

116TH CONGRESS
1ST SESSION

S. 166

To provide provisional protected presence status for certain aliens and to provide mandatory appropriations relating to border security.

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2019

Mr. GRAHAM introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide provisional protected presence status for certain aliens and to provide mandatory appropriations relating to border security.

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. PROVISIONAL PROTECTED PRESENCE.**

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

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

8 “(a) DEFINITIONS.—In this section:

9 “(1) DACA RECIPIENT.—The term ‘DACA re-
10 cipient’ means an alien who is in deferred action sta-

1 tus on the date of the enactment of this section pur-
2 suant to the Deferred Action for Childhood Arrivals
3 (‘DACA’) Program announced on June 15, 2012.

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

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

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

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

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

22 “(5) SIGNIFICANT MISDEMEANOR.—The term
23 ‘significant misdemeanor’ means a Federal, State, or
24 local criminal offense (excluding a State or local of-
25 fense for which an essential element was the alien’s

1 immigration status) for which the maximum term of
2 imprisonment is greater than five days and not
3 greater than one year that—

4 “(A) regardless of the sentence imposed, is
5 a crime of domestic violence (as defined in sec-
6 tion 237(a)(2)(E)(i)) or an offense of sexual
7 abuse or exploitation, burglary, unlawful posses-
8 sion or use of a firearm, drug distribution or
9 trafficking, or driving under the influence if the
10 State law requires, as an element of the offense,
11 the operation of a motor vehicle and a finding
12 of impairment or a blood alcohol content of .08
13 or higher; or

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

17 “(6) THREAT TO NATIONAL SECURITY.—An
18 alien is a ‘threat to national security’ if the alien
19 is—

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

21 or

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

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

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

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

9 “(b) AUTHORIZATION.—The Secretary—

10 “(1) shall grant provisional protected presence
11 to an alien who files an application demonstrating
12 that he or she meets the eligibility criteria under
13 subsection (c) and pays the appropriate application
14 fee;

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

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

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

24 “(1) was born after June 15, 1981;

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

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

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

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

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

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

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

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

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

1 “(7) has not been convicted of—

2 “(A) a felony;

3 “(B) a significant misdemeanor; or

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

8 “(8) is a DACA recipient; and

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

11 “(d) DURATION OF PROVISIONAL PROTECTED PRES-
12 ENCE AND EMPLOYMENT AUTHORIZATION.—Provisional
13 protected presence and the employment authorization pro-
14 vided under this section shall be effective until the date
15 that is three years after the date of the enactment of this
16 section.

17 “(e) STATUS DURING PERIOD OF PROVISIONAL PRO-
18 TECTED PRESENCE.—

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

24 “(2) STATUS OUTSIDE PERIOD.—The granting
25 of provisional protected presence under this section

1 does not excuse previous or subsequent periods of
2 unlawful presence.

3 “(f) APPLICATION.—

4 “(1) AGE REQUIREMENT.—

5 “(A) IN GENERAL.—An alien who has
6 never been in removal proceedings, or whose
7 proceedings have been terminated before mak-
8 ing a request for provisional protected presence,
9 shall be at least 15 years old on the date on
10 which the alien submits an application under
11 this section.

12 “(B) EXCEPTION.—The age requirement
13 set forth in subparagraph (A) shall not apply to
14 an alien who, on the date on which the alien ap-
15 plies for provisional protected presence, is in re-
16 moval proceedings, has a final removal order, or
17 has a voluntary departure order.

18 “(2) APPLICATION FEE.—

19 “(A) IN GENERAL.—The Secretary may re-
20 quire aliens applying for provisional protected
21 presence and employment authorization under
22 this section to pay a reasonable fee that is com-
23 mensurate with the cost of processing the appli-
24 cation.

