



AILA's Recommendations to DHS on Enforcement

The U.S. Department of Homeland Security (DHS) is still removing hundreds of thousands of people who pose no threat to the country's communities and have become part of the social fabric. While fundamental changes to the immigration system require legislative reform, DHS can immediately act to protect families and ensure that enforcement practices comport with the American values of due process, equal rights, and human dignity. DHS should implement the following package of recommendations to achieve meaningful reform:

EXERCISE PROSECUTORIAL DISCRETION IN A MEANINGFUL WAY.

DHS should ensure that every person apprehended is screened for prosecutorial discretion. Immigration and Customs Enforcement (ICE) has not applied its own policies effectively or consistently, while Customs and Border Protection (CBP) has not published any policy on prosecutorial discretion.

DHS should make clear that discretion is particularly appropriate for the following individuals. 1) close family of: U.S. citizens, permanent residents, and recipients of Deferred Action for Childhood Arrivals (DACA); and 2) individuals who have long resided in the United States or have other strong community ties.

DHS also has the authority to designate specific categories of individuals for whom it will suspend enforcement action. For example, in 2012, DHS announced that deferred action would be granted for certain individuals who came to the United States as children. The family of those who serve in the U.S. military have also benefited from such suspensions of enforcement.

DHS TARGETS TOO MANY PEOPLE WHO HAVE ONLY IMMIGRATION VIOLATIONS.

ICE claims that 98 percent of the individuals it removed last year fell within its priorities for civil immigration enforcement, yet over 40 percent of those removed have no criminal background whatsoever. In actuality, tens of thousands of individuals are deported each year who pose no risk to public safety. People with a single immigration status violation (like a prior removal order) are often automatically priorities for removal, even if they have lived in the United States for a long time, have a U.S. citizen child or spouse, or other equities that merit discretion. Many people's decision to stay or return to the United States after they have been deported is driven by the desire to be with their family. **DHS should clarify that status violations do not make someone a priority for removal.**

LIMIT THE PRACTICE OF "NO PROCESS" REMOVALS IN BORDER REGIONS.

ICE and CBP now deport most people without ever bringing them before an immigration judge. In 2013, more than 70 percent of all people ICE deported were subjected to summary removal procedures, which bypass immigration courts →



entirely and lack fundamental due process. For these hundreds of thousands of individuals, immigration agents are the judge and jury. Deportation decisions are made so quickly there is no time to see if a person merits discretion or needs protection. Vulnerable individuals, such as asylum seekers, are particularly hard-hit by these procedures. In case after case, Border Patrol agents have failed to ask about—or have completely ignored—a person’s fear of persecution or torture.

DHS should immediately reevaluate its use of summary removal procedures and implement a screening protocol that must be used in border regions, in every case, to ensure that agents comply with enforcement priorities and prosecutorial discretion policies.

STOP DETAINING INDIVIDUALS WHO POSE NO PUBLIC SAFETY THREAT.

Each day, ICE detains thousands of individuals—including long time lawful residents and asylum seekers—who pose no risk to public safety whatsoever, and often without even the minimal due process of a bond hearing. Immigration detention is expensive, costing taxpayers \$2 billion annually. The purpose of civil immigration detention is not to punish, but instead to ensure that people appear at their hearings and comply with orders. While the size of immigration detention continues to skyrocket (DHS broke a record in 2012 by detaining over 477,000 people), the criminal justice field has reduced detention and expanded the use of smart and effective alternatives to detention. DHS should follow suit. **DHS should not waste taxpayer dollars to needlessly detain immigrants who could successfully and safely be released. DHS should reduce immigration detention, expand the use of alternatives, and provide prompt bond hearings to all detainees.**

RESTRICT THE USE OF CIVIL IMMIGRATION DETAINERS AND OTHER PARTNERSHIPS WITH POLICE.

ICE should restrict and reform its partnerships with local law enforcement—like Secure Communities, 287(g), and the immigration detainers (or “ICE holds”) upon which these programs rely—which compromise public safety, undermine trust in law enforcement, and lack transparency. Each year, ICE issues hundreds of thousands of detainer requests to hold people in jail, sweeping in U.S. citizens, long-time lawful residents, and even juveniles. Many sheriffs and police chiefs oppose ICE’s use of detainers. They are often placed indiscriminately on people who are not even enforcement priorities. Detainers also raise serious constitutional concerns because they are not reviewed by a judge, are not supported by probable cause, and provide inadequate notice, undermining the core American values of due process and civil liberty. These concerns are amplified by the sheer number of detainers issued—over 400,000 in the last two years. **DHS should return to the prior practice of issuing detainers to request notification only.**

BRING TRANSPARENCY AND ACCOUNTABILITY TO CBP.

Continuing reports of improper use of force, including lethal force, by Border Patrol, as well as abusive CBP detention practices raise serious concerns. Men, women, and children held at ports of entry or in Border Patrol detention facilities routinely report that facilities are kept at dangerously cold temperatures, on the verbal and physical intimidation, and the lack of basic health and hygiene provisions. CBP lags behind ICE in evaluating and regulating its detention facilities, which were built to be used on a short-term basis for border apprehensions. Reports continue on racially motivated arrests, coercive interrogation tactics, and denial of the right to counsel. These problems undermine the rights of both citizens and noncitizens and are exacerbated by the lack of any uniform or effective complaint mechanism to address misconduct by CBP officers and agents. **CBP should review and establish functioning oversight, feedback, and redress mechanisms to improve accountability.**

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