

Calendar No. 338

115TH CONGRESS
2D SESSION**S. 2464**

To improve border security and to provide conditional provision residence to certain long-term residents who entered the United States as children.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2018

Mr. FLAKE (for himself and Ms. HEITKAMP) introduced the following bill;
which was read the first time

FEBRUARY 28, 2018

Read the second time and placed on the calendar

A BILL

To improve border security and to provide conditional provision residence to certain long-term residents who entered 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Three-Year Border and DACA Extension Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—BORDER SECURITY

Sec. 101. Authorization of appropriations.

Sec. 102. Operations and support.

TITLE II—DACA EXTENSION

Sec. 201. Provisional protected presence for young individuals.

1 **TITLE I—BORDER SECURITY**

2 **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

3 There is authorized to be appropriated a total of
 4 \$7,639,000,000 to the Department of Homeland Security
 5 for fiscal years 2018 through 2020 for the purpose of im-
 6 proving border security.

7 **SEC. 102. OPERATIONS AND SUPPORT.**

8 (a) PURPOSE.—It is the purpose of this section to
 9 establish a Border Security Enforcement Fund (referred
 10 to in this section as the “Fund”), to be administered
 11 through the Department of Homeland Security and, in fis-
 12 cal year 2018 only, through the Department of State, to
 13 provide for costs necessary to implement this Act and
 14 other Acts related to border security for activities, includ-
 15 ing—

16 (1) constructing, installing, deploying, oper-
 17 ating, and maintaining tactical infrastructure and
 18 technology in the vicinity of the United States bor-
 19 der—

20 (A) to achieve situational awareness and
 21 operational control of the border; and

1 (B) to deter, impede, and detect illegal ac-
2 tivity in high traffic areas; and

3 (C) to implement other border security
4 provisions under this section;

5 (2) implementing port of entry provisions under
6 this section;

7 (3) purchasing new aircraft, vessels, spare
8 parts, and equipment to operate and maintain such
9 craft; and

10 (4) hiring and recruitment.

11 (b) FUNDING.—There are appropriated, to the Fund,
12 out of any monies in the Treasury not otherwise appro-
13 priated, a total of \$7,639,000,000, as follows:

14 (1) For fiscal year 2018, \$2,947,000,000, to re-
15 main available through fiscal year 2022.

16 (2) For fiscal year 2019, \$2,225,000,000, to re-
17 main available through fiscal year 2023.

18 (3) For fiscal year 2020, \$2,467,000,000, to re-
19 main available through fiscal year 2024.

20 (c) PHYSICAL BARRIERS.—

21 (1) IN GENERAL.—In each of the following fis-
22 cal years, the Secretary of Homeland Security shall
23 transfer, from the Fund to the U.S. Customs and
24 Border Protection—Procurement, Construction and
25 Improvements account, for the purpose of con-

1 structing, replacing, or planning physical barriers
2 along the United States land border, a total of
3 \$5,013,000,000, as follows:

4 (A) For fiscal year 2018, \$1,571,000,000.

5 (B) For fiscal year 2019, \$1,600,000,000.

6 (C) For fiscal year 2020, \$1,842,000,000.

7 (2) AVAILABILITY OF FUNDS.—Notwith-
8 standing section 1552(a) of title 31, United States
9 Code, any amounts obligated for the purposes de-
10 scribed in paragraph (1) shall remain available for
11 disbursement until expended.

12 (d) TRANSFER AUTHORITY.—Other than the
13 amounts transferred by the Secretary of Homeland Secu-
14 rity and the Secretary of State pursuant to subsections
15 (b) and (c), the Committee on Appropriations of the Sen-
16 ate and the Committee on Appropriations of the House
17 of Representatives may provide for the transfer of
18 amounts in the Fund for each fiscal year to eligible activi-
19 ties under this section, including—

20 (1) for the purpose of constructing, replacing,
21 or planning for physical barriers along the United
22 States land border; or

23 (2) for any of the activities described in sub-
24 section (a).

1 (e) USE OF FUND.—If the Committee on Appropria-
2 tions of the Senate and the Committee on Appropriations
3 of the House of Representatives do not provide for the
4 transfer of funds in a full-year appropriation in any fiscal
5 year in accordance with subsection (d), the Secretary of
6 Homeland Security shall transfer amounts in the Fund
7 to accounts within the Department of Homeland Security
8 for eligible activities under this section, including not less
9 than the amounts specified in subsection (c) for the pur-
10 pose of constructing, replacing, or planning for physical
11 barriers along the United States land border.

