



H.R. 6 - The Dream and Promise Act of 2021 Bars to Receiving Status¹

H.R. 6² would create a pathway to citizenship for people who came to the United States before January 1, 2021, who were 18 years old or under when they arrived, who have stayed in the United States since they arrived, and who meet an additional education, work, or military service requirement. It would also create a pathway to citizenship for people who have been present in the United States for at least 3 years and who on January 1, 2017 had or were eligible for Temporary Protected Status (TPS), which is a temporary protection from deportation based on dangerous conditions in their countries of origin (like war or natural disaster). The bill has two parts, one for each of these two groups of people, and imposes different eligibility requirements for each. This fact sheet will go over the bars to receiving status under each.

Title I - Dream Act of 2021

The Dream Act imposes several bars to receiving status.

First, a person must not fall under any of the following categories:

- Anyone who has a communicable disease, mental illness the government believes presents a risk to property, another person, or themselves; or the Department of Homeland Security (“DHS”) believes that the person abuses or is addicted to drugs;
- Anyone who helped another person enter the United States without authorization;
- Anyone who violated the terms of a student visa;
- Anyone who is permanently ineligible for citizenship (a category that includes anyone convicted of an “aggravated felony,” a term that has a specific meaning in immigration law and encompasses a broad list of offenses);
- Anyone who voted unlawfully;
- Anyone who has persecuted another person on the basis of that person’s race, religion, membership in a particular group, or political opinion.

¹ Publication of the National Immigration Project of the National Lawyers Guild (NIPNLG), 2021. This primer is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). It provides a summary of the provisions of the bill as of March 8, 2021, and does not account for any future amendments. For questions about this primer, please contact Caitlin Bellis, Policy & Community Advocacy Attorney at NIPNLG, at cbellis@nipnlg.org.

² The bill was formally introduced in the House on March 3, 2021. The text of the House version is available [here](#).

The Dream Act allows a **waiver** of the health related grounds, the assisting another person to unlawfully enter ground, the violating the terms of a student visa ground, and the unlawful voting ground of inadmissibility.

Additionally, the Dream Act adds several “Criminal and National Security” bars to eligibility. Those are:

- All the criminal grounds of inadmissibility in the INA, which include:
 - A “crime involving moral turpitude” - a broad and vague category of often very minor crimes (with an exception for a single misdemeanor for which the person did not spend more than 6 months in jail);
 - Any drug-related conviction;
 - Any two or more convictions with a combined sentence of five years or more;
 - Controlled substance “traffickers” - this category can include people with convictions for selling or intending to sell drugs;
 - Anyone who DHS believes has engaged in “prostitution” (no conviction required);
 - Anyone who DHS believes has engaged in human trafficking (no conviction required);
 - Anyone who DHS believes has engaged in money laundering (no conviction required).
- The national security bars in the INA, which include:
 - Anyone who DHS believes wants to enter the United States to spy, or to unlawfully export any goods, technology, or sensitive information (this could extend to whistleblowers and violations of United States patent law);
 - Anyone who DHS believes will engage in “any other unlawful activity”;
 - Anyone who DHS believes has engaged or will engage in “terrorist activity” or supports or associates with a “terrorist organization”;
 - Anyone who DHS believes it would be bad foreign policy to let in or to whom DHS believes it would be bad foreign policy to grant status.
- Being convicted of any felony. A felony is any criminal offense that can be punished by more than a year in jail. The bar applies even if the person was actually sentenced to less than a year.
- Being convicted of three or more misdemeanors. A misdemeanor is any criminal offense that can be punished by between 5 days and one year in jail.
 - The misdemeanor ground has exceptions for:
 - Marijuana-related possession offenses if they are legal or decriminalized in the person’s state;
 - Nonviolent civil disobedience.
- Being convicted of any domestic violence misdemeanor.
 - This ground has an exception if the person can show that the crime was related to the person also being a victim of domestic violence, sexual assault, child abuse, or other crimes.

