

Calendar No. 425

107TH CONGRESS
2D SESSION

S. 1291

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 college-bound students who are long-term United States residents.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2001

Mr. HATCH (for himself and Ms. CANTWELL) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

JUNE 20, 2002

Reported by Mr. LEAHY, with an amendment and an amendment to the title
[Strike out all after the enacting clause and insert the part printed in *italic*]

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 college-bound students who are long-term United States residents.

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” or “DREAM Act”.

4 **SEC. 2. RESTORATION OF STATE OPTION TO DETERMINE**
5 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**
6 **CATION BENEFITS.**

7 Section 505 of the Illegal Immigration Reform and
8 Immigrant Responsibility Act of 1996 (division C of Pub-
9 lic Law 104–208; 110 Stat 3009–672; 8 U.S.C. 1623) is
10 repealed.

11 **SEC. 3. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**
12 **STATUS OF CERTAIN LONG-TERM RESIDENT**
13 **STUDENTS.**

14 (a) **SPECIAL RULE FOR CHILDREN IN QUALIFIED IN-**
15 **STITUTIONS OF HIGHER EDUCATION.—**

16 (1) **IN GENERAL.**—Notwithstanding any other
17 provision of law and subject to paragraph (2), the
18 Attorney General may cancel removal of, and adjust
19 to the status of an alien lawfully admitted for per-
20 manent residence, subject to the conditional basis
21 described in section 4, an alien who is inadmissible
22 or deportable from the United States, if the alien
23 demonstrates that—

24 (A) the alien has applied for relief under
25 this subsection not later than two years after
26 the date of enactment of this Act;

1 ~~(B)~~ the alien has not, at the time of appli-
 2 ~~cation,~~ attained the age of 21;

3 ~~(C)~~ the alien, at the time of application, is
 4 ~~attending an institution of higher education in~~
 5 ~~the United States (as defined in section 101 of~~
 6 ~~the Higher Education Act of 1965 (20 U.S.C.~~
 7 ~~1001));~~

8 ~~(D)~~ the alien was physically present in the
 9 ~~United States on the date of the enactment of~~
 10 ~~this Act and has been physically present in the~~
 11 ~~United States for a continuous period of not~~
 12 ~~less than five years immediately preceding the~~
 13 ~~date of enactment of this Act;~~

14 ~~(E)~~ the alien has been a person of good
 15 ~~moral character during such period; and~~

16 ~~(F)~~ the alien is not inadmissible under sec-
 17 ~~tion 212(a)(2) or 212(a)(3) or deportable under~~
 18 ~~section 237(a)(2) or 237(a)(4).~~

19 ~~(2) PROCEDURES.—The Attorney General shall~~
 20 ~~provide a procedure by regulation allowing eligible~~
 21 ~~individuals to apply affirmatively for the relief avail-~~
 22 ~~able under this paragraph without being placed in~~
 23 ~~removal proceedings.~~

24 ~~(b) TERMINATION OF CONTINUOUS PERIOD.—For~~
 25 ~~purposes of this section, any period of continuous resi-~~

1 dence or continuous physical presence in the United States
 2 of an alien who applies for cancellation of removal under
 3 this section shall not terminate when the alien is served
 4 a notice to appear under section 239(a) of the Immigra-
 5 tion and Nationality Act.

6 (c) TREATMENT OF CERTAIN BREAKS IN PRES-
 7 ENCE.—An alien shall be considered to have failed to
 8 maintain continuous physical presence in the United
 9 States under subsection (a) if the alien has departed from
 10 the United States for any period in excess of 90 days or
 11 for any periods in the aggregate exceeding 180 days.

12 (d) STATUTORY CONSTRUCTION.—Nothing in this
 13 section may be construed to apply a numerical limitation
 14 on the number of aliens who may be eligible for cancella-
 15 tion of removal or adjustment of status under this section.

16 (e) REGULATIONS.—

17 (1) PROPOSED REGULATIONS.—Not later than
 18 90 days after the date of the enactment of this Act,
 19 the Attorney General shall publish proposed regula-
 20 tions implementing this section.

21 (2) INTERIM, FINAL REGULATIONS.—Not later
 22 than 180 days after the date of the enactment of
 23 this Act, the Attorney General shall publish final
 24 regulations implementing this section. Such regula-
 25 tions shall be effective immediately on an interim

1 basis, but are subject to change and revision after
 2 public notice and opportunity for a period for public
 3 comment.

