



**Torn Apart: How Wasteful Border Enforcement Separates Families
and Makes Border Communities Less Secure**

**Written Statement of Vicki B. Gaubeca
Director, ACLU of New Mexico Regional Center for Border Rights**

**Congressional Ad-Hoc Hearing:
“Lines That Divide US:
Failure to Preserve Family Unity in the Context of Immigration Enforcement at the Border”**

April 10, 2013

I. Introduction

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of more than a half-million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to preserving and defending the fundamental rights of individuals under the Constitution and laws of the United States. The ACLU’s Washington Legislative Office (WLO) conducts legislative and administrative advocacy to advance the organization’s goal to protect immigrants’ rights, including supporting a roadmap to citizenship for aspiring Americans. The Immigrants’ Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of immigrants. The ACLU of New Mexico’s Regional Center for Border Rights (RCBR) addresses civil and human rights violations arising from border-related immigration policies. RCBR works in conjunction with ACLU affiliates in California, Arizona, and Texas, as well as immigrants’ rights advocates throughout the border region.

The ACLU, including RCBR, submitted a statement to a hearing held by the House Committee on Homeland Security’s Subcommittee on Border and Maritime Security on February 26, 2013.¹ The statement outlined the ACLU’s position that in any immigration reform proposal the roadmap to citizenship for aspiring Americans must not be linked to either increased border enforcement resources or a border security “trigger,” given the massive infusion of resources for border protection in the last decade. Deployment of additional border security along the U.S.-Mexico border would be wasteful and unnecessary, with border communities among the safest in

¹ Available at <http://www.aclu.org/immigrants-rights-national-security/aclu-statement-house-homeland-security-subcommittee-hearing> (also appended to this statement).

the nation, apprehensions by Customs and Border Protection (CBP) personnel at their lowest level in 40 years, and net migration from Mexico at zero.

Spending on border security has increased dramatically over the last decade with virtually no accountability measures, resulting in civilian deaths at the hands of CBP personnel and many other civil liberties abuses, including rampant racial profiling. Congress should heed House Appropriations Committee Chairman Hal Rogers' warning about the irrationality of border spending: "It is a sort of a mini industrial complex syndrome that has set in there. And we're going to have to guard against it every step of the way."²

The ACLU appreciates being invited to elaborate at this hearing about a vital aspect of these border abuses: the family separation that results from border enforcement having nothing to do with public safety threats. For example, in June 2009, RCBR staff arrived at a Catholic church in Roswell, New Mexico to hear community members voice concerns about a local police practice of inquiring about immigration status during routine traffic stops. Dorothy, a 24-year-old U.S. citizen, sat with her two boys, ages five and three, as she recounted how a police officer pulled her over for a "broken windshield" near Dexter, New Mexico. The officer asked her husband, a passenger, for his license. When Dorothy replied that he did not have one, the officer demanded to know whether her husband was here "legally." Her heart sank as she whispered, "No."

Dorothy met her husband in high school. He came to the United States as a child and, at the time of the traffic stop, had lived in New Mexico for almost 20 years. After graduating from high school as the valedictorian, he found work on a dairy farm. He was the family's major breadwinner and had never been in trouble with the law. But that didn't matter. The police officer who stopped Dorothy that day called the Border Patrol and, in less than 48 hours, Dorothy's husband had been deported to Mexico. Dorothy now receives public benefits to care for her children and is considering moving to a country she knows nothing about to reunite with her husband. She told us: "I never asked to see his papers before I fell in love with him."

Dorothy's story and others we heard that morning inspired us to document the experience of New Mexican families when harsh immigration policies separate parents, children and siblings across national borders. RCBR has just released its report, "Torn Apart: How U.S. Immigration Policy Fragments New Mexican Families," which focuses on the testimonials of nine families who came forward to describe their experiences in interviews we conducted in 2012.

