Mr. REID. Mr. President, I ask unanimous consent that on Thursday, November 3, 2011, when the Senate resumes consideration of the motion to proceed to S. 1769, the Rebuild America Jobs Act, it be in order for the Republican leader or his designee to move to proceed to S. 1786; that the motions to proceed be debated concurrently, with the time until 3 p.m. equally divided between the two leaders or their designees prior to votes on the motions to proceed in the following order: Reid motion to proceed to S. 1769 and McConnell or designee motion to proceed to S. 1786; that the motions to proceed each be subject to a 60-affirmative-vote threshold; that if the Reid motion to proceed is agreed to, the vote on the McConnell or designee motion to proceed be delayed until disposition of S. 1769; finally, that the cloture motion with respect to the motion to proceed to S. 1769 be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. I now ask unanimous consent to move to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DREAM ACT

Mr. DURBIN. Mr. President, what if I came to the floor today and said I have a new law I want to introduce, and here is what it says: If you stop motorists across America, anywhere across America—for speeding, reckless driving, driving under the influence—you can not only arrest that motorist, you can arrest the child in the backseat. You can tell that child in the backseat, maybe 2 years old or 5 years old, you have to pay a price because your parent broke the law. People would laugh me out of the Senate Chamber. That is not right. That is not the way we handle justice in America. You do not impose a penalty on children because of the wrongdoing of their parents.

Keep that in mind for a moment because I want to tell you a story, a story that goes back 10 years in Chicago, IL, when a Korean-American woman called my office in Chicago and said, I have a problem. Actually, I have a good thing to tell you, she said. My daughter, who is graduating from high school, is an accomplished concert pianist. She has gone through the Merit Music Program in Chicago, a wonderful program that allows kids—not from the wealthy families but kids from families of lower income groups—a chance to own musical instruments or take musical lessons and see if they thrive—and they do; 100 percent of them go to college.

Her daughter was one of them, a concert pianist graduating from high school, and her mom said: She has been accepted at the Julliard School of Music in New York. We cannot believe it. She said: I run a dry cleaner and my daughter is going to the best music school in America, and the Manhattan Conservatory of Music has also accepted her. She sat down and she was filling out the application, and she came to the box which said nationality, citizenship, and she said: USA, right? And her mom said: You know, we brought you here when you were 2 years old, from Korea, and we never filed any papers. So I don't know what to call you at this point, I don't know what your legal status is. Your brother and sister were born here and they are American citizens. The mom said, I am a naturalized citizen but we never filed any paperwork for you. I don't know what to tell you. They called my office. We checked the law. Do you know what the law said? The law said that young girl had to leave the city of Chicago and America for 10 years—10 years—and then apply to come back in. You see, her mother did not file the papers, and at age 2 she became undocumented and illegal.

That is not right. It is no more just than to arrest the child in the backseat for the speeding parent. But it was happening right before our eyes. We started looking at it, and said the only way to deal with this is to change the law, and here is what we said. If you came to the United States as a child under the age of 16—as a child; if you finished high school; and if you had no problems, no significant criminal record—we will give you two chances to become a legal person in America. First chance: Enlist in our military. If you are willing to risk your life for this country, you deserve a chance to be a citizen. Second: Finish at least 2 years of college. Not a lot of kids do that, but if you finish 2 years of college we will give you a chance to be legal. We called it the DREAM Act. For 10 years I have been standing on the Senate floor trying to pass the DREAM Act.

Time and again we have had a majority vote here. The last time I think there were 55, if not 53, Senators. But because it is controversial, someone objected and we needed 60 votes and we failed.

When I first introduced this bill, I would stand up in the Hispanic neighborhoods of Chicago and I would talk about it. A lot of people would listen intently. Then I would leave and go outside to my car to leave and, without fail, usually in the dark of night, there would be a young person standing by my car and that person would say to me: Senator DURBIN, I am one of those kids. Can you do something to help me? Can you pass the DREAM Act? Many of them with tears rolling down their cheeks, and they would tell me their stories, how they had no future, no place to go. They couldn't go to college. If they graduated from college, and some of them had, they could not become engineers or doctors or lawyers or what they wanted to be. They were without a country.

Time has changed that approach. These young people no longer stand in tears in the darkness. They filled the galleries last December when we voted on this. They were all over the galleries with caps and gowns like graduates, and signs that said, ''I am a DREAMer.'' They waited and watched, and the bill failed.

