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“Oversight of the Trump Administration’s Border Policies and the Relationship Between Anti-Immigrant Rhetoric and Domestic Terrorism”

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## **President Trump's Wasteful and Illegal Border Policies Demonstrate the Urgent Need for Oversight and Reform of Customs and Border Protection (CBP)**

The American Civil Liberties Union (ACLU) thanks the U.S. House Committee on the Judiciary, Subcommittee on Immigration and Citizenship, for the opportunity to submit this statement for its field hearing addressing the Trump administration's border policies.

The ACLU is a nonpartisan public interest organization with 4 million members and supporters, and 53 affiliates nationwide—all dedicated to protecting the principles of freedom and equality set forth in the Constitution. The ACLU has a long history of defending civil liberties, including immigrants' rights. The ACLU of Texas Border Rights Center (BRC) addresses civil and human rights violations arising from border-related immigration policies. The BRC works in conjunction with the national office and ACLU affiliates in New Mexico, Arizona, and California, as well as immigrant communities and immigrants' rights advocates throughout the border region and nationwide.

### **I. Overview**

The Trump administration's immigration policies have a clear end game: keep immigrants of color out of the United States by violating constitutional and human rights and basic decency.<sup>1</sup> President Trump has advanced this agenda through inhumane and often illegal border policies. My testimony focuses on four areas of concern: (1) CBP abuses, (2) the dismantling of U.S. asylum protections, (3) family separation and border prosecutions, and (4) ongoing border militarization.

Over the past two and half years, the headlines have been dizzying: family separation, deaths of migrant children, overcrowding of detention facilities, expansion of border walls, and attacks on asylum protections. The results are consistent: needless suffering, contempt for the Constitution, and billions of taxpayer dollars wasted. It is vital to appreciate that the impact of these border policies extends well into the interior of our country, with systemic violations of civil rights throughout the 100-mile zone of enhanced Border Patrol authority.

Border communities, including residents of El Paso, have borne the brunt of this cruelty-first approach. Border residents are looking to Congress to provide critical oversight of DHS, cuts in funding to CBP and ICE, and legislative plans for undoing and redressing the damage done by this administration.

At the border, to reverse course requires much more than rolling back illegal and abusive policies implemented by this administration. There are fundamental failings in the system that go back decades. As a start, Congress must shift immigration policy away from a deterrence-based, enforcement-only system to one that acknowledges humanitarian realities. U.S. immigration and border policies must be rooted in civil liberties and civil and human rights. This includes providing due process to those arriving in the United States, safeguarding access to asylum protections, ensuring that federal agencies are accountable and transparent, and ending border militarization that harms border residents and migrants.

### **II. Customs and Border Protection: Abuses and Lack of Accountability**

U.S. Customs and Border Protection (CBP) is the nation's largest law enforcement agency and operates with routine impunity and lack of transparency. When President Trump took office, CBP

employed 19,437 Border Patrol agents.<sup>2</sup> Of those agents, 85 percent were tasked with patrolling the southwest border—amounting to nearly 9 agents per linear mile.<sup>3</sup> Yet despite this record high, just days after his inauguration, President Trump ordered the hiring of an *additional* 5,000 Border Patrol agents.<sup>4</sup> Today, CBP employs 19,555 Border Patrol agents.<sup>5</sup> These agents are joined by thousands of CBP officers tasked with staffing ports of entry along the southwest border,<sup>6</sup> as well as ICE agents, more military personnel, and state law enforcement in states like Texas.<sup>7</sup> Since the agency’s inception in 2003, its budget has increased from \$5.9 billion to \$14.7 billion.<sup>8</sup>

Despite CBP’s expanding work force, massive budget increases, and the regular accounts of abuse and corruption within its ranks, the agency lacks even the most basic structures for transparency and accountability.

