

114TH CONGRESS  
1ST SESSION

# H. R. 38

To prohibit the executive branch from exempting from removal categories of aliens considered under the immigration laws to be unlawfully present in the United States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2015

Mr. YOHO (for himself, Mr. PITTINGER, Mr. COOK, Mr. HARRIS, Mr. DUNCAN of Tennessee, Mr. ROE of Tennessee, Mr. NUGENT, Mr. ROHRABACHER, Mr. OLSON, Mr. FORBES, Ms. JENKINS of Kansas, Mr. YODER, Mr. McCAUL, Mr. BARLETTA, Mr. McCLINTOCK, Mr. PALAZZO, and Mr. JOLLY) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To prohibit the executive branch from exempting from removal categories of aliens considered under the immigration laws to be unlawfully present in the United States, 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 “Preventing Executive  
5 Overreach on Immigration Act of 2015”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds as follows:

3 (1) Under article I, section 8, of the Constitu-  
4 tion, the Congress has the power to “establish an  
5 uniform Rule of Naturalization”. As the Supreme  
6 Court found in *Galvan v. Press*, “that the formula-  
7 tion of . . . policies [pertaining to the entry of aliens  
8 and their right to remain here] is entrusted exclu-  
9 sively to Congress has become about as firmly  
10 imbedded in the legislative and judicial tissues of our  
11 body politic as any aspect of our government”.

12 (2) Under article II, section 3, of the Constitu-  
13 tion, the President is required to “take Care that  
14 the Laws be faithfully executed”.

15 (3) Historically, executive branch officials have  
16 legitimately exercised their prosecutorial discretion  
17 through their constitutional power over foreign af-  
18 fairs to permit individuals or narrow groups of non-  
19 citizens to remain in the United States temporarily  
20 due to extraordinary circumstances in their country  
21 of origin that pose an imminent threat to the indi-  
22 viduals’ life or physical safety.

23 (4) Prosecutorial discretion generally ought to  
24 be applied on a case-by-case basis and not to whole  
25 categories of persons.

1           (5) President Obama himself has stated at least  
2           22 times in the past that he can't ignore existing  
3           immigration law or create his own immigration law.

4           (6) President Obama's grant of deferred action  
5           to more than 4,000,000 unlawfully present aliens, as  
6           directed in a November 20, 2014, memorandum  
7           issued by Secretary of Homeland Security Jeh  
8           Charles Johnson, is without any constitutional or  
9           statutory basis.

10 **SEC. 3. RULE OF CONSTRUCTION.**

11           (a) IN GENERAL.—Notwithstanding any other law,  
12 the executive branch of the Government shall not—

13           (1) exempt or defer, by Executive order, regula-  
14           tion, or any other means, categories of aliens consid-  
15           ered under the immigration laws (as defined in sec-  
16           tion 101(a)(17) of the Immigration and Nationality  
17           Act (8 U.S.C. 1101(a)(17))) to be unlawfully  
18           present in the United States from removal under  
19           such laws;

20           (2) treat such aliens as if they were lawfully  
21           present or had a lawful immigration status; or

22           (3) treat such aliens other than as unauthorized  
23           aliens (as defined in section 274A(h)(3) of the Im-  
24           migration and Nationality Act (8 U.S.C.  
25           1324a(h)(3))).

1 (b) EXCEPTIONS.—Subsection (a) shall apply ex-  
2 cept—

3 (1) to the extent prohibited by the Constitution;

4 (2) upon the request of Federal, State, or local  
5 law enforcement agencies, for purposes of maintain-  
6 ing aliens in the United States to be tried for crimes  
7 or to be witnesses at trial; or

8 (3) for humanitarian purposes where the aliens  
9 are at imminent risk of serious bodily harm or  
10 death.

11 (c) EFFECT OF EXECUTIVE ACTION.—Any action by  
12 the executive branch with the purpose of circumventing  
13 the objectives of this section shall be null and void and  
14 without legal effect.

15 (d) EFFECTIVE DATE.—This section shall take effect  
16 as if enacted on November 20, 2014, and shall apply to  
17 requests (regardless of whether the request is original or  
18 for reopening of a previously denied request) submitted  
19 on or after such date for —

20 (1) work authorization; or

21 (2) exemption from, or deferral of, removal.

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