



## The DREAM Act in the 111<sup>th</sup> Congress S. 729 and H.R. 1751

### In-State Tuition for Future Illegal Aliens

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

### The Amnesty

- To qualify for lawful permanent resident status, an applicant must be inadmissible or deportable and must:
  - Have been physically present in the US for the five years preceding the date of enactment (the bill does not specify how aliens are to prove this, or even whether they have to prove it);
  - Have been under the age of 16 upon entry into the US;
  - Be a “person of good moral character,” but only AFTER the application is filed;
  - Not have been convicted of an aggravated felony or more than two misdemeanors (though being charged with such crimes is fine);
  - Not be a known terrorist or national security risk;
  - Not be a known/convicted smuggler or human trafficker (all other immigration violations are fine, and this one can be waived for humanitarian or family unity purposes);
  - Not have abducted a child and taken the child to a different country.
  - At the time of filing an application, have been admitted to an institution of higher education, or have a high school diploma or a GED;
  - Have never received a final order of removal or exclusion unless the alien successfully played the legal system and found a way to remain in the US under color of law, or the final order was issued before the alien turned 16; and
  - Be under **35 years of age** as of the date of enactment.
- There are no numerical limits on how many illegal aliens may be granted amnesty, and they cannot be counted against any existing immigration cap.
- There is no end date on the application period, so an alien who enters illegally next year, but who can purchase or fabricate “evidence” indicating that he meets the requirements, can apply for amnesty.
- No alien who files an amnesty application may be removed from the United States before the application is adjudicated completely. *There are no exceptions to this, so as long as an alien filed an amnesty application before he flew a plane into the World Trade Center or went on a killing*

*spree in the local mall, he could not be removed from the country until USCIS (hopefully) denied his application and he exhausted all appeals.*

### **“Conditional” Permanent Residence**

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

### **The Path to Citizenship**

- When the amnestied aliens complete their six years of conditional permanent resident status, they can petition USCIS to have the conditions removed and become regular lawful permanent residents. The petition may be filed any time within the six months leading up to, or the two years following, the end of the six-year period. Each amnestied alien must indicate in the petition that he or she:
  - Has demonstrated good moral character since filing for amnesty;
  - Has not been convicted of disqualifying crimes;
  - Is not a terrorist, human smuggler, or international child abductor;
  - Has not been absent from the US for more than 365 days during the six years (or he/she can explain such absence and why it doesn’t indicate abandonment of US residence); and
  - Has completed at least ONE of the following:
    - A degree from a US institution of higher education or at least two years toward such a degree;
    - At least two years of military service and, if discharged, was honorably discharged; or
    - A list of each secondary school (i.e., high school) the alien attended in the US. (Yes, you read that correctly: a list of high schools attended is sufficient to put an amnestied alien on the path to US citizenship under a bill, the purported purpose of which is to “ensure that all children receive a higher education.”)
- For those aliens who have not completed two years of college or service in the military, and who cannot provide a list of the high schools they attended after the six-year period, DHS may waive this requirement and remove their conditional status if the alien:

- Satisfies the other requirements;
  - Demonstrates “compelling circumstances for the inability to meet the last requirement; and
  - Demonstrates that his/her removal would result in “exceptional and extremely unusual hardship to the alien or the alien’s spouse, parent, or child who is a citizen or lawful permanent resident.
- Alternatively, upon “a showing of good cause,” DHS may extend the six-year period of conditional status to give the alien more time to complete one of these requirements.
  - While amnestied aliens must successfully petition to have their conditional status removed before they may naturalize, their six years of conditional residence counts toward the naturalization requirement. Thus, these aliens will be able to apply for naturalization immediately upon the removal of conditional status.

### **Handling the Additional Workload**

- USCIS would bear the brunt of the massive amnesty workload this bill would generate. The bill’s authors undoubtedly are aware that USCIS announced a few years ago its successful completion of the Backlog Elimination Program, which was instituted before DHS was even created, to address the rapidly growing backlog of immigration benefits applications processed by USCIS. USCIS reported that the backlog had reached a high of almost four million applications by January, 2004. Then-USCIS Director Emilio Gonzalez announced on September 5, 2006, that the backlog had been reduced to 140,000. (Of course, most of that reduction was achieved by redefining the word “backlog,” and the rest was the result of shortcuts on security checks.) The bill’s authors also are undoubtedly aware of the fact that USCIS recently raised immigration fees by unprecedented amounts so that it would have the resources to stay current on applications. Perhaps the bill’s authors are even aware of the fact that USCIS reports that it had 3.2 million applications pending as of January, 2009, despite the alleged success of the Backlog Elimination Program and the fee hikes.
- This could explain why the bill gives exclusive jurisdiction to DHS (meaning USCIS) to grant or deny amnesty applications, *except* where an alien is put in removal proceedings either before or after filing an amnesty application. In these cases, the Attorney General would have exclusive jurisdiction. While this likely would result in lawsuits alleging disparate treatment of applications by the two agencies, at least it will spread the workload around a bit, assuming there are still some enforcement efforts that result in illegal aliens being placed in removal proceedings.
- The Attorney General also would be required to stay removal proceedings for all illegal aliens who appear to meet the requirements for amnesty, are at least 12 years old, and are enrolled full time in school.

### **Americans Need Not Apply**

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

## **Law Enforcement Provisions**

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

## **Moving to the Front of the Line**

- USCIS is required to adjudicate all amnesty applications on “an expedited basis” but is prohibited from requiring a higher fee from amnesty applicants for such expedited processing.

## **Bonus Reward for Illegal Students**

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

## **Assessing the Damage**

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