109TH CONGRESS
1ST SESSION

S. 2075

To amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2005

Mr. DURBIN (for himself, Mr. HAGEL, Mr. LUGAR, Mr. KENNEDY, Mr. MCCAIN, Mr. LEAHY, Mr. COLEMAN, Mr. LIEBERMAN, Mr. CRAIG, Mr. FEINGOLD, Mr. DEWINE, Mr. OBAMA, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Development, Relief, and Education for Alien Minors Act of 2005” or the “DREAM Act of 2005”.

SEC. 2. DEFINITIONS.

In this Act:

(1) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(2) UNIFORMED SERVICES.—The term “uniformed services” has the meaning given that term in section 101(a) of title 10, United States Code.

SEC. 3. RESTORATION OF STATE OPTION TO DETERMINE RESIDENCY FOR PURPOSES OF HIGHER EDUCATION BENEFITS.

(a) In General.—Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is repealed.

(b) Effective Date.—The repeal under subsection (a) shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.
SEC. 4. CANCELLATION OF REMOVAL AND ADJUSTMENT OF
STATUS OF CERTAIN LONG-TERM RESIDENTS
WHO ENTERED THE UNITED STATES AS CHILDREN.

(a) SPECIAL RULE FOR CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as otherwise provided in this Act, the Secretary of Homeland Security may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, subject to the conditional basis described in section 5, an alien who is inadmissible or deportable from the United States, if the alien demonstrates that—

(A) the alien has been physically present in the United States for a continuous period of not less than 5 years immediately preceding the date of enactment of this Act, and had not yet reached the age of 16 years at the time of initial entry;

(B) the alien has been a person of good moral character since the time of application;

(C) the alien—

(i) is not inadmissible under paragraph (2), (3), (6)(B), (6)(C), (6)(E),
(6)(F), or (6)(G) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), or, if inadmissible solely under subparagraph (C) or (F) of paragraph (6) of such subsection, the alien was under the age of 16 years at the time the violation was committed; and

(ii) is not deportable under paragraph (1)(E), (1)(G), (2), (3)(B), (3)(C), (3)(D), (4), or (6) of section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)), or, if deportable solely under subparagraphs (C) or (D) of paragraph (3) of such subsection, the alien was under the age of 16 years at the time the violation was committed;

(D) the alien, at the time of application, has been admitted to an institution of higher education in the United States, or has earned a high school diploma or obtained a general education development certificate in the United States; and

(E) the alien has never been under a final administrative or judicial order of exclusion, deportation, or removal, unless the alien has re-
mained in the United States under color of law
or received the order before attaining the age of
16 years.

(2) WAIVER.—The Secretary of Homeland Se-
curity may waive the grounds of ineligibility under
section 212(a)(6) of the Immigration and Nation-
ality Act and the grounds of deportability under
paragraphs (1), (3), and (6) of section 237(a) of
that Act for humanitarian purposes or family unity
or when it is otherwise in the public interest.

(3) PROCEDURES.—The Secretary of Homeland
Security shall provide a procedure by regulation al-
lowing eligible individuals to apply affirmatively for
the relief available under this subsection without
being placed in removal proceedings.

(b) TERMINATION OF CONTINUOUS PERIOD.—For
purposes of this section, any period of continuous resi-
dence or continuous physical presence in the United States
of an alien who applies for cancellation of removal under
this section shall not terminate when the alien is served
a notice to appear under section 239(a) of the Immigra-
tion and Nationality Act (8 U.S.C. 1229(a)).

(e) TREATMENT OF CERTAIN BREAKS IN PRESENCE.—
(1) IN GENERAL.—An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsection (a) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(2) EXTENSIONS FOR EXCEPTIONAL CIRCUMSTANCES.—The Secretary of Homeland Security may extend the time periods described in paragraph (1) if the alien demonstrates that the failure to timely return to the United States was due to exceptional circumstances. The exceptional circumstances determined sufficient to justify an extension should be no less compelling than serious illness of the alien, or death or serious illness of a parent, grandparent, sibling, or child.

(d) EXEMPTION FROM NUMERICAL LIMITATIONS.—Nothing in this section may be construed to apply a numerical limitation on the number of aliens who may be eligible for cancellation of removal or adjustment of status under this section.

(e) REGULATIONS.—

(1) PROPOSED REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall publish pro-
posed regulations implementing this section. Such
regulations shall be effective immediately on an in-
terim basis, but are subject to change and revision
after public notice and opportunity for a period for
public comment.

(2) INTERIM, FINAL REGULATIONS.—Within a
reasonable time after publication of the interim reg-
ulations in accordance with paragraph (1), the Sec-
retary of Homeland Security shall publish final regu-
lations implementing this section.

