



AILA Policy Brief: How Dreamer Protection Bills Measure Up October 3, 2017¹

Executive Summary

On September 25, 2017, Senators Thom Tillis (R-NC), James Lankford (R-OK), and Orrin Hatch (R-UT) introduced the SUCCEED Act, the latest bill to offer urgently needed protection in the form of permanent legal status for young undocumented immigrants known as Dreamers. With several bills protecting Dreamers now introduced in Congress, this policy brief compares the leading bills, including the Dream Act (S. 1615 and H.R. 3440), the American Hope Act (“Hope Act,” H.R. 3591), the Recognizing America’s Children Act (“RAC Act,” H.R. 1468), and the SUCCEED Act (S.1852).

All of the bills provide protection from deportation and permanent legal status for Dreamers who undergo lengthy, rigorous national security and criminal background checks and demonstrate that they meet defined eligibility requirements. Each of the bills also offer an opportunity for Dreamers to apply for citizenship after lengthy wait times. The SUCCEED Act has the longest wait period, requiring a minimum of 15 years before a person can apply for citizenship. This is far too long, preventing Dreamers, who have grown up in the U.S. and view this country as their own, from fully participating in our democracy.

Overall, the Dream Act and the Hope Act offer protection for the largest population of Dreamers because of their broader age requirements, explicit inclusion of DACA recipients, and more flexible education and work requirements. The SUCCEED Act has the most restrictive eligibility requirements; it includes the most narrow age limits, severe exclusions for minor crimes, and stringent education and work requirements. It also has a number of provisions that undermine due process for Dreamers, including provisions that force applicants to give up any opportunity to apply for other forms of relief, as well as provisions that would automatically subject applicants with minor criminal convictions to expedited removal.

The SUCCEED Act also includes enforcement provisions and provisions restricting legal immigration that are completely unrelated to protecting Dreamers and undermine due process for legal immigrants like business visitors and international students. With the exception of the SUCCEED Act, the other bills do not include these kinds of provisions.

AILA urges Congress to move forward swiftly by bringing for a vote the bipartisan Dream Act, which represents the country’s best chance to pass protection for Dreamers with united Republican and Democratic support. This should be done without additional, extraneous provisions on enforcement being added.

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Introduction

The following is an overview of the major provisions included in bills introduced to protect Dreamers. While not comprehensive, it provides a summary of the major differences among the bills.

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Permanent Residence Status and Path to Citizenship

All of the bills prevent the removal of Dreamers who meet certain eligibility requirements and offer them the opportunity to apply for citizenship after first undergoing a lengthy, multi-stage process that requires them to qualify for conditional permanent residence (CPR) and for lawful permanent residence (LPR) status. The amount of time it takes for someone to become a citizen varies under each bill. Of all the Dreamer bills, SUCCEED sets the longest period--15 years—before an individual could apply for citizenship.

- *The Dream Act*: Under the Dream Act, Dreamers could be eligible to apply for naturalization 5 years after initially being granted CPR status.
- *The Hope Act*: Under the Hope Act, Dreamers could be eligible to apply for naturalization 5 years after initially being granted CPR status.
- *The RAC Act*: Under the RAC Act, Dreamers could be eligible to apply for citizenship 10 years after initially being granted CPR status.
- *The SUCCEED Act*: Under the SUCCEED Act, Dreamers could be eligible to apply for citizenship 15 years after initially being granted CPR status.

Initial Eligibility Requirements

Each of the bills also lays out particular requirements that applicants must meet before being granted initial CPR status.

Age, Presence, and Immigration Status Requirements

All of the bills require that the applicant have entered the U.S. by a certain age and have been present in the U.S. since a certain date. The SUCCEED Act also adds a requirement that, on June 15, 2012, the

person was under the age of 31 and had no lawful status. This provision would exclude a large number of deserving people from relief. Under both the RAC Act and the SUCCEED Act, people who have a final order of removal entered against them are ineligible for relief. By contrast, the Dream Act and the Hope Act would allow those individuals to apply.

