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H. R. 1909

To amend the Immigration and Nationality Act to provide for the adjustment of status of essential workers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2021

Mr. CASTRO of Texas (for himself, Mr. LIEU, Mr. VARGAS, Ms. BARRAGÁN, Mr. VELA, Mr. ESPAILLAT, Ms. GARCIA of Texas, Mr. MCGOVERN, Mr. BLUMENAUER, Mrs. NAPOLITANO, Mr. TORRES of New York, Ms. NORTON, Mr. CONNOLLY, Mr. GALLEGO, Mr. CORREA, Mr. SOTO, Mr. JOHNSON of Georgia, Ms. WILLIAMS of Georgia, Ms. MENG, Ms. VELÁZQUEZ, Mr. KHANNA, Mr. RUSH, Mr. JONES, Ms. MCCOLLUM, Mr. BROWN, Mr. CARBAJAL, Mr. LOWENTHAL, Ms. JACOBS of California, Ms. LEE of California, Mr. GRIJALVA, Ms. JAYAPAL, Mrs. DEMINGS, Mr. GOMEZ, Mr. GREEN of Texas, Mr. DANNY K. DAVIS of Illinois, Mr. CÁRDENAS, Ms. LEGER FERNANDEZ, Mr. TAKANO, Mr. SMITH of Washington, Ms. ESCOBAR, Ms. NEWMAN, Mr. GARCÍA of Illinois, Ms. DEGETTE, Mrs. BEATTY, Ms. DEAN, Ms. CLARKE of New York, Mr. CICILLINE, Ms. SÁNCHEZ, Ms. ADAMS, Ms. DELAURO, Mr. PALLONE, Ms. CHU, and Mr. SUOZZI) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide for the adjustment of status of essential workers, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Citizenship for Essen-
3 tial Workers Act”.

4 **SEC. 2. ADJUSTMENT OF STATUS OF ESSENTIAL WORKERS.**

5 (a) IN GENERAL.—Chapter 5 of title II of the Immi-
6 gration and Nationality Act (8 U.S.C. 1255 et seq.) is
7 amended by inserting after section 245A, the following:

8 **“SEC. 245B. ADJUSTMENT OF STATUS FOR ESSENTIAL**
9 **WORKERS.**

10 “(a) ADJUSTMENT OF STATUS FOR ESSENTIAL
11 WORKERS.—Notwithstanding any other provision of law,
12 the Secretary of Homeland Security (referred to in this
13 section as the ‘Secretary’) or the Attorney General shall
14 adjust to the status of an alien lawfully admitted for per-
15 manent residence—

16 “(1) an alien who—

17 “(A) satisfies the eligibility requirements
18 set forth in subsection (b); and

19 “(B) submits an application and satisfies
20 the criminal and national security background
21 checks and payment of applicable fees pursuant
22 to the procedures set forth in subsection (d);
23 and

24 “(2) the parents, spouse, sons, and daughters
25 of such alien.

1 “(b) ELIGIBILITY.—An alien applying for status
2 under subsection (a) shall satisfy the following require-
3 ments:

4 “(1) ALIENS WORKING IN CERTAIN SECTORS,
5 INDUSTRIES, AND OCCUPATIONS.—Except as pro-
6 vided in paragraph (2), the alien shall have, at any
7 point during the period described in subsection (i),
8 earned income for work in any of the following pri-
9 vate, public, or nonprofit sectors, industries, or occu-
10 pations:

11 “(A) Health care.

12 “(B) Emergency response.

13 “(C) Sanitation.

14 “(D) Restaurant ownership, food prepara-
15 tion, vending, catering, food packaging, food
16 services, or delivery.

17 “(E) Hotel or retail.

18 “(F) Fish, poultry, and meat processing
19 work.

20 “(G) Agricultural work, including labor
21 that is seasonal in nature.

22 “(H) Commercial or residential land-
23 scaping.

24 “(I) Commercial or residential construction
25 or renovation.

1 “(J) Housing, residential, and commercial
2 construction related activities or public works
3 construction.

4 “(K) Domestic work in private households,
5 including child care, home care, or house clean-
6 ing.

7 “(L) Natural disaster recovery, disaster re-
8 construction, and related construction.

9 “(M) Home and community-based work,
10 including—

11 “(i) home health care;

12 “(ii) residential care;

13 “(iii) assistance with activities of daily
14 living;

15 “(iv) any service provided by direct
16 care workers (as defined in section 799B
17 of the Public Health Service Act (42
18 U.S.C. 295p)), personal care aides, job
19 coaches, or supported employment pro-
20 viders; and

21 “(v) any other provision of care to in-
22 dividuals in their homes by direct service
23 providers, personal care attendants, and
24 home health aides.

1 “(N) Family care, including child care
2 services, in-home child care services such as
3 nanny services, and care services provided by
4 family members to other family members.

5 “(O) Manufacturing.

6 “(P) Warehousing.

7 “(Q) Transportation or logistics.

8 “(R) Janitorial.

9 “(S) Laundromat and dry-cleaning opera-
10 tors.

11 “(T) Any other work in ‘essential critical
12 infrastructure labor or services’, as described in
13 the memorandum of the Department of Home-
14 land Security entitled ‘Advisory Memorandum
15 on Identification of Essential Critical Infra-
16 structure Workers During COVID–19 Re-
17 sponse’ issued on March 28, 2020 (as revised),
18 on any date during the period described in sub-
19 section (i).

20 “(U) Any other work that a State or local
21 government considers to be essential during the
22 emergency referred to in subsection (i).

