

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 774

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.

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## IN THE SENATE OF THE UNITED STATES

MARCH 6, 2007

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

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## 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Development, Relief,  
3 and Education for Alien Minors Act of 2007” or the  
4 “DREAM Act of 2007”.

5 **SEC. 2. DEFINITIONS.**

6 In this Act:

7 (1) **INSTITUTION OF HIGHER EDUCATION.**—The  
8 term “institution of higher education” has the  
9 meaning given that term in section 101 of the High-  
10 er Education Act of 1965 (20 U.S.C. 1001).

11 (2) **UNIFORMED SERVICES.**—The term “uni-  
12 formed services” has the meaning given that term in  
13 section 101(a) of title 10, United States Code.

14 **SEC. 3. RESTORATION OF STATE OPTION TO DETERMINE**  
15 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**  
16 **CATION BENEFITS.**

17 (a) **IN GENERAL.**—Section 505 of the Illegal Immi-  
18 gration Reform and Immigrant Responsibility Act of 1996  
19 (8 U.S.C. 1623) is repealed.

20 (b) **EFFECTIVE DATE.**—The repeal under subsection  
21 (a) shall take effect as if included in the enactment of the  
22 Illegal Immigration Reform and Immigrant Responsibility  
23 Act of 1996 (division C of Public Law 104–208; 110 Stat.  
24 3009–546).

1 **SEC. 4. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**  
2 **STATUS OF CERTAIN LONG-TERM RESIDENTS**  
3 **WHO ENTERED THE UNITED STATES AS CHIL-**  
4 **DREN.**

5 (a) SPECIAL RULE FOR CERTAIN LONG-TERM RESI-  
6 DENTS WHO ENTERED THE UNITED STATES AS CHIL-  
7 DREN.—

8 (1) IN GENERAL.—Notwithstanding any other  
9 provision of law and except as otherwise provided in  
10 this Act, the Secretary of Homeland Security may  
11 cancel removal of, and adjust to the status of an  
12 alien lawfully admitted for permanent residence,  
13 subject to the conditional basis described in section  
14 5, an alien who is inadmissible or deportable from  
15 the United States, if the alien demonstrates that—

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

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

24 (C) the alien—

25 (i) is not inadmissible under para-  
26 graph (2), (3), (6)(E), or (10)(C) of sec-

1           tion 212(a) of the Immigration and Na-  
2           tionality Act (8 U.S.C. 1182(a)); and

3           (ii) is not deportable under paragraph  
4           (1)(E), (2), or (4) of section 237(a) of the  
5           Immigration and Nationality Act (8 U.S.C.  
6           1227(a));

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

13          (E) the alien has never been under a final  
14          administrative or judicial order of exclusion, de-  
15          portation, or removal, unless the alien—

16           (i) has remained in the United States  
17           under color of law after such order was  
18           issued; or

19           (ii) received the order before attaining  
20           the age of 16 years.

21          (2) WAIVER.—Notwithstanding paragraph (1),  
22          the Secretary of Homeland Security may waive the  
23          ground of ineligibility under section 212(a)(6)(E) of  
24          the Immigration and Nationality Act and the ground  
25          of deportability under paragraph (1)(E) of section

1 237(a) of that Act for humanitarian purposes or  
2 family unity or when it is otherwise in the public in-  
3 terest.

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

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

16 (c) TREATMENT OF CERTAIN BREAKS IN PRES-  
17 ENCE.—

18 (1) IN GENERAL.—An alien shall be considered  
19 to have failed to maintain continuous physical pres-  
20 ence in the United States under subsection (a) if the  
21 alien has departed from the United States for any  
22 period in excess of 90 days or for any periods in the  
23 aggregate exceeding 180 days.

24 (2) EXTENSIONS FOR EXCEPTIONAL CIR-  
25 CUMSTANCES.—The Secretary of Homeland Security

1        may extend the time periods described in paragraph  
2        (1) if the alien demonstrates that the failure to time-  
3        ly return to the United States was due to excep-  
4        tional circumstances. The exceptional circumstances  
5        determined sufficient to justify an extension should  
6        be no less compelling than serious illness of the  
7        alien, or death or serious illness of a parent, grand-  
8        parent, sibling, or child.

