

116TH CONGRESS  
1ST SESSION

# S. 2929

To protect victims of crime or serious labor violations from removal during Department of Homeland Security enforcement actions, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 21, 2019

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

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## A BILL

To protect victims of crime or serious labor violations from removal during Department of Homeland Security enforcement actions, 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. VICTIMS OF SERIOUS LABOR AND EMPLOYMENT**  
2 **VIOLATIONS OR CRIME.**

3 (a) PROTECTION FOR VICTIMS OF LABOR AND EM-  
4 PLOYMENT VIOLATIONS.—Section 101(a)(15)(U) of the  
5 Immigration and Nationality Act (8 U.S.C.  
6 1101(a)(15)(U)) is amended—

7 (1) in clause (i)—

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

10 “(I) the alien—

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

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

18 “(cc) is a victim of criminal ac-  
19 tivity described in clause (iii) and  
20 would suffer extreme hardship upon  
21 removal; or

22 “(dd) has suffered a violation de-  
23 scribed in clause (iv) and would suffer  
24 extreme hardship upon removal;”;

25 (B) in subclause (II), by inserting “or a  
26 labor or employment violation resulting in a

1 workplace claim described in clause (iv)” before  
2 the semicolon at the end;

3 (C) in subclause (III)—

4 (i) by striking “or State judge, to the  
5 Service” and inserting “, State, or local  
6 judge, to the Department of Homeland Se-  
7 curity, to the Equal Employment Oppor-  
8 tunity Commission, to the Department of  
9 Labor, to the National Labor Relations  
10 Board”; and

11 (ii) by inserting “or investigating,  
12 prosecuting, or seeking civil remedies for a  
13 labor or employment violation related to a  
14 workplace claim described in clause (iv)”  
15 before the semicolon at the end; and

16 (D) in subclause (IV)—

17 (i) by inserting “(aa)” after “(IV)”;  
18 and

19 (ii) by adding at the end the fol-  
20 lowing: “or

21 “(bb) a workplace claim described in clause (iv)  
22 resulting from a labor or employment violation;”;

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

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

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

4 “(iv) in the labor or employment violation  
5 related to a workplace claim, the alien—

6 “(I) has filed, is a material witness in,  
7 or is likely to be helpful in the investiga-  
8 tion of, a bona fide workplace claim (as de-  
9 fined in section 274A(e)(10)(C)); and

10 “(II) reasonably fears, has been  
11 threatened with, or has been the victim of,  
12 an action involving force, physical re-  
13 straint, retaliation, or abuse of the immi-  
14 gration or other legal process against the  
15 alien or another person by the employer in  
16 relation to acts underlying the workplace  
17 claim or related to the filing of the work-  
18 place claim; or”.

19 (b) TEMPORARY PROTECTION FOR VICTIMS OF  
20 CRIME, LABOR, AND EMPLOYMENT VIOLATIONS.—Not-  
21 withstanding any other provision of law, the Secretary of  
22 Homeland Security may permit an alien to temporarily re-  
23 main in the United States, and grant the alien employ-  
24 ment authorization, if the Secretary determines that the  
25 alien—

1           (1) has filed for relief under section  
2           101(a)(15)(U) of the Immigration and Nationality  
3           Act (8 U.S.C. 1101(a)(15)(U)); or

4           (2)(A) has filed, or is a material witness to, a  
5           bona fide workplace claim (as defined in section  
6           274A(e)(10)(C) of such Act, as added by section  
7           3(b) of this Act); and

8           (B) has been helpful, is being helpful, or is like-  
9           ly to be helpful to—

10           (i) a Federal, State, or local law enforce-  
11           ment official;

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

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

14           (iv) the Department of Homeland Security;

15           (v) the Equal Employment Opportunity  
16           Commission;

17           (vi) the Department of Labor, including  
18           the Occupational Safety and Health Adminis-  
19           tration;

20           (vii) the National Labor Relations Board;

21           (viii) the head official of a State or local  
22           government department of labor, workforce  
23           commission, or human relations commission or  
24           council; or

1 (ix) any other Federal, State, or local au-  
2 thority investigating, prosecuting, or seeking  
3 civil remedies related to the workplace claim.

