

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.¹ Furthermore, Streamline proceedings are fraught with due process problems.² 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.³

Meanwhile, illegal entry and re-entry are now the most prosecuted federal crimes in the United States.⁴ 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.⁵ 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.⁶ Furthermore, the prosecutions almost exclusively target Latinos, leading directly to the disproportionate representation of Latinos in the federal prison system.⁷ 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) or Rob Randhava at The Leadership Conference on Civil and Human Rights (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

¹ 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.

² 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>.

³ *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>.

⁴ 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

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).

⁵ 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/>.

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

⁷ 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 (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%2fdZ6XAqlyobgts1zwIHPkQhsSqMrVxuS6brQbHYpDYGXBUCX1bgRtTg3HaweAr5PBs9soaesD5KdByekI9OS>.