

112TH CONGRESS
2D SESSION

S. 3639

To amend the Immigration and Nationality Act to provide secure borders and to give long-term resident youth the ability to contribute to the safety and economic growth of the United States and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 27, 2012

Mrs. HUTCHISON (for herself, Mr. KYL, and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide secure borders and to give long-term resident youth the ability to contribute to the safety and economic growth of the United States and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Assisting Children and
5 Helping them Improve their Educational Value for Em-
6 ployment Act” or the “ACHIEVE Act”.

1 **SEC. 2. CONDITIONAL NONIMMIGRANT STATUS FOR CER-**
2 **TAIN ALIENS WHO ENTERED THE UNITED**
3 **STATES AS CHILDREN.**

4 Section 101(a)(15) of the Immigration and Nation-
5 ality Act (8 U.S.C. 1101(a)(15)) is amended—

6 (1) in subparagraph (T)(iii), by striking the pe-
7 riod at the end and inserting a semicolon;

8 (2) in subparagraph (U)(iii), by striking “or”
9 at the end;

10 (3) in subparagraph (V)(ii)(II), by striking the
11 period at the end and inserting a semicolon; and

12 (4) by adding at the end the following:

13 “(W)(i) an alien whose nonimmigrant sta-
14 tus in the United States is on a conditional
15 basis pursuant to this clause and section 214(s)
16 and the alien has shown with clear and con-
17 vincing evidence that the alien—

18 “(I) was younger than 14 years of age
19 on the date on which the alien initially en-
20 tered the United States;

21 “(II) has maintained a continuous
22 physical presence in the United States dur-
23 ing the 5-year period immediately pre-
24 ceding the date of the enactment of the
25 ACHIEVE Act;

1 “(III) initially entered the United
2 States on a date that was prior to the date
3 that was 5 years prior to the date of the
4 enactment of the ACHIEVE Act;

5 “(IV) has been a person of good
6 moral character since the date on which
7 the alien initially entered the United
8 States;

9 “(V) is not inadmissible under para-
10 graph (1), (2), (3), (4), (5), (6)(B), (6)(C),
11 (6)(E), (6)(F), (6)(G), (8), (9)(A), or (10)
12 of section 212(a);

13 “(VI) is not deportable under para-
14 graph (1)(E), (1)(G), (2), (3)(B), (3)(C),
15 (3)(D), (4), (5), or (6) of section 237(a);

16 “(VII) has not been convicted of a fel-
17 ony, any offense that may be described as
18 a crime of moral turpitude under this Act,
19 or a misdemeanor under Federal or State
20 law, punishable by imprisonment for more
21 than 30 days, unless such misdemeanor is
22 the result of a traffic violation that does
23 not involve the applicant being under the
24 influence of alcohol or any substance listed

1 in Schedule I of the Controlled Substances
2 Act (Public Law 91–513);

3 “(VIII) has not ordered, incited, as-
4 sisted, or otherwise participated in the per-
5 secution of any person on account of race,
6 religion, nationality, membership in a par-
7 ticular social group, or political opinion;

8 “(IX) has earned a high school di-
9 ploma from a high school physically located
10 in the United States or obtained a general
11 education development certificate in the
12 United States and—

13 “(aa) is enlisted, or is intending
14 to enlist (as documented in accord-
15 ance with section 214(s)(3)(I)), in one
16 of the branches of the Armed Forces
17 (which has the meaning given the
18 term ‘armed forces’ in section 101(a)
19 of title 10, United States Code);

20 “(bb) is admitted as a student to
21 an institution of higher education (as
22 defined in section 101(a) of the High-
23 er Education Act of 1965), which is
24 physically located in the United
25 States;

1 “(cc) has earned a bachelor’s de-
2 gree or an associate’s degree from an
3 institution of higher education; or

4 “(dd) has served for a period of
5 at least 4 years in one of the branches
6 of the Armed Forces and was not dis-
7 honorably discharged;

8 “(X) has never been under a final ad-
9 ministrative or judicial order of exclusion,
10 deportation, or removal, unless the alien—

11 “(aa) remained in the United
12 States under the color of law after the
13 order was issued; or

14 “(bb) received the order before
15 reaching 16 years of age; and

16 “(XI)(aa) was younger than 29 years
17 of age on the date of the enactment of the
18 ACHIEVE Act; or

19 “(bb) in the case of an alien who had
20 earned a bachelor’s degree or an associ-
21 ate’s degree prior to such date of enact-
22 ment from an institution of higher edu-
23 cation, was younger than 32 years of age
24 on such date of enactment;

1 “(ii) an alien whose nonimmigrant status
2 in the United States is on a conditional basis
3 pursuant to this clause and section 214(s) and
4 has shown with clear and convincing evidence
5 that the alien—

6 “(I) was a conditional nonimmigrant
7 described in clause (i) for a period of not
8 less than 6 years and during such period—

9 “(aa) has not violated any of the
10 requirements of clause (i);

11 “(bb) has not become a public
12 charge; and

13 “(cc) has not abandoned the
14 alien’s residence in the United States;

15 “(II) before or during such period of
16 conditional nonimmigrant status—

17 “(aa) obtained a bachelor’s de-
18 gree from an institution of higher
19 education and, if such degree was ob-
20 tained before the alien was granted
21 such status, was employed in the
22 United States for a period of not less
23 than 4 years;

24 “(bb) served at least 4 years in
25 one of the branches of the Armed

1 Forces and, if discharged from the
2 military, was not discharged dishonor-
3 ably; or

4 “(cc) obtained an associate’s de-
5 gree from an institution of higher
6 education, or a substantially equiva-
7 lent degree from a technical or voca-
8 tional school that is accredited by the
9 Accrediting Commission of Career
10 Schools and Colleges, and was em-
11 ployed in the United States for a pe-
12 riod of not less than 30 months; and

