[DISCUSSION DRAFT]

118TH CONGRESS 1ST SESSION

H. R. ______

To reform the process for enforcing the immigration laws of the United States, and for other purposes.

________________________________________________________

IN THE HOUSE OF REPRESENTATIVES

Mr. García of Illinois introduced the following bill; which was referred to the Committee on ______________________

________________________________________________________

A BILL

To reform the process for enforcing the immigration laws of 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 “New Way Forward
5 Act”.

6
TITLE I—END MANDATORY DETENTION AND REQUIRE PROBABLE CAUSE FOR ARREST

SEC. 101. PHASE-OUT OF PRIVATE FOR-PROFIT DETENTION FACILITIES AND USE OF JAILS.

(a) Secure Detention Facilities.—Beginning on the date of the enactment of this Act, the Secretary of Homeland Security may not enter into, or extend, any contract with any public or private for-profit entity that owns or operates a detention facility for use of that facility to detain aliens in the custody of the Department of Homeland Security, and shall terminate any such contract not later than the date that is 3 years after the date of the enactment of this Act. Beginning on the date that is 3 years after the date of the enactment of this Act, any facility at which aliens in the custody of the Department of Homeland Security are detained shall be owned and operated by the Department of Homeland Security.

(b) Non-Secure Detention Programs.—Beginning on the date of the enactment of this Act, the Secretary of Homeland Security may not enter into, or extend, any contract with any public or private for-profit entity that owns or operates a program or facility that provides for non-residential detention-related activities for
aliens who are subject to monitoring by the Department
of Homeland Security, and shall terminate any such con-
tract not later than the date that is 3 years after the date
of the enactment of this Act. Beginning on the date that
is 3 years after the date of the enactment of this Act,
any such program or facility shall be owned and operated
by a nonprofit organization or by the Department of
Homeland Security.

(e) Publication of Plan.—Not later than 60 days
after the date of the enactment of this Act, the Secretary
shall develop, and make publicly available, a plan and
timeline for the implementation of this section.

SEC. 102. PROCEDURES FOR DETAINING ALIENS.

(a) Custody and Bond Determinations.—Sec-
tion 236 of the Immigration and Nationality Act (8 U.S.C.
1226) is amended—

(1) by striking subsections (a) through (c) and
inserting the following:

“(a) Arrest, Detention, and Release.—

“(1) In General.—On a warrant issued by an
immigration judge, or pursuant to section 287(a)(2),
the Secretary of Homeland Security may arrest an
alien and, in accordance with this section, may,
pending a decision on whether the alien is to be re-
moved from the United States—
“(A) detain the alien; or

“(B) release the alien—

“(i) on bond;

“(ii) subject to conditions; or

“(iii) on the alien’s own recognizance.

“(2) EXCEPTION.—This section shall not apply to an unaccompanied alien child (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2))). Such an alien shall be transferred to the custody of the Secretary of Health and Human Services pursuant to section 235(b)(3) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232(b)(3)).

“(b) CUSTODY AND BOND DETERMINATIONS.—

“(1) INITIAL DETERMINATION.—Not later than 48 hours after taking an alien into custody, the Secretary of Homeland Security shall make an initial custody determination with regard to that alien, and provide that determination in writing to the alien. If the Secretary determines that the release without conditions of an alien will not reasonably assure the appearance of the alien as required or will endanger the safety of any other person or the community, the custody determination under this paragraph will im-
pose the least restrictive conditions, as described in paragraph (4).

“(2) TIMING.—If an alien seeks to challenge the initial custody determination under paragraph (1), the alien shall be provided with the opportunity for a hearing before an immigration judge to determine whether the alien should be detained, which hearing shall occur not later than 72 hours after the initial custody determination, except that an immigration judge may grant a reasonable continuance upon the alien’s request for additional time to prepare for the hearing.

