

Calendar No. 644

111TH CONGRESS
2^D SESSION

S. 3962

To authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2010

Mr. DURBIN (for himself, Mr. LEAHY, and Mr. LUGAR) introduced the following bill; which was read the first time

NOVEMBER 18, 2010

Read the second time and placed on the calendar

A BILL

To authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Development, Relief,
3 and Education for Alien Minors Act of 2010” or the
4 “DREAM Act of 2010”.

5 **SEC. 2. TABLE OF CONTENTS.**

6 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Definitions.
- Sec. 4. Cancellation of removal and adjustment of status of certain long-term
residents who entered the United States as children.
- Sec. 5. Conditional permanent resident status.
- Sec. 6. Retroactive benefits under this Act.
- Sec. 7. Exclusive jurisdiction.
- Sec. 8. Penalties for false statements in application.
- Sec. 9. Confidentiality of information.
- Sec. 10. Higher Education assistance.
- Sec. 11. GAO report.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) INSTITUTION OF HIGHER EDUCATION.—The
10 term “institution of higher education” has the
11 meaning given that term in section 101 of the High-
12 er Education Act of 1965 (20 U.S.C. 1001).

13 (2) UNIFORMED SERVICES.—The term “uni-
14 formed services” has the meaning given that term in
15 section 101(a) of title 10, United States Code.

1 **SEC. 4. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**
2 **STATUS OF CERTAIN LONG-TERM RESIDENTS**
3 **WHO ENTERED THE UNITED STATES AS CHIL-**
4 **DREN.**

5 (a) SPECIAL RULE FOR CERTAIN LONG-TERM RESI-
6 DENTS WHO ENTERED THE UNITED STATES AS CHIL-
7 DREN.—

8 (1) IN GENERAL.—Notwithstanding any other
9 provision of law and except as otherwise provided in
10 this Act, the Secretary of Homeland Security may
11 cancel removal of, and adjust to the status of an
12 alien lawfully admitted for permanent residence,
13 subject to the conditional basis described in section
14 5, an alien who is inadmissible or deportable from
15 the United States, if the alien demonstrates that—

16 (A) the alien has been physically present in
17 the United States for a continuous period of
18 not less than 5 years immediately preceding the
19 date of enactment of this Act and was younger
20 than 16 years of age on the date the alien ini-
21 tially entered the United States;

22 (B) the alien has been a person of good
23 moral character since the date of the enactment
24 of this Act;

25 (C) the alien—

1 (i) is not inadmissible under para-
2 graph (2), (3), (6)(E), (10)(A), or (10)(C)
3 of section 212(a) of the Immigration and
4 Nationality Act (8 U.S.C. 1182(a)); and

5 (ii) is not deportable under paragraph
6 (1)(E), (2), or (4) of section 237(a) of the
7 Immigration and Nationality Act (8 U.S.C.
8 1227(a));

9 (D) the alien—

10 (i) has been admitted to an institution
11 of higher education in the United States;
12 or

13 (ii) has earned a high school diploma
14 or obtained a general education develop-
15 ment certificate in the United States;

16 (E) the alien has never been under a final
17 administrative or judicial order of exclusion, de-
18 portation, or removal, unless the alien—

19 (i) has remained in the United States
20 under color of law after such order was
21 issued; or

22 (ii) received the order before attaining
23 the age of 16 years; and

24 (F) the alien was younger than 35 years of
25 age on the date of the enactment of this Act.

1 (2) WAIVER.—Notwithstanding paragraph (1),
2 the Secretary of Homeland Security may waive the
3 ground of ineligibility under section 212(a)(6)(E) of
4 the Immigration and Nationality Act and the ground
5 of deportability under paragraph (1)(E) of section
6 237(a) of that Act for humanitarian purposes or
7 family unity or when it is otherwise in the public in-
8 terest.

9 (3) PROCEDURES.—The Secretary of Homeland
10 Security shall provide a procedure by regulation al-
11 lowing eligible individuals to apply affirmatively for
12 the relief available under this subsection without
13 being placed in removal proceedings.