13 “(III)(aa) has an offer of employment
14 in the United States;

15 “(bb) is employed in the United
16 States; or

17 “(cc) is pursuing a graduate degree at
18 an institution of higher education; or

19 “(iii) an alien who has shown with clear
20 and convincing evidence that the alien—

21 “(I) was a conditional nonimmigrant
22 under clause (i) for a period of not less
23 than 6 years and had conditional non-
24 immigrant status under clause (ii) for a

1 period of not less than 4 years and during
2 both such periods—

3 “(aa) was in compliance with all
4 requirements for such status during
5 such periods;

6 “(bb) did not become a public
7 charge; and

8 “(cc) did not abandon the alien’s
9 residence in the United States; and

10 “(II) while in such status pursuant to
11 clause (ii)—

12 “(aa) was employed in the
13 United States for a period of 36
14 months; or

15 “(bb) was enrolled in a graduate
16 degree program at an institution of
17 higher education, or obtained a grad-
18 uate degree from an institution of
19 higher education.”.

20 **SEC. 3. ADMISSION AND CANCELLATION OF REMOVAL OF W**
21 **CONDITIONAL NONIMMIGRANTS.**

22 (a) PROCESS FOR CANCELLATION OF REMOVAL AND
23 ADJUSTMENT TO W-1 CONDITIONAL NONIMMIGRANT
24 STATUS.—Section 214 of the Immigration and Nation-

1 ality Act (8 U.S.C. 1184) is amended by adding at the
2 end the following:

3 “(s) W CONDITIONAL NONIMMIGRANT STATUS.—

4 “(1) DEFINITIONS.—In this subsection:

5 “(A) ARMED FORCES.—The term ‘Armed
6 Forces’ has the meaning given the term ‘armed
7 forces’ in section 101(a) of title 10, United
8 States Code.

9 “(B) INSTITUTION OF HIGHER EDU-
10 CATION.—The term ‘institution of higher edu-
11 cation’ has the meaning given such term in sec-
12 tion 101(a) of the Higher Education Act of
13 1965 (20 U.S.C. 1002), except that the term
14 does not include an institution of higher edu-
15 cation outside the United States.

16 “(C) SECRETARY.—Except as otherwise
17 specifically provided, the term ‘Secretary’
18 means the Secretary of Homeland Security.

19 “(D) W-1 CONDITIONAL NON-
20 IMMIGRANT.—The term ‘W-1 conditional non-
21 immigrant’ means an alien granted non-
22 immigrant status pursuant to clause (i) of sec-
23 tion 101(a)(15)(W) and in compliance with this
24 subsection.

1 “(E) W-2 CONDITIONAL NON-
2 IMMIGRANT.—The term ‘W-2 conditional non-
3 immigrant’ means an alien granted non-
4 immigrant status pursuant to clause (ii) of sec-
5 tion 101(a)(15)(W) and in compliance with this
6 subsection.

7 “(F) W-3 NONIMMIGRANT.—The term
8 ‘W-3 nonimmigrant’ means an alien granted
9 nonimmigrant status pursuant to clause (iii) of
10 section 101(a)(15)(W) and in compliance with
11 this subsection.

12 “(2) GENERAL CONDITIONS.—

13 “(A) IN GENERAL.—An alien applying for
14 or granted W-1 conditional nonimmigrant sta-
15 tus, W-2 conditional nonimmigrant status, or
16 W-3 nonimmigrant status shall be subject to
17 the following general conditions:

18 “(i) STATUS BENEFIT SOLELY FOR
19 ALIEN.—Any nonimmigrant status de-
20 scribed in section 101(a)(15)(W) is solely
21 for the benefit of the alien on whom it is
22 conferred. No dependents, lineal ascen-
23 dants, or collateral ascendants of the alien
24 on whom such status is conferred may ob-
25 tain any immigration benefit as a result of

1 such conferral of status while the principal
2 alien remains in any such nonimmigrant
3 status.

4 “(ii) PROHIBITION ON STATUS BEN-
5 EFIT FOR CULPABLE FAMILY MEMBER.—
6 Any relative of an alien granted non-
7 immigrant status described in section
8 101(a)(15)(W) who assisted the alien’s un-
9 lawful entry or unlawful presence into the
10 United States is prohibited from benefit-
11 ting from such alien’s status while the
12 principal alien remains in such non-
13 immigrant status.

14 “(iii) STATUS DURING PENDENCY OF
15 APPLICATION.—An alien shall be deemed
16 to be in the conditional nonimmigrant or
17 nonimmigrant status applied for during
18 the period in which the alien’s application
19 for such status is pending. Time spent
20 during the pendency of the application
21 process shall not count against the alien
22 for the purpose of calculating the duration
23 of the alien’s valid status under any of the
24 categories set forth in section
25 101(a)(15)(W). While the alien’s applica-

1 tion for such status is pending, the alien
2 may not receive any of the benefits de-
3 scribed in clauses (iv) and (v).

4 “(iv) EMPLOYMENT.—An alien grant-
5 ed such status shall be authorized to be
6 employed in the United States incident to
7 such status. If the alien is a student de-
8 scribed in clause (i) or (ii) of section
9 101(a)(15)(W), the alien’s employment
10 shall be authorized by the Secretary if the
11 alien provides proof to the Secretary that
12 the alien is enrolled in at least 6 credit
13 hours at an institution of higher learning
14 (as defined under section 101(a) of the
15 Higher Education Act of 1965 (20 U.S.C.
16 1001(a)).

17 “(v) TRAVEL.—An alien granted such
18 status may travel outside the United
19 States and may be admitted (if otherwise
20 admissible) upon return to the United
21 States if—

22 “(I) the alien is the bearer of a
23 valid, unexpired nonimmigrant visa
24 document referred to in clause (vii);
25 and

1 “(II) the alien’s absence from the
2 United States is not for any period
3 longer than 90 days in duration.