9        (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—

10       Nothing in this section may be construed to apply a nu-  
11       merical limitation on the number of aliens who may be  
12       eligible for cancellation of removal or adjustment of status  
13       under this section.

14       (e) REGULATIONS.—

15            (1) PROPOSED REGULATIONS.—Not later than  
16       180 days after the date of enactment of this Act, the  
17       Secretary of Homeland Security shall publish pro-  
18       posed regulations implementing this section. Such  
19       regulations shall be effective immediately on an in-  
20       terim basis, but are subject to change and revision  
21       after public notice and opportunity for a period for  
22       public comment.

23            (2) INTERIM, FINAL REGULATIONS.—Within a  
24       reasonable time after publication of the interim reg-  
25       ulations in accordance with paragraph (1), the Sec-

1       retary of Homeland Security shall publish final regu-  
2       lations implementing this section.

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

6       **SEC. 5. CONDITIONAL PERMANENT RESIDENT STATUS.**

7       (a) IN GENERAL.—

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

18               (2) NOTICE OF REQUIREMENTS.—

19                       (A) AT TIME OF OBTAINING PERMANENT  
20       RESIDENCE.—At the time an alien obtains per-  
21       manent resident status on a conditional basis  
22       under paragraph (1), the Secretary of Home-  
23       land Security shall provide for notice to the  
24       alien regarding the provisions of this section

1 and the requirements of subsection (c) to have  
2 the conditional basis of such status removed.

3 (B) EFFECT OF FAILURE TO PROVIDE NO-  
4 TICE.—The failure of the Secretary of Home-  
5 land Security to provide a notice under this  
6 paragraph—

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

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

12 (b) TERMINATION OF STATUS.—

13 (1) IN GENERAL.—The Secretary of Homeland  
14 Security shall terminate the conditional permanent  
15 resident status of any alien who obtained such sta-  
16 tus under this Act, if the Secretary determines that  
17 the alien—

18 (A) ceases to meet the requirements of  
19 subparagraph (B) or (C) of section 4(a)(1);

20 (B) has become a public charge; or

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

24 (2) RETURN TO PREVIOUS IMMIGRATION STA-  
25 TUS.—Any alien whose conditional permanent resi-



1       dent status is terminated under paragraph (1) shall  
2       return to the immigration status the alien had im-  
3       mediately prior to receiving conditional permanent  
4       resident status under this Act.

5       (c) REQUIREMENTS OF TIMELY PETITION FOR RE-  
6       MOVAL OF CONDITION.—

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

16      (2) ADJUDICATION OF PETITION TO REMOVE  
17      CONDITION.—

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

24           (B) REMOVAL OF CONDITIONAL BASIS IF  
25      FAVORABLE DETERMINATION.—If the Secretary

1 determines that the alien meets such require-  
2 ments, the Secretary shall notify the alien of  
3 such determination and immediately remove the  
4 conditional basis of the status of the alien.

5 (C) TERMINATION IF ADVERSE DETER-  
6 MINATION.—If the Secretary determines that  
7 the alien does not meet such requirements, the  
8 Secretary shall notify the alien of such deter-  
9 mination and terminate the conditional perma-  
10 nent resident status of the alien as of the date  
11 of the determination.

12 (3) TIME TO FILE PETITION.—An alien may pe-  
13 tition to remove the conditional basis to lawful resi-  
14 dent status during the period beginning 180 days  
15 before and ending 2 years after either the date that  
16 is 6 years after the date of the granting of condi-  
17 tional permanent resident status or any other expi-  
18 ration date of the conditional permanent resident  
19 status as extended by the Secretary of Homeland  
20 Security in accordance with this Act. The alien shall  
21 be deemed in conditional permanent resident status  
22 in the United States during the period in which the  
23 petition is pending.

