



BACKGROUNDER

WHY WE NEED A NEW WAY FORWARD

Our current immigration laws disproportionately target, jail, and rip apart families of color. It does not have to be this way: we can adopt bold solutions that address systemic racism in our institutions and uplift values of fairness and caring for our neighbors.

In 1996, anti-immigrant laws firmly tied together the racist criminal legal system and the detention and deportation of immigrants, especially immigrants of color. These 1996 laws combined with other laws passed as early as the 1920s by an “unrepentant” white supremacist Senator, and drove the mass detention and deportation of the last 25 years. They:

- Explicitly created programs for collaboration between local law enforcement and immigration enforcement officials;
- Created extremely broad and vague definitions to trigger deportation;
- Stripped immigration judges of discretion to grant relief or forgo deportation based on individual circumstances;
- Vastly expanded the situations where detention was mandatory;
- Led to permanent banishment by separating families forever, with no hope of reunification;
- Stopped immigrants from presenting evidence about why they should stay, and
- Criminalized the very act of migration

There is a growing awareness that our criminal legal system must be reformed. However, our racist and outdated immigration laws have remained virtually unchanged for decades. The result of this failure to change our laws has had predictable results:

- Black, brown, and Southeast Asian immigrants are racially profiled and far more likely to be arrested, detained, and deported on criminal grounds than other immigrants.
- Immigrants are indiscriminately incarcerated for long periods of time in prisons owned or managed by private prison corporations that lack oversight, leading to abuse including physical and sexual violence.
- Laws from the early 1900s are used to prosecute and incarcerate thousands of immigrants seeking safety, freedom, and opportunity.

The New Way Forward Act addresses these harms and updates our immigration laws to protect our communities by:

- Ending mandatory detention;
 - Restoring judicial discretion and ending certain summary deportations;
 - Limiting the criminal legal system-to-deportation pipeline;
 - Decriminalizing migration;
 - Implementing a five year statute of limitations for removal based on old criminal convictions;
 - Ending entanglement between federal immigration enforcement and local law enforcement; and
 - Creating an opportunity to come home for people previously deported.
- This backgrounder further explores the problems with our current system and the devastation they have caused, and offers a blueprint for positive change that challenges white supremacy embedded in current laws—illustrated by stories of three people who have lived it.

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PROBLEM: RACIST POLICING PRACTICES FEED INTO A RACIST IMMIGRATION SYSTEM

Practices like stop-and-frisk, broken windows policing, and racially-driven vehicular stops can lead to deportation. Racial profiling results in unequal rates of arrests—and funnels people into the deportation system.

**A BLACK PERSON
IS ALMOST
10X
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WHITE PERSON TO
BE ARRESTED FOR:**

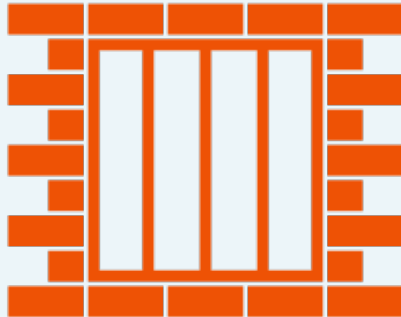
**LOITERING, DISORDERLY
CONDUCT, TRESPASSING,
MARIJUANA POSSESSION**

- Nearly all drug offenses, including marijuana possession offenses, can result in devastating immigration consequences, including deportation.
- Although only 7% of non-citizens are Black they represent 20% of people in deportation proceedings on “criminal grounds.”
- Latinx individuals are imprisoned at 1.3 times the rate of whites.
- Southeast Asian immigrants are at least 3 to 4 times more likely to be deported for an old criminal conviction than other immigrants.
- These injustices are exacerbated through collaboration between local police and ICE, which makes it difficult for immigrants to move freely in their communities and further undercuts confidence in law enforcement.

SOLUTION: We must stop state and local law enforcement officers from acting as extensions of ICE and sharing information with ICE. We must also ensure that criminal convictions like drug offenses do not lead to deportation.

