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Unauthorized Alien Students: Legislation in the 109th and 110th Congresses

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Summary

Legalization of unauthorized immigrants living in the United States is a key issue in immigration reform. Recent discussions of this issue have focused mainly on controversial legislative proposals to create a pathway to legal status for a large majority of today's unauthorized aliens. For many years, however, narrower bills were regularly introduced in Congress that sought to provide both legal immigration status and education-related relief to a subgroup of the larger unauthorized population: individuals who were brought, as children, to live in the United States by their parents or other adults. Historically, these bills, commonly referred to as the "DREAM Act," have been less controversial than broader legalization proposals. The name *DREAM Act* derives from a bill title, Development, Relief, and Education for Alien Minors Act, but refers more broadly to measures to provide immigration relief to unauthorized childhood arrivals, whether or not particular bills carry that name.

Unauthorized alien children in the United States may face various obstacles as they get older. They receive free public primary and secondary education, but may find it difficult to attend college for financial reasons. A provision enacted as part of a 1996 immigration law prohibits states from granting unauthorized aliens certain postsecondary educational benefits on the basis of state residence, unless equal benefits are made available to all U.S. citizens. This prohibition is commonly understood to apply to the granting of "in-state" residency status for tuition purposes. In addition, unauthorized immigrants are not eligible for federal student financial aid. More generally, they are not legally allowed to work in the United States and are subject to being removed from the country at any time.

Multiple DREAM Act measures were introduced in the 109th and 110th Congresses both as stand-alone measures and as parts of larger immigration reform bills. Most of these bills had two key components. They would have repealed the 1996 provision, thereby eliminating a restriction on state provision of postsecondary educational benefits to unauthorized aliens. They also would have provided immigration relief to certain unauthorized alien students by establishing a process for them to become legal permanent residents of the United States.

DREAM Act bills introduced and considered in the 109th and 110th Congresses are the focus of this report. While none of these measures were enacted, they serve as a bridge between older and newer versions of the DREAM Act and provide useful background information for analysis of more recent DREAM Act proposals. For discussion of these more recent proposals, see CRS Report RL33863, *Unauthorized Alien Students: Issues and "DREAM Act" Legislation*, by (name redacted).

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Introduction

The question of legalizing the status of unauthorized aliens in the United States is a key—and controversial—issue in immigration reform. While recent discussions have focused on legislative proposals that aim to enable a large proportion of the unauthorized population to obtain legal status, for many years narrower bills were regularly introduced in Congress to address both the immigration- and education-related circumstances of a subset of unauthorized aliens: individuals brought, as children, to live in the United States by their parents or other adults. Known as the "DREAM Act," these bills have sought to establish a pathway to permanent legal status for these unauthorized childhood arrivals and have historically been less controversial than broader legalization proposals. The name *DREAM Act* derives from a bill title, Development, Relief, and Education for Alien Minors Act, but refers more broadly to measures to provide immigration relief to unauthorized students,[1] whether or not particular bills carry that name.[2]

DREAM Act proposals have seen legislative action since the 107th Congress. In the 107th and 108th Congresses, for example, the Senate Judiciary Committee reported stand-alone DREAM Act bills.[3] The 109th and 110th Congresses saw the introduction of both stand-alone DREAM Act bills and larger immigration reform bills with DREAM Act titles. DREAM Act legislation introduced and considered in these Congresses is the focus of this report. This legislation serves as a bridge between older and newer versions of the DREAM Act and provides useful background information for analysis of more recent DREAM Act proposals.

Background

Unauthorized immigrant children living in the United States are able to receive free public education through high school.[4] Attending college, however, may be more difficult for them because of their unlawful status. One reason for this is a provision enacted in 1996 as section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),[5] which discourages states and localities from granting resident unauthorized aliens certain "postsecondary education benefits," commonly interpreted to include in-state tuition rates.[6] IIRIRA§505 directs that an unauthorized alien

> shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is

[1] While "unauthorized students" is used as a convenient shorthand in this report, potential beneficiaries of DREAM Act legislation would not necessarily have to be enrolled in school. Also, unauthorized students are distinct from a group commonly referred to as foreign students. Like unauthorized alien students, foreign students are foreign nationals. Unlike unauthorized alien students, however, foreign students enter the United States legally on nonimmigrant (temporary) visas in order to study at U.S. institutions.

