



## **DACA LEGAL SERVICES TOOLKIT**

**Practice Advisory 7 of 7**

### **Proposed Federal Legislation to Legalize the Immigration Status of DACA Recipients**

**December 2017**

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## A Note from the Executive Director

The Center for Human Rights and Constitutional Law is a non-profit, public interest legal foundation dedicated to furthering and protecting the civil, constitutional, and human rights of immigrants, refugees, children, prisoners, and the poor. Since its incorporation in 1980, under the leadership of a board of directors comprising civil rights attorneys, community advocates and religious leaders, the Center has provided a range of legal services to vulnerable low-income victims of human and civil rights violations and technical support and training to hundreds of legal aid attorneys and paralegals in the areas of immigration law, constitutional law, and complex and class action litigation.

The Center has achieved significant victories in numerous major class action cases in the courts of the United States and before international bodies that have directly benefited hundreds of thousands of immigrants and other disadvantaged communities.

This practice advisory is part of a *DACA Legal Services Tool Kit* produced by the Center for Human Rights and Constitutional Law including seven practice advisories addressing deportation defense, educational and other government services, employment rights, employment and family-based visa eligibility, individual deferred action status applications, and a potential legislative fix for DACA recipients.

This practice advisory concerns President Trump's recent decision to rescind DACA. The end of DACA means that approximately 800,000 individuals who grew up in the United States will now lose access to work authorization over the next two years, becoming vulnerable to deportation by federal immigration authorities. In light of the President's termination of the DACA program, it has become vitally important to introduce legislation likely to be approved by Congress and the President. This Practice Advisory advocates for a clean bill along the lines of the LIFE Act of 2000, introduced and supported by the Republican leadership, which granted a quick, cost-effective and fair path to Permanent Resident Status for immigrants who, like DACA recipients, only possessed work permits but no permanent status. The best hope for a clean bill is to model it after the Republican-sponsored LIFE Act of 2000.

Manuals prepared by the Center are routinely reviewed for improvements and updates to reflect current policies and practices. This manual was researched and written by Legal Assistant Nneka Jackson. Please feel free to email me at [pschey@centerforhumanrights.org](mailto:pschey@centerforhumanrights.org) to suggest corrections, updates or edits to this practice advisory.

Peter Schey  
President and Executive Director  
Center for Human Rights and Constitutional Law

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## **I. Introduction**

This memo will explain the best way to approach drafting new legislation that will attempt to remedy the effect that the recent rescission of DACA will have on the program's recipients. First, the memo will discuss both the context as well as the content of the Legal Immigration Family Equity Act (hereafter "LIFE Act"). Next, this paper will provide a suggested template for what the appropriate legislation should look like in order to curtail the imminent negative effects of this recent decision under the Trump administration. Section IV presents bills that have been drafted to do just that. The conclusion of this memo will summarize the salient points in order to emphasize the necessity of DACA RECIPIENT lobbying groups creating their own unique bills, rather than lobbying for any currently in existence.

## **II. The 2000 LIFE Act**

The Center for Human Rights and Constitutional Law helped draft the LIFE Act of 2000 in order to benefit 250,000 class members in two of our nationwide class action cases and it may be a model for DACA RECIPIENT sponsored legislation. Revising the LIFE Act to include DACA recipients in the form of a new bill is the best vehicle for achieving substantial protections for the now-vulnerable DACA Recipient population.

### **A. Background**

The LIFE Act was first introduced in the U.S. House of Representatives by Representative Harold Rogers (R-Ky.) on October 25, 2000. The bill was then incorporated into HR 4942, which had been passed by the House by a vote of 217-207 on September 14, 2000. HR 4942 and its amendments was then passed again by the House with a vote of 206-198 on October 26, 2000. The Senate passed the bill by a vote of 48-43 on October 27, 2000. It was finally signed into law by President Bill Clinton (D) on December 21, 2000.<sup>1</sup>

Congress passed the Legal Immigration Family Equity Act (hereafter "LIFE Act") on December 21, 2000. President Clinton signed it into law "as part of the Department of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 2001."<sup>2</sup> The numerous provisions of the Act mainly focused on providing relief for immigrants seeking to become lawful permanent residents

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<sup>1</sup> [Congress.gov, "H.R.4942 - District of Columbia Appropriations Act, 2001,"](https://www.congress.gov/legislation/house-bills/4942) accessed March 15, 2017

