

The Honorable Jerrold Nadler
Chair, House Committee on the Judiciary
2132 Rayburn HOB
Washington, DC 20515

The Honorable Lucille Roybal-Allard
2083 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

The Honorable Zoe Lofgren
Chair, Subcommittee on Immigration and
Citizenship, House Committee on the
Judiciary
1401 Longworth House Office Building
United States House of Representatives
Washington, DC 20515

The Honorable Nydia Velázquez
2302 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

The Honorable Yvette Clarke
2058 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

February 8, 2021

RE: Criminal Bars to Legalization in H.R. 6, the Dream and Promise Act of 2019

Dear Chair Nadler, Chair Lofgren, Congresswoman Roybal-Allard, Congresswoman Velázquez, and Congresswoman Clarke:

We, the undersigned organizations, write to respectfully urge you to amend the criminal bars to eligibility in H.R. 6, the Dream and Promise Act of 2019, to ensure that the bill is more inclusive and that a waiver is available for all grounds of exclusion. We believe these changes are necessary to bring the bill in line with principles of racial justice and fairness.

First, we would like to thank you for your longstanding commitment and leadership on the DREAM Act and efforts to fix our enforcement system. We share your commitment to getting the best version of the American Dream and Promise Act signed into law. In that spirit, we request that you bring the American Dream and Promise Act legislative text in line with the New Way Forward Act, and align it with President Biden's U.S. Citizenship Act of 2021 which we understand will not create any new criminal bars to legalization on top of the existing grounds of inadmissibility.

Making these changes is critical to ensuring that congressional leadership and the White House are presenting a unified vision of inclusive legalization. Eliminating the additional criminal bars to status will ensure that otherwise eligible people will not suffer unjust double punishment. It will also ensure a faster and fairer implementation process.

We applaud President Biden's commitment to racial justice and acknowledgment that racial bias permeates our criminal legal system. [Indisputably](#), Black and brown communities face disproportionately higher rates of arrest, prosecution, and incarceration. The [same tough on crime era policies](#) of the 1990's that brought us mass incarceration and the rise in private prisons also dramatically expanded the range of convictions that made a noncitizen deportable and inadmissible. When Congress imposes criminal bars to legalization, it also imposes the racially biased consequences of the criminal legal system twice over, and often on the communities [most impacted](#) by structural racism. Even apart from the inherent racial bias, criminal legalization bars constitute a form of [double punishment](#): people who have already completed their sentences then face the penalty of *never* achieving permanent status in this country and the perpetual threat of exile. Such barriers and threats frustrate the processes of rehabilitation and healing and run contrary to the goals of criminal justice reform.

A. H.R. 6 should conform its standard to the New Way Forward Act.

Any criminal bars graft the racism of the criminal legal system onto the immigration system. Incorporating the lessons of the criminal justice reform movement, the [New Way Forward Act](#) (re-introduced on January 26) begins to undo the harms caused by the cruel and excessively punitive 1996 laws by amending the grounds of inadmissibility and deportability in current federal immigration law (which provide the basis for criminal bars to legalization under H.R. 6). Particularly at issue here, the New Way Forward Act repeals two especially broad and harmful grounds of inadmissibility: those that exclude individuals for any drug-related offense or for any offense deemed a "crime involving moral turpitude," (hereinafter "CIMT").

Consistent with that approach, grounds of inadmissibility that conform with the New Way Forward Act would be limited to subsections (2)(B), (2)(C), (2)(D)(ii), 2(E), 2(G), 2(H), 2(I) or (3) of section 212(a) of the Immigration and Nationality Act.

The [Reuniting Families Act](#), which was introduced in the last Congress, also incorporates a universal waiver, providing that any ground of inadmissibility or deportability may be waived for family unity, humanitarian, or other factors in the public interest. Providing the opportunity for those applying for benefits to seek a second chance is critical to ensuring that any legalization program gives every person a fair chance to seek protection.

H.R. 6 likewise should adopt the same inadmissibility grounds and waiver described above, showing a united front in pushing for broad, bold, and equitable legalization. Doing so solidifies Democrats' position as being on the right side of history and makes a clear and unequivocal statement that the 11 million undocumented people in this country should have an unobstructed path to citizenship.

At the very least, H.R. 6 should be amended to reflect the standard put forth in President Biden’s bill, the U.S. Citizenship Act of 2021 (hereinafter “the USCA Bill”). Rather than impose the excessively punitive criminal bars found in HR6, we understand that the USCA Bill does not add any new criminal bars to those already imposed by **INA § 212(a)**. Under current law, individuals seeking to adjust their status to lawful permanent resident on the basis of marriage, family, or employment must show that they have not been convicted of any of the disqualifying crimes or categories of crimes under that section. Thus, the USCA Bill subjects would-be applicants to the same requirements green card applicants currently face. Additionally, and crucially, we also understand that the USCA Bill includes a **universal waiver**, which would permit USCIS to grant status to individuals who merited an exception based on the equities of their case.

