

# **Guidelines for Alternative Border Enforcement Policies and Practices**

## **Policy Ideas and Legislative Language**

**December of 2006**

**Prepared by the US/Mexico Immigration Border Task Force**

## **Introduction**

While the border is typically thought of as a political line and a place that is either controlled or out-of-control, there are more than six million people that call the U.S. side of the border “home”. Families live on both sides of the US-Mexico border; shoppers regularly go back and forth throughout the day for quick purchases on each side; fire departments provide emergency support to one another; rivers flow below and over the borderline; and the majority of U.S. produce and other goods cross at ports of entry. The border reality requires policies that acknowledge and understand its complexities.

For the last twelve years, border enforcement policies and practices have relied on more-of-the-same strategies: increasing the number of Border Patrol agents, building more walls, expanding the involvement of military resources and personnel, and increasing infrastructure and technology. Yet the impacts of these strategies have taken an enormous toll on the human and constitutional rights and on the political, economic and social realities of border communities.

Border communities believe that border security and human rights, accountability and community security are not mutually exclusive. Rather, effective border security actually depends on the security of rights and community safety of those that live on the border. Throughout 2006, community members and leaders from all four Border States came together because of the need to put forward a new vision of the border and the types of policies and practices should be in place to secure the rights and responsibilities of border communities. The following policy ideas represent an elaboration of recommendations that were presented by the US/Mexico Immigration and Border Task Force (composed by elected officials, community organizations, and church and community leaders) to Congressional and White House staff in November 2006.

The proposal includes sections on Accountability, Border Operations, Infrastructure and Technology, Ports of Entry, Fencing, Delinking Immigration and Criminal Policy, Military on the Border, and Detention and Deportation. Each component of the proposal is interdependent and should be considered comprehensively. The proposal should be considered within the context of immigration reform that includes a path to permanent residency for immigrant currently living in the US, new and realistic programs for legal, orderly and safe entry into the United States, substantial immigration administrative changes, and the restoration of due process and respect of human and civil rights .

**Legislative Language for Guidelines on Alternative Border Enforcement  
Policies and Practices**  
December 2006

**I. ACCOUNTABILITY, OVERSIGHT AND TRAININGS**

***A. The United States Border Enforcement and Immigration Review Commission or  
The Independent Review Commission.***

The Review Commission is an independent agency established to oversee the implementation of federal policies, projects, programs, and to review the activities of federal agencies at the border and in the interior (Border Patrol, Immigration and Customs Enforcement, Citizenship and Immigration Services, and other agencies involved in border and immigration enforcement), with legal authority to hold federal immigration agencies accountable and provide recommendations regarding federal immigration and security policy, enforcement, and complaint procedures.

**1. Powers and Duties**

The Commission shall have the following powers and duties;

- a. oversee the implementation of federal immigration and security policies and programs
- b. review the immigration enforcement activities of federal agencies
- c. develop civil and human rights training for immigration enforcement personnel
- d. establish a complaint process for civil and human rights abuses
- e. investigate complaints of civil and human rights violations and review federal immigration agency complaint procedures
- f. conduct outreach to educate the public on the role of the Commission and to assist the community with the process and procedures for investigation of complaints
- g. serve as a national clearinghouse for information regarding immigration and security policies, enforcement, and complaints
- h. submit reports, findings, and recommendations to the President, Congress, and federal agencies

**2. National, Regional and Local Structure**

The Review Commission will have a federal, regional and local review structure, and will be divided into two subcommittees – one focused on the border operations, and a second to focus on interior enforcement and administrative issues.

### **3. Purposes of the Review Commission**

#### ***a. As Auditor/Monitor body the Review Commission will:***

- i. Review CBP, ICE, CIS and other agencies procedures on receiving, investigating, and resolving complaints against them for civil and human rights abuses
- ii. Review Department investigations of complaints against officers to determine if the investigation was complete, thorough, objective and fair.
- iii. Review the CBP and ICE complaint process to strengthen full access by victims of abuses to resolution of their claims, and to review current staff capacity to review and investigate all legitimate claims in a timely manner.
- iv. Review the CBP and ICE disciplinary policies for agents, officers, and other staff who are found to be responsible for misconduct, including abuses of civil and human rights.
- v. Review the CBP and ICE practices of engagement, detention, apprehension, use of force, and escalation of use of force towards suspected undocumented immigrants to ensure their compliance with national civil rights and human rights standards
- vi. Review the CBP and ICE policies on the use and definition of probable cause, including the use of racial profiling, in determining how to engage a suspected undocumented immigrant.
- vii. Review the CBP and ICE policies on public outreach to ensure adequate community education on agency complaint processes, and on proper conduct by agents and officers of these agencies.
- viii. Review the CBP and ICE training programs, including continuing education programs, on civil and human rights issues, to ensure adequate agent knowledge of proper procedures.
- ix. Review the feasibility of using community policing models for some or all divisions of ICE and CBP field operations.
- x. Review the operations of the ICE Office of Professional Responsibility to ensure it has the mandate, resources, and staffing to investigate and resolve claims against ICE and CBP officials in a timely manner, and to have the mandate, resources, and staffing

to adequately respond to public inquiry regarding the status of complaints.

