January 22, 2013

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama,

We are encouraged to hear that there is renewed interest in legislative reform of immigration policy. We write to you as a broad group of individuals and border and national organizations—representing faith, labor, immigrants’ rights, and human and civil rights groups—to urge that you adopt a reform plan that recognizes the growing need for accountability among our border officials and stops the senselessness of continuing to build a border enforcement regime.

Border cities are among the safest in the nation and are a vital component of the half a trillion dollars in trade between the United States and Mexico. In fact, one in every 24 workers in the nation depends on the commerce between the two countries.

Since 2003, the U.S. Border Patrol has doubled in size and now employs more than 21,000 agents, with about 85 percent of its force deployed at our 2000-mile Southwestern border. In fact, so many Border Patrol agents now patrol the southern border that if they lined up equally from Brownsville to San Diego, they would stand in plain sight of one another. This number does not include the thousands of other DHS officials, including CBP Office of Field Operations officers and one-fourth of all ICE personnel deployed at the same border. It also does not include the thousands of ATF, DEA, and FBI agents, National Guard members, or the additional physical infrastructure and technologies, such as about 650 miles of border fencing and up to 10 unmanned aerial vehicles patrolling our skies.

From a fiscal perspective, from FY2004 to FY2012, the budget for U.S. Customs and Border Protection increased by 94 percent to $11.65 billion, a leap of $5.65 billion; this following a 20 percent post-9/11 increase of $1 billion. By way of comparison, this jump in funding represents more than quadruple the growth rate of NASA’s budget and almost ten times that of the National Institutes of Health. The Yuma, Arizona sector, for example, is overstaffed and bloated, having seen a 95 percent decline in apprehensions since 2005 while the number of agents has tripled. Each agent was responsible for

interdicting just 8 immigrants in 2010, contributing to ballooning per capita costs: each migrant apprehension at the border now costs five times more, rising from $1,400 in 2005 to over $7,500 in 2011. Indeed, despite Border Patrol's doubling in size since 2004, overtime costs have amounted to $1.6 billion over the last six years.

CBP's spending runs directly counter to data on recent and current migration trends and severely detracts from the true needs of border security. Over the last decade, apprehensions by the U.S. Border Patrol have declined more than 72 percent (2000-10); at a time when migrant apprehensions are lower than at any time since the Nixon administration, wasteful spending by CBP must be reined in. Although the economic downturn is a partial explanation of this reduction, economic growth and declining birth rates in Mexico – the source of 87 percent of 2010 apprehensions – consistently indicate that emigration pressure will continue to decline.

Furthermore, this rapid expansion of border enforcement resources has come with very few corresponding accountability and oversight resources and has, unfortunately, led to an increase in civil and human rights violations, traumatic family separations in border communities, and racial profiling and harassment of Native American/American Indians and Hispanics/Latinos—many of whom are U.S. citizens and have lived in the region for generations.

Incidents of excessive use of force are on the rise, with at least 22 people killed or seriously injured by CBP officials since January 2010. On April 20, 2012, PBS's Need to Know program explored the trend of

