

115TH CONGRESS  
1ST SESSION

# S. 128

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

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## 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

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## 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 “Bar Removal of Indi-  
5       viduals who Dream and Grow our Economy Act” or the  
6       “BRIDGE Act”.

1 **SEC. 2. PROVISIONAL PROTECTED PRESENCE FOR YOUNG**  
2 **INDIVIDUALS.**

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

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

7 “(a) DEFINITIONS.—In this section:

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

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

18 “(3) MISDEMEANOR.—The term ‘misdemeanor’  
19 means a Federal, State, or local criminal offense  
20 (excluding a State or local offense for which an es-  
21 sential element was the alien’s immigration status, a  
22 significant misdemeanor, and a minor traffic of-  
23 fense) for which—

24 “(A) the maximum term of imprisonment  
25 is greater than five days and not greater than  
26 one year; and

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

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

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

12           “(A) regardless of the sentence imposed, is  
13          a crime of domestic violence (as defined in sec-  
14          tion 237(a)(2)(E)(i)) or an offense of sexual  
15          abuse or exploitation, burglary, unlawful posses-  
16          sion or use of a firearm, drug distribution or  
17          trafficking, or driving under the influence if the  
18          State law requires, as an element of the offense,  
19          the operation of a motor vehicle and a finding  
20          of impairment or a blood alcohol content of .08  
21          or higher; or

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

1           “(6) THREAT TO NATIONAL SECURITY.—An  
2 alien is a ‘threat to national security’ if the alien  
3 is—

4                   “(A) inadmissible under section 212(a)(3);

5           or

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

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

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

13                   “(B) has engaged in a continuing criminal  
14 enterprise (as defined in section 408(c) of the  
15 Comprehensive Drug Abuse Prevention and  
16 Control Act of 1970 (21 U.S.C. 848(c))).

17           “(b) AUTHORIZATION.—The Secretary—

18                   “(1) shall grant provisional protected presence  
19 to an alien who files an application demonstrating  
20 that he or she meets the eligibility criteria under  
21 subsection (c) and pays the appropriate application  
22 fee;

23                   “(2) may not remove such alien from the  
24 United States during the period in which such provi-

1 sional protected presence is in effect unless such sta-  
2 tus is rescinded pursuant to subsection (g); and

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

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

8 “(1) was born after June 15, 1981;

9 “(2) entered the United States before attaining  
10 16 years of age;

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

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

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

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

21 “(A) is enrolled in school or in an edu-  
22 cation program assisting students in obtaining  
23 a regular high school diploma or its recognized  
24 equivalent under State law, or in passing a gen-

1 eral educational development exam or other  
2 State-authorized exam;

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

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

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

10 “(7) has not been convicted of—

11 “(A) a felony;

12 “(B) a significant misdemeanor; or

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

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

19 “(d) DURATION OF PROVISIONAL PROTECTED PRES-  
20 ENCE AND EMPLOYMENT AUTHORIZATION.—Provisional  
21 protected presence and the employment authorization pro-  
22 vided under this section shall be effective until the date  
23 that is three years after the date of the enactment of this  
24 section.

1       “(e) STATUS DURING PERIOD OF PROVISIONAL PRO-  
2       TECTED PRESENCE.—

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

8               “(2) STATUS OUTSIDE PERIOD.—The granting  
9       of provisional protected presence under this section  
10      does not excuse previous or subsequent periods of  
11      unlawful presence.

12      “(f) APPLICATION.—

13              “(1) AGE REQUIREMENT.—

14                      “(A) IN GENERAL.—An alien who has  
15      never been in removal proceedings, or whose  
16      proceedings have been terminated before mak-  
17      ing a request for provisional protected presence,  
18      shall be at least 15 years old on the date on  
19      which the alien submits an application under  
20      this section.

21                      “(B) EXCEPTION.—The age requirement  
22      set forth in subparagraph (A) shall not apply to  
23      an alien who, on the date on which the alien ap-  
24      plies for provisional protected presence, is in re-

1 removal proceedings, has a final removal order, or  
2 has a voluntary departure order.

3 “(2) APPLICATION FEE.—

4 “(A) IN GENERAL.—The Secretary may re-  
5 quire aliens applying for provisional protected  
6 presence and employment authorization under  
7 this section to pay a reasonable fee that is com-  
8 mensurate with the cost of processing the appli-  
9 cation.