4 **SEC. 4. CONDITIONAL PERMANENT RESIDENT STATUS FOR**
 5 **CERTAIN LONG-TERM RESIDENT STUDENTS.**

6 ~~(a) IN GENERAL.—~~

7 ~~(1) CONDITIONAL BASIS FOR STATUS.—Not-~~
 8 ~~withstanding any other provision of this Act, an~~
 9 ~~alien whose status has been adjusted under section~~
 10 ~~3 to that of an alien lawfully admitted for perma-~~
 11 ~~nent residence shall be considered, at the time of ob-~~
 12 ~~taining the adjustment of status, to have obtained~~
 13 ~~such status on a conditional basis subject to the pro-~~
 14 ~~visions of this section.~~

15 ~~(2) NOTICE OF REQUIREMENTS.—~~

16 ~~(A) AT TIME OF OBTAINING PERMANENT~~
 17 ~~RESIDENCE.—At the time an alien obtains per-~~
 18 ~~manent resident status on a conditional basis~~
 19 ~~under paragraph (1), the Attorney General~~
 20 ~~shall provide for notice to such alien respecting~~
 21 ~~the provisions of this section and the require-~~
 22 ~~ments of subsection (c)(1) to have the condi-~~
 23 ~~tional basis of such status removed.~~

24 ~~(B) AT TIME OF REQUIRED PETITION.—In~~
 25 ~~addition, the Attorney General shall attempt to~~

provide notice to such an alien, at or about the date of the alien's graduation from an institution of higher education of the requirements of subsection (c)(1).

(C) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such an alien.

(b) TERMINATION OF STATUS IF FINDING THAT QUALIFYING EDUCATION IMPROPER.—

(1) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the Attorney General determines that the alien is no longer a student in good standing at an accredited institution of higher education, the Attorney General shall so notify the alien and, subject to paragraph (2), shall terminate the permanent resident status of the alien as of the date of the determination.

(2) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on

1 the alien to establish, by a preponderance of the evi-
 2 dence, that the condition described in paragraph (1)
 3 is not met.

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

6 (1) IN GENERAL.—In order for the conditional
 7 basis established under subsection (a) for an alien to
 8 be removed the alien must submit to the Attorney
 9 General, during the period described in subsection
 10 (d)(2), a petition which requests the removal of such
 11 conditional basis and which states, under penalty of
 12 perjury, the facts and information described in sub-
 13 section (d)(1).

14 (2) TERMINATION OF PERMANENT RESIDENT
 15 STATUS FOR FAILURE TO FILE PETITION.—

16 (A) IN GENERAL.—In the case of an alien
 17 with permanent resident status on a conditional
 18 basis under subsection (a), if no petition is filed
 19 with respect to the alien in accordance with the
 20 provisions of paragraph (1), the Attorney Gen-
 21 eral shall terminate the permanent resident sta-
 22 tus of the alien as of the 90th day after the
 23 graduation of the alien from an institution of
 24 higher education.

~~(B) HEARING IN REMOVAL PROCEEDING.—~~

In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the condition of paragraph (1).

~~(3) DETERMINATION AFTER PETITION AND INTERVIEW.—~~

~~(A) IN GENERAL.—~~If a petition is filed in accordance with the provisions of paragraph (1), the Attorney General shall make a determination, within 90 days, as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the alien's education.

~~(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—~~If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the alien and shall remove the conditional basis of the status of the alien effective as of the 90th day after the alien's graduation from an institution of higher education.

~~(C) TERMINATION IF ADVERSE DETERMINATION.—~~If the Attorney General determines

that such facts and information are not true;
the Attorney General shall so notify the alien
and, subject to subparagraph (D), shall termi-
nate the permanent resident status of an alien
as of the date of the determination.

~~(D) HEARING IN REMOVAL PRO-~~
~~CEEDING.~~—Any alien whose permanent resident
status is terminated under subparagraph (C)
may request a review of such determination in
a proceeding to remove the alien. In such pro-
ceeding, the burden of proof shall be on the At-
torney General to establish, by a preponderance
of the evidence, that the facts and information
described in subsection (d)(1) and alleged in the
petition are not true with respect to the alien's
education.