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7 "Border Patrol overtime, staffing up; arrests down." Associated Press (Feb. 5, 2012).
11 Jorge A. Solis, 28, shot and killed, Douglas, AZ (Jan. 4, 2010); Victor Santillan de la Cruz, 36, shot and killed, Laredo, TX (March 31, 2010); Anastasio Hernandez Rojas, 32, tortured to death, San Diego, CA (May 28, 2010); Sergio Adrian H. Huerca, 15, shot and killed, El Paso, TX (June 7, 2010); Juan Mendez, 18, shot and killed, Eagle Pass, TX; Jesus E. Castro Romo, 30, survived shooting, Santa Cruz County, AZ (Nov. 16, 2010); Ramses Barron Torres, 17, shot and killed, Nogales, Mexico (Jan. 5, 2011); Roberto Pérez Pérez, beaten while in detention and died due to lack of proper medical care, San Diego, CA (Jan. 13, 2011); Alex Martinez, 30, shot and killed, Whatcom County, WA (Feb. 27, 2011); Carlos Lamadrid, 19, shot and killed, Douglas, AZ (March 21, 2011); Jose Gutierrez Guzman, 41, tased into a coma state, survived, San Luis port of entry, AZ (March 30, 2011); Jose Alfredo Yañez Reyes, 40, shot and killed, Tijuana, Mexico (June 21, 2011); Gerardo Rico Lozana, 20, shot and killed near Corpus Christi, TX (Nov. 3, 2011); Byron Sosa Orellana, 28, shot and killed near Nogales, Mexico (Dec. 6, 2011); Alexander Martin, 24, died in car explosion that may have been caused by Border Patrol tasers (March 15, 2012); Charles Robinson, 75, shot and killed, Jackman, ME (June 23, 2012); Juan Pablo Perez Santillan, 30, shot and killed on the banks of the Rio Grande, near Matamoros, Mexico (July 7, 2012); Guillermo Arévalo Pedrero, 36, shot and killed, Nuevo Laredo, Mexico (Sept. 3, 2012); Valerie Tachiquin-Alvarado, 32, shot and killed, Chula Vista, CA (Sept. 28, 2012); José Antonio Elena Rodriguez, 16, shot and killed, Nogales, Sonora (Oct. 11, 2012); Margarito Lopez Morelos, 19, shot and killed, Baboquivari Mountains, AZ (Dec. 2, 2012), and another person whose name has not been released was shot and injured south of Gila Bend, AZ (Dec. 4, 2012). This count does not include Border Patrol agent Nicholas J. Ivie, 30, who was fatally shot by friendly fire near Bisbee, AZ (Oct. 2, 2012).
excessive use of force by CBP, with a focus on Anastasio Hernandez Rojas. New footage depicting a dozen CBP officials surrounding and applying a Taser and other force to Mr. Hernandez, who was shown to be handcuffed and prostrate on the ground contrary to the agency’s incident reporting, shocked viewers. The San Diego coroner classified Mr. Hernandez’s death as a homicide, noting in addition to a heart attack: “several loose teeth; bruising to his chest, stomach, hips, knees, back, lips, head and eyelids; five broken ribs; and a damaged spine.” CBP’s version of events described a “combative” person: force was needed to “subdue the individual and maintain officer safety.” A follow-up delegation led by the Southern Border Communities Coalition (SBCC) prompted a Congressional letter signed by 16 members and sent to DHS Secretary Janet Napolitano, DHS Inspector General Charles Edwards, and DOJ Attorney General Eric Holder. On July 12, 2012, the Associated Press reported that a federal grand jury was investigating the death of Anastasio Hernandez, which suggests that the government may be considering filing criminal charges. It has also been reported this last fall that DHS’s Office of Inspector General is conducting an investigation of CBP’s use-of-force policies and training, with attention to the Border Patrol’s hurried expansion of its ranks. In December 2012, CBP contracted an “independent outside research center” to conduct a review of its officers’ use of force. Steps like these offer grounds for cautious optimism that effective oversight is possible and serve as building blocks for more systemic, robust and permanent oversight and accountability mechanisms.

Border Patrol’s use-of-force incidents have attracted international scrutiny with the government of Mexico, the Inter-American Commission on Human Rights, and the Office of the United Nations High Commissioner for Human Rights weighing in to urge the U.S. government to investigate CBP’s involvement in each fatality. In addition, testimonies of abuse by CBP officials have raised concerns regarding potential patterns of excessive force; unwarranted, invasive and humiliating personal searches; unjustified and repeated detentions based on misidentification; and use of coercion to force individuals to surrender their legal rights, citizenship documents and property. On May 9, 2012, the ACLU submitted an administrative complaint to DHS that documented 11 cases of abuses that occurred in ports of entry from San Diego, CA, to Brownsville, TX.

One of the cases involved an allegation of a Border Patrol agent sexually assaulting a victim who was then later subjected to a private, intimidating search by CBP officers during a return trip to an El Paso, TX port of entry to give testimony about the assault. The search occurred despite protests by an ACLU representative and a New Mexico State police officer who was investigating the case. Re-traumatized by

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16 See, e.g., http://online.wsj.com/article/SB10000872396390443916104578022440624610104.html?mod=hp_opinion


the experience, the victim subsequently decided to drop the investigation. Her case, among others, led to a follow-up PBS Need to Know documentary\(^\text{20}\) that aired on July 20, 2012, regarding abuse by CBP officials. Since filing the complaint, ACLU affiliates, SBCC and immigrant rights organizations continue to receive numerous complaints from travelers claiming CBP abuse.

While the federal government has the authority to control our nation’s borders and to regulate immigration, CBP officials must do so in compliance with national and international legal norms and standards. As employees of the nation’s largest law enforcement agency, CBP officials should be trained and held to the highest professional law enforcement standards.

