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Unauthorized Childhood Arrivals: Legislative Activity in the 115th Congress

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March 22, 2018

Congressional Research Service

7-5700

www.crs.gov

R45139

Summary

Legislative activity in the 115th Congress on unauthorized childhood arrivals (foreign nationals who as children were brought to live in the United States by their parents or other adults) comes in response to a decision announced by the Trump Administration on September 5, 2017, to terminate the Deferred Action for Childhood Arrivals (DACA) policy. The DACA policy was established by the Obama Administration in 2012 to provide eligible individuals with temporary protection against removal from the United States and work authorization. Initial DACA grants were for two years and could be renewed in two-year increments.

Under the Trump Administration's DACA phase-out plan announced in September 2017, a DACA beneficiary whose grant of deferred action was due to expire on or before March 5, 2018, could submit a renewal request. A beneficiary whose DACA grant was due to expire after March 5, 2018, could not request a renewal and, thus, would lose DACA protection on the grant's expiration date. As of the date of this report, however, the Department of Homeland Security (DHS) continues to process requests to renew DACA, in accordance with federal court orders. According to DHS data, as of January 31, 2018, there were approximately 682,750 active DACA recipients.

Legislative proposals on unauthorized childhood arrivals in the 115th Congress build on related legislation introduced and considered in earlier Congresses. Past measures receiving action would have established a process for eligible unauthorized childhood arrivals to become U.S. lawful permanent residents (LPRs), who can live and work permanently in the United States. None of these measures were enacted. Bills introduced in the 115th Congress include measures to provide pathways to LPR status for certain unauthorized childhood arrivals, like the bills considered in past Congresses, as well as bills to provide more-limited DACA-like temporary protection from removal and employment authorization.

In February 2018, the Senate considered three proposals on unauthorized childhood arrivals as floor amendments to an unrelated bill (H.R. 2579). Each proposal would have established a pathway to LPR status for unauthorized childhood arrivals, although there were significant differences among them with respect to the eligible population, the legalization process and timeline, and the implications for the parents of beneficiaries. The Senate rejected motions to invoke cloture on any of the amendments. The House has not considered legislation on unauthorized childhood arrivals in the 115th Congress as of the date of this report.

Contents

Introduction	1
Legislative Activity Prior to the 115 th Congress.....	2
Legislative Activity in the 115 th Congress.....	3
Measures Providing Temporary Protection from Removal.....	3
Measures Providing Pathways to Lawful Permanent Residence	3
February 2018 Senate Floor Action	4
S.Amdt. 1955	5
S.Amdt. 1958	5
S.Amdt. 1959	6
Conclusion.....	8

Contacts

Author Contact Information	8
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Introduction

Unauthorized childhood arrivals is a general term used to describe foreign nationals who as children were brought to live in the United States by their parents or other adults. Sometimes referred to as *Dreamers*, they represent a subset of the larger unauthorized alien¹ population in the United States.² Many observers view them more sympathetically than other unauthorized aliens because they do not consider them responsible for their unlawful status, and they support establishing a process for them to obtain legal immigration status.³ Others, however, argue that unauthorized childhood arrivals should not be afforded any special treatment under the immigration system.⁴

Bills on unauthorized childhood arrivals have been introduced in the House and the Senate since the 107th Congress. Legislative activity in the 115th Congress comes in response to a decision announced by the Trump Administration on September 5, 2017, to terminate the Deferred Action for Childhood Arrivals (DACA) policy established by the Obama Administration in 2012. Under the DACA policy, the Department of Homeland Security (DHS) granted deferred action to certain individuals without lawful immigration status who met a set of requirements, including initially entering the United States before age 16, continuously residing in the country since June 15, 2007, and being under age 31 as of June 15, 2012 (i.e., having a birthdate after June 15, 1981). DACA applicants also had to meet educational requirements (i.e., enrolled in school, completed high school, or obtained a general education development (GED) certificate) or military requirements (i.e., honorably discharged from the U.S. Armed Forces⁵), and were subject to specified criminal and security-related ineligibilities. Individuals granted deferred action under the DACA policy received protection against removal from the United States and could also receive work authorization. Initial DACA grants were for two years and could be renewed in two-year increments.⁶

Under the Trump Administration's DACA phase-out plan, as presented by DHS in September 2017, a DACA beneficiary whose grant of deferred action was due to expire on or before March 5, 2018, could submit a renewal request. A beneficiary whose DACA grant was due to expire after March 5, 2018, could not request a renewal and, thus, would lose DACA protection on the grant's expiration date. As of the date of this report, however, DHS continues to process requests

¹ *Alien* is a term used in immigration law to describe a person who is not a citizen or national of the United States. It is synonymous with *foreign national*.

