



Dream On: A Brief Examination of the Recently Passed H.R. 6, the American Dream and Promise Act of 2019

By Dan Cadman

President Trump has signaled his desire to see immigration legislation introduced into Congress, and his administration has [articulated the key points](#) that he wishes to see covered in any such legislation.

Whether and how the president would consider legislative initiatives that encompass additional issues, or ideas at odds with his own, is anybody's guess, but it's a relevant question because Sen. Lindsey Graham (R-S.C.), chairman of the Senate Judiciary Committee is reputed to be working on some version of [immigration legislation](#) that he says may very well include Democratic party priorities.

Translated, that almost certainly means he will consider incorporating some form of amnesty into a bill. This would be consistent with his past positions on immigration; he is far from a hardliner, although the tsunami of Central Americans who have inundated our border in recent years appears to have firmed up his recognition of the importance of immigration enforcement, whether at the border or in the interior. For this reason, any bill he sponsors will undoubtedly embed a number of amendments to the Immigration and Nationality Act (INA) designed to bolster law enforcement efforts to regain control of the nation's immigration system. Assuming the Senate with its Republican majority shows itself capable of getting past the possibility of a [Democratic filibuster](#) to vote favorably on Graham's bill — which might or might not be a good thing, depending on its contents — that chamber would then be obliged to negotiate with the House of Representatives on its version of a bill.

The problem is that the House has already come up with its version. Amidst cheers and shouts in the gallery of *¡Si se puede!*, the House recently passed a bill authored by Rep. Lucille Roybal (D-Calif.) to grant an [amnesty](#) that would probably reach, on a rough estimate, four to six million aliens on the first bounce. That's because the potential pool goes beyond recipients of the Obama-era DACA program — and even beyond the group of Dreamers who either didn't apply for DACA, or did and were denied, or who let participation lapse.

The most salient point about the House bill, H.R. 6, (besides its massive amnesty) is that it contains absolutely no enforcement measures to reestablish control of immigration at the border or in the interior, leading one to wonder whether Democrats have become the Party of Open Borders. Members of the House could have chosen to include reasonable enforcement measures, had they wished: In early May, Rep. Henry Cuellar (D-Texas) introduced [H.R. 2522](#), the HUMANE Act of 2019, a vastly improved bill over his prior legislation of the same name. This one contains several salutary measures designed to amend the gaping holes in the nation's asylum and human trafficking laws that are helping to generate present unheard-of volumes of illegal family and minor alien crossers, but his bill has gotten no traction in the House.

In fact, the bill that the House chose to pass would grant amnesty to anyone fitting the age and certain other criteria discussed below, who entered and has resided continuously in the United States, illegally (or even legally as a nonimmigrant who later overstayed), before the age of 18, and whose entry was prior to a cutoff date defined as four years prior to enactment of the bill into law.

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In other words, assuming the bill were to pass the Senate — or that the amnesty provisions contained in H.R. 6 survived a conference report to be incorporated into a joint bill — and be signed by the president tomorrow, then, as of this writing, any alien who entered as a minor *prior to June 17, 2015*, could apply and be handed a “conditional permanent resident” alien card.

Keep in mind that from 2013 onward, the United States has experienced a tidal wave of illegal crossers, including substantial numbers of minors smuggled by their parents. Using the four-year cutoff date not only guarantees that millions of recently arrived aliens would benefit from breaking the law, but also virtually assures that the tsunami that has been overwhelming our southern border, and only gotten worse in the past several years, will continue unabated. How could it not? The bill contains nothing remotely likely to tighten border enforcement or curb asylum abuse. Instead, it gives hope to those not yet here that they, too, may benefit from continued pushing of the amnesty re-set button by Congress.

But this expansive pool of “Dreamers Plus” would not be the only happy recipients laid out in the House bill, because it also grants amnesty to all the past recipients of Temporary Protected Status (TPS) and Deferred Enforced Departure still in the United States. Let’s call it “Dreamers Plus Plus”.

The actual tally could quite possibly be even greater than the four to six million estimate by a significant percentage if the bill were passed into law because, like the prior 1986 amnesty, it would be susceptible to fraud on a large scale as a result of the expansive and inartful language cooked into the bill, which defines the documents and methods by which aliens may prove their eligibility.

And that’s just considering the primary recipients: Once we start getting into collateral beneficiaries whom the amnestied aliens will in the fullness of time petition for, through the existing family chain-migration system (that Congress has yet to amend in favor of a skills and national needs-based system), you can be sure that whatever the final number are, it would again at least double.

