



## PLANK 10: Support fair sentencing policy and end the criminalization of immigrants.

The United States [imprisons people at a higher rate](#) than any other nation, in part because of its [egregiously long sentences](#). As of 2018, [830 of every 100,000 adults](#) in the United States were behind bars. The criminal-legal system is also rife with racial disparities: Black people are [five times more likely to be incarcerated](#) than White people, and [Latinos are incarcerated at a rate about 2 times higher than that of non-Latino White people](#). These sentences can rip parents from their children and devastate entire communities.

At the same time, those trying to immigrate to the United States in search of opportunity and a safer, more prosperous life for their families are often criminalized. Once here, these valuable members of communities across the country are subjected to the constant threat of incarceration and deportation. The practice of jailing, criminalizing, and inhumanely deporting those who come here from other countries must end.

We must advocate for severely limiting punishment and supporting all people, including those who immigrate here from other countries, instead of criminalizing and imprisoning them.

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## State Policy Priorities

### Stop the use of algorithmic risk assessment tools in sentencing determinations

- Stop the use of algorithm-based, actuarial, or data-derived “risk-assessment” tools at all stages of the criminal-legal process, including during sentencing determinations. Jurisdictions still utilizing risk assessment tools should incorporate all of the following principles to reduce the harm these tools can impose:
  - If in use, a pretrial risk assessment instrument must be designed and implemented in ways that reduce and ultimately eliminate unwarranted racial disparities across the criminal justice system.
  - If in use, a pretrial risk assessment instrument must never recommend detention; instead, when a tool does not recommend immediate release, it must recommend a pretrial release hearing that observes rigorous procedural safeguards. Such tools must only be used to significantly increase rates of pretrial release and, where possible, to ascertain and meet the needs of accused persons before trial, in combination with individualized assessments of those persons. Pretrial risk assessment instruments, when used to assign community supervision, should only be used to assign the least restrictive and onerous forms of pretrial supervision. Risk assessment instruments must automatically cause or affirmatively recommend release on recognizance in most cases, because the U.S. Constitution guarantees a presumption of innocence for persons accused of crimes and a strong presumption of release pretrial.
  - Neither pretrial detention nor conditions of supervision should ever be imposed, except through an individualized, adversarial hearing. The hearing must be held promptly to determine whether the accused person presents a substantial and identifiable risk of flight or (in places where such an inquiry is required by law) specific, credible danger to specifically identified individuals in the community.
  - If in use, a pretrial risk assessment instrument must be transparent, independently validated, and open to challenge by an accused person’s counsel. The design and structure of such tools must be transparent and accessible to the public.
  - If in use, a pretrial risk assessment instrument must communicate the likelihood of success upon release in clear, concrete terms.
  - If in use, a pretrial risk assessment instrument must be developed with community input, revalidated regularly by independent data scientists with that input in mind, and subjected to regular, meaningful oversight by the community.

### Reform the state criminal code

- Establish commissions to review the state criminal code and:
  - End arrests and summonses/tickets in schools for misdemeanors and violations;
  - Decriminalize behaviors that are not best addressed through the criminal-legal system, such as drug possession, sex work, and crimes that stem from substance use, mental illness, and homelessness;
  - Review all felonies and misdemeanors to determine if they can be decriminalized or reclassified downward, including a reexamination of how “violence” is defined in state statute and a removal of that definition from crimes as appropriate; and
  - Reduce sentence length, aligning U.S. sentences with peer nations worldwide, and ensure that sentence reductions are accompanied by investments that use non-carceral, prevention- and treatment-focused initiatives that promote public safety by addressing poverty, addiction, mental health, and other systemic factors driving the risk of criminal-legal involvement.
- Abolish mandatory minimum sentences.
- Eliminate the felony murder rule and responsibility for the actions of others in a conspiracy.
  - Reform drug laws, as described in ***Plank 18: End the War on Drugs***; and
  - Abolish the death penalty.
- End life-without-parole sentences, including juvenile life without parole and de facto life sentences. Ensure that all changes apply both currently and retroactively.
- Bring the United States [in line with other countries](#) that have shortened prison terms by creating a maximum sentence of 20 years, with extremely rare exceptions and a rigorous process for the application of those exceptions prior to release or continued detention.
- End “three strikes” and “truth in sentencing” laws.