4 (c) REQUIREMENTS APPLICABLE TO U VISAS.—Sec-  
5 tion 214(p) of the Immigration and Nationality Act (8  
6 U.S.C. 1184(p)) is amended—

7 (1) in paragraph (1)—

8 (A) in the third sentence, by inserting “or  
9 in the investigation or prosecution of, or the  
10 seeking of civil remedies for, a workplace claim  
11 described in section 101(a)(15)(U)(iv)”;

12 (B) in the first sentence—

13 (i) by inserting “or investigating,  
14 prosecuting, or seeking civil remedies for  
15 workplace claims described in section  
16 101(a)(15)(U)(iv)” after “section  
17 101(a)(15)(U)(iii)”;

18 (ii) by striking “The petition” and in-  
19 serting the following:

20 “(A) IN GENERAL.—The petition”; and

21 (C) by adding at the end the following:

22 “(B) FEES.—An alien petitioning for, or  
23 having status under, section 101(a)(15)(U)  
24 shall not be required to submit any fee (or re-  
25 quest any fee waiver) in connection with such

1 petition or status, including fees associated with  
2 biometric services, or an application for advance  
3 permission to enter as a nonimmigrant.

4 “(C) CONFIDENTIALITY OF INFORMA-  
5 TION.—Neither the Secretary of Homeland Se-  
6 curity, nor the Attorney General, may use the  
7 information furnished pursuant to a petition for  
8 status under section 101(a)(15)(U) for pur-  
9 poses of initiating or carrying out a removal  
10 proceeding.”;

11 (2) by striking paragraph (2);

12 (3) by redesignating paragraphs (3) through  
13 (7) as paragraphs (2) through (6), respectively; and  
14 (4) in paragraph (5), as redesignated—

15 (A) by inserting “or workplace claims de-  
16 scribed in section 101(a)(15)(U)(iv)” after “de-  
17 scribed in section 101(a)(15)(U)(iii)”;

18 (B) by inserting “or workplace claim”  
19 after “prosecution of such criminal activity”.

20 (d) ADJUSTMENT OF STATUS FOR VICTIMS OF  
21 CRIMES.—Section 245(m)(1) of the Immigration and Na-  
22 tionality Act (8 U.S.C. 1255(m)(1)) is amended by insert-  
23 ing “or an investigation or prosecution regarding a work-  
24 place claim” after “prosecution”.

1 (e) CHANGE OF NONIMMIGRANT CLASSIFICATION.—  
2 Section 384(a)(1) of the Illegal Immigration Reform and  
3 Immigrant Responsibility Act of 1996 (8 U.S.C.  
4 1367(a)(1)) is amended—

5 (1) in subparagraph (E), by striking “physical  
6 or mental abuse and the criminal activity” and in-  
7 serting “abuse and the criminal activity or work-  
8 place claim”;

9 (2) in subparagraph (F), by adding “or” at the  
10 end; and

11 (3) by inserting after subparagraph (F) the fol-  
12 lowing:

13 “(G) the alien’s employer,”.

14 **SEC. 3. LABOR ENFORCEMENT ACTIONS.**

15 (a) REMOVAL PROCEEDINGS.—Section 239(e) of the  
16 Immigration and Nationality Act (8 U.S.C. 1229(e)) is  
17 amended—

18 (1) in paragraph (1)—

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

21 (B) by inserting “or as a result of informa-  
22 tion provided to the Secretary of Homeland Se-  
23 curity in retaliation against individuals for exer-  
24 cising or attempting to exercise their employ-



1           ment rights or other legal rights” after “para-  
2           graph (2)”; and

3           (2) in paragraph (2), by adding at the end the  
4           following:

5                   “(C) At a facility about which a workplace  
6                   claim has been filed or is contemporaneously  
7                   filed.”.

