

**[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.

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IN THE HOUSE OF REPRESENTATIVES

Mr. GARCÍA of Illinois introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**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”.

1 **TITLE I—END MANDATORY DE-**  
2 **TENTION AND REQUIRE**  
3 **PROBABLE CAUSE FOR AR-**  
4 **REST**

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

7 (a) **SECURE DETENTION FACILITIES.**—Beginning on  
8 the date of the enactment of this Act, the Secretary of  
9 Homeland Security may not enter into, or extend, any con-  
10 tract with any public or private for-profit entity that owns  
11 or operates a detention facility for use of that facility to  
12 detain aliens in the custody of the Department of Home-  
13 land Security, and shall terminate any such contract not  
14 later than the date that is 3 years after the date of the  
15 enactment of this Act. Beginning on the date that is 3  
16 years after the date of the enactment of this Act, any facil-  
17 ity at which aliens in the custody of the Department of  
18 Homeland Security are detained shall be owned and oper-  
19 ated by the Department of Homeland Security.

20 (b) **NON-SECURE DETENTION PROGRAMS.**—Begin-  
21 ning on the date of the enactment of this Act, the Sec-  
22 retary of Homeland Security may not enter into, or ex-  
23 tend, any contract with any public or private for-profit en-  
24 tity that owns or operates a program or facility that pro-  
25 vides for non-residential detention-related activities for

1 aliens who are subject to monitoring by the Department  
2 of Homeland Security, and shall terminate any such con-  
3 tract not later than the date that is 3 years after the date  
4 of the enactment of this Act. Beginning on the date that  
5 is 3 years after the date of the enactment of this Act,  
6 any such program or facility shall be owned and operated  
7 by a nonprofit organization or by the Department of  
8 Homeland Security.

9 (c) PUBLICATION OF PLAN.—Not later than 60 days  
10 after the date of the enactment of this Act, the Secretary  
11 shall develop, and make publicly available, a plan and  
12 timeline for the implementation of this section.

13 **SEC. 102. PROCEDURES FOR DETAINING ALIENS.**

14 (a) CUSTODY AND BOND DETERMINATIONS.—Sec-  
15 tion 236 of the Immigration and Nationality Act (8 U.S.C.  
16 1226) is amended—

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

19 “(a) ARREST, DETENTION, AND RELEASE.—

20 “(1) IN GENERAL.—On a warrant issued by an  
21 immigration judge, or pursuant to section 287(a)(2),  
22 the Secretary of Homeland Security may arrest an  
23 alien and, in accordance with this section, may,  
24 pending a decision on whether the alien is to be re-  
25 moved from the United States—

1 “(A) detain the alien; or

2 “(B) release the alien—

3 “(i) on bond;

4 “(ii) subject to conditions; or

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

6 “(2) EXCEPTION.—This section shall not apply  
7 to an unaccompanied alien child (as defined in sec-  
8 tion 462(g)(2) of the Homeland Security Act of  
9 2002 (6 U.S.C. 279(g)(2))). Such an alien shall be  
10 transferred to the custody of the Secretary of Health  
11 and Human Services pursuant to section 235(b)(3)  
12 of the William Wilberforce Trafficking Victims Pro-  
13 tection Reauthorization Act of 2008 (8 U.S.C.  
14 1232(b)(3)).

15 “(b) CUSTODY AND BOND DETERMINATIONS.—

16 “(1) INITIAL DETERMINATION.—Not later than  
17 48 hours after taking an alien into custody, the Sec-  
18 retary of Homeland Security shall make an initial  
19 custody determination with regard to that alien, and  
20 provide that determination in writing to the alien. If  
21 the Secretary determines that the release without  
22 conditions of an alien will not reasonably assure the  
23 appearance of the alien as required or will endanger  
24 the safety of any other person or the community, the  
25 custody determination under this paragraph will im-

1       pose the least restrictive conditions, as described in  
2       paragraph (4).

3           “(2) TIMING.—If an alien seeks to challenge  
4       the initial custody determination under paragraph  
5       (1), the alien shall be provided with the opportunity  
6       for a hearing before an immigration judge to deter-  
7       mine whether the alien should be detained, which  
8       hearing shall occur not later than 72 hours after the  
9       initial custody determination, except that an immi-  
10      gration judge may grant a reasonable continuance  
11      upon the alien’s request for additional time to pre-  
12      pare for the hearing.

