizen of Micronesia, Palau, or the Marshall Islands (the latter being covered by a special treaty that allows them to enlist if they wish, even in peacetime).²⁷ The other services, and the Reserve Components, apply similar rules. None of the U.S. Armed Forces make an exception for the current wartime situation, despite their statutory authority to do so, and thus all continue to ban all illegal aliens (and many legal ones) from enlisting, no matter how qualified those aliens are. As a result, more than half a million qualified young people in the United States are deemed “off limits” to military recruiters. Many of these potential recruits have been turned away by recruiters, despite scoring well above their American peers on military entrance tests.

Opponents of the DREAM Act have not specifically argued against the military benefit to legalizing young illegal aliens; instead, their opposition rests on the argument that granting conditional status to these teenagers would reward lawbreaking²⁸ and encourage more illegal immigration.²⁹ They argue that these young people should all be deported to their native countries. This alternative, however, has never been pursued on a large scale by U.S. immigration authorities, and a mass deportation of more than half a million children and teenagers is not a reasonable possibility.

Furthermore, the benefit to the United States from keeping these American-educated individuals and legalizing them is far greater than the benefit, if any, of deporting them all; their deportation hurts the United States by depriving it of a substantial U.S. educated cohort of young people. As U.S. Representative Chris Cannon (R-UT), sponsor of the House version of the DREAM Act, said, “The real tragic thing is, of course, that you have these children who had nothing to do with coming here and breaking the law in the first place and are some of our brightest students, and down the line they get sent back.”³⁰ Perhaps opponents of the DREAM Act would be more convinced of its merits if they realized that deporting these young people confers a massive benefit on their countries of birth while depriving the United States of their talents.

The DREAM Act offers a bipartisan “fix” that would allow military recruiters to enlist this highly qualified cohort of young people, and enactment of the DREAM Act would be a “win-win” scenario for the Department of Defense and the United States. Deporting these young people is not possible as a practical matter and deprives the U.S. of a valuable human asset that can be put to work in the Global

War on Terrorism. In a time when qualified recruits—particularly ones with foreign language skills and foreign cultural awareness—are in short supply, enforcing deportation laws against these young people makes no sense. Americans who care about our national security should encourage Congress to pass the DREAM Act.

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Footnotes

¹ Joshua Davis, *La Vida Robot*, WIRED, 13.04 (April 2005), available at http://www.wired.com/wired/archive/13.04/robot_pr.html.

² *Id.*

³ See *infra* note 9.

⁴ The Development, Relief, and Education for Alien Minors Act of 2003 (“DREAM Act”), S. 1545, 108th Cong. (2003). A similar bill, the Student Adjustment Act, was introduced in the House by Representative Chris Cannon (R-UT). H.R. 1684, 108th Cong. (2003).

⁵ Daniella Gerson, *Fordham Student Inspires Immigrants Backing Passage Of DREAM Act*, NY. SUN, July 14, 2005, at 4.

⁶ American Immigration Lawyers Association (AILA), *Issue Paper: DREAM Act—Student Adjustment For Deserving Children* (2005), available at <http://www.aila.org/content/default.aspx?bc=6796%7C6799%7C8383>.

⁷ Brian DeBose, *Alien Still Hopes For DREAM Act*, WASH. TIMES, July 5, 2005, at A10.

⁸ AILA, *supra* note 6.

⁹ JEFFREY PASSEL, PEW HISPANIC CENTER, UNAUTHORIZED MIGRANTS: NUMBERS AND CHARACTERISTICS; BACKGROUND BRIEFING PREPARED FOR TASK FORCE ON IMMIGRATION AND AMERICA’S FUTURE (2005).

¹⁰ 457 U.S. 202 (1982).

¹¹ S. 1545, 108th Cong. (2003).

¹² *Id.*

¹³ *Id.*

¹⁴ JEFFREY PASSEL, URBAN INSTITUTION, FURTHER DEMOGRAPHIC INFORMATION RELATING TO THE DREAM ACT (2003).

¹⁵ RUTH WASEM, CONG. RESEARCH SERV., UNAUTHORIZED ALIENS IN THE UNITED STATES: ESTIMATES SINCE 1986 (2004).

¹⁶ JEFFREY PASSEL, RANDY CAPPAS, & MICHAEL FIX, URBAN INST., UNDOCUMENTED IMMIGRANTS: FACTS & FIGURES (2004).

¹⁷ ANITA HATTIANGADI, ALINE QUESTER, GARY LEE, DIANA LIEN, & IAN MACLEOD, CENTER FOR NAVAL ANALYSES, NON-CITIZENS IN TODAY'S MILITARY: FINAL REPORT, CRM D0011092.A2/FINAL (2005)(discussing characteristics of non-citizens of "recruitable age").

¹⁸ NATIONAL IMMIGRATION LAW CENTER, DREAM ACT: BASIC INFORMATION (February 2005), available at http://www.nilc.org/immlawpolicy/DREAM/DREAM_Basic_Info_0205.pdf.

¹⁹ Eric Schmitt, *Army Officials Voice Concern Over Shortfalls In Recruitment*, N.Y. TIMES, Mar. 4, 2005, at 16.

²⁰ Damien Cave, *Army Recruiters Say They Feel Pressure To Bend Rules*, N.Y. TIMES, May 3, 2005, at 23.

