



February 4, 2013

The Honorable Robert W. Goodlatte
Chairman
U.S. House of Representatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers
Ranking Member
U.S. House of Representatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

RE: House Judiciary Committee Hearing on “America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration”

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Dear Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee:

On behalf of the American Civil Liberties Union (ACLU), we write to offer recommendations for a legislative solution that will further our national interest by creating a more just and humane immigration system true to America's values.

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The 2012 elections produced a mandate for true immigration reform, and momentum has been building ever since to find a permanent solution to our nation's flawed immigration system. Both the White House and the Senate have put this issue at the top of their agendas. Last week President Obama and a bipartisan group of Senators each unveiled their broad frameworks for reform, and are crafting legislation. Both proposals would, commendably, provide 11 million aspiring citizens with a roadmap to citizenship.

As you move forward in the House, we urge you to evaluate all legislative proposals carefully to ensure that they not only embrace a generous roadmap to citizenship, but also include systemic reforms to address civil liberties problems that have long plagued the immigration detention and deportation systems. The absence of discretion and consideration of individual equities in the current immigration system, which also deprives most immigrants of legal counsel, leads to cruel results unsupported by traditional American values of family unity and due process. In addition, immigration reform must bring an end to the wasteful, destructive immigration enforcement policies that have torn apart so many families and led to rampant fear in so many communities. Victims and witnesses of crime are scared to call 911, while communities of color are subjected to rampant racial profiling. Progress must not be contingent upon further enforcement measures.

Immigration enforcement, both at the borders and in the interior, is at an all-time high, and it has come at enormous and unnecessary cost to American

taxpayers. The immigration enforcement price tag since 1986 is \$219 billion in today's dollars.¹ In 2012 alone, the Department of Homeland Security ("DHS") spent nearly \$18 billion on immigration and border enforcement—more than the federal government spent on all principal federal criminal law enforcement agencies combined.² At the borders, unprecedented militarization has resulted in human rights violations and seriously threatens the quality of life in border communities. Wasteful programs such as Operation Streamline's costly criminal prosecutions of border-crossers have contributed to an expansion of federal contracting with private prison facilities, caused serious overcrowding, and skewed the inmate population. For the first time, the majority sentenced to federal prison are Hispanic or Latino.³ House Appropriations Committee Chairman Hal Rogers has correctly said about southwest border spending: "It is a sort of a mini industrial complex syndrome that has set in there. And we're going to have to guard against it every step of the way."⁴

In the first term, this administration deported over 1.5 million people—more than in any other single presidential term.⁵ In 2012 alone nearly 410,000 people were deported – an all-time record for annual deportations.⁶ Despite the administration's claims that it prioritizes the removal of individuals who pose a risk to public safety, nearly one half of those deported had no criminal record at all, and a significant proportion of the remainder committed no serious offenses threatening public safety.⁷ As a result, American families have been separated in devastating numbers: between July 2010 and September 2012, 23 percent of those deported—204,810 individuals—were parents of U.S. citizen children.⁸ From a snapshot survey taken in 2011, at least 5,200 children were in foster care as a result of their parents' deportation.⁹ Wasteful detention spending of \$2 billion annually¹⁰ led to the incarceration of 429,000 people in 2011—despite the existence of effective and less expensive alternatives to detention.¹¹

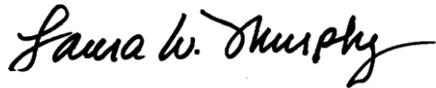
This enforcement-first and enforcement-only strategy has continued unabated in spite of the fact that apprehensions at the southwest border are at their lowest levels in 40 years, net migration from Mexico is zero, and border communities are among the safest in the nation.¹² American taxpayers can no longer afford to foot the bill for these needless enforcement measures. Any legislative proposal must chart a more reasonable course by creating a welcoming roadmap to citizenship for hardworking aspiring Americans who daily contribute to our communities while often living vulnerably in the shadows of society. Immigration reform must *not* usher in yet more costly, unnecessary enforcement as a precondition of achieving the reform that our country and economy so desperately needs.

Finally, any immigration reform bill must respect the privacy and due process rights of all workers – Americans and immigrants alike – by rejecting a mandatory employment verification system. Such a system does little to solve the real problems driving employers to hire undocumented workers and, according to government reports, catches fewer than half of those workers processed through the system. In fact, the system ensnares ordinary workers in government bureaucracy while those workers try to get database errors corrected. Ultimately, the system leads us inexorably toward the creation of a national ID system.

We look forward to working with you to realize immigration reform that not only brings aspiring Americans within the legal embrace of citizenship, but also makes much needed improvements to our immigration detention and deportation systems, including a ban on racial profiling and full

equality for LGBT persons. We have attached the ACLU's 2013 framework for immigration reform, which outlines in more detail the issues that should be addressed in any legislative proposal. Please contact Joanne Lin, ACLU Legislative Counsel, with any questions at 202/675-2317 or jlin@aclu.org.