In 2019, H.R. 6 was an important showing of solidarity with DACA-recipients and TPS-holders in the face of the Trump Administration’s cruel and racist attacks. However, in 2021, the legislation should go farther and demand a broad and equitable legalization program. Amending H.R. 6 to match the eligibility requirements of the New Way Forward Act or at the very least, the USCA Bill, would show that united front.

B. The criminal bars of INA 212(a) are already extremely punitive.

While the USCA Bill makes great strides towards a more equitable approach to legalization, the criminal bars it imposes are still extremely punitive. There is no reason to impose additional barriers to citizenship on top of them. *Any* criminal bars to legalization impose a harsh and often disproportionate penalty; import the inherent racial bias of the criminal legal system into the immigration system; and inflict a double punishment. Moreover, INA § 212(a) already encompasses a broad list of offenses, including:

- Any “crime involving moral turpitude” (with a one-time exception if the maximum sentence for the sole offense committed was \leq 1 year and the actual sentence imposed was \leq 6 months)
- 2 or more offenses with an aggregate sentence of $>$ 5 years
- *Any* drug offense
- Any person the government has “reason to believe” engaged in drug trafficking
- Prostitution-related offenses
- Money laundering
- Human trafficking

This list encompasses very minor offenses. It is important to note that “crime involving moral turpitude” has no statutory definition, and has been interpreted to include minor property crimes, including shoplifting and using a fake bus pass. Therefore, because the exception only applies to

one offense, a person twice convicted of shoplifting and sentenced to no jail time would still be barred. Meanwhile, the law does not provide for *any* exceptions for drug convictions, no matter when received, which runs counter to major legalization and reform initiatives of the past decade.

The version of H.R. 6 that passed the House would impose these grounds *and also* impose the grounds of deportability found at INA § 237, as well as *any* felony, *any* three misdemeanors, or *any* crime of domestic violence -- no exceptions. The deportability grounds at INA § 237 include:

- Any 2 crimes involving moral turpitude
- Any “aggravated felony” offense
- Any drug offense (with an exception for a first time marijuana possession)
- Any firearms offense
- Any domestic violence or stalking offense, or any violation of protective order
- Any child abuse or neglect offense

Like INA § 212(a), this list reaches very minor conduct.

H.R. 6 would also require a “secondary review” process that gives the government the ability to deny an application based on a “public safety risk” finding that can be triggered by any conviction; juvenile delinquency proceedings; and even unproven, alleged conduct that is deemed gang-related. These provisions would harm exactly the communities that H.R. 6 aims to help, and would further entrench the racial inequities of the criminal legal system. The “secondary review” process would inevitably discriminate against young people of color who are [already targeted](#) based on national origin, neighborhood, and appearance, and result in [biased decision-making](#) that relies on “gang databases” repeatedly proven to be unreliable and riddled with biases. Youth often have to explain in immigration court that having tattoos or wearing a soccer jersey from El Salvador are not indicative of gang membership; a new legalization program offers the opportunity to move *away* from these [shameful due process violations](#). Twenty-six juvenile justice and child welfare organizations [wrote](#) to House Judiciary Chairman Jerrold Nadler in May 2019 urging him to oppose H.R. 6 unless these discretionary bars were removed.

Layering additional criminal bars to legalization beyond those found in INA § 212(a) and the USCA Bill is at odds with principles of racial equity and due process. Moreover, given the potentially extreme consequences of INA § 212(a), a **universal waiver**, such as that reportedly provided for in the USCA Bill and included in the Reuniting Families Act, a bill you cosponsor, is absolutely necessary.

C. H.R. 6's multiple layers of review could lead to inefficient and unfair implementation.

As written, H.R. 6's multiple grounds of exclusion and especially its "secondary review" will frustrate equitable and speedy implementation. As discussed above, H.R. 6's "secondary review" essentially provides a discretionary catch-all ground for denial. That degree of discretion invites disparate and discriminatory adjudication: different processing centers, indeed, different officers, will apply that ground differently, and some of them unfairly.

Moreover, the "secondary review" would also dramatically slow implementation of H.R. 6, should it become law. USCIS is already facing extreme backlogs; for example the current estimated processing time for a U Visa application is approximately *five years*. Additional layers of scrutiny only extend processing times. Furthermore, H.R. 6's multiple and overlapping criminal bars will increase the complexity of adjudication, and with it the time required to approve an application. The "secondary review" compounds this problem, adding a whole layer of bureaucracy to an already difficult process.

Rather than invite discriminatory exercises of discretion and add to the long list of backlogged applications for relief, H.R. 6 should simplify its implementation by streamlining its review process and amending its criminal bars to conform to the New Way Forward Act, or at the very least, the USCA Bill.