23 “(2) CERTAIN OTHER ELIGIBLE ALIENS.—An
24 alien not described in paragraph (1)—

25 “(A) shall—

1 “(i)(I) have earned income in any sec-
 2 tor, industry, or occupation described in
 3 that paragraph on any date during the pe-
 4 riod described in subsection (i) but was un-
 5 able to continue that work through no
 6 fault of the alien, including because the
 7 working conditions posed a high degree of
 8 risk to the alien’s health and safety; and

9 “(II) have been seeking to resume
 10 work in any such sector, industry, or occu-
 11 pation;

12 “(B) is the surviving parent, spouse, son,
 13 or daughter of an alien who—

14 “(i) performed any service or labor for
 15 remuneration in any sector, industry, or
 16 occupation described in that paragraph on
 17 any date during the period described in
 18 subsection (i); and

19 “(ii) died due to COVID–19; or

20 “(C) is the parent, spouse, son, or daugh-
 21 ter of a member of the Armed Forces, including
 22 the National Guard.

23 “(3) PHYSICAL PRESENCE.—

24 “(A) DATE OF SUBMITTAL OF APPLICA-
 25 TION.—The alien shall be physically present in

1 the United States on the date on which the ap-
2 plication is submitted.

3 “(B) CONTINUOUS PHYSICAL PRESENCE.—

4 “(i) IN GENERAL.—Except as pro-
5 vided in clause (ii), the alien shall have
6 been continuously physically present in the
7 United States beginning on January 1,
8 2021, and ending on the date on which the
9 application is approved.

10 “(ii) EXCEPTIONS.—

11 “(I) AUTHORIZED ABSENCE.—An
12 alien who departed temporarily from
13 the United States shall not be consid-
14 ered to have failed to maintain contin-
15 uous physical presence in the United
16 States during any period of travel
17 that was authorized by the Secretary.

18 “(II) BRIEF, CASUAL, AND INNO-
19 CENT ABSENCES.—

20 “(aa) IN GENERAL.—An
21 alien who departed temporarily
22 from the United States shall not
23 be considered to have failed to
24 maintain continuous physical
25 presence in the United States if

1 the alien's absences from the
2 United States are brief, casual,
3 and innocent, whether or not
4 such absences were authorized by
5 the Secretary.

6 “(bb) ABSENCES MORE
7 THAN 180 DAYS.—For purposes
8 of this clause, an absence of more
9 than 180 days, in the aggregate,
10 during a calendar year shall not
11 be considered brief, unless the
12 Secretary finds that the length of
13 the absence was due to cir-
14 cumstances beyond the alien's
15 control, including the serious ill-
16 ness of the alien, death or serious
17 illness of a spouse, parent,
18 grandparent, grandchild, sibling,
19 son, or daughter of the alien, or
20 due to international travel re-
21 strictions.

22 “(iii) EFFECT OF NOTICE TO AP-
23 PEAR.—Issuance of a notice to appear
24 under section 239(a) shall not be consid-
25 ered to interrupt the continuity of a alien's

1 continuous physical presence in the United
2 States.

3 “(c) GROUNDS FOR INELIGIBILITY.—

4 “(1) CERTAIN GROUNDS OF INADMISS-
5 SIBILITY.—

6 “(A) IN GENERAL.—Subject to subpara-
7 graph (B), an alien shall be ineligible for status
8 under this section if the alien—

9 “(i) is inadmissible under paragraph
10 (2), (3), (6)(E), (8), (10)(C), or (10)(E) of
11 section 212(a);

12 “(ii) has been convicted of a felony of-
13 fense (excluding any offense under State
14 law for which an essential element in the
15 alien’s immigration status); or

16 “(iii) has been convicted of 3 or more
17 misdemeanor offenses (excluding simple
18 possession of cannabis or cannabis-related
19 paraphernalia, any offense involving can-
20 nabis or cannabis-related paraphernalia
21 that is no longer prosecutable in the State
22 in which the conviction was entered, any
23 offense under State law for which an es-
24 sential element is the alien’s immigration
25 status, any offense involving civil disobe-

1 dience without violence, and any minor
2 traffic offense) not occurring on the same
3 date, and not arising out of the same act,
4 omission, or scheme of misconduct.

5 “(B) WAIVERS.—

6 “(i) IN GENERAL.—For purposes of
7 subparagraph (A), the Secretary may, for
8 humanitarian purposes, family unity, or if
9 otherwise in the public interest—

10 “(I) waive inadmissibility
11 under—

12 “(aa) subparagraphs (A),
13 (C), and (D) of section
14 212(a)(2); and

15 “(bb) paragraphs (6)(E),
16 (8), (10)(C), and (10)(E) of such
17 section;

18 “(II) waive ineligibility under
19 subparagraph (A)(ii) (excluding of-
20 fenses described in section
21 101(a)(43)(A)) or inadmissibility
22 under subparagraph (B) of section
23 212(a)(2) if the alien has not been
24 convicted of any offense during the
25 10-year period preceding the date on

1 which the alien applies for status
2 under this section; and

3 “(III) for purposes of subpara-
4 graph (A)(iii), waive consideration
5 of—

6 “(aa) 1 misdemeanor offense
7 if, during the 5-year period pre-
8 ceding the date on which the
9 alien applies for status under this
10 section the alien has not been
11 convicted of any offense; or

12 “(bb) 2 misdemeanor of-
13 fenses if, during the 10-year pe-
14 riod preceding such date, the
15 alien has not been convicted of
16 any offense.

17 “(ii) CONSIDERATIONS.—In making a
18 determination under subparagraph (B),
19 the Secretary of Homeland Security or the
20 Attorney General shall consider all miti-
21 gating and aggravating factors, includ-
22 ing—

23 “(I) the severity of the under-
24 lying circumstances, conduct, or viola-
25 tion;

1 “(II) the duration of the alien’s
2 residence in the United States;

3 “(III) evidence of rehabilitation,
4 if applicable; and

5 “(IV) the extent to which the
6 alien’s removal, or the denial of the
7 alien’s application, would adversely af-
8 fect the alien or the alien’s United
9 States citizen or lawful permanent
10 resident family members.

11 “(2) ALIENS IN CERTAIN IMMIGRATION
12 STATUSES.—An alien shall be ineligible for adjust-
13 ment of status under this section if, on January 1,
14 2021, the alien was any of the following:

15 “(A) An alien lawfully admitted for perma-
16 nent residence.