4 “(vi) EVIDENCE OF STATUS.—The
5 Secretary of State shall issue to each alien
6 granted any such status a highly tamper-
7 resistant document that—

8 “(I) provides evidence of the
9 alien’s valid nonimmigrant visa status,
10 the alien’s lawful presence in the
11 United States, and the alien’s author-
12 ization for employment in the United
13 States;

14 “(II) contains the alien’s bio-
15 graphic and biometric information;
16 and

17 “(III) contains a unique water-
18 mark and other uniquely designed
19 physical security features, which are
20 to be determined by the Secretary, to
21 prevent the tampering, counterfeiting,
22 and unauthorized duplication of such
23 document.

24 “(vii) NO FOREIGN RESIDENCE.—An
25 alien granted such status is not required to

1 have a foreign residence which the alien
2 has no intention of abandoning.

3 “(viii) PROHIBITION ON BENEFITS.—

4 An alien granted such status—

5 “(I) is not eligible for any Fed-
6 eral means-tested public welfare bene-
7 fits;

8 “(II) is not eligible for any Fed-
9 eral student loans, Federal work-study
10 programs, or any other services or
11 benefits provided under title IV of the
12 Higher Education Act of 1965 (20
13 U.S.C. 1070 et seq.); and

14 “(III) is not considered to be
15 lawfully present in the United States
16 for purposes of—

17 “(aa) section 36B of the In-
18 ternal Revenue Code of 1986; or

19 “(bb) section 1402 of the
20 Patient Protection and Afford-
21 able Care Act (42 U.S.C. 18071).

22 “(ix) CHANGE OF STATUS.—

23 “(I) W-1 CONDITIONAL NON-
24 IMMIGRANT.—Notwithstanding any
25 other provision of law, an alien may

1 not change or adjust from W-1 condi-
2 tional nonimmigrant status to any
3 other legal status except for W-2 con-
4 ditional nonimmigrant status.

5 “(II) W-2 CONDITIONAL NON-
6 IMMIGRANT.—Notwithstanding any
7 other provision of law, an alien may
8 not change or adjust from W-2 condi-
9 tional nonimmigrant status to any
10 other legal status except for W-3 non-
11 immigrant status.

12 “(x) REPORTING REQUIREMENT.—
13 Notwithstanding any other provision of
14 law, each alien granted W-1 conditional
15 nonimmigrant status or W-2 conditional
16 nonimmigrant status shall submit, every 6
17 months, a report to the Secretary that con-
18 tains the alien’s name, the alien’s current
19 address, and sufficient documentary evi-
20 dence to demonstrate that the alien is in
21 compliance with the requirements of such
22 status.

23 “(B) USE OF SURCHARGE.—Notwith-
24 standing any other provision of law, including
25 section 286, any surcharge collected under this

1 subsection shall be deposited as offsetting re-
2 cepts in the general fund of the Treasury and
3 shall not be available for obligation or expendi-
4 ture.

5 “(C) EXCLUSIVE JURISDICTION.—

6 “(i) IN GENERAL.—Except as pro-
7 vided under clause (ii), the Secretary shall
8 have exclusive jurisdiction to determine eli-
9 gibility for relief under section
10 101(a)(15)(W).

11 “(ii) EXCEPTION.—If an alien has
12 been placed into deportation, exclusion, or
13 removal proceedings before or after filing
14 an initial application for cancellation of re-
15 moval and adjustment to conditional non-
16 immigrant status or adjustment of status
17 under the ACHIEVE Act, the Attorney
18 General shall have exclusive jurisdiction
19 and shall assume all the powers and duties
20 of the Secretary until proceedings are ter-
21 minated, or a final order of deportation,
22 exclusion, or removal is entered.

23 “(iii) RESUMPTION OF JURISDIC-
24 TION.—Upon the termination of pro-
25 ceedings or if a final order of deportation,

1 exclusion, or removal is initiated, the Sec-
2 retary shall resume all powers and duties
3 delegated to the Secretary with respect to
4 such alien under this Act, the ACHIEVE
5 Act, and other relevant Federal law.

6 “(3) W-1 CONDITIONAL NONIMMIGRANTS.—

7 “(A) ELIGIBILITY.—An alien is eligible for
8 W-1 conditional nonimmigrant status if the
9 alien meets the requirements under section
10 101(a)(15)(W)(i) and this paragraph.

11 “(B) CANCELLATION OF REMOVAL.—The
12 Secretary shall cancel the removal of an alien
13 seeking W-1 conditional nonimmigrant status
14 and adjust the status of such alien to that of
15 a W-1 conditional nonimmigrant if the alien
16 submits to the Secretary a timely application
17 for such status that includes clear and con-
18 vincing evidence that the alien is eligible for
19 such status.

20 “(C) SUBMISSION OF APPLICATION.—An
21 application for W-1 conditional nonimmigrant
22 status for an alien is timely if such application
23 is submitted to the Secretary not later than—

24 “(i) the date that is 1 year after the
25 date of the enactment of this subsection; or

1 “(ii) the date that is 1 year after the
2 date on which the alien earned a high
3 school diploma or obtained a general edu-
4 cation development certificate in the
5 United States if the alien is younger than
6 22 years of age on the date of the enact-
7 ment of this subsection.

8 “(D) SURCHARGE.—Each application for
9 W-1 conditional nonimmigrant status shall be
10 accompanied by a surcharge in the amount of
11 \$525, which shall be in addition to the other-
12 wise applicable application fee imposed for the
13 purpose of recovering the full costs of providing
14 adjudication and processing services.

15 “(E) OTHER REQUIREMENTS.—The Sec-
16 retary may not cancel the removal of an alien
17 under subparagraph (B) or grant W-1 condi-
18 tional nonimmigrant status to the alien unless
19 the following conditions are met:

20 “(i) BIOMETRIC DATA.—The alien
21 submits biometric and biographic data, in
22 accordance with procedures established by
23 the Secretary. The Secretary shall provide
24 an alternative procedure for applicants who
25 are unable to provide such biometric or

1 biographic data because of a physical im-
2 pairment.

