

115TH CONGRESS
1ST SESSION

H. R. 1036

To amend the Immigration and Nationality Act to promote family unity,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2017

Mr. O'ROURKE (for himself, Mr. PEARCE, and Mr. SWALWELL of California)
introduced the following bill; which was referred to the Committee on the
Judiciary

A BILL

To amend the Immigration and Nationality Act to promote
family unity, 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 “American Families
5 United Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The rights and interests of U.S. citizens
9 should be protected by our Nation’s immigration
10 laws.

1 (2) It is the intent of Congress to provide the
2 Attorney General and Secretary of Homeland Secu-
3 rity with the limited ability to provide fairness to the
4 spouses, children and parents of American citizens
5 in immigration proceedings on a case-by-case basis.

6 **SEC. 3. RULES OF CONSTRUCTION.**

7 Nothing in this Act shall be construed—

8 (1) to provide the Attorney General or the Sec-
9 retary of Homeland Security with the ability to ex-
10 pand the discretionary authority beyond a case-by-
11 case basis; or

12 (2) to provide, confirm or concur legalization or
13 nationalization of persons covered under this Act, it
14 is solely designed to address hardships incurred by
15 a small minority of American families that are ad-
16 versely affected by inadmissibility and deportation
17 provisions that cause family separation.

18 **SEC. 4. WAIVERS OF INADMISSIBILITY.**

19 (a) **ALIENS WHO ENTERED AS CHILDREN.**—Section
20 212(a)(9)(B)(iii) of the Immigration and Nationality Act
21 (8 U.S.C. 1182(a)(9)(B)(iii)) is amended by adding at the
22 end the following:

23 “(VI) **ALIENS WHO ENTERED AS**
24 **CHILDREN.**—Clause (i) shall not apply
25 to an alien who is the beneficiary of

1 an approved petition under section
2 101(a)(15)(H) and who has earned a
3 baccalaureate or higher degree from a
4 United States institution of higher
5 education (as defined in section
6 101(a) of the Higher Education Act
7 of 1965 (20 U.S.C. 1001(a))), and
8 had not yet reached the age of 16
9 years at the time of initial entry to
10 the United States.”.

11 (b) ALIENS UNLAWFULLY PRESENT.—Section
12 212(a)(9)(B)(v) of the Immigration and Nationality Act
13 (8 U.S.C. 1181(a)(9)(B)(v)) is amended—

14 (1) by striking “spouse or son or daughter” and
15 inserting “spouse, son, daughter, or parent”;

16 (2) by striking “extreme”; and

17 (3) by inserting “, child,” after “lawfully resi-
18 dent spouse”.

19 (c) PREVIOUS IMMIGRATION VIOLATIONS.—Section
20 212(a)(9)(C)(i) of the Immigration and Nationality Act
21 (8 U.S.C. 1182(a)(9)(C)(i)) is amended by adding “, other
22 than an alien described in clause (iii) or (iv) of subpara-
23 graph (B),” after “Any alien”.

24 (d) FALSE CLAIMS.—

25 (1) INADMISSIBILITY.—

1 (A) IN GENERAL.—Section 212(a)(6)(C) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1182(a)(6)(C)) is amended to read as follows:

4 “(C) MISREPRESENTATION.—

5 “(i) IN GENERAL.—Any alien who, by
6 fraud or willfully misrepresenting a mate-
7 rial fact, seeks to procure (or within the
8 last 3 years has sought to procure or has
9 procured) a visa, other documentation, or
10 admission into the United States or other
11 benefit provided under this Act is inadmis-
12 sible.

13 “(ii) FALSELY CLAIMING CITIZEN-
14 SHIP.—

15 “(I) INADMISSIBILITY.—Subject
16 to subclause (II), any alien who know-
17 ingly misrepresents himself or herself
18 to be a citizen of the United States
19 for any purpose or benefit under this
20 chapter (including section 274A) or
21 any other Federal or State law is in-
22 admissible.