17 “(B) An alien admitted as a refugee under
18 section 207 or granted asylum under section
19 208.

20 “(C) An alien who, according to the
21 records of the Secretary or the Secretary of
22 State, was in a period of authorized stay in a
23 nonimmigrant status described in section
24 101(a)(15), other than—

1 “(i) the spouse, son, or daughter of an
2 alien who is eligible for status under this
3 section;

4 “(ii) an alien who is considered to be
5 in a nonimmigrant status solely by reason
6 of section 702 of the Consolidated Natural
7 Resources Act of 2008 (Public Law 110–
8 229; 122 Stat. 854) or section 244(f)(4) of
9 this Act; and

10 “(iii) a nonimmigrant described in
11 section 101(a)(15)(H)(ii).

12 “(iv) a nonimmigrant who is described
13 in subsection (b).

14 “(D) An alien paroled into the Common-
15 wealth of the Northern Mariana Islands or
16 Guam who did not reside in the Commonwealth
17 or Guam on November 28, 2009.

18 “(3) CERTAIN ALIENS OUTSIDE THE UNITED
19 STATES AND UNLAWFUL REENTRANTS.—An alien
20 shall be ineligible for adjustment of status under
21 this section if the alien—

22 “(A) departed the United States while sub-
23 ject to an order of exclusion, deportation, re-
24 moval, or voluntary departure; and

1 “(B)(i) was outside the United States on
2 January 1, 2021; or

3 “(ii) reentered the United States unlaw-
4 fully after January 1, 2021.

5 “(d) APPLICATION.—

6 “(1) FEE.—

7 “(A) IN GENERAL.—The Secretary shall,
8 subject to an exemption under subparagraph
9 (B), require an alien applying for adjustment of
10 status under this section to pay a reasonable
11 fee commensurate with the cost of processing
12 the application.

13 “(B) EXEMPTIONS.—An applicant may, in
14 the discretion of the Secretary, be exempted
15 from paying an application fee required under
16 this paragraph if the applicant—

17 “(i) received total income, during the
18 1-year period immediately preceding the
19 date on which the applicant files an appli-
20 cation under this section, that is less than
21 250 percent of the Federal poverty line;

22 “(ii) is younger than 21 years of age;

23 “(iii) is in foster care or is a juvenile
24 who lacks any parental or other familial
25 support; or

1 “(iv) cannot care for himself or her-
2 self because of a serious disability.

3 “(C) INSTALLMENTS.—The Secretary may
4 allow applicants to pay the fee under this para-
5 graph in installments.

6 “(2) BACKGROUND CHECKS.—The Secretary
7 may not grant an alien permanent resident status
8 under this section until a background check has
9 been completed.

10 “(3) WITHDRAWAL OF APPLICATION.—

11 “(A) IN GENERAL.—On receipt of a re-
12 quest to withdraw an application under this sec-
13 tion, the Secretary shall cease processing of the
14 application and close the case.

15 “(B) EFFECT OF WITHDRAWAL.—With-
16 drawal of such an application shall not preju-
17 dice any future application filed by the appli-
18 cant for any immigration benefit under this
19 Act.

20 “(e) EMPLOYER REQUIREMENTS.—

21 “(1) IN GENERAL.—On request, an employer,
22 the agent of an employer, or any person who pro-
23 vides compensation directly or indirectly to a worker
24 for labor or service, shall provide a worker with doc-

1 uments that will assist the worker’s filing of an ap-
2 plication under subsection (d).

3 “(2) EFFECT OF DELAY OR NONCOMPLIANCE.—

4 With respect to a request described in paragraph
5 (1), delay or noncompliance on the part of an em-
6 ployer, the agent of an employer, or the person who
7 provides compensation directly or indirectly shall re-
8 sult in an escalating fine that accrues for the dura-
9 tion of the delay or noncompliance.

10 “(f) EMPLOYER PROTECTIONS.—No part of an
11 alien’s application or request for documents under sub-
12 section (e) shall be used as evidence regarding an employ-
13 er’s or any other person’s hiring, employment, or contin-
14 ued employment of an alien described in subsection (b)
15 for purposes of demonstrating a violation of section
16 274A(a) of the Immigration and Nationality Act (8 U.S.C.
17 1324a(a)) so long as the employer or other person has
18 complied with such subsection (e).

19 “(g) WORKER PROTECTIONS.—

20 “(1) IN GENERAL.—An employer, the agent of
21 an employer, or any person who provides compensa-
22 tion directly or indirectly to a worker for labor or
23 service shall not take an adverse action against a
24 worker based on a request made by the worker in
25 good faith for documents or information to support

1 an application for adjustment of status under this
2 section.

3 “(2) PRESUMPTION.—

4 “(A) IN GENERAL.—If any person or enti-
5 ty described in paragraph (1) takes an adverse
6 action against such a worker within 90 days of
7 the worker’s request for such documentation or
8 information, such conduct shall raise a pre-
9 sumption that the adverse action was carried
10 out in—

11 “(i) response to such request; and

12 “(ii) in violation of this subsection.

13 “(B) REBUTTAL.—The presumption under
14 subparagraph (A) may be rebutted by clear and
15 convincing evidence that the adverse action was
16 taken for other permissible reasons.

17 “(3) CIVIL ACTION.—A worker may bring a
18 civil action in a Federal or State court of competent
19 jurisdiction against any person or entity described in
20 paragraph (1) that violates this subsection to seek
21 such legal or equitable relief as may be appropriate,
22 including reinstatement, promotion, the payment of
23 wages lost, an additional equal amount as liquidated
24 damages, and punitive damages. An action com-
25 menced under this paragraph may be commenced

1 within 2 years after the cause of action accrued. In
2 any judgment in favor of a worker, and in any pro-
3 ceeding to enforce such a judgment, the court shall
4 award reasonable attorney’s fees and costs to the
5 prevailing plaintiff.

