

117TH CONGRESS
1ST SESSION

S. 747

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

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2021

Mr. PADILLA (for himself and Ms. WARREN) introduced the following bill; which was read twice and 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,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

1 **“SEC. 245B. ADJUSTMENT OF STATUS FOR ESSENTIAL**
2 **WORKERS.**

3 “(a) ADJUSTMENT OF STATUS FOR ESSENTIAL
4 WORKERS.—Notwithstanding any other provision of law,
5 the Secretary of Homeland Security (referred to in this
6 section as the ‘Secretary’) or the Attorney General shall
7 adjust to the status of an alien lawfully admitted for per-
8 manent residence—

9 “(1) an alien who—

10 “(A) satisfies the eligibility requirements
11 set forth in subsection (b); and

12 “(B) submits an application and satisfies
13 the criminal and national security background
14 checks and payment of applicable fees pursuant
15 to the procedures set forth in subsection (d);
16 and

17 “(2) the parents, spouse, sons, and daughters
18 of such alien.

19 “(b) ELIGIBILITY.—An alien applying for status
20 under subsection (a) shall satisfy the following require-
21 ments:

22 “(1) ALIENS WORKING IN CERTAIN SECTORS,
23 INDUSTRIES, AND OCCUPATIONS.—Except as pro-
24 vided in paragraph (2), the alien shall have, at any
25 point during the period described in subsection (i),
26 earned income for work in any of the following pri-

1 vate, public, or nonprofit sectors, industries, or occu-
2 pations:

3 “(A) Health care.

4 “(B) Emergency response.

5 “(C) Sanitation.

6 “(D) Restaurant ownership, food prepara-
7 tion, vending, catering, food packaging, food
8 services, or delivery.

9 “(E) Hotel or retail.

10 “(F) Fish, poultry, and meat processing
11 work.

12 “(G) Agricultural work, including labor
13 that is seasonal in nature.

14 “(H) Commercial or residential land-
15 scaping.

16 “(I) Commercial or residential construction
17 or renovation.

18 “(J) Housing, residential, and commercial
19 construction related activities or public works
20 construction.

21 “(K) Domestic work in private households,
22 including child care, home care, or house clean-
23 ing.

24 “(L) Natural disaster recovery, disaster re-
25 construction, and related construction.

1 “(M) Home and community-based work,
2 including—

3 “(i) home health care;

4 “(ii) residential care;

5 “(iii) assistance with activities of daily
6 living;

7 “(iv) any service provided by direct
8 care workers (as defined in section 799B
9 of the Public Health Service Act (42
10 U.S.C. 295p)), personal care aides, job
11 coaches, or supported employment pro-
12 viders; and

13 “(v) any other provision of care to in-
14 dividuals in their homes by direct service
15 providers, personal care attendants, and
16 home health aides.

17 “(N) Family care, including child care
18 services, in-home child care services such as
19 nanny services, and care services provided by
20 family members to other family members.

21 “(O) Manufacturing.

22 “(P) Warehousing.

23 “(Q) Transportation or logistics.

24 “(R) Janitorial.

1 “(S) Laundromat and dry-cleaning opera-
2 tors.

3 “(T) Any other work in ‘essential critical
4 infrastructure labor or services’, as described in
5 the memorandum of the Department of Home-
6 land Security entitled ‘Advisory Memorandum
7 on Identification of Essential Critical Infra-
8 structure Workers During COVID–19 Re-
9 sponse’ issued on March 28, 2020 (as revised),
10 on any date during the period described in sub-
11 section (i).

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

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

17 “(A) shall—

18 “(i)(I) have earned income in any sec-
19 tor, industry, or occupation described in
20 that paragraph on any date during the pe-
21 riod described in subsection (i) but was un-
22 able to continue that work through no
23 fault of the alien, including because the
24 working conditions posed a high degree of
25 risk to the alien’s health and safety; and

1 “(II) have been seeking to resume
2 work in any such sector, industry, or occu-
3 pation;

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

6 “(i) performed any service or labor for
7 remuneration in any sector, industry, or
8 occupation described in that paragraph on
9 any date during the period described in
10 subsection (i); and

11 “(ii) died due to COVID–19; or

12 “(C) is the parent, spouse, son, or daugh-
13 ter of a member of the Armed Forces, including
14 the National Guard.

15 “(3) PHYSICAL PRESENCE.—

16 “(A) DATE OF SUBMITTAL OF APPLICA-
17 TION.—The alien shall be physically present in
18 the United States on the date on which the ap-
19 plication is submitted.