### **a. Culture of Abuse**

CBP’s internal culture has most recently surfaced in widespread reports of a private Facebook group littered with racist and sexually violent postings by current and former CBP officers and agents.<sup>9</sup> Such disturbing speech is not harmless—it begets violence. For example, in 2017, one Border Patrol agent hit a Guatemalan man with his Border Patrol vehicle, and then lied about the incident in a report. Federal prosecutors uncovered dehumanizing and violent text messages. In one, the agent described migrants as “disgusting subhuman shit unworthy of being kindling for a fire.” In another message, he wrote, “PLEASE let us take the gloves off [T]rump!” The agent’s attorney argued the comments about migrants were “commonplace throughout the Border Patrol’s Tucson Sector” and “part of the agency’s culture.”<sup>10</sup>

This culture of cruelty within CBP has long been accompanied by impunity for use of excessive and lethal force. Alarming, agents almost never face public consequences for their actions, and often the agency fails to timely report—or report at all—instances of deaths in CBP custody or misconduct by CBP agents. We only know about many of the stories shared here due to investigative reporting, independent reports by non-governmental organizations, and documents obtained through FOIA requests and litigation.

For example, on May 23, 2018, 20-year-old Claudia Patricia Gómez González was shot in the head by a Border Patrol agent shortly after she crossed into the United States. CBP only admitted the facts of this deadly encounter after the release of bystander video, withdrawing its initial statement alleging the deceased young woman had attacked that agent.<sup>11</sup> Since January 2010, at least 94 people—including some U.S. citizens—have died following encounters with CBP personnel.<sup>12</sup> Such encounters include shootings, car chases ending in deadly crashes, and CBP officers forcing a young man to drink liquid methamphetamine.<sup>13</sup> Tragically, seven individuals were shot across international borders as an escalated response to alleged rock throwing.<sup>14</sup> CBP agents almost never face consequences for their actions and some deaths go unreported all together.<sup>15</sup>

CBP abuses and cruelty extend to the deplorable conditions that migrants are forced to withstand in the agency’s detention facilities. In May, the ACLU of Texas filed a complaint with the Department of Homeland Security (DHS) Office of Inspector General (OIG) regarding conditions at Border Patrol stations in the Rio Grande Valley (RGV) and El Paso, where many migrants were forced to sleep on muddy, rocky ground, and in puddles of water during thunderstorms, which were followed by extreme heat, humidity and sun exposure. Families, including children, were not provided with bedding, mats, or chairs. Reports included consistent sleep deprivation for multiple days in custody,

lack of medical examination and treatment, lack of food and water, and verbal abuse and threats by Border Patrol agents. In one case, agents made fun of one man's speech impediment and held the man and his 10-year-old son for seven days.<sup>16</sup> The OIG later found dangerous conditions in CBP facilities in the RGV and El Paso sectors, including overcrowding and prolonged detention.<sup>17</sup>

In addition to the OIG complaint, the ACLU of Texas filed an amicus brief in support of a class-action lawsuit challenging the conditions of confinement in CBP holding facilities in the RGV.<sup>18</sup> The brief focuses on CBP's unlawful practice of denying attorneys access to individuals in CBP custody and CBP's practice of holding individuals for prolonged periods of time well in excess of the 72-hour limit authorized by Congress and identified in CBP's own internal guidelines.<sup>19</sup>

At least 12 migrants have died in CBP custody in the last year, including multiple children—notably, there had not been a single death of a child in over a decade.<sup>20</sup> Members of Congress have visited the border and toured detention facilities, yet funding for CBP has continued—and even increased—without adequate protections to prevent abusive conditions.

The ACLU and partners have long challenged prolonged detention and abusive conditions in Border Patrol facilities, including via an ongoing lawsuit filed in 2014 in Arizona on inhumane conditions in CBP facilities in that state.<sup>21</sup> And last year, the ACLU and the University of Chicago International Human Rights Clinic released their review of over 30,000 pages of documents dating back to 2009 that describe shocking violence and abuse against migrant children. The documents detail federal officials' verbal, physical and sexual abuse of migrant children; the denial of clean drinking water and adequate food; failure to provide necessary medical care; detention in freezing, unsanitary facilities; and other violations of federal law and policy. The documents also demonstrate that U.S. officials were aware of these abuses as they occurred, but failed to properly investigate, much less to remedy, them.<sup>22</sup>

More recently, rare access to CBP facilities obtained by lawyers due to the 1997 *Flores* settlement revealed atrocious conditions for children in the Clint Border Patrol station (El Paso sector) and equally disturbing conditions in the RGV, including a premature baby detained without medical attention.<sup>23</sup>

Child welfare and medical professionals, including the American Academy of Pediatrics, continue to warn that the use of detention—for any period of time—is irrevocably harmful for children.<sup>24</sup> Detention under the conditions described above is inexcusable.