“(3) PRESUMPTION OF RELEASE.—In a hearing under this subsection, there shall be a rebuttable presumption that the alien should be released. The Government shall have the duty of rebutting this presumption by clear and convincing evidence based on credible and individualized information that establishes that the use of alternatives to detention will not reasonably assure the appearance of the alien at removal proceedings, or that the alien is a threat to another person or the community. The fact that an alien has a prior conviction or a criminal charge pending against the alien may not be the sole factor to justify the continued detention of the alien.
“(4) Least restrictive conditions required.—If an immigration judge determines pursuant to a hearing under this section that the release without conditions of an alien will not reasonably assure the appearance of the alien as required or will endanger the safety of any other person or the community, the immigration judge shall order the least restrictive conditions, or combination of conditions, that the judge determines will reasonably assure the appearance of the alien as required and the safety of any other person and the community, which may include secured or unsecured release on bond, or participation in a program described in subsection (i). Any conditions assigned to an alien pursuant to this paragraph shall be reviewed by the immigration judge on a monthly basis.

“(5) Bond determination.—In the case that an immigration judge makes a determination to release an alien on bond under subsection (a)(1)(B)(i), the immigration judge shall consider, for purposes of setting the amount of the bond, the alien’s financial resources and ability to pay the bond without imposing financial hardship on the alien.

“(6) Special rule for vulnerable persons and primary caregivers.—In a case in
which an alien who is the subject of a custody determination under this subsection is a vulnerable person or a primary caregiver, the alien may not be detained unless the Government shows, in addition to the requirements under paragraph (3), that it is unreasonable or not practicable to place the individual in a community-based supervision program.

“(7) DEFINITION.—In this subsection, the term ‘vulnerable person’ means an individual who—

“(A) is under 21 years of age or over 60 years of age;

“(B) is pregnant;

“(C) identifies as lesbian, gay, bisexual, transgender, or intersex;

“(D) is victim or witness of a crime;

“(E) has filed a nonfrivolous civil rights claim in Federal or State court;

“(F) has a serious mental or physical illness or disability;

“(G) has been determined by an asylum officer in an interview conducted under section 235(b)(1)(B) to have a credible fear of persecution or a reasonable fear of persecution under section 208.31 or 241.8(e) of title 8, Code of
Federal Regulations (as in effect on the date of
the enactment of the New Way Forward Act);

“(H) has limited English language pro-
ficiency and is not provided access to appro-
priate and meaningful language services in a
timely fashion; or

“(I) has been determined by an immigra-
tion judge or the Secretary of Homeland Secu-
rity to be experiencing severe trauma or to be
a survivor of torture or gender-based violence,
based on information obtained during intake,
from the alien’s attorney or legal service pro-
vider, or through credible self-reporting.

“(c) SUBSEQUENT DETERMINATIONS.—An alien who
is detained under this section shall be provided with a de
novo custody determination hearing under this subsection
every 60 days, as well as upon showing of a change in
circumstances or good cause for a de novo custody deter-
mination hearing.”; and

(2) by striking subsection (e) and inserting the
following:

“(e) RELEASE UPON AN ORDER GRANTING RELIEF
FROM REMOVAL.—In the case of an alien with respect to
whom an immigration judge has entered an order termi-
nating removal proceedings or an order providing for relief
from removal, including an order granting asylum, or pro-
viding for withholding, deferral, or cancellation of removal,
which order is pending appeal, the Secretary of Homeland
Security shall immediately release the alien upon entry of
the order, and may impose only reasonable conditions on
the alien’s release from custody.

“(f) COMMUNITY-BASED CASE MANAGEMENT PRO-
GRAM.—

“(1) IN GENERAL.—The Secretary of Homeland
Security shall establish, outside of the purview of
U.S. Immigration and Customs Enforcement, a com-
munity-based case management program that—

“(A) provides alternatives to detaining
aliens;

“(B) offers a continuum of community-
based support options and services, including—

“(i) case management; and

“(ii) access to—

“(I) social services;

“(II) medical and mental health
services;

“(III) housing;

“(IV) transportation; and

“(V) legal services; and
“(C) provides services in the appropriate language.

“(2) Prohibition on electronic surveillance.—The program under paragraph (1) may not include, as an alternative to detention, the provision of ankle monitors or other forms of electronic surveillance.

“(3) Study.—Within 180 days, the Secretary shall undertake a study to examine best practices of government-funded case management and related services, including exploring the possibility of funding case management services out of the Department.

“(4) Contracts.—

“(A) In general.—The Secretary may enter into 1 or more contracts to operate the case management program described in paragraph (1).

