



## SOLUTIONS & ACTIONS TO

# Promote Fairness in Criminal Matters with Immigration Consequences

Our laws and practice should reflect our commitment to human rights as a nation. Yet, some immigrants experience mandatory detention, racial profiling, and due process violations because of laws and policies that violate their human rights. Lawmakers should renew our commitment to international human rights; eliminate unworkable collaborations between local law enforcement and immigration authorities; protect the human rights of families and children who migrate; eliminate the expansion of exclusion based on aggravated felonies; eliminate the use of detention for immigration-related matters; stop deportations; and provide individuals in immigration proceedings access to lawyers.

### 1. Provide Human Rights Training at the Border

Immigration and Customs Enforcement agents, Customs and Border Patrol agents, police officers, and other law enforcement officers working in the border region should receive regular training in human rights, including civil rights, ethics, and community relations. Training should also be given on Fourth Amendment protections against illegal searches and seizures, Fourteenth Amendment prohibitions on racial profiling, and on stereotyping and implicit bias. Additional training should be provided that deals directly with the obligation to protect and provide due process to victims of crimes, trafficking, and domestic violence, among others.

### 2. Protect the Human Rights of Child Migrants and Families

Changes must be made in how child migrants and families who cross the border into the United States are treated, especially since there has been an increase in family detention and in children and families being put on a fast track to deportation without any legal representation. The use of family detention needs to end and alternatives should be utilized. Ensure that children are not exploited or abused in custody; there needs to be greater oversight and accountability to prevent shackling, inhumane detention conditions, and verbal, physical, and sexual abuse, among other violations. The “best interests of the child” standard should be required in all procedures and decisions involving children.

### 3. Provide Adequate Legal Representation

Congress should provide a right to counsel in all stages of immigration enforcement actions and proceedings. This should include phone and in-person access by attorneys and child advocates. Legal counsel should be provided for all children in removal proceedings and children should be provided with information about their legal rights.

## 4. Implement Oversight

DOJ should ensure that civil society has access to and can monitor Customs and Border Patrol's facilities. Oversight should include a transparent, uniform system to process complaints. Nongovernmental organizations should be able to monitor Customs and Border Patrol detention centers as well as have access to detained immigrants for interviewing purposes. Independent oversight organizations should have the power to hold agents who abuse their power accountable.

## 5. Restore Due Process

Congress should change the definitions of conviction and aggravated felony in immigration law to be consistent with current federal and state criminal laws. An immigrant who is convicted of an aggravated felony faces mandatory detention and likely deportation; aggravated felonies also permanently bar lawful and non-lawful permanent residents from applying for asylum, naturalization, cancellation of removal, and voluntary departure. The definition of aggravated felony has broadened to include offenses that are neither felonies nor aggravated under criminal law definitions. The definition of aggravated felony should reflect the common understanding of fairness under the criminal justice system. All bars to entry based on prostitution should be eliminated.

## 6. Encourage Respect for and Cooperation with Border Communities

Policy changes should be made as to how border communities are handled so that human rights, due process, and safety in border communities is upheld.

## 7. Hold Officers Accountable for Civil and Human Rights Abuses

Customs and Border Patrol officers should be held accountable for the abuse of their power, especially when it includes the use of deadly force; such practices amount to civil and human rights abuses. There should be oversight and enforceable custody standards to stop the cruel, degrading, and other ill-treatment of detained individuals. Customs and Border Patrol agents that commit acts of deadly force, excessive force, and other crimes should be prosecuted and punished.

## 8. End Mandatory Detention and Fix 96

Congress should fix the 1996 immigration laws, by repealing Illegal Immigration Reform and Responsibility Act (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA), and eliminating mandatory detention for immigration-related matters.

### 9. End Unworkable Collaborations Between State Criminal and Federal Immigration Systems

Enforcement programs that share data between state and local law enforcement and the FBI and Department of Homeland Security lead to racial profiling, as well as erroneous arrests, which destabilizes the relationship between immigrant communities and police. These programs should be terminated. Immigration enforcement is not a criminal justice matter, but instead a civil process. Local law enforcement should not be allowed to collaborate with Immigration and Customs Enforcement.

### 10. Renew Commitment to International Human Rights Norms

Immigration enforcement practices should be reviewed through an international human rights scope, so that they follow human rights norms. This review should take the form of an independent review commission, which also provides a complaint process for reporting human and civil rights violations. Furthermore, training should be provided to not only local and federal agents on human rights, but also to border communities, so they know about their civil and human rights. Officials should be held accountable when they violate domestic and/or international human rights principles.