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## **The DREAM Act before Congress Today in Its Fifth Version, December 8, 2010**

*To appease opponents of the legalization of undocumented foreigners, even those that were brought to the US when they were minors, the DREAM Act draft bill S.3992 increases the conditions for eligibility, thus reducing the number of illegal aliens who would be able to legalize. The original versions of the DREAM Act drew on political momentum started on college campuses where illegal immigrants accepted to prestigious private school programs on scholarship were “coming out” with their undocumented status. Even in its current version, the DREAM Act would chip away at the huge number of undocumented aliens in the US by allowing a path to legalization for some of the most sympathetic candidates, those brought here as children who have never known another homeland. The Congressional Budget Office estimates that 1.1 million people would be able to obtain legal status under this act over the next nine years.*

The draft bill before Congress today “The Development, Relief and Education for Alien Minors Act of 2010” exists in its fifth iteration. The DREAM Act in all its versions have had the goal of giving undocumented foreign nationals who were brought to the US as minors a path to legalization. Conditions for that legalization would be military service or educational achievements. The latest version is an attempt to compromise with some opponents of the bill. The drafters have lowered the total number of undocumented foreign nationals that could be legalized by increasing the conditions for legalization.

Birth right citizenship is based on a fateful birth in the US, even when one’s parents are foreigners. The DREAM Act would similarly allow those who were brought to the US by undocumented or visa-overstay foreign parents a path to legal status.

**New Legal Status Created.** Drafters call the new legal status offered by this bill “conditional nonimmigrant.” CNI status would be granted for ten years. It could then be converted to regular green card status, and in three years time after that, US citizenship. The status itself is conditional on maintaining “good moral character,” a clean criminal record, and other good immigrant behavior. It would not permit a dishonorable discharge from the military.

**Deadline for Application.** Under the current draft of the bill, an alien may apply for the new status offered under the DREAM Act no later than one year after the date of the enactment of this Act, the date of admission to a US institution of higher learning, or the date of graduation from high school or attainment of a GED, which ever comes latest.

**Restrictions and Conditions for Conditional Nonimmigrant Status.** In general CNI status would be granted to those who had:

- *long residence*, at least five years in the US;
- *entry as a minor*, at less than 16 years of age;
- *a US high school diploma, GED or admission to a US college program*,
- *less than 30 years of age*, on the date of enactment of the DREAM Act,
- *good moral character* maintained since they were brought to the US;
- *no inadmissibility or deportability grounds for the most part*, they have not committed crimes that would make them inadmissible or deportable or had other grounds of inadmissibility or deportability. This condition continues to expand uncomfortably for proponents of the bill;
- *no acts of persecution* committed against others on the basis of race, religion, nationality, political opinion, or membership in a social group;
- *no felonies or prison terms in aggregate over 90 days for three or more misdemeanors*; and
- *no existing final order* of exclusion, deportation or removal, unless the alien has remained in the US under “color of law” or the order was given while the alien was still a minor (under age 16).

Unfortunately, the current iteration of the DREAM Act still does not offer a path to those who came here as children and have committed minor felonies. Even if they have served their time and now have good moral character, they will still have to “serve time” as an undocumented person, or return to a strange or even hostile ‘home’ country.

**Conversion from CNI to Green Card Holder.** To convert CNI status to green card status, a CNI would need to show

- *achievement of two years of higher learning or military service in the US*,
- *secondary school attendance in the US*,
- *good moral character* during the entire period of holding this status (ten years at least),
- *not inadmissible or deportable, no acts of persecution and no felonies or prison terms in aggregate over 90 days for three or more misdemeanors*, as above, and
- *continuous residence in the US* no absences of more than one year, other than for US military service.

**Higher Education Assistance.** Earlier versions of the DREAM Act would have untied the hands of state legislatures to allow them to grant financial benefits like federally backed student loans and work-study programs to undocumented aliens, similar to that granted to other state residents. This version states that only CNIs or green card holders shall be eligible for such federally backed student aid.

**Attorney Bio**

**Melissa J. Chavin** practices exclusively immigration law and is a sole practitioner at Chavin Immigration Law Office in Northbrook, Illinois. Her practice focuses on employment eligibility verification and employment-based visas. She graduated from the University of Pennsylvania (BA/MA Russian 1990) and the University of Connecticut School of Law (JD 1994). She is an active member of the bars in New York and Connecticut, and also admitted in Texas. She is the Co-Chair of AILA Chicago Chapter's Ethics and Unlawful Practice of Law Committee. She previously practiced corporate, real estate and securities law in Moscow, Russia with Clifford Chance, and in San Antonio and New York City with Akin Gump Strauss Hauer & Feld, LLP. She is fluent in Russian.

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