“(B) Prioritization.—In entering into a contract under subparagraph (A), the Secretary shall give priority to direct contracts with qualified nongovernmental community-based organizations that have experience providing services to immigrant, refugee, and asylum-seeking populations.
“(5) Individualized Determination Required.—

“(A) In General.—In determining whether to order an alien to participate in a program under this subsection, the Secretary or the immigration judge, as appropriate, shall make an individualized determination to determine the appropriate level of supervision for the alien.

“(B) Exemption.—Participation in a program under this subsection may not be ordered for an alien for whom it is determined that release on reasonable bond or recognizance will reasonably ensure the appearance of the alien as required and the safety of any other person and the community.

“(6) Prohibition on Fees for Alternatives to Detention.—An alien who is required to participate in a specific alternatives to detention program or service may not be charged a fee for such participation.

“(7) Case Management Review.—Not later than 180 days after the date of the enactment of the New Way Forward Act, the Secretary shall conduct a review of—
“(A) best practices in federally funded case management programs; and

“(B) the feasibility of transferring alternatives to detention case management programs out of the purview of the Department of Homeland Security.”.

(b) **Probable Cause Hearing.**—Section 287(a) of the Immigration and Nationality Act (8 U.S.C. 1357(a)) is amended by striking the matter preceding paragraph (3) and inserting the following:

“(a) Any officer or employee of the Department of Homeland Security authorized under regulations prescribed by the Secretary of Homeland Security shall have power without warrant—

“(1) to interrogate any alien or person believed to be an alien as to the person’s right to be or to remain in the United States, provided that such interrogation is not based on the person’s race, ethnicity, national origin, religion, sexual orientation, color, spoken language, or English language proficiency; and

“(2) to arrest any alien who in the officer or employee’s presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating
the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if—

“(A) the officer or employee has probable cause to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest;

“(B) the officer or employee has reason to believe that the person would knowingly and willfully fail to appear in immigration court in response to a properly served notice to appear; and

“(C) not later than 48 hours after being taken into custody, the arrested alien is provided with a hearing before an immigration judge to determine whether there is probable cause as required by this section, including probable cause to believe that the person would have knowingly and willfully failed to appear as required under subparagraph (B), which burden to establish probable cause shall be on the Government.”.
(c) MANDATORY DETENTION REPEALED.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) in section 235(b)(1)(B)(ii)—

(A) by striking “shall” and inserting “may”; and

(B) by inserting before the period at the end the following: “pursuant to the custody review procedures set forth in section 236”;

(2) by striking section 235(b)(1)(B)(iii)(IV);

(3) in section 235(b)(2)(A)—

(A) by striking “shall” and inserting “may”; and

(B) by inserting before the period at the end the following: “pursuant to the custody review procedures set forth in section 236”;

(4) by striking section 236A;

(5) in section 238(a)(2), by striking “pursuant to section 236(c)”; and

(6) in section 506(a)(2)—

(A) by striking the paragraph heading and inserting the following: “RELEASE HEARING FOR ALIENS DETAINED”; and

(B) in subparagraph (A)—
(i) in the matter preceding clause (i), by striking “lawfully admitted for permanent residence”;

(ii) by striking clause (i); and

(iii) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(d) Aliens Ordered Removed.—Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1231(a)) is amended—

(1) in paragraph (1), by striking “90 days” each place it appears and inserting “60 days”;

(2) by striking paragraph (2) and inserting the following:

“(2) Initial Custody Redetermination Hearing.—

“(A) In General.—Not later than 72 hours after the entry of a final administrative order of removal, the alien ordered removed shall be provided with a custody redetermination hearing before an immigration judge.

