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118TH CONGRESS
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H. R. 3043

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

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2023

Mr. CASTRO of Texas (for himself, Mr. LIEU, Mr. GARCÍA of Illinois, Ms. BARRAGÁN, Mr. TORRES of New York, Mr. VARGAS, Mr. GOMEZ, Mr. ESPAILLAT, Ms. NORTON, Mr. GRIJALVA, Ms. JACKSON LEE, Ms. ESCOBAR, Ms. GARCIA of Texas, Mr. JOHNSON of Georgia, Mr. KHANNA, Mr. MCGOVERN, Ms. JAYAPAL, and Mr. SOTO) introduced the following bill; which was 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Citizenship for Essential Workers Act''.

SEC. 2. ADJUSTMENT OF STATUS OF ESSENTIAL WORKERS.

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

"SEC. 245B. ADJUSTMENT OF STATUS FOR ESSENTIAL WORKERS.

"(a) ADJUSTMENT OF STATUS FOR ESSENTIAL WORKERS.—Notwithstanding any other provision of law, the Secretary of Homeland Security (referred to in this section as the 'Secretary') or the Attorney General shall adjust to the status of an alien lawfully admitted for permanent residence—

"(1) an alien who—

"(A) satisfies the eligibility requirements set forth in subsection (b); and

"(B) submits an application and satisfies the criminal and national security background checks and payment of applicable fees pursuant to the procedures set forth in subsection (d); and

"(2) the parents, spouse, sons, and daughters of such alien.

"(b) ELIGIBILITY.—An alien applying for status under subsection (a) shall satisfy the following requirements:

"(1) ALIENS WORKING IN CERTAIN SECTORS, INDUSTRIES, AND OCCUPATIONS.—Except as provided in paragraph (2), the alien shall have, at any point during the period described in subsection (i), earned income for work in any of the following private, public, or nonprofit sectors, industries, or occupations:

"(A) Health care.

"(B) Emergency response.

"(C) Sanitation.

"(D) Restaurant ownership, food preparation, vending, catering, food packaging, food services, or delivery.

"(E) Hotel or retail.

"(F) Fish, poultry, and meat processing work.

"(G) Agricultural work, including labor that is seasonal in nature.

"(H) Commercial or residential landscaping.

"(I) Commercial or residential construction or renovation.

"(J) Housing, residential, and commercial construction related activities or public works construction.

"(K) Domestic work in private households, including child care, home care, or house cleaning.

"(L) Natural disaster recovery, disaster reconstruction, and related construction.

"(M) Home and community-based work, including—

"(i) home health care;

"(ii) residential care;

"(iii) assistance with activities of daily living;

"(iv) any service provided by direct care workers (as defined in section 799B of the Public Health Service Act (42 U.S.C. 295p)), personal care aides, job coaches, or supported employment providers; and

"(v) any other provision of care to individuals in their homes by direct service providers, personal care attendants, and home health aides.

"(N) Family care, including child care services, in-home child care services such as nanny services, and care services provided by family members to other family members.

"(O) Manufacturing.

"(P) Warehousing.

"(Q) Transportation or logistics.

"(R) Janitorial.

"(S) Laundromat and dry-cleaning operators.

"(T) Any other work performed by 'essential critical infrastructure workers', as described in the memorandum of the Department of Homeland Security entitled 'Advisory Memorandum on Ensuring Essential Critical Infrastructure Workers Ability to Work During the COVID–19 Response', which was originally issued by the Director of the Cybersecurity and Infrastructure Security Agency on March 19, 2020, and last updated on August 10, 2021.

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

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

"(A) shall—

"(i)(I) have earned income in any sector, industry, or occupation described in that paragraph on any date during the pe-

riod described in subsection (i) but was unable to continue that work through no fault of the alien, including because the working conditions posed a high degree of risk to the alien's health and safety; and

"(II) have been seeking to resume work in any such sector, industry, or occupation;

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

"(i) performed any service or labor for remuneration in any sector, industry, or occupation described in that paragraph on any date during the period described in subsection (i); and

"(ii) died due to COVID–19; or

"(C) is the parent, spouse, son, or daughter of a member of the Armed Forces, including the National Guard.