3 “(ii) BACKGROUND CHECKS.—

4 “(I) REQUIREMENT FOR BACK-
5 GROUND CHECKS.—The Secretary uti-
6 lizes the biometric, biographic, and
7 other data submitted by the alien, as
8 requested by the Secretary—

9 “(aa) to conduct security
10 and law enforcement background
11 checks of the alien; and

12 “(bb) to determine if there
13 is any criminal, national security,
14 or other factor that would render
15 the alien ineligible for such sta-
16 tus.

17 “(II) TIMING OF CHECKS.—The
18 security and law enforcement back-
19 ground checks required under this
20 clause are completed to the satisfac-
21 tion of the Secretary.

22 “(iii) MEDICAL EXAMINATION.—The
23 alien undergoes a medical observation and
24 examination in accordance with the policies
25 and procedures established by the Sec-

1 retary, with the concurrence of the Sec-
2 retary of Health and Human Services.

3 “(iv) MILITARY SELECTIVE SERV-
4 ICE.—The alien has registered under the
5 Military Selective Service Act (50 U.S.C.
6 App. 451 et seq.), if the alien is subject to
7 such registration under that Act.

8 “(v) CITIZENSHIP REQUIREMENT.—
9 Except as provided in subclause (II), the
10 alien demonstrates that the alien satisfies
11 the requirements of section 312(a).

12 “(vi) CONTINUOUS PRESENCE AND
13 INITIAL ENTRY.—The alien has maintained
14 continuous physical presence in the United
15 States for the 5-year period immediately
16 preceding the date of the enactment of the
17 ACHIEVE Act, and the alien’s initial date
18 of entry was on or before the date that is
19 5 years before the date of the enactment of
20 the ACHIEVE Act, which shall be deter-
21 mined as follows:

22 “(I) BURDEN OF EVIDENCE.—

23 The alien shall have the burden to es-
24 tablish the alien’s continuous presence

1 in the United States by clear and con-
2 vincing evidence.

3 “(II) ACCEPTABLE FORMS OF
4 EVIDENCE.—The alien may submit
5 types of independently verifiable docu-
6 ments as evidence of continuous phys-
7 ical presence in the United States,
8 entry into the United States, or both.
9 A single document listed under this
10 subclause shall be insufficient to de-
11 termine whether the applicant meets
12 the burden described in subclause (I).
13 The alien shall submit at least 2
14 forms of the documents listed under
15 this subclause with the applicant’s ap-
16 plication, which, in the discretion of
17 the Secretary, may still be insufficient
18 to meet the burden described in sub-
19 clause (I). The alien may meet such
20 burden by submitting two or more of
21 the following documents:

22 “(aa) An order of removal,
23 exclusion, or deportation issued
24 by an Immigration Judge or the
25 Board of Immigration Appeals.

1 “(bb) An I-94 arrival-depart-
2 ture document.

3 “(cc) A valid, expired or un-
4 expired passport reflecting the
5 date of entry into the United
6 States.

7 “(dd) Certified school
8 records from a recognized United
9 States Primary or Secondary
10 School for kindergarten through
11 grade 12.

12 “(ee) Certified medical
13 records from a recognized hos-
14 pital or health care provider in
15 the United States.

16 “(ff) A sworn affidavit from
17 a citizen of the United States at-
18 testing to the alien’s good moral
19 character and the length and in-
20 timacy of the relationship be-
21 tween the alien and the citizen.
22 The citizen signing the affidavit
23 is subject to the penalty of per-
24 jury and if found guilty is subject

1 to a maximum of \$10,000 fine, 5
2 years in prison, or both.

3 “(III) ADDITIONAL FORMS OF
4 EVIDENCE.—The Secretary may—

5 “(aa) designate additional
6 documents that may be sub-
7 mitted as evidence of physical
8 presence or initial entry into the
9 United States according to the
10 requirements of
11 101(a)(15)(W)(i); and

12 “(bb) set such terms and
13 conditions on the use of such
14 documents as is necessary to
15 verify and confirm the identity of
16 the applicant and the legitimacy
17 of the document to prevent
18 fraudulent admissions.

19 “(vii) STAY OF REMOVAL.—

20 “(I) IN GENERAL.—The Sec-
21 retary may not remove any alien
22 who—

23 “(aa) has a pending applica-
24 tion for W-1 nonimmigrant sta-
25 tus; and

1 “(bb) establishes to the Sec-
2 retary, by a preponderance of the
3 evidence, that the alien is eligible
4 for such status.

5 “(II) EVIDENTIARY STAND-
6 ARD.—An alien applying for W-1
7 nonimmigrant status has met the re-
8 quirement for a stay of removal if his
9 or her application for such status
10 meets at least 2 of the 3 following evi-
11 dentiary requirements:

12 “(aa) Certified school
13 records described in clause
14 (vi)(II)(dd).

15 “(bb) Certified medical
16 records described in clause
17 (vi)(II)(ee).

18 “(cc) A sworn affidavit de-
19 scribed in clause (vi)(II)(ff).

20 “(F) CALCULATION OF CONTINUOUS PRES-
21 ENCE UNDER W-1 CONDITIONAL NON-
22 IMMIGRANT STATUS.—

23 “(i) TERMINATION OF CONTINUOUS
24 PERIOD.—For purposes of this section, any
25 period of continuous residence or contin-

1 uous physical presence in the United
2 States of an alien who applies for cancella-
3 tion of removal under subparagraph (B)
4 shall not terminate when the alien is
5 served a notice to appear under section
6 239(a).