“(B) Presumption of Detention.—For purposes of the hearing under subparagraph (A), the alien shall be detained during the removal period unless the alien can show, by a preponderance of the evidence, that the alien’s
removal is not reasonably foreseeable and that
the alien does not pose a risk to the safety of
any individual or to the community.”;
(3) in paragraph (3)—
(A) in the paragraph heading, by striking
“90-DAY” and inserting “60-DAY”; and
(B) in the matter preceding subparagraph
(A), by striking “the alien, pending removal,
shall be subject to supervision under” and in-
serting the following: “except as provided in
paragraph (7), any alien who has been detained
during the removal period shall be released
from custody, pending removal, subject to indi-
vidualized supervision requirements in accord-
ance with”;
(4) by striking paragraph (6); and
(5) by striking paragraph (7) and inserting the
following:
“(7) SUBSEQUENT CUSTODY REDETERMINA-
TION HEARINGS.—
“(A) IN GENERAL.—The Government may
request a subsequent redetermination hearing
before an immigration judge seeking continued
detention for an alien ordered to be detained
pursuant to paragraph (2) who has not been re-
moved within the removal period.

“(B) STANDARD.—An alien may only be
detained after the removal period upon a show-
ing by the Government that—

“(i) the alien’s removal is reasonably
foreseeable; and

“(ii) the alien poses a risk to the safe-
ty of an individual or the community,
which may only be established based on
credible and individualized information
that establishes objective risk factors, and
may not be established based only on the
fact that the alien has been charged with
or is suspected of a crime.

“(C) PERIOD OF DETENTION.—An alien
may not be detained pursuant to an order
under this paragraph for longer than a 60-day
period. The Government may seek subsequent
redetermination hearings under this paragraph
in order to continue detaining an alien beyond
each such 60-day period.”.
TITLE II—STATUTE OF LIMITATIONS

SEC. 201. TIME FOR COMMENCING REMOVAL PROCEEDINGS.

Section 239(d) of the Immigration and Nationality Act (8 U.S.C. 1229(d)) is amended by adding at the end the following:

“(3)(A) Notwithstanding paragraph (2), any removal proceeding against an alien previously admitted to the United States for being within a class of deportable aliens described in section 237(a)(2), or within a class of inadmissible aliens described in section 212(a)(2), shall not be entertained unless commenced not later than the date that is five years after the date on which the alien became deportable or inadmissible.

“(B) This paragraph shall apply to any removal proceeding resulting in an order of removal before the date of the enactment of the New Way Forward Act as if in effect on the date on which the removal proceeding was commenced.”.
TITLE III—LIMIT CRIMINAL-SYSTEM-TO-REMOVAL PIPELINE

SEC. 301. CRIMINAL OFFENSES AND IMMIGRATION LAWS.

(a) Inadmissibility Based on Criminal and Related Grounds.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended—

(1) by striking subparagraph (A); and

(2) by redesignating subparagraphs (B) through (I) as subparagraphs (A) through (H), respectively.

(b) Deportability Based on Criminal Offenses.—Section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)) is amended—

(1) in subparagraph (A)—

(A) by striking clauses (i) and (ii);

(B) by redesignating clauses (iii) through (vi) as clauses (i) through (iv), respectively; and

(C) in clause (iv), as so redesignated, by striking “Clauses (i), (ii), and (iii)” and inserting “Clauses (i) and (ii)”;

(2) by striking subparagraph (B); and

(3) by redesignating subparagraphs (C) through (F) as subparagraphs (B) through (E), respectively.
SEC. 302. DEFINITIONS.

(a) AGGRAVATED FELONY.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended—

(1) in the matter preceding subparagraph (A), by striking “means—” and inserting “means a felony, for which a term of imprisonment of not less than 5 years was imposed, that is—”;

(2) in subparagraph (F), by striking “for which the term of imprisonment at least one year”;  

(3) in subparagraph (G), by striking “for which” and all that follows through “year”;

(4) in subparagraph (J), by striking “, for which a sentence of one year imprisonment or more may be imposed”;

(5) in subparagraph (P)—  

(A) by striking “(i)”; and

(B) by striking “and (ii) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 12 months”;

(6) in subparagraph (R), by striking “for which the term of imprisonment is at least one year”;  

(7) in subparagraph (S), by striking “, for which the term of imprisonment is at least one year”; and
(8) by striking the last sentence.

