

American Dream and Promise Act of 2021

THE ISSUE

The American Dream and Promise Act of 2021 (ADPA) resembles a subset of the radical U.S. Citizenship Act of 2021 and will be considered by Congress as a way to pass mass amnesty in a more piecemeal manner. This bill seeks to reward illegal aliens at the expense of American citizens. It is nothing less than a bold attempt to trade American national security, sovereignty, and well-being for perceived political benefit.

America deserves immigration laws that prioritize Americans, lawful immigrants, U.S. sovereignty, and national and economic security, not illegal aliens, smugglers, cartels, gangs, and breaking the law. The ADPA would increase both illegal and legal immigration, significantly increase agency and court backlogs, and lead to skyrocketing costs for the American taxpayer.

TITLE I, THE DREAM ACT: AMNESTY FOR ILLEGAL ALIENS WHO ENTERED AS CHILDREN

- Legalizes illegal aliens who are inadmissible or deportable; have Deferred Enforced Departure (DED); have Temporary Protected Status (TPS); or are children of “E” (substantial trade or investment), H-1B (specialty occupation), and “L” (intracompany transferees) visa holders on a conditional basis for 10 years if the alien:
 - Has been illegally present in the U.S. since January 1, 2021.
 - Was 18 years or younger when he or she entered the U.S.
 - Is not inadmissible because of health-related grounds, smuggling, student visa abuse, permanent ineligibility for citizenship, draft dodging, practicing polygamy, a guardian required to accompany a helpless alien, international child abduction, unlawful voting, renouncing U.S. citizenship to avoid taxation.
- However, the bill then waives most of these grounds for humanitarian purposes, family unity, or in the public interest, all of which are vague, over-broad standards that are often used to grant benefits.
 - This bill ignores many of the grounds of inadmissibility created by Congress in the Immigration and Nationality Act (INA). The immigration laws should not be treated as if it were a menu from which Members can pick and choose the ones that should apply and the ones that should not.
 - Each waiver creates more work for attorneys because an applicant will need to apply for the waiver, and an adjudicator will have to decide whether the applicant is eligible for the waiver. In addition to enriching immigration attorneys, this increases the backlogs at U.S. Customs and Immigration Services (USCIS) and in immigration court.
- Has not been involved in persecuting another individual.
- Is not barred from adjusting status based on criminal or national security grounds.

- Has been admitted to a college or area career and technical postsecondary school; has obtained a U.S. high school diploma or equivalent, a General Education Development (GED), a certificate from an area career and technical postsecondary school, or a recognized postsecondary credential; or is enrolled in secondary school or education program assisting students in obtaining a diploma, GED, certificate, or credential as described above.
- This Dream Act is far broader than giving green cards to the 869,000 DACA recipients who were required to enter the U.S. before 16 years of age.
- This encourages more parents to make the irresponsible and dangerous journey with their children or, worse, to send their children unaccompanied to enter the U.S. illegally
- The numbers of unaccompanied alien children crossing the border predictably skyrocketed after the Democrats passed the Unaccompanied Alien Child Protection Act, yet they refuse to close the loopholes they created. Instead, they continue to pursue political power on the backs of children by offering them more benefits and creating stronger pull factors.
- Permits U.S. Citizenship and Immigration Services to charge a fee no higher than \$495 to adjudicate the application, but also allows for a fee exemption.
- The Department of Homeland Security (DHS) must streamline the application process for DACA recipients and must not charge a fee for DACA recipients seeking conditional permanent resident status.
- If the DACA recipient adjusts to permanent resident status without condition, DHS may charge a fee, but the fee may be waived by DHS.
- Congress should not prescribe a dollar amount because it will have to relegislate in the future because of inflation and other changes. USCIS is best situated to determine an adjudication fee based on its costs.
- The more fees that are waived, the more other immigration benefit applicants must pay to cover the costs of waived fees. USCIS has estimated that the annual dollar amount of fee waivers increased from around \$344.3 million in fiscal year (FY) 2016 to \$367.9 million in FY 2017.
- Waives numerous misdemeanors, including crimes involving moral turpitude, trafficking in controlled substances, and prostitution.
- Limits ineligibility for gang activity if evidence of the activity is from a state or federal in-house or local database or a network of databases used for the purpose of recording and sharing activities of alleged gang members across law enforcement agencies.
- Requires DHS to notify the applicant twice of a provisional denial and specifies that the applicant has 90 days to respond.
- Requires DHS to reopen the application to the alien who shows good cause for failing to respond to the provisional notice of denial.
- Provides de novo judicial review of a denial by DHS and taxpayer-funded counsel.
- Prohibits removal of or the placing into removal proceedings of an alien 18 years

or younger and requires DHS to provide the alien with a reasonable opportunity to meet the educational requirements described above.

- Removes the conditional basis for lawful permanent resident status after the alien:
 - Obtained a degree from an institution of higher education or has completed at least two years of a program in the United States leading to a bachelor's degree or higher degree or a recognized postsecondary credential from an area career and technical education school providing education at the postsecondary level;
 - Served in the Uniformed Services for at least two years and, if discharged, received an honorable discharge; or
 - Demonstrates earned income for at least three years and had employment authorization for at least 75 percent of the time, or can have the three-year work requirement reduced by the period of enrollment in postsecondary school.
 - The alien can have this earned income/school requirement waived if the alien can show hardship due to disability, being a full-time care-giver, or the alien's removal would result in hardship to the alien or the alien's spouse, parent, or child who is a U.S. citizen or lawful permanent resident.
 - This hardship standard is much lower than that used elsewhere in the Immigration and Nationality Act (INA). Usually, the standard is "extreme hardship" or "exceptional and extremely unusual hardship." Also, Congress has removed the ability for the alien to show hardship to him or herself elsewhere in the

INA. Rather, the alien must show that his or her removal would be a hardship to a qualifying spouse, parent, or child.

