

111TH CONGRESS  
1ST SESSION

# S. 729

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 26, 2009

Mr. DURBIN (for himself, Mr. LUGAR, Mr. REID, Mr. MARTINEZ, Mr. LEAHY, Mr. LIEBERMAN, Mr. KENNEDY, 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 2009” or the  
4 “DREAM Act of 2009”.

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19 (8 U.S.C. 1623) is repealed.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;

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; and

21          (F) the alien had not yet reached the age  
22          of 35 years on the date of the enactment of this  
23          Act.

24          (2) WAIVER.—Notwithstanding paragraph (1),  
25          the Secretary of Homeland Security may waive the

1 ground of ineligibility under section 212(a)(6)(E) of  
2 the Immigration and Nationality Act and the ground  
3 of deportability under paragraph (1)(E) of section  
4 237(a) of that Act for humanitarian purposes or  
5 family unity or when it is otherwise in the public in-  
6 terest.

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

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

19 (c) TREATMENT OF CERTAIN BREAKS IN PRES-  
20 ENCE.—

21 (1) IN GENERAL.—An alien shall be considered  
22 to have failed to maintain continuous physical pres-  
23 ence in the United States under subsection (a) if the  
24 alien has departed from the United States for any

1 period in excess of 90 days or for any periods in the  
2 aggregate exceeding 180 days.

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

13 (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—  
14 Nothing in this section may be construed to apply a nu-  
15 merical limitation on the number of aliens who may be  
16 eligible for cancellation of removal or adjustment of status  
17 under this section.

18 (e) REGULATIONS.—

19 (1) PROPOSED REGULATIONS.—Not later than  
20 180 days after the date of enactment of this Act, the  
21 Secretary of Homeland Security shall publish pro-  
22 posed regulations implementing this section. Such  
23 regulations shall be effective immediately on an in-  
24 terim basis, but are subject to change and revision

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

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

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

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

12 (a) IN GENERAL.—

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

23 (2) NOTICE OF REQUIREMENTS.—

24 (A) AT TIME OF OBTAINING PERMANENT  
25 RESIDENCE.—At the time an alien obtains per-

1           manent resident status on a conditional basis  
2           under paragraph (1), the Secretary of Home-  
3           land Security shall provide for notice to the  
4           alien regarding the provisions of this section  
5           and the requirements of subsection (c) to have  
6           the conditional basis of such status removed.

7                   (B) EFFECT OF FAILURE TO PROVIDE NO-  
8           TICE.—The failure of the Secretary of Home-  
9           land Security to provide a notice under this  
10          paragraph—

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

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

16          (b) TERMINATION OF STATUS.—

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

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

24                   (B) has become a public charge; or



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

4           (2) RETURN TO PREVIOUS IMMIGRATION STA-  
5           TUS.—Any alien whose conditional permanent resi-  
6           dent status is terminated under paragraph (1) shall  
7           return to the immigration status the alien had im-  
8           mediately prior to receiving conditional permanent  
9           resident status under this Act.

10          (c) REQUIREMENTS OF TIMELY PETITION FOR RE-  
11          MOVAL OF CONDITION.—

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

21           (2) ADJUDICATION OF PETITION TO REMOVE  
22           CONDITION.—

23           (A) IN GENERAL.—If a petition is filed in  
24           accordance with paragraph (1) for an alien, the  
25           Secretary of Homeland Security shall make a

1 determination as to whether the alien meets the  
2 requirements set out in subparagraphs (A)  
3 through (E) of subsection (d)(1).

4 (B) REMOVAL OF CONDITIONAL BASIS IF  
5 FAVORABLE DETERMINATION.—If the Secretary  
6 determines that the alien meets such require-  
7 ments, the Secretary shall notify the alien of  
8 such determination and immediately remove the  
9 conditional basis of the status of the alien.

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

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

1 be deemed in conditional permanent resident status  
2 in the United States during the period in which the  
3 petition is pending.

4 (d) DETAILS OF PETITION.—

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

10 (A) The alien has demonstrated good  
11 moral character during the entire period the  
12 alien has been a conditional permanent resi-  
13 dent.