<sup>2</sup> 10 A.L.R. Fed. 2d 435 (Originally published in 2006)

or to avoid deportation. Its validity has rarely been challenged, and, generally, courts have held that it was valid.<sup>3</sup>

Ultimately, “the LIFE Act altered the Immigration and Nationality Act to enable immigrants living unlawfully in the United States who were married to citizens or lawful permanent residents to remain in the country while seeking to adjust their own status, though only in fairly restrictive circumstances.”<sup>4</sup>

### **B. Content**

The LIFE Act created several new avenues for visa eligibility for the immediate relatives of legal permanent residents and United States Citizens. For example, the Act created a new temporary visa (V visa) for spouses and minor children of legal permanent residents who were awaiting approval of permanent residency themselves. This new V visa allowed these family members to visit their relatives in the United States and work while they awaited approval. Individuals must have been waiting for at least three years to qualify for the new visa.<sup>5</sup> Under the law, individuals residing in the country without legal permission who met the qualifications as detailed here could apply to adjust their status with a V visa.

The Act also expanded eligibility for the already existing K visa. The K visa, that had been for fiancées of U.S. citizens entering the country to marry was expanded to cover non-citizen spouses and minor children of U.S. citizens who were waiting approval of permanent residency. The visa allowed them to both enter and work in the United States legally. Both individuals with pending applications and those planning to submit a future application were eligible under the law.

Additionally, the LIFE act contained provisions regarding three class-action lawsuits against the Immigration and Naturalization Service (INS): *CSS v. Meese*, *LULAC v. Reno*, and *INS v. Zambrano*. These lawsuits were filed against the INS for its implementation of the 1986 amnesty program, which granted legal status to 2.7 million individuals who had been residing in the United States without legal permission.

The law allowed individuals who had applied for class-action status under one of these three lawsuits and met other various conditions to apply for status as lawful permanent residents. Individuals eligible to apply were also allowed to work

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<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> [USAVisaNow.com](http://USAVisaNow.com), "Legal Immigration and Family Equity Act (LIFE Act) Summary," accessed November 22, 2017

legally in the United States, and travel while their applications were pending. Further, spouses and unmarried children of eligible individuals were granted relief from deportation and allowed to work legally in the United States, so long as the deportation proceedings were not initiated on the basis of a criminal violation.

Specifically, the LIFE Act was intended to be an advantage for those who had overstayed their visa, or otherwise violated the terms of a visa, worked without authorization, or even entered without inspection. Through the LIFE Act, they are permitted to apply for adjustment of status from within the US by paying an additional fee but without other penalties.

### **III. Suggested Template of Proposed Legislation**

The DACA RECIPIENTS have only accomplished what they have over the past decade by leading themselves. When they do so, they gather wide support from the faith-based community, labor leaders, local elected officials, the public and the media, the allies needed to accomplish victory.

There are several bills already pending in Congress, but nothing will get the attention the issue deserves more than a DACA RECIPIENT-sponsored, simple, effective and fair DACA RECIPIENT bill in Congress. A DACA RECIPIENT authored bill should propose community service as an alternative to filing fees, a quick and easy path to lawful permanent resident status, and minimal bars that disqualify people from qualifying. These characteristics were all part of the 2000 LIFE Act that we helped draft in the summer of 2000 and Congress promptly adopted. The LIFE Act did much to alleviate the plight of an approximated 500,000 individuals who have lived in the U.S. at the time it was passed, and so could a DACA RECIPIENT bill modeled after it.

## **TITLE I—PROTECTING AMERICA’S DREAMERS**

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**(TITLE I of H.R. XXXX)**

**SEC. 1. SHORT TITLE.**

This title may be cited as the “American Dreamer Act of 2017”

## **SEC. 2. DEFINITIONS.**

In this Act:

(1) **IN GENERAL.**—Except as otherwise specifically provided, any term used in this Act that is used in the immigration laws shall have the meaning given such term in the immigration laws.

(2) **DACA.**—The term “DACA” means deferred action granted to an alien pursuant to the Deferred Action for Childhood Arrivals program announced by President Obama on June 15, 2012.

(3) **DISABILITY.**—The term “disability” has the meaning given such term in section 3(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(1)).