7 “(ii) TREATMENT OF CERTAIN
8 BREAKS IN PRESENCE UNDER W-1 STA-
9 TUS.—

10 “(I) IN GENERAL.—Subject to
11 subclauses (II) and (III), an alien
12 shall be considered to have failed to
13 maintain continuous physical presence
14 and abandoned the alien’s residence in
15 the United States if the alien has de-
16 parted from the United States for any
17 period in excess of 90 days or for any
18 aggregated period spent outside of the
19 United States in excess of 180 days.

20 “(II) EXTENSIONS FOR EXCEP-
21 TIONAL CIRCUMSTANCES.—The Sec-
22 retary may extend the time periods
23 described in subclause (I) if the alien
24 demonstrates that the failure to time-
25 ly return to the United States was

1 due to exceptional circumstances. The
2 exceptional circumstances determined
3 sufficient to justify an extension
4 should be no less compelling than seri-
5 ous illness of the alien, or death or se-
6 rious illness of a parent, grandparent,
7 sibling, or child. Such an extension
8 may not exceed 60 days.

9 “(III) EXCEPTION FOR MILITARY
10 SERVICE.—An alien who is absent
11 from the United States due to active
12 service in the Armed Forces has not
13 abandoned the alien’s residence in the
14 United States during the period of
15 such service and any such absence
16 may not be counted in the determina-
17 tion of aggregate time spent outside
18 of the United States for the purposes
19 of determining the abandonment of
20 the alien’s residence.

21 “(G) PERIOD OF STATUS.—

22 “(i) IN GENERAL.—W-1 conditional
23 nonimmigrant status shall be valid for a
24 period of 6 years, subject to termination
25 under subparagraph (H).

1 “(ii) PROHIBITION ON EXTENSION.—
2 The Secretary may not renew or extend
3 the 6-year period referred to in clause (i)
4 for any alien.

5 “(H) TERMINATION OF STATUS.—

6 “(i) IN GENERAL.—The Secretary
7 shall terminate the W-1 conditional non-
8 immigrant status of any alien if the Sec-
9 retary determines that the alien—

10 “(I) ceases to meet the require-
11 ments of this section or of
12 101(a)(15)(W)(i);

13 “(II) has become a public charge;
14 or

15 “(III) has received a dishonorable
16 discharge from the Armed Forces.

17 “(ii) RETURN TO PREVIOUS IMMIGRA-
18 TION STATUS.—Any alien whose W-1 con-
19 ditional nonimmigrant status is terminated
20 under clause (i)—

21 “(I) shall return to the immigra-
22 tion status the alien had immediately
23 before receiving W-1 conditional non-
24 immigrant status; and

1 “(II) shall be subject to imme-
2 diate removal.

3 “(I) INTENDING TO ENLIST.—An alien
4 does not meet the intending to enlist require-
5 ment set forth in section
6 101(a)(15)(W)(i)(IX)(aa) unless the alien sub-
7 mits, to the Secretary of Homeland Security, a
8 document obtained from a branch of the Armed
9 Forces that contains—

10 “(i) the alien’s name and current ad-
11 dress;

12 “(ii) an attestation of the alien’s in-
13 tent to enlist; and

14 “(iii) an attestation that the alien
15 meets the applicable moral, medical, and
16 mental standards for enlistment.”.

17 (b) REGULATIONS.—

18 (1) INITIAL PUBLICATION.—Not later than 180
19 days after the date of the enactment of this Act, the
20 Secretary of Homeland Security shall publish regula-
21 tions to carry out paragraphs (2) and (3) of sub-
22 section (s) of section 214 of the Immigration and
23 Nationality Act (8 U.S.C. 1184), as added by sub-
24 section (a).

1 (2) INTERIM REGULATIONS.—Notwithstanding
2 section 553 of title 5, United States Code, the regu-
3 lations required by paragraph (1) shall be effective,
4 on an interim basis, immediately upon publication
5 but may be subject to change and revision after pub-
6 lic notice and opportunity for a period of public com-
7 ment.

8 (3) FINAL REGULATIONS.—Within a reasonable
9 time after publication of the interim regulations in
10 accordance with this subsection, the Secretary of
11 Homeland Security shall publish final regulations
12 implementing this section.

13 **SEC. 4. W-2 CONDITIONAL NONIMMIGRANT STATUS.**

14 Section 214(s) of the Immigration and Nationality
15 Act (8 U.S.C. 1184), as added by section 3, is amended
16 by adding at the end the following:

17 “(4) W-2 CONDITIONAL NONIMMIGRANT STA-
18 TUS.—

19 “(A) ELIGIBILITY.—

20 “(i) IN GENERAL.—An alien is eligible
21 for W-2 conditional nonimmigrant status
22 if the alien meets the requirements of
23 clause (ii) of section 101(a)(15)(W) and
24 this paragraph.

1 “(ii) PROHIBITION ON APPLICATIONS
2 FROM OTHER NONIMMIGRANTS.—Only an
3 alien granted W-1 conditional non-
4 immigrant status is eligible to apply for
5 W-2 conditional nonimmigrants status.

6 “(B) CHANGE OF STATUS.—The Secretary
7 shall change the status of an alien granted W-
8 1 conditional nonimmigrant status to that of a
9 W-2 conditional nonimmigrant if the alien sub-
10 mits to the Secretary a timely application for
11 such status that includes clear and convincing
12 evidence that the alien is eligible for such sta-
13 tus.

14 “(C) SUBMISSION OF APPLICATION.—An
15 application for W-2 conditional nonimmigrant
16 status for an alien is timely if such application
17 is submitted to the Secretary—

18 “(i) not earlier than 1 year before the
19 applicant’s valid W-1 status expires; and

20 “(ii) not later than the date on which
21 the applicant’s valid W-1 status expires.