24 (d) DETAILS OF PETITION.—

1           (1) CONTENTS OF PETITION.—Each petition  
2 for an alien under subsection (c)(1) shall contain in-  
3 formation to permit the Secretary of Homeland Se-  
4 curity to determine whether each of the following re-  
5 quirements is met:

6           (A) The alien has demonstrated good  
7 moral character during the entire period the  
8 alien has been a conditional permanent resi-  
9 dent.

10          (B) The alien is in compliance with section  
11 4(a)(1)(C).

12          (C) The alien has not abandoned the  
13 alien's residence in the United States. The Sec-  
14 retary shall presume that the alien has aban-  
15 doned such residence if the alien is absent from  
16 the United States for more than 365 days, in  
17 the aggregate, during the period of conditional  
18 residence, unless the alien demonstrates that  
19 alien has not abandoned the alien's residence.  
20 An alien who is absent from the United States  
21 due to active service in the uniformed services  
22 has not abandoned the alien's residence in the  
23 United States during the period of such service.

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

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

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

11 (E) The alien has provided a list of each  
12 secondary school (as that term is defined in sec-  
13 tion 9101 of the Elementary and Secondary  
14 Education Act of 1965 (20 U.S.C. 7801)) that  
15 the alien attended in the United States.

16 (2) HARDSHIP EXCEPTION.—

17 (A) IN GENERAL.—The Secretary of  
18 Homeland Security may, in the Secretary's dis-  
19 cretion, remove the conditional status of an  
20 alien if the alien—

21 (i) satisfies the requirements of sub-  
22 paragraphs (A), (B), and (C) of paragraph  
23 (1);

24 (ii) demonstrates compelling cir-  
25 cumstances for the inability to complete

1 the requirements described in paragraph  
2 (1)(D); and

3 (iii) demonstrates that the alien's re-  
4 moval from the United States would result  
5 in exceptional and extremely unusual hard-  
6 ship to the alien or the alien's spouse, par-  
7 ent, or child who is a citizen or a lawful  
8 permanent resident of the United States.

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

14 (e) TREATMENT OF PERIOD FOR PURPOSES OF NAT-  
15 URALIZATION.—For purposes of title III of the Immigra-  
16 tion and Nationality Act (8 U.S.C. 1401 et seq.), in the  
17 case of an alien who is in the United States as a lawful  
18 permanent resident on a conditional basis under this sec-  
19 tion, the alien shall be considered to have been admitted  
20 as an alien lawfully admitted for permanent residence and  
21 to be in the United States as an alien lawfully admitted  
22 to the United States for permanent residence. However,  
23 the conditional basis must be removed before the alien  
24 may apply for naturalization.

1 **SEC. 6. RETROACTIVE BENEFITS UNDER THIS ACT.**

2 If, on the date of enactment of this Act, an alien has  
3 satisfied all the requirements of subparagraphs (A)  
4 through (E) of section 4(a)(1) and section 5(d)(1)(D), the  
5 Secretary of Homeland Security may adjust the status of  
6 the alien to that of a conditional resident in accordance  
7 with section 4. The alien may petition for removal of such  
8 condition at the end of the conditional residence period  
9 in accordance with section 5(c) if the alien has met the  
10 requirements of subparagraphs (A), (B), and (C) of sec-  
11 tion 5(d)(1) during the entire period of conditional resi-  
12 dence.

13 **SEC. 7. EXCLUSIVE JURISDICTION.**

14 (a) IN GENERAL.—The Secretary of Homeland Secu-  
15 rity shall have exclusive jurisdiction to determine eligibility  
16 for relief under this Act, except where the alien has been  
17 placed into deportation, exclusion, or removal proceedings  
18 either prior to or after filing an application for relief under  
19 this Act, in which case the Attorney General shall have  
20 exclusive jurisdiction and shall assume all the powers and  
21 duties of the Secretary until proceedings are terminated,  
22 or if a final order of deportation, exclusion, or removal  
23 is entered the Secretary shall resume all powers and duties  
24 delegated to the Secretary under this Act.

25 (b) STAY OF REMOVAL OF CERTAIN ALIENS EN-  
26 ROLLED IN PRIMARY OR SECONDARY SCHOOL.—The At-

1 torney General shall stay the removal proceedings of any  
2 alien who—

3           (1) meets all the requirements of subpara-  
4           graphs (A), (B), (C), and (E) of section 4(a)(1);

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

6           (3) is enrolled full time in a primary or sec-  
7           ondary school.