- xi. Review the current border enforcement strategies carried out by ICE and BCP to determine their direct impact on migrant deaths along the Southwest border, and to make specific recommendations on how to minimize migrant deaths.
- xii. Review ICE and BCP border enforcement practices and operations to evaluate their impacts on border residents. Concerns for quality of life, noise and light pollution, and environmental degradation should be factored into the review.
- xiii. Conduct public outreach to educate the community on the role of the Independent Auditor and to assist the community with the process and procedures for investigation of complaints against officers

***b. As an Oversight Body, the Review Commission will:***

- i. Conduct full investigations parallel to internal affairs, or even as the sole investigator.
- ii. Have the power to make recommendations to the Secretary of Homeland Security and/or Department of Defense, or her or his designee, on disposition of cases and discipline of personnel.
- iii. Receive and investigate direct complaints from affected parties. Initial complaints can be anonymous but a signed complaint is required for a formal hearing.
- iv. Have an open and public process. Complainants are informed of Commission procedures in advance, and investigations conclude with a public hearing

**4. Membership in the Commission**

a. The Secretary of Homeland Security (or *the Speaker and Minority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate*) will name (appoint) the members of the Independent Review Commission.

b. The Review Commission *shall be composed by:*

- i. State, county, and city elected officials from Border States
- ii. State, county, and city law enforcement officials from border states
- iii. Academic and think tank experts in border issues

- iv. Religious leaders from border communities
- v. Community-based civil rights and human rights organizations
- vi. Nationally recognized human and civil rights organizations
- vii. State, county, and city school officials
- viii. State, county, and city business leaders
- ix. CBP/ICE representatives

c. Each commission member will be appointed to participate in either the border or the interior enforcement subcommittee, but not to both subcommittees. The subcommittees must maintain the same sectoral balance as the national committee.

d. *Geographic Diversity of Appointments* – Efforts will be made to ensure a balanced representation of commission members, including robust representation of members from communities or regions where immigration and enforcement programs, projects and policies are directly implemented (such as border communities).

## **5. Duration of Commission and Meetings**

The Commission is authorized to carry out its work for three years after the enactment of the legislation. The commission will meet within 45 days of being appointed to initiate the review and oversight process. Commission will meet every 60 days, in addition to relevant community hearings. The committee will follow the meeting procedures outlined in Section 10 of the Federal Advisory Committee Act.

## **6. Independent Conclusions**

The Commission will make recommendations with regard to Department policies and procedures based on the Independent Auditor’s review of investigations of complaints.

### **a. Hearings**

The Commission may hold public hearings and issue subpoenas for the production of documents and the attendance of witnesses at such hearings.

### **b. Investigations**

The Commission may conduct investigations of civil and human rights complaints and make recommendations to appropriate federal agencies on the disposition of cases and discipline of personnel. The Commission shall establish rules and procedures for the investigation, hearing, and disposition of complaints.

### **c. Reports**

- i. Reports produced by this the Review Commission will be submitted to the DHS, the Senate Committee on Homeland Security and

Governmental Affairs, the Senate Committee on the Judiciary, the House Homeland Security Committee and the House Judiciary Committee. Reports will be submitted to Congress at least once a year on the progress of the committee.

- ii. Within 180 days of receipt of a Commission report, DHS shall issue a response, which shall describe how DHS has taken the report's findings into account in designing and reviewing policies, projects, programs and practices.

## **Staffing and offices**

### ***B. Civil and Human Rights Training***

1. The Review Commission will carry out an evaluation of all civil and human rights training provided within the basic training curriculum, including training on cultural sensitivity in border communities.
2. The Commission will also evaluate all language and training programs provided within the basic training curriculum, to ensure that all agents are able to effectively communicate with people under their jurisdiction.
3. The Review Commission will review and improve the human rights training for federal immigration agencies according to the following standards:
  - a. Academy and probationary period training
  - b. Continued in-service training for officers of all ranks
  - c. Essential to graduating from Academy, passing probation, and achieving good performance evaluations
  - d. Involvement of both DHS instructors and community representatives
  - e. Emphasis on social and cultural realities of U.S.-Mexico border region and major migrant-sending nations
  - f. The teaching materials should be practically oriented
  - g. Should include the development of basic skills such as critical thinking, communication skills, problem solving and negotiation in relation to practical human rights situations
  - h. Interactive/participatory techniques should be used
  - i. Outcomes should be measured in terms of competencies
  - j. Continual evaluation and improvement of instruction, testing, and performance evaluation, overseen by the Commission
  - k. Human rights education should be one step towards achieving greater accountability

## **II. BORDER OPERATIONS, TECHNOLOGY AND INFRASTRUCTURE**

Government reports have established that current border operations have failed to stop undocumented immigration into the United States, expanded and professionalized smuggling operations, fostered civil and human rights violations and contribute to the increasing number of immigrant deaths along the US-Mexico border. The policy goal is to suspend the one-size-fits-all approach and develop programs and strategies that can distinguish immigration, criminal activity and terrorist threats, each of which have unique root causes and require distinct prevention and interdiction methods.

### ***A. Border Operations***

Expansions of the Southwest Border Enforcement Strategy and “operational control” initiatives should be suspended until:

1. The implementation of program(s) that provide an orderly, legal way for temporary and provisional immigration and trade to enter the United States through official ports of entry.
2. Initiatives to detect, disrupt and dismantle criminal activities, terrorist travel and its infrastructure are implemented along the southwest border, enabling BCP to distinguish between immigration, criminal activity and national security threats.
3. The Commission’s evaluation of how border enforcement operations are related to the deaths of migrants entering the United States through areas other than legal ports of entry and issues recommendations that ICE and BCP can implement to minimize migrant deaths.

