

115TH CONGRESS  
2D SESSION

# S. 2915

To protect alien victims of crime or serious labor or employment violations from removal from the United States, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 22, 2018

Mr. MENENDEZ (for himself, Mr. BLUMENTHAL, Mr. SANDERS, Ms. CORTEZ MASTO, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To protect alien victims of crime or serious labor or employment violations from removal from the United States, 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. PROTECTION OF VICTIMS OF CRIME OR SERIOUS**  
2 **LABOR AND EMPLOYMENT VIOLATIONS.**

3 (a) AVAILABILITY OF U VISAS.—Section  
4 101(a)(15)(U) of the Immigration and Nationality Act (8  
5 U.S.C. 1101(a)(15)(U)) is amended—

6 (1) in clause (i)—

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

9 “(I) the alien—

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

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

18 “(cc)(AA) is a victim of criminal  
19 activity described in clause (iii); and

20 “(BB) would suffer extreme  
21 hardship on removal from the United  
22 States; or

23 “(dd)(AA) has suffered a labor  
24 or employment violation described in  
25 clause (iv); and

1 “(BB) would suffer extreme  
2 hardship on removal from the United  
3 States;”;

4 (B) in subclause (II)—

5 (i) by striking “concerning” and all  
6 that follows through the semicolon at the  
7 end and inserting “relating to, as applica-  
8 ble—

9 “(aa) criminal activity de-  
10 scribed in clause (iii); or

11 “(bb) the labor or employ-  
12 ment violation described in clause  
13 (iv);”;

14 (C) by amending subclause (III) to read as  
15 follows:

16 “(III) with respect to the inves-  
17 tigation or prosecution of criminal ac-  
18 tivity described in clause (iii) or the  
19 investigation, prosecution, or pursuit  
20 of civil remedies relating to the labor  
21 or employment violation described in  
22 clause (iv), as applicable, the alien (or  
23 in the case of an alien child under the  
24 age of 16, the parent, guardian, or  
25 next friend of the alien) has been

1 helpful, is being helpful, or is likely to  
2 be helpful to—

3 “(aa) a Federal, State, or  
4 local law enforcement official;

5 “(bb) a Federal, State, or  
6 local prosecutor;

7 “(cc) a Federal, State, or  
8 local judge;

9 “(dd) the Secretary of  
10 Homeland Security;

11 “(ee) the Equal Employment  
12 Opportunity Commission;

13 “(ff) the Secretary of Labor;

14 “(gg) the National Labor  
15 Relations Board; or

16 “(hh) any other Federal,  
17 State, or local authority; and”;

18 and

19 (D) in subclause (IV), by inserting before  
20 the semicolon at the end “or a workplace claim  
21 (as defined in section 274A(e)(10)(C)(iii)(II))  
22 resulted from the labor or employment violation  
23 described in clause (iv), as applicable”;

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

1 (3) by moving clause (iii) 2 ems to the left;

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

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

5 “(iv) a labor or employment violation  
6 described in this clause is a violation—

7 “(I) that results in the filing of a  
8 bona fide workplace claim (as defined  
9 in section 274A(e)(10)(C)(iii)(II))—

10 “(aa) by an alien;

11 “(bb) for which an alien is a  
12 material witness; or

13 “(cc) in the investigation of  
14 which an alien is likely to be  
15 helpful; and

16 “(II) with respect to which an  
17 alien reasonably fears, has been  
18 threatened with, or has been the vic-  
19 tim of, an action involving force, phys-  
20 ical restraint, retaliation, or abuse of  
21 the immigration or other legal process  
22 against the alien or any other person  
23 by an employer relating to—

24 “(aa) an act underlying such  
25 workplace claim; or

1                                   “(bb) the filing of such  
2                                   workplace claim; or”.

3           (b) TEMPORARY PROTECTION FROM REMOVAL.—

4 Notwithstanding any other provision of law, the Secretary  
5 of Homeland Security may allow an alien to temporarily  
6 remain in the United States and grant the alien employ-  
7 ment authorization if the Secretary determines that the  
8 alien—

9                   (1) has filed for relief under section  
10           101(a)(15)(U) of the Immigration and Nationality  
11           Act (8 U.S.C. 1101(a)(15)(U)); or

12                   (2)(A) has filed, or is a material witness for, a  
13           bona fide workplace claim (as defined in section  
14           274A(e)(10)(B)(iii)(II) of that Act); and

15                   (B) with respect to the investigation, prosecu-  
16           tion, or pursuit of a civil remedy relating to the  
17           workplace claim, has been helpful, is being helpful,  
18           or is likely to be helpful to—

19                           (i) a Federal, State, or local law enforce-  
20                           ment official;

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

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

23                           (iv) the Secretary of Homeland Security;

24                           (v) the Equal Employment Opportunity  
25                           Commission;

- 1 (vi) the Secretary of Labor;  
2 (vii) the National Labor Relations Board;  
3 or  
4 (viii) any other Federal, State, or local au-  
5 thority.

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

9 (1) in paragraph (1)—

10 (A) in the paragraph heading, by striking  
11 “FOR SECTION 101(A)(15)(U) VISAS”;

12 (B) in the first sentence, by inserting “or  
13 investigating, prosecuting, or seeking a civil  
14 remedy relating to a labor or employment viola-  
15 tion described in section 101(a)(15)(U)(iv)” be-  
16 fore the period at the end; and

17 (C) in the third sentence, by inserting “or  
18 the investigation, prosecution, or pursuit of a  
19 civil remedy relating to a labor or employment  
20 violation described in section 101(a)(15)(U)(iv),  
21 as applicable” before the period at the end;

22 (2) in paragraph (2)(A), by striking “10,000”  
23 and inserting “30,000”; and

24 (3) in paragraph (6), in the first sentence—

1           (A) by inserting “or investigating, prosecuting, or seeking a civil remedy relating to a  
2           labor or employment violation described in section  
3           101(a)(15)(U)(iv), as applicable” after  
4           “described in section 101(a)(15)(U)(iii)”; and  
5

6           (B) by inserting “or labor or employment  
7           violation” after “prosecution of such criminal  
8           activity”.

9           (d) ADJUSTMENT OF STATUS.—Section 245(m)(1) of  
10          the Immigration and Nationality Act (8 U.S.C.  
11          1255(m)(1)) is amended, in the matter preceding subparagraph  
12          (A), by inserting “or an investigation or prosecution  
13          of a labor or employment violation, as applicable” after  
14          “prosecution”.

15          (e) CHANGE OF NONIMMIGRANT CLASSIFICATION.—  
16          Section 384(a)(1) of the Illegal Immigration Reform and  
17          Immigrant Responsibility Act of 1996 (8 U.S.C.  
18          1367(a)(1)) is amended—

19               (1) in subparagraph (E), by striking “physical  
20               or mental abuse and the criminal activity” and inserting  
21               “abuse and the criminal activity or labor or  
22               employment violation”;

23               (2) in subparagraph (F), by striking the comma  
24               at the end and inserting “, or”; and



1           (3) by inserting after subparagraph (F) the fol-  
2           lowing:

3                   “(G) the alien’s employer,”.

4   **SEC. 3. LABOR ENFORCEMENT ACTIONS.**

5           (a) **REMOVAL PROCEEDINGS.**—Section 239(e) of the  
6   Immigration and Nationality Act (8 U.S.C. 1229(e)) is  
7   amended—

8                   (1) in paragraph (1)—

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

11                           (B) by inserting “or as a result of informa-  
12                           tion provided to the Secretary of Homeland Se-  
13                           curity in retaliation against an individual for  
14                           exercising or attempting to exercise his or her  
15                           employment rights or other legal rights” after  
16                           “paragraph (2)”; and

17                   (2) in paragraph (2), by adding at the end the  
18           following:

19                           “(C) At a facility with respect to which a  
20                           workplace claim (as defined in section  
21                           274A(e)(10)(B)(iv)) has been filed or is con-  
22                           temporaneously filed.”.

23           (b) **UNLAWFUL EMPLOYMENT OF ALIENS.**—Section  
24   274A(e) of the Immigration and Nationality Act (8 U.S.C.  
25   1324a(e)) is amended by adding at the end the following:

1 “(10) CONDUCT IN ENFORCEMENT ACTIONS.—

2 “(A) ENFORCEMENT ACTION.—If the Sec-  
3 retary of Homeland Security undertakes an en-  
4 forcement action at a facility with respect to  
5 which a workplace claim has been filed or is  
6 contemporaneously filed or as a result of infor-  
7 mation provided to the Secretary in retaliation  
8 against an individual for exercising his or her  
9 rights relating to a workplace claim, the Sec-  
10 retary shall ensure that—

11 “(i) any alien arrested or detained  
12 who is necessary for the investigation or  
13 prosecution of a labor or employment viola-  
14 tion, as described in clause (iv) of subpara-  
15 graph (U) of section 101(a)(15), or a  
16 criminal activity, as described in subpara-  
17 graph (T) or clause (iii) of subparagraph  
18 (U) of that section, is not removed from  
19 the United States until a date that is after  
20 the date on which the Secretary—

21 “(I) notifies the appropriate law  
22 enforcement agency with jurisdiction  
23 over such labor or employment viola-  
24 tion or criminal activity; and

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

4 “(ii) an alien entitled to a stay of re-  
5 moval or an abeyance of removal pro-  
6 ceedings under this section is not removed.

7 “(B) STAY OF REMOVAL OR ABEYANCE OF  
8 REMOVAL PROCEEDINGS.—

9 “(i) IN GENERAL.—Except as pro-  
10 vided in clause (ii), an alien against whom  
11 removal proceedings have been initiated  
12 under chapter 4 of title II shall be entitled  
13 to a stay of removal or an abeyance of re-  
14 moval proceedings and employment author-  
15 ization if the alien—

16 “(I) has filed a workplace claim;

17 “(II) is a material witness in any  
18 pending or anticipated proceeding re-  
19 lating to a bona fide workplace claim;  
20 or

21 “(III) has filed an application for  
22 relief under section 101(a)(15)(U).

23 “(ii) EXCEPTION.—Clause (i) shall  
24 not apply with respect to an alien if the  
25 Secretary establishes, by a preponderance

1 of the evidence in a proceeding before the  
2 immigration judge presiding over such  
3 alien’s removal hearing, that—

4 “(I) the alien has been convicted  
5 of a felony; or

6 “(II) the workplace claim was  
7 filed in bad faith with the intent to  
8 delay or avoid the removal of the  
9 alien.

10 “(iii) DURATION.—

11 “(I) IN GENERAL.—Any stay of  
12 removal or abeyance of removal pro-  
13 ceedings and employment authoriza-  
14 tion issued pursuant to clause (i) shall  
15 remain valid until the date on which  
16 the workplace claim is resolved or re-  
17 lief under section 101(a)(15)(U) is de-  
18 nied after exhaustion of any adminis-  
19 trative appeal, as applicable.

20 “(II) EXTENSION.—The Sec-  
21 retary of Homeland Security may ex-  
22 tend a stay of removal or an abeyance  
23 of removal proceedings for a period of  
24 not longer than 3 years if the Sec-  
25 retary determines that—

1                   “(aa) such relief would en-  
2                   able the alien asserting a work-  
3                   place claim to pursue the claim  
4                   to resolution;

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

8                   “(cc) such extension would  
9                   otherwise further the interests of  
10                  justice.

11                  “(iv) DEFINITIONS.—In this para-  
12                  graph:

13                  “(I) MATERIAL WITNESS.—The  
14                  term ‘material witness’ means an indi-  
15                  vidual who presents a declaration  
16                  from an attorney investigating, pros-  
17                  ecuting, or defending a workplace  
18                  claim or the presiding officer over-  
19                  seeing the workplace claim that at-  
20                  tests that, to the best of the knowl-  
21                  edge and belief of the declarant, rea-  
22                  sonable cause exists to believe that the  
23                  testimony of the individual will be rel-  
24                  evant to the outcome of the workplace  
25                  claim.

1                   “(II) WORKPLACE CLAIM.—The  
2                   term ‘workplace claim’ means any  
3                   written or oral claim, charge, com-  
4                   plaint, or grievance relating to the vio-  
5                   lation of applicable Federal, State, or  
6                   local labor laws (including laws relat-  
7                   ing to wages and hours, labor rela-  
8                   tions, family and medical leave, occu-  
9                   pational health and safety, civil rights,  
10                  and nondiscrimination) that is filed  
11                  with or communicated or submitted  
12                  to—

13                                   “(aa) an employer;

14                                   “(bb) a Federal, State, or  
15                                   local—

16   “(AA) agency; or

17   “(BB) court; or

18   “(cc) an employee represent-  
19                                   ative.”.

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