



**New Way Forward:
Section-by-Section
November 2019**

Why is now the time for a New Way Forward?

It is time that we pass laws to build communities that are healthy and thriving, instead of ones torn apart by criminalization, biased policing, incarceration, and deportation. Immigration is now a cornerstone of our mass incarceration crisis. Practices like stop-and-frisk, broken windows policing, and racially-driven vehicular stops can lead to deportation. Our mass detention system is mass incarceration.

Across the country, community members who have been hurt by detention and deportation are organizing to repair the harm caused by our unjust immigration laws. To secure the full human rights of all members of our communities, we need a new way forward for immigrant justice—one that ends senseless divisions of “good versus bad” immigrants and recognizes that all communities deserve dignity, restoration and repair, not further criminalization.

What does a New Way Forward do?

New Way Forward advances the following key principles toward dismantling the immigration enforcement legal system that is hurting our communities:

- End mandatory immigration detention, a necessary step to ending mass incarceration of communities of color, including immigrants.
- End laws that create automatic pipelines to deportation through the criminal legal system by removing distorted legal labels in our immigration laws.
- End automatic deportation and summary proceedings for people who have had contact with the criminal legal system.
- End the practices of local police engaging in immigration enforcement and the increased over-policing of communities of color.
- Decriminalize migration by repealing criminal prosecution for illegal entry and reentry.

Section-by-Section Summary

Section I: End mandatory detention and require probable cause for arrest

United States federal immigration law includes detention provisions that give Immigration and Customs Enforcement (ICE) the authority to jail anyone who is facing removal proceedings and make detention mandatory for most immigrants convicted of crimes, without access to a bond hearing. Immigrants are frequently detained for months or years, without access to a lawyer, unable to obtain evidence for their case, fighting to remain in the United States with their family. In the United States, the idea that people facing charges should not be incarcerated without a hearing is deeply entrenched and tied to due process protections. Immigrants should not be held in custody without an individualized hearing or assessment. All immigrants in detention should be eligible for bond or release on parole.

This section:

- *Restores fairness and integrity* to the adjudication system by requiring the government to establish probable cause within 48 hours of detention and by ensuring the right to a fair bond hearing for every detained immigrant.
- *Reduces unnecessary and harmful detention* by adopting a presumption of liberty for all immigrants during their removal proceedings, with additional protections for vulnerable populations including children, the elderly, LGBTI individuals, those with serious mental and/or physical disabilities, and asylum seekers and survivors of torture.
- *Removes the profit motive* from the immigration system by phasing out the use of private prisons and county jails for the civil detention of immigrants during their removal proceedings.

Section II: Implement a statute of limitations for removal

Lawful permanent residents and other lawfully present individuals often face deportation based on conduct that occurred many years ago, and sometimes based on pleas that would not have made them deportable at the time. Tearing people away from their families and communities on the basis of conduct committed years earlier upends basic notions of fairness historically recognized in United States law. Creating a statute of limitations for initiating removal proceedings based on old conduct makes immigration law consistent with other areas of law where there are time limitations on when the government may bring criminal or civil charges against an individual.

This section:

- *Ensures that the government cannot bring removal proceedings more than five years after an immigrant becomes removable.*

Section III: Limit the criminal-legal-system-to-deportation pipeline

United States 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 grounds often result in the equivalent of mandatory minimum sentences of prolonged immigration detention and deportation for immigrants, a de-facto pipeline from nearly any involvement in the criminal legal system to deportation. The broad categories of conduct described in the grounds of removability not only trigger detention and deportation, but also often deprive people of any defense to deportation. In many circumstances, these categories are so unfairly expansive they have given rise to constitutional challenge. So-called “aggravated felonies” and “crimes involving moral turpitude” can deprive a person of any defense to deportation. The only factor a judge may consider is a conviction, even if it is decades old.

This section:

- *Limits the grounds of removability* so as to eliminate the second penalty of deportation or inadmissibility for certain *drug-related offenses* and offenses captured in the overly broad and ill-defined “*crime involving moral turpitude*” category listed in the federal immigration laws.
- *Amends the definition of what constitutes an “aggravated felony”*— the most serious category of offenses triggering removability and bars to relief in immigration law—to more appropriately reflect the severity of the term by limiting the category to convictions where the underlying offense is a felony with a term of imprisonment of five years or more imposed.
- *Amends the definitions of “conviction” and “sentence”* to bring the federal immigration definitions of the terms in line with the most common understanding of these terms in state criminal court proceedings, reversing the current state of the law wherein guilty pleas withdrawn or vacated in state court and suspended sentences nonetheless can be used to deport or deny lawful status. These amendments will ensure that immigration law no longer undermines the efficacy of criminal justice reforms such as diversionary programs and drug treatment courts.

