

**SENATE JUDICIARY COMMITTEE
HEARING ON H.R. 6
AMERICAN DREAM AND PROMISE ACT OF 2021**

**RESPONSES TO QUESTIONS FOR THE RECORD
PREPARED BY
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1. *Do you agree we should be providing a pathway to citizenship for those who assault law enforcement officers? What about those who commit child abuse, sexual assault, or violent assaults? What about gang members?*

We should not be providing pathways for those who that assault law enforcement officers, commit sexual and other violent assaults, child abusers, or gang members. While H.R. 6 ostensibly makes any criminal alien associated with these crimes ineligible for relief, the broad discretion exercised by the Secretary of Homeland Security plus a review and appeal process largely nullifies these public safety ineligibilities. Additionally, beyond the heinous crimes mentioned above, many criminal aliens convicted of crimes involving moral turpitude, drug crimes, smuggling offenses, and commercialized vice, including prostitution, would seemingly still be on a clear pathway toward citizenship under this bill.

2. *What could possibly justify allowing criminal illegal immigrants to receive a waiver from DHS to be eligible for the Dream Act?*

U.S. immigration law has long included waiver authority for certain criminal grounds of inadmissibility and removability. Most relevant to this discussion, the waiver authorized under INA Section 212(h) provides that aliens are eligible for a waiver of the grounds of inadmissibility for certain crimes of moral turpitude, a single offense involving 30 grams of less of marijuana, prostitution or commercialized vice offenses, or two or more crimes with an aggregate sentence of less than 5 years in two circumstances: 1) when the crime occurred more than 15 years ago (plus evidence of rehabilitation, and admission would not be contrary to public interest), or 2) if the removal would cause extreme hardship to a citizen or permanent resident spouse, parent, or child.

The waiver in H.R. 6 is a nondelegable discretionary function of the Secretary of Homeland Security and the timeframe for past conduct is either 5 years since a single misdemeanor offense or 10 years since two misdemeanor offenses. As a general principle, I disfavor this discretionary authority being delegated to the Secretary and even more

so when the standards are eased as compared to existing law. There may, however, be rare circumstances of a compelling enough nature that would warrant the use of a congressionally authorized and unambiguous waiver in this context. My expectation would be that it would be rarely utilized and only in the most exceptional of circumstances. As Secretary Mayorkas has abused his existing discretionary authorities and flagrantly disregarded statutory mandates, I would strongly caution against providing such a waiver with ambiguous standards to the DHS secretary.

- 3. Please explain how the parents of Dreamers would be eligible to receive status under these proposals.*

While H.R.6 does not specifically provide a pathway for parents, once eligible aliens naturalize after going through the conditional permanent resident and permanent resident process, they would be able to sponsor their parents as immediate relatives. A parent's eligibility for status would depend on individual circumstances, whether that parent was in the United States, manner of entry if in the United States, and any accrual of unlawful presence.

- 4. The whole premise of DACA is that we had kids brought to the U.S. by their parents and had no choice but to break the law. Why should we reward the parents who actively broke our laws?*

We should not be rewarding the parents and H.R. 6 should include a provision that specifically precludes parents of eligible aliens from obtaining immigration benefits as a result of the bill.

- 5. How many parents could qualify for citizenship under these provisions?*

Again, there is no specific provision for parents within H.R. 6 but if a parent were eligible for permanent residence based on being sponsored by a child who obtained naturalization through this bill, that parent would eventually be able to naturalize in the normal course. The Migration Policy Institute estimated that approximately 4,438,000 aliens may be eligible for conditional permanent status under H.R. 6. This includes 393,000 aliens with Temporary Protected Status or Deferred Enforced Departure, 2,763,000 aliens who meet the age at entry and educational requirements and would be defined as "Dreamers", and 190,000 aliens who meet the age at entry and educational requirements and would be defined as "legal Dreamers." Of the latter two groups,

2,310,000 and 171,000 individuals, respectively, would likely be eligible for full permanent residency making them eligible for naturalization.¹ If this applicant pool of 2,481,000 individuals all naturalized and each had two parents that were eligible for citizenship, potentially 4,962,000 parents would indirectly qualify for immigration status pursuant to this bill. Of course, not all of those 2,481,000 will either apply to naturalize, will be eligible to naturalize, or will have two parents who will both be eligible for status. Conceivably, this number will range anywhere between the hundreds of thousands to millions, however.

6. *Isn't the point of DACA to address those with roots in the US? What is the logic of allowing someone who arrived in the country on January 1, 2021 to be eligible for citizenship?*

I cannot speak to the logic of this provision, but the effect of moving the entry date to January 1, 2021 would be to increase the applicant pool to significantly higher numbers than merely the DACA-enrolled population of 690,000 or even the unknown and oft-estimated DACA eligible population.

7. *What is the impact of not including a cap on the age of beneficiaries? How old could someone be and still qualify for citizenship?*

DACA was capped for aliens 31 years of age and older on June 15, 2012 but H.R. 6 has no age cut-off and no maximum age. An alien of any age may apply for benefits under this provision provided they are otherwise eligible. Effectively this means that anyone could avail themselves of the benefits in this bill if they are otherwise able to demonstrate that they meet the eligibility criteria. This would expand this bill into a broader amnesty program but is especially problematic as aliens are easily able to seek waivers for past criminal conduct and use any number of documents to establish eligibility. An age limit would have been one of the few criteria that would have been difficult to fake when presenting evidence. With that hurdle removed, H.R. 6 will usher in a new era of forged documents aimed at developing a record to otherwise establish that would be applicants are eligible for conditional permanent residency.

¹ See *American Dream and Promise Act of 2021: Who is Potentially Eligible?*, (Mar. 2021), available at: <https://www.migrationpolicy.org/content/american-dream-and-promise-act-2021-eligibility>.