First let me say that I understand the predicament that these kids are In and I can appreciate that they want to become a part of the American dream. I sat In this hearing and heard from an Immigration attorney that says DACA which was Issued by executive order from the President and then sent out as a memo to the department of Homeland Security as a reason that you should pass a bill such as this because these kids will almost certainly become citizens at some point In time as a result of this executive action. Kansas Secretary of State Kris Kobach is representing ten U.S. Immigration and Customs Enforcement officers in suing the Obama administration in an attempt to block DACA, claiming that it violates federal immigration laws. Kobach, naming Janet Napolitano and John Morton as defendants. In a 35 page decision Federal District Court Judge Reed O'Conner has ruled that 10 ICE agents and officers have standing to challenge in Federal court the so-called Morton Memo on prosecutorial discretion and the DREAM directive on deferred action. The agents filed their complaint in October, charging that unconstitutional and illegal directives from DHS Secretary Janet Napolitano and ICE Director John Morton order the agents to violate federal laws or face adverse employment actions. This is a major first step for the ICE agents in their case against the administration.
The primary impetus for the lawsuit came last June, when Secretary Napolitano issued a memo offering deferred action and employment authorization to illegal aliens under age 31 who meet certain criteria similar to those outlined in the DREAM Act, which has failed to pass Congress on three occasions.

Federal immigration law prohibits states from providing in-state tuition rates to illegal aliens based on residence in a state unless the same rates are offered to all U.S. citizens.While the Justice Department is suing states that are assisting the enforcement of federal immigration law, it is ignoring the violation of an unambiguous federal law that is designed to reduce incentives for illegal immigration.

The United States is a country of immigrants—men and women who sought opportunity and freedom in an exceptional new land. Americans take pride in their heritage and this country's generous policies regarding legal immigration. Yet, as citizens of a sovereign nation, Americans retain the right to decide who can and cannot enter this country—and what terms immigrants and visitors must accept as a condition of residing in the United States. As mandated by the U.S. Constitution, Congress sets America's immigration policy. State officials have considerable influence in Congress over the crafting of immigration laws, and they may take steps to help enforce federal law.However, state officials cannot act contrary to a congressional statute.

America is a "nation of laws, not of men," and thus her citizens must abide by the rule of law. But even if the operation of the rule of law was not imbedded in the U.S. Constitution and legal system, every generation of Americans should re-affirm its virtue and security. These concepts, ancient as they are, and quaint as they may sound to some, provide the bedrock principles of this nation's constitutional republic. To abandon them in individual cases—where, for example, it seems opportunistic or personally appealing—is to render them unavailable in the preservation of all other rights.
Article 1, Section 8, Clause 4 of the United States Constitution provides that Congress has the power to "establish an uniform Rule of Naturalization." Over the decades, Congress has done just that, imposing a variety of conditions on those who wish to immigrate (e.g., such individuals must do so openly and in accordance with established legal process) and on those who might be visiting (e.g., such individuals must not overstay their authorized visit).

Unambiguous federal law regarding who may receive the benefit of in-state college tuition is part of these conditions. Specifically, § 1623 of IIRIRA (Immigration Reform and Immigrant Responsibility Act provides that -

Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizens or national is such a resident.

Thus, it is obvious that Congress meant to prohibit state colleges and universities from offering in-state tuition to illegal aliens unless the state institutions also offer in-state tuition to all students, regardless of whether they live in the state or in another state. Congress may have assumed that state colleges and universities would not be able to "afford" offering in-state rates to everyone because these schools rely on the higher tuition from out-of-state students to help subsidize public colleges, and thus they would not offer in-state rates to illegal aliens.[vii] But the law itself provides a choice and only requires states to treat out-of-state citizens and illegal aliens equally.
To avoid IIRIRA's mandate that in-state tuition be determined "on the basis of residence within a State," some state lawmakers have created alternative criteria through which students might qualify for in-state tuition. Such alternative criteria are intended to act as a substitute for actual residence, which, in turn, creates the patina of compliance with the federal statute: Since residence is not at issue, there is, so these states argue, no conflict between federal and state law. In reality, however, the states are targeting illegal aliens for in-state tuition.