### ***B. Quality of Life and Environmental Protection***

In coordination with the Review Commission and the Commission’s review of border enforcement practices and operations, new guidelines and protocol will be implemented by BCP and ICE to ensure current and proposed border operations, practices and infrastructure:

1. Protect the quality of life of the residents of border communities [“Quality of Life” will be defined by the Independent Review Commission]
2. Employ techniques and use equipment that prevent noise and light pollution;
3. Comply with environmental protection laws and regulations, including the National Environmental Policy Act requirements of hearings to solicit public comment on changes and expansions in federal projects.
4. Reporting: An annual report shall be made to the Commission and Congress evaluating BCP and ICE compliance with these guidelines, protections and protocols.

### ***C. Border Operations: Civil Rights and Human Rights Standards***

In coordination with the Review Commission and the Commission's review of border enforcement practices and operations, new guidelines and protocol will be implemented by BCP and ICE that ensure that the rules of engagement, detention, apprehension, use of force, and escalation of use of force towards suspected undocumented immigrants are in compliance with national civil rights and human rights standards.

1. Based upon the recommendations, new training modules will be integrated in BCP and ICE new-hire training programs and new curriculum will be integrated in required continuing education courses for all field agents.
2. CBP and ICE agents shall not be indemnified when it is determined that a violation of civil rights and human rights standards occurred.
3. Reporting: An annual report shall be made to the Commission and Congress that evaluated compliance and violations of civil rights and human rights standards. The report will assess the types of civil rights and human rights violations by agents that occurred during the year, the investigation procedures that ensued, the findings or results of that investigation, and any disciplinary actions taken.

### ***D. Border Technology***

An assessment, to be conducted by the appropriate federal office, of existing and proposed technologies such as unmanned aerial vehicles, ground based sensors, satellites, radar coverage, and cameras.

The assessment should include:

- Existing and proposed technologies and their compliance with personal privacy rights and other civil liberties.
- The cost effectiveness of existing and proposed technology
- The operational reliability of existing and proposed technology
- The necessity of existing and proposed technology
- The feasibility of implementing the proposed technologies
- Alternative technologies for accomplishing the mission of BCP and ICE

Report: Not later than 120 days after the enactment of this act, \_\_\_\_\_ shall submit the report to the Senate Committee on Homeland Security and Governmental Affairs, the Senate Committee on the Judiciary, the House Homeland Security Committee and the House Judiciary Committee, and other appropriate offices.

### ***E. Civilian Border Vigilante Activities***

1. An independent investigator position shall be created for each border state to conduct independent investigations of any possible civil rights and human rights violations by civilian border watch groups against undocumented immigrants, as observed by the DHS agents or reported by the possible victims. The findings of these investigations will be presented to the appropriate local law enforcement agency, which will be expected to follow the appropriate course of action in a timely manner. Reports that include the investigator's recommendation and the action taken by the local law enforcement agency will be presented to the Independent Commission, State and U.S. Attorney General's office and Congress.

2. The Office of the Attorney General shall conduct an exhaustive study of all reported incidents of civilian detentions of immigrants. The report shall draw from sheriff, police, Border Patrol, Customs, ICE and consular reports, memoranda and any other documentation. The report should assess if and how law enforcement has responded to allegations of civilian groups' violations of immigrants civil and human rights. The report should issue recommendations for effective compliance with civil and human rights standards.

### **III. PORT OF ENTRIES**

*According to a study by the San Diego Association of Governments released in June of 2005, over sixty million trips are made annually in both directions through the three ports of entry located in San Diego County. The study found that the average border crossing lasts 45 minutes, and that these excessive waiting times have a broad range of negative impacts on local economies, including millions of lost working hours and tens of millions in lost wages. The report states that, "The overall impact, at the state level, given that 5% of the trips are headed outside the San Diego region, is over \$1.32 billion in addition to the \$44.4 million in income loss for work trips." The San Diego model can likely be generalized and extended to describe all ports of entry spanning the border.*

*Such delays are attributable, in part, to an increase in rights violations committed by government agents against crossers. Since the Department of Homeland Security took over administration and enforcement at the nations land ports, border crossers have noted dramatic increases in border waits as well as a notable increase in complaints documenting abuses of authority by CBP agents. US citizens have complained that CBP officials target US citizens of Latino descent while entering through the POE. Complaints include verbal and physical abuse, sexual harassment, arbitrary detentions, destruction of documents, and denial of entry.*

#### **A. Recommendations:**

1. To improve operations and infrastructure at existing ports of entry and connecting transportation facilities in order to significantly reduce waiting times for border crossers and the negative economic impacts delays create for border economies;

2. To establish mechanisms such as independent oversight agents at every port in order to facilitate immediate access to complaint processes as well as response and remedy procedures for border crossers with the goal of establishing effective CPB accountability for mounting complaints of verbal and physical abuse, sexual harassment, arbitrary detentions, destruction of documents and denial of entry.

***B. Implementation:***

In conjunction with the recommendations issued by the Review Commission, the following practices, programs and procedures should be developed and/or expanded at the US-Mexico ports of entry:

- A comprehensive study should be conducted that analyzes the economic impacts of wait times in the US Mexico ports of entries, including on the economies of the border communities
- Funding should be allocated to support collaborative efforts among local, state, federal inspection and other stakeholders to improve communications, operations and infrastructure at existing ports of entry and connecting transportation facilities.
- Improving infrastructure at Ports of Entry in order to expedite border crossings, including expanded SENTRI and Carpool lanes
- Launch a community education campaign explaining the documents required by border residents to enter the United States through a land port of entry. CBP agents should standardized their policy for the required documents and clearly post the required documents to enter ports of entry in places that are accessible for the general public.
- Create mechanisms at every port to ensure that CPB accommodates independent oversight agents and posts mission statement and complaint process at the Primary Inspection booths advising all who enter the United States about complaint process against any CBP official

**VI. BORDER FENCING**

That the established Review Commission implement programs to evaluate the current impact of existing fencing and barriers deployed along the U.S./Mexico border and assess the potential impact of proposed barrier and fencing construction projects on trade, tourism, the environment and overall quality of life in border communities.