These criminal exclusions sweep very broadly, and go well beyond the already-extensive criminal exclusions of the INA. However, the Dream Act does provide for several **waivers**, which would allow an otherwise ineligible person to receive status if granted. These waivers are:

- A waiver for a misdemeanor that counts as a crime involving moral turpitude, drug crime, or sex work-related crime *unless* the person has two or more other misdemeanors and would be ineligible under the three misdemeanors ground;
- A waiver for one misdemeanor offense if the person has not been convicted of any other crimes for 5 years;
- A waiver for two misdemeanor offenses if the person has not been convicted of any other crimes for 10 years.

Finally, the Dream Act then imposes a “secondary review” process that allows DHS to deny applications if DHS believes the person is a threat to public safety or has participated in a gang (as defined by federal law) within the past 5 years.

A person is subject to secondary review on the public safety basis if the person has been convicted of *any misdemeanor* that is punishable by more than 30 days in jail. The person could have received no jail time, but so long as anyone could receive a sentence of 30 days or more for that offense, this person would be subject to secondary review. There are exceptions for:

- Marijuana possession-related misdemeanors if marijuana is now legal or decriminalized in the person’s state;
- Minor traffic offenses;
- Offenses where the fact that the person is undocumented is part of the crime;
- Nonviolent civil disobedience.

A person is also subject to secondary review if the person has a juvenile delinquency judgement and had to spend time in a juvenile detention facility. This is so even though juvenile adjudications do not count for other immigration purposes.

DHS must then decide whether the person with the misdemeanor or juvenile adjudication is still a public safety threat. In making that decision, DHS should consider:

- How long ago the conviction happened;
- Length of the sentence the person received;
- Nature and seriousness of the offense;
- Whether the offense involved the possession or use of a deadly weapon or the intent to cause serious bodily injury;
- Any factors that show the person had a lesser role in the offense.

If DHS believes that a person is a public safety threat after looking at these factors, DHS may deny the person’s application for status.

Unlike the public safety basis, if DHS determines that a person participated in a gang within the past 5 years, DHS may deny the application without considering any other evidence. While DHS may not rely *only* on a gang database to determine whether a person is a member of a gang,

the bill does not ban the use of these databases. The bill does not specify how else DHS would determine whether or not a person was a gang member.

Anyone whose application was denied under these two bases would be allowed to ask a court to review DHS's decision, and would get an attorney to help them if they wanted

Title II - American Promise Act of 2021

The American Promise Act (the "Promise Act") also imposes criminal bars to eligibility. The bars in this portion of the bill are all based on grounds that are already in the INA.

First, an applicant cannot fall under any of the following INA grounds of inadmissibility:

- Anyone who has a communicable disease, mental illness the government believes presents a risk to property, another person, or themselves; or the Department of Homeland Security ("DHS") believes that the person abuses or is addicted to drugs;
- Anyone who helped another person enter the United States without authorization;
- Anyone who violated the terms of a student visa;
- Anyone who is permanently ineligible for citizenship (a category that includes anyone convicted of an "aggravated felony," a term that has a specific meaning in immigration law and encompasses a broad list of offenses);
- Anyone who voted unlawfully;
- Anyone who has persecuted another person on the basis of that person's race, religion, membership in a particular group, or political opinion.

Additionally, the Promise Act bars people who were stowaways or convicted of document fraud. The bill also implicitly incorporates the criminal bars to TPS (since it applies only to people who are otherwise eligible for TPS), meaning that it excludes anyone with **one felony** or **more than one misdemeanor** conviction.

The Promise Act does **not** include a secondary review process.

Like the Dream Act, the Promise Act allows for a **waiver** of several grounds of inadmissibility including a crime involving moral turpitude, a drug-related crime, or prostitution, as well as the health ground, the grounds related to immigration violations, and the unlawful voting ground. An applicant cannot waive any controlled substance, drug trafficking, or crime involving moral turpitude convictions received after January 1, 2017.

However, there is no waiver for a crime that would make someone ineligible for TPS, i.e. **any felony** or **more than one misdemeanor**.

For questions about this explainer, you can email Caitlin Bellis at cbellis@nipnlg.org.