8           (b) UNLAWFUL EMPLOYMENT OF ALIENS.—Section  
9           274A(e) of the Immigration and Nationality Act (8 U.S.C.  
10          1324a(e)) is amended by adding at the end the following:

11                   “(10) CONDUCT IN ENFORCEMENT ACTIONS.—

12                           “(A) ENFORCEMENT ACTION.—If the Sec-  
13                           retary of Homeland Security undertakes an en-  
14                           forcement action at a facility about which a  
15                           workplace claim has been filed or is contem-  
16                           poraneously filed, or as a result of information  
17                           provided to the Secretary in retaliation against  
18                           employees for exercising their rights related to  
19                           a workplace claim, the Secretary shall ensure  
20                           that—

21                                   “(i) any alien arrested or detained  
22                                   who is necessary for the investigation or  
23                                   prosecution of workplace claim violations  
24                                   or criminal activity (as described in sub-  
25                                   paragraph (T) or (U) of section

1           101(a)(15)) is not removed from the  
2           United States until after the Secretary—

3                   “(I) notifies the appropriate law  
4                   enforcement agency with jurisdiction  
5                   over such violations or criminal activ-  
6                   ity; and

7                   “(II) provides such agency with  
8                   the opportunity to interview such  
9                   alien; and

10                  “(ii) no alien entitled to a stay of re-  
11                  moval or abeyance of removal proceedings  
12                  under this section is removed.

13                  “(B) PROTECTIONS FOR VICTIMS OF  
14                  CRIME, LABOR, AND EMPLOYMENT VIOLA-  
15                  TIONS.—

16                   “(i) STAY OF REMOVAL OR ABEYANCE  
17                   OF REMOVAL PROCEEDINGS.—An alien  
18                   against whom removal proceedings have  
19                   been initiated under chapter 4 of title II,  
20                   who has filed a workplace claim, who is a  
21                   material witness in any pending or antici-  
22                   pated proceeding involving a bona fide  
23                   workplace claim, or who has filed for relief  
24                   under section 101(a)(15)(U), shall be enti-  
25                   tled to a stay of removal or an abeyance of

1 removal proceedings and to employment  
2 authorization until the resolution of the  
3 workplace claim or the denial of relief  
4 under section 101(a)(15)(U) after exhaus-  
5 tion of administrative appeals, whichever is  
6 later, unless the Secretary establishes, by a  
7 preponderance of the evidence in pro-  
8 ceedings before the immigration judge pre-  
9 siding over that alien’s removal hearing,  
10 that—

11 “(I) the alien has been convicted  
12 of a felony; or

13 “(II) the workplace claim was  
14 filed in bad faith with the intent to  
15 delay or avoid the removal of the  
16 alien.

17 “(ii) DURATION.—Any stay of re-  
18 moval or abeyance of removal proceedings  
19 and employment authorization issued pur-  
20 suant to clause (i) shall remain valid until  
21 the resolution of the workplace claim or  
22 the denial of relief under section  
23 101(a)(15)(U) after the exhaustion of ad-  
24 ministrative appeals, and shall be extended  
25 by the Secretary of Homeland Security for

1 a period of not longer than 10 additional  
2 years upon determining that—

3 “(I) such relief would enable the  
4 alien asserting a workplace claim to  
5 pursue the claim to resolution;

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

9 “(III) such extension would oth-  
10 erwise further the interests of justice.

11 “(C) DEFINITIONS.—In this paragraph:

12 “(i) MATERIAL WITNESS.—Notwith-  
13 standing any other provision of law, the  
14 term ‘material witness’ means an indi-  
15 vidual who presents a declaration from an  
16 attorney investigating, prosecuting, or de-  
17 fending the workplace claim or from the  
18 presiding officer overseeing the workplace  
19 claim attesting that, to the best of the de-  
20 clarant’s knowledge and belief, reasonable  
21 cause exists to believe that the testimony  
22 of the individual will be relevant to the  
23 outcome of the workplace claim.

24 “(ii) WORKPLACE CLAIM.—The term  
25 ‘workplace claim’ means any written or

1 oral claim, charge, complaint, or grievance  
2 filed with, communicated to, or submitted  
3 to the employer, a Federal, State, or local  
4 agency or court, or an employee represent-  
5 ative related to the violation of applicable  
6 Federal, State, and local labor laws, in-  
7 cluding laws concerning wages and hours,  
8 labor relations, family and medical leave,  
9 occupational health and safety, civil rights,  
10 or nondiscrimination.”.

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