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

13           (d) LIFT OF STAY.—The Attorney General shall lift  
14 the stay granted pursuant to subsection (b) if the alien—

15           (1) is no longer enrolled in a primary or sec-  
16           ondary school; or

17           (2) ceases to meet the requirements of sub-  
18           section (b)(1).

19 **SEC. 8. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**  
20 **TION.**

21           Whoever files an application for relief under this Act  
22 and willfully and knowingly falsifies, misrepresents, or  
23 conceals a material fact or makes any false or fraudulent  
24 statement or representation, or makes or uses any false  
25 writing or document knowing the same to contain any

1 false or fraudulent statement or entry, shall be fined in  
2 accordance with title 18, United States Code, or impris-  
3 oned not more than 5 years, or both.

4 **SEC. 9. CONFIDENTIALITY OF INFORMATION.**

5 (a) PROHIBITION.—Except as provided in subsection

6 (b), no officer or employee of the United States may—

7 (1) use the information furnished by the appli-  
8 cant pursuant to an application filed under this Act  
9 to initiate removal proceedings against any persons  
10 identified in the application;

11 (2) make any publication whereby the informa-  
12 tion furnished by any particular individual pursuant  
13 to an application under this Act can be identified; or

14 (3) permit anyone other than an officer or em-  
15 ployee of the United States Government or, in the  
16 case of applications filed under this Act with a des-  
17 ignated entity, that designated entity, to examine  
18 applications filed under this Act.

19 (b) REQUIRED DISCLOSURE.—The Attorney General  
20 or the Secretary of Homeland Security shall provide the

21 information furnished under this section, and any other  
22 information derived from such furnished information, to—

23 (1) a duly recognized law enforcement entity in  
24 connection with an investigation or prosecution of an  
25 offense described in paragraph (2) or (3) of section



1 212(a) of the Immigration and Nationality Act (8  
2 U.S.C. 1182(a)), when such information is requested  
3 in writing by such entity; or

4 (2) an official coroner for purposes of affirma-  
5 tively identifying a deceased individual (whether or  
6 not such individual is deceased as a result of a  
7 crime).

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

11 **SEC. 10. EXPEDITED PROCESSING OF APPLICATIONS; PRO-**  
12 **HIBITION ON FEES.**

13 Regulations promulgated under this Act shall provide  
14 that applications under this Act will be considered on an  
15 expedited basis and without a requirement for the pay-  
16 ment by the applicant of any additional fee for such expe-  
17 dited processing.

18 **SEC. 11. HIGHER EDUCATION ASSISTANCE.**

19 Notwithstanding any provision of the Higher Edu-  
20 cation Act of 1965 (20 U.S.C. 1001 et seq.), with respect  
21 to assistance provided under title IV of the Higher Edu-  
22 cation Act of 1965 (20 U.S.C. 1070 et seq.), an alien who  
23 adjusts status to that of a lawful permanent resident  
24 under this Act shall be eligible only for the following as-  
25 sistance under such title:

1           (1) Student loans under parts B, D, and E of  
2 such title IV (20 U.S.C. 1071 et seq., 1087a et seq.,  
3 1087aa et seq.), subject to the requirements of such  
4 parts.

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

8           (3) Services under such title IV (20 U.S.C.  
9 1070 et seq.), subject to the requirements for such  
10 services.

11 **SEC. 12. GAO REPORT.**

12       Not later than seven years after the date of enact-  
13 ment of this Act, the Comptroller General of the United  
14 States shall submit a report to the Committee on the Judi-  
15 ciary of the Senate and the Committee on the Judiciary  
16 of the House of Representatives setting forth—

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

20           (2) the number of aliens who applied for adjust-  
21 ment of status under section 4(a);

22           (3) the number of aliens who were granted ad-  
23 justment of status under section 4(a); and

1           (4) the number of aliens whose conditional per-  
2           manent resident status was removed under section  
3           5.

○