6 “(h) CLARIFICATION.—Nothing in this section shall
7 be construed to require an alien described in subsection
8 (b) to appear before an agent of the Department of Home-
9 land Security or any other Federal agency for an inter-
10 view.

11 “(i) PERIOD DESCRIBED.—The period described in
12 this subsection—

13 “(1) begins on the first day of the public health
14 emergency declared by the Secretary of Health and
15 Human Services under section 319 of the Public
16 Health Service Act (42 U.S.C. 247d) with respect to
17 COVID–19; and

18 “(2) ends on the date that is 90 days after the
19 date on which such public health emergency termi-
20 nates.

21 “(j) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC
22 DATA.—

23 “(1) IN GENERAL.—

24 “(A) IN GENERAL.—The Secretary may
25 not grant an alien adjustment of status under

1 this section unless the alien submits biometric
2 and biographic data, in accordance with proce-
3 dures established by the Secretary.

4 “(B) ALTERNATIVE PROCEDURE.—The
5 Secretary shall provide an alternative procedure
6 for aliens who are unable to provide such bio-
7 metric or biographic data due to a physical or
8 mental impairment or bona fide religious objec-
9 tion.

10 “(2) BACKGROUND CHECKS.—

11 “(A) IN GENERAL.—The Secretary shall
12 use biometric and biographic data—

13 “(i) to conduct security and law en-
14 forcement background checks; and

15 “(ii) to determine whether there is
16 any criminal, national security, or other
17 factor that would render the alien ineligible
18 for adjustment of status under this section.

19 “(B) COMPLETION REQUIRED.—

20 “(i) IN GENERAL.—The status of an
21 alien may not be adjusted under this sec-
22 tion unless security and law enforcement
23 background checks are completed to the
24 satisfaction of the Secretary.

25 “(ii) TIMELINE.—

1 “(I) IN GENERAL.—Except as
2 provided in subclause (II), the secu-
3 rity and law enforcement background
4 checks required by this paragraph
5 shall be completed within 60 days.

6 “(II) EXTENSION FOR GOOD
7 CAUSE.—The Secretary may extend
8 the timeline under subclause (I) for
9 good cause and, in the case of such an
10 extension, shall communicate the
11 delay to the applicant.

12 “(k) ADJUDICATION.—

13 “(1) IN GENERAL.—The Secretary shall evalu-
14 ate each application filed pursuant to this section to
15 determine whether the alien meets all applicable re-
16 quirements.

17 “(2) ADJUSTMENT OF STATUS IF FAVORABLE
18 DETERMINATION.—If the Secretary determines that
19 the alien meets the requirements under this section,
20 the Secretary shall—

21 “(A) notify the alien of such determina-
22 tion; and

23 “(B) adjust the status of the alien to that
24 of an alien lawfully admitted for permanent res-

1 idence, effective as of the date of such deter-
2 mination.

3 “(3) ADVERSE DETERMINATION.—If the Sec-
4 retary determines that the alien does not meet the
5 requirements for status under this section, the Sec-
6 retary shall notify the alien of such determination.

7 “(1) ALIENS ORDERED REMOVED.—

8 “(1) IN GENERAL.—An alien present in the
9 United States who has been ordered removed or has
10 been permitted to depart voluntarily from the United
11 States, notwithstanding such order or permission to
12 depart, may apply for adjustment of status under
13 this section.

14 “(2) OPPORTUNITY TO APPLY.—

15 “(A) IN GENERAL.—An alien who appears
16 to be prima facie eligible for relief under this
17 section shall be given a reasonable opportunity
18 to apply for such relief and shall not be re-
19 moved until a final decision establishing ineligi-
20 bility for relief is rendered.

21 “(B) MOTION NOT REQUIRED.—Such alien
22 shall not be required to file a separate motion
23 to reopen, reconsider, or vacate the order of re-
24 moval.

1 “(C) EFFECT OF APPROVAL.—If the Sec-
2 retary approves the application, the Secretary
3 or the Attorney General shall vacate the order
4 of removal and terminate any removal pro-
5 ceedings.

6 “(D) EFFECT OF DENIAL.—If the Sec-
7 retary renders a final administrative decision to
8 deny the application, the order of removal or
9 permission to depart shall be effective and en-
10 forceable to the same extent as if the applica-
11 tion had not been made, but only after all avail-
12 able administrative and judicial remedies have
13 been exhausted.

14 “(m) ADVANCE PAROLE.—

15 “(1) IN GENERAL.—During the period begin-
16 ning on the date on which an alien applies for ad-
17 justment of status under this section and ending on
18 the date on which the Secretary makes a final deci-
19 sion regarding such application, the alien shall be el-
20 igible to apply for advance parole based on any rea-
21 sonable need to travel.

22 “(2) APPLICABILITY.—Section 101(g) of the
23 Immigration and Nationality Act (8 U.S.C. 1101(g))
24 shall not apply to an alien granted advance parole
25 under this subsection.

1 “(n) EMPLOYMENT AUTHORIZATION.—

2 “(1) IN GENERAL.—

3 “(A) IN GENERAL.—An alien whose re-
4 moval is stayed pursuant to this section or who
5 has a pending an application under this section
6 shall, on application to the Secretary, be grant-
7 ed an employment authorization document.

8 “(B) TIMELINE FOR ISSUANCE.—

9 “(i) IN GENERAL.—Except as pro-
10 vided in clause (ii), an employment author-
11 ization document shall be issued within 30
12 days.

13 “(ii) EXTENSION FOR GOOD CAUSE.—

14 The Secretary may extend the timeline
15 under clause (ii) for good cause and, in the
16 case of such an extension, shall commu-
17 nicate the delay to the applicant.

18 “(2) RECEIPT OF APPLICATION.—

19 “(A) IN GENERAL.—As soon as practicable
20 after receiving an application for status under
21 this section, the Secretary shall provide the ap-
22 plicant with a document acknowledging receipt
23 of such application.