"(3) PHYSICAL PRESENCE.—

"(A) DATE OF SUBMITTAL OF APPLICATION.—The alien shall be physically present in the United States on the date on which the application is submitted.

"(B) CONTINUOUS PHYSICAL PRESENCE.—

"(i) IN GENERAL.—Except as provided in clause (ii), the alien shall have been continuously physically present in the United States beginning on January 1, 2023, and ending on the date on which the application is approved.

"(ii) EXCEPTIONS.—

"(I) AUTHORIZED ABSENCE.—An alien who departed temporarily from the United States shall not be considered to have failed to maintain continuous physical presence in the United States during any period of travel that was authorized by the Secretary.

"(II) BRIEF, CASUAL, AND INNOCENT ABSENCES.—

"(aa) IN GENERAL.—An alien who departed temporarily from the United States shall not be considered to have failed to maintain continuous physical presence in the United States if the alien's absences from the United States are brief, casual, and innocent, whether or not

such absences were authorized by the Secretary.

"(bb) ABSENCES MORE THAN 180 DAYS.—For purposes of this clause, an absence of more than 180 days, in the aggregate, during a calendar year shall not be considered brief, unless the Secretary finds that the length of the absence was due to circumstances beyond the alien's control, including the serious illness of the alien, death or serious illness of a spouse, parent, grandparent, grandchild, sibling, son, or daughter of the alien, or due to international travel restrictions.

"(iii) EFFECT OF NOTICE TO APPEAR.—Issuance of a notice to appear under section 239(a) shall not be considered to interrupt the continuity of an alien's continuous physical presence in the United States.

"(c) GROUNDS FOR INELIGIBILITY.—

"(1) CERTAIN GROUNDS OF INADMISSIBILITY.—

"(A) IN GENERAL.—Subject to subparagraph (B), an alien shall be ineligible for status under this section if the alien—

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

"(ii) has been convicted of a felony offense (excluding any offense under State law for which an essential element in the alien's immigration status); or

"(iii) has been convicted of 3 or more misdemeanor offenses (excluding simple possession of cannabis or cannabis-related paraphernalia, any offense involving cannabis or cannabis-related paraphernalia that is no longer prosecutable in the State in which the conviction was entered, any offense under State law for which an essential element is the alien's immigration status, any offense involving civil disobedience without violence, and any minor traffic offense) not occurring on the same

date, and not arising out of the same act, omission, or scheme of misconduct.

"(B) WAIVERS.—

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

"(I) waive inadmissibility under—

"(aa) subparagraphs (A), (C), and (D) of section 212(a)(2); and

"(bb) paragraphs (6)(E), (8), (10)(C), and (10)(E) of such section;

"(II) waive ineligibility under subparagraph (A)(ii) (excluding offenses described in section 101(a)(43)(A)) or inadmissibility under subparagraph (B) of section 212(a)(2) if the alien has not been convicted of any offense during the 10-year period preceding the date on which the alien applies for status under this section; and

"(III) for purposes of subparagraph (A)(iii), waive consideration of—

"(aa) 1 misdemeanor offense if, during the 5-year period preceding the date on which the alien applies for status under this section the alien has not been convicted of any offense; or

"(bb) 2 misdemeanor offenses if, during the 10-year period preceding such date, the alien has not been convicted of any offense.

"(ii) CONSIDERATIONS.—In making a determination under subparagraph (B), the Secretary of Homeland Security or the Attorney General shall consider all mitigating and aggravating factors, including—

"(I) the severity of the underlying circumstances, conduct, or violation;

"(II) the duration of the alien's residence in the United States;

"(III) evidence of rehabilitation, if applicable; and

"(IV) the extent to which the alien's removal, or the denial of the alien's application, would adversely affect the alien or the alien's United States citizen or lawful permanent resident family members.

"(2) ALIENS IN CERTAIN IMMIGRATION STATUSES.—An alien shall be ineligible for adjustment of status under this section if, on January 1, 2023, the alien was any of the following:

"(A) An alien lawfully admitted for permanent residence.

"(B) An alien admitted as a refugee under section 207 or granted asylum under section 208.