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

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

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

21 “(III) is in foster care or otherwise  
22 lacking any parental or other familial sup-  
23 port;

24 “(ii) is younger than 18 years of age  
25 and is homeless;



1           “(iii)(I) cannot care for himself or  
2 herself because of a serious, chronic dis-  
3 ability; and

4           “(II) received total income during the  
5 12-month period immediately preceding the  
6 date on which the alien files an application  
7 under this section that is less than 150  
8 percent of the United States poverty level;  
9 or

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

17          “(II) received total income during the  
18 12-month period immediately preceding the  
19 date on which the alien files an application  
20 under this section that is less than 150  
21 percent of the United States poverty level.

22          “(3) REMOVAL STAYED WHILE APPLICATION  
23 PENDING.—The Secretary may not remove an alien  
24 from the United States who appears *prima facie* eli-  
25 gible for provisional protected presence while the

1 alien’s application for provisional protected presence  
2 is pending.

3 “(4) ALIENS NOT IN IMMIGRATION DETEN-  
4 TION.—An alien who is not in immigration deten-  
5 tion, but who is in removal proceedings, is the sub-  
6 ject of a final removal order, or is the subject of a  
7 voluntary departure order, may apply for provisional  
8 protected presence under this section if the alien ap-  
9 pears prima facie eligible for provisional protected  
10 presence.

11 “(5) ALIENS IN IMMIGRATION DETENTION.—  
12 The Secretary shall provide any alien in immigration  
13 detention, including any alien who is in removal pro-  
14 ceedings, is the subject of a final removal order, or  
15 is the subject of a voluntary departure order, who  
16 appears prima facie eligible for provisional protected  
17 presence, upon request, with a reasonable oppor-  
18 tunity to apply for provisional protected presence  
19 under this section.

20 “(6) CONFIDENTIALITY.—

21 “(A) IN GENERAL.—The Secretary shall  
22 protect information provided in applications for  
23 provisional protected presence under this sec-  
24 tion and in requests for consideration of DACA  
25 from disclosure to U.S. Immigration and Cus-

1           toms Enforcement and U.S. Customs and Bor-  
2           der Protection for the purpose of immigration  
3           enforcement proceedings.

4           “(B) REFERRALS PROHIBITED.—The Sec-  
5           retary may not refer individuals whose cases  
6           have been deferred pursuant to DACA or who  
7           have been granted provisional protected pres-  
8           ence under this section to U.S. Immigration  
9           and Customs Enforcement.

10          “(C) LIMITED EXCEPTION.—The informa-  
11          tion submitted in applications for provisional  
12          protected presence under this section and in re-  
13          quests for consideration of DACA may be  
14          shared with national security and law enforce-  
15          ment agencies—

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

19                 “(ii) to identify or prevent fraudulent  
20                 claims;

21                 “(iii) for national security purposes;  
22                 and

23                 “(iv) for the investigation or prosecu-  
24                 tion of any felony not related to immigra-  
25                 tion status.

1           “(7) ACCEPTANCE OF APPLICATIONS.—Not  
2 later than 60 days after the date of the enactment  
3 of this section, the Secretary shall begin accepting  
4 applications for provisional protected presence and  
5 employment authorization.

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

11           “(1) has been convicted of—

12           “(A) a felony;

13           “(B) a significant misdemeanor; or

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

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

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

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

24           “(h) TREATMENT OF BRIEF, CASUAL, AND INNO-  
25 CENT DEPARTURES AND CERTAIN OTHER ABSENCES.—

1 For purposes of subsections (c)(3) and (g)(4), an alien  
2 shall not be considered to have failed to continuously re-  
3 side in the United States due to—

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

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

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

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

21 “(1) PROVISIONAL PROTECTED PRESENCE.—A  
22 DACA recipient is deemed to have provisional pro-  
23 tected presence under this section through the expi-  
24 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.

3 “(2) EMPLOYMENT AUTHORIZATION.—If a  
4 DACA recipient has been granted employment au-  
5 thorization by the Secretary in addition to deferred  
6 action, the employment authorization shall continue  
7 through the expiration date of the alien’s deferred  
8 action status, as specified by the Secretary in con-  
9 junction with the approval of the alien’s DACA ap-  
10 plication.

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

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

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

○