14 (4) DEADLINE FOR SUBMISSION OF APPLICATION.—An alien shall submit an application for can-
15 cellation of removal or adjustment of status under
16 this subsection no later than the date that is one
17 year after the date the alien—
18 year after the date the alien—

19 (A) was admitted to an institution of high-
20 er education in the United States; or

21 (B) earned a high school diploma or ob-
22 tained a general education development certifi-
23 cate in the United States.

24 (b) TERMINATION OF CONTINUOUS PERIOD.—For
25 purposes of this section, any period of continuous resi-

1 dence or continuous physical presence in the United States
 2 of an alien who applies for cancellation of removal under
 3 this section shall not terminate when the alien is served
 4 a notice to appear under section 239(a) of the Immigra-
 5 tion and Nationality Act (8 U.S.C. 1229(a)).

6 (c) TREATMENT OF CERTAIN BREAKS IN PRES-
 7 ENCE.—

8 (1) IN GENERAL.—An alien shall be considered
 9 to have failed to maintain continuous physical pres-
 10 ence in the United States under subsection (a) if the
 11 alien has departed from the United States for any
 12 period in excess of 90 days or for any periods in the
 13 aggregate exceeding 180 days.

14 (2) EXTENSIONS FOR EXCEPTIONAL CIR-
 15 CUMSTANCES.—The Secretary of Homeland Security
 16 may extend the time periods described in paragraph
 17 (1) if the alien demonstrates that the failure to time-
 18 ly return to the United States was due to excep-
 19 tional circumstances. The exceptional circumstances
 20 determined sufficient to justify an extension should
 21 be no less compelling than serious illness of the
 22 alien, or death or serious illness of a parent, grand-
 23 parent, sibling, or child.

24 (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—
 25 Nothing in this section may be construed to apply a nu-

1 merical limitation on the number of aliens who may be
2 eligible for cancellation of removal or adjustment of status
3 under this section.

4 (e) REGULATIONS.—

5 (1) PROPOSED REGULATIONS.—Not later than
6 180 days after the date of enactment of this Act, the
7 Secretary of Homeland Security shall publish pro-
8 posed regulations implementing this section. Such
9 regulations shall be effective immediately on an in-
10 terim basis, but are subject to change and revision
11 after public notice and opportunity for a period for
12 public comment.

13 (2) INTERIM, FINAL REGULATIONS.—Within a
14 reasonable time after publication of the interim reg-
15 ulations in accordance with paragraph (1), the Sec-
16 retary of Homeland Security shall publish final regu-
17 lations implementing this section.

18 (f) REMOVAL OF ALIEN.—The Secretary of Home-
19 land Security may not remove any alien who has a pending
20 application for conditional status under this Act.

21 **SEC. 5. CONDITIONAL PERMANENT RESIDENT STATUS.**

22 (a) IN GENERAL.—

23 (1) CONDITIONAL BASIS FOR STATUS.—Not-
24 withstanding any other provision of law, and except
25 as provided in section 6, an alien whose status has

1 been adjusted under section 4 to that of an alien
2 lawfully admitted for permanent residence shall be
3 considered to have obtained such status on a condi-
4 tional basis subject to the provisions of this section.
5 Such conditional permanent resident status shall be
6 valid for a period of 6 years, subject to termination
7 under subsection (b).

8 (2) NOTICE OF REQUIREMENTS.—

9 (A) AT TIME OF OBTAINING PERMANENT
10 RESIDENCE.—At the time an alien obtains per-
11 manent resident status on a conditional basis
12 under paragraph (1), the Secretary of Home-
13 land Security shall provide for notice to the
14 alien regarding the provisions of this section
15 and the requirements of subsection (c) to have
16 the conditional basis of such status removed.