Sincerely,



Laura W. Murphy
Director, Washington Legislative Office



Joanne Lin
Legislative Counsel

Enclosure: ACLU 2013 framework for immigration reform, "Protecting Civil Liberties in Federal Immigration Reform Legislation"

cc: Members of the Committee

¹ Ted Robbins, *U.S. Grows An Industrial Complex Along The Border*, NPR, Sept. 12, 2012, <http://www.npr.org/2012/09/12/160758471/u-s-grows-an-industrial-complex-along-the-border>.

² In FY 2012, spending for CBP, ICE, and US-VISIT exceeded by 24 percent total spending for the FBI, Drug Enforcement Administration (DEA), Secret Service, US Marshals Service, and Bureau of Alcohol Tobacco, Firearms and Explosives (ATF). *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, Jan. 2013, available at <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf#report>.

³ U.S. Sentencing Commission, 2011 ANNUAL REPORT, Chapter 5, available at <http://www.uscc.gov/Data and Statistics/Annual Reports and Sourcebooks/2011/2011 Annual Report Chap5.pdf>

⁴ Ted Robbins, *U.S. Grows An Industrial Complex Along The Border*, NPR, Sept. 12, 2012, <http://www.npr.org/2012/09/12/160758471/u-s-grows-an-industrial-complex-along-the-border>.

⁵ Corey Dade, *Obama Administration Deported Record 1.5 Million People*, NPR, Dec. 24, 2012, available at <http://www.npr.org/blogs/itsallpolitics/2012/12/24/167970002/obama-administration-deported-record-1-5-million-people>.

⁶ News Release, ICE, *FY 2012: ICE announces year-end removal numbers, highlights focus on key priorities and issues new national detainer guidance to further focus resources*, Dec. 21, 2012, <http://www.ice.gov/news/releases/1212/121221washingtondc2.htm>

⁷ *Id.*

⁸ Seth Freed Wessler, *Nearly 205K Deportations of Parents of U.S. Citizens in Just Over Two Years*, COLORLINES, Dec. 17, 2012, available at http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html.

⁹ *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Applied Research Center, Nov. 2011, <http://arc.org/shatteredfamilies>.

¹⁰ *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*, National Immigration Forum, Aug. 2012, <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>.

¹¹ DHS Annual Report, *Immigration Enforcement Actions: 2011*, Sept. 2012, available at http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf.

¹² *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, Jan. 2013, available at <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf#report>.



Protecting Civil Liberties in Federal Immigration Reform Legislation

January 2013

As President Obama and Congress take up immigration reform, the ACLU urges policymakers to endorse and promote the following priorities for any reform:

- **Immigration reform must create a welcoming roadmap to citizenship for aspiring Americans living in and contributing to the U.S. Fundamental fairness as guaranteed by the Constitution requires that these individuals be brought within the legal embrace of U.S. citizenship.**
 - American history teaches the dire and repugnant consequences of creating an “underclass” of people living without the Constitution’s full protections. The Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution are offended when aspiring citizens – who are primarily from communities of color – face a lifetime of disadvantage and vulnerability.
 - Aspiring citizens are productive members of their communities who often live in mixed-status families with U.S. citizen relatives. Their enormous contributions to American life are hampered by exploitive employers and they face barriers to trusting law enforcement on critical matters including reporting crimes like domestic violence.
 - The roadmap to citizenship must be just and fair, without exclusions for minor crimes or past removal orders, and unobstructed by prohibitive fees or penalties. Federal courts must guarantee effective oversight through judicial review.
 - Legalization of aspiring citizens will help restore fairness to an immigration system under which 1.5 million people have been deported at staggering cost in the last four years, leaving hundreds of thousands of U.S. citizen children without parents, and tens of thousands in foster care. One in four Latinos surveyed reported that they knew someone deported or detained by the federal government in the preceding year.

- **Immigration reform must not create a national ID system or include measures that harm fundamental privacy rights. Error-prone identification systems endanger the rights and livelihood of all Americans in the workplace and in civic life.**
 - E-Verify is an internet-based system that contains identifying information on almost every American, including some drivers’ license information and photos from passports and Department of Homeland Security (DHS) documents. Calls for new and expensive electronic employment-verification systems and biometric worker identification are thinly-disguised national ID requirements – permission slips from the government that employees would need in order to work. Social Security numbers were never meant to be used for identification; now it is almost impossible to function in America without one. E-Verify would likely be similarly expanded if it becomes mandatory. This could lead to unwarranted harassment and denial of access to TSA checkpoints, voting booths, and gun

permits, or other harmful uses not yet envisioned. Some proposals have called for American workers to be fingerprinted or photographed in order to work.