It broke my heart, and many of them left in tears. But they are standing up to tell their stories now and some of them are brave enough to stand up and let America know who they are and why they should have a chance. I think they deserve a chance.

Let me tell you right off the bat I have a conflict of interest on this bill. I guess Senators in this time of ethical considerations should confess and make public their conflict of interest. See, my mother was an immigrant to this country. She would have been a DREAMer in her day. She was brought in at the age of 2 from Lithuania 100 years ago. It was only after she was married and had two children that she became a naturalized American citizen. I have a naturalization certificate upstairs in my office. I am very proud of it. She passed on. She saw me sworn into the Senate and passed on a few months after that.

As her son, first-generation American, son of an immigrant, I stand here as a Member of the Senate, a privilege which barely 2,000 Americans have ever had. It says a lot about my family but it says a lot about America that I had my chance; the fact that my mother came here at the age of 2, perhaps under suspicious circumstances, and was given a chance to become an American citizen, raised a family, worked hard, sent her kids to school, and saw one of them actually end up with a full-time government job as a U.S. Senator.

That is why when I hear this debate across America on immigration I wonder who these people are who are talking about how evil and negative it is to have immigrants in our country. I just left an historic ceremony a couple of hours ago. It was at the hall in the new Visitor Center, Emancipation Hall. I could not believe my eyes. It was a special Congressional Gold Medal honoring those Japanese Americans who served in World War II. What astounded me was the number who showed up. These are men who have to be in their eighties and nineties, who came there to be honored with this Congressional Gold Medal, people of Japanese ancestry, whose parents and relatives were often sent to interment camps, and asked for the chance to risk their lives and serve America in World War II and ended up being some of our most heroic warriors.

I looked at that audience and I wondered if some of the critics of immigration would criticize these men and their families, men who had literally risked their lives—some lost their lives—many of whom were seriously injured.

I am honored serving with so many great people in this Senate, but none

more than DANNY INOUYE, who is in my estimation a true American hero, a recipient of the Congressional Medal of Honor for his service in the 442nd, and a man who still comes and leads the Senate as chairman of the Senate Appropriations Committee. Here was a person who was frowned on and even being spit on for being Japanese at a time when Pearl Harbor was still fresh in the minds of many people. But he said: ''Sign me up, hand me a uniform, give me a gun and I will die for this country.'' He risked his life like thousands of others and I am glad this honor was given today. But it is a constant reminder that we are a nation of immigrants, we are a diverse nation, and it is in that diversity we find our strength. We come from so many different corners of the world and we come to America to call it home. These children are in that same position.

When I see the argument being made in Arizona and Alabama, the anti-immigrant argument being made, I am thinking to myself they are ignoring the reality. The reality is the diversity of our Nation is its strength, the fact that we come from so many different places, drawn and driven to this great country for the opportunity it offers. The Arizona law that was passed last year requires police officers to check the immigration status of any individual if they have ''reasonable suspicion'' that he or she may be undocumented. Under this law, any undocumented immigrant can be arrested and charged with a State crime solely on the basis of their immigration status, if they did nothing wrong. It is a crime for a legal immigrant to fail to carry documents proving their legal status at all times in the State of Arizona.

It doesn't sound right to me in this Nation of immigrants. Last year it was Arizona. This year it is Alabama. Arizona Gov. Robert Bentley recently signed H.R. 56, Alabama's immigration law that requires police officers to check immigration status of any individual they suspect is undocumented. Any undocumented immigrant can be arrested and charged with a State crime. Legal immigrants must carry documents proving their legal status at all times.

It is wrong to criminalize people based solely on their immigration status. That is not the way we treat immigrants in our country and that is not the way our criminal justice system should work. It is not right to make criminals of people who go to work each day, cook our food, clean our hotel rooms, and care for our children and parents. It is not right to make criminals of those who worship with us in our churches, synagogues, and mosques, and send their children to school with our own kids.

I think about this and I think about what a blind eye some of the backers of these laws have when they walk into a restaurant in a major city and don't look up and notice who is cooking, who is cleaning the dishes, who is taking care of their parents at the nursing homes, who cut the grass at the golf course. Many of these people are undocumented. We know it but we are not calling for them to leave. They are serving us, right? No, with these laws we are condemning those in similar status.