17 (B) EFFECT OF FAILURE TO PROVIDE NO-
18 TICE.—The failure of the Secretary of Home-
19 land Security to provide a notice under this
20 paragraph—

21 (i) shall not affect the enforcement of
22 the provisions of this Act with respect to
23 the alien; and

24 (ii) shall not give rise to any private
25 right of action by the alien.

1 (b) TERMINATION OF STATUS.—

2 (1) IN GENERAL.—The Secretary of Homeland
3 Security shall terminate the conditional permanent
4 resident status of any alien who obtained such sta-
5 tus under this Act, if the Secretary determines that
6 the alien—

7 (A) ceases to meet the requirements of
8 subparagraph (B) or (C) of section 4(a)(1);

9 (B) has become a public charge; or

10 (C) has received a dishonorable or other
11 than honorable discharge from the uniformed
12 services.

13 (2) RETURN TO PREVIOUS IMMIGRATION STA-
14 TUS.—Any alien whose conditional permanent resi-
15 dent status is terminated under paragraph (1) shall
16 return to the immigration status the alien had im-
17 mediately prior to receiving conditional permanent
18 resident status under this Act.

19 (c) REQUIREMENTS OF TIMELY PETITION FOR RE-
20 MOVAL OF CONDITION.—

21 (1) IN GENERAL.—In order for the conditional
22 basis of permanent resident status obtained by an
23 alien under subsection (a) to be removed, the alien
24 must file with the Secretary of Homeland Security,
25 in accordance with paragraph (3), a petition which

1 requests the removal of such conditional basis and
2 which provides, under penalty of perjury, the facts
3 and information so that the Secretary may make the
4 determination described in paragraph (2)(A).

5 (2) ADJUDICATION OF PETITION TO REMOVE
6 CONDITION.—

7 (A) IN GENERAL.—If a petition is filed in
8 accordance with paragraph (1) for an alien, the
9 Secretary of Homeland Security shall make a
10 determination as to whether the alien meets the
11 requirements set out in subparagraphs (A)
12 through (E) of subsection (d)(1).

13 (B) REMOVAL OF CONDITIONAL BASIS IF
14 FAVORABLE DETERMINATION.—If the Secretary
15 determines that the alien meets such require-
16 ments, the Secretary shall notify the alien of
17 such determination and immediately remove the
18 conditional basis of the status of the alien.

19 (C) TERMINATION IF ADVERSE DETER-
20 MINATION.—If the Secretary determines that
21 the alien does not meet such requirements, the
22 Secretary shall notify the alien of such deter-
23 mination and terminate the conditional perma-
24 nent resident status of the alien as of the date
25 of the determination.

1 (3) TIME TO FILE PETITION.—An alien may pe-
2 tition to remove the conditional basis to lawful resi-
3 dent status during the period beginning 180 days
4 before and ending 2 years after either the date that
5 is 6 years after the date of the granting of condi-
6 tional permanent resident status or any other expi-
7 ration date of the conditional permanent resident
8 status as extended by the Secretary of Homeland
9 Security in accordance with this Act. The alien shall
10 be deemed in conditional permanent resident status
11 in the United States during the period in which the
12 petition is pending.

13 (d) DETAILS OF PETITION.—

14 (1) CONTENTS OF PETITION.—Each petition
15 for an alien under subsection (c)(1) shall contain in-
16 formation to permit the Secretary of Homeland Se-
17 curity to determine whether each of the following re-
18 quirements is met:

19 (A) The alien has demonstrated good
20 moral character during the entire period the
21 alien has been a conditional permanent resi-
22 dent.

23 (B) The alien is in compliance with section
24 4(a)(1)(C).

1 (C) The alien has not abandoned the
2 alien's residence in the United States. The Sec-
3 retary shall presume that the alien has aban-
4 doned such residence if the alien is absent from
5 the United States for more than 365 days, in
6 the aggregate, during the period of conditional
7 residence, unless the alien demonstrates that
8 the alien has not abandoned the alien's resi-
9 dence. An alien who is absent from the United
10 States due to active service in the uniformed
11 services has not abandoned the alien's residence
12 in the United States during the period of such
13 service.

