

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5759
OFFERED BY MR. YOHO OF FLORIDA**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Preventing Executive
3 Overreach on Immigration Act of 2014”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds as follows:

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

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

1 (3) Historically, executive branch officials have
2 legitimately exercised their prosecutorial discretion
3 through their constitutional power over foreign af-
4 fairs to permit individuals or narrow groups of non-
5 citizens to remain in the United States temporarily
6 due to extraordinary circumstances in their country
7 of origin that pose an imminent threat to the indi-
8 viduals' life or physical safety.

9 (4) Prosecutorial discretion generally ought to
10 be applied on a case-by-case basis and not to whole
11 categories of persons.

12 (5) President Obama himself has stated at least
13 22 times in the past that he can't ignore existing
14 immigration law or create his own immigration law.

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

21 **SEC. 3. RULE OF CONSTRUCTION.**

22 (a) **IN GENERAL.**—Notwithstanding any other law,
23 the executive branch of the Government shall not—

24 (1) exempt or defer, by Executive order, regula-
25 tion, or any other means, categories of aliens consid-

1 ered under the immigration laws (as defined in sec-
2 tion 101(a)(17) of the Immigration and Nationality
3 Act (8 U.S.C. 1101(a)(17))) to be unlawfully
4 present in the United States from removal under
5 such laws;

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

8 (3) treat such aliens other than as unauthorized
9 aliens (as defined in section 274A(h)(3) of the Im-
10 migration and Nationality Act (8 U.S.C.
11 1324a(h)(3))).

12 (b) EXCEPTIONS.—Subsection (a) shall apply ex-
13 cept—

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

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

19 (3) for humanitarian purposes where the aliens
20 are at imminent risk of serious bodily harm or
21 death.

22 (c) EFFECT OF EXECUTIVE ACTION.—Any action by
23 the executive branch with the purpose of circumventing
24 the objectives of this section shall be null and void and
25 without legal effect.

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

6 (1) work authorization; or

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

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