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

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

"(ii) an alien who is considered to be in a nonimmigrant status solely by reason of section 702 of the Consolidated Natural Resources Act of 2008 (Public Law 110–229; 122 Stat. 854) or section 244(f)(4) of this Act;

"(iii) a nonimmigrant described in section 101(a)(15)(H)(ii); and

"(iv) a nonimmigrant who is described in subsection (b).

"(D) An alien paroled into the Commonwealth of the Northern Mariana Islands or Guam who did not reside in the Commonwealth or Guam on November 28, 2009.

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

"(A) departed the United States while subject to an order of exclusion, deportation, removal, or voluntary departure; and

"(B)(i) was outside the United States on January 1, 2023; or

"(ii) reentered the United States unlawfully after January 1, 2023.

"(d) APPLICATION.—

"(1) FEE.—

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

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

"(i) received total income, during the 1-year period immediately preceding the date on which the applicant files an application under this section, that is less than 250 percent of the Federal poverty line;

"(ii) is younger than 21 years of age;

"(iii) is in foster care or is a juvenile who lacks any parental or other familial support; or

"(iv) cannot care for himself or herself because of a serious disability.

"(C) INSTALLMENTS.—The Secretary may allow applicants to pay the fee under this paragraph in installments.

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

"(3) WITHDRAWAL OF APPLICATION.—

"(A) IN GENERAL.—On receipt of a request to withdraw an application under this section, the Secretary shall cease processing of the application and close the case.

"(B) EFFECT OF WITHDRAWAL.—Withdrawal of such an application shall not prejudice any future application filed by the applicant for any immigration benefit under this Act.

"(e) EMPLOYER REQUIREMENTS.—

"(1) IN GENERAL.—On request, an employer, the agent of an employer, or any person who provides compensation directly or indirectly to a worker for labor or service, shall provide a worker with documents that will assist the worker's filing of an application under subsection (d).

"(2) EFFECT OF DELAY OR NONCOMPLIANCE.—With respect to a request described in paragraph (1), delay or noncompliance on the part of an employer, the agent of an employer, or the person who provides compensation directly or indirectly shall result in an escalating fine that accrues for the duration of the delay or noncompliance.

"(f) EMPLOYER PROTECTIONS.—No part of an alien's application or request for documents under subsection (e) shall be used as evidence regarding an employer's or any other person's hiring, employment, or continued employment of an alien described in subsection (b) for purposes of demonstrating a violation of section 274A(a) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)) so long as the employer or other person has complied with such subsection (e).

"(g) WORKER PROTECTIONS.—

"(1) IN GENERAL.—An employer, the agent of an employer, or any person who provides compensation directly or indirectly to a worker for labor or service shall not take an adverse action against a worker based on a request made by the worker in good faith for documents or information to support an application for adjustment of status under this section.

"(2) PRESUMPTION.—

"(A) IN GENERAL.—If any person or entity described in paragraph (1) takes an adverse action against such a worker within 90 days of the worker's request for such documentation or information, such conduct shall raise a presumption that the adverse action was carried out in—

"(i) response to such request; and

"(ii) in violation of this subsection.

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

"(3) CIVIL ACTION.—A worker may bring a civil action in a Federal or State court of competent jurisdiction against any person or entity described in paragraph (1) that violates this subsection to seek such legal or equitable relief as may be appropriate, including reinstatement, promotion, the payment of wages lost, an additional equal amount as liquidated damages, and punitive damages. An action commenced under this paragraph may be commenced within 2 years after the cause of action accrued. In any judgment in favor of a worker, and in any pro-

ceeding to enforce such a judgment, the court shall award reasonable attorney's fees and costs to the prevailing plaintiff.

"(h) CLARIFICATION.—Nothing in this section shall be construed to require an alien described in subsection (b) to appear before an agent of the Department of Homeland Security or any other Federal agency for an interview.

"(i) PERIOD DESCRIBED.—The period described in this subsection is the period beginning on the first day of the public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d) with respect to COVID–19.

"(j) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC DATA.—

"(1) IN GENERAL.—

"(A) IN GENERAL.—The Secretary may not grant an alien adjustment of status under this section unless the alien submits biometric and biographic data, in accordance with procedures established by the Secretary.