20 “(B) CONTINUOUS PHYSICAL PRESENCE.—

21 “(i) IN GENERAL.—Except as pro-
22 vided in clause (ii), the alien shall have
23 been continuously physically present in the
24 United States beginning on January 1,

1 2021, and ending on the date on which the
2 application is approved.

3 “(ii) EXCEPTIONS.—

4 “(I) AUTHORIZED ABSENCE.—An
5 alien who departed temporarily from
6 the United States shall not be consid-
7 ered to have failed to maintain contin-
8 uous physical presence in the United
9 States during any period of travel
10 that was authorized by the Secretary.

11 “(II) BRIEF, CASUAL, AND INNO-
12 CENT ABSENCES.—

13 “(aa) IN GENERAL.—An
14 alien who departed temporarily
15 from the United States shall not
16 be considered to have failed to
17 maintain continuous physical
18 presence in the United States if
19 the alien’s absences from the
20 United States are brief, casual,
21 and innocent, whether or not
22 such absences were authorized by
23 the Secretary.

24 “(bb) ABSENCES MORE
25 THAN 180 DAYS.—For purposes

1 of this clause, an absence of more
2 than 180 days, in the aggregate,
3 during a calendar year shall not
4 be considered brief, unless the
5 Secretary finds that the length of
6 the absence was due to cir-
7 cumstances beyond the alien's
8 control, including the serious ill-
9 ness of the alien, death or serious
10 illness of a spouse, parent,
11 grandparent, grandchild, sibling,
12 son, or daughter of the alien, or
13 due to international travel re-
14 strictions.

15 “(iii) EFFECT OF NOTICE TO AP-
16 PEAR.—Issuance of a notice to appear
17 under section 239(a) shall not be consid-
18 ered to interrupt the continuity of an
19 alien's continuous physical presence in the
20 United States.

21 “(c) GROUNDS FOR INELIGIBILITY.—

22 “(1) CERTAIN GROUNDS OF INADMISS-
23 SIBILITY.—

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

4 “(i) is inadmissible under paragraph
5 (2), (3), (6)(E), (8), (10)(C), or (10)(E) of
6 section 212(a);

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

11 “(iii) has been convicted of 3 or more
12 misdemeanor offenses (excluding simple
13 possession of cannabis or cannabis-related
14 paraphernalia, any offense involving can-
15 nabis or cannabis-related paraphernalia
16 that is no longer prosecutable in the State
17 in which the conviction was entered, any
18 offense under State law for which an es-
19 sential element is the alien’s immigration
20 status, any offense involving civil disobe-
21 dience without violence, and any minor
22 traffic offense) not occurring on the same
23 date, and not arising out of the same act,
24 omission, or scheme of misconduct.

25 “(B) WAIVERS.—

1 “(i) IN GENERAL.—For purposes of
2 subparagraph (A), the Secretary may, for
3 humanitarian purposes, family unity, or if
4 otherwise in the public interest—

5 “(I) waive inadmissibility
6 under—

7 “(aa) subparagraphs (A),
8 (C), and (D) of section
9 212(a)(2); and

10 “(bb) paragraphs (6)(E),
11 (8), (10)(C), and (10)(E) of such
12 section;

13 “(II) waive ineligibility under
14 subparagraph (A)(ii) (excluding of-
15 fenses described in section
16 101(a)(43)(A)) or inadmissibility
17 under subparagraph (B) of section
18 212(a)(2) if the alien has not been
19 convicted of any offense during the
20 10-year period preceding the date on
21 which the alien applies for status
22 under this section; and

23 “(III) for purposes of subpara-
24 graph (A)(iii), waive consideration
25 of—

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

7 “(bb) 2 misdemeanor of-
8 fenses if, during the 10-year pe-
9 riod preceding such date, the
10 alien has not been convicted of
11 any offense.

12 “(ii) CONSIDERATIONS.—In making a
13 determination under subparagraph (B),
14 the Secretary of Homeland Security or the
15 Attorney General shall consider all miti-
16 gating and aggravating factors, includ-
17 ing—

18 “(I) the severity of the under-
19 lying circumstances, conduct, or viola-
20 tion;

21 “(II) the duration of the alien’s
22 residence in the United States;

23 “(III) evidence of rehabilitation,
24 if applicable; and

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

7 “(2) ALIENS IN CERTAIN IMMIGRATION
8 STATUSES.—An alien shall be ineligible for adjust-
9 ment of status under this section if, on January 1,
10 2021, the alien was any of the following:

11 “(A) An alien lawfully admitted for perma-
12 nent residence.