- *The Dream Act:* Applicants must have entered the U.S. before the age of 18 and have been “continuously physically present” in the U.S. for at least four years before the date of the bill’s enactment.
- *The Hope Act:* Applicants must have entered the U.S. before the age of 18, and been “continuously present” since December 31, 2016.
- *The RAC Act:* Applicants must have entered the U.S. before the age of 16 and been “physically present in the United States for a continuous period” since January 1, 2012. Applicants who have a final order of removal entered against them generally are not eligible for CPR status, unless they received the final order before they turned 18 or if they have remained in the U.S. “under color of law” after the final order was issued.
- *The SUCCEED Act:* Applicants must have initially entered the U.S. before the age of 16 and have been “physically present in the United States for a continuous period” since June 15, 2012. In addition, applicants must have been under 31 and with no lawful status on June 15, 2012. Applicants who have ever had a final order of removal entered against them are not eligible for CPR status, unless they received the final order before they turned 18 or remained in the U.S. “under color of law” after the final order was issued.

Education, Military, and Work Requirements

The Dream Act, the RAC Act, and the SUCCEED Act require applicants to show they are pursuing an education, are employed, or are pursuing a career in the military. The SUCCEED Act has the strictest requirements because it does not allow individuals to qualify for CPR based on the fact that they have a currently valid work authorization, and there is no option for individuals to qualify if they are enrolled in a program that assists them in obtaining a high school diploma (or equivalent).²

- *The Dream Act:* To obtain CPR status, the applicant has to have fulfilled one of the following three requirements: 1) gained admission to an institution of higher education in the U.S., 2) earned a high school diploma (or equivalent) while in the U.S., or 3) be enrolled in secondary school or in a program that helps student obtain a high school diploma (or equivalent).
- *The RAC Act:* To obtain CPR status, an applicant who has reached the age of 18 has to have fulfilled one of the following three criteria: 1) gained admission to an institution of higher education in the U.S., 2) earned a high school diploma (or equivalent) while in the U.S., or 3) have valid work authorization. Those under 18 do not need to meet this requirement.
- *The SUCCEED Act:* To obtain CPR status, an applicant who has reached the age of 18, has to have fulfilled one of the following three requirements: 1) gained admission to an institution of higher education in the U.S.; 2) earned a high school diploma (or equivalent) while in the U.S.; or

² The RAC Act allows people to qualify for CPR based on the fact that they have a currently valid work authorization. Under the Dream Act, people who were granted Deferred Action for Childhood Arrivals (DACA) automatically qualify for CPR status unless the individual has engaged in conduct that would make them ineligible for DACA.

3) served or enlisted in the U.S. Armed Forces. If the applicant is under the age of 18, they have to be attending or enrolled in primary or secondary school, or be attending or enrolled in postsecondary school.

Taxes, Fees, Background Checks, and Good Moral Character

All of the bills require applicants to pass rigorous background checks. The RAC Act and SUCCEED Act require applicants to show “good moral character” – presumably as defined by INA § 101(f)³ – since they entered the U.S. The bills also require applicants to pay a fee – the amount of which is to be determined by DHS – when they apply for permanent resident status.

In addition to application fees, the RAC Act and the SUCCEED Act require that applicants pay any applicable federal tax liabilities, though the bills differ as to when the liabilities have to be paid. The RAC Act simply requires that applicants satisfy any tax liabilities by the time they file for adjustment to LPR status. The SUCCEED Act, on the other hand, requires that applicants have paid all tax liabilities (or have agreed to cure any liabilities through a payment installment plan approved by the IRS) at the beginning of the process when they apply for CPR status. In order to extend that CPR status after the initial 5-year period and in order adjust to LPR status under SUCCEED, applicants cannot have any delinquent tax liabilities.

Bars to Eligibility

Each of the bills also lays out particular inadmissibility and deportability grounds that would bar applicants from being granted initial CPR status.

Inadmissibility and Deportability Bars

While there is overlap between the bills on different grounds of inadmissibility and deportability that would bar applicants from being granted CPR status, the SUCCEED Act includes more bars to eligibility than any of the other bills. Note that some bills allow DHS to waive certain inadmissibility and deportability bars.⁴

Inadmissibility Bars

- *The Dream Act*: The Dream Act includes the following categories of inadmissibility bars: criminal and related grounds (including crimes involving moral turpitude – CIMT – and controlled substance offenses); security and related grounds; smuggling; those permanently ineligible for citizenship and draft evaders; student visa abusers; practicing polygamists; international child abduction; and unlawful voters.

