

## HOLDING DHS ACCOUNTABLE FOR LAWLESSNESS

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### **WHAT'S IN THIS TOOLKIT FOR CONGRESS? WHY NOW?**

This toolkit is designed for Members of Congress and their staff. It focuses on how Members can respond to (1) clear violations of law and policy by government officials, and (2) misinformation by DHS officers, leadership, spokespeople, and the agency itself. The toolkit opens with action items: what our communities need from Congress at this unprecedented moment. To support these actions, we provide you with examples of such violations and direct you to relevant DHS policies, along with federal and state laws that are likely being violated by DHS misconduct. Finally, we link to complementary resources to supplement your work on other immigrants' rights issues (e.g., a raids response toolkit or how to support constituents looking for a loved one in detention).

***This toolkit is just a starting point.*** Much of this guide is focused on the point of arrest—but so much happens post-arrest, including horrific abuses in detention and increasingly unlawful deportations. The National Immigration Law Center (NILC) also has legal, policy, and communications experts ready to support your office. We're here to help you craft your ideas into action and impact. **Please reach out to Heidi Altman ([altman@nilc.org](mailto:altman@nilc.org)).**

### **I. BACKGROUND**

#### **What's Happening?**

The Department of Homeland Security (DHS) is systematically carrying out **unprecedented and unlawful abuses** across the country. DHS officers—Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP)—are violating long-standing agency policies, state and federal laws, and constitutional protections.

DHS leadership is unwilling or unable to restrain their officers or hold officers accountable for bad—and often illegal—acts that directly harm your community. DHS instead consistently puts out propaganda with misinformation and even outright lies to defend the agency's and officers' actions. Public safety, including the safety of DHS personnel, as well as public confidence in law enforcement is being eroded because of the climate of aggression.

#### **Congressional Power in the Face of Lawlessness**

**Members of Congress are not powerless when faced with lawlessness. As a co-equal branch of government, Congress holds significant power—regardless of which party is in the majority.** Members of Congress have unique oversight mechanisms and platforms to

spotlight DHS's unprecedented abuses of power (described in detail below) in a way that ordinary citizens cannot.

We are encouraged by Members who are taking to the streets, issuing oversight letters and reports, using strategic communications to amplify abuses, and showing up at courthouses to protect their constituents. As the below examples demonstrate, the actions of DHS are sowing chaos nationwide, and we know it feels impossible to keep up. But it is critical to (1) have clear written records of criminal conduct by officers, and (2) to investigate and combat misinformation.

## **II. ACTIONS FOR CONGRESS**

[Voters are horrified](#) by the Trump administration's immigration enforcement because agents are violating the law and/or agency policies and they are rarely held accountable despite causing tremendous harm. The truth is, our communities often feel helpless because it feels like nobody is listening—especially those in power. But we know Members of Congress are engaged, tracking DHS lawlessness, and taking action; below are some additional ideas for your office to consider.

### **Use the Power of Your Casework Team**

► **Keep internal metrics**

- Your casework and district team members are fielding inquiries from worried and frustrated constituents. If not already part of your practice, we encourage you to start keeping internal metrics of how often you are being contacted for assistance due to: immigration detention conditions, disappearances post-DHS arrest, and incidents involving DHS using force.

► **Break apart those metrics and share them out**

- Examine those metrics and break them out. Turn them into press releases, social content, or other public statements (without revealing identifying information about the constituent or their loved ones, unless they explicitly consent).
- There's room to get creative: for example, consider having a press conference at the site of an illegal ICE arrest to demonstrate the harm being experienced in your district or state.
- Consider turning the metrics into a map to illustrate where immigrants have been arrested, supplemented by public reporting and data. This map can serve as a powerful visual of the communities in your district impacted by immigration enforcement and turned into a large graphic for press conferences or on the House or Senate floor. For offices that want to compare their own internal data or supplement data, [Deportation Data Project](#)'s arrest is data broken down by [ICE Field Office](#). ICE has 25 field offices covering the entire nation. The Deportation Data Project analyzes the government's own data.

► ***Be your constituents' megaphone: encourage them to tell your team their stories***

- For every article about a child separated from their parent when ICE showed up at school, there are countless more stories that go untold. Consider proactively requesting stories from constituents through the various avenues you already use to communicate with them, including: your website, town halls, emails and newsletters, and social media. Check in regularly with [advocacy organizations](#) and mutual aid groups in your state or district to be connected with directly impacted.
- When constituents are empowered to share what is happening in their communities, you are building solidarity and powering resistance—and most important, showing DHS that they cannot silence your constituents.