14 (B) The alien is in compliance with section  
15 4(a)(1)(C).

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

1 has not abandoned the alien's residence in the  
2 United States during the period of such service.

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

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

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

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

20 (2) HARDSHIP EXCEPTION.—

21 (A) IN GENERAL.—The Secretary of  
22 Homeland Security may, in the Secretary's dis-  
23 cretion, remove the conditional status of an  
24 alien if the alien—

1 (i) satisfies the requirements of sub-  
2 paragraphs (A), (B), and (C) of paragraph  
3 (1);

4 (ii) demonstrates compelling cir-  
5 cumstances for the inability to complete  
6 the requirements described in paragraph  
7 (1)(D); and

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

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

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

1 to be in the United States as an alien lawfully admitted  
2 to the United States for permanent residence. However,  
3 the conditional basis must be removed before the alien  
4 may apply for naturalization.

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

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

17 **SEC. 7. EXCLUSIVE JURISDICTION.**

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

1 or if a final order of deportation, exclusion, or removal  
2 is entered the Secretary shall resume all powers and duties  
3 delegated to the Secretary under this Act.

4 (b) STAY OF REMOVAL OF CERTAIN ALIENS EN-  
5 ROLLED IN PRIMARY OR SECONDARY SCHOOL.—The At-  
6 torney General shall stay the removal proceedings of any  
7 alien who—

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

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

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

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

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

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

22 (2) ceases to meet the requirements of sub-  
23 section (b)(1).

1 **SEC. 8. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**  
2 **TION.**

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

11 **SEC. 9. CONFIDENTIALITY OF INFORMATION.**

12       (a) PROHIBITION.—Except as provided in subsection  
13 (b), no officer or employee of the United States may—

14           (1) use the information furnished by the appli-  
15 cant pursuant to an application filed under this Act  
16 to initiate removal proceedings against any persons  
17 identified in the application;

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

21           (3) permit anyone other than an officer or em-  
22 ployee of the United States Government or, in the  
23 case of applications filed under this Act with a des-  
24 ignated entity, that designated entity, to examine  
25 applications filed under this Act.



1 (b) **REQUIRED DISCLOSURE.**—The Attorney General  
2 or the Secretary of Homeland Security shall provide the  
3 information furnished under this section, and any other  
4 information derived from such furnished information, to—

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

11 (2) an official coroner for purposes of affirma-  
12 tively identifying a deceased individual (whether or  
13 not such individual is deceased as a result of a  
14 crime).

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

18 **SEC. 10. EXPEDITED PROCESSING OF APPLICATIONS; PRO-**  
19 **HIBITION ON FEES.**

20 Regulations promulgated under this Act shall provide  
21 that applications under this Act will be considered on an  
22 expedited basis and without a requirement for the pay-  
23 ment by the applicant of any additional fee for such expe-  
24 dited processing.

1 **SEC. 11. HIGHER EDUCATION ASSISTANCE.**

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

9 (1) Student loans under parts B, D, and E of  
10 such title IV (20 U.S.C. 1071 et seq., 1087a et seq.,  
11 1087aa et seq.), subject to the requirements of such  
12 parts.

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

16 (3) Services under such title IV (20 U.S.C.  
17 1070 et seq.), subject to the requirements for such  
18 services.

19 **SEC. 12. GAO REPORT.**

20 Not later than seven years after the date of enact-  
21 ment of this Act, the Comptroller General of the United  
22 States shall submit a report to the Committee on the Judi-  
23 ciary of the Senate and the Committee on the Judiciary  
24 of the House of Representatives setting forth—

- 1           (1) the number of aliens who were eligible for  
2           cancellation of removal and adjustment of status  
3           under section 4(a);
- 4           (2) the number of aliens who applied for adjust-  
5           ment of status under section 4(a);
- 6           (3) the number of aliens who were granted ad-  
7           justment of status under section 4(a); and
- 8           (4) the number of aliens whose conditional per-  
9           manent resident status was removed under section  
10          5.

○