#### **b. Lack of Oversight and Accountability**

There is a volume of evidence that CBP imposes virtually no accountability for abuse and misconduct. A Cato Institute study found that between 2006 to 2016, CBP “misconduct and disciplinary infractions outstripped all other federal law enforcement . . . [and] it is virtually impossible to assess the extent of corruption or misconduct in U.S. Customs and Border Protection . . . because most publicly available information is incomplete or inconsistent.”<sup>25</sup> Data obtained by the American Immigration Council in 2017 revealed that the agency took “no action” in 95.9 percent of complaints made against agents including verbal abuse, theft of property, and physical assault, over a three year-period.<sup>26</sup> To our knowledge, no use of force has ever been determined to violate policy, and the agency has rejected multiple expert recommendations to change its rules on shooting at vehicles.<sup>27</sup>

The lack of accountability for such abuses is largely thanks to CBP's failed disciplinary system. Despite a set of recommendations issued by an independent advisory panel in 2016, CBP has still not taken adequate steps to fix the system. For example, the panel recommended CBP hire 350 internal affairs investigators, but the agency has not done so. It also recommended the appointment of a discipline czar to coordinate internal accountability across the agency. Three years later, the agency has yet to create that position.<sup>28</sup> Worse still, six years after CBP announced that it would explore the use of body-worn cameras, there has not been a single body-worn camera deployed in field operations.<sup>29</sup>

### **III. Dismantling of Asylum Protections at the Border**

Much of the Trump administration's policy changes along the border have focused limiting the ability of migrants to seek asylum in the United States. Asylum seekers have been turned away at ports of entry through "metering" or returned to Mexico under the Migrant Protection Protocols (MPP), and consequently subjected to kidnapping, extortion, rape, and even death.<sup>30</sup> Once in U.S. custody they have been held for prolonged periods in CBP custody, including detention outdoors for days and overcrowded cells for weeks - many just to be returned to the horrors facing migrants in Mexico. The Trump administration has also tried twice to ban altogether certain categories of migrants from applying for asylum at the border.

Seeking protection in the United States is a right under both international and U.S. law.<sup>31</sup> The baseline right to apply for protection and have that claim considered fairly is fundamental to protect people fleeing persecution in their home countries.<sup>32</sup>

#### **a. Unlawful Turn-backs of Asylum Seekers at Ports of Entry, or "Metering"**

The Trump administration has dramatically expanded its use of "metering"—the practice of severely limiting the number of asylum seekers allowed to enter the U.S. each day at a port of entry, and turning everyone else away. In its current iteration, the policy includes CBP officers stationed on the exact international border at ports of entry, where they turn away arriving asylum seekers and instruct them to seek out Mexican immigration officials to be added to waiting lists. The policy illegally denies access to the U.S. asylum system and forces migrants to wait in conditions that leave them vulnerable to abuse.

In March 2019, the ACLU of Texas Border Rights Center filed a complaint with the DHS OIG on behalf of the Castro family. A family of five, two parents and three children, ages 12, 7, and 3, was denied access to asylum at a port of entry in Eagle Pass, TX, in July 2018 after fleeing El Salvador. The 12-year-old suffered from a heart arrhythmia. In Mexico, they experienced gang-related threats, extortion and were later kidnapped. They were forced to pay Mexican immigration agents \$1,000 for their release. On January 12, 2019, CBP denied the family access to asylum for a second time in Ciudad Juarez. Only after ACLU intervention and congressional advocacy was the family processed.<sup>33</sup>

By early August 2019, the number of asylum seekers on the "metering" lists was more than 26,000 along the southern border.<sup>34</sup> "Metering" has forced many migrants to forgo the wait time at ports of entry and risk dangerous crossings in between ports.<sup>35</sup> An independent investigation by the DHS OIG found in September 2018 that at the same time that the administration instituted its "zero

tolerance” policy and encouraged asylum seekers to cross at ports of entry, it had also restricted access through “metering,”—thus forcing more to cross between ports and then separating children from their parents.<sup>36</sup>

### **b. Migrant Protection Protocols, or “Remain in Mexico”**

The “Remain in Mexico” policy, officially known as the “Migrant Protection Protocols” (MPP), has already sent over 37,500 people, including families with young children and babies, back to dangerous border regions in Mexico to await their U.S. immigration court hearings.<sup>37</sup> Reports last month indicate hundreds are returned each day, although CBP does not provide public information on daily returns.<sup>38</sup> These individuals are essentially “sitting ducks” for the cartels and other criminal gangs that largely control these areas.