22 “(D) SURCHARGE.—Each application for
23 W-2 conditional nonimmigrant status shall be
24 accompanied by a surcharge in the amount of
25 \$750, which shall be in addition to the other-

1 wise applicable application fee imposed for the
2 purpose of recovering the full costs of providing
3 adjudication and processing services.

4 “(E) OTHER REQUIREMENTS.—The Sec-
5 retary may not cancel the removal of an alien
6 under subparagraph (B) or grant W-2 condi-
7 tional nonimmigrant status to the alien unless
8 the following conditions are met:

9 “(i) W-1 CONDITIONAL NON-
10 IMMIGRANT STATUS.—Except as provided
11 in clause (ii), the alien was granted W-1
12 conditional nonimmigrant status for a pe-
13 riod of not less than 6 years and during
14 such period the alien—

15 “(I) maintained compliance with
16 section 101(a)(15)(W)(i) and the ap-
17 plicable requirements of this sub-
18 section, including the reporting re-
19 quirement set out in paragraph (2);
20 and

21 “(II) demonstrated good moral
22 character.

23 “(ii) CONTINUOUS PRESENCE.—The
24 alien has maintained continuous physical
25 presence in the United States during such

1 period, as calculated under subparagraph
2 (F).

3 “(iii) DISABILITY EXCEPTION.—

4 “(I) IN GENERAL.—The Sec-
5 retary of Homeland Security may
6 grant a hardship waiver to any alien
7 who proves, by clear and convincing
8 evidence, that—

9 “(aa) the alien became af-
10 flicted with a disability (as de-
11 fined in section 3 of the Ameri-
12 cans with Disabilities Act of
13 1990 (42 U.S.C. 12102)) during
14 the time in which the alien was
15 granted status under section
16 101(a)(15)(W)(i); and

17 “(bb) such disability is di-
18 rectly attributable to the alien’s
19 inability to meet the require-
20 ments under clause (i)(I).

21 “(II) NOTICE.—The alien may
22 not be granted a hardship waiver
23 under this clause unless the alien pro-
24 vides notice of the alien’s disability to
25 United States Citizenship and Immi-

1 gration Services not later than 120
2 days after the date on which the alien
3 became afflicted with a disability.

4 “(F) CALCULATION OF CONTINUOUS PRES-
5 ENCE.—An alien shall be considered to have
6 failed to maintain continuous physical presence
7 in the United States while in W-2 conditional
8 nonimmigrant status if the alien has departed
9 from the United States for any period in excess
10 of 90 days or for any aggregated period spent
11 outside of the United States in excess of 120
12 days, calculated as described in paragraph
13 (3)(F).

14 “(G) PERIOD OF STATUS.—W-2 condi-
15 tional nonimmigrant status shall be valid for a
16 period of 4 years, subject to termination under
17 subparagraph (H).

18 “(H) TERMINATION OF STATUS.—

19 “(i) IN GENERAL.—The Secretary
20 shall terminate the W-2 conditional non-
21 immigrant status of any alien if the Sec-
22 retary determines that the alien—

23 “(I) ceases to meet the require-
24 ments of this section or of
25 101(a)(15)(W)(ii);

1 “(II) has become a public charge;

2 or

3 “(III) has received a dishonorable
4 discharge from the Armed Forces.

5 “(ii) RETURN TO UNDOCUMENTED
6 STATUS.—Any alien whose W-2 condi-
7 tional nonimmigrant status is terminated
8 under clause (i) shall not have any lawful
9 immigration status in the United States
10 and shall be subject to immediate removal.

11 “(I) SPECIAL RULE FOR ALIENS DIS-
12 CHARGED FROM THE MILITARY.—

13 “(i) HONORABLE DISCHARGE.—An
14 alien who has served 4 years in a branch
15 of the Armed Forces and is honorably dis-
16 charged from such service—

17 “(I) may not be required to apply
18 for W-2 conditional nonimmigrant
19 status or W-3 nonimmigrant status;
20 and

21 “(II) during the 1-year period be-
22 ginning on the date of such honorable
23 discharge, may apply for lawful per-
24 manent resident status under a spe-

1 cial process to be determined by the
2 Secretary in regulations.

3 “(ii) GENERAL DISCHARGE.—

4 “(I) REQUIREMENT FOR RE-
5 VIEW.—An alien who is discharged
6 from service in a branch of the Armed
7 Services pursuant to a general dis-
8 charge, which includes any discharge
9 that is not an honorable discharge or
10 a dishonorable discharge, may not re-
11 main in W-1 conditional non-
12 immigrant status or receive W-2 con-
13 ditional nonimmigrant status or W-3
14 nonimmigrant status until the Sec-
15 retary, in consultation with the Sec-
16 retary of Defense, reviews the facts
17 and circumstances of such discharge.

18 “(II) DISPOSITION.—Based on
19 the outcome of a review conducted
20 under subclause (I), the Secretary
21 shall, with respect to an alien, take
22 one of the following actions:

23 “(aa) Terminate the alien’s
24 status under subparagraph (W)
25 of section 101(a)(15).

1 “(bb) Permit the alien to re-
 2 main in status under such sub-
 3 paragraph and continue to apply
 4 for the next appropriate subse-
 5 quent status under such subpara-
 6 graph, pursuant to the proce-
 7 dures set out in this subsection.”.

8 **SEC. 5. W-3 NONIMMIGRANT STATUS.**

9 (a) IN GENERAL.—Section 214(s) of the Immigration
 10 and Nationality Act (8 U.S.C. 1184), as added by section
 11 3 and amended by section 4, is further amended by adding
 12 at the end the following:

13 “(5) W-3 NONIMMIGRANT STATUS.—

14 “(A) ELIGIBILITY.—

15 “(i) IN GENERAL.—An alien is eligible
 16 for W-3 nonimmigrant status if the alien
 17 meets the requirements of clause (iii) of
 18 section 101(a)(15)(W) and this paragraph.

