Secretary

U.S. Department of Homeland Security
Washington, DC 20528

August 18, 2011

The Honorable Dick Durbin
United States Senate
Washington, DC 20510

Dear Senator Durbin:

Thank you for your letter to President Obama regarding the Administration's immigration enforcement policies and the Development, Relief, and Education for Alien Minors (DREAM) Act. The President has asked me to respond on his behalf.

Over the past two years, the Department of Homeland Security (DHS) has established clear and well-reasoned priorities that govern how DHS uses its immigration enforcement resources. These priorities focus our resources on enhancing border security and identifying and removing criminal aliens, those who pose a threat to public safety and national security, repeat immigration law violators and other individuals prioritized for removal. Initially set forth in a March 2010 memorandum from U.S. Immigration and Customs Enforcement (ICE) Director John Morton, these priorities were recently reiterated and clarified in Director Morton's June 17, 2011 memorandum regarding the exercise of prosecutorial discretion by ICE personnel.

While additional work remains, we have made tremendous progress in our effort to focus DHS resources on these enforcement priorities. Our FY 2010 statistics are illustrative. In FY 2010, ICE removed 79,000 more aliens who had been convicted of a crime than it did in FY 2008. As a result, for the first time ever and due to the expansion of the Secure Communities program, over 50 percent of the aliens removed by ICE in a fiscal year were convicted criminals. Of those removed with no confirmed criminal conviction, more than two-thirds were either apprehended at the border or were repeat violators of our immigration laws. As enforcement directives continue to be implemented, we anticipate that these trends will increase in FY 2011.

The President has said on numerous occasions that it makes no sense to expend our enforcement resources on low-priority cases, such as individuals like those you reference in your letter, who were brought to this country as young children and know no other home. From a law enforcement and public safety perspective, DHS enforcement resources must continue to be focused on our highest priorities. Doing otherwise hinders our public safety mission—clogging immigration court dockets and diverting DHS enforcement resources away from individuals who pose a threat to public safety.

Accordingly, the June 17, 2011 prosecutorial discretion memorandum is being implemented to ensure that resources are uniformly focused on our highest priorities. Together

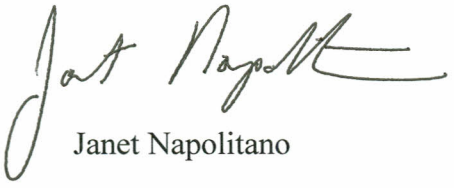
with the Department of Justice (DOJ), we have initiated an interagency working group to execute a case-by-case review of all individuals currently in removal proceedings to ensure that they constitute our highest priorities. The working group will also initiate a case-by-case review to ensure that new cases placed in removal proceedings similarly meet such priorities. In addition, the working group will issue guidance on how to provide for appropriate discretionary consideration to be given to compelling cases involving a final order of removal. Finally, we will work to ensure that the resources saved as a result of the efficiencies generated through this process are dedicated to further enhancing the identification and removal of aliens who pose a threat to public safety.

This case-by-case approach will enhance public safety. Immigration judges will be able to more swiftly adjudicate high priority cases, such as those involving convicted felons. This process will also allow additional federal enforcement resources to be focused on border security and the removal of public safety threats.

Although the process for implementing the June 17 memorandum will focus the Administration's immigration enforcement efforts on high priority cases, it will not provide categorical relief for any group. Thus, this process will not alleviate the need for passage of the DREAM Act or for larger reforms to our immigration laws. President Obama has called the DREAM Act the right thing to do for the young people it would affect, and the right thing to do for the country. Last December, I joined the President and several members of his Cabinet in urging the Congress to pass this important legislation. Earlier this year I was fortunate to be able to testify in favor of the Act. I continue to urge the 112th Congress to pass the DREAM Act as well as other necessary immigration reforms.

Thank you again for your letter. My office would be pleased to provide you with a briefing to discuss this process in greater detail. Identical responses have been sent to the Senators that co-signed your letter. Should you wish additional assistance, please do not hesitate to contact me at (202) 282-8203.

Yours very truly,



Janet Napolitano

Enclosure

Background: Implementing an Effective Immigration Enforcement Strategy

The Department of Homeland Security (DHS) is focused on smart and effective enforcement of U.S. immigration laws in a manner that best promotes public safety, border security, and the integrity of the immigration system. U.S. Immigration and Customs Enforcement (ICE) has made a number of improvements to better advance its efforts to focus ICE's resources on the removal of individuals who fit within their highest priorities, such as those who pose a threat to public safety or who have flagrantly violated the nation's immigration laws, and to do so in a way that respects civil rights and civil liberties.

- In June 2010, ICE Director John Morton issued a Memorandum entitled "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" articulating ICE's commitment to prioritizing the use of its enforcement personnel, detention space, and removal resources to ensure that the removals conducted by the agency promote national security, public safety, and border security—with the removal of aliens who pose a danger to national security or a risk to public safety constituting the highest enforcement priority.