[2] See CRS Report RL33863, *Unauthorized Alien Students: Issues and "DREAM Act" Legislation*.

[3] See archived CRS Report RL31365, *Unauthorized Alien Students: Legislation in the 107th and 108th Congresses*.

[4] For a discussion of the legal basis for the provision of free public education, see CRS Report RS22500, *Unauthorized Alien Students, Higher Education, and In-State Tuition Rates: A Legal Analysis*.

[5] IIRIRA is Division C of P.L. 104-208, September 30, 1996.

[6] For a legal analysis of state laws to that make in-state tuition available to unauthorized immigrants, see CRS Report RS22500, *Unauthorized Alien Students, Higher Education, and In-State Tuition Rates: A Legal Analysis*.

> eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.

Another factor that may make it difficult for some unauthorized immigrants to attend college is that they are not eligible for federal student financial aid under the Higher Education Act (HEA) of 1965, as amended.[7] More broadly, as unauthorized aliens, they typically are unable to work legally and are subject to removal from the United States.

Legislation

DREAM Act bills introduced in the 109th and 110th Congresses sought to provide relief to unauthorized alien students with respect to both higher education and immigration status. These measures generally proposed to repeal the 1996 provision and to enable certain unauthorized students to adjust to legal permanent resident (LPR) status.[8] *Adjustment of status* is the process of becoming an LPR in the United States without having to go abroad to apply for a visa. For the most part, the DREAM Act bills introduced in the 109th and 110th Congresses would have enabled eligible unauthorized immigrants to adjust to LPR status through a mechanism in immigration law known as cancellation of removal. *Cancellation of removal* is a discretionary form of relief that an alien can apply for while in removal proceedings before an immigration judge. Aliens granted cancellation of removal in removal proceedings are adjusted to LPR status. Under the DREAM Act bills utilizing the cancellation of removal mechanism, an individual could have applied affirmatively for this form of relief without first being placed in removal proceedings.

Bills in the 109th Congress

In the 109th Congress, Senator Richard Durbin introduced the Development, Relief, and Education for Alien Minors (DREAM) Act of 2005 (S. 2075), and Representative Lincoln Diaz-Balart introduced the American Dream Act (H.R. 5131). Both bills had bipartisan cosponsorship.

S. 2075 and H.R. 5131 would have repealed IIRIRA §505 and thereby eliminated a restriction on state provision of postsecondary educational benefits to unauthorized aliens. Both bills also would have enabled eligible unauthorized students to adjust to LPR status in the United States through the cancellation of removal procedure. There would have been no limit on the number of aliens who could be granted cancellation of removal/adjustment of status under the bills.

Among the eligibility requirements for cancellation of removal/adjustment of status in both S. 2075 and H.R. 5131, the alien would have had to demonstrate that he or she had been physically present in the United States for a continuous period of not less than five years immediately preceding the date of enactment, had not yet reached age 16 at the time of initial entry, and had been a person of good moral character since the time of application. The alien also would have been required to demonstrate that he or she had been admitted to an institution of higher

[7] The HEA is P.L. 89-329, November 8, 1965, 20 U.S.C. §1001 *et seq*. Section 484(a)(5) sets forth immigration-related eligibility requirements for federal student financial aid, and §484(g) requires the U.S. Department of Education to verify the immigration status of applicants for federal financial aid.

[8] *Legal permanent residents*, also known as *immigrants* and *green card holders*, are noncitizens who are legally authorized to reside permanently in the United States.

education in the United States, or had earned a high school diploma or the equivalent in the United States.

