



The DREAM Act in the 111th Congress

(S. 729 and H.R. 1751^{*})

In-State Tuition for Future Illegal Aliens

- The bills retroactively repeal the federal ban on in-state tuition for illegal aliens, thus nullifying the lawsuits already decided in favor of the federal ban, but currently under appeal.

The Amnesty

- To qualify for lawful permanent resident status, an applicant must be inadmissible or deportable and must:
- Have been physically present in the US for the five years preceding the date of enactment (the bill does not specify how aliens are to prove this, or even whether they have to prove it);
- Have been under the age of 16 upon entry into the US;
- Be a “person of good moral character,” but only AFTER the application is filed;
- Not have been convicted of an aggravated felony or more than two misdemeanors (though being charged with such crimes is fine);
- Not be a known terrorist or national security risk;
- Not be a known/convicted smuggler or human trafficker (all other immigration violations are fine, and this one can be waived for humanitarian or family unity purposes);
- Not have abducted a child and taken the child to a different country (*in the Senate bill only*); and
- At the time of filing an application, have been admitted to an institution of higher education, or have a high school diploma or a GED.

* The House and Senate versions of the DREAM Act are almost identical, with four important exceptions:

- ✓ H.R. 1751 would allow illegal aliens of any age over five (since they have to have been present in the United States for five years) to apply for amnesty, while S. 729 requires applicants to be under the age of 35.
- ✓ H.R. 1751 does not disqualify from amnesty international child abductors or aliens who have received final orders of removal or exclusion, while S. 729 does.
- ✓ H.R. 1751 limits the availability of waivers of the requirements for amnesty to cases of “extreme hardship,” while S. 729 makes waivers available for humanitarian and family unity purposes, as well as for the “public interest.”
- ✓ S. 729 authorizes fines and up to five years in prison for “willfully and knowingly” falsifying or lying on an amnesty application; H.R. 1751 includes no such penalties.

The *Senate version* also requires that applicants:

- Have never received a final order of removal or exclusion unless the alien successfully played the legal system and found a way to remain in the US under color of law, or the final order was issued before the alien turned 16; and
- Be under **35 years of age** as of the date of enactment.
- Neither bill includes a requirement that an amnesty applicant produce either documentation or any other evidence that the individual actually satisfies the criteria listed above.
- There are no numerical limits on how many illegal aliens may be granted amnesty, and they cannot be counted against any existing immigration cap.
- There is no end date on the application period, so there is nothing to stop illegal aliens who enter the country in the future from applying if they are willing to lie about when they entered.
- No alien who files an amnesty application may be removed from the United States before the application is adjudicated completely. *There are no exceptions to this, so as long as an alien files an amnesty application before he flies a plane into the World Trade Center or goes on a killing spree in the local mall, he cannot be removed from the country until USCIS (hopefully) denies his application and he has exhausted all appeals.*

“Conditional” Permanent Residence

- Aliens granted amnesty would be given conditional permanent resident status for six years. This conditional status could only be terminated if DHS determines that the alien:
- Is no longer a person of good moral character;
- Has been convicted of an aggravated felony or three or more misdemeanors;
- Is a terrorist, human smuggler, or (in the Senate version) international child abductor;
- Has become a public charge (there are no regulations defining this term in immigration law, so this provision is not currently enforceable); or
- Received a dishonorable or other than honorable discharge from the military.
- Should an alien’s conditional status be terminated, the alien would return to whatever immigration status he or she had prior to getting amnesty. This means the alien would have to be put through removal proceedings and exhaust all available appeals before being removed, even though the alien admitted to being inadmissible or deportable in the application for amnesty.

The Path to Citizenship

- When the amnestied aliens complete their six years of conditional permanent resident status, they can petition USCIS to have the conditions removed and become regular lawful permanent residents. The petition may be filed any time within the six months leading up to, or the two years following, the end of the six-year period. Each amnestied alien must indicate in the petition that he or she:
- Has demonstrated good moral character since filing for amnesty;
- Has not been convicted of disqualifying crimes;
- Is not a terrorist, human smuggler, or (in the Senate version) international child abductor;