13          “(3) PRESUMPTION OF RELEASE.—In a hearing  
14      under this subsection, there shall be a rebuttable  
15      presumption that the alien should be released. The  
16      Government shall have the duty of rebutting this  
17      presumption by clear and convincing evidence based  
18      on credible and individualized information that es-  
19      tablishes that the use of alternatives to detention  
20      will not reasonably assure the appearance of the  
21      alien at removal proceedings, or that the alien is a  
22      threat to another person or the community. The fact  
23      that an alien has a prior conviction or a criminal  
24      charge pending against the alien may not be the sole  
25      factor to justify the continued detention of the alien.

1           “(4) LEAST RESTRICTIVE CONDITIONS RE-  
2           QUIRED.—If an immigration judge determines pur-  
3           suant to a hearing under this section that the re-  
4           lease without conditions of an alien will not reason-  
5           ably assure the appearance of the alien as required  
6           or will endanger the safety of any other person or  
7           the community, the immigration judge shall order  
8           the least restrictive conditions, or combination of  
9           conditions, that the judge determines will reasonably  
10          assure the appearance of the alien as required and  
11          the safety of any other person and the community,  
12          which may include secured or unsecured release on  
13          bond, or participation in a program described in  
14          subsection (i). Any conditions assigned to an alien  
15          pursuant to this paragraph shall be reviewed by the  
16          immigration judge on a monthly basis.

17          “(5) BOND DETERMINATION.—In the case that  
18          an immigration judge makes a determination to re-  
19          lease an alien on bond under subsection (a)(1)(B)(i),  
20          the immigration judge shall consider, for purposes of  
21          setting the amount of the bond, the alien’s financial  
22          resources and ability to pay the bond without impos-  
23          ing financial hardship on the alien.

24          “(6) SPECIAL RULE FOR VULNERABLE PER-  
25          SONS AND PRIMARY CAREGIVERS.—In a case in

1       which an alien who is the subject of a custody deter-  
2       mination under this subsection is a vulnerable per-  
3       son or a primary caregiver, the alien may not be de-  
4       tained unless the Government shows, in addition to  
5       the requirements under paragraph (3), that it is un-  
6       reasonable or not practicable to place the individual  
7       in a community-based supervision program.

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

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

12               “(B) is pregnant;

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

15               “(D) is victim or witness of a crime;

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

18               “(F) has a serious mental or physical ill-  
19       ness or disability;

20               “(G) has been determined by an asylum of-  
21       ficer in an interview conducted under section  
22       235(b)(1)(B) to have a credible fear of persecu-  
23       tion or a reasonable fear of persecution under  
24       section 208.31 or 241.8(e) of title 8, Code of

1 Federal Regulations (as in effect on the date of  
2 the enactment of the New Way Forward Act);

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

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

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

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

22 “(e) RELEASE UPON AN ORDER GRANTING RELIEF  
23 FROM REMOVAL.—In the case of an alien with respect to  
24 whom an immigration judge has entered an order termi-  
25 nating removal proceedings or an order providing for relief



1 from removal, including an order granting asylum, or pro-  
2 viding for withholding, deferral, or cancellation of removal,  
3 which order is pending appeal, the Secretary of Homeland  
4 Security shall immediately release the alien upon entry of  
5 the order, and may impose only reasonable conditions on  
6 the alien's release from custody.

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

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

13 “(A) provides alternatives to detaining  
14 aliens;

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

17 “(i) case management; and

18 “(ii) access to—

19 “(I) social services;

20 “(II) medical and mental health  
21 services;

22 “(III) housing;

23 “(IV) transportation; and

24 “(V) legal services; and

1           “(C) provides services in the appropriate  
2           language.

3           “(2) PROHIBITION ON ELECTRONIC SURVEIL-  
4           LANCE.—The program under paragraph (1) may not  
5           include, as an alternative to detention, the provision  
6           of ankle monitors or other forms of electronic sur-  
7           veillance.