Here is the reality. Criminalizing immigrants will not help combat illegal immigration. Law enforcement does not have the time or resources to become the immigration office of America. That is why the Arizona Association of Chiefs of Police opposes the Arizona law. It makes it more difficult for them to keep people safe—not easier, more difficult. Immigrants will be much less likely to cooperate with police who can arrest them on the spot.

Alabama's law goes even further. Most contracts with undocumented immigrants are declared null and void, including, for example, rental agreements and child support agreements. Schools have to check the immigration status of every student and parent and report that information to the State. Schools are authorized to report students and parents they believe to be undocumented to the Federal Government.

I am concerned about the use of our schools in enforcing immigration laws. The Supreme Court has made it clear that it is constitutional to provide elementary education to children and not discriminate based on their immigration status. The Education Department of our Federal Government has warned States, including Alabama, not to use education as a device to exclude those students who are otherwise eligible to be taught.

It is good to tell these stories. It is good to speak to these issues. But what I found over the years—and I am sorry it has been years; I wish we had passed this long ago—the best way to tell the story of the DREAM Act is to tell the story of the DREAMers. Let me tell you a couple at this moment.

The first is about Amanda Uruchurtu. Here is Amanda. She is a pretty young woman. She was brought to the United States at the age of 10. She lives in Tuscaloosa, AL. When Amanda first arrived here she did not speak a word of English. She sent me a letter about what it was like, and here is what she said:

> I remember how frustrating it was in school because I had no clue what was going on, but I told myself that all the frustration and fear should be blocked and I should concentrate on learning English. . . . Some made fun of the way I talked but that helped because it made me work even harder and try to assimilate even more. Little by little I worked with my accent to the point that it was hardly noticeable.

There is Amanda. When she started high school she decided she knew what she wanted to do with her life. She wanted to serve in the U.S. military. She was No. 5 in her high school class. She was a member of the National Honor Society and, listen to this, she received the Daughters of the American Revolution award at her high school. Amanda overcame great obstacles and wants to be part of America's future.

She asked, when she wrote to me, if I would tell her story and let those who hear it know that Amanda wants to serve in the U.S. military, but under our law she cannot. She is undocumented. If the DREAM Act passed she would have her chance.

Here is another story, another lovely young lady, Karla Contreras, brought to the United States at the age of 3. Today Karla is 16. She lives in Pelham, AL. She is a sophomore in high school.

She is a leader in the Alabama Dreamers for the Future, an organization of students of similar status, in her State. Her dream? To become an attorney. Her family's considering moving to Washington State because of this new Alabama law, this anti-immigrant law. Here is what Karla wrote to me:

> I have never really lived anywhere besides Alabama. I have been here practically all my life. Alabama is my home.

Karla sent me a powerful essay about the Alabama immigration law. She said:

> All that people want is a better future, a job to maintain them in an average way, a place they can call home with no fear of being kidnapped by a drug dealer, a place where they are not afraid to walk out to their yard. It is so hard for me to see how these things could be a crime in anyone's eye. This law is putting children in fear for their parents. Now tell me who on earth would want to purposely frighten a child.

In 1982, Texas passed a law that allowed elementary schools to refuse entrance to undocumented children. The Supreme Court of the United States of America struck down that law. As a result, millions of children have received an education and millions have become citizens. They are doctors, soldiers, policemen, lawyers, engineers, and businesspeople who make America a better nation. Imagine what would have happened if the Texas law had been allowed to stand. Incidentally, that is exactly what Alabama wants today. Alabama should know—every State should know—that no State is above the law. No State is above the findings of our Supreme Court.

The American people have a right to be frustrated. Congress has repeatedly failed to fix our broken immigration system. The casualties—many are young DREAMers whom I talked about today, and many have been around many years and still live in the shadows and live in fear every single day. We are a better nation than that. We are a nation of immigrants, a nation of justice, and a nation that can find its way to give an opportunity to young people who have attended school every day, stood, put their hand over their heart, and pledged allegiance to the only flag they have ever known. They are asking for a chance to be part of the future of America.

I urge my colleagues on both sides of the aisle to help me pass the DREAM Act.