II. Family Unity Must Be a Foremost Consideration in Immigration Reform

Family unity is a fundamental human right that is widely recognized in international human rights law.³ Indeed, international human rights bodies have consistently held that nations must

² Ted Robbins, "U.S. Grows an Industrial Complex Along the Border." NPR (Sept. 12, 2012), available at <http://www.npr.org/2012/09/12/160758471/u-s-grows-an-industrial-complex-along-the-border>

³ See, e.g., Universal Declaration of Human Rights (UDHR), G.A. Res 217A(III), U.N. Doc A/810 at 78 (1948) adopted December 10, 1948, art. 16; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976,

balance the legitimate state interest in maintaining their borders with respect for human rights, including the guarantee of family unity. For too long, our rigid immigration laws have given short shrift to family unity, leading to a broken and excessively punitive immigration system that inflicts misery on the lives of hundreds of thousands of hard-working American families every year.

Residents of border communities are daily witnesses to the dire consequences of rights violations when unfettered spending on enforcement is not matched with corresponding oversight or accountability. The stories in RCBR's report illustrate the missing piece of a true border portrait, one where the contributions immigrant families make to our culture, economy and communities are ignored as increased numbers of Border Patrol agents creep north into communities far removed from the border. Border enforcement often occurs in collaboration with state and local police, and sweeps up longstanding residents who are frequently deported swiftly without consideration of individual equities and consequences.

Esperanza's story is one such case. After 8 years of residence in New Mexico, Esperanza's 16-year-old son, Sergio, was picked up as a passenger in a vehicle that Border Patrol agents stopped in June 2011. Sergio was on his way to work harvesting lettuce in the fields of southern New Mexico, 70 miles from the border. Esperanza moved to the United States to provide a better life for her family, and since the death of her husband – when Sergio was 12 – Sergio had worked every moment he wasn't in school, often using his earnings to buy treats for his younger siblings. That morning, Esperanza sent him out the door with his lunch, and the next time she spoke with him, he was more than a thousand miles away in Central Mexico, a country he knows little about, feeling alone and torn away from the family he loves. Sergio's deportation has hit his two younger brothers hard. Six-year-old Israel is perhaps the most affected. He used to share a bed with Sergio, and when he sees one of Sergio's belongings around the house, he picks it up to play with and asks his mom when she will bring Sergio back.

According to the Pew Hispanic Center, 5.5 million children in the United States live with a parent who aspires to be an American citizen, and approximately 4.5 million of these children are U.S. citizens.⁴ They live with the constant fear that their parents, siblings or guardians are going to

ratified by the United States on June 8, 1992, Article 23.1; International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res 2200A(XXI), *entered into force* January 3, 1976, signed by the United States on Oct 5, 1977, Article 10.11; The International Covenant on the Protection of the Rights of the Migrant Workers and Members of their Families (ICRMW), New York, Dec. 18, 1990, *entered into force* July 1, 2003, 2220 U.N.T.S. 93, 30 I.L.M. 1517 (1991), Article 44.1; Convention on the Rights of Persons with Disabilities (CPRD), G.A. Res 61/106 at 25(d), UN doc A/RES/61/106, *entered into force* May 3, 2008, Paragraph X, preamble; American Convention on Human Rights "Pact of San Jose, Costa Rica" Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; S. Treaty Doc. No. 95-21, 9 I.L.M. 99 (1969) *entered into force* July 18, 1978, Article 17.1. The principle is also recognized by the UN General Assembly in, *inter alia*, resolutions No. 49/182, UN Doc. A/RES/49/182, 2 March 1995, Article 2; No. 50/175, UN Doc. A/RES/50/175, 27 February 1996, Article 2; No. 51/89, UN Doc. A/RES/51/89, 7 February 1997, Article 2; No. 52/121, UN Doc. A/RES/52/121, 23 February 1998, Article 2; No. 53/143, UN Doc. A/RES/53/143, 8 March 1999, Article 2; No. 57/227, UN Doc. A/RES/57/227, 26 February 2003; No. 59/203, UN Doc. A/RES/59/203, 23 March 2005, Article 2; No. 61/162, UN Doc. A/RES/61/162, 21 February 2007, Article 2.