8           “(3) STUDY.—Within 180 days, the Secretary  
9           shall undertake a study to examine best practices of  
10          government-funded case management and related  
11          services, including exploring the possibility of fund-  
12          ing case management services out of the Depart-  
13          ment.

14          “(4) CONTRACTS.—

15                 “(A) IN GENERAL.—The Secretary may  
16                 enter into 1 or more contracts to operate the  
17                 case management program described in para-  
18                 graph (1).

19                 “(B) PRIORITIZATION.—In entering into a  
20                 contract under subparagraph (A), the Secretary  
21                 shall give priority to direct contracts with quali-  
22                 fied nongovernmental community-based organi-  
23                 zations that have experience providing services  
24                 to immigrant, refugee, and asylum-seeking pop-  
25                 ulations.

1           “(5) INDIVIDUALIZED DETERMINATION RE-  
2           QUIRED.—

3           “(A) IN GENERAL.—In determining wheth-  
4           er to order an alien to participate in a program  
5           under this subsection, the Secretary or the im-  
6           migration judge, as appropriate, shall make an  
7           individualized determination to determine the  
8           appropriate level of supervision for the alien.

9           “(B) EXEMPTION.—Participation in a pro-  
10          gram under this subsection may not be ordered  
11          for an alien for whom it is determined that re-  
12          lease on reasonable bond or recognizance will  
13          reasonably ensure the appearance of the alien  
14          as required and the safety of any other person  
15          and the community.

16          “(6) PROHIBITION ON FEES FOR ALTER-  
17          NATIVES TO DETENTION.—An alien who is required  
18          to participate in a specific alternatives to detention  
19          program or service may not be charged a fee for  
20          such participation.

21          “(7) CASE MANAGEMENT REVIEW.—Not later  
22          than 180 days after the date of the enactment of the  
23          New Way Forward Act, the Secretary shall conduct  
24          a review of—

1           “(A) best practices in federally funded case  
2           management programs; and

3           “(B) the feasibility of transferring alter-  
4           natives to detention case management programs  
5           out of the purview of the Department of Home-  
6           land Security.”.

7           (b) PROBABLE CAUSE HEARING.—Section 287(a) of  
8           the Immigration and Nationality Act (8 U.S.C. 1357(a))  
9           is amended by striking the matter preceding paragraph  
10          (3) and inserting the following:

11          “(a) Any officer or employee of the Department of  
12          Homeland Security authorized under regulations pre-  
13          scribed by the Secretary of Homeland Security shall have  
14          power without warrant—

15                 “(1) to interrogate any alien or person believed  
16                 to be an alien as to the person’s right to be or to  
17                 remain in the United States, provided that such in-  
18                 terrogation is not based on the person’s race, eth-  
19                 nicity, national origin, religion, sexual orientation,  
20                 color, spoken language, or English language pro-  
21                 ficiency; and

22                 “(2) to arrest any alien who in the officer or  
23                 employee’s presence or view is entering or attempt-  
24                 ing to enter the United States in violation of any law  
25                 or regulation made in pursuance of law regulating

1 the admission, exclusion, expulsion, or removal of  
2 aliens, or to arrest any alien in the United States,  
3 if—

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

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

14 “(C) not later than 48 hours after being  
15 taken into custody, the arrested alien is pro-  
16 vided with a hearing before an immigration  
17 judge to determine whether there is probable  
18 cause as required by this section, including  
19 probable cause to believe that the person would  
20 have knowingly and willfully failed to appear as  
21 required under subparagraph (B), which burden  
22 to establish probable cause shall be on the Gov-  
23 ernment.”.

1 (c) MANDATORY DETENTION REPEALED.—The Im-  
2 migration and Nationality Act (8 U.S.C. 1101 et seq.) is  
3 amended—

4 (1) in section 235(b)(1)(B)(ii)—

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

7 (B) by inserting before the period at the  
8 end the following: “pursuant to the custody re-  
9 view procedures set forth in section 236”;

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

11 (3) in section 235(b)(2)(A)—

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

14 (B) by inserting before the period at the  
15 end the following: “pursuant to the custody re-  
16 view procedures set forth in section 236”;

17 (4) by striking section 236A;

