

EXPLAINER & CHART

THE HARMFUL & RACIST IMPACT OF CRIMINAL EXCLUSIONS FROM LEGALIZATION

Under existing federal law, people who are applying for visas or to become lawful permanent residents or citizens already face extreme bars based on interaction with the criminal legal system. If a person has any of a wide range of criminal convictions, arrests, or sometimes even if the government just has “reason to believe” they have committed certain crimes, they are disqualified and are not be allowed to immigrate or to attain status. For example, currently anyone with *any* drug offense is typically ineligible for a green card, even if they are otherwise entitled to one, as is anyone with (with one small exception) a conviction for any “crime involving moral turpitude” — a broad definition that can include shoplifting. These exclusions double down on racism in the criminal legal system; doubly punish people; undermine reforms to the criminal legal system; and make getting lawful status harder for everyone. Unfortunately, instead of undoing the law’s current criminal bars, the citizenship bills that have been introduced add more bars that further entrench this punitive approach. If passed, all of these bills will disqualify many thousands of our community members, leaving them vulnerable to detention and deportation.¹

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THE IMPACT

1. THE CRIMINAL LEGAL SYSTEM IS INFECTED WITH RACIAL BIAS, AND CRIMINAL BARS IMPORT THAT RACIAL BIAS INTO THE IMMIGRATION SYSTEM.

Black and Brown people are [disproportionately more likely to be stopped, arrested, prosecuted, convicted, and sentenced to longer terms](#). When Congress excludes people from eligibility for status based on prior contact with the criminal legal system, it reproduces the racism endemic to that system, disproportionately impacting Black and Brown immigrants.

2. CRIMINAL BARS DOUBLY PUNISH PEOPLE FOR THE SAME CONDUCT.

Deportation and disqualification from status are extreme consequences. Deportation can be a permanent exile, and disqualification from status leaves people perpetually vulnerable to detention and exile. Meanwhile, people with legal status can live with greater stability. They are less vulnerable

¹ Some of the bills currently under consideration have also proposed some fixes to the Immigration and Nationality Act that would reduce some of the most extreme punitive consequences of criminal convictions, including by redefining the term “conviction” to exclude pardoned and expunged convictions, which currently still count for immigration purposes.

THE IMPACT (continued)

to workplace abuse or exploitation; they have greater access to formal education and higher-paying jobs; they have greater access to the social safety net; and eventually they can become citizens and vote. This stability benefits family members too: studies have shown that [children whose parents face detention and deportation have traumatic levels of stress](#). People who have been convicted of crimes have already been punished. Barring individuals with convictions from receiving status punishes them and their families twice, and with consequences that are extreme and disproportionate.

3. CRIMINAL BARS UNDERMINE REFORMS TO THE CRIMINAL LEGAL SYSTEM.

Increasingly, states are recognizing the urgency of reforms to the criminal legal system, to address systemic racism, to acknowledge and support people rebuilding lives, and to remove barriers to reentering society for people returning from jail and prison. People [succeed when they can access appropriate services and support](#), not when the fact of their conviction bars them from accessing jobs, housing, education, and health care — or lawful status. Excluding people from lawful status based on criminal system interactions flies in the face of these hard won lessons, frustrates states' efforts at reform, and prevents people with prior criminal system involvement from rebuilding lives with dignity in the country they know as home.

4. CRIMINAL BARS MAKE GETTING STATUS HARDER FOR EVERYONE.

USCIS already has [lengthy backlogs](#) for nearly all applications it processes. Imposing additional criminal bars means that USCIS agents will have to conduct lengthier and more complicated analyses of people's criminal records, in addition to the rest of a complex adjudication process. Because every state's laws are different, this can often be a complicated legal question. Additionally, criminal records are often inaccurate or hard to access. Besides subjecting people to criminal bars in addition to the ones that immigration law *already imposes*, one of the pending bills, the Dream Title of the Dream and Promise Act, adds an additional layer of screening and the discretion to reject an application for anyone who has even one misdemeanor conviction or whom the government suspects of gang involvement. The complicated criminal bar analysis and the added screenings risk depriving people of due process, as they may not be able to respond to USCIS's wrongful denials. They will also make the process lengthy and burdensome for all applicants, and just add to the agency's backlog. Insisting on criminal bars will punish everyone who would otherwise benefit from these bills, and keep people undocumented longer.

5. WAIVERS DO NOT ADEQUATELY ADDRESS THE PROBLEM.

Many of the current legalization proposals contain waivers — that is, the opportunity to apply for an exemption from the bars. These waivers vary by bill (see chart that follows), but all of them leave some categorical bars in place. No one should be categorically barred from legalization. While better than no exceptions at all, waivers are also not a real solution to the problem: they are not available to everyone, and they are hard to obtain even for those people who are eligible for them. People need lawyers to have any chance at all of getting a waiver, and most people who are facing detention and deportation do not have counsel. They greatly increase the complexity of the application for people who would need them, and they are still up to the discretion of immigration agents who determine whether someone qualifies for a waiver. Those decisions are also impacted by the systemic racism that infects the immigration system generally.