13 “(B) An alien admitted as a refugee under
14 section 207 or granted asylum under section
15 208.

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

21 “(i) the spouse, son, or daughter of an
22 alien who is eligible for status under this
23 section;

24 “(ii) an alien who is considered to be
25 in a nonimmigrant status solely by reason

1 of section 702 of the Consolidated Natural
2 Resources Act of 2008 (Public Law 110–
3 229; 122 Stat. 854) or section 244(f)(4) of
4 this Act;

5 “(iii) a nonimmigrant described in
6 section 101(a)(15)(H)(ii); and

7 “(iv) a nonimmigrant who is described
8 in subsection (b).

9 “(D) An alien paroled into the Common-
10 wealth of the Northern Mariana Islands or
11 Guam who did not reside in the Commonwealth
12 or Guam on November 28, 2009.

13 “(3) CERTAIN ALIENS OUTSIDE THE UNITED
14 STATES AND UNLAWFUL REENTRANTS.—An alien
15 shall be ineligible for adjustment of status under
16 this section if the alien—

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

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

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

24 “(d) APPLICATION.—

25 “(1) FEE.—

1 “(A) IN GENERAL.—The Secretary shall,
2 subject to an exemption under subparagraph
3 (B), require an alien applying for adjustment of
4 status under this section to pay a reasonable
5 fee commensurate with the cost of processing
6 the application.

7 “(B) EXEMPTIONS.—An applicant may, in
8 the discretion of the Secretary, be exempted
9 from paying an application fee required under
10 this paragraph if the applicant—

11 “(i) received total income, during the
12 1-year period immediately preceding the
13 date on which the applicant files an appli-
14 cation under this section, that is less than
15 250 percent of the Federal poverty line;

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

17 “(iii) is in foster care or is a juvenile
18 who lacks any parental or other familial
19 support; or

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

22 “(C) INSTALLMENTS.—The Secretary may
23 allow applicants to pay the fee under this para-
24 graph in installments.

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

5 “(3) WITHDRAWAL OF APPLICATION.—

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

10 “(B) EFFECT OF WITHDRAWAL.—With-
11 drawal of such an application shall not preju-
12 dice any future application filed by the appli-
13 cant for any immigration benefit under this
14 Act.

15 “(e) EMPLOYER REQUIREMENTS.—

16 “(1) IN GENERAL.—On request, an employer,
17 the agent of an employer, or any person who pro-
18 vides compensation directly or indirectly to a worker
19 for labor or service, shall provide a worker with doc-
20 uments that will assist the worker’s filing of an ap-
21 plication under subsection (d).

22 “(2) EFFECT OF DELAY OR NONCOMPLIANCE.—
23 With respect to a request described in paragraph
24 (1), delay or noncompliance on the part of an em-
25 ployer, the agent of an employer, or the person who

1 provides compensation directly or indirectly shall re-
2 sult in an escalating fine that accrues for the dura-
3 tion of the delay or noncompliance.

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

13 “(g) WORKER PROTECTIONS.—

14 “(1) IN GENERAL.—An employer, the agent of
15 an employer, or any person who provides compensa-
16 tion directly or indirectly to a worker for labor or
17 service shall not take an adverse action against a
18 worker based on a request made by the worker in
19 good faith for documents or information to support
20 an application for adjustment of status under this
21 section.

22 “(2) PRESUMPTION.—

23 “(A) IN GENERAL.—If any person or enti-
24 ty described in paragraph (1) takes an adverse
25 action against such a worker within 90 days of

1 the worker's request for such documentation or
2 information, such conduct shall raise a pre-
3 sumption that the adverse action was carried
4 out in—

5 “(i) response to such request; and

6 “(ii) in violation of this subsection.

7 “(B) REBUTTAL.—The presumption under
8 subparagraph (A) may be rebutted by clear and
9 convincing evidence that the adverse action was
10 taken for other permissible reasons.

11 “(3) CIVIL ACTION.—A worker may bring a
12 civil action in a Federal or State court of competent
13 jurisdiction against any person or entity described in
14 paragraph (1) that violates this subsection to seek
15 such legal or equitable relief as may be appropriate,
16 including reinstatement, promotion, the payment of
17 wages lost, an additional equal amount as liquidated
18 damages, and punitive damages. An action com-
19 menced under this paragraph may be commenced
20 within 2 years after the cause of action accrued. In
21 any judgment in favor of a worker, and in any pro-
22 ceeding to enforce such a judgment, the court shall
23 award reasonable attorney's fees and costs to the
24 prevailing plaintiff.