***A. Definition:***

1. Fencing – includes primary and secondary fencing.
2. Vehicle Barrier – includes both permanent and temporary vehicle barriers.  
Associated barrier-related projects - maintenance, access roads, stadium-style lighting, pre-construction alterations.

### 3. Border Region

#### 4. Border Community:

- a. Over 6.5 million individuals reside in U.S. counties that share a border with Mexico.
- b. Fencing, barriers and associated barrier-related projects along the U.S./Mexico border has divided families and negatively impacted the social and economic well-being of border communities, including indigenous communities in the border region.
- c. Border fence construction has negatively impacted the environment, fragile ecosystems and protected and endangered species.

### ***B. Purpose***

The Review Commission will:

1. Provide an assessment of the impact of existing fencing, barriers and barrier related projects on trade, tourism, the environment and the overall quality of life for border communities.
2. Review proposed fencing, barriers and associated barrier related projects to evaluate their potential adverse impact on the quality of life of border residents, border environment and ecosystems, trade and tourism.
3. Evaluate the effectiveness of existing and proposed fencing, barriers and barrier related projects in reducing illegal immigration.
4. Submit recommendations, including possible alternatives that could reduce illegal entries with a less adverse impact on trade, tourism, the environment and overall quality of life in border communities.

### ***C. Reporting***

1. Reports detailing impact of existing fencing and barriers – the review commission shall prepare and make available to the general public through the Internet and other appropriate public channels, including sending a hard copy of the report to the county supervisors of every county immediately adjacent to the U.S./Mexico border. This report shall be understandable to the general public and include –
  - a. A summary of –
    - i. The location and design of primary and secondary fencing and vehicle barriers located at the U.S./Mexico border.
    - ii. Demographic information for border communities adjacent to fencing and barriers.
    - iii. Information regarding apprehensions of illegal entrants.
    - iv. The effectiveness of fencing and barriers in reducing illegal entries overall and the sectors where deployed.
    - v. The impact of the existing fencing on trade, tourism, the environment and quality of life in border communities.
    - vi. Recommendations to reduce identified negative impact(s), including alternatives to the existing fencing, barriers and/or associated barrier-related projects.

2. Reports detailing potential impact of proposed fencing and barrier construction-  
- the review commission shall prepare and make available to the general public through the Internet and other appropriate public channels, including sending a hard copy of the report to the county supervisor of every county immediately adjacent to the proposed fence construction project. This report shall be understandable to the general public and include –
  - a. A summary of –
    - i. The location and design of primary and secondary fencing and vehicle barriers located at the U.S./Mexico border.
    - ii. The location and design of the proposed fence or barrier.
    - iii. Demographic information for border communities adjacent to proposed fence or barrier
    - iv. Information regarding apprehensions of undocumented individuals and economic trends for region adjacent to proposed fence or barrier
    - v. The anticipated effectiveness of fencing and barriers in reducing illegal entries overall and in the in the sectors where fence will be deployed.
    - vi. The expected costs associated with construction and maintenance
    - vii. The potential impact on trade, tourism, the environment and quality of life in border communities
    - viii. The opinions expressed in community hearings
    - ix. Relevant environmental impact statement
    - x. Recommendations to reduce identified negative impact(s), including alternatives to the existing fencing, barriers and/or associated barrier-related projects.

### ***3. Border Community Consultation Process***

A consultation process shall be initiated by the Independent Commission in all border communities when there are proposed enhancements, expansions or modifications to border fencing. The consultation process shall include, but not be limited to, bi- or multi-lingual community forums and opportunities to submit written comments. The consultation process shall be widely publicized in English and Spanish and shall provide opportunities for participation in the evenings. Community organizations, churches, schools, businesses, local officials and other sectors shall be invited to participate in addition to broad, public invitations. The results of the consultation process will be announced in a report within two weeks of the conclusion of the process and distributed to media outlets in border communities, as well as to participants in the consultation process. The results will also be distributed to the Review Commission and the relevant Congressional Committees and other offices involved in border fencing policy development.

## **V. UNLINKING IMMIGRATION POLICIES FROM CRIMINAL POLICIES**

*Summary of the impacts of current experiences of local agencies (City Police Departments, County Sheriff Offices and State Police) enforcing immigration laws:*