In February 2019, the ACLU with partner organizations filed a lawsuit challenging the program (*Innovation Law Lab v. McAleenan*).<sup>39</sup> Although a district court enjoined the policy as illegal, a Ninth Circuit motions panel allowed the policy to continue pending the government’s appeal of the preliminary injunction -- notwithstanding that two of the three judges on the panel found the policy clearly illegal.<sup>40</sup> Since then implementation of the policy has expanded enormously. The Ninth Circuit Court of Appeals will consider the merits in October 2019.<sup>41</sup>

The regions of Mexico to which migrants are being returned --Baja California, Tamaulipas, and Chihuahua, among others – are among the most dangerous in the world.<sup>42</sup> Tamaulipas has been referenced as “the disappearance capital of Mexico,”<sup>43</sup> and a currently effective State Department travel warning puts Tamaulipas in the same category as Syria.<sup>44</sup> As of August 26, 2019, Human Rights First had documented at least 141 publicly reported cases of rape, kidnapping, sexual exploitation, violent assault, and targeting by persecutors of individuals returned to Mexico.<sup>45</sup> This is clearly just the very tip of the iceberg since there is no systematic monitoring of such incidents; many incidents, if not most, go unreported.

### **c. Asylum Bans**

Through two iterations of asylum bans, the White House has attempted to subvert separation of powers and rewrite asylum law from the Oval Office.

The first asylum ban, announced in November of 2018, proposed to make anyone crossing the border between ports of entry ineligible for asylum. Last month, a federal judge vacated the rule entirely, and the government’s attempts to stay the injunction were rejected by both the Ninth Circuit and the Supreme Court. The government’s appeal of the injunction is currently scheduled for argument on October 1, 2019.<sup>46</sup>

In July 2019, the administration announced its second asylum ban, attempting to block asylum eligibility for anyone at the southern border who had transited through a third country en route to the United States, with very limited exceptions.<sup>47</sup> The ACLU, with partner organizations, quickly brought suit and secured a nationwide preliminary injunction to stop the blatantly unlawful rule change.<sup>48</sup> The preliminary injunction was subsequently narrowed to the Ninth Circuit, so the ban has gone into effect in Texas and New Mexico, but the case is ongoing—and just yesterday, ACLU lawyers were in court to push for a nationwide injunction.<sup>49</sup>

Both asylum bans clearly represent the administration’s intent to undermine post-World War II refugee protections by redefining who is eligible for such status in the United States. In doing so, the administration undercuts global protection norms and risks the lives of tens of thousands of asylum seekers fleeing violence in their home countries.

#### **IV. Family Separation and Border Prosecutions**

##### **a. Family Separation**

Despite claims by the administration that it had no policy of separating families at the border, public reporting as early as November 2017 confirmed a “de-facto policy of family separation.”<sup>50</sup> The ACLU filed a lawsuit in March 2018 (*Ms. L v. ICE*) before the Department of Justice (DOJ) and DHS announced their “zero tolerance” policy. By that point, hundreds of children had already been forcibly taken from their parents. By late June 2018, when the court issued an injunction, the government reported that there were around 2,700 families separated.

But that was far from the whole story. A subsequent Health and Human Services (HHS) OIG report found that there may have been “thousands” of additional unreported separated families. And just six weeks ago, on July 30, 2019, the ACLU filed a motion in *Ms. L v. ICE* challenging the government’s separation of over 900 additional separations since the June 2018 injunction. CBP continues to make discretionary determinations separating families—with little to no basis in evidence or child welfare practices—predicated on the “fitness” of the parents, including because of minor traffic violations and unsubstantiated allegations of gang affiliation.<sup>51</sup>

CBP also routinely separates children from non-parental relatives they arrive with, including siblings, aunts, and grandparents<sup>52</sup> and is also separating numerous families stemming from its implementation of MPP.<sup>53</sup>

