



ACLU-NM POLICY ON
IMMIGRATION AND CIVIL LIBERTIES
(1/25/2010)

General Principles:

Immigration is a core aspect of our nation's and the ACLU's identity and history. The sovereign right and duty of the federal government to regulate immigration and control the nation's borders is subject to the rule of law and should be accomplished with fairness and respect for the dignity of all persons. Further, the Constitution of the State of New Mexico extends additional particular protections to all persons within New Mexico. Based on this understanding, we affirm the right of all persons to equal treatment and due process under the law.

Living in a border state with a large Hispanic population, New Mexico residents are affected by extensive immigration control efforts. These efforts can lead to violations of civil liberties and constitutional rights such as targeting individuals for unwarranted searches and seizures, pretextual police stops, or surveillance solely because of their appearance or because they speak Spanish (in a state which, under its constitution, is officially bilingual). Curbing such immigration law abuses is essential to protecting the civil liberties of all New Mexico residents, U.S. citizens and non-citizens alike.

Accordingly, it is the policy of the ACLU of New Mexico that:

1. Immigration laws, policy, and enforcement must be guided by the principles of equal protection and due process of the law, as well as by customary international human rights law, covenants, and treaties.
2. Except for the rights and liberties explicitly reserved to citizens by the U.S. and New Mexico Constitutions, immigrants to the United States must be afforded all the rights and liberties of our U.S. and New Mexico Constitutions and laws.
3. Immigration enforcement must be conducted in a humane, nondiscriminatory manner that protects family unity and human dignity; and comports with the Constitution and laws, including, but not limited to, the right to be free from illegal search and seizure, the right to remain silent, the right to counsel, and the right to have appointed counsel if one cannot afford a lawyer.
4. ACLU of New Mexico opposes state and local intrusions into immigration policy and enforcement. State and local immigration regulation and enforcement leads to racial and ethnic profiling and undermines effective community policing by discouraging immigrant communities from cooperating with the police as victims or witnesses. State and local regulation and enforcement conflicts with all persons' rights under the New Mexico Constitution to seek safety, to secure free public education, and – for victims of a variety of crimes – to attend public court proceedings. ACLU of New Mexico opposes state and local policies that attempt to supersede national immigration policy and target immigrants, because they create confusion and deny immigrants equal protection.
5. ACLU of New Mexico opposes the construction of extensive physical border barriers and other measures which funnel migrants into dangerous, life-threatening paths and interfere with the religious, associational and property rights of persons. These are a dangerous and costly means of addressing immigration issues and raise serious civil liberties concerns.
6. Civil detention of immigrants must comport with constitutional standards. Conditions must be humane, and include access to decent food, clean water, health care, religious practice, recreation, counsel, visitation, telephones, group presentations on immigrant rights, grievance procedures, and legal

materials. Lengthy or indefinite detention and punitive practices such as placing immigrants in solitary confinement raise serious constitutional concerns. It is important to seek alternatives to detention, especially for non-criminal immigrants, children, families, nursing and pregnant women, and the elderly and infirm. Detaining noncriminal immigrants in state and local jails with the general jail population is a practice contrary to the civil nature of immigrant detention. The practice of transferring detainees across the country denies access to resources, family, and counsel and leads to a violation of these due process rights. The ACLU of NM supports the promulgation and uniform enforcement of strict national standards for all facilities housing federal immigration detainees, to include but not limited to the rights outlined above.

7. Removal proceedings must conform to the standards of fundamental fairness encompassed in due process, including, but not limited to, the right to effective assistance of counsel, the right to present and examine evidence and witnesses, and the right to suppress evidence that was not obtained in conformity with an immigrant's due process rights. Further, removal proceedings should include the right to appointment of counsel for a person who cannot afford counsel and the right to in-person testimony as opposed to video testimony.
8. Non-citizen workers must be guaranteed all the same workplace rights as citizen workers, including, but not limited to, rights to organize and bargain collectively, labor standards and wage protections, occupational health and safety, and to be protected against exploitive and illegal acts by employers.
9. Documented and undocumented non-citizens living in the United States should have the opportunity to establish lawful permanent residence. Current immigration laws and policies fail to provide a reasonable path for undocumented immigrants to gain lawful permanent residence. This perpetuates the existence of a separate class of people who are forced to live in the shadows, are subject to constant mistreatment, and do not enjoy equal protection under the law. To eliminate the existence of this separate and unequal class of people, federal immigration laws should provide a reasonable path to lawful permanent residence. Such process should comply with the following principles:
 - a. Equal Protection: The process should not create or perpetuate discrimination on the basis of factors such as religion, ancestry, birth legitimacy, race, ethnicity, color, national or social origin, language, disability, medical condition, gender, gender identity or gender expression, sexual orientation, marital status, property, wealth, age, political or other opinion, or education.
 - b. Freedom of Expression and Association: An applicant's views, beliefs, affiliations, and expressions protected by the First Amendment in the United States should not be used to deny eligibility.
 - c. Reasonable Eligibility Requirements: The process should not contain eligibility requirements that are so unreasonable and lengthy that they would render onerous the opportunity to establish lawful permanent residence. For example, any fees, fines, or taxes should not be cost-prohibitive; and the applicant should not be required to attain certain levels of education or language proficiency.
 - d. Legal Rights: The process should guarantee all applicants the legal protections available to lawful permanent residents.
 - e. Due Process: Regulations concerning applications for change of status and the processing of such applications should be consistent with the constitutional principles of due process, including access to timely, meaningful judicial review.