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To prohibit the executive branch from exempting from removal categories of aliens considered under the immigration laws to be unlawfully present in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2015

Mr. YOHO (for himself, Mr. PITTENGER, Mr. COOK, Mr. HARRIS, Mr. DUNCAN of Tennessee, Mr. ROE of Tennessee, Mr. NUGENT, Mr. ROHRABACHER, Mr. OLSON, Mr. FORBES, Ms. JENKINS of Kansas, Mr. YODER, Mr. MCCAUL, Mr. BARLETTA, Mr. MCCLINTOCK, Mr. PALAZZO, and Mr. JOLLY) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To prohibit the executive branch from exempting from removal categories of aliens considered under the immigration laws to be unlawfully present in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Preventing Executive Overreach on Immigration Act of 2015".

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) Under article I, section 8, of the Constitution, the Congress has the power to ''establish an uniform Rule of Naturalization''. As the Supreme Court found in Galvan v. Press, ''that the formulation of . . . policies [pertaining to the entry of aliens and their right to remain here] is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government''.

(2) Under article II, section 3, of the Constitution, the President is required to ''take Care that the Laws be faithfully executed''.

(3) Historically, executive branch officials have legitimately exercised their prosecutorial discretion through their constitutional power over foreign affairs to permit individuals or narrow groups of noncitizens to remain in the United States temporarily due to extraordinary circumstances in their country of origin that pose an imminent threat to the individuals' life or physical safety.

(4) Prosecutorial discretion generally ought to be applied on a case-by-case basis and not to whole categories of persons.

(5) President Obama himself has stated at least 22 times in the past that he can't ignore existing immigration law or create his own immigration law.

(6) President Obama's grant of deferred action to more than 4,000,000 unlawfully present aliens, as directed in a November 20, 2014, memorandum issued by Secretary of Homeland Security Jeh Charles Johnson, is without any constitutional or statutory basis.

SEC. 3. RULE OF CONSTRUCTION.

(a) IN GENERAL.—Notwithstanding any other law, the executive branch of the Government shall not—

(1) exempt or defer, by Executive order, regulation, or any other means, categories of aliens considered under the immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))) to be unlawfully present in the United States from removal under such laws;

(2) treat such aliens as if they were lawfully present or had a lawful immigration status; or

(3) treat such aliens other than as unauthorized aliens (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))).

(b) EXCEPTIONS.—Subsection (a) shall apply except—

(1) to the extent prohibited by the Constitution;

(2) upon the request of Federal, State, or local law enforcement agencies, for purposes of maintaining aliens in the United States to be tried for crimes or to be witnesses at trial; or

(3) for humanitarian purposes where the aliens are at imminent risk of serious bodily harm or death.

(c) EFFECT OF EXECUTIVE ACTION.—Any action by the executive branch with the purpose of circumventing the objectives of this section shall be null and void and without legal effect.

(d) EFFECTIVE DATE.—This section shall take effect as if enacted on November 20, 2014, and shall apply to requests (regardless of whether the request is original or for reopening of a previously denied request) submitted on or after such date for —

(1) work authorization; or

(2) exemption from, or deferral of, removal.

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