19 “(ii) PROHIBITION ON APPLICATIONS
 20 FROM OTHER NONIMMIGRANTS.—Only an
 21 alien granted W-2 conditional non-
 22 immigrant status is eligible to apply for
 23 W-3 nonimmigrant status.

24 “(B) CHANGE OF STATUS.—The Secretary
 25 shall change the status of such alien to that of

1 a W-3 nonimmigrant if the alien submits to the
2 Secretary a timely application for such status
3 that includes clear and convincing evidence that
4 the alien is eligible for such status.

5 “(C) SUBMISSION OF APPLICATION.—An
6 application for W-3 nonimmigrant status for
7 an alien is timely if such application is sub-
8 mitted to the Secretary during the 1-year pe-
9 riod prior to the expiration of the alien’s W-2
10 conditional nonimmigrant status.

11 “(D) SURCHARGE.—

12 “(i) INITIAL APPLICATION.—Each ap-
13 plication for W-3 nonimmigrant status
14 shall be accompanied by a surcharge in the
15 amount of \$2,000, which shall be in addi-
16 tion to the otherwise applicable application
17 fee imposed for the purpose of recovering
18 the full costs of providing adjudication and
19 processing services.

20 “(ii) RENEWALS.—Any application for
21 renewal of W-3 nonimmigrant status after
22 the initial grant of such status shall be ac-
23 companied by a \$525 surcharge.

24 “(E) OTHER REQUIREMENTS.—The Sec-
25 retary may not cancel the removal of an alien

1 under subparagraph (B) or grant W-3 non-
2 immigrant status to the alien unless the fol-
3 lowing conditions are met:

4 “(i) W-2 CONDITIONAL NON-
5 IMMIGRANT STATUS.—The alien was grant-
6 ed W-2 conditional nonimmigrant status
7 for a period of not less than 4 years and
8 during such period the alien—

9 “(I) maintained compliance with
10 section 101(a)(15)(W)(ii) and the ap-
11 plicable requirements of this sub-
12 section, including the reporting re-
13 quirement set out in paragraph (2);
14 and

15 “(II) demonstrated good moral
16 character.

17 “(ii) DISABILITY EXCEPTION.—

18 “(I) IN GENERAL.—The Sec-
19 retary of Homeland Security may
20 grant a hardship waiver to any alien
21 who proves, by clear and convincing
22 evidence, that—

23 “(aa) the alien became af-
24 flicted with a disability (as de-
25 fined in section 3 of the Ameri-

1 cans with Disabilities Act of
2 1990 (42 U.S.C. 12102)) during
3 the time in which the alien was
4 granted status under clause (i) or
5 (ii) of section 101(a)(15)(W);
6 and

7 “(bb) such disability is di-
8 rectly attributable to the alien’s
9 inability to meet the require-
10 ments under clause (i)(I).

11 “(II) NOTICE.—The alien may
12 not be granted a hardship waiver
13 under this clause unless the alien pro-
14 vides notice of the alien’s disability to
15 United States Citizenship and Immi-
16 gration Services not later than 120
17 days after the date on which the alien
18 became afflicted with a disability.

19 “(iii) UPDATED BIOMETRIC AND BIO-
20 GRAPHIC DATA.—The alien submits bio-
21 metric and biographic data, in accordance
22 with procedures established by the Sec-
23 retary. The Secretary shall provide an al-
24 ternative procedure for applicants who are
25 unable to provide such biometric or bio-

1 graphic data because of a physical impair-
2 ment.

3 “(iv) UPDATED BACKGROUND
4 CHECKS.—The alien completes, to the sat-
5 isfaction of the Secretary, new security and
6 law enforcement background checks, as de-
7 scribed in paragraph (3)(E)(ii).

8 “(v) PAYMENT OF FEDERAL TAXES.—

9 “(I) IN GENERAL.—The alien
10 shall satisfy any applicable Federal
11 tax liability due and owing on the date
12 the alien applies for W-3 non-
13 immigrant status.

14 “(II) APPLICABLE FEDERAL TAX
15 LIABILITY.—For purposes of sub-
16 clause (I), the term ‘applicable Fed-
17 eral tax liability’ means liability for
18 Federal taxes imposed under the In-
19 ternal Revenue Code of 1986, includ-
20 ing any penalties and interest thereon.

21 “(vi) CONTINUOUS PRESENCE.—The
22 alien has maintained continuous physical
23 presence in the United States during such
24 period, as calculated under subparagraph
25 (F).

1 “(F) CALCULATION OF CONTINUOUS PRES-
2 ENCE.—An alien shall be considered to have
3 failed to maintain continuous physical presence
4 in the United States while in W-1 or W-2 con-
5 ditional nonimmigrant status if the alien has
6 departed from the United States for any period
7 in excess of 90 days or for any aggregated pe-
8 riod spent outside of the United States in ex-
9 cess 180 days while present in the United
10 States in W-1 conditional nonimmigrant status
11 or for any aggregate period over 120 days while
12 in W-2 conditional nonimmigrant status, cal-
13 culated as described in paragraph (3)(F).

14 “(G) PERIOD OF STATUS.—

15 “(i) IN GENERAL.—W-3 conditional
16 nonimmigrant status shall be valid for an
17 initial period of 5 years, subject to termi-
18 nation under subparagraph (H).

19 “(ii) RENEWAL.—The Secretary may
20 renew the 4-year period referred to in
21 clause (i) for an unlimited number of 4-
22 year periods.

23 “(H) TERMINATION OF STATUS.—

24 “(i) IN GENERAL.—The Secretary
25 shall terminate the W-3 nonimmigrant

1 status of any alien if the Secretary deter-
2 mines that the alien—

3 “(I) ceases to meet the require-
4 ments of this section or of
5 101(a)(15)(W)(iii);

6 “(II) has become a public charge;
7 or

8 “(III) has received a dishonorable
9 discharge from the Armed Forces.

