



Protecting Civil Liberties in Federal Immigration Reform Legislation May 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 of all workers. Error-prone identification systems endanger the rights and livelihood of everyone in U.S. workplaces 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 protect the rights of workers vulnerable to abuse, including temporary workers (or guestworkers) and unauthorized workers.**
 - Unauthorized workers must have meaningful access to workplace protections, backpay, and other remedies, including for anti-discrimination, wage and hour, health and safety, anti-retaliation, workers' compensation, and tort law protections. Without such protections, employers are able to exploit this vulnerable group of workers and ignore civil rights and labor and employment laws.
 - The road to citizenship should not be blocked based on onerous employment requirements that leave aspiring citizens vulnerable to abuse at the hands of employers. Low-wage workers should be able to get on the road to citizenship.
 - In any temporary visa program, workers must have: the ability to leave abusive U.S. employers and seek employment with other U.S. employers without having to leave the U.S. and return to their country of origin, a path to permanent residency and citizenship (with their families), robust governmental oversight of labor conditions, and enforcement mechanisms verifying that employers comply with the terms of the contract; employers must bear the recruitment/visa processing/travel costs of workers; government must adopt a rigorous and streamlined process to deny visa applications of employers who have violated workers' rights under prior contracts.

- **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.
- **Immigration reform must include the ability of committed and loving couples in same-sex relationships to sponsor their spouse or permanent-partner in the same way opposite-sex couples have long been able to under current immigration law.**
 - The discriminatory and unconstitutional so-called Defense of Marriage Act has caused these LGBT immigrant families to live in the shadows with the fear of separation and deportation for far too long. Family unity - including for those who are LGBT - is a critical component of any reform proposal.