APPENDIX: CHART OF CRIMINAL EXCLUSIONS IN PENDING LEGALIZATION BILLS¹

BILL	USCA 2021	HR-6 DREAM TITLE	HR-6 PROMISE TITLE	ESSENTIAL WORKERS	FARM WORKERS
Existing Crim Bars	212(a)(2) ² (but amends to add second petty offense exception & general waiver)	212(a)(2)	212(a)(2)	212(a)(2) (but amends to add second petty offense exception & general waiver)	212(a)(2)
Additional Bars	One felony (except status related); 3 misdemeanors (except where from same conduct, cannabis possession crimes where state has legalized, civil disobedience, and minor traffic offenses)	One felony; 3 misdemeanors; secondary review process to assess “public safety threat” and potential gang membership	Must also be eligible for TPS under current law which means that one felony or more than one misdemeanor conviction will bar a person	One felony (except status related); 3 misdemeanors (except where from same conduct, cannabis possession crimes where state has legalized, civil disobedience, and minor traffic offenses)	One felony; any aggravated felony; 2 misdemeanors involving moral turpitude; 3 or more misdos of any kind (not arising out of same conduct)
Waivers	Can waive drug, CIMT ⁴ , and prostitution grounds of 212(a)(2); can waive felony if person has no other offenses for 10 years prior to application; one misdemeanor if no other offenses for 5 years preceding application; two misdemeanors if no offenses for 10 years prior to app. Not clear whether waivers stack.	Can waive misdemeanor convictions that fall under drug, CIMT, and prostitution grounds of 212(a)(2), but not if conviction would otherwise bar because it is a third misdemeanor ; can waive one misdemeanor if no other offenses for 5 years preceding application; two misdos if no offenses for 10 years prior to app No felony waiver; no general waivers	Can waive drug, CIMT, and prostitution grounds. Because applicants must have maintained eligibility for TPS ³ following Jan. 1, 2017, applicant cannot waive any controlled substance, drug trafficking, or crime involving moral turpitude convictions received after January 1, 2017.	Can waive drug, CIMT, and prostitution grounds; can waive felony (apart from the murder/rape/sex abuse aggravated felony ⁵ ground, 101(a)(43)(A)) if person has no other offenses for 10 years prior to application; one misdemeanor if no other offenses for 5 years preceding application; two misdemeanors if no offenses for 10 years prior to application. Not clear whether waivers stack.	Can waive <i>either</i> the non-criminal bars (health, smuggling, unlawful voting) or misdemeanor convictions that fall under drug, CIMT, and prostitution grounds of 212(a)(2), but not if conviction would otherwise bar because it is a second CIMT misdemeanor or a third misdemeanor of any kind

1 For a more detailed analysis and comparison of the criminal bars in pending legislation, see the Immigration Legal Resource Center chart [here](#) and the National Immigrant Justice Center chart [here](#).

2 212(a)(2) = section of the Immigration and Nationality Act that contains the criminal bars to entering the U.S. and getting status (known as the grounds of inadmissibility)

3 TPS = Temporary Protected Status

4 CIMT = Crime involving moral turpitude, an extremely broad category of crimes that can include shoplifting

5 Aggravated felony = a term of art in the Immigration and Nationality Act that encompasses a broad range of convictions, see [this explainer](#) for more information.

BILL	USCA 2021	HR-6 DREAM TITLE	HR-6 PROMISE TITLE	ESSENTIAL WORKERS	FARM WORKERS
Waivers (continued)	<p>General waiver of inadmissibility⁶ (not applicable legalization provision) except for national security ground</p> <p>General waiver of deportability⁷ (not applicable to legalization provision) except for national security ground and murder/rape/sex abuse of minor ground of aggravated felony</p>		Additionally , there is no waiver for a crime that would make someone ineligible for TPS, i.e. any felony or more than one misdemeanor.	<p>General waiver of inadmissibility (not applicable legalization provision) except for national security ground</p> <p>General waiver of deportability (not applicable to legalization provision) except for national security ground and murder/rape/sex abuse of minor ground of agfel</p>	Can waive either the non-criminal bars (health, smuggling, unlawful voting) or misdemeanor convictions that fall under drug, CIMT, and prostitution grounds of 212(a)(2), but not if conviction would otherwise bar because it is a second CIMT misdemeanor or a third misdemeanor of any kind
Other crim reforms	<p>Redefinition of conviction for imm purposes to exclude expungements, suspended sentences, & other forms of rehabilitative relief</p> <p>Restoration of Judicial Recommendations Against Deportation (where crim judge can recommend that conviction not lead to deportation)</p> <p>Adds a second petty offense exception to CIMT ground of inadmissibility</p> <p>Repeal of 3-year, 10-year, and permanent bars</p>	None	None	<p>Redefinition of conviction for imm purposes to exclude expungements, suspended sentences, & other forms of rehabilitative relief</p> <p>Restoration of Judicial Recommendations Against Deportation (where crim judge can recommend that conviction not lead to deportation)</p> <p>Adds a second petty offense exception to CIMT ground of inadmissibility</p> <p>Repeal of 3-year, 10-year, and permanent bars</p>	None

6 Inadmissibility = section of the Immigration and Nationality Act that sets out bars to entering the U.S. and getting status, including criminal bars (in section 212(a)(2))

7 Deportability= section of the Immigration and Nationality Act that sets out the grounds on which the U.S. government can deport people