² According to a preliminary estimate by the Pew Research Center, there were about 11.3 million unauthorized aliens living in the United States in 2016; Jens Manuel Krogstad, Jeffrey S. Passel, and D'Vera Cohn, *5 facts about illegal immigration in the U.S.*, Pew Research Center, April 27, 2017. The latest estimate from the Department of Homeland Security puts the 2014 resident unauthorized population at about 12.1 million; U.S. Department of Homeland Security, Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2014*, by Bryan C. Baker, July 2017. Analogous estimates of the "Dreamer" population are not available. There is no common definition of "Dreamer." Instead, Dreamer-related estimates tend to be tied to particular bills or proposals based on their specific eligibility criteria.

³ See, for example, "Dreamers deserve to stay," [Charleston, SC] *Post and Courier*, January 2, 2018, https://www.postandcourier.com/opinion/editorials/dreamers-deserve-to-stay/article_2dc95b48-ea5a-11e7-a311-53e107782eac.html.

⁴ See, for example, Miriam Jordan, "Most Americans Want Legal Status for 'Dreamers.' These People Don't," *New York Times*, January 25, 2008, <https://www.nytimes.com/2018/01/25/us/dreamers-opponents-daca-deal.html>.

⁵ *Armed Forces*, as defined in 10 U.S.C. §101(a)(4), means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

⁶ See CRS Report R44764, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*.

to renew DACA, in accordance with federal court orders.⁷ According to data published by DHS's U.S. Citizenship and Immigration Services (USCIS) in February 2018, the agency had approved a cumulative total of 807,447 initial DACA requests through January 31, 2018. As of that same date, there were approximately 682,750 active DACA recipients.⁸

In January 2018, the White House produced a “legislative framework” for immigration reform.⁹ As part of that framework, the Trump Administration called on Congress to “provide legal status for DACA recipients and other DACA-eligible illegal immigrants.”¹⁰ Against this backdrop, the Senate considered several immigration proposals containing provisions on unauthorized childhood arrivals in February 2018. The House has not considered legislation on unauthorized childhood arrivals in the 115th Congress as of the date of this report.

Legislative Activity Prior to the 115th Congress

Legislative proposals on unauthorized childhood arrivals in the 115th Congress build on related legislation introduced and considered in earlier Congresses. Measures receiving legislative action prior to the 115th Congress would have enabled eligible unauthorized childhood arrivals to become U.S. lawful permanent residents (LPRs).¹¹ Under most of these proposals, individuals meeting an initial set of criteria would have been granted some type of conditional or transitional legal status and then, after meeting additional criteria, would have been granted full-fledged LPR status. In the past, legislation proposing such a pathway to LPR status for unauthorized childhood arrivals was often referred to as the *DREAM Act*, whether or not a particular measure carried the bill title associated with that acronym (i.e., the Development, Relief, and Education for Alien Minors Act).¹²

Congressional action to grant LPR status to certain unauthorized childhood arrivals dates to the early 2000s. The Senate Judiciary Committee reported different *DREAM Act* bills in the 107th Congress (S. 1291) and the 108th Congress (S. 1545). Neither bill saw further action.¹³

Since then, legislative proposals on unauthorized childhood arrivals have been introduced as both stand-alone bills and parts of larger immigration reform bills. While some of these measures have seen legislative action, none have been enacted. In the 109th Congress, the Senate passed a comprehensive immigration reform bill with a *DREAM Act* title (S. 2611); the House did not consider that bill. In the 110th Congress, there were unsuccessful efforts in the Senate to invoke

⁷ See U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction*, <https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction>.

