

116TH CONGRESS
1ST SESSION

S. 2929

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 21, 2019

Mr. MENENDEZ (for himself, Mr. BLUMENTHAL, Mr. BOOKER, Ms. HARRIS, Ms. CORTEZ MASTO, Mr. SANDERS, and Mr. MERKLEY) 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 removal 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

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

3 (C) in subclause (III)—

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

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

16 (D) in subclause (IV)—

17 (i) by inserting “(aa)” after “(IV)”;
 18 and

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

21 “(bb) a workplace claim described in clause (iv)
 22 resulting from a labor or employment violation;”;

23 (2) in clause (ii)(II), by striking “and” at the
 24 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 bona fide workplace claim (as de-
9 fined in section 274A(e)(10)(C)); 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 employ-
24 ment authorization, if the Secretary determines that the
25 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)(C) of such Act, as added by section
7 3(b) of this Act); 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, including
18 the Occupational Safety and Health Adminis-
19 tration;

20 (vii) the National Labor Relations Board;

21 (viii) the head official of a State or local
22 government department of labor, workforce
23 commission, or human relations commission or
24 council; or

1 (ix) any other Federal, State, or local au-
 2 thority investigating, prosecuting, or seeking
 3 civil remedies related to the workplace claim.

4 (c) REQUIREMENTS APPLICABLE TO U VISAS.—Sec-
 5 tion 214(p) of the Immigration and Nationality Act (8
 6 U.S.C. 1184(p)) is amended—

7 (1) in paragraph (1)—

8 (A) in the third sentence, by inserting “or
 9 in the investigation or prosecution of, or the
 10 seeking of civil remedies for, a workplace claim
 11 described in section 101(a)(15)(U)(iv)”;

12 (B) in the first sentence—

13 (i) by inserting “or investigating,
 14 prosecuting, or seeking civil remedies for
 15 workplace claims described in section
 16 101(a)(15)(U)(iv)” after “section
 17 101(a)(15)(U)(iii)”;

18 (ii) by striking “The petition” and in-
 19 serting the following:

20 “(A) IN GENERAL.—The petition”; and

21 (C) by adding at the end the following:

22 “(B) FEES.—An alien petitioning for, or
 23 having status under, section 101(a)(15)(U)
 24 shall not be required to submit any fee (or re-
 25 quest any fee waiver) in connection with such

petition or status, including fees associated with biometric services, or an application for advance permission to enter as a nonimmigrant.

“(C) CONFIDENTIALITY OF INFORMATION.—Neither the Secretary of Homeland Security, nor the Attorney General, may use the information furnished pursuant to a petition for status under section 101(a)(15)(U) for purposes of initiating or carrying out a removal proceeding.”;

(2) by striking paragraph (2);

(3) by redesignating paragraphs (3) through (7) as paragraphs (2) through (6), respectively; and
(4) in paragraph (5), as redesignated—

(A) by inserting “or workplace claims described in section 101(a)(15)(U)(iv)” after “described in section 101(a)(15)(U)(iii)”;

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

(d) ADJUSTMENT OF STATUS FOR VICTIMS OF CRIMES.—Section 245(m)(1) of the Immigration and Nationality Act (8 U.S.C. 1255(m)(1)) is amended by inserting “or an investigation or prosecution regarding a workplace claim” after “prosecution”.

1 (e) CHANGE OF NONIMMIGRANT CLASSIFICATION.—
 2 Section 384(a)(1) of the Illegal Immigration Reform and
 3 Immigrant Responsibility Act of 1996 (8 U.S.C.
 4 1367(a)(1)) is amended—

5 (1) in subparagraph (E), by striking “physical
 6 or mental abuse and the criminal activity” and in-
 7 serting “abuse and the criminal activity or work-
 8 place claim”;

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

11 (3) by inserting after subparagraph (F) the fol-
 12 lowing:

13 “(G) the alien’s employer,”.

14 **SEC. 3. LABOR ENFORCEMENT ACTIONS.**

15 (a) REMOVAL PROCEEDINGS.—Section 239(e) of the
 16 Immigration and Nationality Act (8 U.S.C. 1229(e)) is
 17 amended—

18 (1) in paragraph (1)—

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

21 (B) by inserting “or as a result of informa-
 22 tion provided to the Secretary of Homeland Se-
 23 curity in retaliation against individuals for exer-
 24 cising or attempting to exercise their employ-

1 ment rights or other legal rights” after “para-
2 graph (2)”; and

3 (2) in paragraph (2), by adding at the end the
4 following:

5 “(C) At a facility about which a workplace
6 claim has been filed or is contemporaneously
7 filed.”.