H.R. 6 passed on an almost (but not quite) [party-line vote](#). A few Republicans went on record as saying it was the right thing to do, but that they wished the House Democrats had made more of an effort to reach across the aisle. These Republicans may have voted with their hearts, but it certainly wasn’t with their heads, which is what good legislators are supposed to do. One wonders if they bothered to read the bill, instead of perhaps just skimming the “bill summary” prepared by the Democratic authors.

If they had examined H.R. 6, and understood what they were reading, it’s hard to imagine how they could possibly have lent it any support, tepid or otherwise. With regard to the bill, readers should understand that this writing isn’t intended as an exhaustive analysis; in fact, it only skims the surface. Even so, several serious flaws jump out at a careful reader of the House legislation.

The Dreamers-Plus Amnesty

Title I of the bill addresses amnesty for the enlarged pool of so-called Dreamers, as explained above. But it engages in the same kind of duplicitous approach we saw with the failed 2013 Senate Gang of Eight amnesty bill: tough language up front establishing de minimus requirements, as well as other language purporting to render aliens ineligible based on past misconduct. Unfortunately, they might fairly be called “swiss cheese provisions”, because buried later in the details are any number of sections that create so many holes as to render these requirements and exclusions almost meaningless. To be eligible, in addition to the age, continual presence, and entry date requirements, aliens must establish that they:

- Are enrolled in school or have the equivalent of a GED;
- Are not criminals;
- Are not national security or terrorist risks;
- Are not risks to the public safety;
- Are not gang members; and,
- Are not inadmissible under the INA’s exclusion grounds as:
 - o Health hazards,
 - o Alien smugglers,

- o Student visa violators,
- o Ineligible for citizenship (for example by draft evasion),
- o Polygamists,
- o Child abductors and those who aid them,
- o Aliens who voted unlawfully, or
- o Former U.S. citizens who expatriated to evade their tax responsibilities.

Looking further into the bill, though, we find that later language ameliorates nearly all of these requirements or exclusions. For example, with regard to educational requirements, we see that additional provisions say, “An alien ... shall be provided a reasonable opportunity to meet the educational requirements under subparagraph (D) of such subsection. *The Attorney General or the Secretary may not commence or continue with removal proceedings against such an alien.*” (Emphasis added.) How long does this “reasonable opportunity” remain? We don’t know; the bill makes no attempt to establish a deadline. What happens if they flunk their school programs or are tossed? How many reiterations does a “reasonable opportunity” entail? We don’t know that either. What we can be sure of, though, is that there will be endless years of litigation designed to wear down any logical construct to the words.

Similarly, with regard to allegedly proscribed gang membership, the bill asserts that “allegations of gang membership obtained 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, *shall not establish* the participation described.” (Emphasis added.) One wonders exactly how the government can establish such membership if it is not permitted to use credible law enforcement databases such as the FBI’s National Crime Information Center gang file. Transnational criminal organizations don’t issue membership cards that can handily be seized. And, of course, any alien applying for amnesty found to have “MS-13” or “Mara” tattoos all over his body would undoubtedly say that he was just a wannabe or was shamming in order to hold troublemakers at bay. It will be virtually impossible for government adjudicators to establish proof of gang membership sufficient for denial, given the limitations imposed in the bill.

The bill also asserts that “the term ‘convicted,’ ‘conviction,’ ‘adjudicated,’ or ‘adjudication’ does not include a judgment that has been expunged or set aside, that resulted in a rehabilitative disposition, or the equivalent.” What this means is that any judge who — even after the fact, and solely for the purpose of defeating removal from the United States — sets aside a conviction, will in fact have [enabled that alien to file an application for amnesty](#).

Even the so-called “public safety” provision that permits the government to deny an application for amnesty as a matter of discretion requires no less than two notices to the applicant of its intent to do so, after which the denial is in any case only “provisional”. If that alien is later taken into custody and claims that he had “good cause for not contesting a provisional denial”, the government is obliged to reconsider its denial via appellate review, and if it persists in denying, then the alien may seek judicial review.

One wonders what the effect of all these avenues of relief will inevitably be on the community that is at risk from an alien who was deemed a public safety threat in the first place. It isn’t hard to foresee tragedies and victims in the making, as individuals who are gang members and career criminals work the system and remain at liberty for years on end as their cases slowly grind their way through the adjudicative process.