1 “(B) EVIDENCE OF EMPLOYMENT AU-
2 THORIZATION.—A document issued under sub-
3 paragraph (A) shall—

4 “(i) serve as interim evidence of the
5 alien’s authorization to accept employment
6 in the United States; and

7 “(ii) be accepted by an employer as
8 evidence of employment authorization
9 under section 274A(b)(1)(C) pending a
10 final decision on the application.

11 “(o) EXEMPTION FROM NUMERICAL LIMITATION.—
12 Nothing in this section or in any other law may be con-
13 strued—

14 “(1) to limit the number of aliens who may be
15 granted permanent resident status under this sec-
16 tion; or

17 “(2) to count against any other numerical limi-
18 tation under this Act.

19 “(p) ADMINISTRATIVE REVIEW.—

20 “(1) EXCLUSIVE ADMINISTRATIVE REVIEW.—
21 Administrative review of a determination with re-
22 spect to an application for status under this section
23 shall be conducted solely in accordance with this
24 subsection.

25 “(2) ADMINISTRATIVE APPELLATE REVIEW.—

1 “(A) ESTABLISHMENT OF ADMINISTRA-
2 TIVE APPELLATE AUTHORITY.—The Secretary
3 shall establish or designate an appellate author-
4 ity to provide for a single level of administrative
5 appellate review of determinations with respect
6 to applications for, and revocations of, status
7 under this section.

8 “(B) SINGLE APPEAL FOR EACH ADMINIS-
9 TRATIVE DECISION.—

10 “(i) IN GENERAL.—An alien in the
11 United States whose application for status
12 under this section has been denied or
13 whose status under this section has been
14 revoked may file with the Secretary not
15 more than 1 appeal of each such decision.

16 “(ii) CHANGED CIRCUMSTANCE.—On
17 a showing of changed circumstances, the
18 Secretary may waive the numerical limita-
19 tion under clause (i).

20 “(iii) NOTICE OF APPEAL.—

21 “(I) IN GENERAL.—A notice of
22 appeal filed under this paragraph
23 shall be filed not later than 90 days
24 after the date of service of the denial
25 or revocation, unless the delay beyond

1 the 90-day period is reasonably justifi-
2 able.

3 “(II) WAIVER.—On showing that
4 the delay was reasonably justifiable,
5 the Secretary may waive the time lim-
6 itation described in subclause (I).

7 “(III) SERVICE.—Service of a
8 notice of appeal under this clause
9 shall be provided in English, Spanish,
10 and any other language that the alien
11 concerned is known to understand,
12 and shall be made upon counsel of
13 record.

14 “(C) REVIEW BY SECRETARY.—Nothing in
15 this paragraph may be construed to limit the
16 authority of the Secretary to certify appeals for
17 review and final administrative decision.

18 “(D) DENIAL OF PETITIONS FOR DEPEND-
19 ENTS.—A decision to deny, or revoke the ap-
20 proval of, a petition filed by an alien to classify
21 a spouse, son, daughter, or child of the alien as
22 the spouse, son, daughter, or child for purposes
23 of status under this section may be appealed
24 under this paragraph.

1 “(E) RECORD FOR REVIEW.—Administra-
2 tive appellate review under this paragraph shall
3 be de novo and based solely upon—

4 “(i) the administrative record estab-
5 lished at the time of the determination on
6 the application; and

7 “(ii) any additional newly discovered
8 or previously unavailable evidence.

9 “(3) STAY OF REMOVAL.—An alien seeking ad-
10 ministrative review of a denial, or revocation of ap-
11 proval, of an application under this section shall not
12 be removed from the United States before a final de-
13 cision is rendered establishing ineligibility for lawful
14 permanent residence.

15 “(q) INFORMATION PRIVACY.—

16 “(1) IN GENERAL.—Except as provided in para-
17 graph (3), no officer or employee of the United
18 States may—

19 “(A) disclose (directly or indirectly, includ-
20 ing through inclusion in a database), access, or
21 use the information provided by an alien pursu-
22 ant to an application filed under this section
23 (including information provided during adminis-
24 trative or judicial review) for the purpose of im-

1 migration enforcement, including the initiation
2 of removal proceedings; or

3 “(B) publish any information provided
4 pursuant to an application under this section.

5 “(2) REFERRALS PROHIBITED.—The Secretary,
6 based solely on information provided in an applica-
7 tion for adjustment of status under this section (in-
8 cluding information provided during administrative
9 or judicial review) or an application for deferred ac-
10 tion pursuant to the memorandum of the Depart-
11 ment of Homeland Security entitled ‘Exercising
12 Prosecutorial Discretion with Respect to Individuals
13 Who Came to the United States as Children’ issued
14 on June 15, 2020, may not refer an applicant to
15 U.S. Immigration and Customs Enforcement, U.S.
16 Customs and Border Protection, or any designee of
17 either such entity.

18 “(3) REQUIRED DISCLOSURE.—Notwith-
19 standing paragraph (1), the Attorney General or the
20 Secretary shall provide the information provided in
21 an application under this section, and any other in-
22 formation derived from such information, to an offi-
23 cial coroner for purposes of affirmatively identifying
24 a deceased individual (whether or not such individual
25 is deceased as a result of a crime).

1 “(4) PENALTY.—Whoever knowingly uses, pub-
2 lishes, or permits information to be examined in vio-
3 lation of this subsection shall be fined not more than
4 \$50,000.

5 “(5) SAFEGUARDS.—The Secretary shall re-
6 quire appropriate administrative and physical safe-
7 guards to protect against direct and indirect disclo-
8 sure, access, and uses of information that violate
9 this subsection.

10 “(6) ASSESSMENTS.—Not less frequently than
11 annually, the Secretary shall conduct an assessment
12 that, for the preceding calendar year—

13 “(A) analyzes the effectiveness of the safe-
14 guards described in paragraph (5);

15 “(B) determines the number of authorized
16 disclosures under paragraph (3) made; and

17 “(C) determines the number of disclosures
18 prohibited under paragraphs (1) and (2) made.

