

■ Dream Act of 2010—Bill Summary

Date: November 30, 2010

Author: Senator Richard J. Durbin

Genre: legislation

Summary Overview

The DREAM Act (Development, Relief, and Education for Alien Minors Act) received support from many liberals and progressive groups. It aimed to provide a pathway to legal residency and citizenship for undocumented minors who were brought to the United States as children, encouraging their education and integration into society. Proposed in 2010, it proved one of the more influential of the many failed pieces of immigration reform legislation advanced in recent decades. Although ultimately not passed by the U.S. Senate, the bill was influential in that it formed the foundation of a 2012 executive order, developed by Homeland Security Secretary Janet Napolitano and approved by President Barack Obama, establishing the policy known as Deferred Action for Childhood Arrivals (DACA). Senator Richard Durbin, who was the Democratic cosponsor of the original 2001 version of the DREAM Act bill with Republican Senator Orrin Hatch, sought then to ensure that children who had been brought to the United States by their parents (and hence known as DREAMers) would, under certain conditions, be allowed to stay in the United States and eventually obtain citizenship. For many of those children, the United States was the only country they could remember living in, and some (about 17 percent in 2018) did not even speak the language of their parents' home country. The 2010 DREAM bill was an update of the 2001 version.

Defining Moment

Immigration has been a part of the history of North America for hundreds of years. What is now the United States was founded upon the structure developed by mainly British immigrants starting about four hundred years ago. (There were Europeans living in parts of what is now the United States prior to that time, but it was the British influx of the seventeenth century that created the colonies that banded together to form the United States of America.) For about the last one hundred and fifty years, the United States has had laws restricting entry into the country, with the result that some who entered did so illegally in order to skirt the restrictions.

Under the national quota system, which was in place from 1924 until major immigration reform in 1965, virtually unlimited immigration from countries of the Western hemisphere was permitted, but specific steps had to be taken to gain legal entrance. For many poor laborers, this proved too heavy a burden. At the same time, by the middle of the twentieth



Richard J. Durbin. Photo via Wikimedia Commons. [Public domain.]

century, many agricultural operations (especially those in California) had a difficult time obtaining the necessary number of American workers to tend and pick the crops. Thus, beginning in the 1950s, large numbers of temporary agricultural workers came illegally into the United States to fill the gap, and the federal government from the time of the Eisenhower administration responded with various attempts to reduce their number. Up until 2007, most unauthorized workers were from Mexico, but more recently Central American unauthorized immigrants have come to outnumber those from Mexico.

From its low point in 1970 (4.7 percent of the U.S. population), the number of immigrants, legal and illegal, has tripled. Of that number, just over one-fifth of all immigrants have been unauthorized. Even though the number of authorized immigrants has risen during this period, one reason the percentage of unauthorized immigrants has not changed dramatically is that most no longer come to the United States planning only to work a short time and then return home. Rather, beginning toward the end of the twentieth century, higher numbers of familial units crossed illegally over the border than had been the case in previous decades. This has continued into the current period. For example, in 2007, 41 percent of the unauthorized immigrant adults had lived in the United States for at least ten years, while in 2017 this same number was up to 66 percent. With whole families

arriving in the United States, or parts of families, their young children had little choice but to travel with their parents. This created the population that became the focus of the DREAM Act, and of the subsequent DACA program.

The first attempt to pass the basics of the 2010 DREAM Act was as part of the National Defense Authorization Act, but that was blocked in September. When the stand-alone DREAM Act of 2010 bill came before the Senate, it had already passed the House of Representatives on December 8. However, despite a majority of senators supporting the bill, its opponents began a token filibuster, and on December 18 the Senate failed (55 to 41, with 60 votes needed) to vote cloture on the filibuster, so the bill could not move forward.

Author Biography

Richard J. Durbin (b. 1944), a native of Illinois, has represented that state in Congress since 1983, first in the House of Representatives (1983–97) and then in the Senate (1997-present). He earned a bachelor's and then a law degree from Georgetown University. He has served as the Democratic whip, the second highest position in party leadership, since 2005. While he has been a liberal senator, generally in line with the Democratic Party's positions, his voting record as a member of the House was somewhat more conservative.



