



**THE EQUAL PROTECTION PROJECT
A Project of the Legal Insurrection Foundation
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February 13, 2026

BY EMAIL

Hon. Harmeet K. Dhillon, Esq.
Assistant Attorney General
For Civil Rights
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Re: Request for DOJ Investigation into Colorado's In-State Tuition Program for Illegal Aliens

Dear Assistant Attorney General Dhillon,

The Equal Protection Project (EPP) of the Legal Insurrection Foundation is a non-profit that, among other things, seeks to ensure equal protection under the law and opposes unlawful discrimination in all forms. EPP respectfully requests that the Department of Justice (DOJ) open an investigation into Colorado's Advancing Students for a Stronger Economy Tomorrow (ASSET) law, which provides in-state tuition and related postsecondary education benefits to aliens not lawfully present in the United States, while denying the same in-state benefits to out-of-state U.S. citizens.¹

¹ See <https://financialaid.colostate.edu/in-state-tuition-requirements/> [<https://archive.is/D2DLI>] (accessed February 12, 2026).

For the reasons set forth below, Colorado's ASSET law arguably presents an even stronger conflict with federal law² than the state practices DOJ has recently challenged in California, Virginia, and elsewhere. DOJ should investigate taking similar enforcement action against Colorado.

I. Federal law prohibits postsecondary education benefits for illegal aliens that are not available to U.S. citizens who reside out of state.

Federal law, 8 U.S.C. § 1623(a), expressly prohibits states from providing “a postsecondary education benefit” to an alien who is not lawfully present “on the basis of residence within a State” unless the same benefit is also available to all U.S. citizens “without regard to whether the citizen or national is such a resident.” The Department of Justice has relied on this specific provision—together with Supremacy Clause preemption principles—to challenge state laws and regulations that grant resident tuition, scholarships, and other subsidies to unlawfully present aliens while withholding the same benefits from out-of-state U.S. citizens.³

II. Colorado's ASSET law conflicts with 8 U.S.C. § 1623(a).

Colorado's ASSET law—*Advancing Students for a Stronger Economy Tomorrow*—was enacted through Senate Bill 13-033 and amended by House Bill 22-1155⁴ to establish a statutory mechanism under which certain students who lack lawful immigration status may qualify for in-state tuition at Colorado public institutions of higher education.⁵ Under the current ASSET criteria, a student without legal status may qualify for in-state tuition if the student:

1. Attended a Colorado public or private high school for at least one year immediately preceding graduation, or was physically present in Colorado for at least one year immediately preceding the date the student completed a Colorado high-school equivalency (GED); and
2. Has been physically present in Colorado for at least 12 consecutive months immediately before enrolling in an institution of higher education.⁶

² 8 U.S.C. § 1623(a).

³ See, e.g., <https://www.justice.gov/opa/pr/justice-department-files-complaint-challenging-california-laws-providing-state-tuition> [<https://archive.ph/wip/dDBWV> (accessed February 12, 2026)] (California); <https://www.justice.gov/opa/media/1422151/dl> [<https://archive.ph/wip/S915y>] (accessed February 12, 2026) (Virginia).

⁴ Colo. Rev. Stat. § 23-7-110 (2024).
⁵

<https://cdhe.colorado.gov/sites/highered/files/Revised%20ASSET%20Legislation%20Fact%20Sheet.pdf> [<https://archive.ph/wip/gN4N3>] (accessed February 12, 2026).

⁶ Colorado previously required students without lawful immigration status to submit an affidavit stating that they had applied for lawful presence or would apply as soon as they became eligible.

ASSET operates as a residence-based substitute for lawful presence, permitting aliens who are not lawfully present in the United States to receive in-state tuition at Colorado public institutions while denying the same benefit to out-of-state U.S. citizens. That structure squarely implicates the limitation Congress imposed in 8 U.S.C. § 1623(a).⁷

This conflict is not limited to tuition classification alone. Because ASSET eligibility is integrated into Colorado's broader system of postsecondary education benefits, it extends to additional taxpayer-funded subsidies beyond tuition rates. Colorado institutions describe ASSET eligibility as enabling qualifying undocumented students, where otherwise eligible, to access the College Opportunity Fund (COF)⁸ stipend and other forms of state financial assistance.⁹

The ASSET law also impacts numerous scholarship programs in the state. For example, EPP previously filed a complaint with the U.S. Department of Education's Office for Civil Rights challenging scholarships at Metropolitan State University of Denver that gave preference to, or were restricted to, students eligible under the ASSET program.¹⁰

Each of these uses of the ASSET law constitutes a "postsecondary education benefit" within the meaning of § 1623(a), and each remains unavailable to U.S. citizens who reside out of state. Such discrimination against out-of-state U.S. citizens is prohibited by federal law.

The Colorado legislature removed that requirement in 2025 through Senate Bill 25-276, which amended C.R.S. § 23-7-110 and eliminated the affidavit requirement.

<https://leg.colorado.gov/bills/sb25-276> [<https://archive.is/wip/OdmEM>] (accessed February 12, 2026).