1 “(h) CLARIFICATION.—Nothing in this section shall
2 be construed to require an alien described in subsection
3 (b) to appear before an agent of the Department of Home-
4 land Security or any other Federal agency for an inter-
5 view.

6 “(i) PERIOD DESCRIBED.—The period described in
7 this subsection—

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

13 “(2) ends on the date that is 90 days after the
14 date on which such public health emergency termi-
15 nates.

16 “(j) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC
17 DATA.—

18 “(1) IN GENERAL.—

19 “(A) IN GENERAL.—The Secretary may
20 not grant an alien adjustment of status under
21 this section unless the alien submits biometric
22 and biographic data, in accordance with proce-
23 dures established by the Secretary.

24 “(B) ALTERNATIVE PROCEDURE.—The
25 Secretary shall provide an alternative procedure

1 for aliens who are unable to provide such bio-
2 metric or biographic data due to a physical or
3 mental impairment or bona fide religious objec-
4 tion.

5 “(2) BACKGROUND CHECKS.—

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

8 “(i) to conduct security and law en-
9 forcement background checks; and

10 “(ii) to determine whether there is
11 any criminal, national security, or other
12 factor that would render the alien ineligible
13 for adjustment of status under this section.

14 “(B) COMPLETION REQUIRED.—

15 “(i) IN GENERAL.—The status of an
16 alien may not be adjusted under this sec-
17 tion unless security and law enforcement
18 background checks are completed to the
19 satisfaction of the Secretary.

20 “(ii) TIMELINE.—

21 “(I) IN GENERAL.—Except as
22 provided in subclause (II), the secu-
23 rity and law enforcement background
24 checks required by this paragraph
25 shall be completed within 60 days.

1 “(II) EXTENSION FOR GOOD
2 CAUSE.—The Secretary may extend
3 the timeline under subclause (I) for
4 good cause and, in the case of such an
5 extension, shall communicate the
6 delay to the applicant.

7 “(k) ADJUDICATION.—

8 “(1) IN GENERAL.—The Secretary shall evalu-
9 ate each application filed pursuant to this section to
10 determine whether the alien meets all applicable re-
11 quirements.

12 “(2) ADJUSTMENT OF STATUS IF FAVORABLE
13 DETERMINATION.—If the Secretary determines that
14 the alien meets the requirements under this section,
15 the Secretary shall—

16 “(A) notify the alien of such determina-
17 tion; and

18 “(B) adjust the status of the alien to that
19 of an alien lawfully admitted for permanent res-
20 idence, effective as of the date of such deter-
21 mination.

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

1 “(1) ALIENS ORDERED REMOVED.—

2 “(1) IN GENERAL.—An alien present in the
3 United States who has been ordered removed or has
4 been permitted to depart voluntarily from the United
5 States, notwithstanding such order or permission to
6 depart, may apply for adjustment of status under
7 this section.

8 “(2) OPPORTUNITY TO APPLY.—

9 “(A) IN GENERAL.—An alien who appears
10 to be prima facie eligible for relief under this
11 section shall be given a reasonable opportunity
12 to apply for such relief and shall not be re-
13 moved until a final decision establishing ineligi-
14 bility for relief is rendered.

15 “(B) MOTION NOT REQUIRED.—Such alien
16 shall not be required to file a separate motion
17 to reopen, reconsider, or vacate the order of re-
18 moval.

19 “(C) EFFECT OF APPROVAL.—If the Sec-
20 retary approves the application, the Secretary
21 or the Attorney General shall vacate the order
22 of removal and terminate any removal pro-
23 ceedings.

24 “(D) EFFECT OF DENIAL.—If the Sec-
25 retary renders a final administrative decision to

1 deny the application, the order of removal or
2 permission to depart shall be effective and en-
3 forceable to the same extent as if the applica-
4 tion had not been made, but only after all avail-
5 able administrative and judicial remedies have
6 been exhausted.

7 “(m) ADVANCE PAROLE.—

8 “(1) IN GENERAL.—During the period begin-
9 ning on the date on which an alien applies for ad-
10 justment of status under this section and ending on
11 the date on which the Secretary makes a final deci-
12 sion regarding such application, the alien shall be el-
13 igible to apply for advance parole based on any rea-
14 sonable need to travel.