##### **b. Border Prosecutions**

DOJ relies on two provisions of federal law to criminally prosecute—rather than process through the civil immigration system—those crossing the border between official ports of entry: 8 U.S.C. §1325 and §1326. Those provisions make crossing the border without authorization a federal misdemeanor and felony, respectively. Over the past decade, these prosecutions have become a significant driver of mass incarceration, comprising 57 percent of all federal criminal cases filed nationwide in 2018.<sup>54</sup>

Border prosecutions were also a major tool for the Trump administration’s family separation policy. By enforcing a “zero tolerance” policy of prosecuting migrants—including parents—the Trump administration used these laws to separate thousands of children from their parents.<sup>55</sup> Worse still, many of those families were seeking asylum; a 2018 study by Human Rights First found the government regularly referred asylum seekers for criminal prosecution, violating U.S. treaty obligations, due process, and delaying or preventing the opportunity to seek protection.<sup>56</sup>

#### **V. Impact on Border Communities**

The U.S. government’s border policies are not only impacting recent arriving populations, but they are also harming quality of life for those living in border towns like Brownsville, El Paso, and San

Diego. Border Patrol's interior enforcement operations encroach deep into and across the country. Almost two-thirds of the U.S. population lives within the 100-mile zone, that is, within 100 miles of a U.S. land or coastal border.<sup>57</sup>

#### **a. Build-up of law enforcement and surveillance**

The terrorizing of border communities through the build-up of law enforcement and surveillance is deeply rooted in our nation's history of over-policing of people of color. In early 2018, President Trump authorized 4,000 National Guard troops to the border, a move the Border Patrol union itself called "a colossal waste of time."<sup>58</sup> Although far from the first military deployment to the southwest border,<sup>59</sup> the scale and the narrative promoted by the administration set apart this deployment in distinctly concerning ways. The administration increased deployments to 5,900 active-duty troops in November 2018 to the southwest border as part of a mid-term election buildup - under the false pretense of defending against a migrant "caravan" that, at the time of deployment, was over 1,000 miles away.<sup>60</sup> At a cost of over \$600 million,<sup>61</sup> the political stunt was characterized by renowned military leaders as a "profound betrayal of our military."<sup>62</sup>

Beyond personnel, the deployment of technology and substantial infrastructure has entrenched the militarized border-industrial complex. The U.S. government has invested significant resources into mobile surveillance systems, ground sensors, mobile X-ray technology, and a fleet of six Predator B unmanned aerial drones.<sup>63</sup> Moreover, the military brought Blackhawk helicopters, combat vehicles, and razor wire to the streets and skies of border communities.<sup>64</sup> With the majority of contraband entering the country at ports of entry<sup>65</sup> and the majority of border crossers actively seeking out government officials to request asylum, additional technology and increased surveillance further militarizes the region, invades privacy, and dumps even more resources into an unaccountable agency.

#### **b. Border Wall**

Now the centerpiece of President Trump's xenophobic fearmongering, border walls have long been a pawn in enforcement-focused immigration and border policy. The reality is that border walls lead to migrant deaths, devastate the environment, waste billions in taxpayer dollars, take money from accounts that Congress never contemplated would fund such construction, and inflict permanent, irreparable damage on border communities.

Decades of funding walls has only harmed, not helped the border region. In February 2019, Congress allocated \$1.375 billion to finance construction of new physical border barriers along the U.S.-Mexico border.<sup>66</sup> However, the Government Accountability Office (GAO) had previously concluded that DHS is not responsibly spending already allocated funds, finding that "DHS faces an increased risk that the Border Wall System Program will cost more than projected, take longer than planned, and not fully perform as expected."<sup>67</sup>

The wall places more than 93 endangered species at risk, including jaguars, Mexican wolves, Quino checkerspot butterflies, and several migratory birds and bats. Border barriers cut through sensitive ecosystems, disrupt animal migration patterns, create damaging floods, and divide communities and tribal nations.<sup>68</sup> The Trump administration continues to push forward with new construction plans in Texas that are likely to cause deadly flooding.<sup>69</sup> In 2018, more than 2,800 scientists from 47



countries published a paper objecting to Trump's border wall due to the catastrophic impact on biodiversity and massive blow to the environment.<sup>70</sup>