³ The INA defines “good moral character” 8 U.S.C. 1101(f) by listing both behaviors and crimes that, if committed by an individual, exclude them from qualifying for good moral character. Among the behaviors and crimes included in the definition are habitual drunkards, gamblers, and someone who gives false testimony as well as people convicted of certain drug crimes, aggravated felonies (8 U.S.C 1101(a)(43)), or people who spent 180 days in custody as a result of a conviction or convictions.

⁴ In addition to inadmissibility, deportability, and criminal bars to eligibility, the Dream Act, the RAC Act, and the SUCCEED Act all prohibit anyone from qualifying for CPR status who has ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

- *The Hope Act*: The Hope Act includes the following categories of inadmissibility bars: criminal and related grounds (including CIMTs and controlled substance offenses); security and related grounds; those permanently ineligible for citizenship and draft evaders; practicing polygamists; international child abduction; and former citizens who renounced citizenship to avoid taxes.
- *The RAC Act*: The RAC Act includes the following categories of inadmissibility bars: health-related grounds; criminal and related grounds (including CIMTs and controlled substance offenses); security and related grounds; public charge; smuggling; those permanently ineligible for citizenship; practicing polygamists; international child abduction; and unlawful voters.
- *The SUCCEED Act*: The SUCCEED Act includes the following categories of inadmissibility bars: health-related grounds; criminal and related grounds (including CIMTs and controlled substance offenses); security and related grounds; public charge; misrepresentations and false claims; smuggling; those permanently ineligible for citizenship and draft evaders; those unlawfully present after previous violations; certain people previously ordered removed (except if the sole basis for the removal order was unlawful presence); practicing polygamists; international child abduction; unlawful voters; and a few other miscellaneous categories.

Deportability Bars

- *The RAC Act*: The RAC Act includes the following categories of deportability bars: smuggling; marriage fraud; criminal offenses; public charge; security-related grounds; unlawful voters.
- *The SUCCEED Act*: The SUCCEED Act includes the following categories of deportability bars: individuals who have had conditional status under INA §216 terminated; smuggling; marriage fraud; criminal offenses; public charge; security-related grounds; and failure to register or falsification of documents, which includes failure to change address, document fraud, and false claims to citizenship; and unlawful voters.

Criminal Bars

Most of the bills disqualify individuals from qualifying for CPR status if they committed certain crimes. The SUCCEED Act casts the widest net in terms of who would be subject to the criminal bars. It is also the only bill that places individuals into expedited removal proceedings if their CPR status was taken away due to a violation of one of the criminal bars. Individuals with minor misdemeanors or mere traffic violations will not only lose their status under the SUCCEED Act, but will also be deported without having a chance to contest their deportation in front of a judge, a severe violation of due process.

The SUCCEED Act disqualifies anyone who has been convicted of:

- A felony as defined under Federal or State law, regardless of what sentence was imposed or how much time, if any, the person actually served.
- Any combination of offenses under Federal or State law for which the person was sentenced to imprisonment for at least one year, regardless of how much time, if any, the person served. This could be a combination of misdemeanors, including traffic offenses, or even a single misdemeanor. The offenses do not need to have been committed on the same date.
- A significant misdemeanor. Significant misdemeanors are a new class of offenses not currently defined in statute, though it was a term DHS used in the interpretation of the DACA program.

The SUCCEED act is similar to that used for DACA and defines significant misdemeanors to include domestic violence crimes, sexual exploitation, burglary, unlawful possession or use of a firearm, drug distribution or trafficking, driving under the influence, driving while intoxicated, or any other misdemeanor for which the individual was sentenced to a term of imprisonment of 90 days or more, excluding suspended sentences. By barring those convicted of driving while intoxicated (which is not included in the DACA definition), the SUCCEED Act would bar individuals whose blood alcohol level was not over the legal limit.

The Dream Act disqualifies anyone who has been convicted of:⁵

- Any offense under Federal or State law that is “punishable by a maximum term of imprisonment of more than 1 year.” This definition is based on the maximum penalty that *could* be imposed, not the sentence that was in fact imposed. Under this definition, an individual convicted of a simple misdemeanor that has a possible maximum sentence of over one year would be barred.
- Three or more offenses under Federal or State law for which the person was convicted on different dates for each of the three offenses and imprisoned for an aggregate of 90 days or more. The offenses need to have occurred on three different occasions, and the 90 days refers to the actual time spent in incarceration (not time that was suspended). This definition would apply to low level misdemeanors and traffic convictions.

