

117TH CONGRESS
1ST SESSION

H. R. 536

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2021

Mr. GARCÍA of Illinois (for himself, Ms. JAYAPAL, Ms. PRESSLEY, Ms. BASS, Mr. ESPAILLAT, Ms. SCHAKOWSKY, Mrs. WATSON COLEMAN, Mr. RUSH, Ms. NORTON, Ms. MCCOLLUM, Ms. OCASIO-CORTEZ, Mr. LOWENTHAL, Ms. GARCIA of Texas, Ms. CLARKE of New York, Mr. DANNY K. DAVIS of Illinois, Mr. MCGOVERN, Ms. OMAR, Mr. BLUMENAUER, Mr. CÁRDENAS, Mr. POCAN, Ms. TLAIB, Mr. VARGAS, Ms. LEE of California, Ms. ESCOBAR, Mr. TAKANO, Mr. JONES, Mr. BOWMAN, Ms. BUSH, Ms. WILLIAMS of Georgia, Ms. VELÁZQUEZ, Mr. MEEKS, Mrs. NAPOLITANO, Mr. DESAULNIER, Ms. CHU, Mr. GRIJALVA, Mr. TORRES of New York, Ms. BARRAGÁN, Mr. JOHNSON of Georgia, Ms. NEWMAN, and Ms. MENG) introduced the following bill; which was referred to the Committee on the Judiciary

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 tact 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) ALTERNATIVES TO DETENTION.—

8 “(1) IN GENERAL.—The Secretary of Homeland
9 Security shall establish programs that provide alter-
10 natives to detaining aliens, which shall offer a con-
11 tinuum of supervision mechanisms and options, in-
12 cluding community-based supervision programs and
13 community support. The Secretary may contract
14 with nongovernmental community-based organiza-
15 tions to provide programs, which may include case
16 management services, appearance assistance serv-
17 ices, and screenings of aliens who have been de-
18 tained.

19 “(2) INDIVIDUALIZED DETERMINATION RE-
20 QUIRED.—In determining whether to order an alien
21 to participate in a program under this subsection,
22 the Secretary, or the immigration judge, as appro-
23 priate shall make an individualized determination to
24 determine the appropriate level of supervision for the
25 alien. Participation in a program under this sub-

1 section may not be ordered for an alien for whom it
2 is determined that release on reasonable bond or re-
3 cognizance will reasonably assure the appearance of
4 the alien as required and the safety of any other
5 person and the community.”.

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

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

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

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

1 aliens, or to arrest any alien in the United States,
2 if—

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

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

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

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

1 (1) in section 235(b)(1)(B)(ii)—

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

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

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

8 (3) in section 235(b)(2)(A)—

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

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

14 (4) by striking section 236A;

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

17 (6) in section 506(a)(2)—

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

21 (B) in subparagraph (A)—

22 (i) in the matter preceding clause (i),
23 by striking “lawfully admitted for perma-
24 nent residence”;

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

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

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

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

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

10 “(2) INITIAL CUSTODY REDETERMINATION
11 HEARING.—

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

17 “(B) PRESUMPTION OF DETENTION.—For
18 purposes of the hearing under subparagraph
19 (A), the alien shall be detained during the re-
20 moval period unless the alien can show, by a
21 preponderance of the evidence, that the alien’s
22 removal is not reasonably foreseeable and that
23 the alien does not pose a risk to the safety of
24 any individual or to the community.”;

25 (3) in paragraph (3)—

1 (A) in the paragraph heading, by striking
2 “90-DAY” and inserting “60-DAY”; and

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

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

13 (5) by striking paragraph (7) and inserting the
14 following:

15 “(7) SUBSEQUENT CUSTODY REDETERMINA-
16 TION HEARINGS.—

17 “(A) IN GENERAL.—The Government may
18 request a subsequent redetermination hearing
19 before an immigration judge seeking continued
20 detention for an alien ordered to be detained
21 pursuant to paragraph (2) who has not been re-
22 moved within the removal period.

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

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

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

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

18 **TITLE II—STATUTE OF**
19 **LIMITATIONS**

20 **SEC. 201. TIME FOR COMMENCING REMOVAL PRO-**
21 **CEEDINGS.**

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

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

9 “(B) This paragraph shall apply to any removal pro-
 10 ceeding resulting in an order of removal before the date
 11 of the enactment of the New Way Forward Act as if in
 12 effect on the date on which the removal proceeding was
 13 commenced.”.

14 **TITLE III—LIMIT CRIMINAL-** 15 **SYSTEM-TO-REMOVAL PIPELINE**

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

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

- 20 (1) by striking subparagraph (A); and
- 21 (2) by redesignating subparagraphs (B)
 22 through (I) as subparagraphs (A) through (H), re-
 23 spectively.

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

4 (1) in subparagraph (A)—

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

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

8 (C) in clause (iv), as so redesignated, by
 9 striking “Clauses (i), (ii), and (iii)” and insert-
 10 ing “Clauses (i) and (ii)”;

11 (2) by striking subparagraph (B); and

12 (3) by redesignating subparagraphs (C) through
 13 (F) as subparagraphs (B) through (E), respectively.

14 **SEC. 302. DEFINITIONS.**

15 (a) AGGRAVATED FELONY.—Section 101(a)(43) of
 16 the Immigration and Nationality Act (8 U.S.C.
 17 1101(a)(43)) is amended—

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

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

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

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

4 (5) in subparagraph (P)—

5 (A) by striking “(i)”; and

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

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

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

15 (8) by striking the last sentence.

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

19 (1) in subparagraph (A), by striking “court”
20 and all that follows through “to be imposed.” and
21 inserting the following: “court. An adjudication or
22 judgment of guilt that has been dismissed, ex-
23 punged, sealed, deferred, annulled, invalidated, with-
24 held, or vacated, or where a court has issued a judi-
25 cial recommendation against removal, or an order of

1 probation without entry of judgment or any similar
2 disposition, shall not be considered a conviction for
3 purposes of this Act. No judgment on appeal or
4 within the time to file direct appeal shall be deemed
5 a ‘conviction’ for the purposes of this Act.”; and

6 (2) in subparagraph (B)—

7 (A) by inserting “only” after “deemed to
8 include”; and

9 (B) by striking “or confinement” and all
10 that follows through the period at the end and
11 inserting “ordered by a court of law. Any such
12 reference shall not be deemed to include any
13 suspension of the imposition or execution of
14 that imprisonment or sentence in whole or in
15 part.”.

16 (c) PARTICULARLY SERIOUS CRIME.—Section
17 208(b)(2)(B)(i) of the Immigration and Nationality Act
18 (8 U.S.C. 1158(b)(2)(B)(i)) is amended to read as follows:

19 “(i) CONVICTION OF AGGRAVATED
20 FELONY.—For purposes of clause (ii) of
21 subparagraph (A), section 241(b)(3)(B), or
22 any other provision of this Act, only an
23 alien who has been convicted of an aggra-
24 vated felony for which a term of imprison-
25 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 National Act (8 U.S.C.
8 1101 et seq.), any denial of a motion to reopen or recon-
9 sider submitted pursuant to this section is subject to de
10 novo judicial review in a Federal district court having ju-
11 risdiction over the applicant’s residence or, in the case of
12 an applicant who was removed from the United States,
13 the last known residential address of the applicant in the
14 United States.

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