- **Undermines Community Trust & Threatens Community Security:** In order for Local Police Dept. and Sheriff's Offices to live up to the tasks of creating safe communities, they have to depend on the trust and cooperation of these communities to report crimes when they are victims or witnesses to such events. Currently, fearing the deportation of themselves or family members, immigrant communities have not been able to trust those local agencies and have expressed a fear of calling even when they themselves are victims of a crime or witnesses of a crime. This divide between deputies and the community could have detrimental effects including the increase in crime in all communities, the inability to solve crimes, and future terrorist acts.
- **Lack of Appropriate Resources to Enforce Federal Immigration Law:** Local law enforcement agencies, by diverting resources to the enforcement of federal immigration law, thus take resources away from the protection of communities. Federal immigration law is extremely complex. Most local enforcement agents are not well versed in this complexity and do not have the necessary training to appropriately apply federal civil immigration law. The training and resources for such operations falls clearly under the jurisdiction of federal immigration officials and agencies.
- **Increased Risk of Civil Liability:** Given the complexity of the federal civil immigration law and the limits on the authority of local law enforcement agencies to enforce such law by State Law, the liability involved in enforcing said immigration laws could be costly in terms of civil litigation. On July 10<sup>th</sup>, for example, the El Paso County settled in a case in which Sheriff's Office deputies boarded a bus and asked passengers for immigration documents. Such litigation has also occurred in Katy, Texas. Given the limitations on local law enforcement agencies in terms of prohibition from arresting without warrants, from racial profiling, and lack of experience, the risk of civil liability and litigation increases phenomenally when the complex task of immigration enforcement is added.
- **National Concerns Expressed by Local Law Enforcement Agencies:** The Major Cities' Chiefs Association released a 9-point position statement this year, expressing concern regarding the enforcement of federal immigration law by their agencies. At least 58 localities, including 3 states, have promulgated policies limiting the authority of their employees to enforce immigration laws.
- **Increases Potential for Racial Profiling:** Under several State Law Code of Criminal Procedures (Texas), Racial Profiling is prohibited. However, in an effort to seek out "undocumented immigrants" the potential for increased racial profiling is high as deputies look for "signs" of "illegality. In one documented case four men of Mexican descent were stopped while driving by a El Paso County Sheriff's Deputy and told that they were stopped for having a "suspicious attitude" only. No other reason was given to the men. Others have been stopped while walking to the store and also denied an appropriate reason for detainment.

***A. Recommendation:***

**1. Excerpt from Migration Policy Institute.** In the long run, successful enforcement of immigration law requires that immigration policy be widely accepted and regarded as worthy of the same kind of law enforcement cooperation that prevails in other areas of public policy. However, in the near term, cooperation should take only measured steps that do not undermine trust between police officials and immigrant communities in reporting crime nor contribute to broad misuses of authority without adequate preparation, training, or supervision, as has happened in the past.<sup>i</sup>

The most promising avenue is cooperation being employed in select communities that allows for assistance in identifying, holding, and transporting removable aliens found among those already legitimately arrested for involvement in non-immigration offenses. Where criminal aliens are incarcerated in US jails, coordinated efforts between state and local officials and ICE/DHS should ensure that criminal aliens are identified and returned to their home countries upon completing their sentences in the United States.

Approaches of this type should occur only after a formal agreement is signed between specific local or state agencies and DHS.<sup>ii</sup> Agreements should spell out adequate training requirements carried out by federal officials and ongoing federal supervision.

## **2. Enforcement of Immigration Law by Local Law Enforcement**

### **a. Intent**

Declares that the issue of immigration enforcement is preempted by the federal government of the United States of America except to the extent specifically authorized herein.

### **b. Jurisdiction**

Immigration is a distinctly federal concern. Local and state law enforcement officers retain jurisdiction solely over federal felony violations of the Immigration Code as set forth in US Code, Title 8 § 1324 (c) concerning the authority to make arrests for smuggling, transporting, or harboring criminal aliens. State and local law enforcement authorities have no inherent authority to enforce civil or criminal immigration laws.

### **c. Cooperation with Federal Agencies**

Federal immigration officers are prohibited from entering into formal or informal agreements with state or local law enforcement agencies concerning the arrest, detention or questioning of the immigration status of crime victims.

Federal immigration officers are prohibited from entering into formal or informal agreements with state or local law enforcement agencies concerning the arrest, detention or questioning of persons that local or state law enforcement encounter while performing their routine duties.

US Code § 1357 (g), authorizing written MOUs to grant specified authority to state and local law enforcement agencies to enforce immigration law is repealed.

US Code § 11033(a) (10) authorizing state and local law enforcement officials to enforce federal immigration law during “mass immigration emergency” is repealed.

## **VI. MILITARY AT THE BORDER**

### ***A. Overall:***

1. There should be no involvement of active duty military (including Joint Task Force North) in enforcement (including support of enforcement) of civilian laws within the territory of the United States, other than laws specifically concerned with terrorism against civilians or under declarations of national emergency. This is to include no involvement of active duty military in immigration and drug law enforcement.

2 There should be no involvement of National Guard under federal control in enforcement (including support of enforcement) of civilian laws within the territory of the United States, other than laws specifically concerned with terrorism against civilians or under declarations of national emergency. This is to include no involvement of active duty National Guard in immigration and drug law enforcement.

### ***B. State deployment of National Guard must be regulated by the Posse Comitatus and should follow certain criteria.***

If the above conditions are not met or states deploy National Guard, the following conditions should apply to their duties, training, oversight, and accountability:

1. Oversight and accountability: All civilian law enforcement activities of the military (including National Guard) are subject to the Independent Review Commission. The Commission will establish and publish guidelines for oversight and accountability for military support of civilian border and immigration enforcement.

2. Duties: Duties in support of civilian law enforcement are to be limited to rear echelon support duties, including logistical support, construction, and intelligence collection from positions at least 25 miles from the border. No armed operations in support of civilian law enforcement within 25 miles of the border, including listening post and observation post operations. Exceptions may be made for declared emergencies and specific counter-terrorism duties. A full report of all activities related to civilian law enforcement is to be made every six months to the Independent Review Commission.