- The intrusive verification regimes that have been proposed would rely on massive and inaccurate databases. According to estimates of the E-Verify error rate drawn directly from DHS’s own reports, at least 80,000 American workers lost out on a new job last year because of mistakes in the government database. By extrapolation, if E-Verify becomes mandatory nationwide, at least 1.2 million workers would have to go to DHS or to the Social Security Administration (SSA) to correct their records. Many are newly naturalized citizens.
 - E-Verify will lead to discrimination against those perceived to look or sound “foreign,” when instead immigration reform should reinforce anti-discrimination principles in employment law. Under E-Verify, employers would avoid hiring individuals they fear will be ensnared in the error-prone system. E-Verify does not prevent hiring undocumented workers because it lacks reliability in its core function of identifying non-work-eligible individuals. According to a DHS-funded study, E-Verify fails to identify undocumented workers 54% of the time. Further, unscrupulous employers can still bypass E-Verify by hiring illegally.
 - E-Verify increases the risk of data breaches and identity theft by making personal information on every American more widely accessible. Experts note that the system as currently configured remains vulnerable to identity theft and employer fraud, and may serve as a valuable tool for identity fraudsters. At least one major data breach of E-Verify has already occurred.
- **Immigration reform must end state and local intrusions into immigration policy and enforcement, as well as ban racial profiling at all levels of government.**
 - Immigration reform should recognize that state and local governments cannot interfere with or usurp federal immigration authority or violate constitutional rights in the name of immigration enforcement.
 - State and local involvement in immigration enforcement has led to racial discrimination in policing practices. Racial profiling distances communities from state and local police, and thereby undermines community policing efforts that have reduced violent crime by building trust with victims and witnesses. State and local police are trained to protect the public and solve crimes, not to be immigration enforcement agents.
 - Federal immigration enforcement programs like Secure Communities and 287(g) that involve state and local police, and lead to pretextual arrests, should be terminated. In those communities where state and local police engage in racial profiling and unconstitutional arrests and detentions, these federal programs systematically facilitate civil rights violations. They also undermine federal enforcement priorities by imposing detention and removal proceedings on individuals who pose no threat to public safety.
 - Immigration reform should include a ban on racial profiling by all federal, state, and local law enforcement agencies, as well as robust training and data collection requirements to ensure the ban’s efficacy. Profiling now affects U.S. citizens – especially people of color – as well as immigrants, with numerous examples



throughout the country of illegal traffic stops and detentions for immigration investigation purposes.

- **Immigration reform must address systemic due process problems with immigration detention and deportation.**
 - Immigration reform must end the unnecessary and unconstitutional overreliance on costly and inhumane immigration detention, which led to 429,000 people being detained administratively in the last fiscal year (almost twice as many as in the entire federal prison system), at a wasteful cost of \$2 billion.
 - No one should be in immigration detention without a constitutionally adequate bond hearing where the government bears the burden of showing that detention is necessary to protect against danger to the community or flight risk, and that no alternative release conditions would suffice.
 - Immigration reform must eliminate mandatory and disproportionate deportation laws that needlessly separate families, by restoring discretion to consider the equities in every individual's case. Reform should also ensure access to counsel in immigration proceedings (more than half of individuals in immigration court proceedings are unrepresented, including 84% of those in detention) as well as effective judicial review as integral components of due process.

- **Immigration reform must transform border enforcement, which has grown wastefully and abusively without regard to genuine public safety needs.**
 - Immigration reform must end the abuses committed by U.S. Customs and Border Protection (CBP), both at the border and in interior areas, by creating accountability within CBP, establishing robust and independent external oversight, and ending CBP immigration enforcement efforts removed from the border. Reform must include downsizing the “mini industrial complex” at the borders – which exists despite border communities’ exceptional safety and a 40-year low in migrant apprehensions. It should also contain measures to ensure CBP’s full compliance with national and international legal standards.

- **Immigration reform must address immigration enforcement’s contribution to America’s mass incarceration problem.**
 - Immigration reform should include no new criminal provisions, and must end wasteful and inhumane overreliance on criminal prosecutions. DHS now refers more cases for federal prosecution than the Department of Justice’s law enforcement agencies. Federal prisons are already 40% over capacity, due in large part to indiscriminate prosecution of individuals for crossing the border without authorization, often to rejoin their families. The majority of those sentenced to federal prison last year were Hispanics and Latinos, who constitute 16% of the population.
 - The pipeline of migrant criminalization and mass incarceration must be closed by ending Operation Streamline and drastically reducing reliance on Criminal Alien Requirement (CAR) detention beds which funnel taxpayers’ money into private prison companies’ coffers.



- **Immigration reform must include the ability of committed and loving couples in same-sex relationships to sponsor their spouse or permanent-partner in the same way opposite-sex couples have long been able to under current immigration law.**
 - The discriminatory and unconstitutional so-called Defense of Marriage Act has caused these LGBT immigrant families to live in the shadows with the fear of separation and deportation for far too long. Family unity - including for those who are LGBT - is a critical component of any reform proposal.