We are in an exciting moment of opportunity. We hope that you will work with us to ensure that H.R. 6 fulfills its promise and helps over two million people achieve citizenship.

Sincerely,

ACCESS

Adelante Alabama Worker Center

Adhikaar

Advancement Project, National Office

Advocates for Basic Legal Equality, Inc.

Advocating Opportunity

African American Ministers In Action

African Communities Together

African Public Affairs Committee

Aldea - The People's Justice Center

Alianza Americas

Alianza Nacional de Campesinas
Alliance4Action Immigration Action Group
America's Voice
American Civil Liberties Union
American Friends Service Committee
American Immigration Council
American Immigration Lawyers Association
American-Arab Anti-Discrimination Committee (ADC)
Americans for Immigrant Justice
Arab American Association of New York
Arab Resource & Organizing Center (AROC)
Arkansas United
Arriba Las Vegas Worker Center
Asian American Federation
Asian American Federation of Florida
Asian American Legal Defense and Education Fund (AALDEF)
Asian American Organizing Project
Asian Americans Advancing Justice - Los Angeles
Asian Americans Advancing Justice - Los Angeles
Asian Americans Advancing Justice | AAJC
Asian Americans Advancing Justice | Chicago
Asian Americans Advancing Justice-Atlanta
Asian Pacific Community in Action
Asian Pacific Institute on Gender-Based Violence
Ayuda
Bend the Arc Jewish Action
Black Alliance for Just Immigration
Black and Brown United in Action
Bridges Faith Initiative
California Collaborative for Immigrant Justice
Capital Area Immigrants' Rights (CAIR) Coalition
CASA
Center for Constitutional Rights
Center for Immigrant Representation

Center for Law and Social Policy (CLASP)
Center for LGBTQ Economic Advancement & Research
Center for Popular Democracy
Central American Resource Center - CARECEN- of California
Centro de los Derechos del Migrante, Inc. (CDM)
Chapman & Roberts, P.A.
Church Council of Greater Seattle
Church World Service
Cleveland Jobs with Justice
Coalition for Humane Immigrant Rights (CHIRLA)
Colectiva Legal del Pueblo
College and Community Fellowship
Colorado Immigrant Rights Coalition
Community Action Board of Santa Cruz County, Inc.
Community Change Action
Community Justice Alliance
Connecticut Shoreline Indivisible
Cooperative Baptist Fellowship
Dady Law Group LL
De Leon, Nestor & Torres - Attorneys
Defending Rights & Dissent
Deportation Defense Clinic at Hofstra Law School
Detention Watch Network
Disciples Refugee & Immigration Ministries
Dreamer Fund
Drug Policy Alliance
Earth Day.org
Empowering Pacific Islander Communities (EPIC)
End Streamline Coalition, Tucson AZ
Equal Justice Society
Equality California
Equality Labs
Esperanza Immigrant Rights Project
Fair Immigration Reform Movement (FIRM)

Faith in Public Life
Familia: Trans Queer Liberation Movement
Families Belong Together
Families for Freedom
Farmworker Association of Florida
FLIC Votes
Florence Immigrant & Refugee Rights Project
Florida Asian Services
Florida Asian Services Alliance
Florida Immigrant Coalition
Florida Immigrant Coalition
Foreign Born Information & Referral Network
Franciscan Action Network
Freedom for Immigrants
Freedom Network USA
Friends Committee on National Legislation
Grassroots Leadership
Haitian Bridge Alliance
HANA Center
Health in Justice Action Lab, Northeastern University
Hispanic Federation
Human Rights Campaign
Human Rights Watch
iCountNM.gov
Illinois Coalition for Immigrant and Refugee Rights (ICIRR)
Immigrant and Non-Citizen Rights Clinic, CUNY School of Law
Immigrant Defenders Law Center
Immigrant Defense Advocates
Immigrant Defense Project
Immigrant Justice Corps
Immigrant Justice Network
Immigrant Law Center of Minnesota
Immigrant Legal Advocacy Project
Immigrant Legal Resource Center (ILRC)

Immigration Equality
Immigration Hub
Indivisible
Innovation Law Lab
Intercommunity Justice and Peace Center
Interfaith Council for Peace & Justice
Interfaith Movement for Human Integrity
Japanese American Citizens League
Jetpac Resource Center
Justice for Muslims collective
Justice For Our Neighbors-New York
KCS Korean Community Services
Kehilla Community Synagogue
Korean Community Services
Law Office of Linette Tobin
Law Office of Peggy J. Bristol
League of United Latin American Citizens (LULAC)
Legal Action Center
Legal Aid Justice Center
Legal Services for Children
Lideres del Futuro
Long Beach Immigrant Rights Coalition
Los Angeles LGBT Center
Louisiana Advocates for Immigrants in Detention
Mackins & Mackins LLP
Maine People's Alliance
Mainers for Accountable Leadership
Make the Road Connecticut
Make the Road Nevada
Make the Road New Jersey
Make the Road New York
Make the Road PA
Mano Amiga Smtx
Maria Baldini-Potermin & Associates, P.C.

