

112TH CONGRESS  
1ST SESSION

# S. 1195

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

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IN THE SENATE OF THE UNITED STATES

JUNE 14, 2011

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protect Our Workers  
5 from Exploitation and Retaliation Act” or the “POWER  
6 Act”.

1 **SEC. 2. VICTIMS OF SERIOUS LABOR AND EMPLOYMENT**  
2 **VIOLATIONS OR CRIME.**

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

7 (1) in clause (i)—

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

10 “(I) the alien—

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

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

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

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

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

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

3 (C) in subclause (III)—

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

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

16 (D) in subclause (IV)—

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

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

21 “(bb) a workplace claim described in  
22 clause (iv) resulted from a labor or employ-  
23 ment violation;”;

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

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

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

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

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

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

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

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

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

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

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

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

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

14           (iv) the Department of Homeland Security;

15           (v) the Equal Employment Opportunity  
16           Commission;

17           (vi) the Department of Labor;

18           (vii) the National Labor Relations Board;

19           or

20           (viii) other Federal, State, or local authori-  
21           ties investigating, prosecuting, or seeking civil  
22           remedies related to the workplace claim.

23           (c) CONFORMING AMENDMENTS.—Section 214(p) of  
24           the Immigration and Nationality Act (8 U.S.C. 1184(p))  
25           is amended—

1           (1) in paragraph (1), by inserting “or inves-  
2           tigating, prosecuting, or seeking civil remedies for  
3           workplace claims described in section  
4           101(a)(15)(U)(iv)” after “section  
5           101(a)(15)(U)(iii)” each place such term appears;

6           (2) in paragraph (2)(A), by striking “10,000”  
7           and inserting “30,000”; and

8           (3) in paragraph (6)—

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

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

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

19           (e) CHANGE OF NONIMMIGRANT CLASSIFICATION.—  
20           Section 384(a)(1) of the Illegal Immigration Reform and  
21           Immigrant Responsibility Act of 1996 (8 U.S.C.  
22           1367(a)(1)) is amended—

23                   (1) in subparagraph (E), by striking “physical  
24                   or mental abuse and the criminal activity” and in-

1       serting “abuse and the criminal activity or work-  
2       place claim”;

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

5               (3) by inserting after subparagraph (F) the fol-  
6       lowing:

7                       “(G) the alien’s employer.”.

8       **SEC. 3. LABOR ENFORCEMENT ACTIONS.**

9               (a) REMOVAL PROCEEDINGS.—Section 239(e) of the  
10      Immigration and Nationality Act (8 U.S.C. 1229(e)) is  
11      amended—

12               (1) in paragraph (1)—

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

15                       (B) by inserting “or as a result of informa-  
16                       tion provided to the Department of Homeland  
17                       Security in retaliation against individuals for  
18                       exercising or attempting to exercise their em-  
19                       ployment rights or other legal rights” after  
20                       “paragraph (2)”; and

21               (2) in paragraph (2), by adding at the end the  
22      following:

23                       “(C) At a facility about which a workplace  
24                       claim has been filed or is contemporaneously  
25                       filed.”.

1 (b) UNLAWFUL EMPLOYMENT OF ALIENS.—Section  
2 274A(e) of the Immigration and Nationality Act (8 U.S.C.  
3 1324a(e)) is amended by adding at the end the following:

4 “(10) CONDUCT IN ENFORCEMENT ACTIONS.—

5 “(A) ENFORCEMENT ACTION.—If the De-  
6 partment of Homeland Security undertakes an  
7 enforcement action at a facility about which a  
8 workplace claim has been filed or is contem-  
9 poraneously filed, or as a result of information  
10 provided to the Department in retaliation  
11 against employees for exercising their rights re-  
12 lated to a workplace claim, the Department  
13 shall ensure that—

14 “(i) any aliens arrested or detained  
15 who are necessary for the investigation or  
16 prosecution of workplace claim violations  
17 or criminal activity (as described in sub-  
18 paragraph (T) or (U) of section  
19 101(a)(15)) are not removed from the  
20 United States until after the Depart-  
21 ment—

22 “(I) notifies the appropriate law  
23 enforcement agency with jurisdiction  
24 over such violations or criminal activ-  
25 ity; and



1                   “(II) provides such agency with  
2                   the opportunity to interview such  
3                   aliens; and

4                   “(ii) no aliens entitled to a stay of re-  
5                   moval or abeyance of removal proceedings  
6                   under this section are removed.