- In August 2010, ICE issued a Memorandum entitled "Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions"—outlining a framework for ICE to request expedited adjudication of an application or petition (I-130) for an alien in removal proceedings that is pending before U.S. Citizenship and Immigration Services (USCIS) if the approval of such an application or petition would provide an immediate basis for relief for the alien.

- On June 17, 2011, ICE Director Morton issued a new memorandum that provides guidance for ICE law enforcement personnel and attorneys regarding their authority to exercise prosecutorial discretion when appropriate – authority designed to help ICE better focus on meeting the priorities of both the agency and the Secure Communities program to use limited resources to target criminals and those that put public safety at risk. This memorandum also directs the exercise of prosecutorial discretion where appropriate to ensure greater consistency in the treatment of individuals who do not fit within ICE's enforcement priorities. Finally, it clarifies that the exercise of discretion is inappropriate in cases involving threats to public safety, national security and other agency priorities.

- On June 17, 2011, ICE announced key improvements to the Secure Communities program. Secure Communities has proven to be a critical tool for carrying out ICE's enforcement priorities. To continue to improve the program, DHS and ICE are committed to addressing concerns that have been raised about its operation, including the following reforms:

    - **Advisory Task Force:** ICE created a new advisory task force that will advise on ways to improve Secure Communities, including making recommendations on how to best focus on individuals who pose a true public safety or national security threat. This panel is composed of chiefs of police, sheriffs, ICE agents from the field, immigration advocates, and leading academics. The report of this advisory group will provide recommendations on how ICE can adjust the Secure Communities program to mitigate potential impacts on community policing practices and better effectuate ICE priorities. Currently, the Task Force is conducting field hearings to obtain feedback from communities across the country. DHS anticipates that their report will be issued in early September. For a full list of committee members, visit: http://www.dhs.gov/files/committees/task-force-on-secure-communities-membership.shtm.

- **Training for States:** ICE and the DHS Office for Civil Rights and Civil Liberties (CRCL) developed new training programs for state and local law enforcement agencies to provide more information about how Secure Communities works and how it relates to civil rights and aliens' rights in the criminal justice system. The first set of training materials can be accessed here.

- **Protecting Victims & Witnesses of Crimes:** At the direction of Secretary of Homeland Security Janet Napolitano, ICE, in consultation with CRCL, developed a new policy specifically to protect victims of domestic violence and other crimes and to ensure that these crimes continue to be reported and prosecuted. This policy directs all ICE officers and attorneys to exercise appropriate discretion to ensure that immediate victims of and witnesses to crimes are not penalized by removal. ICE is also working to develop additional tools that will help identify people who may be victims, witnesses, or members of a vulnerable class so officers can exercise appropriate discretion.

- **Detainer Form:** ICE revised the detainer form that it sends to local jurisdictions to request that an alien be held for ICE to interview, to emphasize the longstanding guidance that state and local authorities are not to detain an individual for more than 48 hours (excluding weekends and holidays). Once implemented (likely in September 2011) the form will also require local law enforcement to provide arrestees with a copy, which includes an explanation of how to make a complaint in six languages and a number to call if the arrestee believes his or her civil rights have been violated in a manner connected to immigration enforcement.

- **Civil Rights Complaints:** ICE and CRCL created a new complaint system whereby individuals or organizations who believe civil rights violations connected to Secure Communities have occurred can file a complaint. For example, CRCL will investigate complaints of racial or ethnic discrimination by policing jurisdictions for which Secure Communities has been activated, and DHS will take steps to ensure that bias or other abuses do not affect immigration enforcement.

- **Data Collection and Monitoring:** ICE and CRCL created an ongoing quarterly statistical review of the program to examine data for each jurisdiction where Secure Communities is activated to identify effectiveness and any indications of potentially improper use of the program. Statistical outliers in local jurisdictions will be subject to an in-depth analysis, and DHS and ICE will take appropriate steps to resolve any issues.

- On August 18, 2011, DHS unveiled a new interagency process to ensure that resources are focused on the Administration's highest enforcement priorities. As part of this process, an interagency team of DHS and Department of Justice (DOJ) officers and attorneys, including representatives from throughout DHS and from the Executive Office for Immigration Review (EOIR) and the Office of Immigration Litigation at DOJ, will identify low-priority removal cases that should be considered for an exercise of discretion. This review will be conducted on a case-by-case basis and will consider cases that are at the various stages of enforcement proceedings, including charging, hearing, and after a final order of removal. The interagency working group will also issue guidance to prevent low priority cases from entering the system on a case-by-case basis. Resources that are saved as a result of this process will be used to accelerate the removal of high priority cases.