⁸ These data are available at Department of Homeland Security, U.S. Citizenship and Immigration Services, Immigration and Citizenship Data, <https://www.uscis.gov/tools/reports-studies/immigration-forms-data>, under the “DACA” tab.

⁹ Statement from the Press Secretary on Immigration, January 24, 2018, <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-21/>.

¹⁰ *White House Framework on Immigration Reform & Border Security*, fact sheet, January 25, 2018, <https://www.whitehouse.gov/briefings-statements/white-house-framework-immigration-reform-border-security/>.

¹¹ *U.S. lawful permanent residents* (LPRs), also known as *immigrants* and *green card holders*, are foreign nationals who can live and work permanently in the United States. They can apply for U.S. citizenship under the naturalization provisions in the Immigration and Nationality Act (INA; Act of June 27, 1952, ch. 477, codified, as amended, at 8 U.S.C. §§1101 et seq.).

¹² In this report, the term *DREAM Act* is used to refer only to measures with the associated title.

¹³ See archived CRS Report RL31365, *Unauthorized Alien Students: Legislation in the 107th and 108th Congresses*.

cloture on a comprehensive immigration reform proposal that included a DREAM Act title (S. 1639) and to invoke cloture on a motion to proceed to a stand-alone DREAM Act bill (S. 2205).¹⁴

More recently, the House approved DREAM Act language as part of an unrelated bill in the 111th Congress (H.R. 5281); the Senate rejected a motion to invoke cloture on a motion to agree to the House-passed DREAM Act amendment. In the 113th Congress, the Senate passed a comprehensive immigration reform bill with DREAM Act provisions (S. 744); the House did not consider that bill.¹⁵

Legislative Activity in the 115th Congress

A number of bills have been introduced in the 115th Congress to provide immigration relief to unauthorized childhood arrivals. Some of these measures would provide a pathway to LPR status, like the bills considered in past Congresses, while others would provide DACA-like temporary protection from removal and employment authorization. In February 2018, the Senate considered three proposals on unauthorized childhood arrivals on the Senate floor. All three included a pathway to LPR status for successful applicants, although the particular provisions in the proposals differed. The discussion in this section is limited to provisions on unauthorized childhood arrivals in the relevant measures. It does not address any other provisions in these measures.

Measures Providing Temporary Protection from Removal

Legislation has been introduced in the 115th Congress that would provide temporary protection from removal and employment authorization to certain unauthorized childhood arrivals. For example, one proposal¹⁶ would enable individuals who, on the date of enactment, have DACA protection and associated work authorization and meet additional requirements to obtain a new status that would afford them temporary protection from removal and work authorization. The new status would be granted for an initial period of three years and could be renewed in three-year increments.

Another proposal, which has been included in several bills,¹⁷ would similarly provide eligible applicants with a new form of temporary protection from removal and employment authorization but would do so for a more-limited period of time (for three years after the date of enactment). It, however, would not apply only to current DACA recipients. Containing eligibility requirements broadly similar to those for DACA, this proposal would make temporary protection from removal and employment authorization available to DACA-eligible individuals who may never have applied for DACA protection.

Measures Providing Pathways to Lawful Permanent Residence

Multiple bills have been introduced in the 115th Congress to establish special pathways to LPR status for certain unauthorized childhood arrivals.¹⁸ With some exceptions, these bills would first

¹⁴ See archived CRS Report R43335, *Unauthorized Alien Students: Legislation in the 109th and 110th Congresses*. For general information about cloture, see CRS Report 98-425, *Invoking Cloture in the Senate*.

¹⁵ See archived CRS Report RL33863, *Unauthorized Alien Students: Issues and “DREAM Act” Legislation*.

¹⁶ See H.R. 4760, Div. D, as introduced in the 115th Congress.

¹⁷ See S. 127, S. 128/H.R. 496, S. 2192, Title IV, and S. 2464, Title II, as introduced in the 115th Congress.