23 “(II) SPECIAL RULE.—An alien
24 shall not be inadmissible under this
25 clause if the misrepresentation de-

1 scribed in subclause (I) was made by
2 the alien when the alien—

3 “(aa) was under 18 years of
4 age; or

5 “(bb) otherwise lacked the
6 mental competence to knowingly
7 misrepresent a claim of United
8 States citizenship.

9 “(iii) WAIVER.—The Attorney General
10 or the Secretary of Homeland Security
11 may, in the discretion of the Attorney Gen-
12 eral or the Secretary, waive the application
13 of clause (i) or (ii)(I) for an alien, regard-
14 less whether the alien is within or outside
15 the United States, if the Attorney General
16 or the Secretary find that a determination
17 of inadmissibility to the United States for
18 such alien would—

19 “(I) result in hardship to the
20 alien or to the alien’s parent, spouse,
21 son, or daughter who is a citizen of
22 the United States or an alien lawfully
23 admitted for permanent residence; or

24 “(II) in the case of a VAWA self-
25 petitioner, result in hardship to the

1 alien or a parent or child of the alien
2 who is a citizen of the United States,
3 an alien lawfully admitted for perma-
4 nent residence, or a qualified alien (as
5 defined in section 431 of the Personal
6 Responsibility and Work Opportunity
7 Reconciliation Act of 1996 (8 U.S.C.
8 1641(b))).

9 For purposes of this clause, family separa-
10 tion in and of itself shall be deemed to be
11 a hardship.

12 “(iv) LIMITATION ON REVIEW.—No
13 court shall have jurisdiction to review a de-
14 cision or action of the Attorney General or
15 the Secretary regarding a waiver under
16 clause (iii).”.

17 (B) CONFORMING AMENDMENT.—Section
18 212 of the Immigration and Nationality Act (8
19 U.S.C. 1182) is amended by striking subsection
20 (i).

21 (2) DEPORTABILITY.—Section 237(a)(3)(D) of
22 the Immigration and Nationality Act (8 U.S.C.
23 1227(a)(3)(D)) is amended to read as follows:

1 “(D) FALSELY CLAIMING CITIZENSHIP.—

2 Any alien described in section 212(a)(6)(C)(ii)
3 is deportable.”.

4 (e) DEFINITION OF CONVICTION.—

5 (1) IN GENERAL.—Section 101(a)(48) of the
6 Immigration and Nationality Act (8 U.S.C.
7 1101(a)(48)) is amended by striking subparagraphs
8 (A) and (B) and inserting the following:

9 “(A) The term ‘conviction’ means, with re-
10 spect to an alien, a final, formal judgment of
11 guilt entered by a court. Where a State or Fed-
12 eral court enters an adjudication or judgment
13 of guilt that has been withheld, deferred, ex-
14 punged, annulled, invalidated or vacated, or en-
15 ters an order of probation without entry of
16 judgment, or any similar disposition under
17 State or Federal law such judgment or adju-
18 dication shall not be considered a conviction for
19 purposes of this Act.

20 “(B) Any pardon entered by a State or
21 Federal authority shall render the prior convic-
22 tion null and void for all purposes under this
23 Act.

24 “(C) Any reference to a term of imprison-
25 ment or a sentence with respect to an offense

is deemed to include only the actual period of incarceration or confinement ordered by a court of law. The suspension of the imposition or execution of that imprisonment or sentence in whole or in part shall not be included as a part of the sentence for purposes of this Act.”.

(2) EFFECTIVE DATE AND APPLICATION.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply to convictions and sentences entered before, on, or after the date of the enactment of this Act.

SEC. 5. DISCRETIONARY AUTHORITY WITH RESPECT TO REMOVAL, DEPORTATION, INELIGIBILITY OR INADMISSIBILITY OF CITIZEN AND RESIDENT IMMEDIATE FAMILY MEMBERS.