The Trump administration, like previous administrations, continues to seize private land from Texas landowners along the Rio Grande.<sup>71</sup> Recent government court submissions indicate the administration intends to continue seizing land for wall construction.<sup>72</sup> The REAL ID Act of 2005 also granted DHS unprecedented authority to waive laws to expedite wall construction, a power far exceeding that of even the president, and without any provision for a waiver to be reviewed or overturned.<sup>73</sup>

Thirty-six communities in California, Arizona, New Mexico, and Texas have already passed resolutions opposing the border wall, including 16 cities and all three border counties in the Rio Grande Valley, where wall construction proceeds without a single public meeting.<sup>74</sup> Polls show majority opposition to a border wall.<sup>75</sup> For example, a 2018 poll of Texas Latinos found 73% disapproved of a border wall.<sup>76</sup>

### **c. 100-Mile Zone**

CBP claims a territorial reach of 100 air miles into the United States from any international border, encompassing two-thirds of the U.S. population, or approximately 200 million people.<sup>77</sup> Yet despite this massive reach, Border Patrol agents must have "reasonable suspicion" of an immigration violation or crime (more than just a "hunch") before stopping someone within the 100-mile zone.<sup>78</sup>

Although the law is clear, FOIA documents stemming from ACLU litigation reveal the extent to which Border Patrol supplies flimsy, pretextual reasons for the "reasonable suspicion" the Fourth Amendment requires to stop or search someone in the border zone. Border Patrol's "Enforcement Law Course," the document that it uses to train its agents on the constitutional limitations to their power, says facts such as a car riding too low or too high, or when someone makes too much or not enough eye contact, can be used to justify a stop.<sup>79</sup> The result is U.S. citizens, legal permanent residents, tourists and others are consistently pulled over by Border Patrol for no reason, far from the border, without the required legal standard of "reasonable suspicion."<sup>80</sup>

Similarly, courts have determined that outside of ports of entry, Border Patrol agents cannot search vehicles in the 100-mile zone without a warrant or "probable cause" (a reasonable belief, based on the circumstances, that an immigration violation or crime has occurred).<sup>81</sup> In practice, Border Patrol agents routinely ignore or misunderstand the limits of their legal authority, violating constitutional rights.

CBP's presence throughout the 100-mile zone results in widespread violations of rights, including the Fourth Amendment's protection against unreasonable searches and seizures. For example, in Montana, Border Patrol interrogated Ana Suda and Martha "Mimi" Hernandez at a convenience store for speaking Spanish; the ACLU sued on their behalf.<sup>82</sup> In the past year, Border Patrol has intensified boarding Greyhound buses at stations, profiling and interrogating passengers about their immigration status and pulling individuals off buses. We have documented stories and experiences of Greyhound riders in Vermont, California, Washington, Arizona, and Michigan. The common thread in the reports is that CBP singles out people of color on the buses and fails to provide reasons for boarding and questioning.<sup>83</sup>

Perhaps no case best exemplifies the horrific impact of the 100-mile zone than the case of Rosa Maria Hernandez, a 10-year-old girl with cerebral palsy who was on her way to a hospital in Corpus Christi to undergo gallbladder surgery. After going through a Border Patrol checkpoint—where she was stopped and detained—she was escorted to the hospital and remained in Border Patrol custody with agents in her room, who failed to return her to her parents in Laredo and instead referred her to the Office of Refugee and Resettlement, causing her first-ever separation from her family.<sup>84</sup>

## **VI. Required Reforms**

Thanks to an established immigration enforcement regime and an agency primed for its anti-immigrant agenda, the Trump administration has taken cruelty to new levels. It has found new ways to inflict harm on arriving migrants and border communities alike, and sent a clear message to CBP and ICE agents – any level of cruelty will be excused in an effort to keep people of color out of the country. The abuses of this administration cannot be fixed overnight, but if Congress is committed to addressing the underlying causes of Trump’s violations at the border, it should start with these recommendations.