3. Training: All military personnel involved directly or indirectly in civilian law enforcement support (except in cases of declared emergencies) are to undergo at least one week of intensive training before deployment. This training is to include:

- a. differences between civilian law enforcement and military activities, including use of deadly force;

- b. human and constitutional rights in civilian settings;
- c. border community and cultural training;
- d. an overview of immigration and citizenship law;
- e. command, communication, and control in civilian law enforcement settings.

Training must have a formal curriculum to be reviewed by the Independent Review Commission. Training is to include substantive presentations by non-military, non-Homeland Security representatives of border communities.

## **VII. DETENTION AND DEPORTATION**

Current detention and deportation laws and procedures are unduly harsh and counterproductive. Immigrants arrested for relatively minor criminal and or immigration violations are often detained indefinitely under mandatory detention policies that fail to protect the public and increase tax payer expense for prolonged periods of detention, requiring the housing, care, and feeding of untold number of immigrants awaiting hearings. This begins with an arrest and detention that often takes two to three weeks for an individual to be taken before an immigration judge and apprised of the charges against him/her.

The delays and prolonged detentions are the result of harsh, rigid, unrealistic, and narrow categorizations of who truly represents a threat upon release to the broader community as well as who should be entitled to relief from removal. Moreover, the current waivers of inadmissibility are also unduly harsh and disruptive of family unity efforts of individuals attempting to regularize their status in a lawful manner. Accordingly, we should seek to facilitate and expand the opportunity for immigrant families to avail themselves of liberalized waivers or pardons that would indeed unite not divide families.

### ***A. Review and Reconsider Previous Legislative Proposals:***

The following legislative proposals attempt to address some of the most egregious grievances and problems confronting border immigrant communities and their families. Said proposals are part and parcel of failed legislative recommendations that the ***US/Mexico Immigration and Border Task Force*** believes now deserve a new and fresh look and review and reconsider the content and language of the following proposals previously submitted to Congress:

#### ***H.R.1502 Civil Liberties Restoration Act of 2005 (Introduced in House)***

*This proposal would mandate that aliens be taken before an immigration Judge (IJ) within 72 hours. Currently aliens appear before an IJ for up to 2-3 weeks.*

#### ***H.R.2055 Family Reunification Act of 2005 (Introduced in House)***

*This proposal would allow the release of certain lawful permanent residents pending removal proceedings.*

### **H.R. 2865 Keeping Families Together Act of 2005 (Introduced in House)**

*This bill would restore the definition of aggravated felony prior to IIR/IRA, and thus increase the class of aliens eligible to present various forms of relief from removal to an immigration judge.*

**Language contained in the following bill would grant discretion to immigration judge's to determine which aggravated felons should and can be released from custody.**

#### **SEC. 3. Restoration of Detention Policy.**

(a) In General- Section 236(c) of the Immigration and Nationality Act (8 U.S.C. 1226(c)) is amended to read as follows:

“(c) Detention of Criminal Aliens-

“(1) IN GENERAL- The Secretary of Homeland Security shall take into custody any alien convicted of an aggravated felony upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense). Notwithstanding subsection (a) or section 241(a) but subject to paragraph (2), the Secretary of Homeland Security shall not release such felon from custody.

“(2) NON-RELEASE- The Secretary of Homeland Security **may not release from custody any who has been convicted of an aggravated felony**, either before or after a determination of removability, **unless—**

“(A)(i) the alien was **lawfully admitted**, or

“(ii) the **alien** was not lawfully admitted but the alien **cannot be removed because the designated country of removal will not accept the alien**; and

“(B) the alien satisfies the Secretary of Homeland Security that the **alien will not pose a danger to the safety of other persons or of property and is likely to appear** for any scheduled proceeding.’.

(b) Effective Date- The amendment made by subsection (a) shall be effective as if included in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

**Language contained in the following bill would expand waivers of inadmissibility to include children of U.S. citizens and lawful permanent residents. Additionally, the hardship standard is reduced from extreme hardship to mere hardship.**

(a) In General- Section 212(i) (8 U.S.C. 1182(i)) is amended to read as follows:

`(i) The Secretary of Homeland Security may waive the application of subparagraph (A)(i) or (B), or clause (i) or (ii) of subparagraph (C), of subsection (a)(6) in the case of an immigrant who is the parent, spouse, child, son, or daughter of a United States citizen or of an alien lawfully admitted to the United States for permanent residence, if it is established to the satisfaction of the Secretary that the refusal of admission to the United States of such immigrant would result in hardship to the immigrant or to such citizen or lawful permanent resident parent, spouse, child, son, or daughter.'

(b) Conforming Amendments- Section 212(a)(6) (8 U.S.C. 1182(a)(6)) is amended—

(1) in subparagraph (A), by adding at the end the following:

`(iii) WAIVER AUTHORIZED- For a provision authorizing the waiver of clause (i), see subsection (i).';

(2) in subparagraph (B)—

(A) by inserting `(i)' after the subparagraph heading; and

(B) by adding at the end the following:

`(ii) WAIVER AUTHORIZED- For a provision authorizing the waiver of clause (i), see subsection (i).'; and

(3) in subparagraph (C)(iii), by inserting `or (ii)' after `(i)'.

### **SEC. 503. WAIVER OF INADMISSIBILITY FOR MINOR CRIMINAL OFFENSES.**

Section 212(h) (8 U.S.C. 1182(h)) is amended--

(1) in the matter preceding paragraph (1), by **striking `offense of simple possession of 30 grams or less of marijuana' and inserting `controlled substance offense for which the alien was not incarcerated for a period exceeding 1 year'**; and

(2) by striking the final two sentences.