The eligibility requirements for cancellation of removal/adjustment of status in S. 2075 and H.R. 5131 differed with respect to the applicable grounds of inadmissibility and deportability in the Immigration and Nationality Act (INA).[9] In order to be eligible for admission to the United States, a foreign national must be found to be admissible to the country. The INA enumerates grounds of inadmissibility—grounds upon which aliens are ineligible for visas and admission. They include health-related grounds and security- and terrorism-related grounds as well as grounds concerning illegal entrants, public charge (the likelihood that an alien will require public support), and other issues. The INA also enumerates companion deportability grounds.[10] S. 2075 and H.R. 5131 each specified which of the inadmissibility and deportability grounds would have applied to aliens seeking to adjust status under its provisions. A greater number of these grounds would have applied under S. 2075 than H.R. 5131. In addition, to be eligible under S. 2075, an alien could never have been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

An alien granted cancellation of removal under S. 2075 and H.R. 5131 would have been adjusted initially to *conditional* permanent resident status. Such conditional status would have been valid for six years and would have been subject to termination. To have the condition removed and become a full-fledged LPR, the alien would have had to submit an application during a specified period and meet additional requirements. These requirements would have included that the alien had demonstrated good moral character during the period of conditional permanent residence; had not abandoned his or her U.S. residence; and had either acquired a college degree (or completed at least two years in a bachelor's or higher degree program) in the United States, or had served in the uniformed services for at least two years.

Both S. 2075 and H.R. 5131 would have placed restrictions on aliens who adjusted to LPR status under their provisions, with respect to eligibility for federal student financial aid under Title IV of the Higher Education Act of 1965, as amended. S. 2075 would have made aliens who adjusted to LPR status under the bill eligible only for student loans, federal work-study programs, and services (such as counseling, tutorial services, and mentoring), subject to the applicable requirements. Thus, they would not have been eligible for federal Pell Grants or federal supplemental educational opportunity grants.[11] H.R. 5131 would have imposed similar restrictions on eligibility for federal student financial aid, but they would have been temporary. This bill would have made aliens adjusting status under its terms ineligible for federal Pell Grants and federal supplemental educational opportunity grants while they were in conditional permanent resident status. Once the conditional basis of their LPR status was removed, these restrictions would no longer have applied.

The 109th Congress took no action on S. 2075 or H.R. 5131. S. 2075, however, was incorporated into the Comprehensive Immigration Reform Act of 2006 (S. 2611) as Title VI, Subtitle C. S.

[9] Act of June 27, 1952, ch. 477; 66 Stat. 163; codified as amended at 8 U.S.C. §1101 et seq. The INA is the basis of current immigration law.

[10] The INA grounds of inadmissibility are in INA §212(a), and the INA grounds of deportability are in INA §237(a).

[11] For information about these grant programs, see CRS Report R42446, *Federal Pell Grant Program of the Higher Education Act: How the Program Works, Recent Legislative Changes, and Current Issues*, and CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*.

2611 passed the Senate in May 2006, but saw no further action. The major immigration bill passed by the House in the 109th Congress, the Border Protection, Antiterrorism, and Illegal Immigration Control Act (H.R. 4437), did not contain any provisions on unauthorized alien students.[12]

Bills in the 110th Congress

DREAM Act proposals were again introduced in the 110th Congress, both as stand-alone bills and as part of larger comprehensive immigration reform measures. A selected number of these bills, which illustrate the different forms the DREAM Act took during these years, are described here. Neither the House nor Senate passed any of these measures. As discussed below, the Senate attempted unsuccessfully to invoke cloture on two bills: S. 1639, a bipartisan comprehensive immigration reform proposal that included a DREAM Act title, and S. 2205, a stand-alone DREAM Act bill.

S. 774 and H.R. 1275

The DREAM Act of 2007 (S. 774), introduced by Senator Richard Durbin, and the American Dream Act (H.R. 1275), introduced by Representative Howard Berman, were similar, but not identical, measures. Both had bipartisan cosponsors. Both also were highly similar, respectively, to S. 2075 and H.R. 5131, as introduced in the 109th Congress.