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

19 “(n) EMPLOYMENT AUTHORIZATION.—

20 “(1) IN GENERAL.—

21 “(A) IN GENERAL.—An alien whose re-
22 moval is stayed pursuant to this section or who
23 has a pending application under this section
24 shall, on application to the Secretary, be grant-
25 ed an employment authorization document.

1 “(B) TIMELINE FOR ISSUANCE.—

2 “(i) IN GENERAL.—Except as pro-
3 vided in clause (ii), an employment author-
4 ization document shall be issued within 30
5 days.

6 “(ii) EXTENSION FOR GOOD CAUSE.—
7 The Secretary may extend the timeline
8 under clause (ii) for good cause and, in the
9 case of such an extension, shall commu-
10 nicate the delay to the applicant.

11 “(2) RECEIPT OF APPLICATION.—

12 “(A) IN GENERAL.—As soon as practicable
13 after receiving an application for status under
14 this section, the Secretary shall provide the ap-
15 plicant with a document acknowledging receipt
16 of such application.

17 “(B) EVIDENCE OF EMPLOYMENT AU-
18 THORIZATION.—A document issued under sub-
19 paragraph (A) shall—

20 “(i) serve as interim evidence of the
21 alien’s authorization to accept employment
22 in the United States; and

23 “(ii) be accepted by an employer as
24 evidence of employment authorization

1 under section 274A(b)(1)(C) pending a
2 final decision on the application.

3 “(o) EXEMPTION FROM NUMERICAL LIMITATION.—

4 Nothing in this section or in any other law may be con-
5 strued—

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

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

11 “(p) ADMINISTRATIVE REVIEW.—

12 “(1) EXCLUSIVE ADMINISTRATIVE REVIEW.—
13 Administrative review of a determination with re-
14 spect to an application for status under this section
15 shall be conducted solely in accordance with this
16 subsection.

17 “(2) ADMINISTRATIVE APPELLATE REVIEW.—

18 “(A) ESTABLISHMENT OF ADMINISTRA-
19 TIVE APPELLATE AUTHORITY.—The Secretary
20 shall establish or designate an appellate author-
21 ity to provide for a single level of administrative
22 appellate review of determinations with respect
23 to applications for, and revocations of, status
24 under this section.

1 “(B) SINGLE APPEAL FOR EACH ADMINIS-
2 TRATIVE DECISION.—

3 “(i) IN GENERAL.—An alien in the
4 United States whose application for status
5 under this section has been denied or
6 whose status under this section has been
7 revoked may file with the Secretary not
8 more than 1 appeal of each such decision.

9 “(ii) CHANGED CIRCUMSTANCE.—On
10 a showing of changed circumstances, the
11 Secretary may waive the numerical limita-
12 tion under clause (i).

13 “(iii) NOTICE OF APPEAL.—

14 “(I) IN GENERAL.—A notice of
15 appeal filed under this paragraph
16 shall be filed not later than 90 days
17 after the date of service of the denial
18 or revocation, unless the delay beyond
19 the 90-day period is reasonably justifi-
20 able.

21 “(II) WAIVER.—On showing that
22 the delay was reasonably justifiable,
23 the Secretary may waive the time lim-
24 itation described in subclause (I).

1 “(III) SERVICE.—Service of a
2 notice of appeal under this clause
3 shall be provided in English, Spanish,
4 and any other language that the alien
5 concerned is known to understand,
6 and shall be made upon counsel of
7 record.

8 “(C) REVIEW BY SECRETARY.—Nothing in
9 this paragraph may be construed to limit the
10 authority of the Secretary to certify appeals for
11 review and final administrative decision.

12 “(D) DENIAL OF PETITIONS FOR DEPEND-
13 ENTS.—A decision to deny, or revoke the ap-
14 proval of, a petition filed by an alien to classify
15 a spouse, son, daughter, or child of the alien as
16 the spouse, son, daughter, or child for purposes
17 of status under this section may be appealed
18 under this paragraph.

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

22 “(i) the administrative record estab-
23 lished at the time of the determination on
24 the application; and

1 “(ii) any additional newly discovered
2 or previously unavailable evidence.