There are two additional extremely troubling provisions of H.R. 6. The first is that it would authorize the government to provide grants to multiple private organizations to assist aliens in filing their applications. It doesn’t take much vision to imagine the tens, perhaps hundreds, of millions of appropriated dollars that could be eaten up in such endeavors. How can any legislator credibly claim that the amnesty will be self-funding via fees collected, knowing that isn’t the truth?

The second provision goes beyond troubling to outrageous: The bill makes clear that when an alien seeks judicial review of a provisional denial and asks for legal counsel, *this bill would require the government to give it to him at taxpayer expense*. Why, one asks, should U.S. taxpayers shoulder the burden of helping an alien defeat the government when it has expressed its belief that he is ineligible for amnesty, quite possibly on one of the many public safety/gang member/alien smuggler/criminal grounds that are enumerated as disqualifiers at the beginning of Title I?

These are just a few of the problems that crop up with the Dreamers-Plus provisions of H.R. 6.

The TPS Amnesty

Title II of the bill takes up amnesty for recipients, past and present, of Temporary Protected Status and Deferred Enforced Departure. In many ways, the language is an echo of that found in Title I for Dreamers-Plus. It repeats the same get-tough language up front with many of the same forgiveness provisions buried later in the bill. For that reason, there is no reason to repeat them all here, although a few additional after-thoughts are in order:

Almost all of the multifarious (and extremely serious) grounds of ineligibility may be waived “for humanitarian purposes, for family unity, or because the waiver is otherwise in the public interest”. None of those phrases is defined, and are almost certainly going to end up being applied using the most liberal notions possible; especially the phrase “family unity” — who isn’t going to get shoehorned into that proviso?

There is also a general waiver for amnesty applicants who are inadmissible based on INA section 1182(a)(6)(E), which is to say, for alien smugglers. One imagines the bill’s authors were trying to protect individuals from being removed if they were involved in smuggling family members to the United States. One may agree or disagree whether that is a worthy basis for a waiver, but as written *there is no limiting feature*. As a result, this forgiveness clause would apply equally to a cartel member or professional smuggler who applied for amnesty under the bill. This is beyond comprehension. Would professional gangsters have the audacity to do such a thing? [Absolutely](#).

Finally, one can’t help but note the irony of the waiver available to TPS/DED (and, indeed, also Dreamers-Plus) amnesty applicants when they are inadmissible under INA section 1182(a)(10)(d) — for illegally and fraudulently voting in federal elections (which by implication requires the alien to also have made a false claim to citizenship when registering). Why give aliens a pass on that? Hasn’t it been the Democratic party’s position that fraudulent voting by aliens doesn’t happen? If that were true, then there should be no need for such a waiver.

To conclude, as irredeemably flawed as major sections of the bill are, they aren’t the worst parts about it. The worst parts reside in what one might consider the general, philosophical objections to the bill:

First, there is the timing: We are confronting the worst border crisis in the history of the Republic; adult aliens are using children with impunity to push their way into the country and be released from detention; the system is crippled under the weight of backlogs at every juncture; and the Democrats vote to grant amnesty to millions? What do they think that signals to those still in their home countries trying to decide whether it’s worth the trip? Doctors Without Borders has estimated that nearly a third of females making the journey are assaulted. Absent a comprehensive series of measures to drastically remove incentives to travel to the United States and effect illegal entry, a bill like H.R. 6 only perpetuates — perhaps even exacerbates — that kind of abuse, not to mention putting billions of dollars into the hands of human smugglers and cartels.

Second, there is the question of granting amnesty to TPS recipients: It proves unambiguously that the “temporary” part of the equation is a mockery. Future presidents may have to consider carefully the [long-term effects of granting TPS](#) to nationals of any country, anywhere, at any time, if they recognize that, in effect, they will be granting them a free pass to remain and live in the United States forever.

Third, to return to the question of meeting Republicans halfway, it seems clear that Democrats continue to refuse to negotiate compromises on immigration matters because they think that ultimately they can prevail without the need to tighten border and interior enforcement; or amend the broken asylum and removal hearing processes; or alter the nation’s outdated emphasis on chain migration, even though it stresses scarce public benefit and entitlement programs, many of which already teeter on the brink of insolvency. Those Republicans who “voted with their hearts” in favor of H.R. 6 need to ask themselves what is in the long-term best interests of the United States, and a massive amnesty doesn’t seem like it ought to top that list of priorities.

In sum, the American Dream and Promise Act of 2019 is a turkey that deserves to be fricasseed by the Senate and not passed to the president for signature and enactment into law, whether on its own or via embedding in some other bill.