



WASHINGTON LEGISLATIVE OFFICE

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RE: DHS enforcement review

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Summary of top ACLU reforms: The top administrative reforms discussed in this memorandum are aimed at:

- (1) Reducing record-level removals;
 - a. Issue new DHS-wide immigration enforcement priorities;
 - b. End ICE 287(g), Secure Communities. Require judicial finding of probable cause for detainers and restrict detainers only to individuals convicted of serious crimes;
 - c. Curtail non-judicial removals that bypass immigration court hearings

- (2) Improving due process in order to keep families together and to protect communities;
 - a. Provide bond hearings for detainees after no later than six months;
 - b. Stop immigration enforcement at courthouses;
 - c. Reduce 100-mile border zone;
 - d. End federal prosecutions of non-violent immigration crimes;
 - e. Mandate use of body-worn cameras;
 - f. Establish border protection short-term custody standards
 - g. Develop uniform complaint process.

(1) **Reduce record-level removals:**

Issue new DHS-wide immigration enforcement priorities memorandum with the following changes. New DHS guidance needs to apply to all immigration components (Immigration and Customs Enforcement, Custom and Border Protection, Citizenship and Immigration Services). Current 2011 guidance applies only to ICE and is not followed by CBP, which presents serious problems since two-thirds of all removals now take place from the border regions with CBP agents conducting the vast majority of arrests.

- People with final removal orders should be eliminated from the list of enforcement priorities [currently classified as Priority 3]
- The “recent illegal entrants” category [currently classified as Priority 2] should be significantly narrowed and limited to people who illegally entered the U.S. within the past 30 days and are apprehended within 25 miles of the border.

- Discard the overly broad, punitive “criminal alien” category [currently classified as Priority 1]. The following categories of crimes should be eliminated from the enforcement priorities list, including but not limited to:
 - *Immigration-related offenses*: illegal entry, illegal reentry following removal, identity theft, using false SSN, visa/document fraud, driving without a license. Federal criminal prosecutions for illegal entry and illegal reentry have increased dramatically over the past decade. This administration has a responsibility to ensure that the very people criminalized by overzealous border enforcement, are no longer expelled pursuant to DHS’s removal priorities;
 - Non-serious, non-violent *drug offenses* should not be considered enforcement priorities. Under the Obama I term, DHS removed about 41,000 people with drug convictions. For 6,770 of those deported in FY 2013, their most serious violation was marijuana possession. DHS’s approach is inconsistent with the Attorney General’s 2014 clemency guidelines and 2013 Smart on Crime initiative – both aimed at sparing nonviolent drug offenders from long prison terms. DHS’s punitive treatment of drug offenders is also out of step with the drug reform laws passed by more than 30 states.
- Redefine “criminal alien” removal priorities to be limited to those who *have served more than one year’s imprisonment over the past five years* or who have not demonstrated substantial evidence of rehabilitation. The one-year sentence served provides a proxy for the severity of the crime committed. This redefinition is necessary to ensure that DHS no longer targets people who do not actually serve more than a year in prison. For example, in Georgia, three instances of driving without a license amount to a felony but do not result in more than one year served. The five-year window is aimed at protecting permanent residents with old convictions who have been peaceably living in society without reoffending.
- *Provide individualized assessment for all people facing removal*: All people, including those falling into enforcement priority categories, must be assessed for equities to determine if they are eligible for immigration relief or prosecutorial discretion.
- *Strengthen prosecutorial discretion*: The 2011 prosecutorial discretion guidance has fallen short of its promise and has not been implemented uniformly or effectively. DHS should issue new department-wide guidance on prosecutorial discretion that applies to both ICE and CBP. There should be a presumption of favorable exercise of prosecutorial discretion for the following groups: longtime permanent residents; parents, spouses, and children of citizens; individuals who have lived in the U.S. for the last three years; and persons for whom removal would cause significant personal or family hardship.

End ICE 287(g) and Secure Communities programs. Require judicial finding of probable cause for all immigration detainers and restrict detainers only to individuals convicted of serious crimes: DHS detainer practices violate the Fourth Amendment, encourage racial profiling, and make communities less safe. There is [widespread and growing opposition](#) by states and localities that are either rejecting immigration detainers altogether or only executing them in limited circumstances. At a minimum, DHS needs to stop issuing detainers without any judicial finding of probable cause and restrict detainers only to individuals convicted of serious crimes. DHS must also end the ICE 287(g) and

Secure Communities programs that have promoted racial profiling, undermined community cooperation with law enforcement, and created a wedge of distrust between the Obama administration and immigrant communities.

Curtail non-judicial removals that bypass immigration court hearings: Today 75 percent of people removed do not go before an immigration judge before being expelled. Over the last two decades [the deportation system](#) has moved from a judicial system where the vast majority of people facing deportation had immigration court hearings, to a system today of [non-judicial removals](#) where only 1 out of 4 appears before an immigration judge. Three-quarters of immigrants today are sent through fast-track proceedings wholly controlled by DHS, sometimes involving only a single border agent who acts as both judge and jury. DHS must stop sacrificing individualized due process and limit non-judicial removals to only those situations mandated by statute. DHS (including CBP) should also screen all individuals to determine their eligibility for immigration relief or prosecutorial discretion.