(a) APPLICATIONS FOR RELIEF FROM REMOVAL.—Section 240(c)(4) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(4)) is amended by adding at the end the following:

“(D) JUDICIAL DISCRETION.—In the case of an alien subject to removal, deportation, ineligibility or inadmissibility, the immigration judge may exercise discretion to decline to order the alien removable, deportable, ineligible or inadmissible from the United States and termi-

1 nate proceedings or grant permission to reapply
 2 for admission or any application for relief from
 3 removal if the judge determines that such re-
 4 moval, deportation, ineligibility or inadmis-
 5 sibility is against the public interest or would
 6 result in hardship to the alien's United States
 7 citizen or lawful permanent resident parent,
 8 spouse, or child, or the judge determines the
 9 alien is prima facie eligible for naturalization
 10 except that this subparagraph shall not apply to
 11 an alien whom the judge determines—

12 “(i) is inadmissible or deportable
 13 under—

14 “(I) subparagraph (B), (C),
 15 (D)(ii), (E), (H), or (I) of section
 16 212(a)(2);

17 “(II) section 212(a)(3);

18 “(III) subparagraph (A), (C), or
 19 (D) of section 212(a)(10); or

20 “(IV) paragraph (2)(A)(ii),
 21 (2)(A)(v), (2)(F), (4), or (6) of sec-
 22 tion 237(a); or

23 “(ii) has—

24 “(I) engaged in conduct de-
 25 scribed in paragraph (9) or (10) of

1 section 103 of the Trafficking Victims
2 Protection Act of 2000 (22 U.S.C.
3 7102); or

4 “(II) a felony conviction de-
5 scribed in section 101(a)(43) that
6 would have been classified as an ag-
7 gravated felony at the time of convic-
8 tion.

9 For purposes of this subparagraph, family
10 separation in and of itself shall be deemed
11 to be a hardship and shall be deemed to be
12 against the public interest.”.

13 (b) SECRETARY’S DISCRETION.—Section 212 of the
14 Immigration and Nationality Act (8 U.S.C. 1182) is
15 amended by adding at the end the following:

16 “(u) SECRETARY’S DISCRETION.—In the case of an
17 alien who is inadmissible under this section or deportable
18 under section 237 or ineligible under any provision of this
19 Act, the Secretary of Homeland Security may exercise dis-
20 cretion to waive a ground of ineligibility, inadmissibility
21 or deportability or grant permission to reapply for admis-
22 sion or any application for immigration benefits if the Sec-
23 retary determines that such ineligibility, removal or re-
24 fusals of admission is against the public interest or would
25 result in hardship, including family separation, to the

1 alien’s United States citizen or permanent resident parent,
 2 spouse, or child. For purposes of this subsection, family
 3 separation in and of itself shall be deemed to be a hardship
 4 and shall be deemed to be against the public interest. This
 5 subsection shall not apply to an alien whom the Secretary
 6 determines—

7 “(1) is inadmissible or deportable under—

8 “(A) subparagraph (B), (C), (D)(ii), (E),
 9 (H), or (I) of subsection (a)(2);

10 “(B) subsection (a)(3);

11 “(C) subparagraph (A), (C), or (D) of sub-
 12 section (a)(10);

13 “(D) paragraph (2)(A)(ii), (2)(A)(v),
 14 (2)(F), or (6) of section 237(a); or

15 “(E) section 240(c)(4)(D)(ii)(II); or

16 “(2) has—

17 “(A) engaged in conduct described in para-
 18 graph (8) or (9) of section 103 of the Traf-
 19 ficking Victims Protection Act of 2000 (22
 20 U.S.C. 7102);

21 “(B) a felony conviction described in sec-
 22 tion 101(a)(43) that would have been classified
 23 as an aggravated felony at the time of convic-
 24 tion;”.

1 (c) REINSTATEMENT OF REMOVAL ORDERS.—Sec-
2 tion 241(a)(5) of the Immigration and Nationality Act (8
3 U.S.C. 1231(a)(5)) is amended by striking the period at
4 the end and inserting “, unless the alien reentered prior
5 to attaining the age of 18 years, or reinstatement of the
6 prior order of removal would not be in the public interest
7 or would result in hardship, including family separation,
8 to the alien’s United States citizen or permanent resident
9 parent, spouse, or child.”.

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