14 (D) The alien has completed at least 1 of
15 the following:

16 (i) The alien has acquired a degree
17 from an institution of higher education in
18 the United States or has completed at
19 least 2 years, in good standing, in a pro-
20 gram for a bachelor's degree or higher de-
21 gree in the United States.

22 (ii) The alien has served in the uni-
23 formed services for at least 2 years and, if
24 discharged, has received an honorable dis-
25 charge.

1 (E) The alien has provided a list of each
2 secondary school (as that term is defined in sec-
3 tion 9101 of the Elementary and Secondary
4 Education Act of 1965 (20 U.S.C. 7801)) that
5 the alien attended in the United States.

6 (2) HARDSHIP EXCEPTION.—

7 (A) IN GENERAL.—The Secretary of
8 Homeland Security may, in the Secretary's dis-
9 cretion, remove the conditional status of an
10 alien if the alien—

11 (i) satisfies the requirements of sub-
12 paragraphs (A), (B), and (C) of paragraph
13 (1);

14 (ii) demonstrates compelling cir-
15 cumstances for the inability to complete
16 the requirements described in paragraph
17 (1)(D); and

18 (iii) demonstrates that the alien's re-
19 moval from the United States would result
20 in exceptional and extremely unusual hard-
21 ship to the alien or the alien's spouse, par-
22 ent, or child who is a citizen or a lawful
23 permanent resident of the United States.

24 (B) EXTENSION.—Upon a showing of good
25 cause, the Secretary of Homeland Security may

1 extend the period of conditional resident status
2 for the purpose of completing the requirements
3 described in paragraph (1)(D).

4 (e) TREATMENT OF PERIOD FOR PURPOSES OF NAT-
5 URALIZATION.—For purposes of title III of the Immigra-
6 tion and Nationality Act (8 U.S.C. 1401 et seq.), in the
7 case of an alien who is in the United States as a lawful
8 permanent resident on a conditional basis under this sec-
9 tion, the alien shall be considered to have been admitted
10 as an alien lawfully admitted for permanent residence and
11 to be in the United States as an alien lawfully admitted
12 to the United States for permanent residence. However,
13 the conditional basis must be removed before the alien
14 may apply for naturalization.

15 **SEC. 6. RETROACTIVE BENEFITS UNDER THIS ACT.**

16 If, on the date of enactment of this Act, an alien has
17 satisfied all the requirements of subparagraphs (A)
18 through (E) of section 4(a)(1) and section 5(d)(1)(D), the
19 Secretary of Homeland Security may adjust the status of
20 the alien to that of a conditional resident in accordance
21 with section 4. The alien may petition for removal of such
22 condition at the end of the conditional residence period
23 in accordance with section 5(c) if the alien has met the
24 requirements of subparagraphs (A), (B), and (C) of sec-

tion 5(d)(1) during the entire period of conditional residence.

SEC. 7. EXCLUSIVE JURISDICTION.

(a) IN GENERAL.—The Secretary of Homeland Security shall have exclusive jurisdiction to determine eligibility for relief under this Act, except where the alien has been placed into deportation, exclusion, or removal proceedings either prior to or after filing an application for relief under this Act, in which case the Attorney General shall have exclusive jurisdiction and shall assume all the powers and duties of the Secretary until proceedings are terminated, or if a final order of deportation, exclusion, or removal is entered the Secretary shall resume all powers and duties delegated to the Secretary under this Act.

(b) STAY OF REMOVAL OF CERTAIN ALIENS ENROLLED IN PRIMARY OR SECONDARY SCHOOL.—The Attorney General shall stay the removal proceedings of any alien who—

(1) meets all the requirements of subparagraphs (A), (B), (C), and (E) of section 4(a)(1);

(2) is at least 12 years of age; and

(3) is enrolled full time in a primary or secondary school.