19 “(r) ELIGIBILITY FOR OTHER STATUSES.—An
20 alien’s eligibility to be lawfully admitted for permanent
21 residence under this section shall not preclude the alien
22 from seeking any status under any other provision of law
23 for which the alien may otherwise be eligible.

24 “(s) EFFECT OF FAILURE TO COMPLY WITH RE-
25 MOVAL ORDER.—Failure to comply with 1 or more re-

1 moval orders or voluntary departure agreements for acts
2 committed before the date of the enactment of this section
3 shall not affect the eligibility of an alien to apply for a
4 benefit under this section.”.

5 (b) JUDICIAL REVIEW.—Section 242 of the Immigra-
6 tion and Nationality Act (8 U.S.C. 1252) is amended—

7 (1) in subsection (a)(2)—

8 (A) in subparagraph (B), by inserting “the
9 exercise of discretion specified under this title
10 arising under” after “no court shall have juris-
11 diction to review”;

12 (B) in subparagraph (C), by inserting “or
13 subsection (h)” after “subparagraph (D)”; and

14 (C) in subparagraph (D)—

15 (i) by striking “(other than in this
16 section)”; and

17 (ii) by striking “raised upon a petition
18 for review filed with an appropriate court
19 of appeals in accordance with this section”;

20 (2) in subsection (b)—

21 (A) in paragraph (2), in the first sentence,
22 by inserting “or, in the case of a decision ren-
23 dered under subsection (c), in the judicial cir-
24 cuit in which the petitioner resides” after “pro-
25 ceedings”; and

1 (B) in paragraph (9), by striking the first
2 sentence and inserting the following: “Except as
3 otherwise provided in this section, judicial re-
4 view of a determination respecting a removal
5 order shall be available only in judicial review
6 of a final order under this section.”;

7 (3) in subsection (f)—

8 (A) in paragraph (1), by striking “or re-
9 strain the operation of”; and

10 (B) in paragraph (2), by inserting “after
11 all administrative and judicial review available
12 to the alien is complete” before “unless”; and
13 (4) by adding at the end the following:

14 “(h) JUDICIAL REVIEW OF ELIGIBILITY DETERMINA-
15 TIONS RELATING TO STATUS UNDER TITLE 5.—

16 “(1) DIRECT REVIEW.—If an alien’s application
17 under section 245B is denied, or the approval of
18 such application is revoked, after the exhaustion of
19 administrative appellate review under subsection (p)
20 of that section, the alien may seek review of such de-
21 cision, in accordance with chapter 7 of title 5,
22 United States Code, in the district court of the
23 United States for the district in which the alien re-
24 sides.

1 “(2) STATUS DURING REVIEW.—During the pe-
2 riod in which a review described in paragraph (1) is
3 pending—

4 “(A) any unexpired grant of voluntary de-
5 parture under section 240B shall be tolled; and

6 “(B) any order of exclusion, deportation,
7 or removal shall automatically be stayed unless
8 the court, in its discretion, orders otherwise.

9 “(3) REVIEW AFTER REMOVAL PRO-
10 CEEDINGS.—An alien may seek judicial review of a
11 denial or revocation of approval of the alien’s appli-
12 cation under section 245B in the appropriate court
13 of appeals of the United States in conjunction with
14 the judicial review of an order of removal, deporta-
15 tion, or exclusion if the validity of the denial or rev-
16 ocation has not been upheld in a prior judicial pro-
17 ceeding under paragraph (1).

18 “(4) STANDARD FOR JUDICIAL REVIEW.—

19 “(A) BASIS.—Judicial review of a denial or
20 revocation of an approval of an application
21 under section 245B shall be based upon the ad-
22 ministrative record established at the time of
23 the review.

24 “(B) AUTHORITY TO REMAND.—The re-
25 viewing court may remand a case under this

1 subsection to the Secretary of Homeland Secu-
2 rity (referred to in this subsection as the ‘Sec-
3 retary’) for consideration of additional evidence
4 if the court finds that—

5 “(i) the additional evidence is mate-
6 rial; and

7 “(ii) there were reasonable grounds
8 for failure to adduce the additional evi-
9 dence before the Secretary.

10 “(C) SCOPE OF REVIEW.—Notwithstanding
11 any other provision of law, judicial review of all
12 questions arising from a denial or revocation of
13 approval of an application under section 245B
14 shall be governed by the standard of review set
15 forth in section 706 of title 5, United States
16 Code.

17 “(5) REMEDIAL POWERS.—

18 “(A) JURISDICTION.—Notwithstanding any
19 other provision of law, the district courts of the
20 United States shall have jurisdiction over any
21 cause or claim arising from a pattern or prac-
22 tice of the Secretary in the operation or imple-
23 mentation of the Citizenship for Essential
24 Workers Act, or the amendments made by that

1 Act, that is arbitrary, capricious, or otherwise
2 contrary to law.

3 “(B) SCOPE OF RELIEF.—The district
4 courts of the United States may order any ap-
5 propriate relief in a clause or claim described in
6 subparagraph (A) without regard to exhaustion,
7 ripeness, or other standing requirements (other
8 than constitutionally mandated requirements),
9 if the court determines that—

10 “(i) the resolution of such cause or
11 claim will serve judicial and administrative
12 efficiency; or

13 “(ii) a remedy would otherwise not be
14 reasonably available or practicable.

15 “(6) CHALLENGES TO THE VALIDITY OF THE
16 SYSTEM.—

17 “(A) IN GENERAL.—Except as provided in
18 paragraph (5), any claim that section 245B or
19 any regulation, written policy, written directive,
20 or issued or unwritten policy or practice initi-
21 ated by or under the authority of the Secretary
22 to implement such section, violates the Con-
23 stitution of the United States or is otherwise in
24 violation of law is available in an action insti-
25 tuted in a district court of the United States in

1 accordance with the procedures prescribed in
2 this paragraph.