**Administrative Complaints Process**

Within DHS, the Office of the Inspector General (OIG) has [statutory authority](#) to [conduct criminal employee misconduct investigations](#). DHS OIG investigators have the power to investigate mismanagement and abuses by officials, including non-criminal and criminal employee investigations. The DHS Office of General Counsel and ICE's Office of Principal Legal Advisor also play a role in advising and ensuring agency compliance with the law. Additionally, [ICE](#) and [CBP](#) each have an Office of Professional Responsibility (OPR) responsible for ensuring compliance with agency-wide programs and policies and with the authority to investigate serious misconduct.

Anyone can and should file OPR complaints—which do not have to be lengthy or detailed, nor need to cite legal authorities. These complaints force the agencies to respond to allegations of mistreatment and misconduct. While the responses may not be satisfactory, these complaints may in the future help paint a picture of the severity and breadth of officer misconduct. It also can inform Congress' funding decisions, by providing hard metrics of the number of alleged abuses within these agencies as submitted by the public.

► ***File Complaints with ICE's Office of Professional Responsibility***

- ICE's [Office of Professional Responsibility](#) (OPR) is required to conduct reviews of all critical incidents at ICE. The current complaint process allows for complaints to be filed “on behalf of” an individual. Your office will need to obtain a signed [privacy waiver](#) (Form 60-001) by the impacted individual. If the impacted individual is in detention, this can be challenging given detention conditions and transfers, but it is possible with the assistance of family, legal counsel, or local organizations.

► ***File Complaints with CBP's Office of Professional Responsibility***

- CBP's [Office of Professional Responsibility](#) is responsible for ensuring compliance with CBP programs and policies relating to misconduct, corruption, or mismanagement. Complaints can be submitted to the centralized [CBP OPR](#)

Center. Your office should also send the complaint with an authorization form (Form 590) to the Joint Intake Center ([joint.intake@cbp.dhs.gov](mailto:joint.intake@cbp.dhs.gov)).

When your office submits complaints, you should submit a copy to the DHS Office of Civil Rights and Civil Liberties (CRCL); and the Office of the Immigration Detention Ombudsman if applicable; the local ICE and/or CBP OPR office; and your contact at DHS Congressional Affairs. Note, however, that many offices, like the OIG and CRCL have well-documented shortcomings or have largely been stripped of resources and staff. You should continue sending complaints and/or letters to government oversight bodies to document abuses; in this moment, however, the actions they can or seem willing to take are limited.

### **Using Your Platform: Countering Government Misinformation/Data**

#### ► **Digital Content**

- Many Members of Congress have put out brief, easy-to-digest reels and content on social media, calling out DHS for the agency's outright lies and pointing to specific examples of illegal activity. Please keep this up and send your digital content to NILC so we can uplift! Here are some great examples:
  - Senator Durbin shares ICE's masking and extreme conduct in Chicago
  - Senator Murphy calls out DHS propaganda covering up their violence (partnering with a news outlet to expand the video's reach)
  - Congresswoman Jayapal has held numerous shadow hearings and posted clips of those hearings or other public statements that call for oversight, highlight cruelty, and break down DHS lies.

#### ► **Fact Sheets, Public Statements, and other Written Content**

- Short content designed for social media is critical for mass audiences, but press releases, reports, and fact sheets help reporters, other elected officials (including state and local), and the general public access important information to shift public narratives and expose DHS's lies—with the detailed receipts. Below are some great examples (and there are many more not linked here).
  - Illinois congressional Democrats released a comprehensive fact sheet debunking DHS's misinformation campaign.
  - Speaker Emerita Pelosi and Congressman Mullins issued a press release to remind federal agents they can be subject to arrest for breaking the law.
  - Senator Ossoff is engaged in ongoing investigations resulting in powerful reports documenting human rights abuses in ICE detention.

#### ► **Public Demands for Action**

- After specific incidents that impact constituents, public calls for action can help drive pressure and spotlight the agents' misconduct and even lead to a changed outcome. After illegal conduct, detention (especially when DHS separated a family), raids involving agent misconduct, and/or other concerning incidents, Members can:

- Call for release from ICE detention (we have seen this lead to [reunification with constituents' families and children](#)).
- Hold a public briefing or presser and call on DHS to release the officers' names who were involved in a shooting and additional details.
- Demand investigations by both DHS and the U.S. Department of Justice.

### **Add to the House Oversight Committee's Dashboard**

The House Oversight Committee Democrats have launched a [Dashboard](#) to hold the federal government accountable and monitor and create a public record of DHS misconduct that threatens civil rights, due process, and the rule of law. Please ensure your office submits incidents in your district or state to the Dashboard's online reporting form. Please note that only incidents verified by reputable media outlets or referenced in litigation will be included in the Dashboard.

### **III. DEFINING THE PROBLEM**

To support your office as you work to hold DHS accountable, we provide (1) examples of DHS agents' countless violations of law and its own policies; (2) DHS agency policies that have been repeatedly violated; and (3) laws violated.