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

20 (6) in section 506(a)(2)—

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

24 (B) in subparagraph (A)—

1 (i) in the matter preceding clause (i),  
2 by striking “lawfully admitted for perma-  
3 nent residence”;

4 (ii) by striking clause (i); and

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

7 (d) ALIENS ORDERED REMOVED.—Section 241(a) of  
8 the Immigration and Nationality Act (8 U.S.C. 1231(a))  
9 is amended—

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

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

14 “(2) INITIAL CUSTODY REDETERMINATION  
15 HEARING.—

16 “(A) IN GENERAL.—Not later than 72  
17 hours after the entry of a final administrative  
18 order of removal, the alien ordered removed  
19 shall be provided with a custody redetermina-  
20 tion hearing before an immigration judge.

21 “(B) PRESUMPTION OF DETENTION.—For  
22 purposes of the hearing under subparagraph  
23 (A), the alien shall be detained during the re-  
24 moval period unless the alien can show, by a  
25 preponderance of the evidence, that the alien’s

1 removal is not reasonably foreseeable and that  
2 the alien does not pose a risk to the safety of  
3 any individual or to the community.”;

4 (3) in paragraph (3)—

5 (A) in the paragraph heading, by striking  
6 “90-DAY” and inserting “60-DAY”; and

7 (B) in the matter preceding subparagraph  
8 (A), by striking “the alien, pending removal,  
9 shall be subject to supervision under” and in-  
10 sserting the following: “except as provided in  
11 paragraph (7), any alien who has been detained  
12 during the removal period shall be released  
13 from custody, pending removal, subject to indi-  
14 vidualized supervision requirements in accord-  
15 ance with”;

16 (4) by striking paragraph (6); and

17 (5) by striking paragraph (7) and inserting the  
18 following:

19 “(7) SUBSEQUENT CUSTODY REDETERMINA-  
20 TION HEARINGS.—

21 “(A) IN GENERAL.—The Government may  
22 request a subsequent redetermination hearing  
23 before an immigration judge seeking continued  
24 detention for an alien ordered to be detained



1           pursuant to paragraph (2) who has not been re-  
2           moved within the removal period.

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

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

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

16           “(C) PERIOD OF DETENTION.—An alien  
17           may not be detained pursuant to an order  
18           under this paragraph for longer than a 60-day  
19           period. The Government may seek subsequent  
20           redetermination hearings under this paragraph  
21           in order to continue detaining an alien beyond  
22           each such 60-day period.”.

1                   **TITLE II—STATUTE OF**  
2                   **LIMITATIONS**

3 **SEC. 201. TIME FOR COMMENCING REMOVAL PRO-**  
4                   **CEEDINGS.**

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

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

16           “(B) This paragraph shall apply to any removal pro-  
17 ceeding resulting in an order of removal before the date  
18 of the enactment of the New Way Forward Act as if in  
19 effect on the date on which the removal proceeding was  
20 commenced.”.

1           **TITLE III—LIMIT CRIMINAL-**  
2           **SYSTEM-TO-REMOVAL PIPELINE**

3           **SEC. 301. CRIMINAL OFFENSES AND IMMIGRATION LAWS.**

4           (a) **INADMISSIBILITY BASED ON CRIMINAL AND RE-**  
5           **LATED GROUNDS.**—Section 212(a)(2) of the Immigration  
6           and Nationality Act (8 U.S.C. 1182(a)(2)) is amended—

7                       (1) by striking subparagraph (A); and  
8                       (2) by redesignating subparagraphs (B)  
9           through (I) as subparagraphs (A) through (H), re-  
10           spectively.

11           (b) **DEPORTABILITY BASED ON CRIMINAL OF-**  
12           **FENSES.**—Section 237(a)(2) of the Immigration and Na-  
13           tionality Act (8 U.S.C. 1227(a)(2)) is amended—

14                       (1) in subparagraph (A)—  
15                               (A) by striking clauses (i) and (ii);  
16                               (B) by redesignating clauses (iii) through  
17                       (vi) as clauses (i) through (iv), respectively; and  
18                               (C) in clause (iv), as so redesignated, by  
19                       striking “Clauses (i), (ii), and (iii)” and insert-  
20                       ing “Clauses (i) and (ii)”;  
21                       (2) by striking subparagraph (B); and  
22                       (3) by redesignating subparagraphs (C) through  
23           (F) as subparagraphs (B) through (E), respectively.