3 “(B) SAVINGS PROVISION.—Except as pro-
4 vided in subparagraph (C), nothing in subpara-
5 graph (A) may be construed to preclude an ap-
6 plicant under 245B from asserting that an ac-
7 tion taken or a decision made by the Secretary
8 with respect to the applicant’s status was con-
9 trary to law.

10 “(C) CLASS ACTIONS.—Any claim de-
11 scribed in subparagraph (A) that is brought as
12 a class action shall be brought in conformity
13 with—

14 “(i) the Class Action Fairness Act of
15 2005 (Public Law 109–2; 119 Stat. 4);
16 and

17 “(ii) the Federal Rules of Civil Proce-
18 dure.

19 “(D) PRECLUSIVE EFFECT.—The final dis-
20 position of any claim brought under subpara-
21 graph (A) shall be preclusive of any such claim
22 asserted by the same individual in a subsequent
23 proceeding under this subsection.

24 “(E) EXHAUSTION AND STAY OF PRO-
25 CEEDINGS.—

1 “(i) IN GENERAL.—No claim brought
2 under this paragraph shall require the
3 plaintiff to exhaust administrative remedies under section 245B(p).
4

5 “(ii) STAY AUTHORIZED.—Nothing in
6 this paragraph may be construed to prevent the court from staying proceedings
7 under this paragraph to permit the Secretary to evaluate an allegation of an unwritten policy or practice or to take corrective action. In determining whether to
8 issue such a stay, the court shall take into
9 account any harm the stay may cause to
10 the claimant.”.
11
12
13
14

15 (c) RULEMAKING.—

16 (1) IMPLEMENTATION.—Not later than 180
17 days after the date of the enactment of this Act, the
18 Secretary shall issue interim final rules, published in
19 the Federal Register, implementing section 245B of
20 the Immigration and Nationality Act, as added by
21 this Act.

22 (2) EFFECTIVE DATE.—Notwithstanding section 553 of title 5, United States Code, the rules
23 issued under this subsection shall be effective, on an
24 interim basis, immediately upon publication, but
25

1 may be subject to change and revision after public
2 notice and opportunity for a period of public com-
3 ment.

4 (3) FINAL RULES.—Not later than 180 days
5 after the date of publication under paragraph (2),
6 the Secretary shall finalize the interim rules.

7 (d) RULE OF CONSTRUCTION.—Section 244(h) of the
8 Immigration and Nationality Act (8 U.S.C. 1254a(h))
9 may not be construed to limit the authority of the Sec-
10 retary to adjust the status of an alien under section 245B
11 of the Immigration and Nationality Act, as added by this
12 Act.

13 (e) ELIGIBILITY FOR SERVICES.—Section 504(a)(11)
14 of the Omnibus Consolidated Rescissions and Appropria-
15 tions Act of 1996 (Public Law 104–134; 110 Stat. 1321–
16 54) shall not be construed to prevent a recipient of funds
17 under title X of the Economic Opportunity Act of 1964
18 (42 U.S.C. 2996 et seq.) from providing legal assistance
19 directly related to an application for status under section
20 245B of the Immigration and Nationality Act, as added
21 by this Act, or to an alien granted such status.

22 (f) TECHNICAL AND CONFORMING AMENDMENT.—
23 The table of contents for the Immigration and Nationality
24 Act (8 U.S.C. 1101 et seq.) is amended by inserting after
25 the item relating to section 245A the following:

“Sec. 245B. Adjustment of status for essential workers.”.

1 **SEC. 3. RESTORING FAIRNESS TO ADJUDICATIONS.**

2 (a) **WAIVER OF GROUNDS OF INADMISSIBILITY.—**

3 Section 212 of the Immigration and Nationality Act (8
4 U.S.C. 1182) is amended by inserting after subsection (b)
5 the following:

6 “(c) **HUMANITARIAN, FAMILY UNITY, AND PUBLIC**
7 **INTEREST WAIVER.—**

8 “(1) **IN GENERAL.**—Notwithstanding any other
9 provision of law, except section 245B(c)(1)(B), the
10 Secretary of Homeland Security or the Attorney
11 General may waive the operation of any 1 or more
12 grounds of inadmissibility under this section (exclud-
13 ing inadmissibility under subsection (a)(3)) for any
14 purpose, including eligibility for relief from re-
15 moval—

16 “(A) for humanitarian purposes;

17 “(B) to ensure family unity; or

18 “(C) if a waiver is otherwise in the public
19 interest.

20 “(2) **CONSIDERATIONS.**—In making a deter-
21 mination under paragraph (1), the Secretary of
22 Homeland Security or the Attorney General shall
23 consider all mitigating and aggravating factors, in-
24 cluding—

25 “(A) the severity of the underlying cir-
26 cumstances, conduct, or violation;

1 “(B) the duration of the alien’s residence
2 in the United States;

3 “(C) evidence of rehabilitation, if applica-
4 ble; and

5 “(D) the extent to which the alien’s re-
6 moval, or the denial of the alien’s application,
7 would adversely affect the alien or the alien’s
8 United States citizen or lawful permanent resi-
9 dent family members.”.

10 (b) WAIVER OF GROUNDS OF DEPORTABILITY.—Sec-
11 tion 237(a) of the Immigration and Nationality Act (8
12 U.S.C. 1227(a)) is amended by adding at the end the fol-
13 lowing:

14 “(8) HUMANITARIAN, FAMILY UNITY, AND PUB-
15 LIC INTEREST WAIVER.—

16 “(A) IN GENERAL.—Notwithstanding any
17 other provision of law, except section
18 245B(c)(1)(B), the Secretary of Homeland Se-
19 curity or the Attorney General may waive the
20 operation of any 1 or more grounds of deport-
21 ability under this subsection (excluding deport-
22 ability under paragraph (2)(A)(iii) based on a
23 conviction described in section 101(a)(43)(A)
24 and deportability under paragraph (4)) for any

1 purpose, including eligibility for relief from re-
2 moval—

3 “(i) for humanitarian purposes;

4 “(ii) to ensure family unity; or

5 “(iii) if a waiver is otherwise in the
6 public interest.