S. 774 and H.R. 1275 would have repealed IIRIRA §505 and thereby eliminated a restriction on state provision of postsecondary educational benefits to unauthorized aliens. Both bills also would have enabled eligible unauthorized students to adjust to LPR status in the United States through cancellation of removal. There would have been no limit on the number of aliens who could be granted cancellation of removal/adjustment of status under the bills.

To be eligible for cancellation of removal/adjustment of status under S. 774 or H.R. 1275, an alien would have had to satisfy a set of requirements. Under both bills, the alien would have had to demonstrate that he or she had been physically present in the United States for a continuous period of not less than five years immediately preceding the date of enactment, had not yet reached age 16 at the time of initial entry, and had been a person of good moral character since the time of application. Both bills also would have required the alien to demonstrate that he or she had been admitted to an institution of higher education in the United States, or had earned a high school diploma or the equivalent in the United States.

Other requirements for cancellation of removal/adjustment of status under S. 774 and H.R. 1275 concerned the INA grounds of inadmissibility and deportability. The eligibility requirements with respect to deportability from the United States were the same in both bills, while the requirements with respect to inadmissibility to the country differed somewhat. To be eligible for cancellation of removal/adjustment of status under either S. 774 or H.R. 1275, an alien would have had to demonstrate that he or she was not inadmissible or deportable on INA criminal, security, or smuggling grounds. S. 774 would have further required that the alien not be inadmissible on international child abduction grounds. In addition, to be eligible for cancellation of

[12] For information about Senate-passed S. 2611 and House-passed H.R. 4437 in the 109th Congress, see archived CRS Report RL33125, *Immigration Legislation and Issues in the 109th Congress*.

removal/adjustment of status under S. 774, an alien could never have been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

Aliens granted cancellation of removal under S. 774 or H.R. 1275 would have been adjusted initially to conditional permanent resident status. Such conditional status would have been valid for six years and would have been subject to termination. To have the condition removed and become a full-fledged LPR, an alien would have had to submit an application during a specified period and meet additional requirements. Among these requirements, the alien would have needed to demonstrate good moral character during the period of conditional permanent residence; could not have abandoned his or her U.S. residence; and would have needed either a college degree (or to have completed at least two years in a bachelor's or higher degree program) in the United States, or to have served in the uniformed services for at least two years.

Both S. 774 and H.R. 1275 would have placed restrictions on the eligibility of aliens who adjusted to LPR status under their provisions, for federal student financial aid under Title IV of the Higher Education Act of 1965, as amended. S. 774 would have made aliens who adjusted to LPR status under the bill eligible only for student loans, federal work-study programs, and services (such as counseling, tutorial services, and mentoring), subject to the applicable requirements. Thus, they would not have been eligible for federal Pell Grants or federal supplemental educational opportunity grants. H.R. 1275 would have imposed similar restrictions on eligibility for federal student financial aid, but they would have been temporary. Aliens adjusting status under the House bill would have been ineligible for federal Pell Grants and federal supplemental educational opportunity grants while in conditional permanent resident status. Once the conditional basis was removed and they became full-fledged LPRs, these restrictions would no longer have applied.

H.R. 1645

The Security Through Regularized Immigration and a Vibrant Economy Act of 2007, or the STRIVE Act of 2007 (H.R. 1645), introduced by Representative Luis Gutierrez for himself and a bipartisan group of cosponsors, contained DREAM Act provisions in Title VI, Subtitle B. These provisions were nearly identical to S. 774, as discussed above.

H.R. 1221

The Education Access for Rightful Noncitizens (EARN) Act (H.R. 1221), introduced by Representative Paul Gillmor, was similar in some ways to the bills described above and significantly different in other respects. Like S. 774, H.R. 1275, and H.R. 1645, the EARN Act would have enabled eligible unauthorized students to adjust to LPR status in the United States through cancellation of removal and would have imposed no limit on the number of aliens who could be granted cancellation of removal/adjustment of status, as specified.