### Protect children and families

- Require that, when sentencing parents, judges consider noncustodial and community-based sentences first, and then justify any decision not to use such sentences.
- Dismantle the use of out-of-home placements and youth prisons and replace them with a continuum of culturally relevant, gender-responsive, developmentally appropriate, and strengths-based services, supports, and opportunities for youth and families in communities.
- Require family impact statements for sentencing-related and prison-related bills.

### Expand alternatives to incarceration

- Dramatically expand alternatives to incarceration, provided that such alternatives don't rely on expensive, commercial products that pad the pockets of for-profit companies. These rehabilitative, non-institutional alternatives should be the default, not the exception, and judges should have to justify why they are *not* imposing alternative sentences. All ATI programs should be accessible to all people regardless of immigration status or ability to pay and structured to avoid triggering immigration consequences.

### Address racial disparities and past harms

- Mandate racial equity in sentencing practices through periodic audits to identify sentencing disparities based on race, ethnicity, religion, gender, sexual orientation, gender identity, and disability. Provide meaningful opportunities for defendants to reduce sentences due to those disparities.
- Create a judicial review mechanism requiring judges to periodically evaluate sentences that individuals receive after no more than 10 years into their incarceration. Subsequent reviews should happen every three years.

### End the criminalization of immigration

- Minimize the immigration-related consequences of conviction, such as by reducing maximum incarceration periods for misdemeanors from 365 to 364 days — to explicitly avoid triggering certain federal immigration consequences — and by making available post-conviction relief vehicles that are effective for immigration purposes.
- Prohibit law enforcement agencies from entering into any new or renewed [287\(g\) agreements](#), and terminate existing 287(g) agreements.
- Bar police officers, sheriffs, corrections employees, district attorneys, and child welfare system personnel from investigating, interrogating, arresting, or detaining people for immigration enforcement purposes, including by:



- Inquiring into an individual's immigration status;
  - Using immigration authorities as interpreters;
  - Responding to detainers/holds, interview, transfer, or notification requests from Immigration and Customs Enforcement, unless authorized by a judicial warrant;
  - Contracting with any federal government agency for use of detention facilities to house individuals as federal detainees; and
  - Participating in a joint task force with federal authorities, where a primary purpose of the task force is immigration enforcement, or which includes immigration enforcement as a potential secondary goal or acceptable outcome.
- Ensure that court-appointed defense counsel have access to individualized consultations with immigration experts so they can comply with their constitutional duty to advise their clients of immigration consequences, as recognized by the Supreme Court in 2010.
  - Curtail surveillance of immigrants, including by:
    - Prohibiting, to the maximum extent possible, information sharing, database sharing and access, and task force participation with immigration enforcement authorities;
    - Ending all existing agreements or contracts providing Immigration and Customs Enforcement access to state or local government databases (e.g., driver's license databases and non-public jail records); and
    - Ending cooperation between state and local agencies and USCIS, ICE, EOIR, HSI, and Border Patrol.





## Federal Policy Priorities

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  - Neither pretrial detention nor conditions of supervision should ever be imposed, except through an individualized, adversarial hearing. The hearing must be held promptly to determine whether the accused person presents a substantial and identifiable risk of flight or (in places where such an inquiry is required by law) specific, credible danger to specifically identified individuals in the community.
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  - If in use, a pretrial risk assessment instrument must communicate the likelihood of success upon release in clear, concrete terms.
  - If in use, a pretrial risk assessment instrument must be developed with community input, revalidated regularly by independent data scientists with that input in mind, and subjected to regular, meaningful oversight by the community.

### Create a process to correct unjust sentences

- Prioritize clemency as a tool to correct unfair sentences and create a standard pardon and commutation process outside of the Department of Justice that would result in more routine grants of clemency.

- Continue to use compassionate release expansively to give courts the discretion to reduce sentences for individuals when “extraordinary and compelling reasons” exist, including illness, age, caretaking responsibilities, sentences over 15 years, and previous victimization that led to incarceration. Support policies that broaden eligibility for release. Create a “second look” process to systematically review long sentences after 10 years.

