

114TH CONGRESS
2D SESSION

S. 3546

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2016

Mr. FLAKE 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.

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 “Securing Active and
5 Fair Enforcement Act” or the “SAFE Act”.

6 **SEC. 2. PROVISIONAL PROTECTED PRESENCE FOR YOUNG**
7 **INDIVIDUALS.**

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

1 **“SEC. 244A. PROVISIONAL PROTECTED PRESENCE.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) DACA RECIPIENT.—The term ‘DACA re-
4 cipient’ means an alien who is in deferred action sta-
5 tus on the date of the enactment of this section pur-
6 suant to the Deferred Action for Childhood Arrivals
7 (‘DACA’) Program announced on June 15, 2012.

8 “(2) FELONY.—The term ‘felony’ means a Fed-
9 eral, State, or local criminal offense punishable by
10 imprisonment for a term exceeding one year.

11 “(3) MISDEMEANOR.—The term ‘misdemeanor’
12 means a Federal, State, or local criminal offense
13 (excluding a significant misdemeanor) for which—

14 “(A) the maximum term of imprisonment
15 is greater than five days and not greater than
16 one year; and

17 “(B) the individual was sentenced to time
18 in custody of 90 days or less.

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

21 “(5) SIGNIFICANT MISDEMEANOR.—The term
22 ‘significant misdemeanor’ means a Federal, State, or
23 local criminal offense for which the maximum term
24 of imprisonment is greater than five days and not
25 greater than one year that—

1 “(A) regardless of the sentence imposed, is
2 an offense of domestic violence, sexual abuse or
3 exploitation, burglary, unlawful possession or
4 use of a firearm, drug distribution or traf-
5 ficking, or driving under the influence if the
6 State law requires, as an element of the offense,
7 a finding of impairment or a blood alcohol con-
8 tent of .08 or higher; or

9 “(B) resulted in a sentence of time in cus-
10 tody of more than 90 days, excluding an offense
11 for which the sentence was suspended.

12 “(6) THREAT TO NATIONAL SECURITY.—An
13 alien is a ‘threat to national security’ if the alien
14 is—

15 “(A) inadmissible under section 212(a)(3);
16 or

17 “(B) deportable under section 237(a)(4).

18 “(7) THREAT TO PUBLIC SAFETY.—An alien is
19 a ‘threat to public safety’ if the alien—

20 “(A) has been convicted of an offense for
21 which an element was participation in a crimi-
22 nal street gang (as defined in section 521(a) of
23 title 18, United States Code); or

24 “(B) has engaged in a continuing criminal
25 enterprise (as defined in section 408(c) of the

1 Comprehensive Drug Abuse Prevention and
2 Control Act of 1970 (21 U.S.C. 848(c)).

3 “(b) AUTHORIZATION.—The Secretary—

4 “(1) shall grant provisional protected presence
5 to an alien who files an application demonstrating
6 that he or she meets the eligibility criteria under
7 subsection (c) and pays the appropriate application
8 fee;

9 “(2) may not remove such alien from the
10 United States during the period in which such provi-
11 sional protected presence is in effect unless such sta-
12 tus is rescinded pursuant to subsection (g); and

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

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

18 “(1) was born after June 15, 1981;

19 “(2) entered the United States before attaining
20 16 years of age;

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

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

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

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

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

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

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

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

21 “(7) has not been convicted of—

22 “(A) a felony;

23 “(B) a significant misdemeanor; or

24 “(C) three or more misdemeanors not oc-
25 curring on the same date and not arising out of

1 the same act, omission, or scheme of mis-
 2 conduct; and

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

5 “(d) DURATION OF PROVISIONAL PROTECTED PRES-
 6 ENCE AND EMPLOYMENT AUTHORIZATION.—Provisional
 7 protected presence and the employment authorization pro-
 8 vided under this section shall be effective until the date
 9 that is three years after the date of the enactment of this
 10 section.

11 “(e) STATUS DURING PERIOD OF PROVISIONAL PRO-
 12 TECTED PRESENCE.—

13 “(1) IN GENERAL.—During the period de-
 14 scribed in subsection (d), the alien granted provi-
 15 sional protected presence is not considered to be un-
 16 lawfully present in the United States.

