



SECTION-BY-SECTION

THE NEW WAY FORWARD ACT

The New Way Forward Act takes steps to remedy laws that for decades have resulted in the criminalization of immigrants in the U.S. Specifically, the bill repeals the harshest aspects of 1996 immigration laws that established a harmful entanglement between the criminal and immigration legal systems and led to racial profiling and the disproportionate detention and deportation of Black and Brown immigrants. Through these key changes, the New Way Forward Act offers a blueprint for an immigration system that is not centered on harsh, punitive and wasteful immigration enforcement, and that instead recognizes that all communities deserve dignity, restoration and repair.

How does the New Way Forward Act decriminalize the U.S. immigration system?

SECTION 1

Ends the use of mandatory, “no-bond,” immigration detention by ensuring that anyone detained by Immigration and Customs Enforcement (ICE) receives an opportunity to challenge their detention in a bond hearing. Removes perverse profit incentives by ending private immigration detention. Creates a community-based support program outside of ICE to provide critical services and resources to immigrants.

SECTION 2

Sets a statute of limitations on the timeframe in which federal authorities may initiate immigration removal proceedings after a person is alleged to have violated civil immigration law.

SECTION 3

Removes overbroad and distorted legal labels that create an automatic pipeline to deportation from contact with the criminal legal system.

SECTION 4

Ends automatic deportation, ensuring a full hearing for every individual in the immigration system.

SECTION 5

Repeals laws that lead to local law enforcement agencies engaging in federal immigration enforcement.

SECTION 6

Decriminalizes the act of migration by repealing laws that allow for criminal prosecution of unauthorized entry and reentry into the United States.

SECTION 7

Creates a process for people previously ordered deported because of the harsh 1996 laws to apply for a chance to come home.

THE NEW WAY FORWARD ACT SECTION 1

Reduces unnecessary and harmful immigration detention, adds basic due process & ensures community-based resources to support immigrants

United States federal immigration law gives Immigration and Customs Enforcement (ICE) the authority to jail anyone who is facing removal proceedings and makes detention “mandatory” for many immigrants convicted of crimes, without a right to a hearing to challenge that detention. As a result, immigrants are frequently detained for months or years, without access to a lawyer, unable to obtain evidence for their case, all while fighting to remain in the United States with their family. Many of these detained immigrants suffer prolonged detention in private prisons and county jails that contract with the federal government to detain immigrants, with little accountability for how they treat those they detain. In other words, profit motives dictate the treatment of those deprived of liberty. An exponential growth in the “e-carceration” of immigrants under ICE’s “Alternatives to Detention” (ATD) program also has led to detrimental mental and physical impacts on those monitored and has failed to decrease the use of detention system-wide.

Section 1 of the New Way Forward Act:

- **Ends mandatory detention:** New Way Forward eliminates mandatory detention, requires the government to show “probable cause” within 48 hours of detention, and requires a fair bond hearing for every detained immigrant.
- **Creates a presumption of liberty:** New Way Forward adopts a “presumption of liberty” that the government must overcome in bond hearings, with additional protections for vulnerable populations including children, the elderly, LGBTI individuals, those with serious mental and/or physical disabilities, asylum seekers, and survivors of torture.
- **Ends private immigration detention:** New Way Forward phases out the use of private prisons and county jails for the detention of immigrants.
- **Creates a community-based support program:** New Way Forward creates a program outside of ICE to provide immigrants with language-appropriate access to social services, medical and mental health services, and other resources.

THE NEW WAY FORWARD ACT SECTION 2

Sets a statute of limitations for the initiation of removal proceedings

Lawful permanent residents and other lawfully present individuals often face deportation based on criminal conduct that occurred many years ago, even if such conduct occurred before passage of the 1996 immigration laws. There is no statute of limitations that restricts the time frame within which the U.S. government can initiate civil immigration removal proceedings.

Section 2 of the New Way Forward Act:

- **Sets a statute of limitations:** New Way Forward prohibits the government from initiating removal proceedings more than five years after an immigrant becomes removable due to a criminal conviction.

THE NEW WAY FORWARD ACT SECTION 3

Repeals certain “grounds of removability,” including overbroad and vague categories of criminal conduct triggering detention and deportation

Current U.S. immigration law gives the federal government the power to strip lawfully present immigrants of their status and prevents others from gaining status on the basis of broadly and vaguely defined categories of criminal conduct, referred to as the “grounds of removability.” These vague and overbroad grounds of removability often result in mandatory, prolonged immigration detention and deportation for immigrants and create a de-facto pipeline from even minor contact with the criminal legal system to banishment through deportation. It is extremely difficult, if not impossible, to access a full hearing before an immigration judge.

The broad categories of conduct described in the grounds of removability include “aggravated felonies” and “crimes including moral turpitude.” These not only trigger detention and deportation, but also often deprive people of any defense to deportation. These categories are so unfairly expansive they have given rise to constitutional challenges for vagueness.

Section 3 of the New Way Forward Act:

- **Limits the grounds of removability:** Eliminates deportation or inadmissibility for drug possession offenses and removes the overly broad and ill-defined “crime involving moral turpitude” category of removability.
- **Amends “aggravated felony”:** Under current immigration law, “aggravated felony” is the most serious category of offenses triggering removability and barring relief from removal. New Way Forward limits “aggravated felony” to convictions where the underlying offense is a felony with a term of imprisonment of five years or more in order to align the category more appropriately with its intended severity.
- **Amends “conviction” and “sentence”:** Amends the definitions of “conviction” and “sentence” in federal immigration law to align these terms with their use in state criminal proceedings and reflect recent criminal legal reforms. Specifically, New Way Forward ensures that guilty pleas that are “withdrawn” or “vacated” in state court proceedings and convictions that are pardoned are not used to deport or deny lawful status.

