

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.

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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

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## 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 INADMIS-  
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           removal, 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”; and

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”; and

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.”.

○