17 “(2) STATUS OUTSIDE PERIOD.—The granting
 18 of provisional protected presence under this section
 19 does not excuse previous or subsequent periods of
 20 unlawful presence.

21 “(f) APPLICATION.—

22 “(1) AGE REQUIREMENT.—

23 “(A) IN GENERAL.—An alien who has
 24 never been in removal proceedings, or whose
 25 proceedings have been terminated before mak-

1 ing a request for provisional protected presence,
2 shall be at least 15 years old on the date on
3 which the alien submits an application under
4 this section.

5 “(B) EXCEPTION.—The age requirement
6 set forth in subparagraph (A) shall not apply to
7 an alien who, on the date on which the alien ap-
8 plies for provisional protected status, is in re-
9 moval proceedings, has a final removal order, or
10 has a voluntary departure order, and who is not
11 in immigration detention.

12 “(2) APPLICATION FEE.—

13 “(A) IN GENERAL.—The Secretary may re-
14 quire aliens applying for provisional protected
15 presence under this section to pay a reasonable
16 fee that is commensurate with the cost of proc-
17 essing the application.

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

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

23 “(II) received total income during the
24 12-month period immediately preceding the
25 date on which the alien files an application

1 under this section that is less than 150
2 percent of the United States poverty level;
3 and

4 “(III) is in foster care or otherwise
5 lacking any parental or other familial sup-
6 port;

7 “(ii) is younger than 18 years of age
8 and is homeless;

9 “(iii)(I) cannot care for himself or
10 herself because of a serious, chronic dis-
11 ability; and

12 “(II) received total income during the
13 12-month period immediately preceding the
14 date on which the alien files an application
15 under this section that is less than 150
16 percent of the United States poverty level;
17 or

18 “(iv)(I) on the date on which the alien
19 files an application under this section, has
20 accumulated \$10,000 or more in debt in
21 the past 12 months as a result of unreim-
22 bursed medical expenses incurred by the
23 alien or an immediate family member of
24 the alien; and

1 “(II) received total income during the
2 12-month period immediately preceding the
3 date on which the alien files an application
4 under this section that is less than 150
5 percent of the United States poverty level.

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

12 “(4) SPECIAL CIRCUMSTANCES.—An alien who
13 is in removal proceedings, has an unexpired final re-
14 moval order, or has an unexpired voluntary depart-
15 ure order may apply for provisional protected pres-
16 ence under this section if the alien—

17 “(A) appears *prima facie* eligible for provi-
18 sional protected presence; and

19 “(B) is not in immigration detention.

20 “(5) ALIENS IN IMMIGRATION DETENTION.—
21 The Secretary shall provide any alien in immigration
22 detention who meets the eligibility criteria set forth
23 in subsection (c), upon request, with a reasonable
24 opportunity to apply for provisional protected pres-
25 ence under this section.

1 “(6) CONFIDENTIALITY.—

2 “(A) IN GENERAL.—The Secretary shall
3 protect information provided in applications for
4 provisional protected presence under this sec-
5 tion and in requests for consideration of DACA
6 from disclosure to U.S. Immigration and Cus-
7 toms Enforcement and U.S. Customs and Bor-
8 der Protection for the purpose of immigration
9 enforcement proceedings.

10 “(B) REFERRALS PROHIBITED.—The Sec-
11 retary may not refer individuals whose cases
12 have been deferred pursuant to DACA or who
13 have been granted provisional protected pres-
14 ence under this section to U.S. Immigration
15 and Customs Enforcement.

16 “(C) LIMITED EXCEPTION.—The informa-
17 tion submitted in applications for provisional
18 protected presence under this section and in re-
19 quests for consideration of DACA may be
20 shared with national security and law enforce-
21 ment agencies—

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

1 “(ii) to identify or prevent fraudulent
2 claims;

3 “(iii) for national security purposes;
4 and

5 “(iv) for the investigation or prosecu-
6 tion of any felony not related to immigra-
7 tion status.