⁷ The Department of Justice has argued that state tuition statutes using high-school attendance and graduation requirements are functionally residency-based benefits in disguise. According to DOJ, these criteria operate as proxies for state residency because they effectively require prolonged in-state physical presence while allowing unlawfully present aliens to receive resident tuition rates that are denied to out-of-state U.S. citizens, in conflict with 8 U.S.C. § 1623(a) and the Supremacy Clause. See <https://www.justice.gov/opa/pr/justice-department-files-complaint-challenging-california-laws-providing-state-tuition> [<https://archive.ph/wip/dDBWV>] (accessed February 12, 2026); <https://www.justice.gov/opa/media/1422151/dl> [<https://archive.ph/wip/S915y>] (accessed February 10, 2026).

⁸ Colo. Rev. Stat. § 23-18-201 et seq.

⁹ [https://www.immigrationissues.com/colorados-asset-law-a-plain-english-guide-for-parents-of-undocumented-students/#:~:text=To%20qualify%20for%20ASSET%2C%20students%20must:%20*,State%20Financial%20Aid\)%2C%20not%20the%20federal%20FAFSA](https://www.immigrationissues.com/colorados-asset-law-a-plain-english-guide-for-parents-of-undocumented-students/#:~:text=To%20qualify%20for%20ASSET%2C%20students%20must:%20*,State%20Financial%20Aid)%2C%20not%20the%20federal%20FAFSA). [<https://archive.ph/wip/kKehX>] (accessed February 12, 2026).

¹⁰ See <https://equalprotect.org/case/equal-protection-project-v-metropolitan-state-university-of-denver/> [<https://archive.is/wip/hj14A>] (accessed February 12, 2026).

III. Colorado's ASSET law arguably presents an even stronger conflict than the laws DOJ challenged in California and Virginia.

Federal law does not permit Colorado to preference illegal aliens over out-of-state U.S. citizens. Section 1623(a) bars the provision of any postsecondary education benefit to unlawfully present aliens on a residence-based basis unless U.S. citizens may obtain the same benefit without regard to residency. While Colorado's law shares the core features that prompted the Department's recent enforcement actions against California and Virginia,¹¹ Colorado's statutory structure goes further than those laws by allowing eligibility after substantially shorter periods of in-state high school attendance or physical presence and by integrating that eligibility across additional state-funded postsecondary benefits beyond tuition classification.

Unlike Virginia,¹² which requires at least two years of in-state high school attendance, and California,¹³ which generally requires three years of attendance and graduation from a California high school, Colorado's ASSET law allows a student to qualify for in-state tuition after just one year of in-state high school or physical presence preceding GED completion, coupled with one year of physical presence before enrollment. This comparatively minimal threshold makes Colorado's law even more permissive, and its conflict with federal law even more significant. By lowering both the educational and residency requirements for illegal alien students to access subsidized in-state tuition, Colorado exacerbates the discrimination against out-of-state U.S. citizens who remain excluded from the same benefits absent full state residency.¹⁴

IV. Request for Investigation and Enforcement

Congress drew a clear statutory line in 8 U.S.C. § 1623(a) that states may not provide postsecondary education benefits to aliens not lawfully present on the basis of in-state residence unless out-of-state U.S. citizens may receive the same benefits. Colorado's ASSET law crosses that line by conferring in-state tuition and related taxpayer-funded postsecondary education

¹¹ <https://www.justice.gov/opa/pr/justice-department-files-complaint-challenging-virginia-laws-providing-state-tuition-and> [<https://archive.is/wip/M4HFv>] (accessed February 12, 2026).

¹² <https://www.ecmc.org/media/3sjhwvxm/accessible-college-as-an-undocumented-student-va.pdf> [<https://archive.ph/wip/rw4ru>] (accessed February 12, 2026).

¹³ <https://www.csac.ca.gov/undocumented> [<https://archive.ph/wip/t3BkR>] (accessed February 12, 2026).

¹⁴ The Department of Justice has filed lawsuits challenging similar in-state tuition laws in multiple states, including Texas and Oklahoma—both of which eliminated their policies following suit—as well as Illinois and Minnesota, where litigation is ongoing or anticipated. DOJ's position is that high-school attendance and graduation requirements function as proxies for state residency, allowing unlawfully present aliens to receive resident tuition benefits denied to out-of-state U.S. citizens in violation of 8 U.S.C. § 1623(a) and the Supremacy Clause. *See* <https://www.insidehighered.com/news/quick-takes/2025/09/04/doj-sues-illinois-over-state-tuition-noncitizens> [<https://archive.is/wip/sx33Z>] (accessed February 12, 2026).

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benefits based on lenient Colorado residence criteria while similarly situated U.S. out-of-state citizens remain ineligible for such benefits. Federal law does not permit such discrimination against out-of-state U.S. citizens.

The Department of Justice has the authority to investigate and enforce compliance with § 1623(a). We therefore respectfully request that the Civil Rights Division open a formal investigation into Colorado's ASSET law, determine the full scope of residence-based postsecondary education benefits provided under the program, and take appropriate enforcement action to ensure that Colorado complies with federal law.

Respectfully submitted,

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