(c) EMPLOYMENT.—An alien whose removal is stayed pursuant to subsection (b) may be engaged in employment

1 in the United States consistent with the Fair Labor
2 Standards Act (29 U.S.C. 201 et seq.) and State and local
3 laws governing minimum age for employment.

4 (d) LIFT OF STAY.—The Attorney General shall lift
5 the stay granted pursuant to subsection (b) if the alien—

6 (1) is no longer enrolled in a primary or sec-
7 ondary school; or

8 (2) ceases to meet the requirements of sub-
9 section (b)(1).

10 **SEC. 8. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**
11 **TION.**

12 Whoever files an application for relief under this Act
13 and willfully and knowingly falsifies, misrepresents, or
14 conceals a material fact or makes any false or fraudulent
15 statement or representation, or makes or uses any false
16 writing or document knowing the same to contain any
17 false or fraudulent statement or entry, shall be fined in
18 accordance with title 18, United States Code, or impris-
19 oned not more than 5 years, or both.

20 **SEC. 9. CONFIDENTIALITY OF INFORMATION.**

21 (a) PROHIBITION.—Except as provided in subsection
22 (b), no officer or employee of the United States may—

23 (1) use the information furnished by the appli-
24 cant pursuant to an application filed under this Act

1 to initiate removal proceedings against any persons
2 identified in the application;

3 (2) make any publication whereby the informa-
4 tion furnished by any particular individual pursuant
5 to an application under this Act can be identified; or

6 (3) permit anyone other than an officer or em-
7 ployee of the United States Government or, in the
8 case of applications filed under this Act with a des-
9 ignated entity, that designated entity, to examine
10 applications filed under this Act.

11 (b) REQUIRED DISCLOSURE.—The Attorney General
12 or the Secretary of Homeland Security shall provide the
13 information furnished under this section, and any other
14 information derived from such furnished information, to—

15 (1) a duly recognized law enforcement entity in
16 connection with an investigation or prosecution of an
17 offense described in paragraph (2) or (3) of section
18 212(a) of the Immigration and Nationality Act (8
19 U.S.C. 1182(a)), when such information is requested
20 in writing by such entity; or

21 (2) an official coroner for purposes of affirma-
22 tively identifying a deceased individual (whether or
23 not such individual is deceased as a result of a
24 crime).

1 (c) PENALTY.—Whoever knowingly uses, publishes,
2 or permits information to be examined in violation of this
3 section shall be fined not more than \$10,000.

4 **SEC. 10. HIGHER EDUCATION ASSISTANCE.**

5 Notwithstanding any provision of the Higher Edu-
6 cation Act of 1965 (20 U.S.C. 1001 et seq.), with respect
7 to assistance provided under title IV of the Higher Edu-
8 cation Act of 1965 (20 U.S.C. 1070 et seq.), an alien who
9 adjusts status to that of a lawful permanent resident
10 under this Act shall be eligible only for the following as-
11 sistance under such title:

12 (1) Student loans under parts B, D, and E of
13 such title IV (20 U.S.C. 1071 et seq., 1087a et seq.,
14 1087aa et seq.), subject to the requirements of such
15 parts.

16 (2) Federal work-study programs under part C
17 of such title IV (42 U.S.C. 2751 et seq.), subject to
18 the requirements of such part.

19 (3) Services under such title IV (20 U.S.C.
20 1070 et seq.), subject to the requirements for such
21 services.

22 **SEC. 11. GAO REPORT.**

23 Not later than seven years after the date of enact-
24 ment of this Act, the Comptroller General of the United
25 States shall submit to the Committee on the Judiciary of

1 the Senate and the Committee on the Judiciary of the
2 House of Representatives a report setting forth—

3 (1) the number of aliens who were eligible for
4 cancellation of removal and adjustment of status
5 under section 4(a);

6 (2) the number of aliens who applied for adjust-
7 ment of status under section 4(a);

8 (3) the number of aliens who were granted ad-
9 justment of status under section 4(a); and

10 (4) the number of aliens whose conditional per-
11 manent resident status was removed under section
12 5.

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