~~(d) DETAILS OF PETITION.—~~

~~(1) CONTENTS OF PETITION.~~—Each petition
under subsection (c)(1)(A) shall contain the fol-
lowing facts and information:

~~(A) The alien graduated from an institu-~~
~~tion of higher education, as evidenced by an of-~~
~~ficial report from the registrar—~~

~~(i) within six years, in the case of a~~
~~four-year bachelor's degree program; or~~

1 (ii) within four years, in the case of
2 the degree program of a two-year institu-
3 tion.

4 (B) The alien maintained good moral char-
5 acter.

6 (C) The alien has not been convicted of
7 any offense described in section 237(a)(2) or
8 237(a)(4).

9 (D) The alien has maintained continuous
10 physical residence in the United States.

11 (2) PERIOD FOR FILING PETITION.—The peti-
12 tion under subsection (c)(1)(A) must be filed during
13 the 90-day period after the alien's graduation from
14 a institution of higher education.

15 (c) TREATMENT OF PERIOD FOR PURPOSES OF NAT-
16 URALIZATION.—For purposes of title III of the Immigra-
17 tion and Nationality Act, in the case of an alien who is
18 in the United States as a lawful permanent resident on
19 a conditional basis under this section, the alien shall be
20 considered to have been admitted as an alien lawfully ad-
21 mitted for permanent residence and to be in the United
22 States as an alien lawfully admitted to the United States
23 for permanent residence.

24 (f) TREATMENT OF CERTAIN WAIVERS.—In the case
25 of an alien who has permanent residence status on a con-

ditional basis under this section; if, in order to obtain such status, the alien obtained a waiver under subsection (h) or (i) of section 212 of the Immigration and Nationality Act of certain grounds of inadmissibility, such waiver terminates upon the termination of such permanent residence status under this section.

(g) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term “institution of higher education” has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C.1001).

SEC. 5. GAO REPORT.

Six 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 during the application period described in section 3(a)(1)(A);

(2) the number of aliens who applied for adjustment of status under section 3(a);

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

1 (4) the number of aliens with respect to whom
 2 the conditional basis of their status was removed
 3 under section 4.

4 **SECTION 1. SHORT TITLE.**

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

7 **SEC. 2. RESTORATION OF STATE OPTION TO DETERMINE**
 8 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**
 9 **CATION BENEFITS.**

10 *Section 505 of the Illegal Immigration Reform and*
 11 *Immigrant Responsibility Act of 1996 (Division C of Public*
 12 *Law 104–208; 110 Stat. 3009–672; 8 U.S.C. 1623) is re-*
 13 *pealed.*

14 **SEC. 3. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**
 15 **STATUS OF CERTAIN ALIEN HIGH SCHOOL**
 16 **GRADUATES WHO ARE LONG-TERM RESI-**
 17 **DENTS OF THE UNITED STATES.**

18 (a) *SPECIAL RULE FOR CERTAIN ALIEN HIGH*
 19 *SCHOOL GRADUATES.—*

20 (1) *IN GENERAL.—Except as otherwise provided*
 21 *in paragraph (2), notwithstanding any other provi-*
 22 *sion of law, the Attorney General may cancel the re-*
 23 *moval of, and adjust to the status of an alien lawfully*
 24 *admitted for permanent residence, an alien who is in-*
 25 *admissible or deportable from the United States, if the*

1 *alien applies for such cancellation and adjustment of*
2 *status and demonstrates that—*

3 *(A) the alien has attained 12 years of age*
4 *prior to the date of enactment of this Act;*

5 *(B) the alien has not, prior to the date of*
6 *filing the application for cancellation of removal*
7 *and adjustment of status under this subsection,*
8 *attained the age of 21 years;*

9 *(C) the alien, prior to the date of filing an*
10 *application for cancellation of removal and ad-*
11 *justment of status under this subsection, has re-*
12 *ceived a certificate of graduation from a school*
13 *providing secondary education or the recognized*
14 *equivalent of such certificate;*

15 *(D) has maintained a continuous physical*
16 *presence in the United States for a period of not*
17 *less than 5 years immediately preceding the date*
18 *of enactment of this Act;*