12 (f) BUDGET REQUEST.—A request for the transfer
13 of amounts in the Fund under this section—

14 (1) shall be included in each budget for a fiscal
15 year submitted by the President under section 1105
16 of title 31, United States Code; and

17 (2) shall detail planned obligations by program,
18 project, and activity in the receiving account at the
19 same level of detail provided for in the request for
20 other appropriations in that account.

21 (g) REPORTING REQUIREMENT.—At the beginning of
22 fiscal year 2019, and annually thereafter until the funding
23 made available under this title has been expended, the Sec-
24 retary of Homeland Security shall submit a report to the
25 Committee on Homeland Security and Governmental Af-

1 fairs of the Senate, the Committee on the Judiciary of the
 2 Senate, the Committee on Homeland Security of the
 3 House of Representatives, and the Committee on the Judi-
 4 ciary of the House of Representatives that describes—

5 (1) the status of border security in the United
 6 States; and

7 (2) the amount planned to be expended on bor-
 8 der security during the upcoming fiscal year, broken
 9 down by project and activity.

10 **TITLE II—DACA EXTENSION**

11 **SEC. 201. PROVISIONAL PROTECTED PRESENCE FOR** 12 **YOUNG INDIVIDUALS.**

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

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

17 “(a) DEFINITIONS.—In this section:

18 “(1) DACA RECIPIENT.— The term ‘DACA
 19 recipient’ means an alien who is in deferred action
 20 status on the date of the enactment of this section
 21 pursuant to the Deferred Action for Childhood Ar-
 22 rivals (‘DACA’) Program announced on June 15,
 23 2012.

24 “(2) FELONY.—The term ‘felony’ means a Fed-
 25 eral, State, or local criminal offense (excluding a

1 State or local offense for which an essential element
 2 was the alien’s immigration status) punishable by
 3 imprisonment for a term exceeding 1 year.

4 “(3) MISDEMEANOR.—The term ‘misdemeanor’
 5 means a Federal, State, or local criminal offense
 6 (excluding a State or local offense for which an es-
 7 sential element was the alien’s immigration status, a
 8 significant misdemeanor, and a minor traffic of-
 9 fense) for which—

10 “(A) the maximum term of imprisonment
 11 is greater than five days and not greater than
 12 1 year; and

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

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

17 “(5) SIGNIFICANT MISDEMEANOR.—The term
 18 ‘significant misdemeanor’ means a Federal, State, or
 19 local criminal offense (excluding a State or local of-
 20 fense for which an essential element was the alien’s
 21 immigration status) for which the maximum term of
 22 imprisonment is greater than 5 days and not greater
 23 than 1 year that—

24 “(A) regardless of the sentence imposed, is
 25 a crime of domestic violence (as defined in sec-

tion 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

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—

6 “(A) files an application demonstrating
7 that he or she meets the eligibility criteria
8 under subsection (c); and

9 “(B) pays the appropriate application fee;

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

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

16 “(c) ELIGIBILITY CRITERIA.—An alien is eligible for
17 provisional protected presence and employment authoriza-
18 tion under this section if the alien—

19 “(1) was born after June 15, 1981;

20 “(2) entered the United States before reaching
21 16 years of age;

22 “(3) continuously resided in the United States
23 between June 15, 2007, and the date on which the
24 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) 3 or more misdemeanors not occur-
25 ring 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 employment authorization pro-
8 vided under this section shall be effective until the date
9 that is 3 years after the date of the enactment of the
10 Three-Year Border and DACA Extension Act.

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

13 “(1) IN GENERAL.—An alien granted provi-
14 sional protected presence is not considered to be un-
15 lawfully present in the United States during the pe-
16 riod beginning on the date such status is granted
17 and ending on the date described in subsection (d).

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

22 “(f) APPLICATION.—

23 “(1) AGE REQUIREMENT.—

24 “(A) IN GENERAL.—An alien who has
25 never been in removal proceedings, or whose

1 proceedings have been terminated before mak-
2 ing a request for provisional protected presence,
3 shall be at least 15 years old on the date on
4 which the alien submits an application under
5 this section.

