



WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

**“How Comprehensive Immigration Reform Should Address the Needs of Women
and Families”**

Submitted to the U.S. Senate Committee on the Judiciary

March 18, 2013

ACLU Washington Legislative Office
Laura W. Murphy, Director
Joanne Lin, Legislative Counsel
Ian S. Thompson, Legislative Representative

I. Introduction

The American Civil Liberties Union (ACLU) is a nationwide, 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 of individuals under the Constitution and laws of the United States. The ACLU's Washington Legislative Office (WLO) conducts legislative and administrative advocacy to advance the organization's goal to protect immigrants' rights.

The ACLU submits this statement to the U.S. Senate Committee on the Judiciary on the occasion of its hearing addressing the needs of women and families in the immigration system. Reforming our immigration laws is urgently needed to ensure that women, children, and families do not continue to be deported in unprecedented numbers by the Department of Homeland Security ("DHS"). During President Obama's first term, over 1.5 million people were deported – the highest number of deportations in any single presidential term. These historic-level deportations have torn asunder untold numbers of families, leaving U.S. citizen children alone and many placed in the child welfare system. As Congress drafts and considers immigration reform legislation, we urge Congress to address the impact of DHS immigration policies on women and families, with special attention to women who are detained and deported, to the U.S. citizen children who lose their mothers to deportation, and to LGBT couples who are not protected under family immigration laws.

II. U.S. Immigration Policies Have Produced Record-Level Deportations and Shattered Untold Numbers of American Families.

According to 2012 data obtained through the Freedom of Information Act ("FOIA") by Colorlines.com, between July 2010 and September 2012, DHS conducted nearly 205,000 deportations of parents who said their children are U.S. citizens. These figures represent the longest view to date of the national scale of parental deportation. During this two-year period, the near 205,000 deportations of parents with U.S. citizen children accounted for nearly one quarter of all deportations.¹

Every day American families are torn apart, and U.S. citizen children are forced to say goodbye, many forever, to their parents who are deported. What happens to the children of deportees? A 2011 Applied Research Center study estimated that at least 5,100 children in foster care faced significant barriers to reunifying with their detained or deported parents. The Applied Research Center projected that if deportation and child welfare policies remained unchanged, another 15,000 kids could face a similar fate over the three years between 2012 and 2014.

Amy Cruz is one such child. Born in the U.S., the now 18-year-old is set to graduate from high school this spring and to attend San Diego State University in the fall of 2013. Her academic achievement is particularly notable because she lost her mother to

¹ Seth Freed Wessler, *Primary Data: Deportations of Parents of U.S. Citizen Kids*, Colorlines, Dec. 17, 2012, available at http://colorlines.com/archives/2012/12/deportations_of_parents_of_us-born_citizens_122012.html.

deportation eight years ago and has spent her teen years growing up in the child welfare system. Eight years ago following a traffic stop in San Diego, Amy's mother, who was undocumented, was deported to Mexico -- leaving Amy and her eight siblings on their own. All the children were placed in foster care. Due to the large family size, Amy and her siblings could not remain together and were instead placed in different foster placements. After losing their mother to deportation, Amy and her siblings then lost each other – the only family they ever knew. Their family was permanently shattered.

Amy is just one of many children, born and bred in the U.S., who lose their parents to deportation and are then faced with overwhelming odds – fending on their own as they try to grow up without their parents. Amy's story begs the question, "Whose interests were served by the deportation of Amy's mother? What has happened to Amy and her siblings who were robbed of any family stability? What impact do our nation's deportation policies have on our state child welfare systems, already strapped for resources and stretched thin by urgent demands?"

The annual deportation of 100,000 parents of U.S. citizens is a trend that must cease. In considering immigration reform legislation in 2013, Congress should rescind the punitive deportation laws that tear apart American children from their parents each and every day.

III. Immigration Detention Laws Lack Due Process, Thereby Sweeping in Women, Mothers, and Grandmothers Who Are Imprisoned by DHS for Years.

Over the last 15 years, immigration detention levels have more than tripled—from 85,730 detainees in 1995² to an all-time high of 429,247 individuals in FY 2011.³ In FY 2011 DHS held an average daily population of 33,034 individuals in more than 250 immigration prison facilities nationwide.⁴ The people locked up by DHS include survivors of torture, asylum-seekers, victims of trafficking, families with small children, the elderly, individuals with serious medical and mental health conditions, and lawful permanent residents with longstanding family and community ties who are facing deportation because of old or minor crimes for which they have already served their sentences.