Recommendations that the Department of Homeland Security can implement include:

- Change CBP’s training to ensure lethal use of force is used only as a last resort. A good first step is making public CBP’s use-of-force guidelines (several law enforcement agencies have done so\(^\text{21}\)). Transparency on use-of-force guidelines would allow outside experts to review them for compliance with best practices and legal rules, and in particular to determine whether CBP should be emphasizing de-escalation techniques to avoid unnecessary incidents of lethal force.

- Review, reform and disseminate to all CBP sectors and field offices policies that:
  - Prevent suspicion-less searches of persons and property at ports of entry.
  - Ban the use of racial profiling, (i.e., relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities)
  - Prevent immigration enforcement activities on interior transportation services and in sensitive community locations.
  - Ensure the return of personal belongings confiscated by CBP officials.
  - Prohibit CBP immigration enforcement when providing assistance to state and local police responding to 911 calls.

- Develop enforceable and humane standards for holding immigrants in short-term custody to ensure conditions of confinement meet constitutional standards and basic needs.

- Improve training requirements of Border Patrol agents, including developing more robust academy and post-academy training on the rights of immigrants, including U and T visas, civil rights law (particularly limits on stop and search authority), use-of-force de-escalation techniques, and cultural sensitivity.

- Install officer, hold room, and dashboard-mounted cameras to record CBP operations.

- Allow unannounced visits to short-term custody facilities by non-governmental organizations and international human rights bodies.

In addition to these administrative recommendations, Congress should create an external, independent oversight commission with investigatory, auditing, and subpoena power to respond to complaints from whistleblowers and the general public about CBP abuses, while protecting the identity and status of


complainants. The commission, which should include non-governmental organizations among its members, should be required to issue public reports on its activity and have the authority to make legislative, regulatory, or policy recommendations.  

Furthermore, border enforcement policy decisions should be pragmatic and reflect the perspectives of border communities. Now is the time to improve existing resources and rein in irresponsible or increased spending, including halting further construction of costly yet ineffective border walls or unproven technologies, and stopping the expensive, unnecessary prosecution of migrants through programs like Operation Streamline. In fact, by overwhelming federal courthouses in the Southwestern border with defendants charged with illegal entry or re-entry, Operation Streamline often diverts judicial resources away from addressing crimes such as arms trafficking. Instead, the program criminally prosecutes migrants who spend time in prison at an incredible cost to U.S. taxpayers. Operation Streamline has led to unprecedented mass incarceration of Hispanics and Latinos, who in the last year of available statistics were the majority of those sent to federal prison despite constituting only 16 percent of the population. Without clear data demonstrating Operation Streamline’s effectiveness in reducing unauthorized migration, this program serves as an extremely expensive and unnecessary addition to an already extensive civil, immigration enforcement system.

House Appropriations Committee Chairman Hal Rogers has warned against “a sort of mini industrial complex syndrome that has set in there [at the border], and we’re going to have to guard against it every step of the way . . . . DHS is now dealing with the same challenge the entire government’s facing, and that’s the realization that our budget is hemorrhaging from red ink and we’ve got to cut spending before it’s too late.”

Border security is not an exception to fiscal responsibility, and the vital conversation about offering a humane and reasonable roadmap to legal residency and citizenship for individuals currently contributing to the United States must not be compromised by unsupported rhetoric about border enforcement needs. Border communities are safe, and rather than continuing years of profligate and wasteful spending the administration must begin holding CBP accountable for its bloated budget, flawed policies, and pervasive abuses.

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If you have any questions or require further information, please contact Vicki B. Gaubeca, Director, Regional Center for Border Rights, ACLU of New Mexico, at (575) 373-5789 or vgaubeca@aclu-nm.org or Chris Rickerd, Policy Counsel, ACLU Washington Legislative Office, 202-675-2339 or crickerd@dcaclu.org.

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22 There have been two comprehensive immigration reform bills, one introduced by Senator Robert Menendez (Comprehensive Immigration Reform Act of 2011) and another by Congressman Luis Gutierrez (Comprehensive Immigration Reform for America’s Security and Prosperity Act of 2009), that include legislative language establishing an independent commission.


