

111TH CONGRESS
2D SESSION

S. 3207

To protect victims of crime or serious labor violations from deportation during Department of Homeland Security enforcement actions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 14, 2010

Mr. MENENDEZ (for himself, Mrs. GILLIBRAND, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect victims of crime or serious labor violations from deportation during Department of Homeland Security enforcement actions, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protect Our Workers
5 from Exploitation and Retaliation Act” or the “POWER
6 Act”.

1 **SEC. 2. VICTIMS OF SERIOUS LABOR AND EMPLOYMENT**
2 **VIOLATIONS OR CRIME.**

3 (a) PROTECTION FOR VICTIMS OF LABOR AND EM-
4 PLOYMENT VIOLATIONS.—Section 101(a)(15)(U) of the
5 Immigration and Nationality Act (8 U.S.C.
6 1101(a)(15)(U)) is amended—

7 (1) in clause (i)—

8 (A) by amending subclause (I) to read as
9 follows:

10 “(I) the alien—

11 “(aa) has suffered substantial
12 abuse or harm as a result of having
13 been a victim of criminal activity de-
14 scribed in clause (iii);

15 “(bb) has suffered substantial
16 abuse or harm related to a violation
17 described in clause (iv);

18 “(cc) is a victim of criminal ac-
19 tivity described in clause (iii) and
20 would suffer extreme hardship upon
21 removal; or

22 “(dd) has suffered a violation de-
23 scribed in clause (iv) and would suffer
24 extreme hardship upon removal;”;

25 (B) in subclause (II), by inserting “, or a
26 labor or employment violation resulting in a

workplace claim described in clause (iv)” before
the semicolon at the end;

(C) in subclause (III)—

(i) by striking “or State judge, to the
Service” and inserting “, State, or local
judge, to the Department of Homeland Se-
curity, to the Equal Employment Oppor-
tunity Commission, to the Department of
Labor, to the National Labor Relations
Board”; and

(ii) by inserting “, or investigating,
prosecuting, or seeking civil remedies for a
labor or employment violation related to a
workplace claim described in clause (iv)”
before the semicolon at the end; and

(D) in subclause (IV)—

(i) by inserting “(aa)” after “(IV)”
and

(ii) by adding at the end the fol-
lowing: “or

“(bb) a workplace claim described in
clause (iv) resulted from a labor or employ-
ment violation;”;

(2) in clause (ii)(II), by striking “and” at the
end;

1 (3) in clause (iii), by striking “or” at the end
2 and inserting “and”; and

3 (4) by adding at the end the following:

4 “(iv) in the labor or employment violation
5 related to a workplace claim, the alien—

6 “(I) has filed, is a material witness in,
7 or is likely to be helpful in the investiga-
8 tion of, a workplace claim (as defined in
9 section 274A(e)(10)(C)(iii)(II)); and

10 “(II) reasonably fears, has been
11 threatened with, or has been the victim of,
12 an action involving force, physical re-
13 straint, retaliation, or abuse of the immi-
14 gration or other legal process against the
15 alien or another person by the employer in
16 relation to acts underlying the workplace
17 claim or related to the filing of the work-
18 place claim; or”.

19 (b) TEMPORARY PROTECTION FOR VICTIMS OF
20 CRIME, LABOR, AND EMPLOYMENT VIOLATIONS.—Not-
21 withstanding any other provision of law, the Secretary of
22 Homeland Security may permit an alien to temporarily re-
23 main in the United States and grant the alien employment
24 authorization if the Secretary determines that the alien—

1 (1) has filed for relief under section
2 101(a)(15)(U) of the Immigration and Nationality
3 Act (8 U.S.C. 1101(a)(15)(U)); or

4 (2)(A) has filed, or is a material witness to, a
5 bona fide workplace claim (as defined in section
6 274A(e)(10)(B)(iii)(II) of such Act, as added by sec-
7 tion 3(b)); and

8 (B) has been helpful, is being helpful, or is like-
9 ly to be helpful to—

10 (i) a Federal, State, or local law enforce-
11 ment official;

12 (ii) a Federal, State, or local prosecutor;

13 (iii) a Federal, State, or local judge;

14 (iv) the Department of Homeland Security;

15 (v) the Equal Employment Opportunity
16 Commission;

17 (vi) the Department of Labor;

18 (vii) the National Labor Relations Board;

19 or

20 (viii) other Federal, State, or local authori-
21 ties investigating, prosecuting, or seeking civil
22 remedies related to the workplace claim.