"(B) ALTERNATIVE PROCEDURE.—The Secretary shall provide an alternative procedure for aliens who are unable to provide such bio-

metric or biographic data due to a physical or mental impairment or bona fide religious objection.

"(2) BACKGROUND CHECKS.—

"(A) IN GENERAL.—The Secretary shall use biometric and biographic data—

"(i) to conduct security and law enforcement background checks; and

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

"(B) COMPLETION REQUIRED.—

"(i) IN GENERAL.—The status of an alien may not be adjusted under this section unless security and law enforcement background checks are completed to the satisfaction of the Secretary.

"(ii) TIMELINE.—

"(I) IN GENERAL.—Except as provided in subclause (II), the security and law enforcement background checks required by this paragraph shall be completed within 60 days.

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

"(k) ADJUDICATION.—

"(1) IN GENERAL.—The Secretary shall evaluate each application filed pursuant to this section to determine whether the alien meets all applicable requirements.

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

"(A) notify the alien of such determination; and

"(B) adjust the status of the alien to that of an alien lawfully admitted for permanent residence, effective as of the date of such determination.

"(3) ADVERSE DETERMINATION.—If the Secretary determines that the alien does not meet the requirements for status under this section, the Secretary shall notify the alien of such determination.

1 "(l) 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

deny the application, the order of removal or permission to depart shall be effective and enforceable to the same extent as if the application had not been made, but only after all available administrative and judicial remedies have been exhausted.

"(m) ADVANCE PAROLE.—

"(1) IN GENERAL.—During the period beginning on the date on which an alien applies for adjustment of status under this section and ending on the date on which the Secretary makes a final decision regarding such application, the alien shall be eligible to apply for advance parole based on any reasonable need to travel.

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

"(n) EMPLOYMENT AUTHORIZATION.—

"(1) IN GENERAL.—

"(A) IN GENERAL.—An alien whose removal is stayed pursuant to this section or who has a pending application under this section shall, on application to the Secretary, be granted an employment authorization document.

"(B) TIMELINE FOR ISSUANCE.—

"(i) IN GENERAL.—Except as provided in clause (ii), an employment authorization document shall be issued within 30 days.

"(ii) EXTENSION FOR GOOD CAUSE.—The Secretary may extend the timeline under clause (ii) for good cause and, in the case of such an extension, shall communicate the delay to the applicant.

"(2) RECEIPT OF APPLICATION.—

"(A) IN GENERAL.—As soon as practicable after receiving an application for status under this section, the Secretary shall provide the applicant with a document acknowledging receipt of such application.

"(B) EVIDENCE OF EMPLOYMENT AUTHORIZATION.—A document issued under subparagraph (A) shall—

"(i) serve as interim evidence of the alien's authorization to accept employment in the United States; and

"(ii) be accepted by an employer as evidence of employment authorization

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

"(o) EXEMPTION FROM NUMERICAL LIMITATION.—Nothing in this section or in any other law may be construed—

"(1) to limit the number of aliens who may be granted permanent resident status under this section; or

"(2) to count against any other numerical limitation under this Act.

"(p) ADMINISTRATIVE REVIEW.—

"(1) EXCLUSIVE ADMINISTRATIVE REVIEW.—Administrative review of a determination with respect to an application for status under this section shall be conducted solely in accordance with this subsection.

"(2) ADMINISTRATIVE APPELLATE REVIEW.—

"(A) ESTABLISHMENT OF ADMINISTRATIVE APPELLATE AUTHORITY.—The Secretary shall establish or designate an appellate authority to provide for a single level of administrative appellate review of determinations with respect to applications for, and revocations of, status under this section.

"(B) SINGLE APPEAL FOR EACH ADMINISTRATIVE DECISION.—

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

"(ii) CHANGED CIRCUMSTANCE.—On a showing of changed circumstances, the Secretary may waive the numerical limitation under clause (i).

"(iii) NOTICE OF APPEAL.—

"(I) IN GENERAL.—A notice of appeal filed under this paragraph shall be filed not later than 90 days after the date of service of the denial or revocation, unless the delay beyond the 90-day period is reasonably justifiable.

"(II) WAIVER.—On showing that the delay was reasonably justifiable, the Secretary may waive the time limitation described in subclause (I).