Mariposa Legal - Indianapolis
Mazzoni Center
MEChA de SRJC
Mennonite Central Committee U.S. Washington Office
Meyer Law Office PC
Migrant Justice
Minnesota Interfaith Coalition on Immigration
National Asian Pacific American Women's Forum (NAPAWF)
National Association of Social Workers
National Association of Social Workers - Texas Chapter
National Black Justice Coalition
National Center for Lesbian Rights
National Council of Jewish Women
National Council of Jewish Women California
National Council of Jewish Women Contra Costa Section
National Council on Independent Living
National Domestic Workers Alliance
National Employment Law Project
National Equality Action Team (NEAT)
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project (NIPNLG)
National Justice for Our Neighbors
National Korean American Service & Education Consortium (NAKASEC)
National Lawyers Guild
National Lawyers Guild of Los Angeles
National Network for Arab American Communities
National Network for Immigrant & Refugee Rights
National Partnership for New Americans
Navigate MN
NCAAT In Action
NCJW Greater Long Beach & West Orange County
Neighbors Link
NETWORK Lobby for Catholic Social Justice

Nevada TPS Committee
New American Leaders Action Fund
New Mexico Immigrant Law Center
New Sanctuary Coalition
New York County Defender Services
New York Immigration Coalition
NM CAFE
NorCal Resist
Northern Illinois Justice for Our Neighbors
Northwest Immigrant Rights Project
NYU Immigrant Rights Clinic
Oasis Legal Services
OCA -- Asian Pacific American Advocates
OCA Asian Pacific Islander American Advocates Utah
OCA Greater Washington DC Chapter
OCA South Florida Chapter
OCA-Greater Houston
OneAmerica
Open Immigration Legal Services
Operation Restoration
Oregon Justice Resource Center
Oxfam America
Pangea Legal Services
Pennsylvania Immigration and Citizenship Coalition
People For the American Way
Progressive Leadership Alliance of Nevada
Project South
Public Counsel
RAICES
RAISE (Revolutionizing Asian American Immigrant Stories on the East Coast)
Raizes Collective
Reformed Church of Highland Park Affordable Housing Corp
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Rich Stolz, Executive Director, OneAmerica

Rocky Mountain Immigrant Advocacy Network
Safe Horizon
Sakhi for South Asian Women
SALUD-Multicultural Health Coalition of Storm Lake
Sampreshan Inc
San Bernardino Community Service Center
San Diego Chapter of the American Immigration Lawyers Association
Santa Clara County Public Defender's Office
Santa Fe Dreamers Project
SB Law Group LLC
SEIU-United Service Workers West
Services, Immigrant Rights & Education Network (SIREN)
Silberman School of Social Work at Hunter College CUNY
Silicon Valley De-Bug
Silver State Equality-Nevada
South Asian Americans Leading Together (SAALT)
South Bay People Power
Southeast Asia Resource Action Center
Southern Border Communities Coalition
Southwestern Law School Community Lawyering Clinic
SPLC Action Fund
St. Mark's Presbyterian Church
StoptheDrugWar.org
Students for Sensible Drug Policy
T'ruah: The Rabbinic Call for Human Rights
Tennessee Immigrant and Refugee Rights Coalition
The Advocates for Human Rights
The Bronx Defenders
The Door's Legal Services Center
The Leadership Conference on Civil and Human Rights
The Meyer Law Office, P.C.
The National Council for Incarcerated and Formerly Incarcerated Women and Girls
The Resurrection Project
The Sentencing Project

Transformations CDC
UC Irvine School of Law Immigrant Rights Clinic
UCLA Labor Center
UndocuBlack Network
Unidad Latina en Acción Connecticut
Unidos MN
Union for Reform Judaism
Unitarian Universalist Service Committee
United Front for Social Workers
United Stateless
United We Dream
University of Maryland Carey Immigration Clinic
UnLocal
Van Der Hout, LLP
VECINA
Vecindarios901
Vera Institute of Justice
Veterans for American Ideals
Virginia Civic Engagement Table
Vital Immigrant Defense Advocacy and Services
Washington Defender Association
Washtenaw Interfaith Coalition for Immigrant Rights
Western Front Indivisible
Willmoth Immigration Law, LLC
Wind of the Spirit Immigrant Resource Center
Workers Center of Central New York
Working Families United
Yemeni American Merchants Association
Young Center for Immigrant Children's Rights