PROBLEM: PROFIT AND PERVERSE INCENTIVES DRIVE DETENTION

Immigration detention is mass incarceration: immigrants wear the same jumpsuits and shackles, are subjected to the same coercive techniques including solitary confinement, and suffer physical and sexual violence. Despite broad bipartisan consensus that it is time to reduce mass incarceration, immigration detention has become the fastest growing incarceration system in the U.S., including through ICE's so-called "Alternatives to Detention" (ATD) programs that only increase the surveillance and policing of immigrant communities.



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- ICE has the power to detain many immigrants—often without even a bond hearing—for the duration of their deportation proceedings.
- Since the creation of ICE in 2003, more than 200 people have died in ICE custody. In the 2020 fiscal year, 21 people died in ICE custody—the highest death toll in 15 years. In FY 2021 and FY 2022, 9 additional people died in ICE custody.
- In one year, more than 48,800 complaints were filed against detention facilities for a lack of access to legal counsel, sexual violence and abuse, and substandard conditions and medical care.
- 79% of people in ICE custody are held in immigration jails owned or managed by private prison corporations, criticized for their utter lack of oversight. Perverse financial incentives are endemic to the detention system. Local governments are also incentivized to cooperate with ICE and build or expand detention facilities as a means to bring in more funding for their dwindling budgets.

SOLUTION: It is time to end mandatory “no-bond” immigration detention and facilities that profit off of putting people in cages. In addition to releasing immigrants from detention - whether from physical jails or electronic monitoring - we must provide them with access to the community-based services and resources they need to fight their immigration case and thrive in their communities.

PROBLEM: JUDGES FORCED TO DEPORT

The 1996 laws tie judges' hands so much that many immigration hearings amount to little more than rubber-stamping an ICE agent's charges.

The 1996 laws frequently prohibit immigration judges from considering:

- Whether an immigrant is a veteran, sole caregiver to minor U.S. citizen children, employer of U.S. citizens, long-term resident, teacher, victim of domestic abuse, patient with severe health problems, homeowner, parent, grandparent, caregiver for elderly parents, community leader, or example of successful transformation.
- Just one conviction within seven years of entering the U.S. make a green card holder subject to mandatory deportation.

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- In these cases, a judge is forbidden from considering any positive factors in the individual’s life, including family ties, recent conduct, or transformation.
- At the same time, an immigrant is prohibited from providing evidence of individualized circumstances.

SOLUTION: We need to restore due process and protect people from arbitrary abuses. Immigration judges must have the power to consider the individual circumstances of each person’s life and ensure they can stay in the U.S.

PROBLEM: ARBITRARY DEFINITIONS LEAD TO EXCESSIVE PUNISHMENT

The 1996 laws allow and often force judges to deport people based on terms so unfairly expansive they have given rise to constitutional challenge. So-called “aggravated felonies” and “crimes of moral turpitude” can deprive a person of any defense to deportation. The only factor a judge may consider is a conviction, even if it is decades old and even when there is no jail sentence imposed.



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- “Aggravated felony” is a vague term that includes 21 categories, encompassing hundreds of offenses. Many are not even felonies.
- A conviction can count as an “aggravated felony” even if the sentence was suspended, no jail time was required, the conviction was expunged or sometimes even if the person was pardoned.
- Unlike other areas of law, people can be targeted decades after a conviction for harsh additional punishment of detention and deportation.
- A pardoned, vacated, expunged, sealed, or otherwise modified conviction is often still a “conviction” for immigration purposes, undercutting the commitment to reentry that many cities and states are making.
- The costs of the 1996 Laws and their associated arrests, detentions, and deportations are brutally borne by the family left behind.

SOLUTION: It’s time to repeal these abusive categories. Community members should be able to move forward with their lives without fear that an old conviction could lead to deportation years later. Additionally, people previously ordered deported under these unjust laws should be able to apply for the opportunity to come home.