### **End unjust sentencing practices and the death penalty**

- Abolish all mandatory minimum sentencing laws.
- Dismantle and reverse all harmful policies contained in the 1994 Crime Bill and pass a modern 21st century public safety bill that acknowledges the harms and ineffectiveness of mass criminalization and mass incarceration while beginning to repair the damage wrought by the 1994 Crime Bill and broader punitive, expensive, violent, and racist systems of criminalization.
- Reform conspiracy laws, including those relating to drug conspiracies, to reduce individuals’ liability for the conduct of others. Require specific intent to be held liable as a co-conspirator, raise the bar for the type of evidence necessary to establish conspiracy, and limit liability for conduct that co-conspirators do not commit.
- Abolish the death penalty and commute all death sentences.
- End life without parole sentences.
- Create a maximum sentence of no more than 20 years in prison, with extremely rare exceptions and a rigorous process for the application of those exceptions prior to release or continued detention.
- Comprehensively revise and expand charging and sentencing policies issued under former Attorney General Eric Holder to instruct that prosecutors should not charge mandatory minimums in cases with an alternate charge that would not carry a mandatory minimum.
- End “three strikes” and “truth in sentencing” laws.
- Pass legislation that would eliminate consideration of acquitted conduct by federal courts to enhance sentences, such as the bipartisan Prohibiting Punishment of Acquitted Conduct Act.
- Amend statutory sentencing ranges so that sentence length is commensurate with Western European nations, including England, Finland, and Norway. Require that the U.S. Sentencing Commission release to the public, without individual identifiers, its data files for sentenced individuals, organizations, appeals, and resentencings and modifications, in addition to data underlying all commission publications at the time the publication is released.
- Decriminalize marijuana by urging the administration to remove marijuana from the Controlled Substances Act (CSA) and by urging Congress to pass legislation that is inclusive of reparative justice and reinvestment provisions that support those communities who have been the most impacted by marijuana criminalization. Follow the specific guidelines in **Plank 18: End the War on Drugs**.

- Make all sentencing changes retroactive so they apply to currently incarcerated people. To facilitate this process, partner with and provide adequate resources to federal public and community defenders and the criminal defense bar to ensure that all beneficial changes and case law are applied to currently incarcerated people.

### **Protect children**

- Pass legislation that abolishes life without parole for children in the federal system and establishes parole eligibility after 10 years for people who were children when they were sentenced in the adult federal system, in accord with the decisions of the U.S. Supreme Court in *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).
- Eliminate the [“valid court order” exception](#) in the Juvenile Justice and Delinquency Prevention Act, which allows judges and other court personnel to detain youth adjudicated as status offenders.

### **Expand alternatives to incarceration**

- Expand the use of alternatives to incarceration, including [deflection programs](#), community supervision, halfway houses in local communities, and suspended sentences, without the use of electronic monitoring.
- Pass legislation to extend the federal Elderly Home Confinement Program to individuals who are 50 and older who have completed at least 50 percent of their sentences.

### **Amend the process for changing sentencing laws**

- Improve the quality of, and public confidence in, the U.S. Sentencing Commission’s work by amending 28 U.S.C. § 9921 to codify the addition of a federal defender as an ex officio representative to the commission, balancing out the ex officio representation from the Justice Department.
- Require racial impact statements for sentencing, other prison-related bills, and proposed amendments to the U.S. Sentencing Guidelines.
- Fund state-based pilot programs to develop and implement rehabilitative, non-institutional alternatives to incarceration, including models based on free, need-based treatment and social services.
- Nominate members to the U.S. Sentencing Commission with diverse backgrounds (*i.e.*, public defense, academia, and civil and human rights advocacy) and a demonstrated commitment to reversing the course of mass incarceration in America.



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- Nominate members to the U.S. Sentencing Commission with diverse backgrounds (*i.e.*, public defense, academia, and civil and human rights advocacy) and a demonstrated commitment to reversing the course of mass incarceration in America.