⁴ Passel, Jeffrey S. and Cohn, D'Vera. "A Portrait of Unauthorized Immigrants in the United States," Pew Hispanic Center, April 14, 2009. Available at: <http://www.pewhispanic.org/files/reports/107.pdf>

be apprehended and forcibly removed to another country. In December 2012, Immigration and Customs Enforcement (ICE) released data showing that almost 205,000 mothers and fathers of U.S.-citizen children had been deported in 27 months from 2010 to 2012.⁵

The motivations behind migration are complex, just as they have been throughout history. People often move not for themselves, but for those they love. Moving is hard and takes courage, but people move to put food on the table, to provide opportunities for their children, and to find communities where they can and do thrive, integrate, and contribute. The stories in RCBR's report are emblematic of border-community realities and experiences not often featured in our national narrative and point to a number of findings that we must consider as immigration reform is, commendably, contemplated by Congress.

III. Report Findings

a. Families affected by border enforcement that strays from public safety priorities are typically mixed-status families that include U.S. citizens and lawful residents.

RCBR's study confirmed that migrant families along the U.S.-Mexico border typically include members of varying immigration statuses: U.S. citizens, lawful residents, and individuals who have tried for years to obtain resident status in a convoluted immigration system that is rife with unnecessary, often insurmountable barriers. Only 20 percent of the nuclear families RCBR interviewed consisted entirely of members who were unauthorized to work and live in the United States. These fathers and mothers came to the United States with great difficulty and have worked hard to provide their U.S. citizen children with an education, health care, and better opportunities. Congress must recognize that outdated immigration policies not only affect unauthorized residents, but also harm many U.S. citizens and lawful residents.

Congress must also recognize the deep roots these families develop in their community networks and how these networks play a significant role in helping families survive the harsh consequences of a family member's detention and/or deportation. In over half the testimonies RCBR reported, extended family members, from grandparents to aunts and uncles, stepped in to take an active role in supporting families suffering the upheaval of a deportation. Churches, local non-profits, schools, counselors, and neighbors also helped weather these crises. These testimonies are evidence in microcosm of the astounding national statistic that one in four Latinos surveyed in June 2011 reported that they knew someone deported or detained by the federal government.⁶

b. Unchecked border enforcement has led to a crisis of trust in collaborating local police, due to widespread racial profiling characterized by pretextual traffic stops.

⁵ Freed Wessler, Seth. "Nearly 205K Deportations of Parents of U.S. Citizens in Just Over Two Years," Colorlines, Dec. 17, 2012. Available at: http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html

⁶ Available at http://faculty.washington.edu/mbarreto/1d/June_banners.html

RCBR also found that local police, not immigration authorities, were often responsible for apprehending aspiring citizens and setting in motion the deportation proceedings that fragment New Mexican families. In more than half the testimonies in RCBR's report, families were separated as the result of a person—often a passenger—being asked about immigration status by local police during a routine traffic stop. The same local law enforcement officers who swore an oath to serve and protect New Mexico communities have become agents of devastating family separation.

Collaboration between state and local law enforcement officials and Border Patrol often incentivizes local police to find pretextual and unconstitutional reasons to stop someone who “looks” foreign to ask about their immigration status, and then to invite Border Patrol to verify a person's status. Such tactics threaten the safety and integrity of all border families by creating fear and mistrust of police. When people do not trust the police, they often choose not to report crimes or cooperate in police investigations, resulting in a less safe environment for everyone.

c. Children are profoundly harmed by dragnet border enforcement.

RCBR learned that harsh immigration enforcement policies have deeply harmful effects on children. They disrupt children's ability to go to school and complete an education that would let them prosper and contribute to our economy's growth. They interfere with families' ability to address children's medical and other health-related needs, lowering their quality of life. Children often exhibit symptoms that reflect emotional trauma from family separation and the fear – despite having U.S. citizenship or lawful residency – of being deported. Symptoms displayed by children in RCBR's report range from social withdrawal and lack of focus and/or appetite to more serious emotional outbursts, anger and misbehavior.

d. Due process in immigration proceedings is frequently bypassed; reforms to ensure accuracy and fundamental fairness in adjudications are urgently needed.