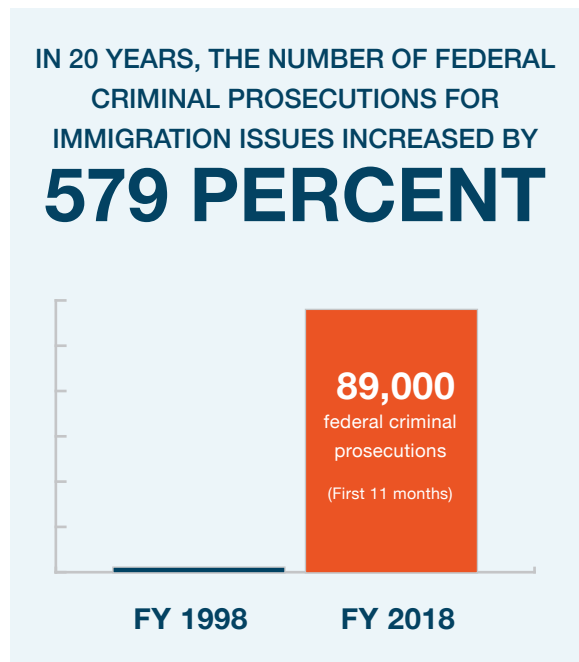
PROBLEM: WHITE SUPREMACIST LAWS USED TO PROSECUTE AND IMPRISON IMMIGRANTS

A troubling section of federal law (8 US Code § 1325 and 1326) written by an “unrepentant” white supremacist Senator in 1929 has worked in tandem with the 1996 laws to further drive mass incarceration. In recent decades, this provision has fueled a sharp spike in federal prosecutions,

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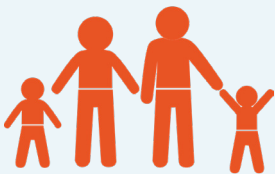
targeting people who cross the border seeking safety, freedom, and opportunity—and people who are coming home after unjust deportation. Federal prosecutions and prison sentences are an extra punishment in addition to unjust detention and deportation through the immigration system.

- Prosecutions for immigration-related offenses are charged more than any other category of federal crimes. In FY2018, before the federal government instituted the Title 42 expulsion policy, prosecutions for immigration violations accounted for more than 60% of all federal prosecutions. Since Title 42 has been in place, the percent has dropped, but in FY2021, these immigration-related prosecutions still made up 34% of all federal prosecutions—still the most charged category of federal crimes. With over 10,000 people in federal custody for such offenses, this has fueled mass incarceration despite growing consensus that it must end.
- These troubling provisions have also enabled “assembly line” hearings of dozens of shackled people at a time under the past three administrations—and the infamous tearing of children from parents at the border under Trump. People suffer—but the prison industry benefits.



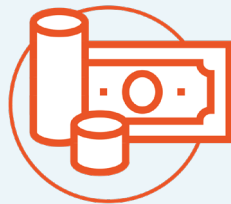
SOLUTION: We need to end federal prison sentences for people who cross the border seeking safety and freedom or trying to come home. Removing this punitive provision is an important step, but we’ll still have much more work to do. We should honor the vision and voices of border communities, and lift up policies that recognize the humanity of people who are migrating.

THE DEVASTATING CONSEQUENCES OF DETENTION AND DEPORTATION INCLUDE:



FAMILIES TORN APART

tens of thousands of U.S. citizen children have a parent who is detained or deported every year.



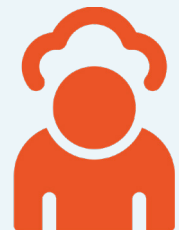
LOSS OF INCOME

family income drops by 70% on average after an ICE arrest.



HIGHER RISK OF HOMELESSNESS

and food insufficiency for family members left behind.



INCREASED RISK OF DEPRESSION

anxiety, and PTSD in children.

Across the country, community members who have been hurt by detention and deportation are organizing to repair the harm caused by these unjust laws. Following are three of their stories.