The RAC Act disqualifies anyone who has been convicted of:⁶

- Any offense under Federal or State law that is “punishable by a maximum term of imprisonment of more than 1 year.” This definition is based on the maximum penalty that *could* be imposed, not the sentence that was in fact imposed. An individual convicted of a simple misdemeanor that has a possible maximum sentence of over one year would be barred.
- Any combination of offenses under Federal or State law, for which the individual was sentenced to imprisonment for a total of more than 1 year. This provision differs from the SUCCEED Act, though, because it would not include minor traffic offenses and would likely not include any time given that was suspended. The RAC Act states “for a total of more than 1 year;” whereas SUCCEED states “for at least 1 year.”

Expunged Convictions

Some of the bills address how expunged convictions should be treated when determining whether an applicant is excluded on criminal grounds. The RAC Act excludes all judgments of guilt that were dismissed, expunged, deferred, annulled, invalidated, withheld, vacated or where an order of probation was issued without entry of a judgment when deciding what should count as a conviction. While both the Dream Act and the SUCCEED Act require that expunged convictions be considered on a case-by-case basis, the Dream Act states that “[a]n expunged conviction shall not automatically be treated as an offense.” In addition, the SUCCEED Act attempts to block any judicial review of DHS’s decision to disqualify someone based on an expunged conviction.

Waivers and Exceptions

⁵ The Dream Act makes exceptions for state offenses in which the individual’s immigration status is an essential element.

⁶ The RAC Act makes exceptions for state or local offenses for which an essential element is the individual’s immigration status, minor traffic offenses, or a violation of the RAC act.

All of the bills give DHS some authority to waive the criminal, inadmissibility, or deportability bars to eligibility. The Dream Act and the RAC Act specifically note that waiver authority applies to “any benefits” under the Acts. The SUCCEED Act, on the other hand, appears to only provide limited waivers for conduct being considered during the initial CPR application. It is also the only bill that does not provide a waiver for criminal convictions or criminal grounds of inadmissibility, and does not set out “family unity” as a reason to grant a waiver. Finally, all of the bills have an exception or waiver for state offenses where an essential element is the individual’s immigration status, with the exception of the SUCCEED Act.⁷

- *The Dream Act:* The Dream Act allows DHS to waive certain criminal, smuggling, student visa abuser, and unlawful voter grounds of inadmissibility with respect to any benefit provided in the Act. Waivers can be granted for humanitarian purposes, family unity purposes, or if it is otherwise in the public interest.
- *The Hope Act:* The Hope Act allows DHS to waive criminal grounds of inadmissibility when deciding to grant CPR status, if the ground of inadmissibility pertains to an offense for which immigration status is an essential element, a misdemeanor offense (or its equivalent), or any other offense that is not a crime of violence. Waivers can be granted for humanitarian purposes, family unity purposes, or if it is otherwise in the public interest.
- *The RAC Act:* The RAC Act allows DHS to waive the following with respect to any benefit under the act: 1) criminal bars; 2) certain grounds of inadmissibility, including health-related, public charge, and smuggling; and 3) certain grounds of deportability, including smuggling or marriage fraud. Waivers can be granted for humanitarian purposes, family unity purposes, or when it is otherwise in the public interest.
- *The SUCCEED Act:* The SUCCEED Act allows DHS, when deciding whether to grant initial CPR status, to waive the following on a case by case basis:⁸ 1) certain grounds of inadmissibility, including health-related, public charge, and smuggling; and 2) the smuggling ground of deportability. Waivers can be granted for humanitarian purposes or when it is otherwise in the public interest, but not for family unity purposes.

Eligibility Requirements for Renewing CPR Status or Adjusting to LPR Status

In addition to requiring Dreamers to fulfill certain conditions when they apply for their initial CPR status, the bills also generally require them to meet certain conditions when they renew their CPR status and when they adjust to LPR status, depending on the bill’s path to naturalization. Again, the SUCCEED Act stands out as having far more restrictive renewal and adjustment requirements, as well as the most complicated path to LPR status. However, it does allow Dreamers who apply to extend their CPR status to show a combination of academic studies, employment, and military service – which will allow flexibility for applicants during the initial CPR period.

Extending CPR Status

- *The RAC Act:* To extend CPR status for a second 5-year period, applicants must: 1) have demonstrated good moral character during the first CPR period; 2) continue to meet certain initial

⁷The Hope Act actually expands this exception by creating a waiver for an offense for which immigration status is an essential element, whether the offense is state or federal or a misdemeanor or felony.