10 “(ii) RETURN TO UNDOCUMENTED
11 STATUS.—Any alien whose W-3 non-
12 immigrant status is terminated under
13 clause (i) shall not have lawful immigration
14 status in the United States.

15 “(I) CHANGE OF STATUS.—Nothing in this
16 section or in any other provision of law, may
17 prevent an alien granted W-3 nonimmigrant
18 status from using any other lawful measures
19 under this Act to change or adjust to another
20 lawful nonimmigrant or immigrant status pro-
21 vided for in this Act.”.

22 (b) DUAL INTENT.—Section 214(b) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1184(b)) is amended
24 by striking “(L) or (V) of section 101(a)(15)” and insert-
25 ing, “(L), (V), or (W)”.

1 **SEC. 6. PENALTIES FOR FALSE STATEMENTS.**

2 (a) CRIMINAL PENALTY.—Chapter 75 of title 18,
3 United States Code, is amended—

4 (1) by redesignating section 1547 as section
5 1548;

6 (2) by inserting after section 1546 the fol-
7 lowing:

8 **“§ 1547. Fraud and misuse of the ACHIEVE Act**

9 “Any person who files an application for any benefit
10 under the ACHIEVE Act, or an amendment made by such
11 Act, and willfully and knowingly engages in fraud by fal-
12 sifying, misrepresenting, concealing, or in any way failing
13 to disclose a material fact or makes any false or fraudulent
14 statement or representation, or makes or uses any false
15 writing or document knowing the same to contain any
16 false or fraudulent statement or entry—

17 “(1) shall be fined under this title, imprisoned
18 not more than 5 years, or both;

19 “(2) shall be placed into the immigration status
20 that the person had before the person’s initial appli-
21 cation for relief under section 101(a)(15)(W) of the
22 Immigration and Nationality Act (8 U.S.C.
23 1101(a)(15)(W)); and

24 “(3) shall be subject to immediate removal pro-
25 ceedings, in which the information that the person
26 provided to the Secretary of Homeland Security dur-

1 ing the person’s application process may be used.”;
2 and

3 (3) in the chapter analysis, by striking the item
4 relating to section 1547 and inserting the following:

“1547. Fraud and misuse of the ACHIEVE Act.

“1548. Alternative imprisonment maximum for certain offenses.”.

5 (b) **DEFINITION OF AGGRAVATED FELONY.**—Section
6 101(a)(43) of the Immigration and Nationality Act (8
7 U.S.C. 1101(a)(43)) is amended—

8 (1) in subparagraph (T), by striking “and” at
9 the end;

10 (2) by redesignating subparagraph (U) as sub-
11 paragraph (V); and

12 (3) by inserting after subparagraph (T) the fol-
13 lowing:

14 “(U) an offense described in section 1547
15 of title 18, United States Code; and”.

16 **SEC. 7. CONFIDENTIALITY OF APPLICANT INFORMATION.**

17 Section 214(s)(2) of the Immigration and Nationality
18 Act, as added by section 3(a), is amended by adding at
19 the end the following:

20 “(D) **PROHIBITIONS ON INFORMATION**
21 **USAGE.**—Except as provided in subparagraphs
22 (E) and (G), section 1547 of title 18, United
23 States Code, and any provision of law that au-
24 thorizes the use of applicant information col-

1 lected under this subsection, no officer or em-
2 ployee of the United States may—

3 “(i) use the information furnished by
4 an individual pursuant to an application
5 for nonimmigrant status under section
6 101(a)(15)(W) to initiate removal pro-
7 ceedings against the applicant or the appli-
8 cant’s immediate family members;

9 “(ii) make any publication in which
10 the information furnished by any par-
11 ticular individual pursuant to an applica-
12 tion for nonimmigrant status under section
13 101(a)(15)(W) can be identified; or

14 “(iii) permit anyone other than an of-
15 ficer or employee of the United States Gov-
16 ernment or, in the case of an application
17 filed with a designated entity, that des-
18 ignated entity, to examine such applica-
19 tion.

20 “(E) REQUIRED DISCLOSURE.—The Attor-
21 ney General or the Secretary shall provide the
22 information furnished under this subsection,
23 and any other information derived from such
24 furnished information, to—

1 “(i) a Federal, State, tribal, or local
2 law enforcement agency, intelligence agen-
3 cy, national security agency, directorate of
4 the Department of Homeland Security,
5 court, or grand jury in connection with a
6 criminal investigation or prosecution, a
7 background check conducted pursuant to
8 the Brady Handgun Violence Protection
9 Act (Public Law 103–59; 107 Stat. 1536),
10 or for homeland security or national secu-
11 rity purposes, if such information is re-
12 quested by such entity or consistent with
13 an information sharing agreement or
14 mechanism; or

15 “(ii) an official coroner for purposes
16 of affirmatively identifying a deceased indi-
17 vidual (whether or not such individual is
18 deceased as a result of a crime).

19 “(F) PENALTY.—Any person who know-
20 ingly uses, publishes, or permits information to
21 be examined in violation of this section shall be
22 fined not more than \$10,000, imprisoned not
23 more than 5 years, or both.

24 “(G) OBTAINING INFORMATION BY OTHER
25 MEANS.—Notwithstanding subparagraph (D),

1 nothing in this subsection may be construed to
2 limit the authority of Federal, State, or local
3 law enforcement authorities to obtain informa-
4 tion that was included by an applicant in their
5 application by any other lawful, independent
6 means otherwise authorized under Federal,
7 State, or local law.”.

8 **SEC. 8. MILITARY ENLISTMENT.**

9 Section 504(b)(1) of title 10, United States Code, is
10 amended by adding at the end the following:

11 “(D) An alien who qualifies as a non-
12 immigrant (as defined in section 101(a)(15)(W)
13 of the Immigration and Nationality Act (8
14 U.S.C. 1101(a)(15)(W))).”.

○