23 (c) CONFORMING AMENDMENTS.—Section 214(p) of
24 the Immigration and Nationality Act (8 U.S.C. 1184(p))
25 is amended—

1 (1) in paragraph (1), by inserting “or inves-
 2 tigating, prosecuting, or seeking civil remedies for
 3 workplace claims described in section
 4 101(a)(15)(U)(iv)” after “section
 5 101(a)(15)(U)(iii)” each place such term appears;

6 (2) in paragraph (2)(A), by striking “10,000”
 7 and inserting “20,000”; and

8 (3) in paragraph (6)—

9 (A) by inserting “or workplace claims de-
 10 scribed in section 101(a)(15)(U)(iv)” after “de-
 11 scribed in section 101(a)(15)(U)(iii)”;

12 (B) by inserting “or workplace claim”
 13 after “prosecution of such criminal activity”.

14 (d) ADJUSTMENT OF STATUS FOR VICTIMS OF
 15 CRIMES.—Section 245(m)(1) of the Immigration and Na-
 16 tionality Act (8 U.S.C. 1255(m)(1)) is amended by insert-
 17 ing “or an investigation or prosecution regarding a work-
 18 place claim” after “prosecution”.

19 (e) CHANGE OF NONIMMIGRANT CLASSIFICATION.—
 20 Section 384(a)(1) of the Illegal Immigration Reform and
 21 Immigrant Responsibility Act of 1996 (8 U.S.C.
 22 1367(a)(1)) is amended—

23 (1) in subparagraph (E), by striking “physical
 24 or mental abuse and the criminal activity” and in-

1 serting “abuse and the criminal activity or work-
2 place claim”;

3 (2) in subparagraph (F), by adding “or” at the
4 end; and

5 (3) by inserting after subparagraph (F) the fol-
6 lowing:

7 “(G) the alien’s employer,”.

8 **SEC. 3. LABOR ENFORCEMENT ACTIONS.**

9 (a) REMOVAL PROCEEDINGS.—Section 239(e) of the
10 Immigration and Nationality Act (8 U.S.C. 1229(e)) is
11 amended—

12 (1) in paragraph (1)—

13 (A) by striking “In cases where” and in-
14 serting “If”; and

15 (B) by inserting “or as a result of informa-
16 tion provided to the Department of Homeland
17 Security in retaliation against individuals for
18 exercising or attempting to exercise their em-
19 ployment rights or other legal rights” after
20 “paragraph (2)”; and

21 (2) in paragraph (2), by adding at the end the
22 following:

23 “(C) At a facility about which a workplace
24 claim has been filed or is contemporaneously
25 filed.”.

1 (b) UNLAWFUL EMPLOYMENT OF ALIENS.—Section
2 274A(e) of the Immigration and Nationality Act (8 U.S.C.
3 1324a(e)) is amended by adding at the end the following:

4 “(10) CONDUCT IN ENFORCEMENT ACTIONS.—

5 “(A) ENFORCEMENT ACTION.—If the De-
6 partment of Homeland Security undertakes an
7 enforcement action at a facility about which a
8 workplace claim has been filed or is contem-
9 poraneously filed, or as a result of information
10 provided to the Department in retaliation
11 against employees for exercising their rights re-
12 lated to a workplace claim, the Department
13 shall ensure that—

14 “(i) any aliens arrested or detained
15 who are necessary for the investigation or
16 prosecution of workplace claim violations
17 or criminal activity (as described in sub-
18 paragraph (T) or (U) of section
19 101(a)(15)) are not removed from the
20 United States until after the Depart-
21 ment—

22 “(I) notifies the appropriate law
23 enforcement agency with jurisdiction
24 over such violations or criminal activ-
25 ity; and

1 “(II) provides such agency with
2 the opportunity to interview such
3 aliens; and

4 “(ii) no aliens entitled to a stay of re-
5 moval or abeyance of removal proceedings
6 under this section are removed.

