



Secretary Janet Napolitano
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Napolitano:

On behalf of the undersigned organizations, we ask that you take steps to ensure that Customs and Border Protection (CBP) exercise its discretion in a manner that is consistent with the Department of Homeland Security's (DHS) enforcement priorities and which meets constitutional safeguards. As funding for CBP has soared, the agency's enforcement activity has drifted inland, often times many miles from the border or any point of entry. As this enforcement activity within 100 miles of the border has increased, so too have questionable practices that violate constitutional rights and standards. Such enforcement tactics do little to protect the border, and worse, they threaten constitutional protections that apply to citizens and immigrants alike, by inviting racial profiling, tearing apart families and burdening taxpayers with the cost of detaining individuals who pose no threat to our national security.

For example, we have received reports of Border Patrol conducting operations outside places where children and families are likely to be present, including schools, churches, and other community locations frequently visited by immigrants.

- In August 2011, the Office of Field Operations and Border Patrol conducted an operation in the parking lot of St. Anne's Church in Detroit, Michigan during mass. Half a dozen agents detained a man on church grounds for nearly an hour, eventually releasing him. No explanation has been provided for the detention, even subsequent to a Freedom of Information Act (FOIA) request.
- Also in Detroit, Latino Family Services has documented numerous instances of harassment of their clients, volunteers, and staff by Border Patrol. This includes the blockading of cars, unsolicited questioning, and following pedestrians or drivers for great distances.

There are also complaints regarding Border Patrol agents wrongfully stopping, interrogating and arresting individuals, including United States citizens.

- In 2010, Peter Mares, a U.S. citizen of Mexican descent, was providing translation services during a traffic stop by the Sodus, New York Police Department of a Spanish-speaking individual. Peter provided the translation services as a courtesy. The Sodus Police Department called Border Patrol for assistance, and upon arrival, Border Patrol

agents began to interrogate Peter and asked him to produce identification. Shocked by the fact that he was being treated as a suspect by Border Patrol, and knowing that as a United States citizen he was not required to carry identification, Peter asked why a United States citizen needed to show I.D.? In response, the Border Patrol agent became agitated and handcuffed Peter. Border Patrol agents then interrogated Peter about his citizenship. Throughout the entire interrogation Peter was in handcuffs. After approximately 45 minutes, Peter was released without charges.

- In 2009, a United States citizen who was born in Mexico was stopped in his car in upstate New York by Border Patrol agents who demanded to see his driver's license. He produced his New York license, but the Border Patrol agents refused to believe that it was real, accusing him of being in the United States illegally. He responded that he was a naturalized citizen, but the Border Patrol agents did not believe him and asked him to get out of his car. They then proceeded to handcuff him. His family members, who were also in the car, pleaded for Border Patrol agents not to arrest him and said that they could offer proof of his citizenship. The Border Patrol agents ignored their pleas and took the man to the Border Patrol station, where he was fingerprinted and photographed. Finally his wife arrived with a copy of his US passport and naturalization certificate. He was eventually released without charges.

Additionally, police-community relations are harmed when Border Patrol engages in enforcement practices in partnership with state and local law enforcement. Serious concerns have been raised about state and local police collaborating with CBP in immigration enforcement operations. Similarly, a disturbingly frequent pattern has emerged of local law enforcement routinely calling Border Patrol agents to serve as interpreters for Latino community members stopped for traffic violations. This type of conduct by state or local law enforcement agencies may be, as in Ohio, violative of state law. In some cases, these stops appear pre-textual and potentially due to racial profiling. In many cases, CBP officers have immediately asked for immigration documents of individuals before interpreting and have engaged in aggressive and intimidating behavior.

- In 2011, state troopers and Border Patrol agents began patrolling a trailer park outside of Sodus, New York where many farm workers lived. The state troopers and Border Patrol agents drive together from street to street in the park. According to one resident, "We cover up our windows and we don't dare to go outside unless we have to."
- In 2011, a husband, wife and their youngest son were driving to the grocery store in Everson, Washington when they were pulled over by a Sheriff because their muffler was too loud. The husband only had a license from Mexico, which he presented to the Sheriff along with the car registration. Since the car wasn't registered under his name the Sheriff told the family they were free to go as long as the owner of the car came to pick up the

car. The family called their oldest son to pick them up. Moments later, Border Patrol arrived to the scene to “interpret.” Realizing that her family was in danger, the wife began having a panic attack. And paramedics were called to assist her. While the medics took care of the woman in the ambulance, her husband and oldest son were arrested by immigration officials.

- In 2011, at a family birthday party in Nooksack, Washington a little girl had an accident and fell in the driveway. Her mother called 911, asking for an ambulance. The mother spoke English but gave her last name, which was “Martinez.” Shortly after, an ambulance, firefighters, the Sheriff, and Border Patrol arrived. Border Patrol agents walked around the party asking people who they were and their names. Many guests ran inside the home and closed the door, however, the family members who lived there were U.S. citizens.