### **SEC. 504. GENERAL WAIVER FOR ALIENS PREVIOUSLY REMOVED AND FOR THE UNLAWFUL PRESENCE BARS.**

(a) In General- Section 212(d) (8 U.S.C. 1182(d)) is amended by adding at the end the following:

`(14) The Secretary of Homeland Security may, in the discretion of the Secretary, for **humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive the application of subparagraph (A) or (B)(i) of subsection (a)(9).'**

(b) Conforming Amendment- Section 212(a)(9)(B) of such Act (8 U.S.C. 1182(a)(9)(B)) is amended by striking clause (v).

### **SEC. 505. WAIVER OF AGGRAVATED FELONY CONSEQUENCES.**

Section 101 (8 U.S.C. 1101) is amended by adding at the end the following:

`(j) For purposes of this Act, and notwithstanding subsection (a)(43), the Secretary of Homeland Security may treat any conviction that did not result in incarceration for more than 1 year as if such conviction were not a conviction for

an aggravated felony. This discretion may be exercised for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.'

**SEC. 506. DISCRETIONARY WAIVER TO ADMIT PERSONS IN UNUSUAL CIRCUMSTANCES.**

(a) **New General Waiver-** Section 212(d) (8 U.S.C. 1182(d)) is amended by adding at the end the following:

`(13) The Secretary of Homeland Security may, in the discretion of such Secretary for **humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive the** application of subparagraph (B) or (G) of subsection (a)(6), clause (i) or (ii) of subsection (a)(9)(A), or subsection (a)(9)(B)(i), **in unusual circumstances.** For purposes of the preceding sentence, an instance of battering or extreme cruelty is deemed to constitute unusual circumstances in the case where it is inflicted on an alien (or a child of an alien) by the alien's United States citizen or lawful permanent resident spouse, parent, child, son, or daughter.'

(b) **Waiver for Aliens Previously Removed-**

(1) **CERTAIN ALIENS PREVIOUSLY REMOVED-** Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is amended by adding at the end the following:

`(iv) **WAIVER AUTHORIZED-** For provision authorizing waiver of clause (i) or (ii), see subsection (d)(13).'

(2) **ALIENS UNLAWFULLY PRESENT-** Section 212(a)(9)(B)(v) (8 U.S.C. 1182(A)(9)(B)(v)) is amended to read as follows:

`(v) **WAIVER AUTHORIZED-** For provision authorizing waiver of clause (i), see subsection (d)(13).'

**Language in the following proposal would restore the former suspension of deportation provisions, which allowed immigration judge's to consider extreme hardship to the alien as well as U.S. citizen and lawful permanent resident alien family members. Also, aggravated felons convicted and sentenced to less than five years would be eligible for cancellation of removal.**

**SEC. 507. RESTORATION OF SUSPENSION OF DEPORTATION.**

(a) **Cancellation of Removal-** Section 240A(a)(3) (8 U.S.C. 1229b(a)(3)) is amended to read as follows:

`(3) **has not been convicted of an aggravated felony for which the sentence imposed is five years or more.'**

(b) **Repeal of Rule for Termination of Continuous Period-**

(1) Section 240A(d)(1) (8 U.S.C. 1229b(d)(1)) (8 U.S.C. 1229b(a)) is repealed.

(2) Section 240A(d) (8 U.S.C. 1229b) is amended--

(A) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(B) by inserting before the period at the end of paragraph (1) (as redesignated) the following: ` , unless the alien's departure from the United States was due to a temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien'.

(b) Cancellation of Removal and Adjustment for Certain Nonpermanent Residents- Section 240A(b)(1) (8 U.S.C. 1229b(b)(1)) is amended to read as follows:

`(1) IN GENERAL- The **Attorney General may cancel removal** in the case of an alien who is inadmissible or deportable from the United States if the alien--

`(A) has been **physically present** in the United States for a **continuous period of--**

`(i) **7 years immediately preceding the date of application in the case of an alien--**

`(I) who is deportable on any ground other than a ground specified in clause (ii)(I); and

`(II) **whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's spouse, child, parent, son, or daughter**, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

`(ii) **10 years immediately** preceding the date of application in the case of an alien—

`(I) who is deportable for conviction of an offense under section 212(a)(2), 237(a)(2), or 237(a)(3); and

`(II) **whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship** to the alien or the alien's spouse, parent, child, son, or daughter, who is a citizen of the United States or an alien lawfully admitted for permanent residence; and

`(B) has been a person of **good moral character** during such period.'.

(d) Elimination of Annual Limitation- Section 240A (8 U.S.C. 1229b) is amended by striking subsection (e).

## **TITLE VI--REMOVAL GROUNDS BASED ON CRIMINAL OFFENSES**

### **SEC. 601. DEFINITION OF MORAL TURPITUDE.**

(a) Equitable Definition of `Moral Turpitude'-

(1) **CONVICTION OF CERTAIN CRIMES-** Section 212(a)(2)(A)(i) (8 U.S.C. 1182(a)(2)(A)(i)) is amended by striking `of, or who admits having

committed, or who admits committing acts which constitute the essential elements of--' and inserting `of--'.

(2) EXCEPTION- Section 212(a)(2)(A)(ii)(II) (8 U.S.C. 1182(a)(2)(A)(ii)(II)) is amended—

(A) by striking `the maximum' and all that follows through `such crime,'; and

(B) by striking `6 months' and inserting `1 year'.