#### **Examples of Lawlessness and Violations of Agency Policy**

**DHS agents have abused their authority as law enforcement officials.** Their actions are shocking career law enforcement professionals:

*["I think they're so unusual that it shocks the psyche to see federal agents making administrative warrant arrests and using potential deadly force tactics."](#)*

– Former Tennessee law enforcement official

*["I don't know where the leadership is here. . . . It seems to be non-existent. Any oversight and justification for the use of force seems to be absent across the board."](#)*

– Former federal agent and expert on use of force

Below are recent examples of abuses by DHS agents. **These kinds of actions are intentional and frequently unlawful, and should not go unchecked.**

#### ► **Use of Deadly Force & Mishandling of Firearms**

- [ICE's spending on weapons has spiked by a stunning 600%](#). It's no wonder that we are now seeing an uptick in [fatal shootings](#). Immigration agents are brandishing firearms, including [pointing weapons](#) in the faces of nonviolent protestors and [shooting a U.S. citizen](#). CBP agents [fired shots](#) at a family who wouldn't get out of

their car as the masked agents surrounded their car and smashed the car windows. A CBP agent even [bragged about his marksmanship](#) after shooting a woman five times.

► **Vehicular Attacks**

- News feeds regularly show videos and images of DHS agents carrying out [car crashes and rammings](#), and even [smashing car windows](#). CBP agents [crashed](#) a car in a residential neighborhood—in a maneuver that is banned or restricted by many police departments.

► **Military-Style Tactics: Use of Munitions, Armored Trucks, Stun Grenades, and More**

- In multiple cities, ICE and CBP agents have hurled [flash-bang grenades, tear gas, less-lethal rounds, and pepper spray](#) at unarmed civilians, including faith leaders, the elderly, and children. They are [deploying stun grenades, using armored vehicles equipped with battering rams, Black Hawk helicopters, and drones](#). Agents even tear-gassed [a two-year-old](#).

► **Neglect & Endangerment of Children**

- We are seeing repeated neglect and endangerment of children—often U.S. citizens. In the parking lot of a Home Depot, armed and masked DHS agents arrested a U.S. citizen, and then hopped into his car and [drove away with his 1-year-old child](#). In one family's driveway, agents used a [5-year-old girl on the autism spectrum](#) as “bait” to arrest her father. During a traffic stop, [ICE agents beat a man holding a toddler, while the man was also having a seizure](#).

► **Abuse of Power to Violate the Law**

- ICE and CBP agents consistently demonstrate that they believe laws and basic ethics do not apply to them. Just this month, an [ICE employee was arrested for sex trafficking](#); when arrested, he said, “I’m ICE, boys.” A CBP officer recently [pled guilty](#) to bribery, drug trafficking, and human smuggling (this kind of corruption from CBP is, unfortunately, [systemic](#) and [exploits vulnerable people](#)).

► **Use of Excessive Force**

- Beyond the categories above, immigration agents are [regularly deploying unnecessary and terrifying tactics](#). They put people in [chokeholds](#) in violation of use of force standards and national standards of care. At immigration courts, agents are slamming [nonviolent bystanders](#) and [journalists](#) against the wall and floors. One man reported his head was [pushed forcefully into a wall](#) while he was detained in a California detention center, where others witnessed detention staff “walking through housing units wearing gas masks and threatening to pepper-spray individuals.”

The stories above are just some examples of abuses of power. Federal agents—wearing masks, hailing from unclear agencies, and driving unmarked vehicles—are terrifying communities and abusing their power, often illegally. Yet they are rarely held accountable for their actions and are [perceived as “untouchable.”](#)

### Agency Policies Violated

Thanks in large part to decades of congressional oversight and advocacy, DHS has clear internal policies that prohibit or largely curb every category outlined above. Below is a non-exhaustive sample of DHS policies violated by the incidents above—your office should review the policies closely to identify other portions of the policies that were violated, specific to your case(s).

- ▶ [\*\*DHS Policy on the Use of Force\*\*](#)
  - Authorizes use of force “only when no reasonably effective, safe, and feasible alternative appears to exist.”
- ▶ [\*\*ICE Detained Parents Directive\*\* \(i.e., \[Parental Interests Directive\]\(#\)\)](#)
  - Makes clear that “ICE personnel should not, under any circumstances, take custody of or transport the minor child(ren). . . [instead] ICE should remain on the scene with the Covered Individual until the designated third party, or the local child welfare authority or law enforcement agency assumes physical custody of the minor child(ren).”
- ▶ [\*\*ICE Firearms and Use of Force Directive\*\* \(unredacted version \[here\]\(#\)\) and \[Handbook\]\(#\):](#)
  - Outlines the “ICE Use of Force Continuum” for ICE agents making an arrest, beginning with “professional, courteous demeanor; positive attitude.”
  - Specifies that “[d]eadly force is not authorized solely to prevent the escape of a fleeing suspect. Deadly force against a fleeing subject is only authorized if there is probable cause to believe that the escape of the subject would pose an imminent danger of death or serious bodily injury to the officer or another person.”
- ▶ [\*\*ICE Detention Standards\*\*](#)
  - Standard 2.8 provides that, “Under no circumstances shall force be used to punish a detainee.”