### **Instituting CBP Oversight and Accountability:**

- **CBP Detention:**
  - Congress should ensure that CBP abide by its own rules and regulations for the humane treatment of migrants in its custody and guarantee that no migrant is held in CBP custody for longer than 72 hours.
  - Congress should ensure that CBP improves the conditions of CBP facilities consistent with all requirements under applicable law, including the standards in the *Flores Settlement Agreement*, and ensure CBP provides humane treatment of individuals in its custody;
  - Congress should conduct oversight to ensure that no individual is held in CBP custody for longer than 72 hours in violation of CBP’s congressional authorization, and that all individuals have immediate access to counsel while in CBP custody.
- **Transparency and Data Collection:**
  - Congress should require DHS to collect and make public data on all use-of-force incidents.
  - Congress should require Border Patrol to collect and make public all data collection of roving patrols and secondary inspections at interior checkpoints, including recording the factual basis for and duration of the stops and searches.
  - CBP should make publicly available, at minimum, the following: policies, complaint investigations, and disciplinary records, stop data, and apprehension statistics, and data relating to use of force through annual reports to Congress.
- **Accountability Measures:**
  - CBP should require officers, including Border Patrol agents, to wear body-worn cameras, with appropriate privacy protections for officers and the public.
  - CBP should communicate openly to the public about serious incidents when they occur, respecting when the law requires confidentiality
  - CBP should require officers to identify themselves by their full name, rank, and command (as applicable) and provide that information in writing to individuals they encounter at ports or within the 100-mile zone if requested.

- Congress should establish a permanent, independent civilian oversight body that is charged with investigating and responding to complaints about CBP abuses, including authority to impose discipline.

### **Restoring Asylum Protections:**

- DHS should end the policy of “metering” at ports of entry and return to a policy of accepting and processing migrants as they arrive.
- DHS should rescind the Migrant Protection Protocols, stop the forced return to Mexico of individuals seeking asylum in the United States and provide safe transportation back to the U.S. for returnees currently stranded in Mexico.
- DHS should revoke all rule changes that attempt to ban asylum eligibility for certain classes of border crossers.

### **Ending Family Separation and Border Prosecutions:**

- CBP officials should not have discretion to separate families. Instead, child welfare experts should assess whether a child appears to be in danger and then determine whether separation is warranted. If a separation occurs, there must be detailed information recorded and shared across agencies (DHS, DOJ, and HHS) in order to maintain data and to facilitate reunification or release to a sponsor. Review should be required by the appropriate state court handling child welfare cases.
- Congress should repeal 8 U.S.C. §§ 1325, 1326.

### **Demilitarizing the Border and Addressing CBP’s Bloated Budget:**

- Congress should restrict CBP’s authority to no more than 25 miles from the border, limiting incursions onto private property to no more than 10 miles, and remove all Border Patrol interior checkpoints.
- Congress should not allocate any additional funds for “border security” or border walls. It should cut funds to CBP, which has used such funds to increase border militarization.
- Congress should conduct robust oversight of existing funding and demand DHS provide a full accounting of funds previously allocated for border security infrastructure and CBP enforcement. Funding for any type of border barriers should be tied to required, ongoing community consultations that include in-person community meetings and open comment periods for all construction proposals, as well as public reporting requirements on the outcomes of such consultation.
- Congress should repeal the Real ID Act Section 102(c) waiver and pass legislation requiring that any border barrier comply with all applicable environmental laws.

<sup>1</sup> Ali Vitali, Kasie Hunt and Frank Thorp V, “Trump referred to Haiti and African nations as ‘shithole’ countries,” NBC News, Jan. 11, 2018, available at <https://www.nbcnews.com/politics/white-house/trump-referred-haiti-african-countries-shithole-nations-n836946>

<sup>2</sup> Christian Penichet-Paul, “Border Security Along the Southwest Border: Fact Sheet,” National Immigration Forum, March 11, 2019, available at <https://immigrationforum.org/article/border-security-along-the-southwest-border-fact-sheet/>.

<sup>3</sup> *Id.*

<sup>4</sup> Executive Order: Border Security and Immigration Enforcement Improvements, January 25, 2017, available at <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>; see also U.S. Government Accountability Office, Border Security and Immigration: Initial Executive Order Actions and Resource Implications, Government Accountability Office, July 12, 2018, available at <https://www.gao.gov/products/GAO-18-470>.

<sup>5</sup> U.S. Customs and Border Protection, Snapshot: A Summary of CBP Facts and Figures, July 2019, available at [https://www.cbp.gov/sites/default/files/assets/documents/2019-Aug/CBP\\_Snapshot\\_07032019.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2019-Aug/CBP_Snapshot_07032019.pdf).