Section IV: Restore judicial discretion and end summary deportations

In many removal cases, immigrants are ordered deported by an immigration judge who is statutorily barred from even considering the positive equities in the case. These summary

removals occur because of the broad categories of offenses that double not only as grounds of removal but also as bars to relief from some or all forms of relief from removal. In other cases, an individual's procedural posture (such as a former removal order or number of years' residence prior to initiation of proceedings) will trigger summary proceedings without judicial review. These summary proceedings make a mockery of due process and have turned immigration courts into deportation factories. Immigration judges must be given back the power to grant a second chance and cancel someone's deportation after looking at other aspects of a person's life—such as family ties, length of time in the United States, and rehabilitation.

This section:

- *Restores full discretion to immigration judges to grant relief to those immigrants who are otherwise eligible for relief from deportation by removing per se categorical bars to relief due to prior criminal convictions or conduct. Judges will be permitted to consider the exercise of discretion in such cases on the basis of humanitarian purposes, to assure family unity, or in the public interest.*
- *Repeals summary removal procedures by ensuring that immigrants are not denied a fair day in court solely on the basis of a prior removal order or prior criminal conviction.*

Section V: Promote public safety by ending the entanglement of federal immigration law enforcement and local law enforcement

The criminal-legal-system-to-deportation pipeline is a racial justice issue. Discriminatory policing practices like stop-and-frisk, broken windows policing, and racially-driven vehicular stops have cascading immigration consequences. Because even minor contact with the criminal system can result in deportation, racially biased policing practices place immigrants of color at greater risk of both criminal arrest *and* immigration detention and deportation. The entanglement of deportation programs—like 287(g), Secure Communities, and the Criminal Alien Program—with the criminal legal system threatens the rights of citizens and immigrants alike, encouraging racial profiling and also resulting in long periods of detention, raising serious constitutional questions. This threatens the work that communities of color and law enforcement agencies are doing to build stronger relationships.

This section:

- *Prohibits state and local law enforcement agencies from carrying out federal immigration law functions and strikes section 287(g).*
- *Prohibits the federal government from requiring local law enforcement agencies to engage in information sharing programs with Immigration and Customs Enforcement or requiring compliance with detainers.*

- *Prohibits provision of civil immigration warrants* to the National Crime Information Center or other federal criminal databases.

Section VI: Decriminalize migration

Two of the most harmful, costly and unnecessary provisions in federal immigration law are sections 1325 and 1326 of Title 8 U.S.C., which make it a federal crime for someone to enter the United States somewhere other than an official port of entry. The legislative history of these provisions reveals them to have been born from white supremacist ideology and politics. The current administration has further weaponized these provisions to demonize immigrants and tear families apart. Striking these harmful laws would leave border crossing as a civil offense, rather than a federal crime. Such repeal is a critical and necessary step toward a humane and just approach to migration law and policy. As long as they remain on the books, sections 1325 and 1326 will fuel the unjust incarceration of immigrants and leave children permanently scarred by the trauma of separation.

This section:

- *Repeals the provisions* of the federal immigration law that criminalize irregular crossing and reentry.

Section VII: The right to come home

The United States' immigration enforcement regime as codified in current law destroys families, communities, and the economy. The tragic yet avoidable consequences of deportation include: broken families—tens of thousands of United States citizen children have a parent who is detained or deported every year, leaving thousands of children in foster care; income and tax revenue loss—after an immigration arrest, family income drops 70% on average; and increased risk of mental health consequences for children, including depression, anxiety, and post-traumatic stress disorder. For those long-time residents of our communities who are stuck abroad and permanently exiled from their loved ones, the right to come home has been elusive for too long.

This section:

- *Provides a legal pathway* for those previously ordered removed or deported to apply to return to their homes and families in the United States if they can show they would not have been not removable or would have been eligible for relief had this Act been in place.