1 **SEC. 302. DEFINITIONS.**

2 (a) AGGRAVATED FELONY.—Section 101(a)(43) of  
3 the Immigration and Nationality Act (8 U.S.C.  
4 1101(a)(43)) is amended—

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

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

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

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

16 (5) in subparagraph (P)—

17 (A) by striking “(i)”; and

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

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

24 (7) in subparagraph (S), by striking “, for  
25 which the term of imprisonment is at least one  
26 year”; and

1 (8) by striking the last sentence.

2 (b) CONVICTION.—Section 101(a)(48) of the Immi-  
3 gration and Nationality Act (8 U.S.C. 1101(a)(48)) is  
4 amended—

5 (1) in subparagraph (A), by striking “court”  
6 and all that follows through “to be imposed.” and  
7 inserting the following: “court. However, any such  
8 adjudication or judgment of guilt that has been dis-  
9 missed, expunged, sealed, deferred, annulled, invali-  
10 dated, withheld, or vacated by any court or entity  
11 shall not be considered a conviction for purposes of  
12 this Act. Any such adjudication or judgment of guilt  
13 where a court has issued a judicial recommendation  
14 against removal shall not be considered a conviction  
15 for purposes of this Act. Any disposition that is an  
16 order of probation without entry of judgment or any  
17 similar disposition, or where the President of the  
18 United States, the governor of a State or territory,  
19 or any body authorized by a state legislature or gov-  
20 ernor has issued a pardon, shall not be considered  
21 a conviction for purposes of this Act. Any such adju-  
22 dication or judgment on direct appeal or within the  
23 time to file direct appeal shall not be considered a  
24 ‘conviction’ for the purposes of this Act.”; and

25 (2) in subparagraph (B)—

1 (A) by inserting “only” after “deemed to  
2 include”; and

3 (B) by striking “or confinement” and all  
4 that follows through the period at the end and  
5 inserting “ordered by a court of law. Any such  
6 reference shall not include any term of impris-  
7 onment or any sentence that has been subject  
8 to any suspension of imposition or execution in  
9 whole or in part, or that has been commuted or  
10 in any way modified or changed by the Presi-  
11 dent of the United States, the governor of a  
12 State or territory, or any body authorized by a  
13 State legislature or governor to commute, mod-  
14 ify, or in any way change a sentence.”.

15 (c) PARTICULARLY SERIOUS CRIME.—Section  
16 208(b)(2)(B)(i) of the Immigration and Nationality Act  
17 (8 U.S.C. 1158(b)(2)(B)(i)) is amended to read as follows:

18 “(i) CONVICTION OF AGGRAVATED  
19 FELONY.—For purposes of clause (ii) of  
20 subparagraph (A), section 241(b)(3)(B), or  
21 any other provision of this Act, only an  
22 alien who has been convicted of an aggra-  
23 vated felony for which a term of imprison-  
24 ment of not less than five years was im-

1                   posed shall be considered to have been con-  
2                   victed of a particularly serious crime.”.

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

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

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

10 **TITLE IV—RESTORE JUDICIAL**  
11 **DISCRETION AND END RE-**  
12 **MOVAL WITHOUT DUE PROC-**  
13 **ESS**

14 **SEC. 401. IMMIGRATION PROCEDURAL CHANGES.**

15           (a) **DECISION AND BURDEN OF PROOF.**—Section  
16 240(c)(1)(A) of the Immigration and Nationality Act (8  
17 U.S.C. 1229(c)(1)(A)) is amended by inserting after the  
18 period at the end the following: “Notwithstanding any  
19 other provision of law, an immigration judge may grant  
20 any relief or deferral from removal, including withholding  
21 of removal, to any individual who is otherwise eligible for  
22 such relief but for a prior criminal conviction, or the com-  
23 mission of or a finding of the commission of other conduct  
24 described in section 212(a)(2), 237(a)(2), or 237(a)(3), if  
25 the immigration judge finds such an exercise of discretion

1 appropriate in pursuit of humanitarian purposes, to as-  
2 sure family unity, or when it is otherwise in the public  
3 interest.”.