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

12 “(2) APPLICATION FEE.—

13 “(A) IN GENERAL.—The Secretary may re-
14 quire aliens applying for provisional protected
15 presence and employment authorization under
16 this section to pay a reasonable fee that is com-
17 mensurate with the cost of processing the appli-
18 cation.

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

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

24 “(II) received total income during the
25 12-month period immediately preceding the

1 date on which the alien files an application
2 under this section that is less than 150
3 percent of the United States poverty level;
4 and

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

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

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

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

19 “(iv)(I) as of the date on which the
20 alien files an application under this sec-
21 tion, has accumulated \$10,000 or more in
22 debt in the past 12 months as a result of
23 unreimbursed medical expenses incurred by
24 the alien or an immediate family member
25 of 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) ALIENS NOT IN IMMIGRATION DETEN-
13 TION.—An alien who is not in immigration deten-
14 tion, but who is in removal proceedings, is the sub-
15 ject of a final removal order, or is the subject of a
16 voluntary departure order, may apply for provisional
17 protected presence under this section if the alien ap-
18 pears *prima facie* eligible for provisional protected
19 presence.

20 “(5) ALIENS IN IMMIGRATION DETENTION.—
21 The Secretary shall provide any alien in immigration
22 detention, including any alien who is in removal pro-
23 ceedings, is the subject of a final removal order, or
24 is the subject of a voluntary departure order, who
25 appears *prima facie* eligible for provisional protected

1 presence, upon request, with a reasonable oppor-
2 tunity to apply for provisional protected presence
3 under this section.

4 “(6) CONFIDENTIALITY.—

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

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

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

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

4 “(ii) to identify or prevent fraudulent
5 claims;

6 “(iii) for national security purposes;
7 and

8 “(iv) for the investigation or prosecu-
9 tion of any felony not related to immigra-
10 tion status.

11 “(7) ACCEPTANCE OF APPLICATIONS.—Not
12 later than 60 days after the date of the enactment
13 of the Three-Year Border and DACA Extension Act,
14 the Secretary shall begin accepting applications for
15 provisional protected presence and employment au-
16 thorization.

17 “(g) RESCISSION OF PROVISIONAL PROTECTED
18 PRESENCE.—The Secretary may not rescind an alien’s
19 provisional protected presence or employment authoriza-
20 tion granted under this section unless the Secretary deter-
21 mines that the alien—

22 “(1) has been convicted of—

23 “(A) a felony;

24 “(B) a significant misdemeanor; or

1 “(C) 3 or more misdemeanors not occur-
2 ring on the same date and not arising out of
3 the same act, omission, or scheme of mis-
4 conduct;

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

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

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

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

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

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

22 “(i) TREATMENT OF EXPUNGED CONVICTIONS.—For
23 purposes of subsections (c)(7) and (g)(1), an expunged
24 conviction shall not automatically be treated as a disquali-
25 fying felony, significant misdemeanor, or misdemeanor,

1 but shall be evaluated on a case-by-case basis according
2 to the nature and severity of the offense to determine
3 whether, under the particular circumstances, the alien
4 should be eligible for provisional protected presence under
5 this section.

6 “(j) EFFECT OF DEFERRED ACTION UNDER DE-
7 FERRED ACTION FOR CHILDHOOD ARRIVALS PROGRAM.—

8 “(1) PROVISIONAL PROTECTED PRESENCE.—A
9 DACA recipient is deemed to have provisional pro-
10 tected presence under this section through the expi-
11 ration date of the alien’s deferred action status, as
12 specified by the Secretary in conjunction with the
13 approval of the alien’s DACA application.

14 “(2) EMPLOYMENT AUTHORIZATION.—If a
15 DACA recipient has been granted employment au-
16 thorization by the Secretary in addition to deferred
17 action, the employment authorization shall continue
18 through the expiration date of the alien’s deferred
19 action status, as specified by the Secretary in con-
20 junction with the approval of the alien’s DACA ap-
21 plication.

22 “(3) EFFECT OF APPLICATION.—If a DACA re-
23 cipient files an application for provisional protected
24 presence under this section not later than the expi-
25 ration date of the alien’s deferred action status, as

1 specified by the Secretary in conjunction with the
2 approval of the alien's DACA application, the alien's
3 provisional protected presence, and any employment
4 authorization, shall remain in effect pending the ad-
5 judication of such application.”.

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

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

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