19 *(E) the alien is a person of good moral*
20 *character; and*

21 *(F) is not inadmissible under section*
22 *212(a)(2) (8 U.S.C. 1182(a)(2)) or 212(a)(3) (8*
23 *U.S.C. 1182(a)(3)) or deportable under section*
24 *237(a)(2) (8 U.S.C. 1227(a)(2)) or 237(a)(4) (8*

1 *U.S.C. 1227(a)(4)) of the Immigration and Na-*
2 *tionality Act.*

3 (2) *EXCEPTIONS.—*

4 (A) *REHABILITATION AND HARDSHIP TO*
5 *CERTAIN ALIENS.—Notwithstanding subpara-*
6 *graph (F) of paragraph (1), the Attorney Gen-*
7 *eral may cancel the removal of, and adjust to the*
8 *status of an alien lawfully admitted for perma-*
9 *nent residence, an alien (other than an alien*
10 *convicted of an aggravated felony, as defined in*
11 *section 101(a)(43) of the Immigration and Na-*
12 *tionality Act (8 U.S.C. 1101(a)(43)) or an alien*
13 *who is inadmissible under section 212(a)(3) (8*
14 *U.S.C. 1182(a)(3)) or deportable under section*
15 *237(a)(4) (8 U.S.C. 1227(a)(4)) of such Act) who*
16 *but for that subparagraph would qualify for can-*
17 *cellation of removal and adjustment of status*
18 *under this section if the alien demonstrates reha-*
19 *ilitation and that the alien’s removal will result*
20 *in exceptional and extremely unusual hardship*
21 *to the alien or a United States citizen or lawful*
22 *permanent resident spouse, parent, or child.*

23 (B) *ALIENS QUALIFYING BEFORE THE DATE*
24 *OF ENACTMENT.—Notwithstanding paragraph*
25 *(1), the Attorney General may cancel the re-*

1 *removal of, and adjust to the status of an alien*
2 *lawfully admitted for permanent residence, an*
3 *alien if—*

4 *(i) the alien would have met the re-*
5 *quirements of paragraph (1) at any time*
6 *during the 4-year period immediately pre-*
7 *ceding the date of enactment of this Act;*
8 *and*

9 *(ii) the alien has graduated from, or*
10 *is, on the date of filing an application for*
11 *cancellation of removal under this sub-*
12 *section, enrolled in the United States in an*
13 *institution of higher education, as defined*
14 *by section 101 of the Higher Education Act*
15 *of 1965 (20 U.S.C. 1001).*

16 *(3) PROCEDURES.—*

17 *(A) IN GENERAL.—The Attorney General*
18 *shall by regulation establish a procedure that*
19 *permits aliens to apply for cancellation of re-*
20 *moval and adjustment of status available under*
21 *this subsection without being placed in removal*
22 *proceedings, except that, in addition, such can-*
23 *cellation of removal and adjustment of status*
24 *shall be available in removal proceedings. In the*
25 *case of an alien in an exclusion or deportation*

1 *hearing, suspension of deportation on the same*
2 *grounds as are provided under this subsection for*
3 *cancellation of removal, together with adjustment*
4 *of status, shall be available.*

5 (B) *TREATMENT PRIOR TO GRADUATION.*—

6 (i) *IN GENERAL.*—*Notwithstanding*
7 *any other provision of law, an alien de-*
8 *scribed in clause (ii) may not be removed so*
9 *long as the alien continues to meet the cri-*
10 *teria of that clause.*

11 (ii) *COVERED ALIENS.*—*An alien de-*
12 *scribed in this clause is an alien who does*
13 *not meet the requirements of paragraph*
14 *(1)(C) but is otherwise able to demonstrate*
15 *prima facie eligibility for cancellation of re-*
16 *moval and adjustment of status under this*
17 *section and has a reasonable opportunity of*
18 *meeting all the requirements of cancellation*
19 *of removal and adjustment of status under*
20 *this section in the future.*

21 (iii) *WORK AUTHORIZATION.*—*The At-*
22 *torney General shall grant an alien de-*
23 *scribed in clause (ii) authorization to en-*
24 *gage in employment in the United States.*

1 (C) *EXPEDITED PROCESSING OF APPLICA-*
2 *TIONS; PROHIBITION ON FEES.*—*Regulations pro-*
3 *mulgated under this paragraph shall provide*
4 *that applications for cancellation of removal and*
5 *adjustment of status under this subsection will be*
6 *considered on an expedited basis and without a*
7 *requirement for the payment by the applicant of*
8 *any additional fee for such expedited processing.*

