



**ACLU Recommendations to the U.S. Department of Homeland Security:**  
***Immediate Improvements Needed for Progress Toward a More Humane Immigration and Border Enforcement Regime***

**May 2014**

**Curb Record-Level Deportations**

- *Civil Enforcement Priorities:* DHS should replace ICE's overbroad 2011 civil enforcement priorities memo, which has created a dragnet across the nation that harms communities and separates families, with DHS-wide civil enforcement priority guidance to significantly limit the priority categories and clarify that individual cases must still be assessed for equities before they are pursued for removal by DHS.
- *Removals Without Hearings:* DHS should restrict the use of and provide an administrative appeal process for deportations without hearings before an immigration judge, which fail to provide adequate legal process and result in the erroneous removal of individuals who are not deportable or who would be eligible for relief or discretion if processed through normal removal procedures. Such removals constituted at least 70 percent of all removals in FY 2013.
- *Prosecutorial Discretion:* DHS should implement reforms to ensure that ICE's 2011 prosecutorial discretion memorandum is strengthened and applied uniformly nationwide in order to focus resources on individuals recently convicted of serious crimes who actually pose a current threat to public safety, and to guarantee fairness and proportionality in immigration proceedings.

**End Programs and Practices Violating Civil Liberties, Civil Rights, and Human Rights**

- *End ICE 287(g) and Secure Communities Programs. Require judicial finding of probable cause for all immigration detainers:* DHS detainer practices flagrantly violate the fourth amendment, encourage racial profiling, and make communities less safe. That's why there is widespread and growing opposition by states and localities that are either rejecting immigration detainers altogether or executing them in limited circumstances. In April 2014 alone several dozen counties in Oregon, Colorado, Washington, and Pennsylvania decided that they will no longer prolong an individual's detention on the basis of an ICE detainer. They join two states (California, Connecticut) and numerous localities that had already imposed restrictions on detainers. At a minimum, DHS needs to stop issuing detainers without any judicial finding of probable cause, and must end the ICE 287(g) and Secure Communities programs -- failed enforcement programs of yesteryear -- that have promoted racial profiling, undermined community cooperation with law enforcement, and created a wedge of distrust between the Obama administration and immigrant communities.
- *Use of Force:* DHS should direct CBP to reform its use of force policy by implementing, at a minimum, all Police Executive Research Forum (PERF) recommendations as well as a policy requiring the use of body-worn and dashboard cameras for CBP personnel with strong privacy protections, and publicly release unredacted and in full the PERF review, in order to bring CBP into line with the highest law enforcement standards relating to use of force, and to improve transparency and accountability to the public. DHS should also commission an independent review of all use-of-force fatalities in the last 5 years.
- *Racial Profiling:* DHS should ensure that CBP enforcement activities do not facilitate racial profiling or discriminatory policing by conducting a comprehensive review of CBP policies and practices relating to roving patrol stops and checkpoints, including expanding nationally the terms of the settlement in the Washington state *Sanchez* case regarding data collection and 4<sup>th</sup> Amendment training. This review should include recommendations to reduce CBP's "100-mile zone" for investigative detentions and warrantless searches of vehicles to 25 miles, and permissible incursions on private property to 10 miles. DHS should issue clear guidance that race and ethnicity may not be considered to any extent in determining removability or in targeting individuals for questioning, stops or any other enforcement activity and institute data collection mechanisms to inform DHS units and the public about its immigration enforcement activities. Leadership

should also urge DOJ to issue revised guidance on the use of racial profiling by federal law enforcement that closes the border integrity and national security loopholes and prohibits profiling based on actual or perceived religion, national origin, sexual orientation, and gender (including gender identity or expression) and independently adopt such clear guidance as a matter of DHS policy.

- *Sensitive Locations*: DHS should issue new Department-wide guidance placing clear restrictions on immigration and border enforcement actions at “sensitive locations” including, but not limited to schools, hospitals, places of worship, as well as courthouses, in order to ensure that all people – citizen and immigrant alike – have full access to the justice system and critical services.

### **Strengthen Due Process and Human Rights Protections in Detention**

- *Prolonged Detention Without Bond Hearings*: DHS should require a bond hearing before an immigration judge for all individuals detained more than six months, where the government must justify continued detention, as required by the Ninth Circuit in *Rodriguez v. Robbins*, as a first step to providing due process and preventing the unnecessary prolonged and indefinite detention of those who ultimately may become permanent residents or qualify for other immigration relief.
- *Access to Counsel*: DHS, DOJ, and HHS should ensure that children and individuals with serious mental disabilities who are unable to represent themselves are afforded legal representation in removal proceedings, either *pro bono* or at government expense, as guaranteed by fundamental principles of fairness and due process, and in order to improve court efficiency.
- *CBP Short-term Detention Conditions*: DHS should implement enforceable standards applicable to all CBP short-term custody facilities and hold rooms, and create an online detainee locator for individuals in CBP custody, in order to address widespread reports of deficient conditions, including verbal and physical abuse, denial of medical care, inadequate food, water, and bedding, due process violations, exposure to extreme temperatures, extreme overcrowding, and permanent confiscation of personal items. Deportations of migrants must be conducted more safely and humanely, including the elimination of night deportations, deportations to dangerous locations, and family separations in the detention and deportation process.
- *Solitary Confinement*: ICE should rigorously oversee compliance of its 2013 directive on the use of solitary confinement and release data to Congress and the public.
- *PREA Implementation*: DHS should ensure compliance with recently finalized regulations to implement the Prison Rape Elimination Act (PREA) in all DHS confinement facilities, including all ICE-run facilities, all CBP facilities and hold rooms, and all jails and contract facilities that hold immigrants for DHS.

### **Improve Efficiency and Accountability Department-wide**

- *Uniform Complaint Process*: DHS should create an online, multilingual portal and telephone number through which individuals can file all immigration- and border-related complaints and a uniform complaint process that ensures timely investigation and transparency, replacing the current inadequate and confusing systems, which inhibit the Department’s ability to identify civil rights and civil liberties concerns, to resolve complaints appropriately, and to reform policies or training when systemic problems are identified.
- *Proactive Disclosure of A-files*: DHS should adopt a policy of proactively providing a copy of all A-files to individuals in immigration proceedings, as required by statute, rather than relying entirely on the Freedom of Information Act to satisfy this requirement, which both wastes significant Departmental resources and prevents the vast majority of individuals in removal proceedings from accessing the documents necessary to ensure a fair hearing.

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