¹⁸ These bills include H.R. 1468, H.R. 3440/S. 1615, H.R. 3591, H.R. 4796, S. 1852, S. 2199, and S. 2367, as (continued...)

grant lawful permanent resident status on a conditional basis (conditional permanent resident status)¹⁹ to unauthorized childhood arrivals who meet an initial set of requirements. In most cases, these requirements would include continuous presence in the United States since a specified date, initial U.S. entry before a specified age, specified educational (or in some cases, work or military) activity, and background checks, among others. All the bills would cover some individuals who do not satisfy the original DACA eligibility requirements concerning presence and age. The DACA policy, as noted, requires U.S. continuous residence since June 15, 2007, initial U.S. entry before age 16, and a birthdate after June 15, 1981. In contrast, some of the bills would require continuous presence since 2012, while others include later cutoff dates. Some of the bills would require initial entry before age 16, while others would require initial entry before age 18. Most would not set a maximum eligibility age.

Under the bills, aliens initially granted conditional permanent resident status would need to satisfy additional criteria in order to extend their conditional status (in the case of bills with two conditional periods) and to have the conditional basis of their status removed and become full-fledged LPRs (in the case of all bills providing LPR pathways). The particular criteria in the bills differ, but in most cases, at either the conditional period extension stage or the condition removal stage, they include some number of years of education, military service, or work, among other requirements.

The bills also differ with respect to the length of their pathways to LPR status. For example, they would grant conditional permanent resident status for varying numbers of years. In addition, some bills would specify that an alien must be in conditional status for a minimum number of years before applying to remove the condition on his or her status and becoming a full-fledged LPR. Other bills include no such time requirements.

The bills include various provisions regarding residence requirements for naturalization, the process by which an LPR becomes a U.S. citizen. Under the Immigration and Nationality Act (INA), an alien typically has to reside in the United States in LPR status for five years before applying for U.S. citizenship.²⁰ Among the related provisions in some bills are sections stating that time in conditional permanent resident status would count toward the LPR residence requirement for naturalization.

February 2018 Senate Floor Action

In February 2018, the Senate considered four immigration proposals as floor amendments to an unrelated bill, the Broader Options for Americans Act (H.R. 2579). Three of the amendments included language on unauthorized childhood arrivals. The Senate rejected motions to invoke cloture on any of the amendments.²¹

(...continued)

introduced in the 115th Congress.

¹⁹ Conditional permanent resident status is referenced in the INA. Under the INA, certain aliens obtaining lawful permanent resident status (such as certain alien spouses of U.S. citizens or LPRs and certain entrepreneurs) are considered to have obtained such status on a conditional basis. See INA §§216, 216a; 8 U.S.C. §§1186a, 1186b. Related DHS regulations can be found at 8 C.F.R. Part 216.

²⁰ The INA is Act of June 27, 1952, ch. 477, codified, as amended, at 8 U.S.C. §§1101 et seq. The residence requirements for naturalization are in INA §316, 8 U.S.C. §1427.

²¹ For general information about cloture, see CRS Report 98-425, *Invoking Cloture in the Senate*.

S.Amdt. 1955

S.Amdt. 1955 was entitled the Uniting and Securing America (USA) Act of 2018. Subtitle A contained provisions on unauthorized childhood arrivals.²² It was substantively identical to Title I of a Senate bill (S. 2367) and a House bill (H.R. 4796) of the same name.

S.Amdt. 1955 would have established a mechanism for certain unauthorized childhood arrivals to become LPRs, in most cases through a two-stage process. In stage 1, an applicant would have been able to obtain lawful permanent resident status on a conditional basis (conditional permanent resident status) by meeting requirements including continuous presence in the United States since December 31, 2013; initial U.S. entry before age 18; no inadmissibility under specified grounds in the INA²³ and no other specified criminal ineligibilities; and either college admission, high school graduation or the equivalent, or secondary school enrollment or the equivalent. Among the other stage 1 requirements, the applicant would have had to clear security and law enforcement background checks, undergo a medical examination, and register under the Military Selective Service Act, if applicable. Conditional permanent resident status would have been valid for eight years, unless extended, and would have been subject to termination.