RCBR's report concludes that aspiring citizens often make significant efforts to secure legal status, but struggle in a complex, confusing, and unforgiving immigration system with significant backlogs that impede family unity. Americans often assume that most immigrants could become legal residents if they just tried hard enough to get proper documentation. In fact, many of the families interviewed recounted how their family members are trying to become citizens or lawful residents. Some family members were even deported with residency petitions pending for five years or longer.

Immigration laws are complicated and difficult to navigate alone, especially for those who do not speak English as their first language. Unfortunately, for those individuals who cannot afford to hire a private attorney, there is no real way to fight their deportation even though they may have a valid defense. We urge every member of Congress to consult the ACLU's statement submitted last month to the Senate Judiciary Committee for its hearing on “Building an Immigration System

Worthy of American Values.”⁷ There, the ACLU outlines in detail reforms to immigration detention and deportation laws that must be enacted in order to restore the discretion needed by immigration judges to perform their duties fairly and give each case individual attention.

In its reporting, RCBR learned that one of the greatest threats to family unity results from federal immigration authorities pressuring individuals to sign away their legal rights and agree to deportation. Several families talked about alarming practices of official coercion. For example, in one case ICE officials threatened an individual with solitary confinement when refusing to agree to a voluntary return. In others, Border Patrol agents provided Limited English Proficient individuals with forms only in English, without any explanation of consequences, and threatened family separation or more time in detention if they refused to sign.

When individuals agree to a voluntary return or expedited removal, they forgo any right to fight their deportation, thus ensuring family separation. With an expedited removal, there are more immigration consequences, such as 5 and 10-year bars to returning. The immigration laws must be reformed to acknowledge explicitly that individuals must knowingly agree to give up the important right to fight their deportation, and clearly understand the consequences of signing away their rights; otherwise, their right to family unity or reunification is imperiled by a fundamentally unfair lack of information.

IV. CONCLUSION

The families who bravely shared their personal experiences with RCBR provide the voices I am here to represent to Congress. These families are composed of U.S. citizens, lawful residents, and aspiring Americans, all of whom have significant roots in their communities. The value of their contributions is evident in the outpouring of generosity from community members seeking to help families weather the cruelty of needless separations.

Now is the time for Congress to act and end the suffering caused by painful deportations that have nothing to do with true border security or public safety. A roadmap to citizenship should not be contingent upon the false notion that the border is insecure or can be completely sealed. Congress should turn its attention to improving accountability and oversight at the border, including robust implementation of commitments in the bipartisan Senate principles released on January 28, 2013, to address racial profiling and inappropriate uses of force.

To protect mothers, fathers, sons, and daughters who enrich our communities, like those profiled in RCBR’s report, Congress must enact immigration reform that recognizes the contributions of our relatives, co-parishioners, and neighbors by keeping their families strong and united in the country they already call home. In accomplishing that, Congress can bring true security and quality of life to border communities.

⁷ Available at <http://www.aclu.org/immigrants-rights/written-statement-ahilan-arulanantham-senate-judiciary-hearing-building>



APPENDIX:

**WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION**

For a Hearing on

“What Does a Secure Border Look Like?”

**Submitted to the Subcommittee on Border and Maritime Security
of the U.S. House Committee on Homeland Security**

February 26, 2013

ACLU Washington Legislative Office

Laura W. Murphy, Director

Joanne Lin, Legislative Counsel

Christopher Rickerd, Policy Counsel

ACLU of New Mexico, Regional Center for Border Rights

Vicki B. Gaubeca, Director

Brian Erickson, Policy Advocate

I. Introduction

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of more than a half-million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to preserving and defending the fundamental rights of individuals under the Constitution and laws of the United States. The ACLU's Washington Legislative Office (WLO) conducts legislative and administrative advocacy to advance the organization's goal to protect immigrants' rights, including supporting a roadmap to citizenship for aspiring Americans. The Immigrants' Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of immigrants. The ACLU of New Mexico's Regional Center for Border Rights (RCBR) addresses civil and human rights violations arising from border-related immigration policies. RCBR works in conjunction with ACLU affiliates in California, Arizona, and Texas, as well as immigrants' rights advocates throughout the border region.