Historical Document

Dream Act of 2010

S.3992—DREAM Act of 2010

111th Congress (2009-2010)

Sponsor: Sen Durbin, Richard J. [D-IL] (Introduced 11/30/2010)

Bill Summary, authored by Congressional Research Service

Development, Relief, and Education for Alien Minors Act of 2010 or DREAM Act of 2010 - Authorizes the Secretary of Homeland Security (DHS) to cancel the removal of, and adjust to conditional nonimmigrant status, an alien who: (1) entered the United States before his or her 16th birthday and has been present in the United States for at least five years immediately preceding this Act's enactment; (2) is a person of good moral character; (3) is not inadmissible or deportable under specified grounds of the Immigration and Nationality Act; (4) has not participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; (5) has not been convicted of certain offenses under federal or state law; (6) has been admitted to an institution of higher education (IHE) or has earned a high school diploma or general education development certificate in the United States; (7) has never been under a final order of exclusion, deportation, or removal unless the alien has remained in the United States under color of law after such order's issuance, or received the order before attaining the age of 16; and (8) was under age 30 on the date of this Act's enactment.

Authorizes the Secretary to waive specified grounds of inadmissibility or deportability for humanitarian, family unity, or public interest purposes.

Requires an alien to apply for cancellation of removal and conditional nonimmigrant status within one year after the later of: (1) being admitted to an IHE; (2) earning a high school diploma or general education development certificate in the United States; or (3) enactment of this Act.

Requires prior to cancellation of removal or granting of conditional nonimmigrant status: (1) an alien to submit biometric and biographic data; and (2) completion of security and law enforcement background checks.

Requires an alien applying for relief to: (1) register under the Military Selective Service Act if so required; and (2) undergo a medical examination.

Prohibits the Secretary from removing an alien with a pending application who establishes *prima facie* eligibility for cancellation of removal and conditional nonimmigrant status.

Establishes a 10-year period of conditional nonimmigrant status which shall include employment authorization. Terminates such status if the alien: (1) becomes a public charge; (2) receives a dishonorable or other than honorable military discharge; or (3) ceases to be a person of good moral character, becomes inadmissible or deportable under specified grounds, has participated in racial, religious, social, or political persecution, or has been convicted of certain federal or state offenses.

Authorizes a conditional nonimmigrant to file an application to adjust his or her status to that of an alien lawfully admitted for permanent residence. Requires such application to be filed during the period beginning 1 year before and ending on either the date that is 10 years after the date of the granting of conditional nonimmigrant status or any other expiration date as extended by the Secretary.

Requires such application to show that the alien: (1) has demonstrated good moral character; (2) is not inadmissible or deportable under specified grounds, has not participated in racial, religious, social, or political persecution, and has not been convicted of certain federal or state offenses; (3) has not abandoned U.S. residency; (4) has earned an IHE degree (or has completed at least two years in a bachelor's or higher degree program) in the United States, or has served in the Armed Forces for at least two years (or if discharged, was honorably discharged); and (5) has provided a list of each secondary school attended in the United States.

Authorizes, and sets forth the criteria for, a hardship exception to such adjustment of status requirements.

Requires an alien, prior to adjusting from conditional to permanent resident status, to: (1) satisfy citizenship and federal tax requirements; (2) submit biometric and biographic data; and (3) have had security and law enforcement background checks completed.

Authorizes an alien who adjusts to permanent resident status (and meets other specified requirements) to apply after three years in such status for naturalization.

Authorizes: (1) the Secretary to cancel removal and grant conditional nonimmigrant status to an alien who has satisfied all the conditional status

and certain permanent resident status requirements prior to enactment of this Act; and (2) an alien who has met the appropriate requirements during the entire period of conditional nonimmigrant status to apply for permanent resident status.

Sets forth provisions regarding: (1) jurisdiction of the Secretary and the Attorney General; (2) penalties for false application statements; (3) confidentiality of information; (4) higher education assistance; (5) military enlistment; and (6) a Government Accountability Office (GAO) report respecting the number of aliens adjusted under this Act.



Glossary

biometric: referring to an individual's unique physical traits used to identify that individual

color of law: authority/rights given to a person by a governmental entity, state, local, or federal

conditional immigrant status: a person who expects to remain in the United States but for various legal reasons has been given conditional rather than permanent resident status

conditional nonimmigrant: a category that would have been created under the DREAM Act indicating the temporary nature of an alien's status, pending the processing of forms, etc.