(b) CONVICTION.—Section 101(a)(48) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(48)) is amended—

(1) in subparagraph (A), by striking “court” and all that follows through “to be imposed.” and inserting the following: “court. However, any such adjudication or judgment of guilt that has been dismissed, expunged, sealed, deferred, annulled, invalidated, withheld, or vacated by any court or entity shall not be considered a conviction for purposes of this Act. Any such adjudication or judgment of guilt where a court has issued a judicial recommendation against removal shall not be considered a conviction for purposes of this Act. Any disposition that is an order of probation without entry of judgment or any similar disposition, or where the President of the United States, the governor of a State or territory, or any body authorized by a state legislature or governor has issued a pardon, shall not be considered a conviction for purposes of this Act. Any such adjudication or judgment on direct appeal or within the time to file direct appeal shall not be considered a ‘conviction’ for the purposes of this Act.”; and

(2) in subparagraph (B)—
(A) by inserting “only” after “deemed to include”; and

(B) by striking “or confinement” and all that follows through the period at the end and inserting “ordered by a court of law. Any such reference shall not include any term of imprisonment or any sentence that has been subject to any suspension of imposition or execution in whole or in part, or that has been commuted or in any way modified or changed by the President of the United States, the governor of a State or territory, or any body authorized by a State legislature or governor to commute, modify, or in any way change a sentence.”.

(c) PARTICULARLY SERIOUS CRIME.—Section 208(b)(2)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(B)(i)) is amended to read as follows:

“(i) CONVICTION OF AGGRAVATED FELONY.—For purposes of clause (ii) of subparagraph (A), section 241(b)(3)(B), or any other provision of this Act, only an alien who has been convicted of an aggravated felony for which a term of imprisonment of not less than five years was im-
posed shall be considered to have been convicted of a particularly serious crime.”.

(d) APPLICABILITY.—The amendments made by this section shall apply to—

(1) admissions and conduct occurring before, on, or after the date of the enactment of this Act; and

(2) convictions and sentences entered before, on, or after the date of the enactment of this Act.

TITLE IV—RESTORE JUDICIAL DISCRETION AND END REMOVAL WITHOUT DUE PROCESS

SEC. 401. IMMIGRATION PROCEDURAL CHANGES.

(a) DECISION AND BURDEN OF PROOF.—Section 240(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1229(c)(1)(A)) is amended by inserting after the period at the end the following: “Notwithstanding any other provision of law, an immigration judge may grant any relief or deferral from removal, including withholding of removal, to any individual who is otherwise eligible for such relief but for a prior criminal conviction, or the commission of or a finding of the commission of other conduct described in section 212(a)(2), 237(a)(2), or 237(a)(3), if the immigration judge finds such an exercise of discretion
appropriate in pursuit of humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.”.

(b) Removal of Aliens Who Are Not Permanent Residents.—Section 238 of the Immigration and Nationality Act (8 U.S.C. 1228) is amended—

(1) by striking subsection (b); and

(2) by redesignating the first subsection (c) as subsection (b).

(c) Reinstatement of Removal Orders Against Aliens Illegally Reentering.—Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1231(a)) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(d) Special Rules Relating to Continuous Residence or Physical Presence.—Section 240A(d) of the Immigration and Nationality Act (8 U.S.C. 1229b(d)) is amended—

(1) by striking paragraph (1); and

(2) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.
(e) JUDICIAL REVIEW OF ORDERS OF REMOVAL.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by striking subsection (a)(2)(C).

TITLE V—PROHIBITION AGAINST PERFORMANCE OF IMMIGRATION OFFICER FUNCTIONS BY STATE AND LOCAL OFFICERS AND EMPLOYEES

SEC. 501. LOCAL ENFORCEMENT.

(a) IN GENERAL.—Section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)) is amended to read as follows:

“(g)(1) The officers and employees of any State, or any political subdivision of a State, are prohibited from performing the function of an immigration officer in relation to the investigation, apprehension, transport, or detention of aliens in the United States or otherwise assist in the performance of such functions.

“(2) Civil immigration warrants shall not be made available to the officers or employees of any State, or any political subdivision of a State, through the National Crime Information Center database or its incorporated criminal history databases. Federal, State, and local law enforcement officials are prohibited from entering into the National Crime Information Center database or its incor-
porated criminal history databases information that relates to an alien’s immigration status, the existence of a prior removal, deportation, or voluntary departure order entered against an alien, or any allegations of civil violations of the immigration laws. Any information described in this paragraph that is in the National Crime Information Center database shall be removed from such database not later than 90 days after the enactment of the New Way Forward Act.”.