7                   “(B) PROTECTIONS FOR VICTIMS OF  
8                   CRIME, LABOR, AND EMPLOYMENT VIOLA-  
9                   TIONS.—

10                   “(i) STAY OF REMOVAL OR ABEYANCE  
11                   OF REMOVAL PROCEEDINGS.—An alien  
12                   against whom removal proceedings have  
13                   been initiated under chapter 4 of title II,  
14                   who has filed a workplace claim, who is a  
15                   material witness in any pending or antici-  
16                   pated proceeding involving a bona fide  
17                   workplace claim, or who has filed for relief  
18                   under section 101(a)(15)(U), shall be enti-  
19                   tled to a stay of removal or an abeyance of  
20                   removal proceedings and to employment  
21                   authorization until the resolution of the  
22                   workplace claim or the denial of relief  
23                   under section 101(a)(15)(U) after exhaus-  
24                   tion of administrative appeals, whichever is  
25                   later, unless the Department establishes,

1 by a preponderance of the evidence in pro-  
2 ceedings before the immigration judge pre-  
3 siding over that alien’s removal hearing,  
4 that—

5 “(I) the alien has been convicted  
6 of a felony; or

7 “(II) the workplace claim was  
8 filed in bad faith with the intent to  
9 delay or avoid the alien’s removal.

10 “(ii) DURATION.—Any stay of re-  
11 moval or abeyance of removal proceedings  
12 and employment authorization issued pur-  
13 suant to clause (i) shall remain valid until  
14 the resolution of the workplace claim or  
15 the denial of relief under section  
16 101(a)(15)(U) after the exhaustion of ad-  
17 ministrative appeals, and shall be extended  
18 by the Secretary of Homeland Security for  
19 a period of not longer than 3 additional  
20 years upon determining that—

21 “(I) such relief would enable the  
22 alien asserting a workplace claim to  
23 pursue the claim to resolution;

1 “(II) the deterrent goals of any  
2 statute underlying a workplace claim  
3 would be served; or

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

6 “(iii) DEFINITIONS.—In this para-  
7 graph:

8 “(I) MATERIAL WITNESS.—Not-  
9 withstanding any other provision of  
10 law, the term ‘material witness’ means  
11 an individual who presents a declara-  
12 tion from an attorney investigating,  
13 prosecuting, or defending the work-  
14 place claim or from the presiding offi-  
15 cer overseeing the workplace claim at-  
16 testing that, to the best of the declar-  
17 ant’s knowledge and belief, reasonable  
18 cause exists to believe that the testi-  
19 mony of the individual will be relevant  
20 to the outcome of the workplace claim.

21 “(II) WORKPLACE CLAIM.—The  
22 term ‘workplace claim’ means any  
23 written or oral claim, charge, com-  
24 plaint, or grievance filed with, commu-  
25 nicated to, or submitted to the em-

1                    ployer, a Federal, State, or local agen-  
2                    cy or court, or an employee represent-  
3                    ative related to the violation of appli-  
4                    cable Federal, State, and local labor  
5                    laws, including laws concerning wages  
6                    and hours, labor relations, family and  
7                    medical leave, occupational health and  
8                    safety, or nondiscrimination.”.

9    **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

10            There are authorized to be appropriated such sums  
11    as may be necessary to carry out this Act and the amend-  
12    ments made by this Act.

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