

July 28, 2015

Attorney General Loretta Lynch  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530-0001

**Re: Prosecutions for Illegal Entry (8 U.S.C. § 1325) and Illegal Re-entry (8 U.S.C. § 1326)**

Dear Attorney General Lynch:

We, the undersigned 171 civil rights, human rights, and faith-based organizations, write to express our profound concern with the ongoing criminal prosecution by U.S. Attorneys of asylum seekers who have fled their countries seeking safety and of migrants who wish to reunite with their families in the United States. Federal criminal prosecution is the wrong response to immigration at our southern border.

The May 2015 report from the Department of Homeland Security Office of the Inspector General (DHS OIG) on the Streamline initiative finds that Customs and Border Protection (CBP) is unable to demonstrate that Border Patrol referrals of apprehended migrants for prosecution by U.S. Attorney's Offices actually deter unauthorized migration – the precise policy goal of CBP.<sup>1</sup> Furthermore, Streamline proceedings are fraught with due process problems.<sup>2</sup> Finally, DHS OIG found that Border Patrol is referring asylum seekers for criminal prosecution via Streamline, prosecutions that clearly violate U.S. obligations under Article 31(1) of the Refugee Convention.<sup>3</sup>

Meanwhile, illegal entry and re-entry are now the most prosecuted federal crimes in the United States.<sup>4</sup> According to the Pew Research Center, the increase in illegal re-entry convictions over the past two decades accounts for 48 percent of the growth in total convictions in federal courts over the period.<sup>5</sup> The Department of Justice (DOJ) expends untold hundreds of millions of dollars each year on U.S. Marshals Service and Bureau of Prisons beds that hold non-citizens prosecuted for illegal entry or re-entry, both pre-trial and post-sentence. Yet these prosecutions further none of DOJ's own prosecutorial priorities – national security, violent crime, financial fraud, and cases that protect our most vulnerable communities.<sup>6</sup> Furthermore, the prosecutions almost exclusively target Latinos, leading directly to the disproportionate representation of Latinos in the federal prison system.<sup>7</sup> DOJ should not be in the business of immigration enforcement, particularly when the strategies are unproven and highly problematic in their implementation.

Most importantly, criminalizing migration is profoundly immoral. The causes of migration are complex and varied, and migration per se poses no threat to public safety. Our nation can find far more humane and compassionate ways to respond to people crossing our southern border.

**We urge you to end Department of Justice prosecutions for illegal entry and re-entry at the southern border.**

Short of complete discontinuation, we urge you to issue guidance directing U.S. Attorneys to 1) significantly reduce their use of prosecutions for illegal entry and re-entry, and 2) always decline referrals for prosecution of asylum seekers.

Thank you for your consideration. Please contact Ruthie Epstein at the American Civil Liberties Union ([repstein@aclu.org](mailto:repstein@aclu.org)) or Rob Randhava at The Leadership Conference on Civil and Human Rights ([Randhava@civilrights.org](mailto:Randhava@civilrights.org)) with any questions.

Sincerely,

### **National Organizations**

American Civil Liberties Union

American Friends Service Committee

American Immigration Council

American Immigration Lawyers Association

Asian Americans Advancing Justice – AAJC

Black Alliance for Just Immigration

Catholic Legal Immigration Network, Inc. (CLINIC)

Center for Community Change

Center for Forced Migration Studies

Center for Gender & Refugee Studies

Center for Popular Democracy

Christian Church (Disciples of Christ), Refugee & Immigration Ministries

Church World Service

Community Initiatives for Visiting Immigrants in Confinement (CIVIC)

Council on American-Islamic Relations

Detention Watch Network

Disciples Justice Action Network

Enlace

Fair Immigration Reform Movement, FIRM

Families for Freedom

Farmworker Justice

FedCURE | FedCURE Italia  
Franciscan Action Network  
Friends Committee on National Legislation  
Grassroots Leadership  
Human Rights First  
Human Rights Watch  
Ignatian Solidarity Network  
Immigrant Legal Resource Center  
In the Public Interest  
International Rescue Committee  
Jesuit Conference  
Justice Policy Institute  
Justice Strategies  
Justice and Witness Ministries, United Church of Christ  
Kids in Need of Defense  
Latin America Working Group Education Fund  
The Leadership Conference on Civil and Human Rights  
Leadership Conference of Women Religious  
League of United Latin American Citizens  
Lutheran Immigration and Refugee Service  
MALDEF  
Missionary Servants of the Most Holy Trinity  
NAACP  
National Alliance of Latin American and Caribbean Communities (NALACC)  
National Association of Criminal Defense Lawyers  
National Association of Social Workers  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Council of La Raza (NCLR)  
National Employment Law Project  
National Immigrant Justice Center  
National Immigration Forum  
National Immigration Law Center  
National Immigration Project of the NLG  
National Lawyers Guild  
National LGBTQ Task Force  
National Network for Arab American Communities  
National Network for Immigrant and Refugee Rights  
NETWORK, A National Catholic Social Justice Lobby  
Not1More