THE NEW WAY FORWARD ACT SECTION 4

Provides basic due process in all immigration cases & ends “summary deportations”

Under current immigration law, immigration judges must order deportation in some cases without any meaningful hearing or consideration of positive equities in a person’s immigration case. These “summary deportations” are triggered either based on broad categories of prior criminal conduct that bar eligibility for relief from removal or by the procedural posture of a person’s immigration case (such as a prior removal order). Such proceedings deprive immigrants of judicial review and basic due process despite the fact that they face the life-altering consequence of deportation and permanent separation from family and livelihood.

Section 4 of the New Way Forward Act:

- **Restores discretion to immigration judges in all cases:** New Way Forward removes the categorical bars to relief due to prior criminal convictions or conduct thereby restoring

discretion to immigration judges. In such cases, immigration judges can grant relief on the basis of humanitarian purposes, to assure family unity, or in the public interest.

- **Provides a fair day in court:** Repeals summary removal procedures by ensuring that immigrants are not denied a hearing solely on the basis of a prior removal order or criminal conviction.

THE NEW WAY FORWARD ACT SECTION 5

Ends entanglement between local law enforcement and federal immigration agencies

Current immigration law creates a criminal-legal-system-to-deportation pipeline based on cooperation and collaboration between local law enforcement agencies and federal immigration agencies. Local police work closely with federal immigration authorities through a range of “entanglement” programs that may deputize local police to act as federal immigration officers, require local police to execute immigration detainees, or give local police access to inaccurate federal criminal databases.

These programs encourage racial profiling of Black and Brown immigrants and decrease public safety. Black and Brown immigrants who already face disproportionate stops and arrests in the criminal legal system become more likely to end up in the immigration system. When local police engage in immigration enforcement, immigrant communities also have less trust in local law enforcement agencies and public institutions, which decreases public safety and community cohesion for all.

Section 5 of the New Way Forward Act:

- **Terminates 287(g) agreements:** New Way Forward repeals section 287(g) of the Immigration and Nationality Act, thereby ending the practice of state and local law enforcement agencies directly enforcing federal immigration law.
- **Terminates information sharing programs & forced compliance with detainees:** New Way Forward prohibits the federal government from requiring local law enforcement agencies to engage in information-sharing programs with ICE or to comply with detainees (the documents ICE issues to initiate an immigration arrest).
- **Ends reliance on federal criminal databases:** Prohibits the use of the National Crime Information Center or other federal criminal databases to issue civil immigration detainees.

THE NEW WAY FORWARD ACT SECTION 6

Decriminalizes migration by ending federal criminal prosecutions for entering or reentering the U.S. without authorization

Sections 1325 and 1326 of Title 8 of the U.S. Code make it a federal crime to enter or reenter the United States after a deportation or removal order without proper authorization. These laws are harmful, costly, and discriminatory in their origin and application. They stem from a dark period of xenophobic history when lawmakers influenced by eugenicists sought to criminalize the act of migration. These laws were the cornerstone of the Trump Administration’s Zero Tolerance Family Separation policy, and continue to tear families and communities apart today. The act of crossing without proper authorization is already a civil offense; categorizing it as a federal crime creates layers of punishment for the same act. Striking these harmful laws would leave crossing the border without authorization as a civil offense, rather than a federal crime.

Section 6 of the New Way Forward Act:

- **Terminates criminal prosecutions of migration:** New Way Forward repeals Sections 1325 and 1326 of Title 8 thereby ending the criminalization of entering and reentering the U.S.

THE NEW WAY FORWARD ACT SECTION 7

A Chance to Come Home

Through detention and deportation, the U.S. immigration enforcement regime tears apart families and communities with devastating results. Every year, tens of thousands of U.S. citizen children are separated from a parent who is detained or deported, leaving thousands of children in foster care. Families who lose a parent to detention or deportation experience significant income loss and their communities also lose tax revenue. Children left behind suffer psychologically and medically, including through increased depression, anxiety, and post-traumatic stress disorder. Current immigration laws and procedures envision a process to give some deported long-time residents an opportunity to come home, but these mechanisms fail in practice.

Section 7 of the New Way Forward Act:

- **Offers a meaningful chance to come home for deported people seeking to reunite with family:** New Way Forward provides a pathway to return for those previously ordered removed or deported if the person can show that they would not have been removable or would have been eligible for relief had The New Way Forward Act been in place at the time of their removal.

Does the New Way Forward Act overlap with the Dignity for Detained Immigrants Act?

The New Way Forward Act includes some of the same provisions included in the Dignity for Detained Immigrants Act regarding the immigration detention system. Specifically, both New Way Forward and Dignity for Detained Immigrants:

1. End mandatory detention;
2. Terminate the use of private detention facilities;
3. Require that all detained people receive a bond hearing after 48 hours;
4. Create a presumption of liberty that the government must overcome to keep someone detained; and
5. Create a community-based support program outside of ICE

These provisions are the same across the two bills. New Way Forward includes additional steps to remedy the criminalization of the immigration system as described above.



If you have further questions about the New Way Forward Act, please contact:

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