



November 21, 2012

President Barack Obama
The White House
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Re: Pursuing Immigration Reform While Protecting Constitutional Values

Dear President Obama:

On behalf of the American Civil Liberties Union (“ACLU”), a non-partisan organization of more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to preserving and defending the fundamental rights assured under the Constitution and laws of the United States, we congratulate you on your re-election and wish you every success in your second term. We stand ready to work with you on advancing a progressive, pro-civil liberties and civil rights agenda. We welcome your recent announcement that immigration reform will be a top priority in your second term, and we look forward to working with you and your Administration to pursue reforms – both administrative and legislative – to make our immigration system and laws comport with principles of due process, non-discrimination, privacy, and fundamental fairness.

As the nation looks to you for leadership on immigration reform, we offer the following recommendations to ensure that your Administration’s plans and strategy clearly represent and communicate your vision for a more just, more humane immigration system – one that will help build a more diverse and inclusive United States. Our views, for your consideration, have been informed by our state ACLU affiliates and our ongoing litigation.

Legislative reform: The ACLU strongly supports a permanent legislative solution for the millions of undocumented immigrants, our country’s new Americans. We are encouraged by the growing number of statements from both major parties about the need to reform our immigration system. Nonetheless, we also know that the road to final passage remains steep and challenging, especially in the House of Representatives.

Given the divided Congress, the many different definitions of ‘reform’, and the many competing proposals that lawmakers will offer in the name of immigration reform, we hope the White House will act early with a strong, progressive bill that truly represents comprehensive reform – one that addresses the needs of America’s immigrants while fulfilling America’s

constitutional promise. Therefore, a comprehensive reform bill should establish a process for the undocumented to legalize and pursue citizenship, without adding new enforcement measures along the border or in the interior and without mandating E-Verify.

Your Administration has established an undeniably tough record on immigration and border enforcement. We have strongly criticized that history -- record-breaking deportations of over 1.5 million individuals in your first term (more than in any other single presidential term); unprecedented detention levels of immigrants; nationwide deployment of Department of Homeland Security (DHS) Secure Communities program despite opposition of many state and local leaders; continuation of the controversial DHS 287(g) program; historically high enforcement resources along the southwest border; and record spending on border and interior enforcement. As a result of your Administration's enforcement record, immigrant communities throughout the country have suffered permanent deportation and family separation. At a time when illegal immigration rates and border apprehensions have plummeted to the lowest levels in 40 years, there is no need for this Administration to undertake more enforcement or to seek additional authorities or resources to that end.¹

In addition, we urge you to reject the idea of mandatory employment verification (E-Verify), in the absence of fundamental changes to the concept. While mandatory E-Verify proposals have been a key element of many comprehensive immigration reform proposals, E-Verify remains an error prone system that will affect every worker - citizen and non-citizen alike. There are few safeguards currently in place to protect wrongly identified workers and Americans' privacy generally. 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.² 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.

Moreover, the system for correcting errors is in complete disarray. Both the Department of Justice (DOJ) and DHS have said that employers often fail to notify workers about errors or remedies. When they do, employees have difficulty understanding the complicated error notification letters and there is no centralized forum for correcting records.

E-Verify could also easily become a de facto national identity system. It is a widely accessible database and, if implemented nationwide due to mandatory participation, it would contain identifying information on almost every American, including photos from passports and DHS documents. Just as Social Security numbers began to be used beyond their originally intended purpose, E-Verify's use as an identification tool could become required at TSA checkpoints, to gain access to federal facilities, or for other uses not yet envisioned. The system could also be combined with travel, financial, or watch list information. The errors and problems with E-Verify as an employment tool would then automatically become problems with travel and other fundamental freedoms affecting every person in the country.

¹ Testimony of DHS Secretary Napolitano to the House Judiciary Committee (July 19, 2012).

² National Immigration Law Center, *Expanding E-Verify Will Undermine Job Growth and Cripple Small Businesses*, January 2011.

At the very least, one would think proponents would be able to point to E-Verify's success in stopping the problem it was intended to address. But E-Verify has a reliability problem in its core function of identifying non-work eligible individuals. According to a study funded by DHS, E-Verify fails to identify undocumented workers 54% of the time.³

Given these problems, Congress must not deploy mandatory E-Verify without substantial accuracy improvements. Legislative proposals should provide additional due process and worker protections and safeguards against using E-Verify for other purposes.

Civil rights and civil liberties advocates across the country will be looking to the White House immigration plan to see if it lives up to your vision and promise. By leading with a comprehensive, progressive bill that contains no additional enforcement measures, you would set the terms of debate for defining true immigration reform.

Administrative reforms: While we understand and appreciate the importance of tackling legislative reform, we urge you to institute immediate administrative reforms to curb ongoing DHS excesses and abuses. These administrative reforms can and should be pursued concomitantly with a legislative strategy. Positive administrative reforms will be welcomed by civil rights advocates and will place more pressure on Congress to work cooperatively on legislative reform.