Many of the eligibility requirements for cancellation of removal/adjustment of status—including the physical presence, age at entry, good moral character, and educational requirements—were the same under H.R. 1221, S. 774, H.R. 1275, and H.R. 1645. There were differences, however, with respect to the INA grounds of inadmissibility and deportability. Under H.R. 1221, as under these other bills, aliens would have been ineligible for cancellation of removal/adjustment of status if they were inadmissible or deportable on criminal, security, or smuggling grounds. They also would have been ineligible under H.R. 1221 if they were inadmissible on other grounds,

including failure to attend a removal proceeding, or deportable on other grounds, including marriage fraud. In addition, aliens would have been ineligible for cancellation of removal/adjustment of status under H.R. 1221, as under S. 774 and H.R. 1645, if they had ever been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

As under S. 774, H.R. 1275, and H.R. 1645, aliens granted cancellation of removal under H.R. 1221 would have been adjusted initially to a conditional permanent resident status, which would have been valid for six years. To have the condition removed and become a full-fledged LPR, an alien would have had to submit an application during a specified period and meet additional requirements regarding good moral character, no abandonment of U.S. residence, and higher education or service in the uniformed services, among others, as under these other bills (see "S. 774 and ").

At the same time, H.R. 1221 did not contain certain key provisions included in S. 774, H.R. 1275, and H.R. 1645. Unlike these bills, it would not have placed restrictions on the eligibility of aliens who adjusted to LPR status under its terms, for federal student financial aid. Also unlike S. 774, H.R. 1275, and H.R. 1645, it would not have repealed IIRIRA §505 and thus would not have eliminated this restriction on state provision of postsecondary educational benefits to unauthorized aliens.

S. 1639

A version of the DREAM Act was included in a bipartisan comprehensive immigration reform bill (S. 1639) introduced by Senator Edward Kennedy for himself and Senator Arlen Specter. The DREAM Act provisions comprised Title VI, Subtitle B, of S. 1639. The Senate failed to invoke cloture on the measure in June 2007, and the bill was pulled from the Senate floor.

The version of the DREAM Act in S. 1639 was substantially different than the other DREAM Act bills introduced in the 110th Congress. The DREAM Act provisions in S. 1639 were tied to other provisions in Title VI of the bill that would have enabled certain unauthorized aliens in the United States to obtain legal status under a new "Z" nonimmigrant visa category. Among the eligibility requirements for Z status, an alien would have had to have been continuously physically present in the United States since January 1, 2007, and could not have been lawfully present on that date under any nonimmigrant classification or any other immigration status made available under a treaty or other multinational agreement ratified by the Senate.[13]

S. 1639's DREAM Act title would have established a special adjustment of status mechanism for aliens who were determined to be eligible for, or who had been issued, probationary Z[14] or Z visas, and who met other requirements, including being under age 30 on the date of enactment, being under age 16 at the time of initial entry into the United States, and having either acquired a college degree (or completed at least two years in a bachelor's or higher degree program) in the United States or served in the uniformed services for at least two years. The Secretary of the Department of Homeland Security could have begun adjusting the status of eligible individuals to

[13] For further information about the proposed Z classifications, see archived CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*.

[14] Under S. 1639, certain applicants for Z status would have been eligible to receive probationary benefits in the form of employment authorization pending final adjudication of their applications.

LPR status three years after the date of enactment.[15] Unlike under the other DREAM Act bills introduced in the 110th Congress, DREAM Act beneficiaries under S. 1639 would not have adjusted status through the cancellation of removal procedure and would not have been adjusted initially to conditional permanent resident status.