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

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

"(D) DENIAL OF PETITIONS FOR DEPENDENTS.—A decision to deny, or revoke the approval of, a petition filed by an alien to classify a spouse, son, daughter, or child of the alien as the spouse, son, daughter, or child for purposes of status under this section may be appealed under this paragraph.

"(E) RECORD FOR REVIEW.—Administrative appellate review under this paragraph shall be de novo and based solely upon—

"(i) the administrative record established at the time of the determination on the application; and

"(ii) any additional newly discovered or previously unavailable evidence.

"(3) STAY OF REMOVAL.—An alien seeking administrative review of a denial, or revocation of approval, of an application under this section shall not be removed from the United States before a final decision is rendered establishing ineligibility for lawful permanent residence.

"(q) INFORMATION PRIVACY.—

"(1) IN GENERAL.—Except as provided in paragraph (3), no officer or employee of the United States may—

"(A) disclose (directly or indirectly, including through inclusion in a database), access, or use the information provided by an alien pursuant to an application filed under this section (including information provided during administrative or judicial review) for the purpose of immigration enforcement, including the initiation of removal proceedings; or

"(B) publish any information provided pursuant to an application under this section.

"(2) REFERRALS PROHIBITED.—The Secretary, based solely on information provided in an application for adjustment of status under this section (in-

cluding information provided during administrative or judicial review) or an application for deferred action pursuant to the memorandum of the Department of Homeland Security entitled 'Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children' issued on June 15, 2020, may not refer an applicant to U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, or any designee of either such entity.

"(3) REQUIRED DISCLOSURE.—Notwithstanding paragraph (1), the Attorney General or the Secretary shall provide the information provided in an application under this section, and any other information derived from such information, to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

"(4) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be fined not more than $50,000.

"(5) SAFEGUARDS.—The Secretary shall require appropriate administrative and physical safeguards to protect against direct and indirect disclo-

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

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

"(A) analyzes the effectiveness of the safeguards described in paragraph (5);

"(B) determines the number of authorized disclosures under paragraph (3) made; and

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

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

"(s) EFFECT OF FAILURE TO COMPLY WITH REMOVAL ORDER.—Failure to comply with 1 or more removal orders or voluntary departure agreements for acts committed before the date of the enactment of this section shall not affect the eligibility of an alien to apply for a benefit under this section.".

(b) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (B), by inserting ''the exercise of discretion specified under this title arising under'' after ''no court shall have jurisdiction to review'';

(B) in subparagraph (C), by inserting ''or subsection (h)'' after ''subparagraph (D)''; and

(C) in subparagraph (D)—

(i) by striking ''(other than in this section)''; and

(ii) by striking ''raised upon a petition for review filed with an appropriate court of appeals in accordance with this section'';

(2) in subsection (b)—

(A) in paragraph (2), in the first sentence, by inserting ''or, in the case of a decision rendered under subsection (c), in the judicial circuit in which the petitioner resides'' after ''proceedings''; and

(B) in paragraph (9), by striking the first sentence and inserting the following: ''Except as otherwise provided in this section, judicial review of a determination respecting a removal order shall be available only in judicial review of a final order under this section.'';

(3) in subsection (f)—

(A) in paragraph (1), by striking ''or restrain the operation of''; and

(B) in paragraph (2), by inserting ''after all administrative and judicial review available to the alien is complete'' before ''unless''; and

(4) by adding at the end the following:

''(h) JUDICIAL REVIEW OF ELIGIBILITY DETERMINATIONS RELATING TO STATUS UNDER TITLE 5.—

''(1) DIRECT REVIEW.—If an alien's application under section 245B is denied, or the approval of such application is revoked, after the exhaustion of administrative appellate review under subsection (p) of that section, the alien may seek review of such decision, in accordance with chapter 7 of title 5, United States Code, in the district court of the United States for the district in which the alien resides.

''(2) STATUS DURING REVIEW.—During the period in which a review described in paragraph (1) is pending—

''(A) any unexpired grant of voluntary departure under section 240B shall be tolled; and

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

"(3) REVIEW AFTER REMOVAL PROCEEDINGS.—An alien may seek judicial review of a denial or revocation of approval of the alien's application under section 245B in the appropriate court of appeals of the United States in conjunction with the judicial review of an order of removal, deportation, or exclusion if the validity of the denial or revocation has not been upheld in a prior judicial proceeding under paragraph (1).