The ACLU submits this statement to the Subcommittee on Border and Maritime Security of the U.S. House of Representatives' Committee on Homeland Security on the occasion of its hearing addressing "What Does a Secure Border Look Like?" Our statement aims to provide the Subcommittee with an appraisal of the civil liberties implications of border security. The ACLU is particularly concerned with attempts to define border security that fail to take into account the fact that border security benchmarks in previous immigration reform proposals have been satisfactorily met. Any proposal for immigration reform should not be made contingent upon border security escalation, because:

- Deployment of additional border security along the U.S.-Mexico border would be wasteful and unnecessary, with apprehensions by Customs and Border Protection (CBP) personnel at their lowest level in 40 years and net migration from Mexico at zero; and
- Spending on the Southwest border has increased dramatically over the last decade with virtually no accountability measures, resulting in civilian deaths at the hands of CBP personnel and many other civil liberties abuses, including rampant racial profiling.

At a time of sequestration, when the federal government is poised to cut spending by 8.2 percent, our country can no longer afford to throw money down the border drain. Congress must not adopt the conventional wisdom of inadequate border security, nor heed siren calls for more border enforcement resources. Instead, border security resources should be guided by principles of fiscal responsibility, accountability and oversight, and attention to the true needs of border

communities suffering from a wasteful, militarized enforcement regime. Experts, including from the Department of Homeland Security, agree that the border is more secure than ever.⁸ Congress should proceed unimpeded by border security obstacles to the vital task of providing a roadmap to citizenship for aspiring Americans in a way that advances our Constitution’s principles and American values of family unity and due process.

II. The Pathway to Citizenship Must Not Be Contingent on the False Metric of a “Completely Secure Border.” Instead, Immigration Reform Should End the Abusive Militarization of Border Communities.

a. The “Mini-Industrial Complex” of Border Spending

Congress should not seek to define a “secure border” as an airtight 2,000-mile border, because this would ignore the fact that border security benchmarks of prior proposed or enacted legislation (in 2006, 2007, and 2010) have already been met or exceeded.⁹ In the last decade, the United States has relied heavily on enforcement-only approaches to address migration, using deterrence-based border security strategies:

- The U.S. government has expanded the powers of federal authorities by creating “Constitution-Light” or “Constitution-Free” zones within 100 miles of land and sea borders, areas in which CBP personnel claim they have authority that would be unconstitutional in other parts of the country, despite the fact that two-thirds of the American population resides within 100 miles of these borders.
- Because of “zero-tolerance” initiatives like Operation Streamline,¹⁰ the Department of Homeland Security (DHS) now refers more cases for federal prosecution than the Department of Justice’s (DOJ) law enforcement agencies. Federal prisons are already 39 percent 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 only 16 percent of the population, but are now held in large numbers in private prisons.¹¹

⁸ Testimony of DHS Secretary Napolitano to the Senate Judiciary Committee (Feb. 13, 2013), available at <http://www.judiciary.senate.gov/pdf/2-13-13NapolitanoTestimony.pdf>.

⁹ Chen, Greg and Kim, Su. “Border Security: Moving Beyond Past Benchmarks,” American Immigration Lawyers Association, (Jan. 30, 2013). Available at: <http://www.aila.org/content/default.aspx?bc=25667/43061>

¹⁰ See generally ACLU, “Operation Streamline Issue Brief.” (Feb. 25, 2013), available at <http://www.aclu.org/immigrants-rights/operation-streamline-issue-brief>

¹¹ U.S. Sentencing Commission, 2011 ANNUAL REPORT, Chapter 5, available at http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2011/2011_Annual_Report_Chap5.pdf

- Since 2003, the U.S. Border Patrol has doubled in size and now employs more than 21,400 agents, with about 85 percent of its force deployed at the U.S.-Mexico border.¹² 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 (about 10 per mile). This number does not include the thousands of other DHS officials, including CBP Office of Field Operations officers and one-fourth of all Immigration and Customs Enforcement (ICE) personnel deployed at the same border. It also does not include 651 miles of fencing, 333 video surveillance systems, and 9 drones for air surveillance.