We urge you to take immediate steps to address some of the longstanding problems that continue to plague the immigration system. We urge you to act now to end abusive and discriminatory immigration enforcement programs.

As noted above, your Administration has deported more individuals than that of any other President in a single term. Although DHS has attempted to focus enforcement efforts on individuals who threaten public safety, ordinary immigrants are swept up for detention and removal every day. This has had a devastating impact on families. In the first half of FY 2011, 46,486 deported individuals had one or more U.S. citizen children.⁴ Over 5,100 U.S. citizen children were placed in foster care last year as a result of their parents' deportation.⁵

We urge you to seize the opportunity now to take concrete administrative actions to eliminate some of the most abusive and discriminatory immigration practices. We ask that you:

- End 287(g) and Secure Communities – DHS programs that foster racial profiling, undermine community policing, and harm public safety: Next month your Administration will be confronted with a major decision on the 287(g) program, as all 287(g) partnerships are set to expire on December 31, 2012.

³ Westat Report, *Findings of the E-Verify Program Evaluation*, December 2009, pg. 118.

⁴ ICE, *Deportation of Parents of U.S.-Born Citizens* (Mar. 26, 2012), available at <http://www.lirs.org/atf/cf/%7bA9DDBA5E-C6B5-4C63-89DE-91D2F09A28CA%7d/ICE%20-%20DEPORT%20OF%20PARENTS%20OF%20US%20CIT%20FY%202011.PDF>

⁵ Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* (2011), available at <http://arc.org/shatteredfamilies>; see also Jonathan Baum et al., *In the Child's Best Interest? The Consequences of Losing a Lawful Immigrant Parent to Deportation* 4-5 (2010).

The time has come for this Administration to end the 287(g) program outright – including ALL jail and task force agreements.

The 287(g) program is a creature of the Bush Administration and a favorite enforcement weapon of Maricopa County Sheriff Arpaio, Alamance County Sheriff Johnson, and other sheriffs with anti-immigrant agendas. The 287(g) program is a stain on this Administration's record, and has been roundly criticized by the General Accountability Office, the DHS Inspector General, the Migration Policy Institute, and civil rights organizations including the ACLU. You should end this program – including jail partnerships — at the end of 2012.

In addition, the loud public outcry against Secure Communities has translated into state and local advocacy efforts to push back against excessive deportations. The outcry has included the California Trust Act and over a dozen municipal ordinances or resolutions passed to curb the impact of Secure Communities and immigration detainers. Such state and local measures will increase in the next term as communities, in the face of unrelenting DHS enforcement, will stop waiting for reform and choose to establish limits to federal immigration programs. The ACLU joins a growing number of groups across the country and urges you to put an end to Secure Communities.

- Shut down the ten worst immigration detention facilities: In addition to ending these harmful enforcement programs, major reforms are needed to create a more just and more humane civil detention system. This Administration's average daily immigrant detainee population is 34,000 – the highest in history. Many of Immigration and Customs Enforcement's (ICE's) detention reform projects have fallen short due to various obstacles, despite tremendous efforts by the ICE Office of Detention Policy and Planning. Meanwhile, some one million people have languished in substandard, inhumane detention conditions. In some facilities detainees have died, and have been denied medical care, outdoor recreation, and contact family visits. The ACLU and other members of the Detention Watch Network have identified ten facilities considered to be the worst in the nation. We strongly urge that DHS immediately stop detaining people at these ten facilities: Etowah County Detention Center (AL), Pinal County Jail (AZ), Houston Processing Center (TX), Polk County Jail (TX), Stewart Detention Center (GA), Irwin County Detention Center (GA), Hudson County Jail (NJ), Theo Lacy Jail (CA), Tri-County Jail (IL), Baker County Jail (FL).

Ending 287(g) and Secure Communities, and shutting down the worst detention facilities are concrete actions that you can and should take now, separate and apart from any legislative reform strategy. Your Administration should no longer condone immigration enforcement that fosters racial profiling and immigration detention that violates human rights standards. Civil rights and human rights groups including the ACLU will applaud these reforms, helping to set the best possible tone for the legislative reform debate to follow.

The ACLU looks forward to working with you as you lead the way on reforms that promote due process, privacy, and fundamental fairness. Please contact Joanne Lin, Legislative Counsel, with any questions at (202) 675-2317 or jlin@dcaclu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Romero". The signature is fluid and cursive, with a prominent underline at the end.

Anthony D. Romero
Executive Director

A handwritten signature in black ink, appearing to read "Laura W. Murphy". The signature is cursive and elegant, with a long, sweeping tail on the "y".

Laura W. Murphy
Director, Washington Legislative Office