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

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

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

12 “(III) is in foster care or otherwise
13 lacking any parental or other familial sup-
14 port;

15 “(ii) is younger than 18 years of age
16 and is homeless;

17 “(iii)(I) cannot care for himself or
18 herself because of a serious, chronic dis-
19 ability; and

20 “(II) received total income during the
21 12-month period immediately preceding the
22 date on which the alien files an application
23 under this section that is less than 150
24 percent of the United States poverty level;
25 or

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

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

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

19 “(4) ALIENS NOT IN IMMIGRATION DETEN-
20 TION.—An alien who is not in immigration deten-
21 tion, but who is in removal proceedings, is the sub-
22 ject of a final removal order, or is the subject of a
23 voluntary departure order, may apply for provisional
24 protected presence under this section if the alien ap-

1 appears prima facie eligible for provisional protected
2 presence.

3 “(5) ALIENS IN IMMIGRATION DETENTION.—

4 The Secretary shall provide any alien in immigration
5 detention, including any alien who is in removal pro-
6 ceedings, is the subject of a final removal order, or
7 is the subject of a voluntary departure order, who
8 appears prima facie eligible for provisional protected
9 presence, upon request, with a reasonable oppor-
10 tunity to apply for provisional protected presence
11 under this section.

12 “(6) CONFIDENTIALITY.—

13 “(A) IN GENERAL.—The Secretary shall
14 protect information provided in applications for
15 provisional protected presence under this sec-
16 tion and in requests for consideration of DACA
17 from disclosure to U.S. Immigration and Cus-
18 toms Enforcement and U.S. Customs and Bor-
19 der Protection for the purpose of immigration
20 enforcement proceedings.

21 “(B) REFERRALS PROHIBITED.—The Sec-
22 retary may not refer individuals whose cases
23 have been deferred pursuant to DACA or who
24 have been granted provisional protected pres-

1 ence under this section to U.S. Immigration
2 and Customs Enforcement.

3 “(C) LIMITED EXCEPTION.—The informa-
4 tion submitted in applications for provisional
5 protected presence under this section and in re-
6 quests for consideration of DACA may be
7 shared with national security and law enforce-
8 ment agencies—

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

12 “(ii) to identify or prevent fraudulent
13 claims;

14 “(iii) for national security purposes;
15 and

16 “(iv) for the investigation or prosecu-
17 tion of any felony not related to immigra-
18 tion status.

19 “(7) ACCEPTANCE OF APPLICATIONS.—Not
20 later than 60 days after the date of the enactment
21 of this section, the Secretary shall begin accepting
22 applications for provisional protected presence and
23 employment authorization.

24 “(g) RESCISSION OF PROVISIONAL PROTECTED
25 PRESENCE.—The Secretary may not rescind an alien’s

1 provisional protected presence or employment authoriza-
2 tion granted under this section unless the Secretary deter-
3 mines that the alien—

4 “(1) has been convicted of—

5 “(A) a felony;

6 “(B) a significant misdemeanor; or

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

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

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

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

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

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

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

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

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

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

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

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

1 action status, as specified by the Secretary in con-
2 junction with the approval of the alien’s DACA ap-
3 plication.

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

13 **“SEC. 244B. RENEWABLE PROVISIONAL PROTECTED PRES-**
14 **ENCE.**

15 “(a) IN GENERAL.—The Secretary of Homeland Se-
16 curity (referred to in this section as the ‘Secretary’) shall
17 grant provisional protected presence, for a period of 3
18 years and renewable indefinitely, to an alien who—

19 “(1) submits an application for such status to
20 the Secretary not later than 21 years after the first
21 day on which applications for such status are accept-
22 ed;

23 “(2) is admissible as an immigrant under this
24 Act at the time of examination for such status, ex-
25 cept that in the determination of the alien’s admissi-

1 bility for purposes of this section, the Secretary shall
2 apply the terms of section 244(c)(2)(A);

3 “(3) was granted temporary protected status or
4 deferred enforced departure on or before October 1,
5 2017;

6 “(4) has been continuously physically present in
7 the United States for a period of not less than 5
8 years immediately preceding the date of the enact-
9 ment of this section; and

10 “(5) has not been convicted of—

11 “(A) a felony; nor

12 “(B) 2 or more misdemeanors not occur-
13 ring on the same date and not arising out of
14 the same act, omission, or scheme of mis-
15 conduct.