From a fiscal perspective, from FY2004 to FY2012, the budget for CBP 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.¹³ By way of comparison, this jump in funding is more than quadruple the growth rate of NASA's budget and is almost ten times that of the National Institutes of Health. U.S. taxpayers now spend more on immigration enforcement agencies (\$18 billion) than on the FBI, DEA, ATF, U.S. Marshals, and Secret Service—*combined*.¹⁴

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 Border Patrol have declined more than 72 percent (2000-10). At a time when migrant apprehensions are lower than at any time since the 1970s, wasteful spending by CBP must be reined in.¹⁵ In FY2012, Border Patrol apprehended on average 18 people per agent.¹⁶ A weakening U.S. economy, strengthened enforcement, and a growing Mexican economy have led to a dramatic decrease in unauthorized migration from Mexico. In fact, net migration from Mexico is now zero or slightly negative (i.e., more people leaving than coming).¹⁷

The costs per apprehension vary per sector, but are at an all-time high. The Yuma, Arizona sector, for example, has seen a 95 percent decline in apprehensions since 2005 while the

¹² Meissner, Doris, Kerwin, Donald M., Chishti, Muzaffar and Bergeron, Claire. Immigration Enforcement in the United States: The Rise of a Formidable Machinery, Migration Policy Institute, January 2013. Available at: <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>

¹³ Michele Mittelstadt et al., "Through the Prism of National Security: Major Immigration Policy and Program Changes in the Decade since 9/11." (Migration Policy Institute, Aug. 2011), 3, available at http://www.migrationpolicy.org/pubs/FS23_Post-9-11policy.pdf

¹⁴ Migration Policy Institute, Immigration Enforcement, *supra*.

¹⁵ Testimony of DHS Secretary Napolitano to the House Judiciary Committee (July 19, 2012); DHS Fact Sheet, "Apprehensions by the U.S. Border Patrol: 2005–2010." (July 2011), available at <http://www.dhs.gov/xlibrary/assets/statistics/publications/ois-apprehensions-fs-2005-2010.pdf>; see also Jeffrey Passel and D'Vera Cohn, "U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade." (Pew Hispanic Center, Sept. 1, 2010), available at <http://pewhispanic.org/reports/report.php?ReportID=126>

¹⁶ Chen and Kim, "Border Security," *supra*.

¹⁷ Philip E. Wolgin and Ann Garcia, "What Changes in Mexico Mean for U.S. Immigration Policy." (Center for American Progress, Aug. 8, 2011), available at http://www.americanprogress.org/issues/2011/08/mexico_immigration.html

number of agents has tripled.¹⁸ 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 2011.¹⁹ Indeed, despite Border Patrol's doubling in size since 2004, overtime costs have amounted to \$1.6 billion over the last six years.²⁰ Congress should heed House Appropriations Committee Chairman Hal Rogers' warning about the irrationality of border spending: "It is a sort of a mini industrial complex syndrome that has set in there. And we're going to have to guard against it every step of the way."²¹

b. Lack of CBP Oversight: Racial Profiling and Excessive Use of Force

Unprecedented investment in border enforcement without corresponding oversight mechanisms²² has led to an increase in human and civil rights violations, traumatic family separations in border communities, and racial profiling and harassment of Native Americans, Latinos, and other people of color – many of them U.S. citizens and some who have lived in the region for generations. The bipartisan framework that was proposed by the "Gang of Eight" Senators in late January rightly recognizes a need for strengthened prohibitions against racial profiling and inappropriate use of force. In addition, more must be done to transform border enforcement by prioritizing investment in robust and independent external oversight that includes input from border communities.