(4) **EARLY CHILDHOOD EDUCATION PROGRAM.**—The term “early childhood education program” has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

(5) **ELEMENTARY SCHOOL; HIGH SCHOOL; SECONDARY SCHOOL.**—The terms “elementary school”, “high school”, and “secondary school” have the meanings given such terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(6) **IMMIGRATION LAWS.**—The term “immigration laws” has the meaning given such term in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))<sup>6</sup>.

(7) **INSTITUTION OF HIGHER EDUCATION.**—The term “institution of higher education”—

(A) except as provided in subparagraph (B), has the meaning given such term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002); and

(B) does not include an institution of higher education outside of the United States.

(8) **PERMANENT RESIDENT STATUS.**—The term “permanent resident status” means status as an alien lawfully admitted for permanent residence.

(9) **POVERTY LINE.**—The term “poverty line” has the meaning given such term in section 673 of the Community Services Block Grant Act (42 U.S.C. 9902).

(10) **SECRETARY.**—Except as otherwise specifically provided, the term “Secretary” means the Secretary of Homeland Security.

(11) **UNIFORMED SERVICES.**—The term “Uniformed Services” has the meaning given the term “uniformed services” in section 101(a) of title 10, United States Code.

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<sup>6</sup> 8 U.S.C. § 1101(a)(17) - The term “[immigration laws](#)” includes this chapter and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens



(12) SECTION 245A - such section 245A' means section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a)<sup>7</sup>.

**SEC. 3. ADJUSTMENT OF STATUS FOR CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE.**

(a) **IN GENERAL-** In the case of an eligible alien described in subsection (b), the provisions of section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a), as modified by subsection (c), shall apply to the alien.

(b) **ELIGIBLE ALIENS DESCRIBED-** An alien is an eligible alien described in this subsection if they are:

(1) an alien who is inadmissible or deportable from the United States or is in temporary protected status under section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a)<sup>8</sup>, if—

(A) the alien has been continuously physically present in the United States since the date that is 4 years before the date of the enactment of this Act;

(B) the alien was younger than 18 years of age on the date on which the alien initially entered the United States;

(C) subject to paragraphs (2) and (3), the alien—

(i) is not inadmissible under paragraph (2), (3), (6)(E), (6)(G), (8), (10)(A), (10)(C), or (10)(D) of section 212(a) of the Immigration and Nationality Act<sup>9</sup> (8 U.S.C. 1182(a));

(ii) has not 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; and

(iii) has not been convicted of—

(I) any offense under Federal or State law, other than a State offense for which an essential element is the alien's immigration status, that is punishable by a maximum term of imprisonment of more than 1 year; or

(II) three or more offenses under Federal or State law, other than State offenses for which an essential element is the alien's immigration status, for which the alien was convicted on different dates for each of the 3 offenses and imprisoned for an aggregate of 90 days or more; and

(D) the alien—

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<sup>7</sup> 8 U.S.C. § 1255a - Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for lawful residence

<sup>8</sup> 8 U.S. Code § 1254a - Temporary protected status

<sup>9</sup> INA 212(a)(2) - Criminal and related grounds; INA 212(a)(3) - Security and related grounds; INA 212(a)(6)(E) – Smugglers; INA 212(a)(6)(G) - Student visa abusers; INA 212(a)(8) - Ineligible for citizenship; INA 212(a)(10)(A) - Practicing polygamists; INA 212(a)(10)(C) - International child abduction; INA 212(a)(10)(D) – Unlawful Voters.

- (i) has been admitted to an institution of higher education;
- (ii) has earned a high school diploma or a commensurate alternative award from a public or private high school, or has obtained a general education development certificate recognized under State law or a high school equivalency diploma in the United States; or
- (iii) is enrolled in secondary school or in an education program assisting students in—

- (I) obtaining a regular high school diploma or its recognized equivalent under State law; or

- (II) in passing a general educational development exam, a high school equivalence diploma examination, or other similar State-authorized exam.

(2) **WAIVER.**—With respect to any benefit under this Act, the Secretary may waive the grounds of inadmissibility under paragraph (2), (6)(E), (6)(G), or (10)(D) of section 212(a) of the Immigration and Nationality Act<sup>10</sup> (8 U.S.C. 1182(a)) for humanitarian purposes or family unity or if the waiver is otherwise in the public interest.

(3) **TREATMENT OF EXPUNGED CONVICTIONS.**—An expunged conviction shall not automatically be treated as an offense under paragraph (1). The Secretary shall evaluate expunged convictions on a case-by-case basis according to the nature and severity of the offense to determine whether, under the particular circumstances, the Secretary determines that the alien should be eligible for cancellation of removal, adjustment to permanent resident status, or other adjustment of status.