(b) Prohibiting Coordination for Enforcement of Immigration Laws.—

(1) Prohibiting State and Local Law Enforcement Arrest and Detention of Aliens.— Section 439 of the Antiterrorism and Effective Death Penalty Act of 1996 (8 U.S.C. 1252e) is repealed.

(2) Communication.—Section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1644) is repealed.

(c) Communication and Enforcement.—Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) is repealed.

SEC. 502. NATIONAL CRIME INFORMATION CENTER.

Section 534(f) of title 28, United States Code, is amended—
(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

“(3) Civil immigration warrants shall not be made available to the officers or employees of any State, or any political subdivision of a State, through the National Crime Information Center database or its incorporated criminal history databases. Federal, State, and local law enforcement officials are prohibited from entering into the National Crime Information Center database or its incorporated criminal history databases information that relates to an alien’s immigration status, the existence of a prior removal, deportation, or voluntary departure order entered against an alien, or any allegations of civil violations of the immigration laws. Any information described in this paragraph that is in the National Crime Information Center database shall be removed from such database not later than 90 days after the enactment of the New Way Forward Act.”.
TITLE VI—DECRIMINALIZE MIGRATION

SEC. 601. REPEALING MIGRATION CRIMINAL LAWS.

(a) Criminal Penalties for Entry at Improper Time or Place.—Section 275 of the Immigration and Nationality Act (8 U.S.C. 1325) is repealed.

(b) Criminal Penalties for Reentry.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is repealed.

TITLE VII—RIGHT TO COME HOME

SEC. 701. RECONSIDERING AND REOPENING IMMIGRATION CASES.

(a) In General.—Notwithstanding any other provision of law, the Attorney General—

(1) shall grant a motion to reconsider or reopen proceedings pursuant to paragraph (6) or (7) of section 240(c) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)) with respect to any alien who—

(A) on or after April 24, 1996—

(i) was ordered removed, deported, or excluded; or

(ii) departed the United States pursuant to a grant of voluntary departure under section 240B of the Immigration
and Nationality Act (8 U.S.C. 1229c) (regardless of whether or not the alien was ordered removed, deported, or excluded); and

(B) demonstrates that the alien—

(i) would not have been considered inadmissible, excludable, or deportable under the immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))) if this Act, and the amendments made by this Act, had been in effect on the date on which such order was issued or the voluntary departure took place; or

(ii) would have been eligible to apply for relief from removal, deportation, or exclusion under such laws if this Act, and the amendments made by this Act, had been in effect on the date on which such order was issued or the voluntary departure took place; and

(2) shall deem an alien who makes the demonstration under paragraph (1)(B) as not having been removed, deported, excluded, or departed, and as not having failed to depart under a voluntary de-
parture order, for all purposes under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(b) Previously Filed Application; Previous Motions To Reopen or Reconsider.—The Attorney General may not reject or deny a motion to reconsider or reopen under subsection (a) because—

(1) the alien did not include a copy of any previously filed application for relief; or

(2) the alien had previously filed a motion to reopen or reconsider.

(c) Deadline.—The deadline described in paragraphs (6)(B) and (7)(C)(i) of section 240(c) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)) shall not apply to a motion to reopen or reconsider under this section.

(d) Transportation.—The Secretary of Homeland Security shall provide transportation for aliens eligible for reopening or reconsideration of their proceedings under this section, at Government expense, to return to the United States for further immigration proceedings and shall admit or parole the alien into the United States.

(e) Physical Presence Requirement.—For the purpose of applications filed subsequent to reopening under this section pursuant to section 240A of the Immigration and Nationality Act (8 U.S.C. 1229b), or any
other application for relief under the immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))), removal, deportation, exclusion, or voluntary departure shall not be considered to toll any physical presence requirement.

(f) JUDICIAL REVIEW.—Notwithstanding any other provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), any denial of a motion to reopen or reconsider submitted pursuant to this section is subject to de novo judicial review in a Federal district court having jurisdiction over the applicant’s residence or, in the case of an applicant who was removed from the United States, the last known residential address of the applicant in the United States.