



Immigration Policy Update*

December 14, 2016

Senators Introduce Starkly Different Bills on DREAMers

On December 9, just before the 114th Congress concluded, Senators Graham (R-SC), Durbin (D-IL), Murkowski (R-AK), Feinstein (D-CA), Flake (R-AZ), and Schumer (D-NY) introduced the BRIDGE Act (“Bar Removal of Immigrants Who Dream and Grow the Economy Act,” S. 3542) to provide temporary protection to people who are eligible for President Obama’s Deferred Action for Childhood Arrivals (DACA) initiative. The BRIDGE Act offers critical, though short-term, relief for an extremely compelling population, DREAMers brought to the United States as children. The bill was introduced as a response to President-elect Trump who has declared that he will rescind the DACA initiative, an action that would put about 750,000 people granted DACA protection at risk of deportation. AILA supports the BRIDGE Act and urges members of Congress to pass it at the start of the new Congress.

On the same day, Senator Flake, a co-sponsor of the BRIDGE Act, also introduced his own bill called the SAFE Act (“Securing Active and Fair Enforcement Act”), which pairs the identical text of the BRIDGE Act with tough immigration enforcement measures that would increase the use of mandatory detention and further expedite removal proceedings. Sen. Flake’s SAFE Act not only comes with a high price tag (it requests \$100 million in funding), but would also require the detention of undocumented immigrants with strong ties to this country who pose no threat to public safety. The SAFE Act would also force immigration judges to decide cases under a 90-day clock—fundamentally undermining judicial independence and due process. Contrary to its name, the SAFE Act is likely to upend the lives of thousands of immigrants and their families, and erode communities’ faith and trust in local law enforcement. The families of precisely those DREAMers that Sen. Flake purports to protect in the BRIDGE Act would be subject to harsh detention and removal under the SAFE Act.

The bipartisan BRIDGE Act would protect DREAMers.

By essentially codifying President Obama’s 2012 DACA initiative, the BRIDGE Act would provide a temporary reprieve from deportation (“provisional protected presence”) and employment authorization for the DACA-eligible population for up to three years after the date of the bill’s enactment. Applicants would have to meet the same requirements as they would for DACA:

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pay a fee; undergo criminal background checks; demonstrate they are not a threat to public safety; and establish that they came to the United States at an early age, have continued to live here, and have pursued an education. Those granted temporary protection under the bill would be able leave the United States if they obtain authorization from DHS. The BRIDGE Act also ensures DREAMers already granted DACA can transition to a new provisional status without risk of deportation.

The BRIDGE Act recognizes the significant contributions DACA recipients are making today by working, attending school, and supporting their families and communities. Studies have shown that revoking DACA for current grantees would cost America more than \$430 billion over ten years.

By focusing on a highly vulnerable but narrow population, the BRIDGE Act does not protect most of the undocumented individuals and families who have lived in the country for years and have no way to legalize their status. The bill also does not assist the many individuals, families, and businesses nationwide who have been waiting for a more comprehensive solution that ensures our immigration system serves the needs of America. With three-out-of-four Americans supporting immigration reform, Congress and President-elect Trump should enact not only the BRIDGE Act but also broader immigration reform.

The SAFE Act would hurt DREAMers, their families and immigrant communities.

Unlike the BRIDGE Act, the SAFE Act uses DREAMers as a bargaining chip to enact interior enforcement measures. Far from making America safer, the bill would target many undocumented immigrants who pose no public safety threat. The bill would sweep in people with deep roots in our communities—including the parents and siblings of the very DREAMers Senator Flake aims to protect.

The SAFE Act mandates the detention of people who pose no public safety threat. The bill mandates that DHS hold in custody throughout removal proceedings anyone it determines is “unlawfully present” who has been arrested for certain criminal offenses -- it does not require a conviction for a listed offense. Though Senator Flake intends for the SAFE Act to target “violent criminals,”¹ the bill also includes minor or nonviolent misdemeanors like shoplifting or turnstile jumping.² Even after a person is ultimately exonerated of a listed offense, the SAFE Act mandates that DHS continue detention for the remainder of their removal proceedings.

The SAFE Act pressures localities to detain people beyond what is constitutionally permissible. The bill requires that DHS take custody of a person if local law enforcement is about to release the person. The bill would pressure localities to honor federal detainer requests to hold the person beyond the period that is legally permissible. Recent federal court decisions have invalidated DHS’s practice of issuing detainers against people in local custody,

¹ <http://www.flake.senate.gov/public/index.cfm/press-releases?ID=6337D00E-5319-4C39-9C84-5E41AFEFC5F5>

² The bill includes offenses described in Immigration and Nationality Act §236(c)(A) – §236(c)(D).

ruling that the practice exceeds the government's limited warrantless arrest authority under federal immigration laws. If the SAFE Act becomes law, localities that detain for a period longer than is constitutionally allowed could be held liable for unlawful detention.

The SAFE Act will embolden racial profiling by the likes of Sheriff Joe Arpaio. This bill will encourage racial profiling by overzealous law enforcement officers, who will be motivated to make more arrests for crimes listed in the bill in order to subject more people to mandatory immigration detention and removal. The SAFE Act sets a low bar by requiring the continued detention of anyone arrested for one of the crimes set forth in the bill until removal proceedings are completed. The extensive collaboration the bill requires between DHS and local law enforcement would erode the community's trust in law enforcement. Ultimately this would compromise the ability of police and sheriffs to protect and serve the people.

The SAFE Act will rush immigration court proceedings. The SAFE Act also contains a 90-day mandatory completion requirement for removal proceedings against anyone detained under this section. The Immigration Courts already prioritize the cases of people who are detained. But if Congress imposes a strict deadline, it will almost certainly compromise the fairness of proceedings and the integrity of judges' decisions. The vast majority of those facing these fast-track proceedings would never have the opportunity to obtain legal counsel with an attorney. Currently only 14 percent of detained individuals in removal proceedings have legal representation.³ Even worse, the SAFE Act would put enormous pressure on DHS to shortcut due process, and apply expedited methods of removal that completely bypass the courts.

The bill requires the Attorney General to designate up to 100 temporary immigration judges within 14 days. It further requires that DHS hire 150 new ICE trial attorneys. The bill authorizes the appropriation of \$100 million to accomplish these goals. While improving the capacity of the immigration court system is absolutely necessary, these provisions are insufficient to fix the deep erosion of due process required in the SAFE Act. Moreover, rushing through the vetting and hiring process for temporary immigration judges in 14 days would sacrifice quality and undermine the high standards of the immigration judge corps.

The SAFE Act will inflate costly and unnecessary detention. The SAFE Act's massive expansion of mandatory detention comes with a \$100 million price tag, further escalating the \$2 billion already spent on immigration detention annually. This bill would send costs through the roof and line the pockets of private, for-profit prison companies while offering no real public safety benefit. The detention mandated under the SAFE Act is unnecessary and wasteful.

³ A national study of 1.2 million cases decided between 2007 and 2012 concluded that 14 percent of detained immigrants received legal counsel.

https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf