

116TH CONGRESS
2D SESSION

H. R. 5767

To defer the removal of certain Eritrean nationals for a 24-month period,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2020

Ms. OMAR (for herself, Ms. BASS, Mr. NEGUSE, Mr. PAYNE, Ms. NORTON, Mr. MCGOVERN, Mr. CARSON of Indiana, Ms. CLARKE of New York, Ms. JAYAPAL, Mr. JOHNSON of Georgia, Ms. MCCOLLUM, Ms. JACKSON LEE, Mr. GRIJALVA, Mr. KHANNA, Ms. PRESSLEY, Mr. HORSFORD, Ms. TLAIB, Ms. OCASIO-CORTEZ, Mrs. WATSON COLEMAN, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SMITH of Washington, Mr. GOMEZ, Mr. ENGEL, Mr. ESPAILLAT, Ms. LEE of California, Mr. RUSH, Mr. RASKIN, Ms. CRAIG, Mr. PHILLIPS, and Mr. CLAY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To defer the removal of certain Eritrean nationals for a
24-month period, 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 “Eritrean Nationals’
5 Safety from Unjust Removal or Expulsion Act” or the
6 “ENSURE Act of 2020”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) There are 700 Eritrean nationals living in
4 the United States who have final orders of removal.

5 (2) In September 2017, the Secretary of Home-
6 land Security announced visa sanctions to encourage
7 certain recalcitrant countries, including Eritrea, to
8 accept the respective nationals from such countries
9 who are subject to final orders of removal from the
10 United States.

11 (3) Eritrea has generally declined to issue trav-
12 el documents to accept such nationals upon removal
13 from the United States but has begun to issue such
14 documents due to the threat of visa sanctions from
15 the United States.

16 (4) The human rights crisis and humanitarian
17 situation in Eritrea has resulted in extraordinary
18 conditions that have driven nationals to flee the
19 country and prevented such nationals from safely re-
20 turning to Eritrea.

21 (5) Conditions in Eritrea have been historically
22 dangerous and oppressive for certain groups that
23 frequently suffer state reprisal, including individuals
24 who have fled Eritrea to evade indefinite military
25 service and arbitrary detention, conscientious objec-

1 tors, opponents of political leaders in Eritrea, jour-
2 nalists, and religious minorities.

3 (6) If returned to Eritrea after removal from
4 the United States, many Eritrean nationals that be-
5 long to such groups may face persecution, torture,
6 or death.

7 (7) Eritrean nationals who are removed from
8 the United States are also at a particular risk of
9 state reprisal for leaving in the first place.

10 (8) The most recent report of the United Na-
11 tions Special Rapporteur on the situation of human
12 rights in Eritrea assessed current country conditions
13 as grim, with arbitrary arrests, detentions, tortures,
14 disappearances, and extrajudicial executions occur-
15 ring regularly.

16 (9) Human rights violations, including indefi-
17 nite military service, overcrowding in prolonged, un-
18 sanitary detention, and an overall lack of freedom of
19 movement and expression, persist in Eritrea, con-
20 tributing to the mass exodus from the country.

21 (10) United Nations Special Rapporteurs in
22 Eritrea have determined that this situation is fore-
23 ing many Eritrean nationals to choose between en-
24 slavement if they stay in Eritrea or death if they at-
25 tempt to leave Eritrea.

1 (11) The most recent State Department report
2 on human rights practices in Eritrea warns that
3 many citizens who have fled Eritrea “remain in self-
4 imposed exile due to their religious and political
5 views and fear that they would be conscripted into
6 national service if returned,” which may result in
7 torture and death.

8 (12) In order to begin to restore immigration
9 relations with the United States, Eritrea will need to
10 adopt accountability measures that ensure that Eri-
11 trean nationals returned to Eritrea do not face state
12 reprisal.

13 (13) In 2018, the co-chairs of the Tom Lantos
14 Human Rights Commission reiterated these concerns
15 in a bipartisan delegation letter to the Secretary of
16 State, urging the Department of State to ensure
17 human rights objectives were taken into consider-
18 ation when resetting any relations or policies toward
19 Eritrea.

20 (14) In 2017, the Director of U.S. Immigration
21 and Customs Enforcement sought to remove ap-
22 proximately 700 Eritrean nationals from the United
23 States.

24 (15) Without enough time to seek immigration
25 assistance based on country conditions in Eritrea,

1 and without careful consideration for each case, Eri-
2 trean nationals could be removed to face persecution,
3 torture, or death before such Eritreans receive fair
4 adjudication of eligibility for relief under current law
5 and in light of present facts.

6 (16) Deferring removal of Eritrean nationals
7 for 24 months would give—

8 (A) such Eritreans, who have not had the
9 time or resources to seek sufficient immigration
10 assistance or legal counsel based on the unique
11 circumstances described in this section, time to
12 seek such assistance or counsel;

13 (B) immigration judges and authorities the
14 time to fully understand the dire human rights
15 crisis and humanitarian situation in Eritrea;
16 and

17 (C) the Government of Eritrea time to
18 start to reform the security of Eritrea and ad-
19 dress human rights abuses within Eritrea, in-
20 cluding preventing indefinite military service,
21 arbitrary and prolonged detention, and general
22 persecution of the Eritrean people.

23 **SEC. 3. SENSE OF CONGRESS.**

24 It is the sense of Congress that—

1 (1) Eritrean nationals should not be deported
2 to Eritrea if such nationals face persecution, torture,
3 or death;

4 (2) due to the horrific conditions in Eritrea, in-
5 cluding conditions listed under section 2, and the
6 substantial increase in removal orders for Eritrean
7 aliens in the United States, it would both be unfair
8 and dangerous to deport Eritreans without ensuring
9 that each case is carefully considered or, if applica-
10 ble, reconsidered based on current country condi-
11 tions in Eritrea; and

12 (3) the removal of Eritrean nationals described
13 in section 4 should be deferred for a period of 24
14 months, at the end of which Congress should have
15 the opportunity to reevaluate conditions in Eritrea.

16 **SEC. 4. DEFERRAL OF REMOVAL FOR ERITREAN NATION-**
17 **ALS WITH REMOVAL ORDERS.**

18 (a) IN GENERAL.—Subject to subsection (b), an alien
19 may not be removed during the 24-month period begin-
20 ning on the date of the enactment of this Act if the alien—

21 (1) is a national of Eritrea;

22 (2) has been ordered removed to Eritrea at any
23 time before the date of the enactment of this Act;
24 and

1 (3) has been continuously physically present in
2 the United States since the effective date of the en-
3 actment of this Act.

4 (b) EMPLOYMENT AUTHORIZATIONS.—Upon applica-
5 tion to the Secretary of Homeland Security, an alien
6 whose removal is deferred pursuant to this Act shall be
7 authorized to engage in employment during the 24-month
8 period described in subsection (a), provided that—

9 (1) the alien is not subject to extradition by an
10 international tribunal or by a country with a treaty
11 of extradition with the United States (except the
12 alien shall not be extradited to Eritrea); or

13 (2) if the alien is subject to extradition under
14 paragraph (1) due to an accusation of torture,
15 crimes against humanity, war crimes, or genocide,
16 the Secretary of State and the Attorney General cer-
17 tify that such accusation is not credible with respect
18 to the alien.

19 **SEC. 5. NOTICE FOR CERTAIN ALIENS WITH REMOVAL OR-**
20 **DERS TO ERITREA.**

21 (a) IN GENERAL.—Not later than 60 days after the
22 date of the enactment of this Act, the Secretary of Home-
23 land Security shall provide notice of the provisions of this
24 Act to each alien described in section 4(a).

1 (b) CONTENTS OF NOTICE.—The notice required
2 under subsection (a) shall include clear instructions ex-
3 plaining how an alien may file a motion to reopen a pro-
4 ceeding under section 240 of the Immigration and Nation-
5 ality Act (8 U.S.C. 1229a) based on current country con-
6 ditions.

7 **SEC. 6. PROHIBITION ON DETENTION.**

8 The Secretary of Homeland Security may not detain
9 an alien whose removal is deferred pursuant to this Act
10 based upon—

11 (1) the immigration status of such alien in the
12 United States; or

13 (2) a motion filed by the alien to reopen a pro-
14 ceeding under section 240 of the Immigration and
15 Nationality Act (8 U.S.C. 1229a).

16 **SEC. 7. JUDICIAL REVIEW.**

17 (a) REVIEW.—Notwithstanding any other provision
18 of law, an individual or entity who has been harmed by
19 a violation of this Act may file an action in an appropriate
20 district court of the United States to seek declaratory or
21 injunctive relief.

22 (b) RULE OF CONSTRUCTION.—Nothing in this Act
23 may be construed to preclude an action filed pursuant to
24 subsection (a) from proceeding as a class action (as such

1 term is defined in section 1711 of title 28, United States
2 Code).

3 **SEC. 8. REPORTS.**

4 (a) REPORT REGARDING ASYLUM AND REFUGEE
5 SEEKERS.—Not later than 180 days after the date of the
6 enactment of this Act, and annually thereafter, the Sec-
7 retary of Homeland Security, in consultation with the At-
8 torney General, shall submit to Congress a report that in-
9 cludes—

10 (1) the number of Eritrean nationals who—

11 (A) have been removed upon an order of
12 the Attorney General from the United States
13 each fiscal year beginning on September 1,
14 2019, through the present fiscal year;

15 (B) are—

16 (i) currently in the United States;

17 (ii) in detention by the Attorney Gen-
18 eral;

19 (iii) under final orders of removal
20 from the United States; or

21 (iv) the subject of a request from the
22 head of U.S. Immigration and Customs
23 Enforcement to the Government of Eritrea
24 for travel documents;

1 (C) applied for status as a refugee under
2 section 207 of the Immigration and Nationality
3 Act (8 U.S.C. 1157), including the number of
4 Eritrean nationals who were granted such sta-
5 tus; or

6 (D) applied for asylum under section 208
7 of the Immigration and Nationality Act (8
8 U.S.C. 1158), including the number of Eritrean
9 nationals who were granted such status;

10 (2) with respect to Eritrean nationals identified
11 pursuant to paragraph (1)(A), the names of each
12 such country that such nationals were removed to;
13 and

14 (3) with respect to Eritrean nationals identified
15 pursuant to paragraph (1), the number of Eritrean
16 nationals that qualify under 2 or more of the re-
17 quirements under paragraph (1).

18 (b) REPORT ON THE SAFETY OF ERITREAN NATION-
19 ALS REMOVED FROM THE UNITED STATES.—Not later
20 than 180 days after the date of the enactment of this Act,
21 and annually thereafter, the Secretary of Homeland Secu-
22 rity, in consultation with the Secretary of State, shall sub-
23 mit to Congress a report describing how the Federal Gov-

- 1 ernment is ensuring the safety of Eritrean nationals re-
- 2 moved from the United States to another country.

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