7 “(B) PROTECTIONS FOR VICTIMS OF
8 CRIME, LABOR, AND EMPLOYMENT VIOLA-
9 TIONS.—

10 “(i) STAY OF REMOVAL OR ABEYANCE
11 OF REMOVAL PROCEEDINGS.—An alien
12 against whom removal proceedings have
13 been initiated under chapter 4 of title II,
14 who has filed a workplace claim, who is a
15 material witness in any pending or antici-
16 pated proceeding involving a workplace
17 claim, or who has filed for relief under sec-
18 tion 101(a)(15)(U), shall be entitled to a
19 stay of removal or an abeyance of removal
20 proceedings and to employment authoriza-
21 tion until the resolution of the workplace
22 claim or the denial of relief under section
23 101(a)(15)(U) after exhaustion of adminis-
24 trative appeals, whichever is later, unless
25 the Department establishes, by a prepon-

1 derance of the evidence in proceedings be-
2 fore the immigration judge presiding over
3 that alien’s removal hearing, that—

4 “(I) the Department initiated the
5 alien’s removal proceeding for wholly
6 independent reasons and not based
7 on, or as a result of, any information
8 provided to, or obtained by, the De-
9 partment—

10 “(aa) from the alien’s em-
11 ployer;

12 “(bb) from any outside
13 source, including any anonymous
14 source or any individual de-
15 scribed in subparagraphs (A)
16 through (G) of section
17 1384(a)(1) of the Illegal Immi-
18 gration Reform and Immigrant
19 Responsibility Act of 1996 (8
20 U.S.C. 1367(a)(1)); or

21 “(cc) during the prosecution
22 or investigation of the workplace
23 claim; and

1 “(II) the workplace claim was
2 filed in a bad faith with the intent to
3 delay or avoid the alien’s removal.

4 “(ii) DURATION.—Any stay of re-
5 moval or abeyance of removal proceedings
6 and employment authorization issued pur-
7 suant to clause (i) shall remain valid until
8 the resolution of the workplace claim or
9 the denial of relief under section
10 101(a)(15)(U) after the exhaustion of ad-
11 ministrative appeals, and shall be extended
12 by the Secretary of Homeland Security for
13 a period of not longer than 3 additional
14 years upon determining that—

15 “(I) such relief would enable the
16 alien asserting a workplace claim to
17 pursue the claim to resolution;

18 “(II) the deterrent goals of any
19 statute underlying a workplace claim
20 would be served; or

21 “(III) such extension would oth-
22 erwise further the interests of justice.

23 “(iii) DEFINITIONS.—In this section:

24 “(I) MATERIAL WITNESS.—Not-
25 withstanding any other provision of

1 law, the term ‘material witness’ means
2 an individual who presents a declara-
3 tion from an attorney investigating,
4 prosecuting, or defending the work-
5 place claim or from the presiding offi-
6 cer overseeing the workplace claim at-
7 testing that, to the best of the declar-
8 ant’s knowledge and belief, reasonable
9 cause exists to believe that the testi-
10 mony of the individual will be relevant
11 to the outcome of the workplace claim.

12 “(II) WORKPLACE CLAIM.—The
13 term ‘workplace claim’ means any
14 written or oral claim, charge, com-
15 plaint, or grievance filed with, commu-
16 nicated to, or submitted to the em-
17 ployer, a Federal, State, or local agen-
18 cy or court, or an employee represent-
19 ative related to the violation of appli-
20 cable Federal, State, and local labor
21 laws, including laws concerning wages
22 and hours, labor relations, family and
23 medical leave, occupational health and
24 safety, or nondiscrimination.”.

1 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out this Act and the amend-
4 ments made by this Act.

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