The steep rise in ICE detention expenditures corresponds to two key shifts that effectively guarantee tens or hundreds of thousands of individuals will be unnecessarily detained every year. First, mandatory custody provisions enacted by Congress in 1996 have been interpreted by DHS to require incarceration without bond for virtually all

² Doris Meissner et al., *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, (Jan. 2013), 126, available at <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>

³ John Simanski & Lesley M. Sapp, DHS Office of Immigration Statistics, *Immigration Enforcement Actions: 2011*, 4, available at http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf

⁴ ICE Office of Enforcement and Removal Operations, *ERO Facts and Statistics* (Dec. 12, 2011), available at www.ice.gov/doclib/foia/reports/ero-facts-and-statistics.pdf

noncitizens who are removable because of criminal convictions—including nonviolent misdemeanor convictions for which they may have received no jail sentence.⁵ As a result, thousands of people—including many longtime lawful permanent residents—are held without ever being afforded the basic due process of a bond hearing before an independent adjudicator while their deportation cases are being decided.

Moreover, because of DHS’s overly expansive interpretation, mandatory detention is being improperly applied to, among others, individuals who have substantial challenges to removal on which they ultimately prevail; individuals who have old convictions and have subsequently demonstrated rehabilitation;⁶ and individuals who are detained for prolonged periods of time—sometimes years—far beyond the “brief” period of detention contemplated both by Congress and the Supreme Court in *Demore v Kim*.⁷

For example, the ACLU is currently representing Bertha Mejia, a grandmother who has been detained without due process by DHS for nearly 1.5 years. Ms. Mejia has deep family ties in California and no violent criminal history. Yet DHS classified her as a “mandatory detainee” because of misdemeanor convictions for stealing groceries. That classification made her ineligible for a hearing before an immigration judge, where she could present evidence that she posed no danger to the community or risk of flight—even as her immigration case dragged on for months with no end in sight.

Because of DHS’s unlawful policies, Ms. Mejia has languished in a county jail for the past year and a half. Her lengthy detention has caused great hardship for her loved ones, especially for her 9-year-old grandchild whom she was raising. Meanwhile, U.S. taxpayers funded Ms. Mejia’s unnecessary detention at the rate of \$164 per day, to a total cost of nearly \$90,000.

Last week a federal judge ordered a bond hearing for Ms. Mejia. The judge held that Congress did not intend to strip immigrants of their due process rights based on old convictions—including for minor, nonviolent offenses like petty theft. The ruling recognizes that Ms. Mejia never should have been in mandatory lock-up in the first place, and should have received a prompt bond hearing to determine if she needed to be detained.⁸

⁵ See 8 U.S.C. § 1226(c).

⁶ Although section 1226(c) limits the application of mandatory custody to persons who are arrested by ICE “when released” from criminal custody, the agency insists that it applies *any time* after an individual’s release. See *Matter of Rojas*, 23 I. & N. Dec. 117 (BIA 2001). As a result, ICE applies mandatory detention to individuals who have been leading law-abiding lives in the community for years following completion of their criminal sentences. See *Saysana v. Gillen*, 590 F.3d 7, 17-18 (1st Cir. 2009) (“By any logic, it stands to reason that the more remote in time a conviction becomes and the more time after a conviction an individual spends in a community, the lower his bail risk is likely to be.”).

⁷ See *Demore v. Kim*, 538 U.S. 510, 513 (2003) (authorizing mandatory detention for a “brief period”); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 233 (3d Cir. 2011) (due process requires a hearing once the duration of mandatory detention becomes unreasonable); *Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005) (8 U.S.C. § 1226(c) only authorizes mandatory detention if removal proceedings are “expeditious”).

⁸ Jenny Zhao, *VICTORY: Grandmother in Immigration Detention Finally Receives Fair Hearing*, ACLU Blog of Rights, Mar. 15, 2013, <http://www.aclu.org/blog/immigrants-rights/victory-grandmother-immigration-detention-finally-receives-fair-hearing>.

Unfortunately Ms. Mejia’s case is just the tip of the iceberg. DHS routinely subjects immigrants nationwide to unlawful mandatory detention. Another grandmother detained without due process is Melida Ruiz, who was detained for seven months at Monmouth County Jail in New Jersey before she was finally released after winning her case. A longtime lawful permanent resident with three U.S. citizen children and two U.S. citizen grandchildren, Ms. Ruiz was arrested by DHS at her home in 2011. She was placed into mandatory immigration detention based on a misdemeanor drug possession offense from nine years earlier for which she had not even been required to serve any jail time, and which was her sole conviction during 30 years of living in the United States.