4 (b) REMOVAL OF ALIENS WHO ARE NOT PERMA-  
5 NENT RESIDENTS.—Section 238 of the Immigration and  
6 Nationality Act (8 U.S.C. 1228) is amended—

7 (1) by striking subsection (b); and

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

10 (c) REINSTATEMENT OF REMOVAL ORDERS AGAINST  
11 ALIENS ILLEGALLY REENTERING.—Section 241(a) of the  
12 Immigration and Nationality Act (8 U.S.C. 1231(a)) is  
13 amended—

14 (1) by striking paragraph (5); and

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

17 (d) SPECIAL RULES RELATING TO CONTINUOUS  
18 RESIDENCE OR PHYSICAL PRESENCE.—Section 240A(d)  
19 of the Immigration and Nationality Act (8 U.S.C.  
20 1229b(d)) is amended—

21 (1) by striking paragraph (1); and

22 (2) by redesignating paragraphs (2) and (3) as  
23 paragraphs (1) and (2), respectively.



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

4 **TITLE V—PROHIBITION AGAINST**  
5 **PERFORMANCE OF IMMIGRA-**  
6 **TION OFFICER FUNCTIONS BY**  
7 **STATE AND LOCAL OFFICERS**  
8 **AND EMPLOYEES**

9 **SEC. 501. LOCAL ENFORCEMENT.**

10 (a) IN GENERAL.—Section 287(g) of the Immigra-  
11 tion and Nationality Act (8 U.S.C. 1357(g)) is amended  
12 to read as follows:

13 “(g)(1) The officers and employees of any State, or  
14 any political subdivision of a State, are prohibited from  
15 performing the function of an immigration officer in rela-  
16 tion to the investigation, apprehension, transport, or de-  
17 tention of aliens in the United States or otherwise assist  
18 in the performance of such functions.

19 “(2) Civil immigration warrants shall not be made  
20 available to the officers or employees of any State, or any  
21 political subdivision of a State, through the National  
22 Crime Information Center database or its incorporated  
23 criminal history databases. Federal, State, and local law  
24 enforcement officials are prohibited from entering into the  
25 National Crime Information Center database or its incor-

1 porated criminal history databases information that re-  
2 lates to an alien’s immigration status, the existence of a  
3 prior removal, deportation, or voluntary departure order  
4 entered against an alien, or any allegations of civil viola-  
5 tions of the immigration laws. Any information described  
6 in this paragraph that is in the National Crime Informa-  
7 tion Center database shall be removed from such database  
8 not later than 90 days after the enactment of the New  
9 Way Forward Act.”.

10 (b) PROHIBITING COORDINATION FOR ENFORCE-  
11 MENT OF IMMIGRATION LAWS.—

12 (1) PROHIBITING STATE AND LOCAL LAW EN-  
13 FORCEMENT ARREST AND DETENTION OF ALIENS.—  
14 Section 439 of the Antiterrorism and Effective  
15 Death Penalty Act of 1996 (8 U.S.C. 1252c) is re-  
16 pealed.

17 (2) COMMUNICATION.—Section 434 of the Per-  
18 sonal Responsibility and Work Opportunity Rec-  
19 onciliation Act of 1996 (8 U.S.C. 1644) is repealed.

20 (c) COMMUNICATION AND ENFORCEMENT.—Section  
21 642 of the Illegal Immigration Reform and Immigrant Re-  
22 sponsibility Act of 1996 (8 U.S.C. 1373) is repealed.

23 **SEC. 502. NATIONAL CRIME INFORMATION CENTER.**

24 Section 534(f) of title 28, United States Code, is  
25 amended—

1           (1) by redesignating paragraph (3) as para-  
2           graph (4); and

3           (2) by inserting after paragraph (2) the fol-  
4           lowing:

5           “(3) Civil immigration warrants shall not be  
6           made available to the officers or employees of any  
7           State, or any political subdivision of a State,  
8           through the National Crime Information Center  
9           database or its incorporated criminal history data-  
10          bases. Federal, State, and local law enforcement of-  
11          ficials are prohibited from entering into the National  
12          Crime Information Center database or its incor-  
13          porated criminal history databases information that  
14          relates to an alien’s immigration status, the exist-  
15          ence of a prior removal, deportation, or voluntary  
16          departure order entered against an alien, or any al-  
17          legations of civil violations of the immigration laws.  
18          Any information described in this paragraph that is  
19          in the National Crime Information Center database  
20          shall be removed from such database not later than  
21          90 days after the enactment of the New Way For-  
22          ward Act.”.