"(4) STANDARD FOR JUDICIAL REVIEW.—

"(A) BASIS.—Judicial review of a denial or revocation of an approval of an application under section 245B shall be based upon the administrative record established at the time of the review.

"(B) AUTHORITY TO REMAND.—The reviewing court may remand a case under this subsection to the Secretary of Homeland Security (referred to in this subsection as the 'Secretary') for consideration of additional evidence if the court finds that—

"(i) the additional evidence is material; and

"(ii) there were reasonable grounds for failure to adduce the additional evidence before the Secretary.

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

"(5) REMEDIAL POWERS.—

"(A) JURISDICTION.—Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any cause or claim arising from a pattern or practice of the Secretary in the operation or implementation of the Citizenship for Essential Workers Act, or the amendments made by that Act, that is arbitrary, capricious, or otherwise contrary to law.

"(B) SCOPE OF RELIEF.—The district courts of the United States may order any appropriate relief in a clause or claim described in subparagraph (A) without regard to exhaustion, ripeness, or other standing requirements (other

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

"(i) the resolution of such cause or claim will serve judicial and administrative efficiency; or

"(ii) a remedy would otherwise not be reasonably available or practicable.

"(6) CHALLENGES TO THE VALIDITY OF THE SYSTEM.—

"(A) IN GENERAL.—Except as provided in paragraph (5), any claim that section 245B or any regulation, written policy, written directive, or issued or unwritten policy or practice initiated by or under the authority of the Secretary to implement such section, violates the Constitution of the United States or is otherwise in violation of law is available in an action instituted in a district court of the United States in accordance with the procedures prescribed in this paragraph.

"(B) SAVINGS PROVISION.—Except as provided in subparagraph (C), nothing in subparagraph (A) may be construed to preclude an applicant under 245B from asserting that an action taken or a decision made by the Secretary

with respect to the applicant's status was contrary to law.

"(C) CLASS ACTIONS.—Any claim described in subparagraph (A) that is brought as a class action shall be brought in conformity with—

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

"(ii) the Federal Rules of Civil Procedure.

"(D) PRECLUSIVE EFFECT.—The final disposition of any claim brought under subparagraph (A) shall be preclusive of any such claim asserted by the same individual in a subsequent proceeding under this subsection.

"(E) EXHAUSTION AND STAY OF PROCEEDINGS.—

"(i) IN GENERAL.—No claim brought under this paragraph shall require the plaintiff to exhaust administrative remedies under section 245B(p).

"(ii) STAY AUTHORIZED.—Nothing in this paragraph may be construed to prevent the court from staying proceedings

under this paragraph to permit the Secretary to evaluate an allegation of an unwritten policy or practice or to take corrective action. In determining whether to issue such a stay, the court shall take into account any harm the stay may cause to the claimant.''.

(c) RULEMAKING.—

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

(2) EFFECTIVE DATE.—Notwithstanding section 553 of title 5, United States Code, the rules issued under this subsection shall be effective, on an interim basis, immediately upon publication, but may be subject to change and revision after public notice and opportunity for a period of public comment.

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

(d) RULE OF CONSTRUCTION.—Section 244(h) of the Immigration and Nationality Act (8 U.S.C. 1254a(h)) may not be construed to limit the authority of the Secretary to adjust the status of an alien under section 245B of the Immigration and Nationality Act, as added by this Act.

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

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

"Sec. 245B. Adjustment of status for essential workers.".

SEC. 3. RESTORING FAIRNESS TO ADJUDICATIONS.

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

"(c) HUMANITARIAN, FAMILY UNITY, AND PUBLIC INTEREST WAIVER.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, except section 245B(c)(1)(B), the Secretary of Homeland Security or the Attorney General may waive the operation of any 1 or more grounds of inadmissibility under this section (excluding inadmissibility under subsection (a)(3)) for any purpose, including eligibility for relief from removal—

"(A) for humanitarian purposes;

"(B) to ensure family unity; or

"(C) if a waiver is otherwise in the public interest.