⁸ The SUCCEED Act also lists additional grounds of inadmissibility and deportability that can be waived, but that are not actually listed as applicable grounds of inadmissibility and deportability for the purposes of the Act.

eligibility requirements (including any inadmissibility, deportability, and criminal bars to eligibility); 3) not have abandoned their residence in the U.S.; and 4) (if over 18) graduated from an institution of higher education, been employed for at least 48 months out of the 5-year CPR period, or – if an enlistee - been in active duty status for at least 3 years.⁹

- *The SUCCEED Act:* To extend CPR status for a second 5-year period, applicants must 1) have demonstrated good moral character during the first CPR period; 2) continue to meet all initial eligibility requirements (including any inadmissibility, deportability, and criminal bars to eligibility); 3) not have abandoned their residence in the U.S.; 4) not have any delinquent tax liabilities, 5) not have received any Federal public benefits,¹⁰ and 6) meet certain work, education, or military track requirements. The bill specifies the following work, education, or military tracks for renewing CPR status: 1) *Education:* the applicant must have graduated from an accredited high education institution or attended a postsecondary school for not less than 8 semesters; 2) *Military Service:* the applicant must have served in the Armed Forces for 3 years;¹¹ or 3) *Combination Track:* the applicant has attended a postsecondary school, served in the Armed Forces, or maintained employment in the U.S. for at least 48 months cumulatively.

Adjusting to LPR Status

- *The Dream Act:* The Dream Act permits the applicant to apply for LPR status when the following conditions are met: 1) continue to meet certain initial eligibility requirements (including any inadmissibility, deportability, and criminal bars to eligibility); 2) not have abandoned their residence in the U.S.; 3) have either acquired a degree from a higher education institution or completed at least two years towards a bachelor's degree or higher, served in the armed forces for at least 2 years,¹² or been employed for at least 3 years (with certain exceptions/qualifications). The bill provides a hardship exception for the work/education/military requirement.
- *The Hope Act:* The Hope Act permits the applicant to apply for LPR status after three years in CPR status. To adjust to LPR status, applicants must: 1) continue to meet most initial eligibility requirements (including inadmissibility bars to eligibility); 2) not have abandoned their residence in the U.S.; and 3) maintained CPR status for at least 3 years.
- *The RAC Act:* To adjust to LPR status, applicants must 1) demonstrate good moral character during both CPR periods; 2) continue to meet certain initial eligibility requirements (including any inadmissibility, deportability, and criminal bars to eligibility); and 3) not have abandoned their residence in the U.S.
- *The SUCCEED Act:* Once someone has been a CPR for 10 years, they can adjust to LPR status. To adjust to LPR status, the applicant must 1) have been a CPR for 10 years; 2) have demonstrated good moral character during those 10 years; 3) continue to meet all initial eligibility requirements (including any inadmissibility, deportability, and criminal bars to eligibility); and 4) not have abandoned their residence in the U.S. The applicant also has to have paid all tax liabilities to file the adjustment application.

Termination of Status

⁹ If discharged from service, the applicant must have received an honorable discharge.

¹⁰ Note that the SUCCEED Act has defined “federal public benefit” in Section 1 to be extremely broad, and include things like Earned Income Tax Credits, Federal-State unemployment benefits, Social Security, and Medicare.

¹¹ If discharged from service, the applicant must have received an honorable discharge.

¹² If discharged from service, the applicant must have received an honorable discharge.

Each of the bills allows or requires DHS to terminate a Dreamer's CPR status in certain circumstances. Both the SUCCEED Act and the RAC Act direct DHS to terminate CPR status in a number of different circumstances, including if they fail to meet certain work, education, or military qualifications, though the SUCCEED Act's provisions are more severe than the RAC Act's provisions.