8 “(g) RESCISSION OF PROVISIONAL PROTECTED
9 PRESENCE.—The Secretary may not rescind an alien’s
10 provisional protected presence or employment authoriza-
11 tion granted under this section unless the Secretary deter-
12 mines that the alien—

13 “(1) has been convicted of—

14 “(A) a felony;

15 “(B) a significant misdemeanor; or

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

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

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

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

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

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

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

12 “(i) EFFECT OF DEFERRED ACTION UNDER DE-
13 FERRED ACTION FOR CHILDHOOD ARRIVALS PROGRAM.—

14 “(1) PROVISIONAL PROTECTED PRESENCE.—A
15 DACA recipient is deemed to have provisional pro-
16 tected presence under this section through the expi-
17 ration date of the alien’s deferred action status, as
18 specified by the Secretary in conjunction with the
19 approval of the alien’s DACA application.

20 “(2) EMPLOYMENT AUTHORIZATION.—If a
21 DACA recipient has been granted employment au-
22 thorization by the Secretary in addition to deferred
23 action, the employment authorization shall continue
24 through the expiration date of the alien’s deferred
25 action status, as specified by the Secretary in con-

1 junction with the approval of the alien’s DACA ap-
 2 plication.

3 “(3) EFFECT OF APPLICATION.—If a DACA re-
 4 cipient files an application for provisional protected
 5 presence under this section not later than the expi-
 6 ration date of the alien’s deferred action status, as
 7 specified by the Secretary in conjunction with the
 8 approval of the alien’s DACA application, the alien’s
 9 provisional protected presence, and any employment
 10 authorization, shall remain in effect pending the ad-
 11 judication of such application.”.

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

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

16 **SEC. 3. MANDATORY DETENTION AND PROMPT REMOVAL**
 17 **OF CERTAIN CRIMINAL ALIENS.**

18 (a) DETENTION.—Section 236(c) of the Immigration
 19 and Nationality Act (8 U.S.C. 1226(c)(1)) is amended—

20 (1) in paragraph (1)—

21 (A) in subparagraph (A), by striking the
 22 comma at the end and inserting a semicolon;

23 (B) in subparagraph (B), by striking the
 24 comma at the end and inserting a semicolon;

1 (C) in subparagraph (C), by striking “, or”
2 at the end and inserting a semicolon;

3 (D) in subparagraph (D), by striking the
4 comma at the end and inserting “; or”; and

5 (E) by inserting after subparagraph (D)
6 the following:

7 “(E)(i) is unlawfully present in the United
8 States, as determined by the Secretary of
9 Homeland Security; and

10 “(ii) is arrested for any offense described
11 in subparagraphs (A) through (D), the convic-
12 tion of which would render the alien inadmis-
13 sible under section 212(a) or deportable under
14 section 237(a),”; and

15 (2) in paragraph (2)—

16 (A) by striking “The Attorney General”
17 and inserting the following:

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (C), the Secretary of Homeland
20 Security”;

21 (B) by striking “Attorney General” each
22 place such term appears and inserting “Sec-
23 retary”;

24 (C) by striking “Code, that release” and
25 inserting the following: “Code, that—

1 “(i) release”;

2 (D) by striking “investigation, and the
3 alien” and inserting the following: “investiga-
4 tion; and

5 “(ii) the alien”;

6 (E) by striking “A decision relating to
7 such release” and inserting the following:

8 “(B) DECISION PROCEDURE.—A decision
9 relating to a release under subparagraph (A)”;
10 and

11 (F) by adding at the end the following:

12 “(D) ALIENS WHO HAVE BEEN ARRESTED,
13 BUT NOT CONVICTED.—The Secretary of Home-
14 land Security may release any alien held pursu-
15 ant to paragraph (1)(E) to the appropriate au-
16 thority for any proceedings subsequent to the
17 arrest. The Secretary shall resume custody of
18 such alien during any period pending the final
19 disposition of any such proceedings when the
20 alien is not in the custody of such appropriate
21 authority. If the alien is not convicted of the of-
22 fense for which the alien was arrested, the Sec-
23 retary shall continue to detain the alien until
24 removal proceedings are completed.”.