"(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Secretary of Homeland Security or the Attorney General shall consider all mitigating and aggravating factors, including—

"(A) the severity of the underlying circumstances, conduct, or violation;

"(B) the duration of the alien's residence in the United States;

"(C) evidence of rehabilitation, if applicable; and

"(D) the extent to which the alien's removal, or the denial of the alien's application, would adversely affect the alien or the alien's United States citizen or lawful permanent resident family members.".

(b) WAIVER OF GROUNDS OF DEPORTABILITY.—Section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)) is amended by adding at the end the following:

"(8) HUMANITARIAN, FAMILY UNITY, AND PUBLIC INTEREST WAIVER.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, except section 245B(c)(1)(B), the Secretary of Homeland Security or the Attorney General may waive the operation of any 1 or more grounds of deportability under this subsection (excluding deportability under paragraph (2)(A)(iii) based on a conviction described in section 101(a)(43)(A) and deportability under paragraph (4)) for any purpose, including eligibility for relief from removal—

"(i) for humanitarian purposes;

"(ii) to ensure family unity; or

"(iii) if a waiver is otherwise in the public interest.

"(B) CONSIDERATIONS.—In making a determination under subparagraph (A), the Secretary of Homeland Security or the Attorney General shall consider all mitigating and aggravating factors, including—

"(i) the severity of the underlying circumstances, conduct, or violation;

"(ii) the duration of the alien's residence in the United States;

"(iii) evidence of rehabilitation, if applicable; and

"(iv) the extent to which the alien's removal, or the denial of the alien's application, would adversely affect the alien or the alien's United States citizen or lawful permanent resident family members.".

(c) REPEAL OF 3-YEAR, 10-YEAR, AND PERMANENT BARS.—Section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)) is amended to read as follows:

"(9) ALIENS PREVIOUSLY REMOVED.—

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

or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

"(B) OTHER ALIENS.—Any alien not described in subparagraph (A) who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible if the alien—

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

"(ii) departed the United States while an order of removal was outstanding.

"(C) EXCEPTION.—Subparagraphs (A) and (B) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the

United States or attempt to be admitted from foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.''.

SEC. 4. EXPUNGEMENT AND SENTENCING.

(a) DEFINITION OF CONVICTION.—

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

''(48)(A) The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court.

''(B) The following may not be considered a conviction for purposes of this Act:

''(i) An adjudication or judgment of guilt that has been dismissed, expunged, deferred, annulled, invalidated, withheld, vacated, or pardoned by the President of the United States or the Governor of any State.

''(ii) Any adjudication in which the court has issued—

''(I) a judicial recommendation against removal;

''(II) an order of probation without entry of judgment; or

"(III) any similar disposition.

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

"(C)(i) Unless otherwise provided, with respect to an offense, any reference to a term of imprisonment or a sentence is considered to include only the period of incarceration ordered by a court.

"(ii) Any such reference shall be considered to exclude any portion of a sentence of which the imposition or execution was suspended.".

(2) RETROACTIVE APPLICABILITY.—The amendment made by this subsection shall apply with respect to any conviction, adjudication, or judgment entered before, on, or after the date of the enactment of this Act.

(b) JUDICIAL RECOMMENDATION AGAINST REMOVAL.—The grounds of inadmissibility and deportability under sections 212(a)(2) and 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2) and 1227(a)(2)) shall not apply to an alien with a criminal conviction if, not later than 180 days after the date on which the alien is sentenced, and after having provided notice and an opportunity to respond to representatives of the State concerned, the Secretary, and prosecuting authorities, the sentencing court issues a recommendation to

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

SEC. 5. PETTY OFFENSES.

Section 212(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)) is amended—

(1) in clause (i), in the matter preceding subclause (I), by striking ", or who admits having committed, or who admits committing acts which constitute the essential elements of"; and

(2) in clause (ii)—

(A) in the matter preceding subclause (I), by striking "to an alien who committed only one crime";

(B) in subclause (I), by inserting "the alien committed only one crime," before "the crime was committed when"; and

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

"(II)(aa) the alien was not convicted of more than 2 crimes; and

"(bb) for each such crime—

"(AA) the maximum penalty possible did not exceed imprisonment for 1 year; and

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

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