Park Avenue Christian Church (DoC)/UCC  
Pax Christi USA  
Prison Policy Initiative  
Proyecto Juan Diego  
Refugee and Immigrant Center for Education and Legal Services  
Religious of the Assumption  
Sisters of Mercy of the Americas  
South Asian Americans Leading Together (SAALT)  
Southeast Asia Resource Action Center (SEARAC)  
Southern Border Communities Coalition  
The Advocates for Human Rights  
The Sentencing Project  
Treatment Communities of America  
United Food and Commercial Workers International Union  
United Methodist Church, General Board of Church and Society  
United Methodist Women  
U.S. Committee for Refugees and Immigrants  
U.S. Human Rights Network  
We Belong Together  
Women's Refugee Commission

### **State Organizations**

American Gateways  
Arkansas Interfaith Alliance  
Asian Americans Advancing Justice – LA  
Central Texas MoveOn  
Conversations With Friends (MN)  
Ella Baker Center for Human Rights  
Equality New Mexico  
Florence Immigrant & Refugee Rights Project  
Greater Birmingham Ministries  
Illinois Coalition for Immigrant and Refugee Rights  
Interfaith Movement for Human Integrity  
Interfaith Movement for Immigrant Justice – IMIrJ  
Iowa Unitarian Universalist Witness/Advocacy Network  
Maryland Province of the Society of Jesus  
Massachusetts Immigrant and Refugee Advocacy Coalition  
Massachusetts Law Reform Institute  
Nebraska Appleseed Center for Law in the Public Interest

New Mexico Criminal Defense Lawyers Association  
New Mexico Faith Coalition for Immigrant Justice  
New Sanctuary Coalition  
No Mas Muertes/No More Deaths  
Northwest Immigrant Rights Project  
OneAmerica  
Pennsylvania Immigration Resource Center  
Political Asylum Immigration Representation Project  
Portland Immigrants Rights Coalition  
Reform Immigration for Texas Alliance  
Sisters of Mercy South Central Community  
South Texas Human Rights Center  
Southeast Immigrant Rights Network  
Texans United for Families  
Texas Criminal Justice Coalition  
Texas Unitarian Universalist Justice Ministry  
The Humanitarian Immigration Law Clinic at Elon University School of Law  
Together Colorado  
UC Davis Immigration Law Clinic  
United Church of Christ Southwest Conference  
USA Northeast Province of the Society of Jesus

### **Local Organizations**

ACTIONN ~ Acting in Community Together in Organizing Northern Nevada  
Annunciation House, Inc.  
Austin Immigrant Rights Coalition  
Austin MoveOn Council  
Beacon Presbyterian Fellowship  
Casa de Proyecto Libertad  
Casas Adobes Congregational Church UCC  
Central American Resource Center (CARECEN)  
Central Ohio Worker Center  
Chicago Religious Leadership Network on Latin America (CRLN)  
Coalicion de Derechos Humanos  
Comunidades en Acción y de Fe (NM CAFÉ)  
Diocesan Migrant & Refugee Services, Inc.  
Dominican Sisters of Houston  
El CENTRO de Igualdad y Derechos  
Emmanuel Mennonite Church, Gainesville FL

End Streamline Coalition  
Filipino Advocates for Justice  
First Unitarian Universalist Church of Austin Social Action Committee  
Fuerza del Valle Workers' Center  
Gainesville Interfaith Alliance for Immigrant Justice  
Human Rights Initiative of North Texas  
Immigrant Defenders Law Center  
Immigration Justice Network  
Interfaith Center for Worker Justice of San Diego County  
Jewish Voice for Peace – Tucson  
Justice For Our Neighbors DFW  
Justice, Peace, & Integrity of Creation Committee, Springfield Dominican Sisters  
Keep Tucson Together  
Kino Border Initiative  
La Union Del Pueblo Entero  
Migrant Rights Collective Houston Texas  
New Orleans Workers' Center for Racial Justice  
New Sanctuary Movement of Philadelphia  
NM CAFE  
Oregon DreamActivist  
Pilgrim United Church of Christ  
Priority Africa Network  
Pueblo Sin Fronteras  
Reformed Church of Highland Park, NJ  
Samaritans  
Shadow Rock United Church of Christ  
Sisters Gospel Justice Committee/Srs. of the Most Precious Blood of O'Fallon, MO  
Skyline UCC Oakland CA  
Social Action Committee of the Unitarian Universalist Church of Las Cruces  
The Good Shepherd UCC  
Tucson Samaritans  
United Church of the Valley  
University Presbyterian Church, Tempe, AZ  
Wilco Justice Alliance  
Xavier Mission  
Young Women United

Cc: John Kerry, Secretary, Department of State  
Jeh Johnson, Secretary, Department of Homeland Security  
Sally Yates, Deputy Attorney General, Department of Justice

Alejandro Mayorkas, Deputy Secretary, Department of Homeland Security  
Vanita Gupta, Acting Assistant Attorney General, Department of Justice, Civil Rights Division  
Stevan Bunnell, General Counsel, Department of Homeland Security  
Megan Mack, Officer of Civil Rights and Civil Liberties, Department of Homeland Security  
R. Gil Kerlikowske, Commissioner, Customs and Border Protection, Department of Homeland Security  
Sarah Saldana, Director, Immigration and Customs Enforcement, Department of Homeland Security  
Tom Malinowski, Assistant Secretary of State, Democracy, Human Rights, and Labor  
Anne C. Richard, Assistant Secretary of State, Population, Refugees, and Migration  
Cecilia Munoz, Director, White House Domestic Policy Council