Although Ms. Ruiz was eligible for various forms of discretionary relief from removal, and posed no danger or flight risk, and although she was the primary support for her U.S. citizen mother who suffers from Alzheimer’s disease, her 17-year-old and 11-year-old daughters, and her 5-year-old granddaughter, she was nevertheless forced to endure seven months of immigration incarceration. While she was in detention, her 17-year-old daughter gave birth to a boy.

In granting her application for cancellation of removal, the Immigration Judge emphasized the “substantial equities in [her] favor” including her “work history, tax history and property ownership” as well as the fact that her family “would suffer significant hardship if she were deported.” The Immigration Judge also found that, despite the one conviction from 2002 which was “out of character,” Ms. Ruiz has been “a law abiding resident of the United States and a stalwart positive force for her family and friends.” DHS chose not to appeal the decision. Ms. Ruiz is now once again reunited with her family but at considerable emotional and financial cost.

As reflected in the examples of Ms. Mejia and Ms. Ruiz, DHS routinely incarcerates people who pose no flight risk or danger. Effective alternatives to incarceration—such as ankle monitors, curfews, and reporting requirements—are available at a fraction of the cost of detention. The question Congress should be asking is -- why did DHS spend taxpayers’ monies to incarcerate these two grandmothers? As Congress considers immigration reform legislation in 2013, the ACLU urges Congress to remember cases like Ms. Mejia and Ms. Ruiz, and to take concrete steps to end mandatory detention and to provide bond hearings for all detainees in DHS custody.

IV. Immigration Reform Must Include Equality for LGBT Couples and Their Children.

Family unity – including for those who are LGBT – is a critical component of immigration reform. A recent study by the Williams Institute at the UCLA School of Law estimates that there are 32,300 same-sex bi-national (one U.S. citizen and one non-citizen) couples raising more than 11,000 children living in the U.S. today.⁹ These couples, due to senseless and unconstitutional discrimination enacted in the so-called

⁹ Gary Gates, *LGBT Adult Immigrants in the United States*, The Williams Institute (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTImmigrants-Gates-Mar-2013.pdf>

Defense of Marriage Act, are unable to sponsor their spouse or permanent partner in the same way opposite-sex couples have long been able to under current immigration law.

The President's January 29, 2013, announcement on immigration reform rightly noted that it is important to treat same-sex families as what they are – families.¹⁰ There are at least 31 countries around the world that allow residents to sponsor same-sex permanent partners for legal immigration.¹¹ To that end, U.S. citizens and lawful permanent residents must be given the ability to apply for an immigrant visa on the basis of a permanent relationship with a same-sex partner.

V. Recommendations

As Congress considers immigration reform legislation in 2013, the ACLU urges it to adopt the following recommendations to address the special concerns of women, children, and families including LGBT families:

- Congress should rescind punitive provisions of the 1996 immigration laws that lead to family separation. Congress should tighten the “aggravated felony” definition so as to limit mandatory deportation to those convicted of serious, violent felonies with significant jail time served. Specifically Congress should amend the “aggravated felony” definition to ensure that it applies to “convictions” only, to felonies and not misdemeanors, and not retroactively.
- Congress should give DHS and immigration judges broad discretion to consider a range of factors in deciding whether to detain or deport an individual. Special consideration should be given to situations where detention or deportation would cause hardship to the individual or her family, or for other humanitarian or public interest reasons. DHS and immigration judges should have the ability to consider extenuating circumstances such as the nature of the offense, when it occurred, rehabilitation, family ties, military service, and other equities.
- Congress should end mandatory detention and instead instruct immigration judges to conduct prompt bond hearings for all DHS detainees.
- Congress should authorize and expand community-based alternative to detention (“ATD”) programs that employ case-management services. All DHS detainees should be screened for placement in ATDs.

¹⁰ Press Release, The White House, Office of the Press Secretary, *FACT SHEET: Fixing our Broken Immigration System so Everyone Plays by the Rules*, (January 29, 2013), <http://www.whitehouse.gov/the-press-office/2013/01/29/fact-sheet-fixing-our-broken-immigration-system-so-everyone-plays-rules>.

¹¹ Andorra, Argentina, Australia, Austria, Belgium, Brazil, Canada, Colombia, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Israel, Japan, Liechtenstein, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, and the United Kingdom.

- Congress should amend the family immigration laws to give U.S. citizens and permanent residents the ability to apply for an immigrant visa on the basis of a permanent relationship with a same-sex partner.

We look forward to working with the members of the Committee to address these and other issues at stake in the current discussion over immigration reform. For comments or questions, please contact Legislative Counsel Joanne Lin at (202) 675-2338 and by email at jlin@dcacclu.org.