(2) **Improve Immigration Due Process in Order to Keep Families Together and Protect Communities**

DHS must implement additional reforms to remedy due process deficits in the detention and removal system. These reforms include:

Provide immigration bond hearings for all ICE detainees after no more than six months: The [Ninth Circuit](#) has already implemented a [six-month bond hearing rule](#) for ICE detainees, due to the ACLU litigation [Rodriguez v. Robbins](#). DHS should extend this rule nationwide, and guarantee that all ICE detainees subject to prolonged detention are given a bond hearing before an immigration judge, where the government must justify continued detention. When given these bond hearings, more than half of detainees have been ordered released on conditions by immigration judges, showing the unnecessary expense of detaining individuals whose flight risk and other concerns can be mitigated.

Stop immigration enforcement at courthouses: [DHS should treat courthouses](#) the same way it treats schools, hospitals, places of worship, and sites of public demonstration. In recognition of the compelling public mission and exercise of constitutional rights afforded at these sites, ICE and CBP have issued policy guidance establishing restrictions on enforcement at or near these sites, absent exigent circumstances. DHS, however, has [refused to extend this policy](#) to courthouses and instead continues to arrest immigrants at courthouses, thereby creating a chilling effect that has spread throughout immigrant communities. The ACLU has documented cases of [ICE arrests](#) taking place at courthouses all over the countr. America's courthouses must be open, accessible, and safe for all people, regardless of their immigration status.

Eliminate the “Constitution-Free” 100-mile border zone: This zone includes entire states (Florida, Maine) as well as most of the nation's largest metropolitan regions. Within this zone, CBP conducts investigatory detentions and warrantless searches, using interior checkpoints and roving patrols located far from the border. This militarized expansion has led to [rampant abuses](#) including racial profiling and excessive force, and has brought drones into some of the nation's safest cities. Short of eliminating the 100-mile zone altogether, DHS should reduce the zone to 25 miles (10 miles for entry onto private lands without a warrant, which is currently allowed up to 25 miles). The 25-mile/10-mile border zone reduction passed in the 2013 Senate immigration reform bill, after being proposed by Senators [Leahy](#) and [Murray](#), but was limited to the northern border.

End federal criminal prosecutions of non-violent immigration offenses: Since 1996 there has been a sharp increase in federal prosecutions for immigration-related crimes, mainly consisting of illegal entry and illegal reentry cases in the Southwest border region. Once convicted of these immigration crimes, people are incarcerated in [substandard, privately-run BOP prisons](#). DHS should stop referring [illegal entry and illegal reentry cases](#) for federal criminal prosecution. DHS can process these cases through the DHS removal system. Short of ending federal prosecutions of non-violent immigration offenses, DHS should deprioritize illegal entry and reentry cases involving veterans, vulnerable individuals, individuals with citizen family members, and persons who have not been sentenced for serious violent felonies over the past five years.

Mandate use of body-worn cameras: The use of [body-worn cameras](#), deployed within a framework that includes strong privacy protections and data retention limitations, should be mandated and funded for all CBP enforcement encounters with the public. These cameras are fast becoming a standard, cost-effective best law enforcement practice. They are a “win-win” for law enforcement and the public, because false accusations can be quickly disproved while abuses are recorded to avoid reliance on the parties’ statements. A study of the Rialto, California, Police Department found that the use of officer-mounted cameras resulted in an 88 percent decrease in complaints filed against officers and a 60 percent decrease in incidents where officers used force, with those officers not wearing cameras being twice as likely to use force.

Establish CBP short-term custody standards: Require DHS to create enforceable standards applicable to all CBP short-term custody facilities and hold rooms. These standards should address provision of adequate nutrition, appropriate climate, and medical care; dissemination of legal rights information in commonly-spoken languages; access to lawyers, consular officials, family members, and non-governmental organizations; independent inspection and monitoring protocols; NGO access and visitation; property return; and enforceable policies for identifying and processing credible fear claims of asylum seekers. CBP should also develop a detainee locator system for short-term custody, similar to the ICE system, in order to allow counsel and family members to determine where individuals are being held.

Develop uniform complaint process: CBP should develop [one centralized complaint form](#); create one toll-free number and website; create a mechanism that provides timely information in multiple languages about complaint status; establish a publicly accessible standardized database of complaints, including written resolutions, filed with CBP, ICE, Office for Civil Rights and Civil Liberties, and the Inspector General; and develop a [uniform process](#) for receiving, processing, and investigating all immigration and border-related complaints. Particular attention should be given to the prompt, thorough, and transparent investigation and resolution of use-of-force incidents, whether or not an individual complaint is filed.

Recent interviews given by James Tomsheck, formerly CBP’s Assistant Commissioner for the Office of Internal Affairs and currently a senior Border Patrol official, reveal the most serious allegations yet of improperly investigated, covered-up excessive uses of force and corruption. Tomsheck cites a culture of impunity at CBP, noting that Border Patrol officials have consistently tried to change or distort facts to make fatal shootings by agents appear to be “a good shoot.” Perhaps most alarmingly of all, Tomsheck said he believes that thousands of employees hired by CBP during an unprecedented expansion of the agency after 9/11 are potentially unfit to carry a badge and gun.