- *The Dream Act*: The Dream Act allows DHS to terminate CPR status if the Dreamer fails to continue meeting some initial requirements, including becoming subject to certain inadmissibility grounds or being convicted of certain crimes.
- *The Hope Act*: The Hope Act directs DHS to terminate CPR status in cases where the person has engaged in conduct that renders them deportable under INA § 237(a).
- *The RAC Act*: The RAC Act directs DHS to terminate CPR status in a few circumstances, including if the Dreamer 1) is over 18 and was admitted to an institute of higher education, but failed to enroll within a year of being granted CPR or to remain enrolled; 2) has not been employed for at least 48 months during the 5-year CPR period;¹³ 3) was granted CPR status as an enlistee but failed to complete basic training and begin service within 9 months of being granted status or if that individual received an other-than-honorable discharge from the Armed Forces; 4) fails to continue meeting certain initial requirements;¹⁴ 5) or has become a public charge.
- *The SUCCEED Act*: The SUCCEED Act requires DHS to terminate CPR status in number of circumstances, including if the Dreamer: 1) is 18 or older and was admitted to an institution of higher education, but failed to enroll within a year of being granted CPR or to remain enrolled; 2) is under 18 and was enrolled in primary or secondary school, but failed to attend school for more than a year during the 5-year CPR status; 3) was granted CPR status as an enlistee but failed to complete basic training and begin service within a year of being granted status or if that individual received an other-than-honorable discharge from the Armed Forces; 4) was granted CPR due to fraud or misrepresentation; 5) fails to continue meeting certain initial requirements;¹⁵ 6) violates any term or condition of her conditional resident status; 7) has become a public charge; 8) has been unemployed for a year or more since obtaining CPR status (unless they were enrolled in school or serving in the Armed Forces); or 9) has not completed a combination of employment, military service, or post-secondary school for 48 months out of the 5-year CPR period.

Family Sponsorship

¹³ The bill says that this only applies to individuals described “under Section 4(a)(1)(C),” which includes people who qualified for CPR initially because they earned a high school diploma (or equivalent), have a valid work authorization, OR were admitted to an institution of higher education. While the drafting is unclear, presumably someone attending a higher education institution for 48 months of the 5-year period would not have their status terminated because they were not working during that period.

¹⁴ DHS will terminate status if the person fails to continue meeting the good moral character requirement, becomes inadmissible or deportable under the initial inadmissibility or deportability grounds, or is convicted of certain crimes.

¹⁵ DHS will terminate status if the person fails to continue meeting the good moral character requirement, paying or agreeing to pay tax liabilities, becomes inadmissible or deportable under the initial inadmissibility or deportability grounds, is convicted of certain crimes, or receives a final order of removal.

None of the bills create special pathways for Dreamers to sponsor their family members. However, the SUCCEED Act attempts to block Dreamers from petitioning for their children and spouses after they obtain LPR status, despite the fact that LPRs can otherwise generally petition for those family members.¹⁶ Such a restriction would create a second class of permanent residents who are treated worse than other permanent residents.

This provision of the SUCCEED Act would prolong the already-lengthy period that families must remain separated. Currently LPRs wait years to reunite with the narrow category of family members who they can sponsor – up to 20 years for the adult children of LPRs from Mexico. Family-based immigration – a cornerstone of American immigration policy – has had a positive impact on economic development and civic improvement by creating strong communities which foster the development of local businesses.

Due Process

Unlike the other bills, the SUCCEED Act requires Dreamers to agree up front that they will relinquish the opportunity to apply for nearly all other forms of immigration relief or benefits if they violate any term of their status.¹⁷ The bill makes exceptions only for two very limited forms of humanitarian relief: withholding of removal or Convention Against Torture (CAT) claims. The bill does grant DHS the authority to waive this bar for humanitarian and public interest reasons, as long as the person is not deemed a national security or public safety risk and as long as the person is not considered a “criminal alien.”¹⁸ If DHS initiates enforcement against such applicants under the SUCCEED Act, the bill completely blocks them from seeking judicial review of the decision to bar relief under the federal habeas corpus and mandamus statutes.¹⁹

Additionally, the bill subjects anyone whose CPR status is terminated because they are convicted of a crime specified in the bill – which includes minor crimes like traffic violations – to expedited removal. That means anyone with minor misdemeanors will not only lose their status under the SUCCEED Act, but will also be deported without having a chance to contest their deportation in front of a judge.

Unrelated to Dreamers, the SUCCEED Act also requires nonimmigrants to waive their right to any relief and their right to contest their removal in a hearing or other venue if they violate the terms of their visa, even unintentionally. For example, this provision would apply to a business traveler who accidentally overstays her visa as little as 24 hours or a student who drops just below a full course of study.

Confidentiality

The bills contain varying degrees of confidentiality for information people provide when they apply for relief provided under the bills. For example, under the Dream Act and the Hope Act, there are exceptions to the confidentiality provisions that allow information to be shared with law enforcement agencies that are investigating serious crimes. Under the RAC Act and the SUCCEED Act, the exceptions to the confidentiality provisions are broader, and information can be shared with law enforcement agencies in connection with *any* criminal investigation or prosecution.