(4) **DACA RECIPIENTS.**—The Secretary shall cancel the removal of, and adjust to the status of an alien lawfully admitted for permanent residence on a conditional basis, an alien who was granted DACA unless the alien has engaged in conduct since the alien was granted DACA that would make the alien ineligible for DACA.

(c) **MODIFICATIONS TO PROVISIONS GOVERNING ADJUSTMENT OF STATUS-** The modifications to section 245A of the Immigration and Nationality Act that apply to an eligible alien described in subsection (b) of this section are the following:

(1) **TEMPORARY RESIDENT STATUS-** Subsection (a) of such section 245A shall not apply.

(2) **ADJUSTMENT TO PERMANENT RESIDENT STATUS-** In lieu of paragraphs (1) and (2) of subsection (b) of such section 245A, the Attorney

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<sup>10</sup> INA 212(a)(2) - Criminal and related grounds; INA 212(a)(6)(E) – Smugglers; INA 212(a)(6)(G) - Student visa abusers; INA 212(a)(10)(D) – Unlawful Voters.

General shall be required to adjust the status of an eligible alien described in subsection (b) of this section to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) APPLICATION PERIOD- The alien must file with the Attorney General an application for such adjustment during the 12- month period beginning on the date on which the Attorney General issues final regulations to implement this section.

(B) APPLICATION FEE.—

(i) IN GENERAL.—The Secretary may require an alien applying for permanent resident status under this section to pay a reasonable fee that is commensurate with the cost of processing the application.

(ii) EXEMPTION.—An applicant may be exempted from paying the fee required under subparagraph (B) if the alien—

(I) (a) is younger than 18 years of age;

(b) received total income, during the 12-month period immediately preceding the date on which the alien files an application under this section, that is less than 150 percent of the poverty line; and

(c) is in foster care or otherwise lacking any parental or other familial support;

(II) is younger than 18 years of age and is homeless;

(III) (a) cannot care for himself or herself because of a serious, chronic disability; and

(b) received total income, during the 12-month period immediately preceding the date on which the alien files an application under this section, that is less than 150 percent of the poverty line; or

(IV) (a) during the 12-month period immediately preceding the date on which the alien files an application under this section, accumulated \$10,000 or more in debt as a result of unreimbursed medical expenses incurred by the alien or an immediate family member of the alien; and

(b) received total income, during the 12-month period immediately preceding the date on which the alien files an application under this section, that is less than 150 percent of the poverty line.

(C) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC DATA.—The Secretary may not grant an alien permanent resident status under this section unless the alien submits biometric and biographic data, in accordance with procedures established by the Secretary. The Secretary shall provide an alternative procedure for aliens who are unable to provide such biometric or biographic data because of a physical impairment.

(D) BACKGROUND CHECKS.—

(i) **REQUIREMENT FOR BACKGROUND CHECKS.**—The Secretary shall utilize biometric, biographic, and other data that the Secretary determines appropriate—

(I) to conduct security and law enforcement background checks of an alien seeking permanent resident status under this section; and

(II) to determine whether there is any criminal, national security, or other factor that would render the alien ineligible for such status.

(ii) **COMPLETION OF BACKGROUND CHECKS.**—The security and law enforcement background checks of an alien required under subparagraph (iv) shall be completed, to the satisfaction of the Secretary, before the date on which the Secretary grants such alien permanent resident status under this section.

(E) **MEDICAL EXAMINATION.**—

(i) **REQUIREMENT.**—An alien applying for permanent resident status under this section shall undergo a medical examination.

(ii) **POLICIES AND PROCEDURES.**—The Secretary, with the concurrence of the Secretary of Health and Human Services, shall prescribe policies and procedures for the nature and timing of the examination required under subparagraph (A).

(F) **MILITARY SELECTIVE SERVICE.**—An alien applying for permanent resident status under this section shall establish that the alien has registered under the Military Selective Service Act (50 U.S.C. 3801 et seq.), if the alien is subject to registration under such Act.