1 (b) PROMPT REMOVAL.—Section 239(d) of the Immi-
 2 gration and Nationality Act (8 U.S.C. 1229(d)) is amend-
 3 ed by adding at the end the following:

4 “(3) The Secretary of Homeland Security shall
 5 complete removal proceedings for any alien held pur-
 6 suant to section 236(c)(1)(E) not later than 90 days
 7 after such alien is detained.”.

8 **SEC. 4. EMERGENCY IMMIGRATION PERSONNEL.**

9 (a) GOAL.—It shall be the goal of the Attorney Gen-
 10 eral, the Secretary of Homeland Security, and the Direc-
 11 tor of the Executive Office for Immigration Review to use
 12 the amounts appropriated pursuant to subsection (d) to
 13 bring a prompt resolution to immigration cases pertaining
 14 to aliens who are inadmissible under section 212(a)(2) or
 15 237(a)(2) of the Immigration and Nationality Act (8
 16 U.S.C. 1182(a) and 1227(a)).

17 (b) EMERGENCY IMMIGRATION JUDGES.—

18 (1) DESIGNATION.—Not later than 14 days
 19 after the date of the enactment of this Act, the At-
 20 torney General shall designate up to 100 temporary
 21 immigration judges, for renewable 6-month terms,
 22 including by hiring retired immigration judges, mag-
 23 istrate judges, administrative law judges, or other
 24 qualified attorneys using the same criteria as applied
 25 to the hiring of permanent immigration judges.

1 (2) REQUIREMENT.—The Attorney General
2 shall ensure that sufficient immigration judge re-
3 sources are dedicated to achieving the goal described
4 in subsection (a).

5 (c) IMMIGRATION LITIGATION ATTORNEYS.—The
6 Secretary of Homeland Security shall hire 150 new immi-
7 gration litigation attorneys in the Field Legal Operations
8 of U.S. Immigration and Customs Enforcement to ensure
9 that the goal described in subsection (a) is achieved.

10 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
11 authorized to be appropriated \$100,000,000 to carry out
12 this section.

13 **SEC. 5. REPORTING REQUIREMENTS.**

14 (a) REPORT REQUIRED.—Not later than 180 days
15 after the date of the enactment of this Act, and annually
16 thereafter, the Secretary of Homeland Security shall sub-
17 mit a report to the Committee on the Judiciary of the Sen-
18 ate and the Committee on the Judiciary of the House of
19 Representatives that includes the information specified in
20 subsection (b).

21 (b) CONTENTS.—The report required under sub-
22 section (a) shall describe—

23 (1) the number of aliens currently present in
24 the United States who have ever been arrested for
25 a criminal offense;

1 (2) the number of aliens currently present in
2 the United States who have ever been convicted of
3 a criminal offense;

4 (3) the number of aliens with final orders of re-
5 moval who are currently present in the United
6 States and of such aliens—

7 (A) how many have ever been arrested for
8 any criminal offense; and

9 (B) how many have ever been convicted for
10 any criminal offense;

11 (4) the number of detainers that were issued by
12 the Department of Homeland Security during the
13 previous fiscal year and the number of such detain-
14 ers that were honored; and

15 (5) during the previous fiscal year—

16 (A) the number of aliens who were de-
17 ported not later than 90 days after being de-
18 tained by U.S. Immigration and Customs En-
19 forcement, as required under section 239(d)(3)
20 of the Immigration and Nationality Act (8
21 U.S.C. 1229(d)) and the criminal offenses of
22 such aliens;

23 (B) of the aliens who should have been de-
24 ported under such section and were not de-
25 ported within 90 days of detention—

1 (i) the reasons the aliens were not de-
2 ported; and

3 (ii) the criminal offenses of such
4 aliens; and

5 (C) of the aliens who were released from
6 the custody of U.S. Immigration and Customs
7 Enforcement and not deported—

8 (i) the number of such aliens;

9 (ii) the criminal offenses committed
10 by such aliens;

11 (iii) the conditions of their release;

12 (iv) the number of aliens who com-
13 mitted a crime after being released from
14 custody; and

15 (v) a list of crimes committed by such
16 aliens.

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