HOWARD BAILEY came to the U.S. in 1989 at the age of 17 as a Lawful Permanent Resident with his U.S. Citizen mother. After graduating from high school he joined the navy during which time he was awarded the National Defense Service Medal. In 1995, shortly after his return from the Persian Gulf, Howard was convicted of a first-time drug offense. With Virginia's strict mandatory minimum sentencing laws for drug crimes, Howard didn't have many options. His lawyer advised him to plead guilty and take 15 months in a state work camp rather than risk going to trial and a much higher sentence.

After completing his sentence, Howard returned to his family and worked hard to rebuild his life. He devoted himself to his loving wife and two children, started two small businesses, and employed seven people. In 2005 Howard applied to become a US citizen, and disclosed his old conviction. In 2010, after five years of delays, his application was denied. At 6AM one morning ICE agents handcuffed and detained him at his home in front of his wife and children.

After two years fighting his case in immigration detention, far away from his family, Howard was deported to a country he hadn't seen in 24 years. Howard lives in constant fear of violence as deportees are stigmatized in Jamaica. He is unable to support his family, his business has shut down, his home is under foreclosure, and his teenage children are struggling emotionally and academically without him. Howard remains in Jamaica, and the current immigration laws provide him with almost no option for an opportunity to return home and be reunited with family.



CECILIA EQUIHUA is a public defender in Los Angeles. Her father, Francisco Equihua Lemus, was first deported in 2001 after serving four years in a California prison for a drug offense. Cece was just seven years old when her dad went to prison. She and her little sister Lili were living in Las Vegas with their mother when Francisco returned to the U.S., determined to be close to his daughters and support them.



Finding work in Las Vegas without documents proved difficult, so Francisco settled in Los Angeles where he found stable employment as a construction worker. He chose to live in a shed in someone's backyard in order to be able to contribute to his daughters' support. Every weekend, for nine years, he drove to Las Vegas to take Cece and Lili to church.

In November 2010, while driving home from visiting his daughters, Francisco was pulled over by the highway patrol in Rancho Cucamonga, California, for a broken tail light. A fingerprint check at the local police station led to a call to immigration authorities.

Back in Mexico again, Francisco was desperate to be reunited with his daughters. But his attempt to return once more went haywire. Cece received a call from relatives that he had gone missing. Fearing the worst, she postponed a college philosophy exam to try to hunt him down. Two weeks later, he called her from the Central Arizona Detention Center to say he had been apprehended and was facing felony re-entry charges. Sentenced to serve two years, he was then transferred to a private prison operated by CoreCivic in Milan, New Mexico. Living now in Michoacán after his third deportation, Francisco stays in touch with his daughters by phone, but grieves deeply for having lost them again.



RAVI RAGBIR has lived in the U.S. for nearly three decades since receiving his green card in 1994. Ravi is a nationally-recognized immigrant rights activist who has dedicated his life to the dignity and well-being of immigrants in New York City and nationwide. Ravi was detained and ordered deported in 2006 because of a single fraud conviction in 2001 for which he already served his sentence. Because his conviction was considered an “aggravated felony”, he was not able to present evidence to the judge about his character and community ties. For almost two years, he was mandatorily detained without bail, including time spent halfway across the country in Alabama, far from his family. Since his release from immigration detention, Ravi has challenged the immigration judge’s order. He has also become one of New York’s most prominent immigrant rights activists. He has trained hundreds of volunteers to accompany immigrants to ICE check-ins and support them in court proceedings, has met with elected officials to discuss detention and deportation policy, and has organized immigrants and faith communities to advocate for immigrant rights, including as the Executive Director of the New Sanctuary Coalition. Ravi was recognized with the Immigrant Excellence Award by the New York State Association of Black and Puerto Rican Legislators, given to those who show “deep commitment to the enhancement of their community.” In recognition of his value to the community, Congresswoman Nydia Velázquez introduced a private bill to allow Ravi to remain here. Despite his commitment to his family and community, and the support by elected officials, Ravi remains under a deportation order. In January 2018, ICE suddenly arrested Ravi and attempted to deport him. He was able to fight this action but still remains under a deportation order that threatens to tear him away from his family and community here in the U.S.