- Has not been absent from the US for more than 365 days during the six years (or he/she can explain such absence and why it doesn't indicate abandonment of US residence); and
- Has completed at least ONE of the following:
- A degree from a US institution of higher education or at least two years toward such a degree; or
- At least two years of military service and, if discharged, was honorably discharged.
- For those aliens who have not completed two years of college or service in the military during this six-year period, DHS may waive this requirement and remove their conditional status if the alien:
- Satisfies the other requirements;
- Demonstrates "compelling circumstances for the inability to meet the last requirement; and
- Demonstrates that his/her removal would result in "exceptional and extremely unusual hardship to the alien or the alien's spouse, parent, or child who is a citizen or lawful permanent resident.
- Alternatively, upon "a showing of good cause," DHS may extend the six-year period of conditional status to give the alien more time to complete one of these requirements.
- While amnestied aliens must successfully petition to have their conditional status removed before they may naturalize, their six years of conditional residence counts toward the naturalization requirement. Thus, these aliens will be able to apply for naturalization immediately upon the removal of conditional status.
- Since conditional permanent resident status can only be terminated for one of the reasons in the section above, and since neither bill includes either a *requirement* that amnestied aliens petition to have their conditional status removed or a provision that terminates the legal status of aliens who do not seek to have the conditions removed, there is nothing to prevent an alien from simply remaining in conditional status permanently. This would be especially helpful to aliens who would not meet the criteria for removal of the conditions. The only major benefit they would be denied would be the opportunity to naturalize.

Handling the Additional Workload

- USCIS would bear the brunt of the massive amnesty workload this bill would generate. The bill's authors undoubtedly are aware that USCIS announced a few years ago its successful completion of the Backlog Elimination Program, which was instituted before DHS was even created, to address the rapidly growing backlog of immigration benefits applications processed by USCIS. USCIS reported that the backlog had reached a high of almost four million applications by January, 2004. Then-USCIS Director Emilio Gonzalez announced on September 5, 2006, that the backlog had been reduced to 140,000. (Of course, most of that reduction was achieved by redefining the word "backlog," and the rest was the result of shortcuts on security checks.) The bill's authors also are undoubtedly aware of the fact that USCIS recently raised immigration fees by unprecedented amounts so that it would have the resources to stay current on applications. Perhaps the bill's authors are even aware of the fact that USCIS reports that it had 3.2 million applications pending as of January, 2009, despite the alleged success of the Backlog Elimination Program and the fee hikes.
- This could explain why the bill gives exclusive jurisdiction to DHS (meaning USCIS) to grant or deny amnesty applications, *except* where an alien is put in removal proceedings either before or after filing an amnesty application. In these cases, the Attorney General

would have exclusive jurisdiction. While this likely would result in lawsuits alleging disparate treatment of applications by the two agencies, at least it will spread the workload around a bit, assuming there are still some enforcement efforts that result in illegal aliens being placed in removal proceedings.

- The Attorney General also would be required to stay removal proceedings for all illegal aliens who appear to meet the requirements for amnesty, are at least 12 years old, and are enrolled full time in school.

Americans Need Not Apply

- The good news for illegal alien students is that if their removal proceedings are stayed, they are automatically authorized to work in the US, regardless of whether they apply for and are granted amnesty. This is in addition to all the illegal aliens who are actually granted amnesty and automatically given work authorization with their conditional permanent resident status.

Law Enforcement Provisions

- Under the Senate bill, “willfully and knowingly” lying on an amnesty application is punishable by a fine, up to five years in prison, or both.
- None of the information provided by illegal aliens in their applications may be used for any purpose except the adjudication of the application, with two exceptions:
- The AG or DHS must provide such information if a law enforcement agency is investigating or prosecuting *a criminal or terrorism-related offense that would make an alien inadmissible*, and such agency requests the information in writing; and
- Coroners attempting to identify the dead are the only others granted access to the information.

Moving to the Front of the Line

- Both bills require USCIS to adjudicate all amnesty applications on “an expedited basis” but prohibit the agency from requiring a higher fee from amnesty applicants for such expedited processing. This means that every illegal alien who applies for amnesty would move to the front of the line, ahead of the millions of people who are in line to come to the United States the right way.

Bonus Reward for Illegal Students

- Amnesty beneficiaries would be eligible for certain student loans and federal work-study programs.

Assessing the Damage

- Within seven years after enactment, the GAO would be required to submit to Congress a report on the number of aliens amnestied, the breakdown of approvals versus denials, and the number whose conditional status had been removed.