In stage 2, a conditional permanent resident would have had to meet a second set of requirements in order to have the conditional basis of his or her status removed and become a full-fledged LPR. These stage 2 requirements would have included either (1) acquisition of a college degree, or completion of at least two years in a postsecondary vocational program or a program for a bachelor's or higher degree; (2) service in the uniformed services²⁴ for the obligatory period; or (3) employment for at least three years and at least 80% of the time the alien had valid employment authorization. Other stage 2 requirements would have included satisfaction of the English language and civics requirements for naturalization²⁵ and completion of security and law enforcement background checks.

Under S.Amdt. 1955, a conditional permanent resident could have applied to have the condition on his or her status removed at any time after meeting the stage 2 requirements. The time spent in conditional status would have counted as time in LPR status for purposes of naturalization, but the alien could not have applied for naturalization while in conditional status. In addition, the bill would have provided that an alien meeting all the stage 1 and stage 2 requirements at the time of submitting his or her initial application would have been granted full-fledged LPR status directly (without first being granted conditional status).

On February 15, 2018, the Senate voted (52-47) not to invoke cloture on S.Amdt. 1955.

S.Amdt. 1958

S.Amdt. 1958 was entitled the Immigration Security and Opportunity Act.²⁶ Section 2 of the amendment would have established a two-stage pathway to LPR status for certain unauthorized

²² Other subtitles addressed border security, immigration judges, and other immigration issues.

²³ The INA enumerates grounds, including criminal grounds and security grounds, on which aliens are inadmissible to the United States and thus are ineligible to receive visas from the Department of State or to be admitted to the United States by DHS.

²⁴ *Uniformed services*, as defined in 10 U.S.C. §101(a)(5), means the Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard); the commissioned corps of the National Oceanic and Atmospheric Administration; and the commissioned corps of the Public Health Service.

²⁵ See INA §312, 8 U.S.C. §1423.

²⁶ This amendment was considered on the Senate floor, as modified.

childhood arrivals.²⁷ To obtain conditional permanent resident status in stage 1, an alien would have had to either be a DACA recipient or meet a set of requirements. These requirements would have included continuous presence in the United States since June 15, 2012; initial U.S. entry before age 18; no inadmissibility under specified grounds in the INA and no other specified criminal ineligibilities; and either satisfaction of educational requirements like those under S.Amdt. 1955, or enlistment or service in the U.S. Armed Forces.²⁸

Among the other requirements for conditional status, a non-DACA recipient would have had to meet a maximum age requirement—having a birthdate after June 15, 1974—and to have paid or arranged to pay any applicable federal tax liability, as specified. As under S.Amdt. 1955, all stage 1 applicants would have had to clear security and law enforcement background checks, undergo a medical examination, and register under the Military Selective Service Act, if applicable. Conditional permanent resident status under S.Amdt. 1958 would have been valid for seven years, unless extended, and would have been subject to termination.

In order to have the conditional basis of his or her status removed and become a full-fledged LPR, a conditional permanent resident would have had to meet a second set of requirements. These stage 2 requirements would have included (1) acquisition of a college degree or completion of at least two years in a program for a bachelor’s or higher degree; (2) service in the uniformed services for at least two years, or, if the alien had been discharged, receipt of an honorable discharge; or (3) employment for at least three years and at least 75% of the time the alien had valid employment authorization. Other requirements would have included satisfaction of the English language and civics requirements for naturalization, completion of security and law enforcement background checks, payment or arrangement for payment of any applicable federal tax liability, and demonstration of good moral character during the entire conditional period.

Under S.Amdt. 1958, the time spent in conditional status would have counted as time in LPR status for purposes of naturalization. However, the amendment would have limited when beneficiaries could naturalize. In general, beneficiaries could not have been naturalized until 12 years after the date they received conditional permanent resident status. This period could have been reduced by up to two years for DACA recipients. S.Amdt. 1958 also would have limited the ability of the parents of its beneficiaries to obtain LPR status in the United States. The amendment would have specified that a parent could not obtain LPR status in the United States based on an immigrant petition filed by a child who received conditional permanent resident status if the parent had assisted in the child’s unlawful entry into the United States.