7 “(B) CONSIDERATIONS.—In making a de-
8 termination under subparagraph (A), the Sec-
9 retary of Homeland Security or the Attorney
10 General shall consider all mitigating and aggra-
11 vating factors, including—

12 “(i) the severity of the underlying cir-
13 cumstances, conduct, or violation;

14 “(ii) the duration of the alien’s resi-
15 dence in the United States;

16 “(iii) evidence of rehabilitation, if ap-
17 plicable; and

18 “(iv) the extent to which the alien’s
19 removal, or the denial of the alien’s appli-
20 cation, would adversely affect the alien or
21 the alien’s United States citizen or lawful
22 permanent resident family members.”.

23 (c) REPEAL OF 3-YEAR, 10-YEAR, AND PERMANENT
24 BARS.—Section 212(a)(9) of the Immigration and Nation-

1 ality Act (8 U.S.C. 1182(a)(9)) is amended to read as fol-
2 lows:

3 “(9) ALIENS PREVIOUSLY REMOVED.—

4 “(A) ARRIVING ALIEN.—Any alien who has
5 been ordered removed under section 235(b)(1)
6 or at the end of proceedings under section 240
7 initiated upon the alien’s arrival in the United
8 States and who again seeks admission within 5
9 years of the date of such removal (or within 20
10 years in the case of a second or subsequent re-
11 moval or at any time in the case of an alien
12 convicted of an aggravated felony) is inadmis-
13 sible.

14 “(B) OTHER ALIENS.—Any alien not de-
15 scribed in subparagraph (A) who seeks admis-
16 sion within 10 years of the date of such alien’s
17 departure or removal (or within 20 years of
18 such date in the case of a second or subsequent
19 removal or at any time in the case of an alien
20 convicted of an aggravated felony) is inadmis-
21 sible if the alien—

22 “(i) has been ordered removed under
23 section 240 or any other provision of law;
24 or

1 “(ii) departed the United States while
2 an order of removal was outstanding.

3 “(C) EXCEPTION.—Subparagraphs (A)
4 and (B) shall not apply to an alien seeking ad-
5 mission within a period if, prior to the date of
6 the alien’s reembarkation at a place outside the
7 United States or attempt to be admitted from
8 foreign contiguous territory, the Secretary of
9 Homeland Security has consented to the alien’s
10 reapplying for admission.”.

11 **SEC. 4. EXPUNGEMENT AND SENTENCING.**

12 (a) DEFINITION OF CONVICTION.—

13 (1) IN GENERAL.—Section 101(a)(48) of the
14 Immigration and Nationality Act (8 U.S.C.
15 1101(a)(48)) is amended to read as follows:

16 “(48)(A) The term ‘conviction’ means, with respect
17 to an alien, a formal judgment of guilt of the alien entered
18 by a court.

19 “(B) The following may not be considered a convic-
20 tion for purposes of this Act:

21 “(i) An adjudication or judgment of guilt that
22 has been dismissed, expunged, deferred, annulled, in-
23 validated, withheld, vacated, or pardoned by the
24 President of the United States or the Governor of
25 any State.

1 “(ii) Any adjudication in which the court has
2 issued—

3 “(I) a judicial recommendation against re-
4 moval;

5 “(II) an order of probation without entry
6 of judgment; or

7 “(III) any similar disposition.

8 “(iii) A judgment that is on appeal or is within
9 the time to file direct appeal.

10 “(C)(i) Unless otherwise provided, with respect to an
11 offense, any reference to a term of imprisonment or a sen-
12 tence is considered to include only the period of incarcer-
13 ation ordered by a court.

14 “(ii) Any such reference shall be considered to ex-
15 clude any portion of a sentence of which the imposition
16 or execution was suspended.”.

17 (2) RETROACTIVE APPLICABILITY.—The
18 amendment made by this subsection shall apply with
19 respect to any conviction, adjudication, or judgment
20 entered before, on, or after the date of the enact-
21 ment of this Act.

22 (b) JUDICIAL RECOMMENDATION AGAINST RE-
23 MOVAL.—The grounds of inadmissibility and deportability
24 under sections 212(a)(2) and 237(a)(2) of the Immigra-
25 tion and Nationality Act (8 U.S.C. 1182(a)(2) and

1 1227(a)(2)) shall not apply to an alien with a criminal
 2 conviction if, not later than 180 days after the date on
 3 which the alien is sentenced, and after having provided
 4 notice and an opportunity to respond to representatives
 5 of the State concerned, the Secretary, and prosecuting au-
 6 thorities, the sentencing court issues a recommendation to
 7 the Secretary that the alien not be removed on the basis
 8 of the conviction.

9 **SEC. 5. PETTY OFFENSES.**

10 Section 212(a)(2)(A) of the Immigration and Nation-
 11 ality Act (8 U.S.C. 1182(a)(2)(A)) is amended—

12 (1) in clause (i), in the matter preceding sub-
 13 clause (I), by striking “, or who admits having com-
 14 mitted, or who admits committing acts which con-
 15 stitute the essential elements of”; and

16 (2) in clause (ii)—

17 (A) in the matter preceding subclause (I),
 18 by striking “to an alien who committed only
 19 one crime”;

20 (B) in subclause (I), by inserting “the
 21 alien committed only one crime,” before “the
 22 crime was committed when”; and

23 (C) by amending subclause (II) to read as
 24 follows:

1 “(II)(aa) the alien was not con-
2 victed of more than 2 crimes; and
3 “(bb) for each such crime—
4 “(AA) the maximum penalty
5 possible did not exceed imprison-
6 ment for 1 year; and
7 “(BB) the alien was not
8 sentenced to a term of imprison-
9 ment in excess of 180 days.”.

○