(G) **CONTINUOUS UNLAWFUL RESIDENCE-**

(i) **IN GENERAL-** The alien must establish that the alien entered the United States at least 4 years before the date of this bill's enactment, and that he or she has resided continuously in the United States in an unlawful or temporary protected status since such date and through the date of the filing of their application. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

(H) **CONTINUOUS PHYSICAL PRESENCE-**

(i) **IN GENERAL-** The alien must establish that the alien was continuously physically present in the United States during the period beginning on 4 years before the date of this bill's enactment, and that he or she has resided continuously in the United States in an unlawful or temporary protected status since such date and through the date of the filing of their application, except that--

(I) an alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of this subparagraph by virtue of brief, casual, and innocent absences from the United States; and  
(II) brief, casual, and innocent absences from the United States shall not be limited to absences with advance parole.

(ii) **TERMINATION OF CONTINUOUS PERIOD.**—Any period of continuous physical presence in the United States of an alien who applies for permanent resident status under this section shall not terminate when the alien is served a notice to appear under section 239(a) of the Immigration and Nationality Act (8 U.S.C. 1229(a)<sup>11</sup>).

(iii) **TREATMENT OF CERTAIN BREAKS IN PRESENCE.**—

(I) **IN GENERAL.**—Except as provided in subparagraphs (II) and (III), an alien shall be considered to have failed to maintain continuous physical presence in the United States under subsection (b)(1)(A) if the alien has departed from the United States for any period exceeding 90 days or for any periods, in the aggregate, exceeding 180 days.

(II) **EXTENSIONS FOR EXTENUATING CIRCUMSTANCES.**—The Secretary may extend the time periods described in subparagraph (A) for an alien who demonstrates that the failure to timely return to the United States was due to extenuating circumstances beyond the alien’s control, including the serious illness of the alien, or death or serious illness of a parent, grandparent, sibling, or child of the alien.

(III) **TRAVEL AUTHORIZED BY THE SECRETARY.**—Any period of travel outside of the United States by an alien that was authorized by the Secretary may not be counted toward any period of departure from the United States under subparagraph (I).

(iv) **ADMISSIONS-** Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this section or section 245A of the Immigration and Nationality Act.

(I) **ADMISSIBLE AS IMMIGRANT-** The alien must establish that the alien--

(i) is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Immigration and Nationality Act<sup>12</sup>;

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<sup>11</sup> 8 U.S. § 1229 - Initiation of removal proceedings

**(a) Notice to appear (1) In general** In [removal proceedings](#) under [section 1229a of this title](#), written notice (in this section referred to as a “notice to appear”) shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien’s counsel of record, if any)...

<sup>12</sup> INA 245(d)(2) Waiver of grounds for exclusion.-In the determination of an alien's admissibility...

(A) Grounds of exclusion not applicable.-The provisions of paragraphs (5) [Labor certification and qualifications for certain immigrants] and (7)(A) [immigrant at the time of application for admission... who is

- (ii) has not been convicted of any felony or of three or more misdemeanors committed in the United States;
- (iii) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion; and
- (iv) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.

**(J) BASIC CITIZENSHIP SKILLS-**

- (i) **IN GENERAL-** The alien must demonstrate that the alien either--
  - (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
  - (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.
- (ii) **EXCEPTION FOR ELDERLY OR DEVELOPMENTALLY DISABLED INDIVIDUALS-** The Attorney General may, in the discretion of the Attorney General, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older or who is developmentally disabled.
- (iii) **RELATION TO NATURALIZATION EXAMINATION-** In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 312(a) of the Immigration and Nationality Act may be considered to have satisfied the

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not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document] of section [212\(a\)](#) shall not apply.

**(B) Waiver of other grounds.-**

- (i) **In general.-**Except as provided in clause (ii), the Attorney General may waive any other provision of section [212\(a\)](#) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.
- (ii) **Grounds that may not be waived.-**The following provisions of section [212\(a\)](#) may not be waived by the Attorney General under Grounds that may not be waived.-The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):
  - (I) Paragraphs (2)(A) and (2)(B) (relating to criminals).
  - (II) Paragraph (2)(C) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.
  - (III) Paragraph (3) (relating to security and related grounds).
  - (IV) Paragraph (4) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence.Subclause (IV) (prohibiting the waiver of section 212(a)(4)) shall not apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).
- (iii) **Special rule for determination of public charge.-**An alien is not ineligible for adjustment of status under this section due to being inadmissible under section [212\(a\)\(4\)](#) if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance.

requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III of such Act.

