

107<sup>TH</sup> CONGRESS  
1<sup>ST</sup> 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.

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IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2001

Mr. HATCH 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 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,*

3       **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. RESTORATION OF STATE OPTION TO DETERMINE**  
2 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**  
3 **CATION BENEFITS.**

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7 repealed.

8 **SEC. 3. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**  
9 **STATUS OF CERTAIN LONG-TERM RESIDENT**  
10 **STUDENTS.**

11 (a) SPECIAL RULE FOR CHILDREN IN QUALIFIED IN-  
12 STITUTIONS OF HIGHER EDUCATION.—

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

21 (A) the alien has applied for relief under  
22 this subsection not later than two years after  
23 the date of enactment of this Act;

24 (B) the alien has not, at the time of appli-  
25 cation, attained the age of 21;

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

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

12 (E) the alien has been a person of good  
13 moral character during such period; and

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

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

22 (b) TERMINATION OF CONTINUOUS PERIOD.—For  
23 purposes of this section, any period of continuous resi-  
24 dence or continuous physical presence in the United States  
25 of an alien who applies for cancellation of removal under

1 this section shall not terminate when the alien is served  
2 a notice to appear under section 239(a) of the Immigra-  
3 tion and Nationality Act.

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

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

14 (e) REGULATIONS.—

15 (1) PROPOSED REGULATIONS.—Not later than  
16 90 days after the date of the enactment of this Act,  
17 the Attorney General shall publish proposed regula-  
18 tions implementing this section.

19 (2) INTERIM, FINAL REGULATIONS.—Not later  
20 than 180 days after the date of the enactment of  
21 this Act, the Attorney General shall publish final  
22 regulations implementing this section. Such regula-  
23 tions shall be effective immediately on an interim  
24 basis, but are subject to change and revision after

1 public notice and opportunity for a period for public  
2 comment.

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

5 (a) IN GENERAL.—

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

14 (2) NOTICE OF REQUIREMENTS.—

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

23 (B) AT TIME OF REQUIRED PETITION.—In  
24 addition, the Attorney General shall attempt to  
25 provide notice to such an alien, at or about the

1 date of the alien's graduation from an institu-  
2 tion of higher education of the requirements of  
3 subsection (c)(1).

4 (C) EFFECT OF FAILURE TO PROVIDE NO-  
5 TICE.—The failure of the Attorney General to  
6 provide a notice under this paragraph shall not  
7 affect the enforcement of the provisions of this  
8 section with respect to such an alien.

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

11 (1) IN GENERAL.—In the case of an alien with  
12 permanent resident status on a conditional basis  
13 under subsection (a), if the Attorney General deter-  
14 mines that the alien is no longer a student in good  
15 standing at an accredited institution of higher edu-  
16 cation, the Attorney General shall so notify the alien  
17 and, subject to paragraph (2), shall terminate the  
18 permanent resident status of the alien as of the date  
19 of the determination.

20 (2) HEARING IN REMOVAL PROCEEDING.—Any  
21 alien whose permanent resident status is terminated  
22 under paragraph (1) may request a review of such  
23 determination in a proceeding to remove the alien.  
24 In such proceeding, the burden of proof shall be on  
25 the alien to establish, by a preponderance of the evi-

1           dence, that the condition described in paragraph (1)  
2           is not met.

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

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

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

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

24          (B) HEARING IN REMOVAL PROCEEDING.—

25          In any removal proceeding with respect to an

1 alien whose permanent resident status is termi-  
2 nated under subparagraph (A), the burden of  
3 proof shall be on the alien to establish compli-  
4 ance with the condition of paragraph (1).

5 (3) DETERMINATION AFTER PETITION AND  
6 INTERVIEW.—

7 (A) IN GENERAL.—If a petition is filed in  
8 accordance with the provisions of paragraph  
9 (1), the Attorney General shall make a deter-  
10 mination, within 90 days, as to whether the  
11 facts and information described in subsection  
12 (d)(1) and alleged in the petition are true with  
13 respect to the alien's education.

14 (B) REMOVAL OF CONDITIONAL BASIS IF  
15 FAVORABLE DETERMINATION.—If the Attorney  
16 General determines that such facts and infor-  
17 mation are true, the Attorney General shall so  
18 notify the alien and shall remove the conditional  
19 basis of the status of the alien effective as of  
20 the 90th day after the alien's graduation from  
21 an institution of higher education.

22 (C) TERMINATION IF ADVERSE DETER-  
23 MINATION.—If the Attorney General determines  
24 that such facts and information are not true,  
25 the Attorney General shall so notify the alien

1 and, subject to subparagraph (D), shall termi-  
2 nate the permanent resident status of an alien  
3 as of the date of the determination.

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

15 (d) DETAILS OF PETITION.—

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

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

22 (i) within six years, in the case of a  
23 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 (e) 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.

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