Maryland's Senate Bill 167, which was signed into law by Governor Martin O'Malley (D), is a typical example of such chicanery. This bill exempts individuals, including "undocumented immigrants," from paying out-of-state tuition if the person attended a secondary school in the state for at least three years, graduated or received a GED in the state, proves that he or his parents have filed Maryland income tax returns annually for the three years the student attended school in Maryland, and states that they will file an application to become a permanent resident.[xi]

Maryland Attorney General Douglas F. Gansler provided a dubious legal opinion regarding Senate Bill 167 to Gov. O'Malley on May 9, 2011. Gansler concluded that federal law (in particular, 8 U.S.C. § 1623(a)) does not preempt Senate Bill 167. The opinion suggests that Senate Bill 167 is not subject to the preemptive effect of § 1623(a) because the former "looks to factors such as time of attendance in Maryland schools and graduation from Maryland schools to define an exemption from nonresident tuition" [xii] and not residence. There are at least two problems with that legal analysis.

First, federal law permits a state to grant in-state college tuition to an illegal alien only if the state affords the same benefit to non-Maryland residents. The purpose of that law is to allow a state to treat illegal aliens like nonresidents for college tuition purposes: If the state does not charge more to the latter than to in-state students, then it may charge the same amount to illegal aliens (who, in an abstract sense, are akin to non-Marylanders). But Maryland's law does not use that

formula; Gansler claims that the bill does not require "residence" in Maryland to attend college and receive in-state tuition since it looks to "time of attendance" in Maryland high schools.

However, the regulations of the Maryland Board of Education authorize local schools to require "proof of the residency of the child" for admission into public schools for kindergarten through high school. In fact, the Web site for the Prince George's County Public Schools says that "proof of residence shall be a prerequisite of admission to the public schools" and parents and guardians who are registering their children for school the first time must file an "Affidavit of Disclosure as required by law, verifying their legal residence in Maryland."[xiv] Montgomery County also tells parents enrolling their children for the first time that "all students…must provide verification of age, identity, residency, and immunizations."[xv] As the state's attorney general, Gansler has constructive knowledge of this residency requirement. The fact that he ignores it throws into question the premise on which his entire legal opinion rests.

No one who lives in, and went to high school in, for example, Wyoming, could satisfy the eligibility requirements of Senate Bill 167; the new law does not apply to non-Marylanders. As such, because the Maryland bill does not put non-Maryland residents on a par with Marylanders, the bill cannot give illegal aliens a break on state tuition.

Second, Gansler's letter states that "the entire purpose of the bill is to design a law that will enable the State to continue to provide services to young undocumented aliens."[xvi] The purpose of the bill, therefore, is to achieve the result that Congress outlawed in 8 U.S.C. § 1623(a)—granting in-state college tuition to illegal aliens without also granting that benefit to non-Maryland residents.

The Supreme Court has repeatedly struck down state legislation enacted to evade federal statutory or constitutional requirements. Indeed, the Court has rejected such legislation even when state lawmakers do not reference a suspect or disfavored classification:

The states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.
States that offer in-state tuition for illegal aliens are in violation of federal law. In doing so, these states are also acting against the will of the American people.

The applicable statute and the case law are clear: If there is no private right of action under § 1623, the U.S. Department of Justice must enforce this statutory provision against states that have violated federal law. Yet even as it sues states like Arizona and Alabama for trying to assist the enforcement of federal immigration law, the U.S. government refuses to sue states that are incontrovertibly and brazenly violating an unambiguous federal immigration law.

The President and the Attorney General have an obligation to enforce the provisions of the United States' comprehensive federal immigration regulations—including the federal law prohibiting state colleges and universities from providing in-state tuition rates to illegal aliens "on the basis of residence within the State."

James Bills - Tualatin Oregon