(3) TEMPORARY STAY OF REMOVAL, AUTHORIZED TRAVEL, AND EMPLOYMENT DURING PENDENCY OF APPLICATION-

In lieu of subsections (b)(3) and (e)(2) of such section 245A<sup>13</sup>, the Attorney General shall provide that, in the case of an eligible alien described in subsection (b) of this section who presents a prima facie application for adjustment of status to that of an alien lawfully admitted for permanent residence under such section 245A during the application period described in paragraph (2)(A), until a final determination on the application has been made--

(A) the alien may not be deported or removed from the United States;

(B) the Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need; and

(C) the Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an 'employment authorized' endorsement or other appropriate work permit.

(4) APPLICATIONS- Paragraphs (1) through (4) of subsection (c) of such section 245A shall not apply.

(5) CONFIDENTIALITY OF INFORMATION- Subsection (c)(5) of such section 245A shall apply to information furnished by an eligible alien described in subsection (b) pursuant to any application filed under such section 245A or this section, except that the Attorney General (and other officials and employees of the Department of Justice and any bureau or agency thereof) may use such information for purposes of rescinding, pursuant to section 246(a) of the Immigration and Nationality Act (8 U.S.C. 1256(a)<sup>14</sup>), any adjustment of status obtained by the alien.

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<sup>13</sup> INA 245A(b)(3) - Authorized travel and employment during temporary residence; INA 245A(e)(2) - Temporary Stay of Deportation and Work Authorization for Certain Applicants during application period.

<sup>14</sup> 8 U.S.C. § 1256(a) - If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section [1255](#) or [1259](#) of this title or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling removal in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this chapter to the same extent as if the adjustment of status had not been made. Nothing in this subsection shall require the Attorney General to rescind the alien's status prior to commencement of procedures to remove the alien under [section 1229a of this title](#), and an order of removal issued by an immigration judge shall be sufficient to rescind the alien's status.

(6) USE OF FEES FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES- Notwithstanding subsection (c)(7)(C) of such section 245A,<sup>15</sup> no application fee paid to the Attorney General pursuant to this section by an eligible alien described in subsection (b) of this section shall be available in any fiscal year for the purpose described in such subsection (c)(7)(C).

(7) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS BEFORE APPLICATION PERIOD-

In lieu of subsection (e)(1) of such section 245A, the Attorney General shall provide that in the case of an eligible alien described in subsection (b) of this section who is apprehended before the beginning of the application period described in paragraph (2)(A) and who can establish a prima facie case of eligibility to have his status adjusted under such section 245A pursuant to this section (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien--

(A) may not be deported or removed from the United States; and

(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

(8) JURISDICTION OF COURTS- Effective as of November 6, 1986, subsection (f)(4)(C) of such section 245A<sup>16</sup> shall not apply to an eligible alien described in subsection (b) of this section.

(9) PUBLIC WELFARE ASSISTANCE- Subsection (h) of such section 245A shall not apply.

(d) APPLICATIONS FROM ABROAD- The Attorney General shall establish a process under which an alien who has become eligible to apply for adjustment of status to that of an alien lawfully admitted for permanent residence as a result of the enactment of this section and who is not physically present in the United States may apply for such adjustment from abroad.

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<sup>15</sup> INA 245A (c)(7)(C) - Immigration-related unfair employment practices.

<sup>16</sup> INA 245A(f)(4)(C) - Notwithstanding any other provision of law, no court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1), or attempted to file a complete application and application fee with an authorized legalization officer of the Service but had the application and fee refused by that officer.



(e) **DEADLINE FOR REGULATIONS-** The Attorney General shall issue regulations to implement this section not later than 120 days after the date of the enactment of this Act.

(f) **ADMINISTRATIVE AND JUDICIAL REVIEW-**The provisions of subparagraphs (A) and (B) of section 245A(f)(4) of the Immigration and Nationality Act (8 U.S.C. 1255a(f)(4)) shall apply to administrative or judicial review of a determination under this section or of a determination respecting an application for adjustment of status under section 245A of the Immigration and Nationality Act filed pursuant to this section.

(g) **INAPPLICABILITY OF REMOVAL ORDER REINSTATEMENT.--** Section 241(a)(5)<sup>17</sup> of the Immigration and Nationality Act shall not apply with respect to an alien who is applying for adjustment of status under this section."

#### **IV. Similar Bills Currently Drafted**

This section provides a brief overview of legislation currently pending that could possibly serve as a means for restoring DACA Recipients to their previous status.