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

9 “(q) INFORMATION PRIVACY.—

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

13 “(A) disclose (directly or indirectly, includ-
14 ing through inclusion in a database), access, or
15 use the information provided by an alien pursu-
16 ant to an application filed under this section
17 (including information provided during adminis-
18 trative or judicial review) for the purpose of im-
19 migration enforcement, including the initiation
20 of removal proceedings; or

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

23 “(2) REFERRALS PROHIBITED.—The Secretary,
24 based solely on information provided in an applica-
25 tion for adjustment of status under this section (in-

1 including information provided during administrative
2 or judicial review) or an application for deferred ac-
3 tion pursuant to the memorandum of the Depart-
4 ment of Homeland Security entitled ‘Exercising
5 Prosecutorial Discretion with Respect to Individuals
6 Who Came to the United States as Children’ issued
7 on June 15, 2020, may not refer an applicant to
8 U.S. Immigration and Customs Enforcement, U.S.
9 Customs and Border Protection, or any designee of
10 either such entity.

11 “(3) REQUIRED DISCLOSURE.—Notwith-
12 standing paragraph (1), the Attorney General or the
13 Secretary shall provide the information provided in
14 an application under this section, and any other in-
15 formation derived from such information, to an offi-
16 cial coroner for purposes of affirmatively identifying
17 a deceased individual (whether or not such individual
18 is deceased as a result of a crime).

19 “(4) PENALTY.—Whoever knowingly uses, pub-
20 lishes, or permits information to be examined in vio-
21 lation of this subsection shall be fined not more than
22 \$50,000.

23 “(5) SAFEGUARDS.—The Secretary shall re-
24 quire appropriate administrative and physical safe-
25 guards to protect against direct and indirect disclo-

1 sure, access, and uses of information that violate
2 this subsection.

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

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

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

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

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

17 “(s) EFFECT OF FAILURE TO COMPLY WITH RE-
18 MOVAL ORDER.—Failure to comply with 1 or more re-
19 moval orders or voluntary departure agreements for acts
20 committed before the date of the enactment of this section
21 shall not affect the eligibility of an alien to apply for a
22 benefit under this section.”.

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

25 (1) in subsection (a)(2)—

1 (A) in subparagraph (B), by inserting “the
2 exercise of discretion specified under this title
3 arising under” after “no court shall have juris-
4 diction to review”;

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

7 (C) in subparagraph (D)—

8 (i) by striking “(other than in this
9 section)”; and

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

13 (2) in subsection (b)—

14 (A) in paragraph (2), in the first sentence,
15 by inserting “or, in the case of a decision ren-
16 dered under subsection (c), in the judicial cir-
17 cuit in which the petitioner resides” after “pro-
18 ceedings”; and

19 (B) in paragraph (9), by striking the first
20 sentence and inserting the following: “Except as
21 otherwise provided in this section, judicial re-
22 view of a determination respecting a removal
23 order shall be available only in judicial review
24 of a final order under this section.”;

25 (3) in subsection (f)—

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

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

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

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

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

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

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

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

10 “(4) STANDARD FOR JUDICIAL REVIEW.—

11 “(A) BASIS.—Judicial review of a denial or
12 revocation of an approval of an application
13 under section 245B shall be based upon the ad-
14 ministrative record established at the time of
15 the review.

16 “(B) AUTHORITY TO REMAND.—The re-
17 viewing court may remand a case under this
18 subsection to the Secretary of Homeland Secu-
19 rity (referred to in this subsection as the ‘Sec-
20 retary’) for consideration of additional evidence
21 if the court finds that—

22 “(i) the additional evidence is mate-
23 rial; and

1 “(ii) there were reasonable grounds
2 for failure to adduce the additional evi-
3 dence before the Secretary.

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

11 “(5) REMEDIAL POWERS.—

12 “(A) JURISDICTION.—Notwithstanding any
13 other provision of law, the district courts of the
14 United States shall have jurisdiction over any
15 cause or claim arising from a pattern or prac-
16 tice of the Secretary in the operation or imple-
17 mentation of the Citizenship for Essential
18 Workers Act, or the amendments made by that
19 Act, that is arbitrary, capricious, or otherwise
20 contrary to law.

21 “(B) SCOPE OF RELIEF.—The district
22 courts of the United States may order any ap-
23 propriate relief in a clause or claim described in
24 subparagraph (A) without regard to exhaustion,
25 ripeness, or other standing requirements (other

1 than constitutionally mandated requirements),
2 if the court determines that—

3 “(i) the resolution of such cause or
4 claim will serve judicial and administrative
5 efficiency; or

6 “(ii) a remedy would otherwise not be
7 reasonably available or practicable.

