115TH CONGRESS
1ST SESSION

S. 128

To provide provisional protected presence to qualified individuals who came to the United States as children.

IN THE SENATE OF THE UNITED STATES

JANUARY 12, 2017

Mr. GRAHAM (for himself, Mr. DURBIN, Ms. MURKOWSKI, Mrs. FEINSTEIN, Mr. FLAKE, Mr. SCHUMER, and Ms. HARRIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide provisional protected presence to qualified individuals who came to the United States as children.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Bar Removal of Indi-
viduals who Dream and Grow our Economy Act” or the “BRIDGE Act”.

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SEC. 2. PROVISIONAL PROTECTED PRESENCE FOR YOUNG INDIVIDUALS.

(a) IN GENERAL.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by adding at the end the following:

“SEC. 244A. PROVISIONAL PROTECTED PRESENCE.

“(a) DEFINITIONS.—In this section:

“(1) DACA RECIPIENT.—The term ‘DACA recipient’ means an alien who is in deferred action status on the date of the enactment of this section pursuant to the Deferred Action for Childhood Arrivals (‘DACA’) Program announced on June 15, 2012.

“(2) FELONY.—The term ‘felony’ means a Federal, State, or local criminal offense (excluding a State or local offense for which an essential element was the alien’s immigration status) punishable by imprisonment for a term exceeding one year.

“(3) MISDEMEANOR.—The term ‘misdemeanor’ means a Federal, State, or local criminal offense (excluding a State or local offense for which an essential element was the alien’s immigration status, a significant misdemeanor, and a minor traffic offense) for which—

“(A) the maximum term of imprisonment is greater than five days and not greater than one year; and
“(B) the individual was sentenced to time in custody of 90 days or less.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of Homeland Security.

“(5) SIGNIFICANT MISDEMEANOR.—The term ‘significant misdemeanor’ means a Federal, State, or local criminal offense (excluding a State or local offense for which an essential element was the alien’s immigration status) for which the maximum term of imprisonment is greater than five days and not greater than one year that—

“(A) regardless of the sentence imposed, is a crime of domestic violence (as defined in section 237(a)(2)(E)(i)) or an offense of sexual abuse or exploitation, burglary, unlawful possession or use of a firearm, drug distribution or trafficking, or driving under the influence if the State law requires, as an element of the offense, the operation of a motor vehicle and a finding of impairment or a blood alcohol content of .08 or higher; or

“(B) resulted in a sentence of time in custody of more than 90 days, excluding an offense for which the sentence was suspended.
“(6) Threat to National Security.—An alien is a ‘threat to national security’ if the alien is—

“(A) inadmissible under section 212(a)(3);
or
“(B) deportable under section 237(a)(4).

“(7) Threat to Public Safety.—An alien is a ‘threat to public safety’ if the alien—

“(A) has been convicted of an offense for which an element was participation in a criminal street gang (as defined in section 521(a) of title 18, United States Code); or
“(B) has engaged in a continuing criminal enterprise (as defined in section 408(c) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 848(e))).

“(b) Authorization.—The Secretary—

“(1) shall grant provisional protected presence to an alien who files an application demonstrating that he or she meets the eligibility criteria under subsection (c) and pays the appropriate application fee;
“(2) may not remove such alien from the United States during the period in which such provi-
sional protected presence is in effect unless such sta-
status is rescinded pursuant to subsection (g); and

“(3) shall provide such alien with employment
authorization.

“(c) ELIGIBILITY CRITERIA.—An alien is eligible for
provisional protected presence under this section and em-
ployment authorization if the alien—

“(1) was born after June 15, 1981;

“(2) entered the United States before attaining
16 years of age;

“(3) continuously resided in the United States
between June 15, 2007, and the date on which the
alien files an application under this section;

“(4) was physically present in the United
States on June 15, 2012, and on the date on which
the alien files an application under this section;

“(5) was unlawfully present in the United
States on June 15, 2012;

“(6) on the date on which the alien files an ap-
application for provisional protected presence—

“(A) is enrolled in school or in an edu-
cation program assisting students in obtaining
a regular high school diploma or its recognized
equivalent under State law, or in passing a gen-
eral educational development exam or other
State-authorized exam;

“(B) has graduated or obtained a certifi-
cate of completion from high school;

“(C) has obtained a general educational
development certificate; or

“(D) is an honorably discharged veteran of
the Coast Guard or Armed Forces of the
United States;

“(7) has not been convicted of—

“(A) a felony;

“(B) a significant misdemeanor; or

“(C) three or more misdemeanors not oc-
curring on the same date and not arising out of
the same act, omission, or scheme of mis-
conduct; and

“(8) does not otherwise pose a threat to na-
tional security or a threat to public safety.

“(d) DURATION OF PROVISIONAL PROTECTED PRE-
SENCE AND EMPLOYMENT AUTHORIZATION.—Provisional
protected presence and the employment authorization pro-
vided under this section shall be effective until the date
that is three years after the date of the enactment of this
section.
“(e) Status During Period of Provisional Protected Presence.—

“(1) In General.—An alien granted provisional protected presence is not considered to be unlawfully present in the United States during the period beginning on the date such status is granted and ending on the date described in subsection (d).

“(2) Status Outside Period.—The granting of provisional protected presence under this section does not excuse previous or subsequent periods of unlawful presence.

“(f) Application.—

“(1) Age Requirement.—

“(A) In General.—An alien who has never been in removal proceedings, or whose proceedings have been terminated before making a request for provisional protected presence, shall be at least 15 years old on the date on which the alien submits an application under this section.