On February 15, 2018, the Senate voted (54-45) not to invoke cloture on S.Amdt. 1958.

S.Amdt. 1959

Provisions on unauthorized childhood arrivals comprised Title III of S.Amdt. 1959, the SECURE and SUCCEED Act.²⁹ Title III, named the SUCCEED Act, was broadly similar to a Senate bill of the same name (S. 1852), although there were some key differences between the two measures.

S.Amdt. 1959 would have established a two-stage process for certain unauthorized childhood arrivals to obtain LPR status. Applicants who met an initial set of requirements would have been

²⁷ Other sections of the amendment addressed border security and family-based immigration.

²⁸ *Armed Forces*, as defined in 10 U.S.C. §101(a)(4), means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

²⁹ Other titles addressed border security, family-based immigration, and other immigration issues.

granted conditional *temporary* resident status.³⁰ These requirements would have included continuous presence in the United States since June 15, 2012; initial U.S. entry before age 16; a birthdate after June 15, 1981; no inadmissibility under specified grounds in the INA and no other specified criminal ineligibilities; and educational or military requirements based on the applicant's age on the date of enactment. Regarding the latter, aliens under age 18 would have had to be enrolled in or attending school. The requirements for applicants age 18 or older would have included either admission to college, high school graduation or the equivalent, or enlistment or service in the U.S. Armed Forces.

As under one or both of the other amendments discussed, all applicants would also have needed to clear security and law enforcement background checks; undergo a medical examination; register under the Military Selective Service Act, if applicable; and pay or arrange to pay any applicable federal tax liability, as specified. In addition, S.Amdt. 1959 included some requirements to obtain conditional status that were not found in the other amendments. Among them, an applicant age 18 or older would have had to acknowledge being notified that if he or she violated a term of conditional temporary resident status, he or she would be ineligible for any immigration relief or benefits, with limited exceptions.

Conditional temporary resident status would have been valid for an initial period of seven years or until the alien turned 18, if longer, and would have been subject to termination. Conditional temporary residents would have been eligible for employment authorization and enlistment in the U.S. Armed Forces, and could have traveled outside the United States and been permitted to return.

Under S.Amdt. 1959, an alien's initial period of conditional temporary residence would have been extended for five years if the alien met additional requirements, which would have included (1) college graduation or college attendance for at least eight semesters, (2) service in the U.S. Armed Forces for at least three years, or (3) a combination of college attendance, military service, and/or employment, as specified, for at least four years.

After seven years in conditional temporary resident status, an alien could have obtained LPR status if he or she satisfied another set of requirements. These included satisfaction of the English language and civics requirements for naturalization, completion of security and law enforcement background checks, payment of any applicable federal tax liability, and demonstration of good moral character during the entire conditional period.

Like S.Amdt. 1958, S.Amdt. 1959 would have limited both the ability of its beneficiaries to naturalize and the ability of the family members of its beneficiaries to obtain lawful immigration status under existing law. The provisions in S.Amdt. 1959, however, were more restrictive than those in S.Amdt. 1958. An individual would have had to wait at least seven years after being granted LPR status to apply for naturalization. S.Amdt. 1959 would also have provided that a parent or other family member of an alien granted conditional temporary resident status or LPR status could not gain any status under the immigration laws based on a parental or other family relationship.

On February 15, 2018, the Senate voted (39-60) not to invoke cloture on S.Amdt. 1959.

³⁰ Unlike conditional permanent resident status, conditional temporary resident status is not an existing immigration status. Legislation establishing a new immigration status typically sets forth the terms of that status in the text.

Conclusion

Each proposal on unauthorized childhood arrivals considered on the Senate floor in February 2018 would have established a pathway to LPR status for eligible beneficiaries. At the same time, there were significant differences among the proposals with respect to the eligible population, the legalization process and timeline, and the implications for the parents of beneficiaries. In addition, the proposals were parts of larger measures that addressed other components of the immigration system in different ways. It remains to be seen whether the 115th Congress will take up other immigration measures with provisions on unauthorized childhood arrivals along the same lines as the Senate amendments or opt to consider alternative approaches.

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