Cordially,

**Endorsements from Border and National Organizations, Coalitions, and Allies**

African American Ministers In Action (Washington, DC)
Aguilas del Desierto Inc. (San Diego, CA)
American Civil Liberties Union
American Friends Service Committee
American Immigration Council (Washington, DC)
American Immigration Lawyers Association (Washington, DC)
America’s Voice Education Fund (Washington, DC)
Arizona-Sonora Border Coalition
Alliance San Diego (San Diego, CA)
Asian Law Alliance (San Jose, CA)
Black Unity (Nashville, TN)
Border Action Network (Tucson, AZ)
Border Angels (San Diego, CA)
Border Network for Human Rights (El Paso, TX)
Border Peace Presence (El Paso, TX)
Casa Esperanza (Plainfield, NJ)
Catholic Charities Legal Services Program (Las Cruces, NM)
Catholic Community Services (Tucson, AZ)
CAUSA, Oregon’s Immigrant Rights Coalition
Church World Service
Coalición de Líderes Latinos-CLILA (Dalton, GA)
Cobb Immigrant Alliance (Austell, GA)
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) (Los Angeles, CA)
Colonias Development Council (Las Cruces, NM)
Comunidades en Acción y Fé (CAFé) (Las Cruces, NM)
Community to Community Development, Immigrant Solidarity Committee (Bellingham, WA)
Conference of Major Superiors of Men (CMSM) (Silver Spring, MD)
Disciples Justice Action Network
Diocesan Migrant and Refugee Services (El Paso, TX)
Dominican Sisters of Houston (Houston, TX)
El CENTRO de Igualdad y Derechos (Albuquerque, NM)
Ellin Jimmerson, Immigration Initiative, LLC (Huntsville, AL)
Immigrant Rights Committee, First Unitarian Society of Denver (Denver, CO)
Free Radicals (Houston, TX)
Frente Indígena de Organizaciones Binacionales (FIOB)
Four Freedoms Forum (Honolulu, HI)
Gainesville Interfaith Alliance for Immigrant Justice (Gainesville, FL)
Gente Unida (San Diego, CA)
Georgia Detention Watch (Atlanta, GA)
Good Shepherd United Church of Christ (Sahuarita, AZ)
Green Valley/Sahuarita Samaritans (Green Valley and Sahuarita, AZ)
Holy Spirit Missionary Sister – JPIC, USA
Hour Time Now for Black Unity (Los Angeles CA)
Houston United/Unido (Houston, TX)
Humane Border Solutions (Bisbee, AZ)
Immigration Equality (Washington, DC)
Justice Strategies (Brooklyn, NY)
Kino Border Initiative (Nogales, AZ)
Latin America/Caribbean Committee of the Loretto Community
La Union del Pueblo Entero (LUPE) (San Juan, TX)
Leadership Conference on Civil and Human Rights (Washington, DC)
League of United Latin American Citizens (LULAC)
Lipan Apache Women Defense and Emilio Institute for Indigenous and Human Rights (El Calaboz Rancheria, Cameron County, TX)
Long Island Immigrant Alliance (Amityville, NY)
March 25 Coalition (Javier Rodriguez, Larayueladejavier.wordpress.com, Los Angeles, CA)
Mexican American Legal Defense and Educational Fund (MALDEF)
Muslim Legal Fund of America (MLFA)
National Council of La Raza (NCLR)
National Immigration Forum (Washington, DC)
National Immigration Law Center (Los Angeles, CA)
National Network for Immigrant and Refugee Rights (Oakland, CA)
New York Immigration Coalition (New York, NY)
No Border Wall (McAllen, TX)
No More Deaths (Tucson, AZ)
One Horizon Institute (Lexington, KY)
Oregon New Sanctuary Movement (Portland, OR)
Paso del Norte Civil Rights Project (El Paso, TX)
PCUN, Oregon's Farmworker Union
Political Asylum/Immigration Representation Project (Boston, MA)
Presbyterian Peace Fellowship (Stony Point, NY)
Priority Africa Network (Oakland, CA)
Proyecto Juan Diego (Brownsville, TX)
Reformed Church of Highland Park (Highland Park, NJ)
Refugee and Immigration Ministries of Disciples Home Missions, Christian Church/Disciples of Christ (Indianapolis, IN)
Religious of the Assumption (Chaparral, NM)
Rights Working Group (Washington, DC)
Rio Grande Valley Equal Voice Network (Rio Grande Valley, TX)
School Sisters of Notre Dame (Douglas, AZ)
Sisters of Mercy South Central Community (Belmont, NC)
Somos Un Pueblo Unido (Santa Fe, NM)
South Asian Americans Leading Together (SAALT) (Takoma Park, MD)
Southern Border Communities Coalition (SBCC)
Southern Coalition for Social Justice (Durham, NC)
Taskforce for Immigrant Advocacy and Services (TIAS-NM) (Southern New Mexico)
Tepeyac Institute, Diocese of El Paso (El Paso, TX)
The Hat Project (Wenatchee, WA)
Tucson Samaritans (Tucson, AZ)
UbuntU Immigration Project, Countryside Church UU (Palatine, IL)
United Church of Christ, Justice and Witness Ministries (Washington, DC)
United Methodist Church, General Board of Church and Society
United We Dream
Washington Office on Latin America (Washington, DC)
Washtenaw Interfaith Coalition for Immigrant Rights (Ypsilanti, MI)
WeCount! (Homestead, Florida)
Witness for Peace (Washington, DC)
Women's Refugee Commission (Washington, DC)
Women Voters of Greater Las Cruces (Las Cruces, NM)