In other respects, the DREAM Act adjustment of status provisions in S. 1639 were similar to those in the other DREAM Act bills before the 110th Congress. As under the other bills, there would have been no limit on the number of aliens who could have adjusted to LPR status under S. 1639. With respect to federal student financial aid, beneficiaries of the S. 1639 provisions, like beneficiaries under S. 774 and H.R. 1645, would have been eligible for student loans, federal work-study programs, and services (such as counseling, tutorial services, and mentoring), subject to the applicable requirements, but would not have been eligible for grants.[16]

S. 1639, like most other DREAM Act bills before the 110th Congress, coupled adjustment of status provisions for unauthorized students with provisions addressing IIRIRA §505, which, as discussed, places restrictions on state provision of educational benefits to unauthorized aliens. Unlike S. 774, H.R. 1275, and H.R. 1645, however, S. 1639 would not have completely repealed IIRIRA §505. Instead, S. 1639 proposed to make IIRIRA §505 inapplicable to aliens with probationary Z or Z status.

S. 2205

Another version of the DREAM Act (S. 2205) was introduced in October 2007 by Senator Durbin. It contained legalization provisions similar to those in S. 774, H.R. 1275, H.R. 1645, and H.R. 1221. Under S. 2205, eligible unauthorized students could have adjusted to LPR status through a cancellation of removal process, and there would have been no limit on the number of aliens who could be granted cancellation of removal/adjustment of status, as specified.

To be eligible for cancellation of removal/adjustment of status under S. 2205, an alien would have had to demonstrate, among other requirements, that he or she had been physically present in the United States for a continuous period of not less than five years immediately preceding the date of enactment, had not yet reached age 16 at the time of initial entry, had been a person of good moral character since the date of enactment, and had been admitted to an institution of higher education in the United States or had earned a high school diploma or the equivalent in the United States. In addition, in a requirement not found in S. 774, H.R. 1275, H.R. 1221, or H.R. 1645 but included in S. 1639, the alien would have had to show that he or she was under age 30 on the date of enactment. The eligibility requirements in S. 2205 with respect to the INA grounds of inadmissibility and deportability were similar to those in H.R. 1221. Also like H.R. 1221 and most of the other DREAM Act bills before the 110th Congress, S. 2205 would have made ineligible, aliens who had ever been under a final administrative or judicial order of exclusion, deportation, or removal, with some exceptions.

[15] Unlike Z aliens applying to adjust to LPR status under S. 1639 §602, beneficiaries of the DREAM Act provisions would not have been subject to a "back of the line" provision requiring them to wait to adjust status until immigrant visas became available to others whose petitions had been filed by a specified date. For further information about the permanent immigration system, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[16] Aliens in probationary Z or Z nonimmigrant status who met certain requirements similarly would have been eligible for student loans, federal work-study programs, and services, but not grants.

An alien granted cancellation of removal under S. 2205 would have been adjusted initially to conditional permanent resident status. To have the condition removed and become a full-fledged LPR, the alien would have had to meet additional requirements, including acquisition of a college degree (or completion of at least two years in a bachelor's or higher degree program) or service in the uniformed services for at least two years.

A key difference between S. 2205 on the one hand and S. 774, H.R. 1275, and H.R. 1645 on the other was that S. 2205, like H.R. 1221, would not have repealed IIRIRA §505 and thus would not have eliminated this statutory restriction on state provision of postsecondary educational benefits to unauthorized aliens. On October 24, 2007, the Senate voted on a motion to invoke cloture on S. 2205. The motion failed on a vote of 52 to 44.

Conclusion

DREAM Act legislation was introduced in the House and the Senate in the 109th and 110th Congresses, as in earlier Congresses. The Senate considered DREAM Act measures in both Congresses and, in the 109th Congress, passed a comprehensive immigration reform bill (S. 2611) that included a DREAM Act title. This bill was not enacted into law, however. The House did not consider any DREAM Act bills in the 109th or 110th Congresses. Such measures would again be introduced in the 111th and subsequent Congresses.[17]

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[17] See CRS Report RL33863, *Unauthorized Alien Students: Issues and "DREAM Act" Legislation.*