8 “(6) CHALLENGES TO THE VALIDITY OF THE
9 SYSTEM.—

10 “(A) IN GENERAL.—Except as provided in
11 paragraph (5), any claim that section 245B or
12 any regulation, written policy, written directive,
13 or issued or unwritten policy or practice initi-
14 ated by or under the authority of the Secretary
15 to implement such section, violates the Con-
16 stitution of the United States or is otherwise in
17 violation of law is available in an action insti-
18 tuted in a district court of the United States in
19 accordance with the procedures prescribed in
20 this paragraph.

21 “(B) SAVINGS PROVISION.—Except as pro-
22 vided in subparagraph (C), nothing in subpara-
23 graph (A) may be construed to preclude an ap-
24 plicant under 245B from asserting that an ac-
25 tion taken or a decision made by the Secretary

1 with respect to the applicant’s status was con-
2 trary to law.

3 “(C) CLASS ACTIONS.—Any claim de-
4 scribed in subparagraph (A) that is brought as
5 a class action shall be brought in conformity
6 with—

7 “(i) the Class Action Fairness Act of
8 2005 (Public Law 109–2; 119 Stat. 4);
9 and

10 “(ii) the Federal Rules of Civil Proce-
11 dure.

12 “(D) PRECLUSIVE EFFECT.—The final dis-
13 position of any claim brought under subpara-
14 graph (A) shall be preclusive of any such claim
15 asserted by the same individual in a subsequent
16 proceeding under this subsection.

17 “(E) EXHAUSTION AND STAY OF PRO-
18 CEEDINGS.—

19 “(i) IN GENERAL.—No claim brought
20 under this paragraph shall require the
21 plaintiff to exhaust administrative rem-
22 edies under section 245B(p).

23 “(ii) STAY AUTHORIZED.—Nothing in
24 this paragraph may be construed to pre-
25 vent the court from staying proceedings

1 under this paragraph to permit the Sec-
2 retary to evaluate an allegation of an un-
3 written policy or practice or to take correc-
4 tive action. In determining whether to
5 issue such a stay, the court shall take into
6 account any harm the stay may cause to
7 the claimant.”.

8 (c) RULEMAKING.—

9 (1) IMPLEMENTATION.—Not later than 180
10 days after the date of the enactment of this Act, the
11 Secretary shall issue interim final rules, published in
12 the Federal Register, implementing section 245B of
13 the Immigration and Nationality Act, as added by
14 this Act.

15 (2) EFFECTIVE DATE.—Notwithstanding sec-
16 tion 553 of title 5, United States Code, the rules
17 issued under this subsection shall be effective, on an
18 interim basis, immediately upon publication, but
19 may be subject to change and revision after public
20 notice and opportunity for a period of public com-
21 ment.

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

1 (d) **RULE OF CONSTRUCTION.**—Section 244(h) of the
2 Immigration and Nationality Act (8 U.S.C. 1254a(h))
3 may not be construed to limit the authority of the Sec-
4 retary to adjust the status of an alien under section 245B
5 of the Immigration and Nationality Act, as added by this
6 Act.

7 (e) **ELIGIBILITY FOR SERVICES.**—Section 504(a)(11)
8 of the Omnibus Consolidated Rescissions and Appropria-
9 tions Act of 1996 (Public Law 104–134; 110 Stat. 1321–
10 54) shall not be construed to prevent a recipient of funds
11 under title X of the Economic Opportunity Act of 1964
12 (42 U.S.C. 2996 et seq.) from providing legal assistance
13 directly related to an application for status under section
14 245B of the Immigration and Nationality Act, as added
15 by this Act, or to an alien granted such status.

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

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

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

21 (a) **WAIVER OF GROUNDS OF INADMISSIBILITY.**—
22 Section 212 of the Immigration and Nationality Act (8
23 U.S.C. 1182) is amended by inserting after subsection (b)
24 the following:

1 “(c) HUMANITARIAN, FAMILY UNITY, AND PUBLIC
2 INTEREST WAIVER.—

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

11 “(A) for humanitarian purposes;

12 “(B) to ensure family unity; or

13 “(C) if a waiver is otherwise in the public
14 interest.