#### **2017 Dream Act (S. 1615 and H.R. 3440)**

##### **S. 1615**

**Sponsor:** Sen. Graham, Lindsey [R-SC] (Introduced 07/20/2017)

**Committees:** Senate –Judiciary

**Latest Action:** 07/20/2017 Read twice and referred to the Committee on the Judiciary.

##### **H.R. 3440**

**Sponsor:** Rep. Roybal-Allard, Lucille [D-CA-40] (Introduced 07/26/2017)

**Committees:** House-Judiciary; Education and the Workforce

**Latest Action:** 09/06/2017 Referred to the Subcommittee on Immigration and Border Security

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<sup>17</sup> INA 241(a)(5) - Reinstatement of removal orders against aliens illegally reentering. -If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

## **Summary**

This bill directs the Department of Homeland Security (DHS) to cancel removal and grant lawful permanent resident status on a conditional basis to an immigrant who is inadmissible or deportable or is in temporary protected status who: (1) has been continuously physically present in the United States for four years preceding this bill's enactment; (2) was younger than 18 years of age on the initial date of U.S. entry; (3) is not inadmissible on criminal, security, terrorism, or other grounds; (4) has not participated in persecution; (5) has not been convicted of specified federal or state offenses; and (6) has fulfilled specified educational requirements.

DHS shall cancel the removal of, and adjust to the status of an immigrant lawfully admitted for permanent residence on a conditional basis, an immigrant who was granted Deferred Action for Childhood Arrivals (DACA) status unless the immigrant has engaged in conduct that would make the immigrant ineligible for DACA.

DHS may not: (1) grant conditional permanent resident status without the submission of biometric and background data, and completion of background and medical checks; and (2) disclose or use information provided in applications filed under this bill or in DACA requests for immigration enforcement purposes.

The bill prescribes the conditions under which DHS: (1) may terminate a person's conditional permanent resident status, and (2) shall adjust a person's conditional status to permanent resident status.

The bill: (1) sets forth documentation requirements for establishing DACA eligibility, and (2) repeals the denial of an unlawful immigrant's eligibility for higher education benefits based on state residence.

## **American Hope Act (H.R. 3591)**

**Sponsor:** Rep. Gutierrez, Luis V. [D-IL-4] (Introduced 07/28/2017)

**Committees:** House - Judiciary; Education and the Workforce

**Latest Action:** 09/06/2017 Referred to the Subcommittee on Immigration and Border Security.

## **Summary**

This bill amends the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to allow a state to extend higher-education benefits to state residents regardless of whether they are lawfully present in the United States.

In addition, the bill requires the Department of Homeland Security (DHS) to cancel the removal, and adjust the status, of certain residents who entered the United States as children prior to 2017. An individual whose status has been so adjusted shall be considered to have obtained conditional permanent-resident status, valid

for a period of eight years and subject to termination on the basis of specified deportable conduct.

In order for an individual's conditional status to become permanent, the individual must timely file with DHS a petition indicating, among other specified information, that the individual has maintained conditional permanent-resident status for at least three years. Any period of time in which the individual was granted deferred action pursuant to the Deferred Action for Childhood Arrivals policy shall count toward this three-year period. Information furnished by an individual in such a petition may not be used by an officer or employee of the United States to initiate removal proceedings.

The bill also: (1) allows DHS to establish a competitive grant program for the provision of nonprofit assistance to eligible applicants for conditional permanent-resident status; (2) establishes the Presidential Award for Business Leadership in Promoting American Citizenship; (3) allows the Department of Education to develop an open-source, electronic English-learning program; (4) specifies requirements related to federal higher-education assistance for individuals with conditional permanent-resident status; and (5) requires the Government Accountability Office to report on specified data related to the bill.

### **Bar Removal of Individuals who Dream and Grow our Economy Act or the BRIDGE Act (H.R. 496)**

**Sponsor:** Rep. Coffman, Mike [R-CO-6] (Introduced 01/12/2017)

**Committees:** House - Judiciary

**Latest Action:** 09/05/2017 Motion to Discharge Committee filed by Mr. Coffman. Petition No: 115-4. (All Actions)

**Notes:** On 9/5/2017, a motion was filed to discharge the Committee on the Judiciary from the consideration of H.R. 496. A discharge petition requires 218 signatures for further action. (Discharge Petition No. 115-4: text with signatures.)

