Texas Immigration LAW COUNCIL

EO: PROTECTING AMERICAN COMMUNITIES FROM CRIMINAL ALIENS

REFERENCES TO IN-STATE TUITION

On April 28, 2025, President Trump issued an Executive Order entitled Protecting American Communities from Criminal Aliens. Section 5, entitled "Equal Treatment of Americans" states that the Attorney General should identify and challenge any state or local policies that favor noncitizens over U.S. citizens, and that are either unlawful, preempted by federal law, or otherwise unenforceable. Specifically, the EO suggests that laws that offer in-state tuition for undocumented students when it is not equally offered to out-of-state U.S. citizens – which the order suggests may violate 8 U.S.C. § 1623.

WHAT IS THE STATUTE?

This statute is 8 U.S.C. § 1623, part of the federal immigration laws which says the following:

- What it does: States cannot give a higher education benefit (like in-state tuition rates, scholarships, or financial aid based on residency) to undocumented immigrants unless U.S. citizens (from out of state) would also get that same benefit without having to prove state residency.
- What it does **not** do: Federal law doesn't outright ban in-state tuition for undocumented students. It only bans giving a residency-based tuition break to undocumented immigrants without giving it equally to out-of-state citizens.

IMPLICATIONS OF 8 U.S.C. § 1623

If a state gives in-state tuition to undocumented students based solely on residency, it must also offer the same in-state tuition to out-of-state U.S. citizens, without requiring them to meet any residency requirements.

Federal law does not prohibit Texas from offering in-state tuition to students who graduate from our high schools. Texas policy is carefully crafted to reward those who have lived here, learned here, and contributed to our communities – without violating federal immigration law.

TEXAS' DREAM ACT COMPLIANCE WITH 8 U.S.C. § 1623:

Texas, complies with the statute by basing in-state tuition NOT on immigration status but on other factors, like:

- Graduation from a state high school
- Living in the state for a certain number of years
- Signing an affidavit of intent to legalize immigration status when eligible

As a result, Texas law (since 2001) says if you graduate from a Texas high school after attending for a few years and sign an affidavit promising to fix your status when you can, you qualify for in-state tuition – ***no matter your immigration status.***

Texas' Dream Act is Legal, Smart and Fair and Should be Preserved: Texas bases in-state tuition on attending and graduating from a Texas high school – not just residency – and it requires students to commit to legalizing their status if eligible. Because Texas ties the benefit to school attendance and graduation (not just "residency"), it complies with the federal statute. That's why Texas's policy is legal, smart, and fair – and why it's stood for over 20 years.