(f) REMOVAL OF ALIEN.—The Secretary of Home-
land Security may not remove any alien who has a pending
application for conditional status under this Act.

SEC. 5. CONDITIONAL PERMANENT RESIDENT STATUS.

(a) IN GENERAL.—

(1) CONDITIONAL BASIS FOR STATUS.—Not-
withstanding any other provision of law, and except
as provided in section 6, an alien whose status has
been adjusted under section 4 to that of an alien
lawfully admitted for permanent residence shall be
considered to have obtained such status on a condi-
tional basis subject to the provisions of this section.
Such conditional permanent resident status shall be
valid for a period of 6 years, subject to termination
under subsection (b).
(2) NOTICE OF REQUIREMENTS.—

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien obtains permanent resident status on a conditional basis under paragraph (1), the Secretary of Homeland Security shall provide for notice to the alien regarding the provisions of this section and the requirements of subsection (c) to have the conditional basis of such status removed.

(B) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Secretary of Homeland Security to provide a notice under this paragraph—

(i) shall not affect the enforcement of the provisions of this Act with respect to the alien; and

(ii) shall not give rise to any private right of action by the alien.

(b) TERMINATION OF STATUS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall terminate the conditional permanent resident status of any alien who obtained such status under this Act, if the Secretary determines that the alien—
(A) ceases to meet the requirements of subparagraph (B) or (C) of section 4(a)(1);

(B) has become a public charge; or

(C) has received a dishonorable or other than honorable discharge from the uniformed services.

(2) Return to previous immigration status.—Any alien whose conditional permanent resident status is terminated under paragraph (1) shall return to the immigration status the alien had immediately prior to receiving conditional permanent resident status under this Act.

(c) Requirements of timely petition for removal of condition.—

(1) In general.—In order for the conditional basis of permanent resident status obtained by an alien under subsection (a) to be removed, the alien must file with the Secretary of Homeland Security, in accordance with paragraph (3), a petition which requests the removal of such conditional basis and which provides, under penalty of perjury, the facts and information so that the Secretary may make the determination described in paragraph (2)(A).

(2) Adjudication of petition to remove condition.—
(A) IN GENERAL.—If a petition is filed in accordance with paragraph (1) for an alien, the Secretary of Homeland Security shall make a determination as to whether the alien meets the requirements set out in subparagraphs (A) through (E) of subsection (d)(1).

(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Secretary determines that the alien meets such requirements, the Secretary shall notify the alien of such determination and immediately remove the conditional basis of the status of the alien.

(C) TERMINATION IF ADVERSE DETERMINATION.—If the Secretary determines that the alien does not meet such requirements, the Secretary shall notify the alien of such determination and terminate the conditional permanent resident status of the alien as of the date of the determination.

(3) TIME TO FILE PETITION.—An alien may petition to remove the conditional basis to lawful resident status during the period beginning 180 days before and ending 2 years after either the date that is 6 years after the date of the granting of conditional permanent resident status or any other expi-
ration date of the conditional permanent resident status as extended by the Secretary of Homeland Security in accordance with this Act. The alien shall be deemed in conditional permanent resident status in the United States during the period in which the petition is pending.

(d) **Details of Petition.**—

(1) **Contents of Petition.**—Each petition for an alien under subsection (c)(1) shall contain information to permit the Secretary of Homeland Security to determine whether each of the following requirements is met:

(A) The alien has demonstrated good moral character during the entire period the alien has been a conditional permanent resident.

(B) The alien is in compliance with section 4(a)(1)(C).

(C) The alien has not abandoned the alien’s residence in the United States. The Secretary shall presume that the alien has abandoned such residence if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of conditional residence, unless the alien demonstrates that
alien has not abandoned the alien’s residence.

An alien who is absent from the United States
due to active service in the uniformed services
has not abandoned the alien’s residence in the
United States during the period of such service.

(D) The alien has completed at least 1 of
the following:

(i) The alien has acquired a degree
from an institution of higher education in
the United States or has completed at
least 2 years, in good standing, in a pro-
gram for a bachelor’s degree or higher de-
gree in the United States.

(ii) The alien has served in the uni-
formed services for at least 2 years and, if
discharged, has received an honorable dis-
charge.

(E) The alien has provided a list of all of
the secondary educational institutions that the
alien attended in the United States.

(2) HARDSHIP EXCEPTION.—

(A) IN GENERAL.—The Secretary of
Homeland Security may, in the Secretary’s dis-
cretion, remove the conditional status of an
alien if the alien—
(i) satisfies the requirements of subparagraphs (A), (B), and (C) of paragraph (1);

(ii) demonstrates compelling circumstances for the inability to complete the requirements described in paragraph (1)(D); and

(iii) demonstrates that the alien’s removal from the United States would result in exceptional and extremely unusual hardship to the alien or the alien’s spouse, parent, or child who is a citizen or a lawful permanent resident of the United States.