### Agents are not Immune when Breaking the Law

“If [DHS] agents are hearing a persistent message from their higher-ups of ‘you’re immune no matter what you do. . . it’s up to the rest of us to disabuse them of that error.’”

- *Walter Olsen, Senior Legal Fellow, Cato Institute*

Trump, Stephen Miller, and DHS leadership have signaled to immigration enforcement agents: [their actions will not be scrutinized](#) and they will not be forced to adhere to agency policies, state and federal laws, or the Constitution. [They are wrong](#). Law enforcement officers are provided significant latitude in how they carry out their duties and assess threats, but [they are still subject to the law](#) and can be arrested, prosecuted, and sued for this unlawful behavior.

Members of Congress can publicly call for a DOJ investigation, which could lead to the filing of federal criminal charges (some examples below). Members can also cite to legal authorities

below as examples of laws that DHS agents are clearly violating in the course of their duties. Finally, as challenges to the Trump administration's actions are making their way through the courts, [judicial rulings](#) can provide important arguments to arm your office.

► **Constitutional Protections**

- [Non-citizens in the United States are guaranteed rights under the U.S. Constitution](#)—most notably, the [right to due process](#) and the [right to be free from unreasonable searches and seizures](#).

► **Federal Laws**

- [Federal law](#) outlines the powers of immigration officers and clearly limits officers' authority to detain individuals without reasonable suspicion, or make warrantless arrests without probable cause (and likelihood of escape).
- [Federal regulations](#) require adherence to standards for enforcement activities, including strict limitations on warrantless arrests, use of force (including deadly force), and identifying themselves as immigration officers authorized to make an arrest.
- Vehicles exist for constituents to seek redress for violations of these laws and regulations, although they are [limited](#). *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 404 U.S. 388 (1971) authorizes constitutional damage suits against federal officials under limited circumstances; the Federal Tort Claims Act allows for damages against the United States, like [this wrongful detention lawsuit on behalf of a U.S. citizen](#). And [some states, like California, Maine, Massachusetts, and New Jersey](#), have laws that could authorize lawsuits for damages against federal officials who violate the U.S. Constitution.

► **State laws**

- In each state, the list of laws being violated by immigration agents is growing and could include:
  - Homicide
  - Reckless Driving
  - Assault with a Deadly Weapon; Felony Assault
  - Battery
  - False Arrest, False Imprisonment and/or Kidnapping
  - Negligence
  - Intentional/Negligent Infliction of Emotional Distress
  - Child Endangerment
- Federal agents who engage in unlawful behavior are subject to arrest, and responses available to state [and local prosecutors include bringing grand jury charges against immigration agents](#) or filing complaints. There is [precedent](#) for bringing [charges like the ones above](#).

**Misinformation & Lies from the Executive Branch**

For incidents like the ones outlined above, DHS responds with incendiary and false accusations about the victims and bystanders. Such misinformation coming from a federal agency is dangerous and threatens our democratic institutions, making the actions described above even more critical. For example:

- ▶ Falsely claiming a more than 1,000% rise in assaults against ICE agents—which was clearly [rebuted by data](#).
- ▶ [Falsely accusing](#) a mother who had a stillbirth in ICE custody of homicide.
- ▶ DHS's account of a shooting involving a U.S. citizen [fell apart](#) after a criminal complaint was filed.
- ▶ After a stunning midnight raid of an apartment building in Chicago, DHS “[hailed \[the raid\] as a major strike against terrorism](#).” Yet this victory was a lie: an [in-depth investigation found no evidence to support this claim](#); not a single person arrested was even charged with a crime.
- ▶ DHS has even intentionally [mischaracterized the actions of Members of Congress](#).

#### **IV. RESOURCE HUB**

NILC and our partners have put together countless [resources](#) to support people who want to take action at this moment. Below are some additional resources that supplement the information in this guide. Don't see what you're looking for? Reach out and we can help your office find what it needs.

- ▶ [How to Find a Loved One After a U.S. Immigration Arrest](#)
- ▶ [Know Your Rights: Five Things Parents Detained by ICE Should Know](#)
- ▶ [Green Card Holders: Know Your Rights & Risks Under the Second Trump Administration](#)
- ▶ [Mass Raids & Immigration Arrests: What to Know and How to Respond](#)
- ▶ [Protections Against Immigration Enforcement from Court Orders](#)