“(B) Exception.—The age requirement set forth in subparagraph (A) shall not apply to an alien who, on the date on which the alien applies for provisional protected presence, is in re-
moval proceedings, has a final removal order, or has a voluntary departure order.

“(2) APPLICATION FEE.—

“(A) IN GENERAL.—The Secretary may require aliens applying for provisional protected presence and employment authorization under this section to pay a reasonable fee that is commensurate with the cost of processing the application.

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

“(i)(I) is younger than 18 years of age;

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

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

“(ii) is younger than 18 years of age and is homeless;
“(iii)(I) cannot care for himself or herself because of a serious, chronic disabil-
ity; and

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

“(iv)(I) as of the date on which the alien files an application under this sec-
tion, has accumulated $10,000 or more in debt in the past 12 months as a result of unreimbursed medical expenses incurred by the alien or an immediate family member of the alien; and

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

“(3) REMOVAL STAYED WHILE APPLICATION PENDING.—The Secretary may not remove an alien from the United States who appears prima facie eli-
gible for provisional protected presence while the
alien’s application for provisional protected presence is pending.

“(4) ALIENS NOT IN IMMIGRATION DETENTION.—An alien who is not in immigration detention, but who is in removal proceedings, is the subject of a final removal order, or is the subject of a voluntary departure order, may apply for provisional protected presence under this section if the alien appears prima facie eligible for provisional protected presence.

“(5) ALIENS IN IMMIGRATION DETENTION.—The Secretary shall provide any alien in immigration detention, including any alien who is in removal proceedings, is the subject of a final removal order, or is the subject of a voluntary departure order, who appears prima facie eligible for provisional protected presence, upon request, with a reasonable opportunity to apply for provisional protected presence under this section.

“(6) CONFIDENTIALITY.—

“(A) IN GENERAL.—The Secretary shall protect information provided in applications for provisional protected presence under this section and in requests for consideration of DACA from disclosure to U.S. Immigration and Cus-
Customs Enforcement and U.S. Customs and Border Protection for the purpose of immigration enforcement proceedings.

“(B) REFERRALS PROHIBITED.—The Secretary may not refer individuals whose cases have been deferred pursuant to DACA or who have been granted provisional protected presence under this section to U.S. Immigration and Customs Enforcement.

“(C) LIMITED EXCEPTION.—The information submitted in applications for provisional protected presence under this section and in requests for consideration of DACA may be shared with national security and law enforcement agencies—

“(i) for assistance in the consideration of the application for provisional protected presence;

“(ii) to identify or prevent fraudulent claims;

“(iii) for national security purposes; and

“(iv) for the investigation or prosecution of any felony not related to immigration status.
“(7) ACCEPTANCE OF APPLICATIONS.—Not later than 60 days after the date of the enactment of this section, the Secretary shall begin accepting applications for provisional protected presence and employment authorization.

“(g) RESCISSION OF PROVISIONAL PROTECTED PRESENCE.—The Secretary may not rescind an alien’s provisional protected presence or employment authorization granted under this section unless the Secretary determines that the alien—

“(1) has been convicted of—

“(A) a felony;

“(B) a significant misdemeanor; or

“(C) three or more misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct;

“(2) poses a threat to national security or a threat to public safety;

“(3) has traveled outside of the United States without authorization from the Secretary; or

“(4) has ceased to continuously reside in the United States.

“(h) TREATMENT OF BRIEF, CASUAL, AND INNOCENT DEPARTURES AND CERTAIN OTHER ABSENCES.—
For purposes of subsections (c)(3) and (g)(4), an alien shall not be considered to have failed to continuously reside in the United States due to—

“(1) brief, casual, and innocent absences from the United States during the period beginning on June 15, 2007, and ending on August 14, 2012; or

“(2) travel outside of the United States on or after August 15, 2012, if such travel was authorized by the Secretary.

“(i) TREATMENT OF EXPUNGED CONVICTIONS.—For purposes of subsections (c)(7) and (g)(1), an expunged conviction shall not automatically be treated as a disqualifying felony, significant misdemeanor, or misdemeanor, but shall be evaluated on a case-by-case basis according to the nature and severity of the offense to determine whether, under the particular circumstances, the alien should be eligible for provisional protected presence under this section.

“(j) EFFECT OF DEFERRED ACTION UNDER DEFERRED ACTION FOR CHILDHOOD ARRIVALS PROGRAM.—

“(1) PROVISIONAL PROTECTED PRESENCE.—A DACA recipient is deemed to have provisional protected presence under this section through the expiration date of the alien’s deferred action status, as
specified by the Secretary in conjunction with the approval of the alien’s DACA application.

“(2) Employment Authorization.—If a DACA recipient has been granted employment authorization by the Secretary in addition to deferred action, the employment authorization shall continue through the expiration date of the alien’s deferred action status, as specified by the Secretary in conjunction with the approval of the alien’s DACA application.

“(3) Effect of Application.—If a DACA recipient files an application for provisional protected presence under this section not later than the expiration date of the alien’s deferred action status, as specified by the Secretary in conjunction with the approval of the alien’s DACA application, the alien’s provisional protected presence, and any employment authorization, shall remain in effect pending the adjudication of such application.”.

(b) Clerical Amendment.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 note) is amended by inserting after the item relating to section 244 the following:

“Sec. 244A. Provisional protected presence.”.