CRIME VICTIMS' RIGHTS ACT

Mr. KYL. Mr. President, I ask unanimous consent to have printed in the RECORD a letter to Attorney General Holder.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, November 2, 2011.

Hon. ERIC H. HOLDER, Jr.,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL HOLDER: I am writing to follow up regarding my June 6, 2011 letter to you concerning the Justice Department's implementation of the Crime Victims' Rights Act—an Act that I co-sponsored. I am writing to ask why the Justice Department persists in taking the view that the CVRA does not extend rights to crime victims until the formal filing of criminal charges.

As I explained in my earlier letter to you, Congress intended the CVRA to broadly protect crime victims throughout the criminal justice process—from the investigative phases to the final conclusion of a case. Congress could not have been clearer in its direction that using ''best efforts'' to enforce the CVRA was an obligation of ''[o]fficers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime. . . .'' 18 U.S.C. §3771(c)(1) (emphasis added). Congress also permitted crime victims to assert their rights either in the court in which formal charges had already been filed ''or, if no prosecution is underway, in the district court in the district in which the crime occurred.'' 18 U.S.C. §3771(d)(3) (emphasis added).

As you know, it has now been more than four months since I sent the letter to you explaining this clear point. In those four months, I have not received any response from you. Instead, during that time, on October 1, 2011, you promulgated new Attorney General Guidelines for Victims and Witness Assistance. These Guidelines persist in misconstruing the CVRA so that it does not extend any rights to victims until charges have been filed. Your Guidelines state: ''CVRA rights attach when criminal proceedings are initiated by complaint, information, or indictment.'' Guidelines at 8.

The Guidelines you have promulgated now conflict quite clearly with the CVRA's plain language. This is not simply my view. One court of appeals has addressed the issue of whether the CVRA applies only after charges have been filed. In In re Dean, 527 F.3d 391 (5th Cir. 2008), the Department took the position that crime victims had no right to confer with federal prosecutors until the Department had filed a plea agreement in court. The agreement involved a corporation (BP Products North America) whose illegal actions had resulted in the deaths of fifteen workers in an oil refinery explosion. In rejecting the Department's position that it did not have to confer with victims earlier, the Fifth Circuit held that ''the government should have fashioned a reasonable way to inform the victims of the likelihood of criminal charges and to ascertain the victims' views on the possible details of a plea bargain.'' Id. at 394.

In spite of this binding decision from the U.S. Court of Appeals for the Fifth Circuit, you have now promulgated guidelines that directly conflict with that decision. As a result, it continues to appear to me (as I noted in my earlier letter) that your prosecutors are failing to extend rights to potentially thousands of crime victims within the Fifth Circuit in Louisiana, Mississippi, and Texas.

The Fifth Circuit's decision is hardly an outlier. To the contrary, so far as I have been able to determine, the Fifth Circuit's position is supported by all other court decisions that have decided the issue. For example, in United States v. Rubin, 558 F.Supp.2d 411, 419 (E.D.N.Y. 2008), the court discussed a claim by various movants that they had been victimized by a criminal fraud. The court explained that CVRA can attach before charges are filed:

Quite understandably, movants perceive their victimization as having begun long before the government got around to filing the superseding indictment. They also believe their rights under the CVRA ripened at the moment of actual victimization, or at least at the point when they first contacted the government. Movants rely on a decision from the Southern District of Texas for the notion that CVRA rights apply prior to any prosecution. In United States v. BP Products North America, Inc., the district court reasoned that because §3771(d)(3) provided for the assertion of CVRA rights ''in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred,'' the CVRA clearly provided for ''rights . . . that apply before any prosecution is underway.'' United States v. BP Products North America, Inc., Criminal No. H–07–434, 2008 WL 501321 at *11 (S.D. Tex. Feb. 21, 2008) (emphasis in original), mandamus denied in part, In re Dean, 527 F.3d 391 (5th Cir. 2008). But, assuming that it was within the contemplation and intendment of the CVRA to guarantee certain victim's rights prior to formal commencement of a criminal proceeding, the universe of such rights clearly has its logical limits. For example, the realm of cases in which the CVRA might apply despite no prosecution being ''underway,'' cannot be read to include the victims of uncharged crimes that the government has not even contemplated.

Rubin, 558 F.Supp.2d at 419.