(b) Equitable Definition of `Crimes of Moral Turpitude'- Section 237(a)(2)(A)(i)(II) (8 U.S.C. 1227(a)(2)(A)(i)(II)) is amended to read as follows:

`(II) for which the alien has been incarcerated for a period exceeding one year,'.

## SEC. 602. `AGGRAVATED FELONY' DEFINITIONS.

(a) In General- Section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended by striking `The term `aggravated felony' means' and inserting `**Aggravated felony means a felony**'.

(b) Illicit Trafficking- Section 101(a)(43)(B) (8 U.S.C. 1101(a)(43)(B)) is amended by striking `Code);' and inserting `Code), except it does not include simple possession of a controlled substance;':

(c) **Crimes of Violence and Theft Offenses-** Subparagraphs (F), (G), (R), and (S) of section 101(a)(43) (8 U.S.C. 1101(a)(43)(F), (G), (R), and (S)) are each amended by striking `imprisonment' and all that follows through the semicolon and inserting `**imprisonment of more than five years;**'.

(d) Corrupt Organizations and Gambling Offenses- Section 101(a)(43)(J) is amended by inserting `more than five years' after the words `sentence of'.

(e) Alien Smuggling- Section 101(a)(43)(N) (8 U.S.C. 101(a)(43)(N)) is amended

—  
(1) by inserting `committed for the purpose of **commercial advantage,**' after `smuggling),'; and

(2) by adding at the end a semicolon.

(f) Discretionary Waiver in Cases of Other Minor Felonies- Section 101 (8 U.S.C. 1101) is amended by adding at the end the following:

`(i) For purposes of this Act, and notwithstanding subsection (a)(43), the Attorney General may treat any conviction that did not result in incarceration for more than 1 year as if such conviction were not a conviction for an aggravated felony.'

## SEC. 603. DEFINITIONS OF `CONVICTION' AND `TERM OF IMPRISONMENT.

Section 101(a)(48) (8 U.S.C. 1101(a)(48)) is amended--

(1) in subparagraph (A), by striking `court' and all that follows through the period at the end and inserting `court. **An adjudication or judgment of guilt that has been expunged, deferred, annulled, invalidated, withheld, or vacated, an order of probation without entry of**

**judgment, or any similar disposition shall not be considered a conviction** for purposes of this Act.'; and

(2) in subparagraph (B)—

(A) by inserting `only' after `deemed to include'; and

(B) by striking `court of law' and all that follows through the period at the end and inserting `court of law. Any such reference shall not be deemed to include any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.'.

## **B. Detention and Deportation Procedures**

- The Independent Commission shall have the authority to review and revise oversight and enforcement of mechanisms pertaining to detention facility standards including informing detainees of their basic legal rights, providing medical and mental health care, and attorney and telephone access. Particular attention shall be placed on ensuring private facilities' compliance with these standards.
- All Border Patrol holding and detention facilities shall post in the holding cells, in English and Spanish, detainees rights to report complaints and agency requirements for providing water, food, blanket and medical attention. The poster shall also inform detainees of their legal right to request a hearing and to present their case to an immigration judge.
- Deportation and voluntary removal procedures should prohibit the practice of returning detainees to Mexico at hours in which all services and facilities are closed. The practice of returning people in the middle of the night and early morning hours should be specifically prohibited.

<sup>i</sup> Major Cities Chiefs Immigration Committee, “M.C.C. Immigration Committee Recommendations For Enforcement Of Immigration Laws By Local Police Agencies,” 4–5, June 2006, [http://www.houstontx.gov/police/pdfs/mcc\\_position.pdf](http://www.houstontx.gov/police/pdfs/mcc_position.pdf). See also, Ned Glascock, “Questioning Started in N.C.,” *Raleigh News and Observer*, November 29, 2001; Scott Learn, “Cities React, Portland Catches the Heat,” *The Oregonian*, December 17, 2001; Gretchen Schuldt, “Attorney General’s Office Questions INS Plan,” *Milwaukee Journal Sentinel*, December 7, 2001; “Portland Police Decline to Question Immigrants,” *The Advocate* (Baton Rouge, LA), November 22, 2001; “Third City in Oregon Balks at Assisting Federal Interviews,” *The New York Times*, November 30, 2001; Frank Rich, “Wait Until Dark,” *The New York Times*, November 24, 2001.

<sup>ii</sup> Section 133 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which amended INA §287 (8 U.S.C. §1357(g)), authorized the Attorney General (now the Secretary of Homeland Security to Security) to enter into a written agreement with a state or locality so that qualified officers can be trained and given authority to perform specific immigration enforcement functions including investigation, apprehension, or detention of immigrants in the United States. The written agreement must articulate the specific powers and duties that may be performed by the state officer, and the duration of the agreement. Currently, Florida, Alabama, Arizona, California, and North Carolina have signed memorandums of understanding (MOUs) with DHS for local immigration enforcement. Lisa Seghetti, Stephen R. Viña, and Karma Ester, “Enforcing Immigration Law: The Role of State and Local Law Enforcement,” Congressional Research Service Report to Congress, October 13, 2005, <http://www.ilw.com/immidaily/news/2005.1026-crs.pdf>; US Immigration and Customs Enforcement, “Partners,” [http://www.ice.gov/partners/287g/Section287\\_g.htm](http://www.ice.gov/partners/287g/Section287_g.htm).