²¹ 10 U.S.C. §3253 (2005). Similar rules and laws govern enlistment in the Air Force, Navy, and Marine Corps, although the Navy and Marine Corps are not statutorily barred from enlisting all categories of aliens, even in time of peace. See DEP'T OF DEFENSE DIRECTIVE 1304.26, QUALIFICATION STANDARDS FOR ENLISTMENT, APPOINTMENT, & INDUCTION, & E1.2.2.1 (Dec. 21, 1993) ("To be eligible for enlistment in the Regular Army or Air Force, an individual must be an American citizen, or lawfully admitted to the United States for permanent residence (10 U.S.C., 3253 and 8253. . .). There is no equivalent statute limiting enlistment in the Regular Navy and Marine Corps, but they usually apply the same citizenship requirements as those required for the Army and Air Force."). Army Reserve enlistments are governed by 10 U.S.C. § 12102 (2003) ("no person may be enlisted as a Reserve unless—(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*); or (2) he has previously served in the armed forces or in the National Security Training Corps."). The National Guard has sometimes allowed aliens to enlist, despite their lack of lawful permanent resident status, and several states permit "able-bodied aliens" to enlist in the state militia.

²² 10 U.S.C. §8253 (2005).

²³ 50 U.S.C.S. Appx § 453 (2005). The Selective Service Act states (emphasis added):

(a) Except as otherwise provided in this title, it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for . . . registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined . . . The provisions of this section shall not be applicable to any alien lawfully admitted to the United States as a nonimmigrant under section 101(a)(15) of the Immigration and Nationality Act, as amended (66 Stat. 163; 8 U.S.C. 1101), for so long as he continues to maintain a lawful nonimmigrant status in the United States.

Clearly, this means that any illegal or undocumented male alien must register for the draft.

²⁴ Section 329 of the Immigration & Nationality Act [8 U.S.C. § 1440] states:

(a) Requirements. Any person who, while an alien or a noncitizen national of the United States, has served honorably in an active-duty status in the military, air, or naval forces of the United States. . . during any [] period

which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who, if separated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment, reenlistment, extension of enlistment, or induction such person shall have been in the United States, the Canal Zone, American Samoa, or Swains Island, or on board a public vessel owned or operated by the United States for noncommercial service, whether or not he has been lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable conditions: Provided: however, That no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military, air, or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this section. . . .

(b) Exceptions. A person filing an application under subsection (a) of this section shall comply in all other respects with the requirements of this title, except that— (1) he may be naturalized regardless of age, and notwithstanding the provisions of section 318 [8 U.S.C. § 1429] as they relate to deportability and the provisions of section 331 [8 U.S.C. § 1442]; (2) no period of residence or specified period of physical presence within the United States or any State or district of the Service in the United States shall be required; and (3) service in the military, air, or naval forces of the United States shall be proved by a duly authenticated certification from the executive department under which the applicant served or is serving, which shall state whether the applicant served honorably in active duty status. . . during any [] period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and was separated from such service under honorable conditions.

(c) Revocation. Citizenship granted pursuant to this section may be revoked in accordance with section 340 of this title [8 U.S.C. § 1451] if at any time subsequent to naturalization the person is separated from the military, air, or naval forces under other than honorable conditions

²⁵ Exec. Or. No. 13,269, (July 3, 2002), 67 Fed.Reg. 45, 287 (July 8, 2002). The Executive Order states:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 329 of the Immigration and Nationality Act 8 U.S.C. § 1440) (the 'Act'), and solely in order to provide expedited naturalization for aliens and noncitizen nationals serving in an active-duty status in the Armed Forces of the United States during the

period of the war against terrorists of global reach, it is hereby ordered as follows:

For the purpose of determining qualification for the exception from the usual requirements for naturalization, I designate as a period in which the Armed Forces of the United States were engaged in armed conflict with a hostile foreign force the period beginning on September 11, 2001. Such period will be deemed to terminate on a date designated by future Executive Order. Those persons serving honorably in active-duty status in the Armed Forces of the United States, during the period beginning on September 11, 2001, and terminating on the date to be so designated, are eligible for naturalization in accordance with the statutory exception to the naturalization requirements, as provided in section 329 of the Act [this section]. Nothing contained in this order is intended to affect, nor does it affect, any other power, right, or obligation of the United States, its agencies, officers, employees, or any other person under Federal law or the law of nations.

²⁶ Florangela Davila, *Army Says Illegal Immigrant Soldier Can Stay*, SEATTLE TIMES, October 3, 2003, at A1.

²⁷ Army Reg. 601-210, REGULAR ARMY & ARMY RESERVE ENLISTMENT PROGRAM, ¶2-4 (“Applicant is eligible for enlistment if any of the following apply: (1) Citizen of the United States. (2) Alien who has been lawfully admitted to the United States for permanent residence. (3) National of the United States. (4) Citizens. . . of the Federated States of Micronesia (FSM), Palau and the Republic of the Marshall Islands (RMI).”). The latter are permitted to enlist in the Army due to United States treaty obligations with their countries.).

²⁸ J. Mann, *Illegal Alien’s D.R.E.A.M.—Patriot’s Nightmare* (October 28, 2003), available at http://www.vdare.com/mann/dream_act.htm.

²⁹ FEDERATION FOR AMERICAN IMMIGRATION REFORM, THE “DREAM ACT”: HATCH-ING EXPENSIVE NEW AMNESTY FOR ILLEGAL ALIENS (October 2003), available at <http://www.fairus.org/news/News Print.cfm?ID=2194&c=34>.

³⁰ Brian DeBose, *Alien Still Hopes For DREAM Act*, WASH. TIMES, July 5, 2005, at A10.