1           **TITLE VI—DECRIMINALIZE**  
2                           **MIGRATION**

3   **SEC. 601. REPEALING MIGRATION CRIMINAL LAWS.**

4           (a) CRIMINAL PENALTIES FOR ENTRY AT IMPROPER  
5 TIME OR PLACE.—Section 275 of the Immigration and  
6 Nationality Act (8 U.S.C. 1325) is repealed.

7           (b) CRIMINAL PENALTIES FOR REENTRY.—Section  
8 276 of the Immigration and Nationality Act (8 U.S.C.  
9 1326) is repealed.

10           **TITLE VII—RIGHT TO COME**  
11                           **HOME**

12   **SEC. 701. RECONSIDERING AND REOPENING IMMIGRATION**  
13                           **CASES.**

14           (a) IN GENERAL.—Notwithstanding any other provi-  
15 sion of law, the Attorney General—

16                   (1) shall grant a motion to reconsider or reopen  
17 proceedings pursuant to paragraph (6) or (7) of sec-  
18 tion 240(c) of the Immigration and Nationality Act  
19 (8 U.S.C. 1229a(c)) with respect to any alien who—

20                           (A) on or after April 24, 1996—

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

23                                   (ii) departed the United States pursu-  
24 ant to a grant of voluntary departure  
25 under section 240B of the Immigration

1 and Nationality Act (8 U.S.C. 1229c) (re-  
2 gardless of whether or not the alien was  
3 ordered removed, deported, or excluded);  
4 and

5 (B) demonstrates that the alien—

6 (i) would not have been considered in-  
7 admissible, excludable, or deportable under  
8 the immigration laws (as defined in section  
9 101(a)(17) of the Immigration and Nation-  
10 ality Act (8 U.S.C. 1101(a)(17))) if this  
11 Act, and the amendments made by this  
12 Act, had been in effect on the date on  
13 which such order was issued or the vol-  
14 untary departure took place; or

15 (ii) would have been eligible to apply  
16 for relief from removal, deportation, or ex-  
17 clusion under such laws if this Act, and  
18 the amendments made by this Act, had  
19 been in effect on the date on which such  
20 order was issued or the voluntary depar-  
21 ture took place; and

22 (2) shall deem an alien who makes the dem-  
23 onstration under paragraph (1)(B) as not having  
24 been removed, deported, excluded, or departed, and  
25 as not having failed to depart under a voluntary de-

1       parture order, for all purposes under the Immigra-  
2       tion and Nationality Act (8 U.S.C. 1101 et seq.).

3       (b) PREVIOUSLY FILED APPLICATION; PREVIOUS  
4       MOTIONS TO REOPEN OR RECONSIDER.—The Attorney  
5       General may not reject or deny a motion to reconsider or  
6       reopen under subsection (a) because—

7             (1) the alien did not include a copy of any pre-  
8       viously filed application for relief; or

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

11       (c) DEADLINE.—The deadline described in para-  
12       graphs (6)(B) and (7)(C)(i) of section 240(c) of the Immi-  
13       grations and Nationality Act (8 U.S.C. 1229a(c)) shall not  
14       apply to a motion to reopen or reconsider under this sec-  
15       tion.

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

22       (e) PHYSICAL PRESENCE REQUIREMENT.—For the  
23       purpose of applications filed subsequent to reopening  
24       under this section pursuant to section 240A of the Immi-  
25       gration and Nationality Act (8 U.S.C. 1229b), or any

1 other application for relief under the immigration laws (as  
2 defined in section 101(a)(17) of the Immigration and Na-  
3 tionality Act (8 U.S.C. 1101(a)(17))), removal, deporta-  
4 tion, exclusion, or voluntary departure shall not be consid-  
5 ered to toll any physical presence requirement.

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