16 “(b) PROCEDURES.—The Secretary shall establish a
17 procedure allowing eligible individuals to apply for the re-
18 lief available under this section without requiring place-
19 ment in removal proceedings. Such procedure shall provide
20 for the ability of a minor to apply for such relief, including
21 through a legal guardian or counsel.

22 “(c) APPLICATION FEE.—The Secretary may require
23 an alien applying for provisional protected presence under
24 this section to pay a reasonable fee that is commensurate
25 with the cost of processing the application.

1 “(d) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC
2 DATA.—The Secretary may not grant an alien provisional
3 protected presence under this section unless the alien sub-
4 mits biometric and biographic data, in accordance with
5 procedures established by the Secretary. The Secretary
6 shall provide an alternative procedure for aliens who are
7 unable to provide such biometric or biographic data be-
8 cause of a physical impairment.

9 “(e) BACKGROUND CHECKS.—

10 “(1) REQUIREMENT FOR BACKGROUND
11 CHECKS.—The Secretary shall use biometric, bio-
12 graphic, and other data that the Secretary deter-
13 mines appropriate—

14 “(A) to conduct security and law enforce-
15 ment background checks of an alien seeking
16 provisional protected presence under this sec-
17 tion; and

18 “(B) to determine whether there is any
19 criminal, national security, or other factor that
20 would render the alien ineligible for such status.

21 “(2) COMPLETION OF BACKGROUND CHECKS.—
22 The security and law enforcement background
23 checks of an alien required under paragraph (1)
24 shall be completed, to the satisfaction of the Sec-
25 retary, before the date on which the Secretary

1 grants such alien provisional protected presence
2 under this section.

3 “(3) CRIMINAL RECORDS REQUESTS.—The Sec-
4 retary, in cooperation with the Secretary of State,
5 shall seek to obtain information about any criminal
6 activity the alien engaged in, or for which the alien
7 was convicted in his or her country of nationality,
8 country of citizenship, or country of last habitual
9 residence, from INTERPOL, EUROPOL, or any
10 other international or national law enforcement
11 agency of the alien’s country of nationality, country
12 of citizenship, or country of last habitual residence.

13 “(f) TREATMENT OF BRIEF, CASUAL, AND INNOCENT
14 DEPARTURES.—For purposes of subsection (a)(4), an
15 alien shall not be considered to have failed to maintain
16 continuous residence in the United States by virtue of
17 brief, casual, and innocent absences from the United
18 States.”.

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

“Sec. 244A. Provisional protected presence.

“Sec. 244B. Renewable provisional protected presence.”.

1 **SEC. 2. MANDATORY APPROPRIATIONS.**

2 (a) IN GENERAL.—Notwithstanding any other provi-
3 sion of law, out of any funds in the Treasury not otherwise
4 appropriated, the Secretary of the Treasury shall transfer
5 to the Secretary of Homeland Security and the Attorney
6 General, as applicable, to remain available until ex-
7 pended—

8 (1) \$5,700,000,000 for U.S. Customs and Bor-
9 der Protection for procurement, construction, and
10 improvements;

11 (2) \$800,000,000 for urgent humanitarian
12 needs to ensure the well-being of individuals taken
13 into the custody of U.S. Customs and Border Pro-
14 tection, including for enhanced medical support,
15 transportation, consumable supplies, and additional
16 temporary facilities for processing and short-term
17 custody of vulnerable aliens;

18 (3) \$563,000,000 for the Executive Office for
19 Immigration Review to hire not fewer than 75 addi-
20 tional immigration judges and support staff to re-
21 duce the backlog of cases pending before the Execu-
22 tive Office for Immigration Review; and

23 (4) \$211,000,000 to hire not fewer than 750
24 additional Border Patrol Agents to safeguard and
25 secure the international borders of the United
26 States.

1 (b) RECEIPT AND ACCEPTANCE.—The Secretary of
2 Homeland Security and the Attorney General, as applica-
3 ble, shall be entitled to receive, shall accept, and shall use
4 the funds transferred under subsection (a) for the pur-
5 poses described in that subsection, without further appro-
6 priation.

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