United States v. Okun, 2009 WL 790042 (E.D. Va. 2009), also reached the same conclusion that CVRA rights can apply before charges are filed:

Victims have been permitted to exercise CVRA rights before a determination of the defendant's guilt. See, e.g., United States v. Edwards, 526 F.3d 747, 757–58 (11th Cir. 2008); In re Mikhel, 453 F.3d 1137, 1138–39 (9th Cir. 2006) (per curiam); see also United States v. Rubin, 558 F.Supp.2d 211, 418 (E.D.N.Y. 2008) (anyone the government identifies as harmed by the defendant's conduct is a victim). Furthermore, the Fifth Circuit has noted that victims acquire rights under the CVRA even before prosecution. See In re Dean, 527 F.3d 391, 394 (5th Cir. 2008). This view is supported by the statutory language, which gives the victims rights before the accepting of plea agreements and, therefore, before adjudication of guilt. See 18 U.S.C. §3771(a)(4).

Okun, 2009 WL 790042 at *2.

Also agreeing that at least some CVRA rights apply before charging is In re Peterson, 2010 WL 5108692 (N.D. Ind. 2010). The court acknowledged that some rights in the CVRA do not apply before charges have been filed. But the court also specifically held that ''a victim's 'right to be treated with fairness and with respect for [his or her] dignity and privacy,' 18 U.S.C. §3771(a)(8), may apply before any prosecution is underway and isn't necessarily tied to a 'court proceeding' or 'case,' In re Dean, 527 F.3d 391, 394 (5th Cir. 2008); United States v. BP Products North America, Inc., 2008 WL 501321 (S.D. Tex. 2008).'' Peterson, 2010 WL 5108692 at *2.

The most recent court decision to carefully review the Justice Department's position is Jane Does #1 and #2 v. United States, No. 08–80736–CIV–MARRA/JOHNSON (S.D. Fla. Sept. 26, 2011). In that case, the court flatly rejected the Department's claim that rights attach only after charges are formally filed:

The Court first addresses the threshold issue whether the CVRA attaches before the government brings formal charges against the defendant[.] The Court holds that it does because the statutory language clearly contemplates pre-charge proceedings. For instance, subsections (a)(2) and (a)(3) provide rights that attach to ''any public court proceeding . . . involving the crime.'' Similarly, subsection (b) requires courts to ensure CVRA rights in ''any court proceeding involving an offense against a crime victim.'' Court proceedings involving the crime are not limited to post-complaint or post-indictment proceedings, but can also include initial appearances and bond hearings, both of which can take place before a formal charge. . . .

Subsection (c)(1) requires that ''Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights in subsection (a).'' (Emphasis added). Subsection (c)(1)'s requirement that officials engaged in ''detection [or] investigation'' afford victims the rights enumerated in subsection (a) surely contemplates pre-charge application of the CVRA.

Subsection (d)(3) explains that the CVRA's enumerated rights ''shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred.'' (Emphasis added). If the CVRA's rights may be enforced before a prosecution is underway, then, to avoid a strained reading of the statute, those rights must attach before a complaint or indictment formally charges the defendant with the crime.

Id. at *3–4.

In sum, the plain language of the CVRA—and every reported court decision I have been able to find—all clearly indicate that the CVRA does extend rights to crime victims even before charges are filed. Yet in spite of this, the Justice Department has apparently prepared a new form letter to be sent to victims that specifically tells crime victims that they lack any rights in federal criminal cases before charges have been filed in federal court. As I understand it, this letter will be sent to victims in federal cases around the country (including victims in the Fifth Circuit, the Eastern District of New York, the Eastern District of Virginia, the Northern District of Indiana, and the Southern District of Florida) telling them that they should ''[p]lease understand that these rights only apply to victims of the counts charged in federal court. . . .''

Compounding the confusion is the fact that your own Guidelines make it a matter of policy to confer with victims about plea negotiations even before charges have been filed. The new Attorney General Guidelines for Victims and Witness Assistance specifically state: ''In circumstances where plea negotiations occur before a case has been brought, Department policy is that this should include reasonable consultations prior to filing a charging instrument with the court.'' Guidelines at 41. I can only assume that this new policy has been put in place to avoid the outrageous situations that occurred in the Dean case and the Jane Does case, where prosecutors did not confer with victims before the Government reached final agreements with defendants. But the policy would seem to be a complete dead letter if you