(B) EXTENSION.—Upon a showing of good cause, the Secretary of Homeland Security may extend the period of the conditional resident status for the purpose of completing the requirements described in paragraph (1)(D).

(c) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.), in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and
to be in the United States as an alien lawfully admitted

to the United States for permanent residence. However,

the conditional basis must be removed before the alien

may apply for naturalization.

SEC. 6. RETROACTIVE BENEFITS UNDER THIS ACT.

If, on the date of enactment of this Act, an alien has

satisfied all the requirements of subparagraphs (A)

through (E) of section 4(a)(1) and section 5(d)(1)(D), the

Secretary of Homeland Security may adjust the status of

the alien to that of a conditional resident in accordance

with section 4. The alien may petition for removal of such

condition at the end of the conditional residence period

in accordance with section 5(e) if the alien has met the

requirements of subparagraphs (A), (B), and (C) of sec-

tion 5(d)(1) during the entire period of conditional resi-

dence.

SEC. 7. EXCLUSIVE JURISDICTION.

(a) IN GENERAL.—The Secretary of Homeland Secu-

rity shall have exclusive jurisdiction to determine eligibility

for relief under this Act, except where the alien has been

placed into deportation, exclusion, or removal proceedings

either prior to or after filing an application for relief under

this Act, in which case the Attorney General shall have

exclusive jurisdiction and shall assume all the powers and

duties of the Secretary until proceedings are terminated,
or if a final order of deportation, exclusion, or removal is entered the Secretary shall resume all powers and duties delegated to the Secretary under this Act.

(b) Stay of Removal of Certain Aliens Enrolled in Primary or Secondary School.—The Attorney General shall stay the removal proceedings of any alien who—

(1) meets all the requirements of subparagraphs (A), (B), (C), and (E) of section 4(a)(1);

(2) is at least 12 years of age; and

(3) is enrolled full time in a primary or secondary school.

c) Employment.—An alien whose removal is stayed pursuant to subsection (b) may be engaged in employment in the United States, consistent with the Fair Labor Standards Act (29 U.S.C. 201 et seq.), and State and local laws governing minimum age for employment.

d) Lift of Stay.—The Attorney General shall lift the stay granted pursuant to subsection (b) if the alien—

(1) is no longer enrolled in a primary or secondary school; or

(2) ceases to meet the requirements of subsection (b)(1).
SEC. 8. PENALTIES FOR FALSE STATEMENTS IN APPLICATION.

Whoever files an application for relief under this Act and willfully and knowingly falsifies, misrepresents, or conceals a material fact or makes any false or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.

SEC. 9. CONFIDENTIALITY OF INFORMATION.

(a) PROHIBITION.—No officer or employee of the United States may—

(1) use the information furnished by the applicant pursuant to an application filed under this Act to initiate removal proceedings against any persons identified in the application;

(2) make any publication whereby the information furnished by any particular individual pursuant to an application under this Act can be identified; or

(3) permit anyone other than an officer or employee of the United States Government or, in the case of applications filed under this Act with a designated entity, that designated entity, to examine applications filed under this Act.
(b) REQUIRED DISCLOSURE.—The Attorney General or the Secretary of Homeland Security shall provide the information furnished under this section, and any other information derived from such furnished information, to—

1. a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

2. an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(c) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

SEC. 10. EXPEDITED PROCESSING OF APPLICATIONS; PROHIBITION ON FEES.

Regulations promulgated under this Act shall provide that applications under this Act will be considered on an expedited basis and without a requirement for the payment by the applicant of any additional fee for such expedited processing.
SEC. 11. HIGHER EDUCATION ASSISTANCE.

Notwithstanding any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), with respect to assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), an alien who adjusts status to that of a lawful permanent resident under this Act shall be eligible only for the following assistance under such title:

(1) Student loans under parts B, D, and E of such title IV (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.), subject to the requirements of such parts.

(2) Federal work-study programs under part C of such title IV (42 U.S.C. 2751 et seq.), subject to the requirements of such part.

(3) Services under such title IV (20 U.S.C. 1070 et seq.), subject to the requirements for such services.

SEC. 12. GAO REPORT.

Seven years after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives setting forth—

(1) the number of aliens who were eligible for cancellation of removal and adjustment of status under section 4(a);
(2) the number of aliens who applied for adjustment of status under section 4(a);

(3) the number of aliens who were granted adjustment of status under section 4(a); and

(4) the number of aliens whose conditional permanent resident status was removed under section 5.