Document Analysis

The proposal put forward as the DREAM Act of 2010 by Senator Durbin was an attempt to offer humanitarian assistance to individuals who were not in the United States by their own choice, but only because of decisions made by their parents. The criteria that those young individuals had to meet to move toward U.S. citizenship were of a kind that would likely also prove beneficial to the nation. Although, as with most laws, many details of the implementation of the law would have been developed by the executive branch, this legislation gave the broad outlines that individuals would have to meet to qualify for permanent residency and the chance to apply for citizenship. Educational achievement and/or military service were the keys to success in the program.

Some aspects of the DREAM program would have been the same as those applying to any immigrant coming into the United States, such as being of “good moral character.” However, the specifics that defined this proposal (and the DACA policy based on this bill) were that it applied only to individuals brought into the United States as children, “before his or her 16th birthday.” It also clarified that this law did not apply to individuals who came to the United States as dependents of legal immigrants, since those individuals could follow a more traditional path to possible citizenship.

In addition to not violating certain laws or participating in “the persecution” of individuals or groups, there were positive steps that needed to be taken by the person who, as a child, came into the country in an unauthorized manner. The alien covered under this law should either be enrolled in “an institution of higher education (IHE) or earned a high school diploma” or the GED equivalent. One reason education was a key element in this program is that it expected the vast majority of participants to be from relatively low-education, working families from Mexico, Central America, or Caribbean countries. (Ninety-four percent of the participants of DACA have been of such backgrounds from Mexico, Central, or South American.) Among the immigrants to the United States (legal or illegal) only people from these three areas had a lower average level of education than did the American population at large. Immigrants from all

other areas of the world had, on average, higher levels of education than the average American citizen. Thus, by emphasizing education, it was anticipated that new norms for education might be created within the various communities.

The other area in which the DREAMers were hoped to contribute to the nation was in the area of military service. With combat operations then taking place in Iraq, Syria, and Afghanistan, the repeated deployment of military personnel to these areas was hurting enlistment efforts and re-enlistments numbers. By including two years of military service, as an alternative to higher education, as criteria necessary to show support for America, it was hoped that this would help bolster the armed forces. At the end of the ten-year “conditional nonimmigrant” period, if all the positive steps had been achieved, the individual would be able to move into the category of “permanent resident.” After three years, the individual would then have been eligible to begin the final process toward citizenship.

Essential Themes

For many supporters of the measure, the situation in which the DREAMers found themselves was not only tragic but potentially harmful to the United States. Without legal status, and with no possibility of obtaining it, young aliens could be prime targets for recruitment by criminal enterprises. On the other hand, if the DREAMers were redirected toward positive goals for themselves (education and military service), perhaps they could make positive contributions to society. While it can never be known how well the law would have worked, most observers believe it would have worked better than the implementation of similar regulations under DACA. Hundreds of thousands participated in DACA, yet many (correctly) did not trust the permanence of a program, based, as it was, on an executive order rather than on statutory law. Less than half of the people estimated to have been eligible at any specific time have participated in DACA. According to the National Immigration Forum, about 80 percent of DACA participants are from Mexico, although close to one hundred and fifty countries are represented in the program.

Most of the opposition to the legislation came from people who asserted that the DREAMers would be rewarded for breaking the law, even though, as minors, they did not make the decision to cross the border into the United States and/or break any of its laws. Whether such opposition will remain solid in the near future, in the face of a new administration and as weighed against the benefits that DACA seems to have provided to its participants, remains uncertain. The value of the education mandated for DREAMers has not always been clear. However, the contributions that DREAMers have made in the armed forces can be demonstrated to have been of value to the country. Thus, the DREAM Act of 2010, even though never passed into law, was regarded by most liberals and some on the right as benefitting the nation because of the process put in place through DACA as part of a broader humane approach toward DREAMers.

The first Trump administration rescinded DACA, but the Supreme Court later ruled (in 2020) that it did so in a manner that violated the Administrative Procedures Act. The Biden administration restored the program in 2021, but the future of DACA remains uncertain due to ongoing litigation. Since 2021, the DHS has been unable to process first-time DACA

applications due to court challenges but has continued to process DACA renewal requests and related requests for employment authorization.

—Donald A. Watt, PhD

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