**Endorsements from Individuals*  
Donald Bahlinger, SJ, Ignatius Residence (New Orleans, LA)
Diana M. Barnes, PhD, Visiting Assistant Professor, Skidmore College (Saratoga Springs, NY)
Cynthia Bejarano, PhD, member of the Taskforce for Immigrant Advocacy and Services (Las Cruces, NM)
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Rev. William F. Brisotti, Pastor, Our Lady of the Miraculous Medal Church (Wyandanch, NY)
Sister Judy Bourg, SSND (Douglas, AZ)
Dr. James Cockcroft, PhD, author, lecturer (Montreal, Canada)
Benin "Beni" Dakar, Beni Dakar & Associates (Duluth, GA & Columbia, MD)
Fr. Robert F. Dueweke, OSA (El Paso, TX)
Arthur V. Flores (Las Cruces, NM)
Al Galves (Las Cruces, NM)
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Sister Christine Garcia, SSND (Douglas, AZ)
Kathy Glatz (Denver, CO)
Gilbert G. Gonzalez, Professor Emeritus, Chicano Latino Studies, University of California (Irvine, CA)
Roberta K. Gran (Las Cruces, NM)
David E. Hansen, member of the Taskforce for Immigrant Advocacy and Services (Las Cruces, NM)
Neil Harvey, Professor, New Mexico State University (Las Cruces, NM)
Roberto D. Hernández, PhD, Assistant Professor of Chicana/o Studies, San Diego State University; At-large Representative, National Association for Chicana and Chicano Studies (San Diego, CA)
Josiah Heyman, Professor of Anthropology and Chair, Sociology and Anthropology, University of Texas at El Paso (El Paso, TX)
Randy and Susan Hinthorn, Retired Maryknoll Lay Missioners, (residing in Puerto Escondido, Mexico)
Win Jacobs (Las Cruces, NM)
Parrish Jones, minister, Presbyterian Church USA and at large member of the Presbytery of St. Augustine (Jasper, FL)
Al Kissling (Las Cruces, NM)
Rev. Randy J. Mayer (Sahuarita, AZ)
Molly Molloy, Frontera List for Border News (Las Cruces, NM)
Dorinda Moreno, U.S. Liaison Fuerza Mundial, International Tribunal of Conscience of Peoples in Movement, Hitec Aztec Communications (Santa Maria, CA)
Dr. Carlos Muñoz, Jr., Professor Emeritus, Chancellor’s Distinguished Public Scholar University of California, Berkeley (currently at Universidad Nacional Autónoma de México, Mexico City, Mexico)
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Tim Reed, Peace Environment Social Concerns Committee of the Las Cruces Religious Society of Friends, Quakers (Las Cruces, NM)
Sister Anne Salaun, RA (Chaparral, NM)
Michael Seifert, Rio Grande Valley Equal Voice Network Weaver (Rio Grande Valley, TX)
Roshi Anne Seisen Saunders, Abbess, Sweetwater Zen Center (National City, CA)
Gill Sorg, Las Cruces City Councillor (Las Cruces, NM)
Juanita Valdez-Cox, LUPE Executive Director (San Juan, TX)
Mike Wilson, Tohono O’odham human rights activist (Tucson, AZ)

*NOTE: organizational affiliation is informational and does not represent an endorsement by the organization.*