### **Summary**

This bill amends the Immigration and Nationality Act to provide that the Department of Homeland Security (DHS): (1) shall grant a three-year provisional protected presence to a qualifying immigrant, (2) may not remove the immigrant from the United States unless such protected presence is rescinded, and (3) shall provide such immigrant with employment authorization.

An immigrant is eligible for such protected presence and employment authorization if the immigrant: (1) was born after June 15, 1981; (2) entered the United States before attaining 16 years of age; (3) continuously resided in the United States since June 15, 2007; (4) was physically but unlawfully present in the United States on June 15; (5) on the date the immigrant files an application the

immigrant is present in the United States, is enrolled in school or in an education program assisting students in obtaining a high school diploma, has graduated or obtained a certificate of completion from high school or a general educational development certificate, or is an honorably discharged U.S. Coast Guard or Armed Forces veteran; (6) has not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors not occurring on the same date and not arising out of the same act; and (7) does not otherwise pose a threat to national security or a threat to public safety.

**The bill: (1) provides for confidentiality of application information, with certain national security and law enforcement exceptions; and (2) sets forth the criteria under which DHS may rescind protected presence.**

**An immigrant granted protected presence is not considered to be unlawfully present in the United States during such period. Additionally, an immigrant must be at least 15 years old, unless in removal proceedings, to apply for protected presence. While DHS may provide for an application fee and for fee exemptions, DHS may not: (1) remove an immigrant who appears prima facie eligible for protected presence while the immigrant's application is pending, or (2) refer individuals whose cases have been deferred pursuant to the Deferred Action for Childhood Arrivals Program (DACA) or who have been granted protected presence to U.S. Immigration and Customs Enforcement. A DACA immigrant is deemed to have protected presence through the expiration date of his or her deferred action status.**

### **Recognizing America's Children (RAC) Act (H.R. 1468)**

**Sponsor:** Rep. Curbelo, Carlos [R-FL-26] (Introduced 03/09/2017)

**Committees:** House - Judiciary; Homeland Security; Armed Services

**Latest Action:** 03/22/2017 Referred to the Subcommittee on Counterterrorism and Intelligence.

### **Summary**

This bill authorizes the Department of Homeland Security (DHS) to cancel the removal of, and adjust to conditional nonimmigrant for an initial five-year period the status of, an immigrant who meets the following criteria:

- was younger than 16 years old when he or she initially entered the United States and has been physically present in the United States since January 1, 2012;
- is a person of good moral character;

- is not inadmissible or deportable on specified grounds under the Immigration and Nationality Act;
- has not participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
- has not been convicted of certain offenses under federal or state law;
- is 18 years or older and has earned a high school diploma, general education development certificate, or high school equivalency diploma in the United States, has been admitted to an institution of higher education, or has a valid work authorization; and
- has never been under a final order of exclusion, deportation, or removal unless the immigrant has remained in the United States under color of law after such order's issuance or received the order before attaining the age of 18.

An immigrant applying for relief under this bill shall: (1) register under the Military Selective Service Act if so required, (2) undergo a medical examination, (3) submit biometric and biographic data, and (4) complete security and law enforcement background checks. DHS shall, under specified, circumstances terminate or extend the conditional nonimmigrant status of an immigrant who is at least 18 years old.

A conditional nonimmigrant may file an application to adjust his or her status to that of an immigrant lawfully admitted for permanent residence during a specified period.

An immigrant who adjusts to permanent resident status may apply for naturalization upon compliance with all immigration law requirements.

## **V. Conclusion**

This practice advisory is intended to explain the strategic importance of DACA RECIPIENTs drafting their own, more impactful and comprehensive bill rather than lobbying for any that may be pre-existing. The DACA program enabled a staggering number of young people to strengthen the labor force, attend college, support their households and travel without fear. By instructing the U.S. Citizenship and Immigration Services to completely stop accepting and renewing applications by March 5, 2018, this endangers nearly one million lives. Using DACA RECIPIENT-drafted legislation as written in this practice advisory to garner support from both Democratic and Republican policymakers is the best way to ensure that DACA recipients achieve the same protections they previously had under the Obama administration.

The Center for Human Rights and Constitutional Law is available to provide technical support to legal services programs representing and groups organizing DACA recipients. If you'd like to join a conference call to discuss the options of DACA RECIPIENT-initiated legislation and litigation, and discuss the status of pending litigation, [please indicate your interest at this link](#).

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