Stressed border communities are a vital component of the half-trillion dollars in trade between the U.S. and Mexico, and the devastating effects of militarization on them must be addressed in immigration reform. The U.S.-Canada border has experienced an increase in border enforcement resources as well, with northern border residents often complaining about Border Patrol agents conducting roving patrols near schools and churches and asking passengers for their documents on trains and buses that are traveling far from border crossings. The ACLU of Washington State has brought a class action lawsuit to end the Border Patrol's practice of stopping vehicles and interrogating occupants without legal justification. One of the plaintiffs in the case is an African American corrections officer and part-time police officer who was pulled over for no expressed reason and interrogated about his immigration status while wearing his

¹⁸ Richard Marosi, "Plunge in border crossings leaves agents fighting boredom," *Los Angeles Times* (Apr. 21, 2011).

¹⁹ Immigration Policy Center, *Second Annual DHS Progress Report*. (Apr. 2011), 26, available at http://www.immigrationpolicy.org/sites/default/files/docs/2011_DHS_Report_041211.pdf

²⁰ "Border Patrol overtime, staffing up; arrests down," Associated Press (Feb. 5, 2012).

²¹ Ted Robbins, "U.S. Grows an Industrial Complex Along the Border," NPR (Sept. 12, 2012), available at <http://www.npr.org/2012/09/12/160758471/u-s-grows-an-industrial-complex-along-the-border>

²² Tim Steller, "Border Patrol faces little accountability," *Arizona Daily Star* (Dec. 9, 2012), available at: http://azstarnet.com/news/local/border/border-patrol-faces-little-accountability/article_7899cf6d-3f17-53bd-80a8-ad214b384221.html

corrections uniform.²³ A local business owner said he's "never seen anything like this. Why don't they do it to the white people, to see if they're from Canada or something?"²⁴

CBP also aids and abets state and local police racial profiling practices, ensnaring U.S. citizens. In February 2011, Tiburcio Briceno, a naturalized U.S. citizen, was stopped by a Michigan State Police officer for a traffic violation while driving in a registered company van. Rather than issue him a ticket, the officer interrogated Briceno about his immigration status, apparently based on Briceno's Mexican national origin and limited English. Dissatisfied with Briceno's valid Michigan chauffeur's license, the officer summoned CBP, impounded Briceno's car, and told him he would be deported. Briceno says he reiterated again and again that he was a U.S. citizen, and offered to show his social security card but the officer refused to look.

Briceno was released after CBP officers arrived and confirmed that he was telling the truth. "Becoming a U.S. citizen was a proud moment for me," Briceno has since reflected. "When I took the oath to this country, I felt that I was part of something bigger than myself; I felt that I was a part of a community and that I was finally equal to every other American. Although I still believe in the promise of equality, I know that I have to speak out to make sure it's a reality for me, my family and my community. No American should be made to feel like a criminal simply because of the color of their skin or language abilities."²⁵

In addition to racial profiling at and beyond the border, incidents of excessive use of force are on the rise, with at least 19 people killed by CBP officials since January 2010,²⁶ including five U.S. citizens and six individuals who were standing in Mexico when fatally shot. On April 20,

²³ Complaint available at http://www.aclu-wa.org/sites/default/files/attachments/2012-04-26--Complaint_0.pdf

²⁴ William Yardley, "In Far Northwest, a New Border Focus on Latinos." New York Times (May 29, 2012) (emphasis added), available at <http://www.nytimes.com/2012/05/29/us/hard-by-canada-border-fears-of-crackdown-on-latino-immigration.html?pagewanted=all>

²⁵ ACLU of Michigan, "ACLU Urges State Police to Investigate Racial Profiling Incident." (Mar. 21, 2012) (emphasis added), available at <http://www.aclumich.org/issues/racial-justice/2012-03/1685>

²⁶ 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. Huereca, 15, shot and killed, El Paso, TX (June 7, 2010); Juan Mendez, 18, shot and killed, Eagle Pass, TX; 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 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 Sells, AZ (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 Santillán, 30, shot and killed on the banks of the Rio Grande, near Matamoros, Mexico (July 7, 2012); Guillermo Arévalo Pedroza, 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); and Margarito Lopez Morelos, 19, shot and killed, Baboquivari Mountains, AZ (Dec. 2, 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).