Community organizations have also documented a pattern of CBP officers targeting certain individuals, apparently on the basis of race or religion, particularly Muslims, for extra scrutiny during border crossings. These individuals have been surrounded by agents with guns drawn, held and interrogated for hours, subjected to invasive and humiliating searches, and questioned inappropriately about their religion. Because this practice occurs repeatedly to the same individuals at border crossings, it appears that these individuals are on a “watch list” of some kind. Each of these individuals filed multiple inquiries through the DHS Traveler Inquiry Program (DHS TRIP), the only administrative remedy available to them, but have never been informed of the reason for the repeated questioning and detention at the border.

- In 2010, a U.S. citizen of Lebanese origin was returning to the United States with her husband and young children. As soon as she presented her passport to the CBP officer, she was instructed to turn off her vehicle. Her car was immediately surrounded by several armed agents pointing their weapons in her direction ordering her out of the vehicle. After stepping out of the vehicle, she was thrown against the car, handcuffed in front of her children, and taken inside for questioning. She was subjected to what she described a “sexually humiliating” full body search. For several hours, she was questioned about organizations she supports, her opinion regarding Hamas and Hizbollah, organizations she is affiliated with, and her personal finances. The process took six hours. After this incident, she has been unable to cross the US-Canada border without being subjected to a similar process each time. On one occasion, she was pressured by federal agents to become an informant against her community in exchange for an end to the continued harassment at the border.
- A U.S. Citizen of Lebanese origin and University of Michigan student, Mr. Cherri has been surrounded by armed agents, handcuffed, subjected to what he described as sexually humiliating searches, and taken inside for questioning for several hours at a time, each

and every time he crossed the U.S.-Canada border back into the United States. His car is routinely subjected to a K-9 search. Told his name sounded like someone else's, he is also fingerprinted every time he crosses the border. Mr. Cherri has been questioned for several hours at a time about his religious views, the mosque he prays at, the Muslim charities he donates to, and the Muslim nonprofit organizations with which he is affiliated.

- Mr. Mohamed is a U.S. citizen truck driver of Egyptian origin whose employment required him to cross the U.S.-Canada border on a daily basis. Despite having passed the necessary background check to obtain a FAST membership card, each day Mr. Mohamed crossed the border, he was selected for a secondary inspection. Mr. Mohamed was also subjected to questioning that would routinely take up to seven hours — the same exact questions each and every day he crossed: questions about his Islamic beliefs, his political views, and whether he received any terrorism training. One agent asked Mr. Mohamed how much he paid his wife to marry him. Another told him he should change his name to Jose, making a joking reference to Mr. Mohamed's repeated detentions. After being stopped every day for three weeks, because Mr. Mohamed was unable to complete any of his deliveries on time and was terminated from his job.

Finally, CBP's indiscriminate use of detention imposes a significant hardship on the individuals detained and their family members and community ties in the United States. A recent study on CBP activity analyzed arrests from 2006-2009 in the Rochester station, within the Buffalo sector of CBP. The findings revealed that seventy-three percent of individuals arrested by CBP agents were then placed into detention rather than being released during the adjudication of their case.¹

The signatories to this letter understand that there may have been a recent change in policy that directs CBP enforcement officers to refrain from conducting transportation sweeps on domestic trains and buses operating within 100 miles of the border, absent specific articulable facts that a passenger has committed an immigration violation. We would applaud such a change in policy as a first step, however, to address all the concerns raised above, we propose the following additional reforms:

- The proper lines of authority for Border Patrol enforcement activity that falls outside of the scope of preventing illegal entry into the U.S. should be clearly delineated. While CBP has increased significantly its enforcement activity within 100 miles from the border, it has done so without a full and transparent explanation of authority that details where Border Patrol may operate, what activities agents may conduct between points of entry, and when agents are permitted to conduct enforcement activity between the points

¹ Anon, et. al. *Justice Derailed. What Raids on New York's Trains and Buses Reveal about Border Patrol's Interior Enforcement Practices*. New York Civil Liberties Union, NYU School of Law - Immigrants' Rights Clinic, Families for Freedom, Nov. 2011. Accessible at http://www.nyclu.org/files/publications/NYCLU_justicederailedweb_0.pdf.

of entry. CBP should provide authority for Border Patrol enforcement activity within 100 miles from the border that is not for the purpose of preventing illegal entry into the U.S. but instead targets immigrant communities who have been present in the U.S. for some time.²