¹⁶ The SUCCEED Act also explicitly states that conditional permanent residents under the Act shall not be considered a lawful permanent resident for the purposes of petitioning for relatives.

¹⁷ The drafting is not clear as to what would be considered a “term” of the CPR status.

¹⁸ The bill does not define “criminal alien.”

¹⁹ In addition, the SUCCEED Act also blocks any judicial review of DHS’s decision to disqualify someone based on an expunged conviction.

- *The Dream Act*: DHS generally cannot disclose information from applications for CPR status or DACA applications for purposes of enforcement, and cannot refer individuals granted CPR or DACA to ICE or CBP. However, information can be shared in limited circumstances, such as for the purposes of assistance in adjudicating an application, to identify or prevent fraudulent claims, for national security purposes, or to investigate or prosecute a felony.
- *The Hope Act*: The government generally cannot use information in an application to initiate removal proceedings against anyone identified in the application. DHS or DOJ can share information when it is requested by law enforcement to investigate or prosecute certain crimes or national security offenses, or if it is request by an official coroner.
- *The RAC Act*: The government cannot use information in an application to initiate removal proceedings against anyone identified in the application. DHS or DOJ can share information when it is requested in connection to a criminal investigation or prosecution, for national security purposes, or if it is requested by an official coroner. Information can also be used to investigate whether the applicant has engaged in fraud or committed a crime.
- *The SUCCEED Act*: The government cannot use information in an application to initiate removal proceedings against anyone identified in the application. DHS or DOJ can share information when it is requested in connection to a criminal investigation or prosecution, for national security purposes, or if it is requested by an official coroner. Information can also be used to investigate whether the applicant has engaged in fraud or committed a crime.

Public Benefits

Under current law, most foreign nationals do not have access to the majority of federal public assistance benefits. For example, individuals who are undocumented and individuals who are here on temporary visas are not eligible for most public benefits. LPRs are also restricted from accessing many federal benefits for at least their first five years in LPR status.²⁰

In addition to these strict limits, the SUCCEED Act also includes provisions that expand the definition of “federal public benefit” for the purposes of the legislation to include things like Earned Income Tax Credits, Federal-State unemployment benefits, Social Security, and Medicare. The SUCCEED Act disqualifies anyone from renewing eligibility if they have received these “benefits.” The other bills do not specify additional terms regarding public benefits.

Parole

Among the bills, the SUCCEED Act alone includes several enforcement-related provisions that have nothing to do with protecting Dreamers. First, the Act would dramatically curtail DHS parole authority, which has been exercised by both Republican and Democratic presidents to bring compelling populations to the United States, such as Cuban medical professionals, and provide relief to former veterans, military families, and others for whom humanitarian protection or family reunification has been deemed necessary.

The SUCCEED Act also prohibits people who return to the United States on “advance parole” from qualifying for adjustment of status to lawful permanent residence. This could create enormous difficulties—including blocking adjustment of status applications—for hundreds of thousands of

²⁰ For more information, see the American Immigration Council’s *Giving the Facts a Fighting Chance: Addressing Common Questions on Immigration* (December 14, 2015).

individuals who utilize advance parole as a means to engage in business travel and to deal with important family matters while their green card applications are pending, which can take years.

Visa Overstays

Only the SUCCEED Act includes provisions that would severely punish visa overstays. The bill requires students, business travelers, and others traveling on nonimmigrant visas to waive their right to apply for relief or almost any immigration benefit in the U.S., and their right to contest their removal in a hearing before a judge or other venue if they violate the terms of their visa or overstay their period of admission. This would include individuals who accidentally overstay even as little as 24 hours as well as those who unintentionally violate the terms of their visa (such as a student who drops just below a full course of study).

Under current rules, DHS has the discretion to be flexible in granting benefits, such as an extension of nonimmigrant status, if a person overstays their period of admission accidentally or due to circumstances beyond their control. Stripping DHS of this discretion by forcing nonimmigrants to waive away their rights, and denying nonimmigrants the opportunity to seek relief before an immigration judge or to adjust to permanent resident status (if, for example, they later marry an American citizen) is fundamentally unfair and will only contribute to the current population of those living in limbo.