

The Boston Principles on the Economic, Social, and Cultural Rights of Noncitizens



Program on Human Rights and the
Global Economy
Northeastern University

Webinar
June 22, 2011



Part I: Overview of the “Beyond National Security” Institute

by Professor Rachel E. Rosenbloom, Northeastern University School of Law

Part II: Top 10 Keys to the Boston Principles on the Economic, Social and Cultural Rights of Noncitizens

by Professor Hope Lewis, Northeastern University School of Law



OVERVIEW OF THE “BEYOND NATIONAL SECURITY” INSTITUTE

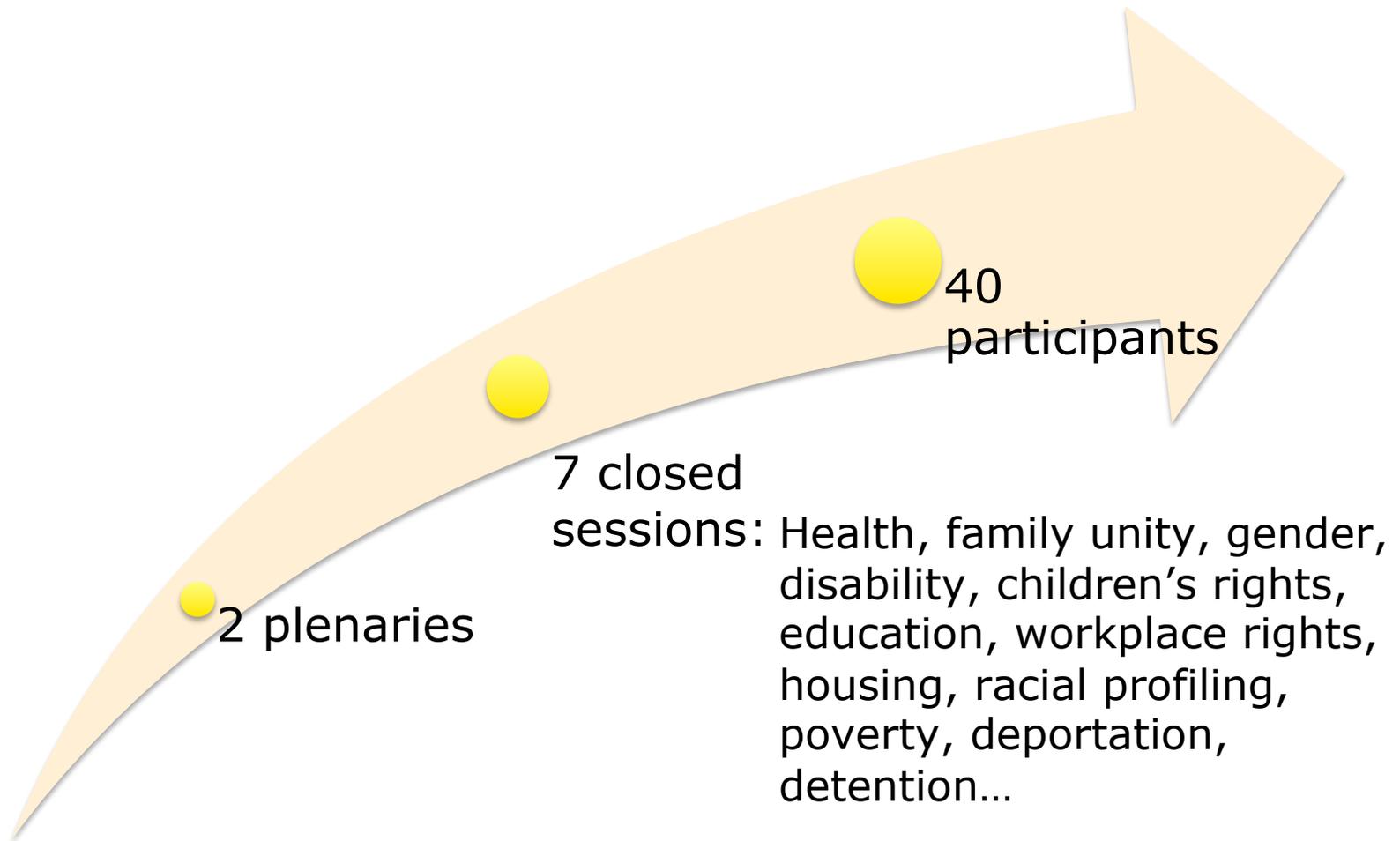
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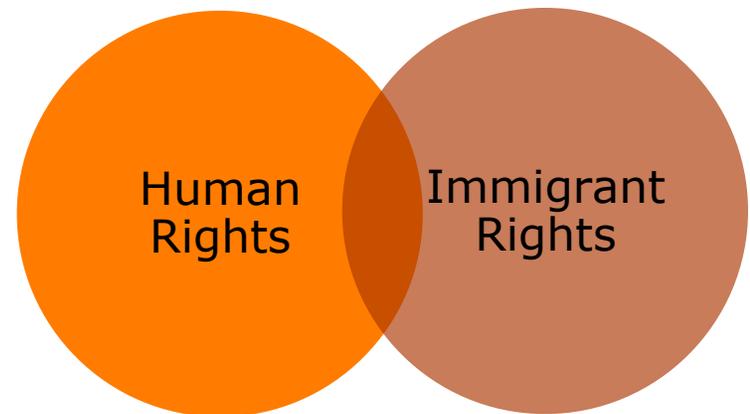
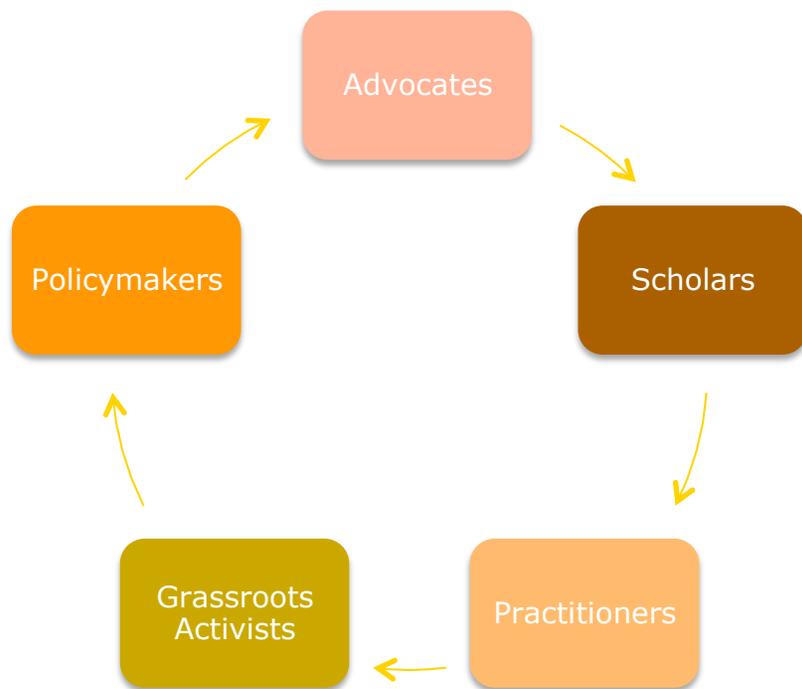
Program on Human Rights and the Global Economy