2012, PBS's *Need to Know*²⁷ program explored the trend of CBP's excessive use of force, with a focus on Anastasio Hernandez Rojas. New footage depicting a dozen CBP personnel surrounding and repeatedly 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." Spotlighting another CBP fatality, three weeks ago the *Arizona Republic* reported that "An autopsy report raises new questions about the death of a Mexican youth shot by at least one U.S. Border Patrol officer four months ago in Nogales. The Border Patrol has maintained that Jose Antonio Elena Rodriguez, 16, was throwing rocks over the border fence at agents on the U.S. side when an agent fired across the international border the night of Oct. 10. But entry and exit wounds suggest that all but one of as many as 11 bullets that struck the boy entered from behind, according to the report by two medical examiners working for the Sonora Attorney General's Office."²⁸

After a Congressional letter signed by 16 Members was sent to DHS Secretary Janet Napolitano, DHS Acting Inspector General Charles Edwards, and Attorney General Eric Holder,²⁹ on July 12, 2012, the Associated Press reported that a federal grand jury was investigating the death of Anastasio Hernandez.³⁰ Border Patrol's use-of-force incidents have attracted international scrutiny with the government of Mexico,³¹ the Inter-American Commission on Human Rights,³² and the Office of the United Nations High Commissioner for Human Rights³³ weighing in.

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

²⁷ PBS *Need to Know* special, aired April 20, 2012 and entitled "Crossing the line at the border," available at: <http://www.pbs.org/wnet/need-to-know/security/video-first-look-crossing-the-line/13597/>

²⁸ Bob Ortega, "New theory on Border Patrol killing of boy." *Arizona Republic* (Feb. 7, 2013), available at <http://www.azcentral.com/news/articles/20130206border-patrol-killing-boy-new-theory.html>

²⁹ Congressional sign-on letter sent May 10, 2012 to Secretary Janet Napolitano available at: <http://serrano.house.gov/sites/serrano.house.gov/files/DHSletter.pdf>; letter sent to DHS Inspector General Charles Edwards available at: <http://serrano.house.gov/sites/serrano.house.gov/files/DHSIGletter.pdf>; letter sent to DOJ Attorney General Eric Holder available at: <http://serrano.house.gov/sites/serrano.house.gov/files/DoJLetter.pdf>

³⁰ Grand Jury Probes Anastasio Hernandez Border Death, available <http://www.kpbs.org/news/2012/jul/12/grand-jury-probes-border-death/>

³¹ See, e.g., Bret Stephens, "The Paradoxes of Felipe Calderón." *Wall Street Journal* (Sept. 28, 2012), available at http://online.wsj.com/article/SB10000872396390443916104578022440624610104.html?mod=hp_opinion

³² See "IACHR condemns the recent death of Mexican national by U.S. Border Patrol Agents." (July 24, 2012), available at http://www.oas.org/en/iachr/media_center/PReleases/2012/093.asp

³³ See U.N. Radio, "United States urged to probe deaths of Mexican migrants at border." (May 29, 2012), available at <http://www.unmultimedia.org/radio/english/2012/05/united-states-urged-to-probe-deaths-of-mexican-migrants-at-border/>

legal norms and standards. As employees of the nation's largest law enforcement agency, CBP personnel should be trained and held to the highest professional law enforcement standards. Systemic, robust, and permanent oversight and accountability mechanisms for CBP should be integral to border security measures. Congress must seize this moment for immigration reform to transform border enforcement in a manner that is fiscally responsible, enlists border communities in defining their true needs and upholds Constitutional rights and American values.

III. Conclusion

The ACLU urges Congress to prioritize the reduction of abuses in the currently-oppressive immigration and border enforcement system which has cost \$219 billion in today's dollars since 1986.³⁴ By jettisoning proposals for escalated border security that clash with civil liberties and thereby creating space for genuine immigration reform, Congress can ensure that the roadmap to citizenship for aspiring Americans is a generous one, free of unjust obstacles. Members would thereby maximize the historic expansion of Constitutional freedoms for spouses, friends, parishioners, and neighbors in our communities, who contribute every day to their successes and deserve full and prompt citizenship.

³⁴ Robbins, "*U.S. Grows*," *supra*.