Shelly Pitterman, Office of the United Nations High Commissioner for Refugees,  
Regional Representative to the United States and the Caribbean

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<sup>1</sup> Office of Inspector General, *Streamline: Measuring Its Effect on Illegal Border Crossing 2* (May 15, 2015) [hereinafter *OIG*], available at [https://www.oig.dhs.gov/assets/Mgmt/2015/OIG\\_15-95\\_May15.pdf](https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf).

<sup>2</sup> Defendants in Streamline cases are typically detained for 1 to 14 days before appearing in court for the first time. These individuals frequently have no counsel until their hearings, allowing little time to consult with an attorney to understand the charges, consequences of conviction, and potential avenues for legal relief. Because a single attorney often represents dozens of defendants at a time, he or she might not be able to speak confidentially with each client or might have a conflict of interest among clients. Finally, Streamline hearings are conducted *en masse*, with instructions relating to charges, rights, and terms of plea agreements only nominally individualized. Joanna Jacobbi Lydgate, *Assembly Line Justice: A Review of Operation Streamline* 499 98 CAL. L. REV. 481 (2010), available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1100&context=californialawreview>. Oversight Hearing on the Executive Office for United States Attorneys Before the Subcomm. of Commercial and Administrative Law of the H. Comm on the Judiciary, 110th Cong. (2008) (Written Statement of Heather Williams, First Assistant, Federal Public Defender, District of Arizona-Tucson) (Appendix 1-1), available at <http://judiciary.house.gov/files/hearings/pdf/Williams080625.pdf>. Dan Rather Reports: *Operation Streamline* (AXS television broadcast May 14, 2013), available at <http://vimeo.com/67640573>. Solomon Moore, *Push on Immigration Crimes Is Said to Shift Focus*, N.Y. TIMES, Jan. 11, 2009, at A1, available at <http://www.nytimes.com/2009/01/12/us/12prosecute.html?pagewanted=all&r=0>.

<sup>3</sup> *OIG*, *supra* note 1 at 16. The United States is bound through its accession to the 1967 Protocol Relating to the Status of Refugees to Article 31(1) of the Refugee Convention, which prohibits states from penalizing refugees for illegal entry. Because refugee status is a matter of discovery and a refugee is, in fact, deserving of the protections of the Refugee Convention and Protocol prior to recognition of refugee status, the referral of asylum seekers for criminal prosecution in the manner described by the *OIG* report is incompatible with U.S. commitments under Article 31(1). Convention Relating to the Status of Refugees art. 31(1), July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137, available at <http://www.refworld.org/docid/3be01b964.html>.

<sup>4</sup> In FY 2013, U.S. Attorney's offices filed criminal charges against almost 100,000 immigrants for illegal entry or illegal re-entry – 53 percent of all federal prosecutions nationwide. See Syracuse University, Transactional Records

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Access Clearinghouse (TRAC) Federal Criminal Enforcement: Going Deeper, <http://tracfed.syr.edu/index/index.php?layer=crl>. See also, TRAC Immigration, At Nearly 100,000, Immigration Prosecutions Reach All-time High in FY 2013, <http://trac.syr.edu/immigration/reports/336/> (Nov. 25, 2013).

<sup>5</sup> MICHAEL T. LIGHT, ET AL., PEW RESEARCH CENTER THE RISE OF FEDERAL IMMIGRATION CRIMES (2014), available at <http://www.pewhispanic.org/2014/03/18/the-rise-of-federal-immigration-crimes/>.

<sup>6</sup> DEPARTMENT OF JUSTICE, SMART ON CRIME 2 (Aug. 2013), available at <http://www.justice.gov/ag/smart-on-crime.pdf>.

<sup>7</sup> Latinos represent 34 percent of all BOP prisoners but just 17 percent of the total U.S. population. Federal Bureau of Prisons, Statistics: Inmate Ethnicity, [http://www.bop.gov/about/statistics/statistics\\_inmate\\_ethnicity.jsp](http://www.bop.gov/about/statistics/statistics_inmate_ethnicity.jsp) (last visited June 26, 2015); Pew Research Center, Statistical Portrait of Hispanics in the United States, 1980-2013, <http://www.pewhispanic.org/2015/05/12/statistical-portrait-of-hispanics-in-the-united-states-2013-key-charts/> (May 12, 2015). Indeed, the United Nations Committee on the Elimination of Racial Discrimination has called for an end to Operation Streamline. United Nations, International Convention on the Elimination of All Forms of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports of the United States of America (Sept. 25, 2014), available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspzOI9YwTXeABruAM8pBAK1Q%2fDZ6XAqlyobgts1zwlHPkQhsSqMrVxuS6brQbHYpDYGXBUcX1bgRtTg3HaweAr5PBs9soaesD5KdByekI9OS>.