



January 25, 2013

President Barack Obama
The White House
1600 Pennsylvania Ave, NW
Washington, DC 20500

Re: Establishing a New Framework for Immigration Reform in 2013

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

LAURA W. MURPHY
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

Dear President Obama:

On behalf of the American Civil Liberties Union, we commend you for making immigration reform a top priority in your second term. The ACLU has reviewed your 2011 blueprint for reform, “Building a 21st Century Immigration System,” and write with recommendations for developing an entirely new framework to advance immigration reform in 2013. The 2011 White House immigration blueprint set forth a framework that is wholly out of date and is unworkable in 2013. The 2012 elections produced a mandate for true immigration reform. Americans want a permanent solution to our nation’s immigration problems – one that brings an end to the record-level deportations, one that places the 11 million undocumented on a pathway to citizenship, one that fixes the many longstanding civil liberties problems embedded in our immigration laws.

The national dialogue and political demands concerning immigration reform have changed dramatically since the release of the 2011 blueprint, which was centered on an enforcement-first approach. The 2011 blueprint was replete with references to “unprecedented resources” and “boots on the ground” devoted to border security. Today it is undisputed that the Department of Homeland Security (“DHS”) during your first term, achieved, and even exceeded, nearly all the southwest border enforcement triggers laid out in the failed 2007 Comprehensive Immigration Reform bill.

This enforcement-first approach has led to unprecedented militarization of the southwest border region including record-level numbers of border patrol, unmanned aerial vehicles, and drones in the region. This militarization has taken place at a time when southwest border apprehensions are at their lowest levels in 40 years, net migration from Mexico is now zero, and southwest border cities are among the safest in the nation.

Senate Majority Leader Harry Reid recently spoke of the need to stop focusing on border security, “We have spent a huge amount of money on border security, and both our northern and southern borders are more secure . . . We can’t build a fence of 3,000 miles because no matter how high we

build it, they can build a ladder taller than that fence. So I think we have about expended our energy on border security.”

Beyond the militarization build-up along the Mexican border, this administration’s interior immigration enforcement record is undeniably excessive. Over 1.5 million people were deported during the first term – the highest number in a single presidential term. Some 34,000 people are imprisoned in immigration jails each day –about one half of these detainees can be released under our current immigration laws and authorities, yet DHS chooses to imprison them at a hefty price that is footed by American taxpayers.

The facts on the ground simply no longer can support this enforcement-first approach. Nor can our country afford to continue spending \$18 billion annually on immigration and border enforcement -- more than what the government spends on all the other principal federal law enforcement agencies combined. As the nation struggles under a growing national debt, it is incumbent on the administration to cut wasteful spending on immigration and border enforcement.

Finally, any new proposal should reject 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 undocumented workers processed through the system. What the system does do is ensnare ordinary workers in government bureaucracy as they try to fix database errors and leads us toward the creation of a national ID system.

2013 is a new year and a new era. It is time to throw away the enforcement-first and enforcement-only approach to immigration reform embodied in the 2011 White House blueprint. Now it is time to lead with an entirely new paradigm – one that creates a fair legalization program to benefit the broadest possible population, and places them on a clear road to citizenship. This new paradigm must also fix the multitude of civil liberties problems long established in our punitive immigration detention and deportation system, and protect the privacy and due process rights of all workers – Americans and immigrants alike.

The ACLU looks forward to working with the administration towards building a more just, humane immigration system that brings the 11 million within the legal embrace of citizenship, extends the constitutional legacy and promise of equality for all, and guarantees due process and fairness to all who face detention, deportation, and family separation. We have attached the ACLU’s 2013 framework for immigration reform, which outlines in more detail the principles that we believe will do just that. Please contact Joanne Lin, ACLU Legislative Counsel, with any questions at 202/675-2317 or jlin@dcaclu.org.

Sincerely,



Laura W. Murphy
Director, Washington Legislative Office



Joanne Lin
Legislative Counsel



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.