9 (4) *CONFIDENTIALITY OF INFORMATION.*—

10 (A) *PROHIBITION.*—*Neither the Attorney*
11 *General nor any other official or employee of the*
12 *Department of Justice may—*

13 (i) *use the information furnished by*
14 *the applicant pursuant to an application*
15 *filed under this subsection for any purpose*
16 *other than to make a determination on the*
17 *application;*

18 (ii) *make any publication whereby the*
19 *information furnished by any particular in-*
20 *dividual can be identified; or*

21 (iii) *permit anyone other than a sworn*
22 *officer or employee of the Department of*
23 *Justice or, with respect to an application*
24 *filed under this subsection with a designated*

1 entity, that designated entity, to examine
2 applications filed under this subsection.

3 (B) *PENALTY.*—Whosoever knowingly uses,
4 publishes, or permits information to be examined
5 in violation of this subsection shall be fined not
6 more than \$10,000.

7 (b) *TERMINATION OF PERIOD OF CONTINUOUS PE-*
8 *RIOD.*—For purposes of this section, any period of contin-
9 uous physical presence in the United States of an alien who
10 applies for cancellation of removal and adjustment of status
11 under subsection (a) shall not terminate when the alien is
12 served a notice to appear under section 239(a) of the Immi-
13 gration and Nationality Act (8 U.S.C. 1229) or any other
14 document notifying the alien of the initiation of immigra-
15 tion proceedings under that Act.

16 (c) *TREATMENT OF CERTAIN BREAKS IN PRESENCE.*—
17 An alien shall be considered to have failed to maintain con-
18 tinuous physical presence in the United States under sub-
19 section (a)(1)(D) if the alien has departed from the United
20 States for any period in excess of 90 days or for any periods
21 in the aggregate exceeding 180 days, except that an alien
22 may remain eligible for cancellation of removal and adjust-
23 ment of status under this section notwithstanding a failure
24 to maintain continuous physical presence in the United
25 States if the alien demonstrates that failure is due to excep-

1 *tional circumstances, as defined by section 240(e)(1) of the*
 2 *Immigration and Nationality Act (8 U.S.C. 1229a(e)(1)),*
 3 *or circumstances described in subparagraphs (A), (B), or*
 4 *(C) of section 244(b)(1) of the Immigration and Nationality*
 5 *Act (8 U.S.C. 1254a(b)(1)).*

6 *(d) STATUTORY CONSTRUCTION.—Nothing in this sec-*
 7 *tion may be construed to apply a numerical limitation on*
 8 *the number of aliens who may be eligible for cancellation*
 9 *of removal under section 240A of the Immigration and Na-*
 10 *tionality Act (8 U.S.C. 1229b).*

11 *(e) REGULATIONS.—Not later than 180 days after the*
 12 *date of enactment of this Act, the Attorney General shall*
 13 *publish regulations implementing this section. Such regula-*
 14 *tions shall be effective immediately on an interim, final*
 15 *basis, but are subject to change and revision after public*
 16 *notice and opportunity for a period for public comment.*

17 **SEC. 4. ANNUAL REPORT.**

18 *Not later than one year after the date of enactment*
 19 *of this Act, and annually thereafter, the Attorney General*
 20 *shall submit a report to the Committees on the Judiciary*
 21 *of the Senate and the House of Representatives and to the*
 22 *Secretary of Education setting forth—*

23 *(1) the number of aliens who applied for can-*
 24 *cellation of removal and adjustment of status under*
 25 *section 3;*

1 (2) *the number of aliens who were granted can-*
2 *cellation of removal and adjustment of status under*
3 *section 3;*

4 (3) *the number of aliens who applied for can-*
5 *cellation of removal and adjustment of status under*
6 *section 3 but whose applications were denied and the*
7 *basis for the denial of each application; and*

8 (4) *the number of pending applications for can-*
9 *cellation of removal and adjustment of status under*
10 *section 3.*

Amend the title to read as follows: “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 high school graduates who are long-term United States residents.”.

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107TH CONGRESS
2D SESSION

S. 1291

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 college-bound students who are long-term United States residents.

JUNE 20, 2002

Reported with an amendment and an amendment to the
title