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HUMAN RIGHTS COUNCIL

Mandate of the Special Rapporteur on the human rights of migrants.

REFERENCE: OL G/SO 214 (106-10)
USA 15/2012

7 August 2012

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolution 17/12.

I am writing in regard to the communication dated 16 September 2011, in which I, inter alia, requested information about progress made by the United States Senate with respect to the enactment of the Development, Relief, and Education for Alien Minors Act (**DREAM Act**). I also raised the enactment of **immigration laws at the state level in Alabama, Georgia, Indiana, South Carolina and Utah**, which have in common the investigation and detention of persons who are suspected of living or working irregularly in the USA, and I expressed particular concern at the Alabama Taxpayer and Citizen Protection Act. I requested a response to this communication by 16 October 2011. Furthermore, as follow-up to this communication, I sent a communication dated 24 April 2012 specifically concerning the **Alabama Taxpayer and Citizen Protection Act**, Act No. 2011-535 (HB 56), jointly with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Independent Expert on minority issues. We invited Your Excellency's Government to respond to this communication by 24 June 2012.

In this regard, I regret that I have yet to receive a response from Your Excellency's Government to either of these two communications. Recalling paragraph 7 of Human Rights Council resolution 17/12, which encourages Governments to cooperate fully with the mandate and to furnish all information requested, I therefore kindly invite Your Excellency's Government to send its observations and comments on the aforementioned communications. I wish to take this opportunity of reiterating that constructive engagement and cooperation with States is essential to the fulfilment of the mandate as entrusted to me by the Human Rights Council.

Regarding the DREAM Act, while noting that the Act is still blocked in Congress, I welcome the new policy from the Department of Homeland Security announced by President Obama in June this year, referred to as the "administrative DREAM Act", which would allow people brought to the United States as children younger than 16, who

do not present a risk to national security or public safety and who meet other key criteria, to be considered for relief from removal from the country or from entering into removal proceedings. Reportedly, those who demonstrate that they meet the criteria will be eligible to receive deferred action for a period of two years, subject to renewal, and will be eligible to apply for work authorization. I would welcome receiving more information about this positive initiative.

Regarding the Arizona Immigration Law (SB 1070), which was the subject of a press release issued by my predecessor and other mandate-holders on 10 May 2010, I have taken note of the Supreme Court decision of 25 June 2012, which upheld the provision which permits police to demand papers and investigate immigration status if they suspect a person is undocumented. However, I note that the decision struck down the other significant provisions of the Act, namely the right of police to arrest an individual without a warrant if they believe the person is a deportable immigrant, and that immigrants who fail to carry federal registration papers or who seek or accept work without authorization are guilty of state crime. I would welcome an assessment by your Excellency's Government on how this decision will impact on similar legislation or draft legislation in other states.

As it is my responsibility according to the mandate entrusted to me by the Human Rights Council to clarify all information brought to my attention, I would greatly appreciate receiving a response to the two above-mentioned communications, as well as to my additional questions related to the administrative Dream Act and the Supreme Court decision in the Arizona case as soon as possible. Your Excellency's Government's responses will be made available in a report to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

François Crépeau
Special Rapporteur on the human rights of migrants