8 (b) UNLAWFUL EMPLOYMENT OF ALIENS.—Section
9 274A(e) of the Immigration and Nationality Act (8 U.S.C.
10 1324a(e)) is amended by adding at the end the following:

11 “(10) CONDUCT IN ENFORCEMENT ACTIONS.—

12 “(A) ENFORCEMENT ACTION.—If the Sec-
13 retary of Homeland Security undertakes an en-
14 forcement action at a facility about which a
15 workplace claim has been filed or is contem-
16 poraneously filed, or as a result of information
17 provided to the Secretary in retaliation against
18 employees for exercising their rights related to
19 a workplace claim, the Secretary shall ensure
20 that—

21 “(i) any alien arrested or detained
22 who is necessary for the investigation or
23 prosecution of workplace claim violations
24 or criminal activity (as described in sub-
25 paragraph (T) or (U) of section

1 101(a)(15)) is not removed from the
2 United States until after the Secretary—

3 “(I) notifies the appropriate law
4 enforcement agency with jurisdiction
5 over such violations or criminal activ-
6 ity; and

7 “(II) provides such agency with
8 the opportunity to interview such
9 alien; and

10 “(ii) no alien entitled to a stay of re-
11 moval or abeyance of removal proceedings
12 under this section is removed.

13 “(B) PROTECTIONS FOR VICTIMS OF
14 CRIME, LABOR, AND EMPLOYMENT VIOLA-
15 TIONS.—

16 “(i) STAY OF REMOVAL OR ABEYANCE
17 OF REMOVAL PROCEEDINGS.—An alien
18 against whom removal proceedings have
19 been initiated under chapter 4 of title II,
20 who has filed a workplace claim, who is a
21 material witness in any pending or antici-
22 pated proceeding involving a bona fide
23 workplace claim, or who has filed for relief
24 under section 101(a)(15)(U), shall be enti-
25 tled to a stay of removal or an abeyance of

1 removal proceedings and to employment
2 authorization until the resolution of the
3 workplace claim or the denial of relief
4 under section 101(a)(15)(U) after exhaus-
5 tion of administrative appeals, whichever is
6 later, unless the Secretary establishes, by a
7 preponderance of the evidence in pro-
8 ceedings before the immigration judge pre-
9 siding over that alien’s removal hearing,
10 that—

11 “(I) the alien has been convicted
12 of a felony; or

13 “(II) the workplace claim was
14 filed in bad faith with the intent to
15 delay or avoid the removal of the
16 alien.

17 “(ii) DURATION.—Any stay of re-
18 moval or abeyance of removal proceedings
19 and employment authorization issued pur-
20 suant to clause (i) shall remain valid until
21 the resolution of the workplace claim or
22 the denial of relief under section
23 101(a)(15)(U) after the exhaustion of ad-
24 ministrative appeals, and shall be extended
25 by the Secretary of Homeland Security for

1 a period of not longer than 10 additional
 2 years upon determining that—

3 “(I) such relief would enable the
 4 alien asserting a workplace claim to
 5 pursue the claim to resolution;

6 “(II) the deterrent goals of any
 7 law underlying a workplace claim
 8 would be served; or

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

11 “(C) DEFINITIONS.—In this paragraph:

12 “(i) MATERIAL WITNESS.—Notwith-
 13 standing any other provision of law, the
 14 term ‘material witness’ means an indi-
 15 vidual who presents a declaration from an
 16 attorney investigating, prosecuting, or de-
 17 fending the workplace claim or from the
 18 presiding officer overseeing the workplace
 19 claim attesting that, to the best of the de-
 20 clarant’s knowledge and belief, reasonable
 21 cause exists to believe that the testimony
 22 of the individual will be relevant to the
 23 outcome of the workplace claim.

24 “(ii) WORKPLACE CLAIM.—The term
 25 ‘workplace claim’ means any written or

1 oral claim, charge, complaint, or grievance
2 filed with, communicated to, or submitted
3 to the employer, a Federal, State, or local
4 agency or court, or an employee represent-
5 ative related to the violation of applicable
6 Federal, State, and local labor laws, in-
7 cluding laws concerning wages and hours,
8 labor relations, family and medical leave,
9 occupational health and safety, civil rights,
10 or nondiscrimination.”.

○