- Permits aliens who have already met the education/military/earned income requirement and has an understanding of the English language and U.S. history and civics at the time of application to become a lawful permanent resident without a conditional basis.
- Permits illegal aliens to receive in-state tuition for higher education.
- Provides federal student loans to lawful permanent residents with a conditional basis.

TITLE II, THE AMERICAN PROMISE ACT: AMNESTY FOR TPS AND DED HOLDERS AND ELIGIBLES

- Legalizes an alien if the alien applies within three years; if (1) the alien is a national of a state that had a TPS designation on January 1, 2017, and (2) the individual had or was otherwise eligible for TPS on that date; or the alien was eligible for DED as of January 20, 2021.
 - Giving permanent residence to TPS holders ignores Congress's own intent for the program, the most obvious of which is that Congress made it "temporary."
- Limits the grounds of inadmissibility that would apply to such aliens and waives those limited grounds for humanitarian purposes, family unity, or the public interest.
- Requires DHS to charge an application fee that does not exceed \$1,140, but provides a fee exemption.
- Requires DHS to give an alien who appears eligible for this relief a "reasonable

opportunity” to apply and prohibits the alien’s removal until a final decision of ineligibility is rendered.

- Determining how long a “reasonable opportunity” is will result in frequent litigation.
- An alien’s removal will be prohibited for years as he or she exhausts an initial application, agency review of a denial, and judicial review.
- Any alien who submits an application under this act is eligible for advance parole and shall be given employment authorization.
 - These benefits encourage fraudulent applications by those who are ineligible for lawful permanent resident status under this act.

TITLE III, GENERAL PROVISIONS

- Aliens with final orders of removal can apply for benefits in the bill and do not have to file a motion to reopen, reconsider, or vacate the final removal order.
- Exempts fees for applicants who are 18 years old and younger; below 150 percent of the poverty line for the previous 12 months; in foster care or lack parental/familial support; or have a serious, chronic disability.
- Waives the physical presence requirement if the alien was removed during the Trump Administration and requires DHS to establish a process outside the U.S. for aliens to apply for these benefits.
 - The extensive due process of removal provided during the Trump Administration was the same process and administered by the same career officials and judges that applied during other Administrations. This provision demonstrates the sponsors’

attitude toward President Trump rather than the process.

- Requires U.S. taxpayers to pay for the return of aliens who went through due process and received a final order of removal.
- All aliens who receive these benefits are cap-exempt from the annual immigrant visa numerical limits.
 - Normally, the U.S. grants approximately 1 million green cards per year. This change would raise that number to unknown millions.
 - The increase in family-based immigration would increase chain migration, which provides green cards based on family relations rather than merit and the skills an immigrant brings to the U.S. economy. With the erroneous application of the Fourteenth Amendment to birthright citizenship, it would also allow the children born to those present in the country without citizenship to become U.S. citizens upon birth.
- Requires a process for administrative review of a denial of adjustment of status and provides judicial review of a denial.
 - Adding at least two additional layers of due process, including federal court review, increases court backlogs and keeps aliens in the U.S. years longer, achieving the illegal alien’s objective.
- Removal of an alien is stayed until a final decision is rendered that an alien is ineligible.
- With limited exceptions (to assist the applicant, identify or prevent fraudulent claims, national security, investigate or prosecute

felonies unrelated to immigration status), this bill repeats the irresponsible “red sheet” law from the 1986 amnesty program by preventing the sharing of application information with Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) and imposes a \$10,000 fine for such sharing of information.

- Despite the carve-out for identifying or preventing fraudulent claims, the addition of a fine will discourage USCIS staff from sharing application information with ICE, resulting in an unknown number of fraudulent applications.
- Establishes a grant program for organizations to assist in applying for these immigration benefits, preparing for the GED test, teaching civics and English as a second language, and the rights and responsibilities of U.S. citizenship.
 - U.S. taxpayer money should not be used to help illegal aliens apply for amnesty. Countless privately funded advocacy groups already exist to assist aliens. They should not also receive taxpayer funds.
 - An annual USCIS grant program to educate aliens on U.S. civics and citizenship already exists and should not be duplicated.
- Requires a \$25 surcharge in fees, except for exempted fees, for taxpayer-appointed counsel to appeal a denial to a judicial court.
 - U.S. immigration law has long and correctly stated that aliens can have legal representation, *but at no cost to the taxpayer*. It is sound policy: American taxpayers should not have to pay attorneys’ fees for immigration lawyers representing deportable aliens. It has also been good fiscal policy when aliens routinely drag out proceedings for years

with continuances, appeals, and motions to reconsider and reopen.

- With open-border policies and excessive court processes, funding legal counsel for any population of aliens would be bottomless fiscal pit.
- The \$25 surcharge on application fees would be a mere subsidy against the total cost of attorneys’ fees.
- It is irresponsible for Congress to enact this drastic fiscal change without knowing the total cost.
- This would treat non-Americans better than Americans, as Americans do not receive taxpayer-funded lawyers for civil proceedings.

THIS BILL:

- Provides green cards to untold millions of illegal immigrants living in the U.S.
 - Amnesty begets more illegal immigration, and thus more amnesties. It is an immoral solution to an immigration problem as it only encourages more individuals, particularly children, to make dangerous and illegal entry into the U.S.
 - This rewards illegal aliens for breaking the law.
 - The dates by which applicants must have been residing in the U.S. are meaningless. Illegal aliens won’t obey the dates, and fraudulent documents can easily overcome them. Previous amnesties have proven that document fraud is rampant and difficult to enforce in determining eligibility.
 - This tells future illegal aliens: Come to the U.S. illegally and you, too, will eventually get a green card.