15 “(2) CONSIDERATIONS.—In making a deter-
16 mination under paragraph (1), the Secretary of
17 Homeland Security or the Attorney General shall
18 consider all mitigating and aggravating factors, in-
19 cluding—

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

22 “(B) the duration of the alien’s residence
23 in the United States;

24 “(C) evidence of rehabilitation, if applica-
25 ble; and

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

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

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

12 “(A) IN GENERAL.—Notwithstanding any
13 other provision of law, except section
14 245B(c)(1)(B), the Secretary of Homeland Se-
15 curity or the Attorney General may waive the
16 operation of any 1 or more grounds of deport-
17 ability under this subsection (excluding deport-
18 ability under paragraph (2)(A)(iii) based on a
19 conviction described in section 101(a)(43)(A)
20 and deportability under paragraph (4)) for any
21 purpose, including eligibility for relief from re-
22 moval—

23 “(i) for humanitarian purposes;

24 “(ii) to ensure family unity; or

1 “(iii) if a waiver is otherwise in the
2 public interest.

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

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

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

12 “(iii) evidence of rehabilitation, if ap-
13 plicable; and

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

19 (c) REPEAL OF 3-YEAR, 10-YEAR, AND PERMANENT
20 BARS.—Section 212(a)(9) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1182(a)(9)) is amended to read as fol-
22 lows:

23 “(9) ALIENS PREVIOUSLY REMOVED.—

24 “(A) ARRIVING ALIEN.—Any alien who has
25 been ordered removed under section 235(b)(1)

1 or at the end of proceedings under section 240
2 initiated upon the alien's arrival in the United
3 States and who again seeks admission within 5
4 years of the date of such removal (or within 20
5 years in the case of a second or subsequent re-
6 moval or at any time in the case of an alien
7 convicted of an aggravated felony) is inadmis-
8 sible.

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

17 “(i) has been ordered removed under
18 section 240 or any other provision of law;

19 or

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

22 “(C) EXCEPTION.—Subparagraphs (A)
23 and (B) shall not apply to an alien seeking ad-
24 mission within a period if, prior to the date of
25 the alien's reembarkation at a place outside the

1 United States or attempt to be admitted from
2 foreign contiguous territory, the Secretary of
3 Homeland Security has consented to the alien’s
4 reapplying for admission.”.

5 **SEC. 4. EXPUNGEMENT AND SENTENCING.**

6 (a) DEFINITION OF CONVICTION.—

7 (1) IN GENERAL.—Section 101(a)(48) of the
8 Immigration and Nationality Act (8 U.S.C.
9 1101(a)(48)) is amended to read as follows:

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

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

15 “(i) An adjudication or judgment of guilt that
16 has been dismissed, expunged, deferred, annulled, in-
17 validated, withheld, vacated, or pardoned by the
18 President of the United States or the Governor of
19 any State.

20 “(ii) Any adjudication in which the court has
21 issued—

22 “(I) a judicial recommendation against re-
23 moval;

24 “(II) an order of probation without entry
25 of judgment; or

1 “(III) any similar disposition.

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

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

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

11 (2) RETROACTIVE APPLICABILITY.—The
12 amendment made by this subsection shall apply with
13 respect to any conviction, adjudication, or judgment
14 entered before, on, or after the date of the enact-
15 ment of this Act.

16 (b) JUDICIAL RECOMMENDATION AGAINST RE-
17 MOVAL.—The grounds of inadmissibility and deportability
18 under sections 212(a)(2) and 237(a)(2) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1182(a)(2) and
20 1227(a)(2)) shall not apply to an alien with a criminal
21 conviction if, not later than 180 days after the date on
22 which the alien is sentenced, and after having provided
23 notice and an opportunity to respond to representatives
24 of the State concerned, the Secretary, and prosecuting au-
25 thorities, the sentencing court issues a recommendation to

1 the Secretary that the alien not be removed on the basis
2 of the conviction.

3 **SEC. 5. PETTY OFFENSES.**

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

6 (1) in clause (i), in the matter preceding sub-
7 clause (I), by striking “, or who admits having com-
8 mitted, or who admits committing acts which con-
9 stitute the essential elements of”;

10 (2) in clause (ii)—

11 (A) in the matter preceding subclause (I),
12 by striking “to an alien who committed only
13 one crime”;

14 (B) in subclause (I), by inserting “the
15 alien committed only one crime,” before “the
16 crime was committed when”;

17 (C) by amending subclause (II) to read as
18 follows:

19 “(II)(aa) the alien was not con-
20 victed of more than 2 crimes; and

21 “(bb) for each such crime—

22 “(AA) the maximum penalty
23 possible did not exceed imprison-
24 ment for 1 year; and

1 “(BB) the alien was not
2 sentenced to a term of imprison-
3 ment in excess of 180 days.”.

○