- ICE currently has a national policy prohibiting enforcement operations at sensitive community locations, defined as those places where children and families are likely to be present. These include churches, schools, funerals, political demonstrations, hospitals, or other community events. There are exceptions for exigent circumstances, and a clear chain-of-command process in those circumstances. We recommend development and implementation of a CBP-wide sensitive community locations policy, mirroring the prohibitions in the ICE policy, with meaningful accountability mechanisms;
- CBP should align its enforcement priorities with ICE's prosecutorial discretion guidelines. For example, Border Patrol agents should be directed to place lower priority on cases involving immigrants who are not apprehended while attempting to illegally enter the country. CBP personnel should be directed to apply DHS's enforcement priorities when deciding whether and how to conduct enforcement operations;
- CBP should make bond decisions on the individualized assessment of the need to detain, including an individual's risk of flight, danger to the community, and other humanitarian considerations;
- CBP should adopt a policy barring the use of agency personnel and resources to perform state or local law enforcement functions, including operating local 911 emergency dispatch centers or acting as interpreters during state or local law enforcement activities. Such commingling of functions undermines the trust that immigrant communities have with state and local law enforcement, to the detriment of public safety for the entire community. It may also be violative of state law;
- CBP should be prohibited from stopping people based on their perceived race, religion, ethnicity or national origin. CBP agents should record the articulable facts in the Vehicle Stop report and/or I-213 that provide the basis for, or circumstances surrounding each stop, including whether such individual's perceived religion, race or ethnicity contributed to such basis. Additionally, CBP agents should record identifying factors of each individual stopped, such as religion, race, gender, ethnicity and approximate age. If the CBP agent declares that the stop or search was consensual, then the agent should document in the Vehicle Stop report, incident report, and/or I-213 how that consent was asked for and received, and whether consent was asked for and received in the individual's native language;

² Id. At 9-11.

- The Department of Justice should amend its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply to profiling based on religion and national origin, remove national and border security loopholes, cover surveillance activities, apply to state and local law enforcement agencies acting in partnership with federal agencies or receiving federal funds, and make the guidance enforceable.
- Contemporaneous with enhanced or secondary inspections, provide individuals who have been designated for enhanced questioning or searches with information about where and how to file grievances, processes whereby they may learn if they have been flagged as part of a “watch list” and instructions on how to modify their records if they are part of such a list.

Based on the above, CBP’s current operations and procedures undermine DHS-stated enforcement priorities objectives and weaken community safety. We urge you to take immediate action to implement the recommendations outlined in this letter. For more information, please contact Ryan Bates, Director, Alliance for Immigrants Rights & Reform – Michigan, 248.787.6767 ryan@michiganimmigrationreform.org.

Sincerely,

The Northern Border Coalition

On behalf of the following organizations:

National Networks:

Americans for Immigrant Justice
 Arab Community Center for Economic and Social Services
 Muslim Legal Fund of America (MLFA)
 National Immigration Forum
 National Network for Immigrant and Refugee Rights
 National Network of Arab American Communities
 Rights Working Group
 South Asian Americans Leading Together (SAALT)
 Southern Border Communities Coalition

State Organizations:

Georgia Detention Watch- GA
 Idaho Community Action Network (ICAN)-ID
 Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA)- MA
 American Immigration Lawyers Association-Michigan Chapter- MI
 Alliance for Immigrants Rights Michigan- MI
 Home Visitors of Mary- MI

Michigan Immigrant Rights Center- MI
Washtenaw Interfaith Coalition for Immigrant Rights- MI
Law Office of Christopher B. Vreeland- MI
American Civil Liberties Union of Minnesota- MN
Sisters of Mercy West Midwest Justice Team- NE
Casa Esperanza - Ombudsman- NJ
American Civil Liberties Union New Mexico Regional Center for Border Rights- NM
Catholic Charities of Tompkins/Tioga- NY
Citizen Action of New York-NY
Central New York Immigration Task Force- NY
Centro Independiente de Trabajadores Agricolas (CITA)-NY
Empire Justice Center- NY
Greater Rochester Coalition for Immigration Justice (GRCIJ)- NY
Hudson Valley Community Coalition- NY
Interfaith Alliance of Rochester-NY
League of United Latin American Citizens -Syracuse Chapter- NY
Migrant Support Services of Wayne County- NY
New York Chapter of the American Immigration Lawyers Association- NY
New York Civil Liberties Union- NY
New York Civil Liberties Union - Genesee Valley Chapter- NY
New York Civil Liberties Union- Western Regional Office
New York Civil Liberties Union- Central New York chapter
New York Civil Liberties Union- Capitol Region chapter
New York Civil Liberties Union-Lower Hudson Valley chapter
New York Civil Liberties Union- Nassau County chapter
New York Civil Liberties Union- Suffolk County chapter
New York Immigration Coalition (NYIC)- NY
Oscar Romero Church- NY
Spiritus Immigrant Rights Committee (SIRC)- NY
The Rochester Committee on Latin America- NY
Tompkins County Immigrant Rights Coalition- NY
Wayne Action for Racial Equality- NY
Worker Justice Center of New York- NY
Workers' Center of Central New York- NY
Advocates for Basic Legal Equality, Inc.- OH
American Civil Liberties Union of Pennsylvania- PA
Asian Counseling and Referral Service (ACRS)- WA
CAIR-WA
El Centro de la Raza- WA
Alliance for a Just Society- WA
Northwest Immigrant Rights Project- WA
OneAmerica- WA
SEIU 775 NW-WA
Tacoma Community House- WA
American Civil Liberties Union of West Virginia-WV
Voces de la Frontera- WI