



The FIRST STEP Act's Harmful Impact on Immigrant Communities

As organizations that advocate for the rights of immigrants, we support the many civil society and criminal justice reform organizations opposing the [FIRST STEP Act of 2018 \(H.R. 5682\)](#). [Civil rights advocates agree](#) that this bill does not advance meaningful holistic criminal justice reform. Additionally, we are deeply troubled that the bill specifically excludes immigrants from receiving the so-called benefits of these mitigating policies.

The bill excludes from its reforms most undocumented immigrants and many long-time lawful permanent residents.

The bill excludes all people who are “inadmissible or deportable” under the immigration laws from obtaining time credit benefits. These carve-outs will remove most non-citizens from time credit eligibility, including: undocumented people who remained in the United States longer than permitted under a visa but had no previous involvement in the criminal justice system; and long-time lawful permanent residents with any criminal conviction triggering removability, including offenses such as marijuana possession. Non-citizens can be deportable or inadmissible but still eligible for relief under our immigration laws. It is especially short-sighted to deny them equal access to rehabilitative programs.

In addition to exacerbating the criminal justice system’s disparate treatment of communities of color, these provisions are entirely unworkable and raise serious due process concerns. Determinations of inadmissibility and deportability are complex questions of law, yet the bill does not specify who would make the legal determinations or according to what procedures.

This bill further criminalizes migration, and a significant percentage of those currently serving time in federal prison, by including certain illegal reentry convictions in the list of those offenses that disqualify individuals from receiving time credit.

Mass incarceration is a national failing that demands our attention. But advancing piecemeal reform that specifically exempts individuals from its protections on the basis of their citizenship will only do more harm. Moreover, the Trump administration is already rapidly advancing ways to target immigrants for federal criminal prosecutions. In 2015, half (49 percent) of all federal

prosecutions were for improper entry and re-entry prosecutions.¹ Almost a quarter of those in the Federal Bureau of Prisons (BOP) prison population are non-citizens (23 percent)². Now, Attorney General Sessions is enacting a zero tolerance policy regarding improper entry and re-entry, further expanding the net of prosecutions of immigrants. Any criminal justice reforms must address these devastating policies and impact this growing percentage of the federal prison population, instead of including provisions that deliberately exclude them.

The bill codifies into law existing problematic policies.

Bureau of Prisons currently treats detainers, which are requests from ICE to hold individuals to effectuate transfer to ICE custody, like warrants. This bill codifies this problematic policy into law and requires that ICE take custody of immigrants with detainers in pre-release custody. Given the increased targeting of immigrants at this time, codifying problematic policies like this undercuts advances made by communities around the country to fight the impact of detainers, which are unconstitutional and unjust.

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¹ See Justice Strategies. *INDEFENSIBLE: A DECADE OF MASS INCARCERATION OF MIGRANTS PROSECUTED FOR CROSSING THE BORDER*. July 2016.

https://justicestrategies.org/sites/default/files/publications/indefensible_book_web.pdf

² *Id.*