<sup>6</sup> American Immigration Council, “The Cost of Immigration Enforcement and Border Security,” May 17, 2019, available at <https://www.americanimmigrationcouncil.org/research/the-cost-of-immigration-enforcement-and-border-security>.

<sup>7</sup> See Melissa del Bosque, “The Surge: How Texas’ decade-long border security operation has turned South Texas into one of the most heavily policed and surveilled places in the nation,” *The Texas Observer*, May 23, 2018, available at <https://www.texasobserver.org/the-surge/>; see also Zach Montague, “Pentagon to Send 2,100 More Troops to the Southwestern Border,” *The New York Times*, July 17, 2019, available at <https://www.nytimes.com/2019/07/17/us/politics/troops-border-immigration.html>; see also Robert Moore, “Troops deployed to border take over mobile security mission,” *The Washington Post*, June 6, 2019, available at [https://www.washingtonpost.com/world/national-security/troops-deployed-to-border-take-over-mobile-security-mission/2019/06/06/d05423fe-8877-11e9-98c1-e945ae5db8fb\\_story.html?noredirect=on](https://www.washingtonpost.com/world/national-security/troops-deployed-to-border-take-over-mobile-security-mission/2019/06/06/d05423fe-8877-11e9-98c1-e945ae5db8fb_story.html?noredirect=on).

<sup>8</sup> *Id.*

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<sup>18</sup> ACLU of Texas, *ACLU Files Court Brief To Address Prolonged Immigration Detention And Lack Of Access To Counsel At The Border*, Aug. 20, 2019, available at <https://www.aclutx.org/en/press-releases/aclu-files-court-brief-address-prolonged-immigration-detention-and-lack-access>.

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<sup>31</sup> See Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980) (codified as amended in scattered sections of 8 U.S.C.); Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267, <https://perma.cc/522Y-2Q67>. Under current statutory and regulatory provisions, individuals may be granted asylum

if they meet the definition of “refugee” or qualify for protection under the Convention Against Torture. *See* 8 U.S.C. §§ 1158(b)(1)(A), 1101(a)(42) (2017); 8 C.F.R. § 208.18 (2017).

<sup>32</sup> The heart of U.S. asylum law rests in the Refugee Act of 1980, which was intended to bring domestic law into conformity with the 1951 Refugee Convention and 1967 Protocol. *See* Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980) (codified as amended in scattered sections of 8 U.S.C.) The United States had acceded to the Protocol in 1968 and the Refugee Act codified the customs that had developed in the interim. *See* S. REP. NO. 96-256, at 1 (1979), as reprinted in 1980 U.S. CODE CONG. & AD. NEWS 141, 141. The Refugee Act adopted a definition of refugee, mirroring that in the Protocol, and it enshrined the right to apply for asylum. *See* Refugee Act of 1980, Pub. L. No. 96-212, § 201, 94 Stat. 102, 102-03 (1980) (codified as amended in scattered sections of 8 U.S.C. § 1101(42) (2017).)

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<sup>36</sup> DHS Office of Inspector General, Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, September 27, 2018, available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

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<sup>39</sup> *See* American Civil Liberties Union, *Innovation Law Lab v. McAleenan*, Updated: July 10, 2019, available at <https://www.aclu.org/cases/innovation-law-lab-v-mcaleenan?redirect=cases/innovation-law-lab-v-nielsen>.

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- <sup>73</sup> ACLU Border Rights Center, *supra* note 68 at page 7.
- <sup>74</sup> The full list of community resolutions is as follows: Arizona: Flagstaff, Inter-Tribal Association, Pima County, Tohono O’odham Nation, Tucson; New Mexico: Las Cruces; California: Berkeley, Los Angeles, Oakland, San Diego; Texas: Alton, Alamo, Austin, Brownsville, Brewster County, Cameron County, Edinburg, El Paso, Hidalgo County, La Joya, Laguna Vista, Los Fresnos, McAllen, Mercedes, Mission, Palmview, Pharr, Port Isabel, Presidio, San Juan, Starr County, Sullivan City, and Weslaco. See list available at <https://noborderwalls.org/opposition/>.
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