



Written by [Bob Adelman](#) on July 18, 2016

ACLU Preparing to Sue Trump If He Wins

Perhaps recognizing the increasing likelihood of a Trump victory in November, the American Civil Liberties Union (ACLU) released last Friday [“The Trump Memo”](#) — a virtual legal action plan against many of Trump’s statements and proposals.

The release was preceded by a letter published in the *Washington Post* two days earlier written by Anthony Romero, the ACLU’s executive director, which said in part, “A Trump administration would violate the First, Fourth, Fifth and Eighth Amendments [to the Constitution] if it tried to implement his most controversial plans.”



Romero claimed that Trump’s plans to deport more than 11 million people during the first two years of his administration “would shred the Fourth Amendment’s protections against unreasonable searches and seizures ... [it] would run face-first into the due process protections afforded every person inside the United States under the Fifth Amendment.”

The 27-page memo outlines explicitly various Trump proposals and how the ACLU would attack them in court. The memo begins with Trump’s proposal to remove all illegal immigrants from the United States by creating a “deportation force” to round them up and send them home followed by building a wall along the entire Mexican-American border to keep them from returning. Also included is Trump’s proposal that in the meantime all Muslims be registered in a federal database. Wrote the ACLU: “All of these proposals would most likely violate the Constitution, federal statutory laws and/or international law ... Congress cannot grant, and a president cannot exercise, authority that would violate the Constitution.”

Summarizing its main complaints, the ACLU claims that Trump’s proposals would

- violate the Establishment Clause of the First Amendment;
- violate the Due Process and Equal Protection Clauses of the Fourth and Fifth Amendments;
- violate citizens’ First Amendment rights to religion, speech, and association;
- violate the civil liberties not only of illegal aliens but of Muslim citizens legally here;
- result in a breakdown of due process which presently allows deportation orders to be challenged in federal court;
- extend the lengthy process already in place to grant citizenship to legal immigrants, which process currently takes 635 calendar days; and
- violate the Privacy Act of 1974, which would bar the creation of a Muslim database.

The ACLU is also preparing to battle Trump’s belief that the nation’s libel laws need to be amended because, according to Trump, “if a paper writes something wrong ... and they don’t do a retraction, they



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should” be subject to penalties. But the ACLU noted that “writing something wrong is constitutionally protected unless the writer knew it was wrong and published it anyway ... no legislature, state or federal, is permitted to expand libel liability beyond this constitutional limit.” There is, accordingly, no chance that Trump would be able to “open up our libel laws” in the manner that he has proposed, said the report.

There are other Trump proposals that the ACLU says would be found unconstitutional: authorizing “something beyond waterboarding,” which the ACLU declares would violate the Fifth and Eighth Amendments as well as the Geneva Convention and the War Crimes Act; and expanding mass surveillance, which already violates the First and Fourth Amendments.

On the issue of abortion, the ACLU’s case falters. Trump has said that women seeking abortions should be punished along with those assisting them with the procedure. The ACLU said that would involve overturning *Roe v. Wade*, which was cemented into place in the Supreme Court’s decision in 1992 in *Planned Parenthood v. Casey*. If it were overturned, claimed the ACLU, it “would undermine the legitimacy of the Supreme Court and damage the United States’ commitment to the rule of law.” It failed to mention any constitutional right that would be abridged if *Roe v. Wade* were overturned, nor did it outline any plan of legal attack to prevent such a decision from being overturned in the future.

Regarding the physical constraints of rounding up every illegal immigrant, the report noted:

Trump has pledged to round up and deport the entire undocumented population, by some estimates 11 million people, within two years....

There is no conceivable mechanism to accomplish the roundup that Trump has promised while respecting basic constitutional rights ... [that] would mean arresting more than 15,000 people a day on immigration charges, seven days a week, 365 days a year....

Even if massive taxpayer dollars could be diverted to do so, as a practical matter the effort would erode the civil liberties of all. It would cost an estimated \$25 billion and take 40,000 workers four years to complete such a wall. The ACLU also doesn’t like Trump’s suggestion that the PATRIOT Act could be used to confiscate funds headed from the United States to Mexico to pay for it.

The ACLU made it clear that it wasn’t picking on just Trump. It is also looking at Hillary Clinton’s various proposals to see if they are constitutional. In closing his letter about the ACLU’s legal plans to thwart Trump if he were elected in November, Romero wrote:

Our institutions — particularly our courts — are stronger than the will of one man. But we need to be prepared because the very freedoms guaranteed by the Constitution could come under sustained attack by a President Trump in the Oval Office.

If that day comes, make no mistake: We’ll be seeing him in court.

Photo: AP Images

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