### **Address racial biases in sentencing and detention practices**

- End the indefinite detention of Muslim Americans and put an end to Communications Management Units.
- Mandate racial equity in sentencing practices through periodic audits to identify sentencing disparities based on race, ethnicity, religion, gender, sexual orientation, gender identity, and disability. Ensure there is a process to resentence defendants whose sentences were found to be disparate.

### **Limit the immigration effects of criminal conviction**

- Support legislation to limit immigration effects of criminal conviction, such as reducing the maximum incarceration for a misdemeanor from 365 days to 364 days to explicitly avoid triggering federal immigration consequences.
- Support legislation that identifies felony and misdemeanor offenses for decriminalization, a reduction in offense classification, or other downward modification.
- Eliminate all mandatory immigration penalties and consequences — including deportation, bars to asylum, naturalization, citizenship, voting, etc. — for any allegations of criminal conduct, suspected criminal activity, or for arrests, convictions, or other contact with the criminal-legal, juvenile, or family court systems. Make all repeals and changes retroactive.

### **Address the immediate harms of deportation and immigration detention**

- Enact an immediate moratorium on new immigration detention and create a clear, time-bound plan to end the use of inhumane immigration detention altogether. Implement community-based case management support in place of immigration detention.
- Enact a moratorium on deportations.

### **Decriminalize human movement**

- Repeal all federal laws criminalizing border entry, including 8 USC 1325 and 8 USC 1326, which criminalize human movement by creating federal crimes of “unlawful entry” and “unlawful re-entry.” Repeal the provisions in the Antiterrorism and Effective Death Penalty Act of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 that make detention and deportation virtually a mandatory minimum for contact with the criminal system. Pass legislation like the New Way Forward Act, which eliminates many criminalization provisions in immigration law.

### **Repeal denaturalization**

- Repeal civil and criminal denaturalization provisions.

### **Ensure due process for immigrants**

- Ensure due process for immigrants seeking lawful status and citizenship by:
  - Eliminating bars to judicial review for orders of removal and other administrative agency decisions;



- Repealing 8 USC 1253, which makes it a federal crime for failure to depart following a deportation order;
- Ensuring algorithmic tools are not used to determine eligibility under immigration statuses and/or risk;
- Ending summary removal procedures, such as expedited removal and reinstatement of removal orders; and
- Guaranteeing the right to free counsel during immigration proceedings for all people who cannot afford counsel.
- Create an Immigration Court System Task Force to create a new mechanism for adjudicating immigration cases with a case management and community support approach replacing the current adversarial system. This new mechanism should have sufficient resources to conduct its work efficiently, ensuring no backlog of immigration cases; appropriate safeguards to ensure that decision-making is impartial and bias-free; and appropriate opportunities for further judicial review.

### **End the criminalization of immigration**

- Terminate all [287\(g\) agreements](#) with local law enforcement agencies.
- Never detain people in juvenile or adult criminal custody while they are awaiting transfer to Immigration and Customs Enforcement or awaiting immigration proceedings or transfer individuals who have completed a criminal sentence into immigration custody.
- End cooperation between immigration authorities and local law enforcement, including by:
  - Prohibiting, to the maximum extent possible, information sharing, database sharing and access, and task force participation with immigration enforcement authorities;
  - Ending all existing agreements or contracts providing Immigration and Customs Enforcement access to state or local government databases (e.g., driver's license databases);
  - Banning cooperation between local authorities and USCIS, ICE, EOIR, HSI, and Border Patrol;
  - Ending the use of Form I-247 (immigration detainers) or any other form of detainer, transfer, interview, or notification request from ICE to state and local facilities and revoke all such existing forms and guidance;
  - Prohibiting performance of immigration-enforcement functions by state and local officers and employees;
  - Ending ICE's Criminal Alien Program;
  - Terminating ICE's Secure Communities program; and
  - Repealing 8 USC § 1373, which prohibits certain limitations on communication between local government agencies and the federal government regarding immigration status.



### End requirements for police cooperation

- Eradicate the requirement that survivors of violence must obtain certification from or collaborate with law enforcement agencies and/or child protective services to apply for U, S, and T visas and allow any state or community services agency to provide the necessary certification.

### End the commercialization of immigration detention

- End the use of private prisons as immigrant detention centers.