- ❑ Train the human rights lawyers of the 21st century
- ❑ Encourage and deepen scholarship on human rights and the global economy
- ❑ Work to implement human rights norms and sound economic development approaches worldwide.

Beyond National Security: Immigrant Communities and Economic, Social, and Cultural Rights (Oct 14-15, 2010)



Goal #1: Build Bridges



Goal #2: Develop Unified Framework

Exponential growth
and changing
nature of federal
immigration
enforcement

Subnational
restrictions on
economic, social,
and cultural rights
of noncitizens

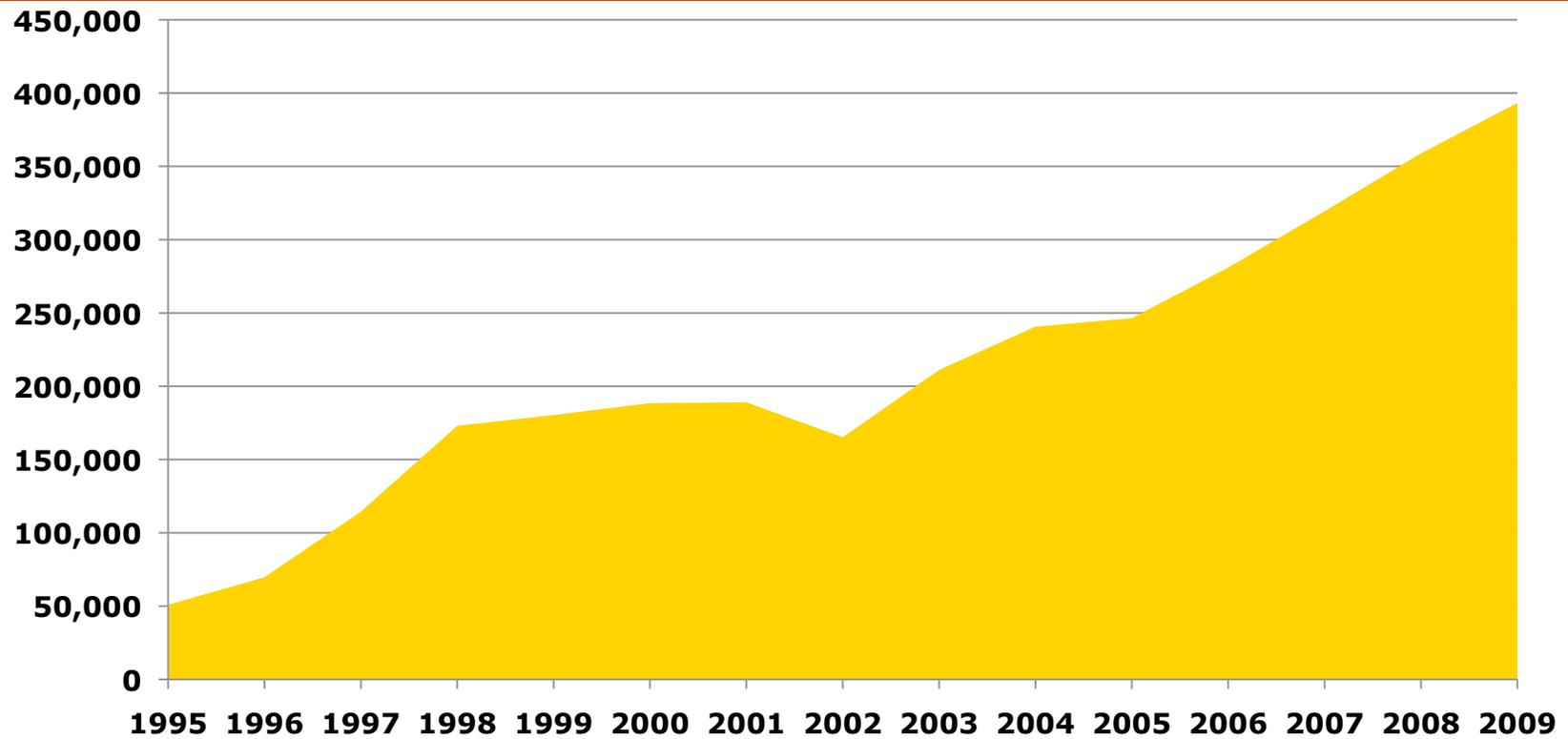
1996 Immigration Laws

- ❑ Elimination of humanitarian relief → Mandatory deportation of longtime residents even for minor crimes
- ❑ One-year filing deadline for asylum claims
- ❑ 3-year/10-year bar for unlawful presence
- ❑ Mandatory detention while in removal proceedings for those with criminal convictions.

Post-9/11

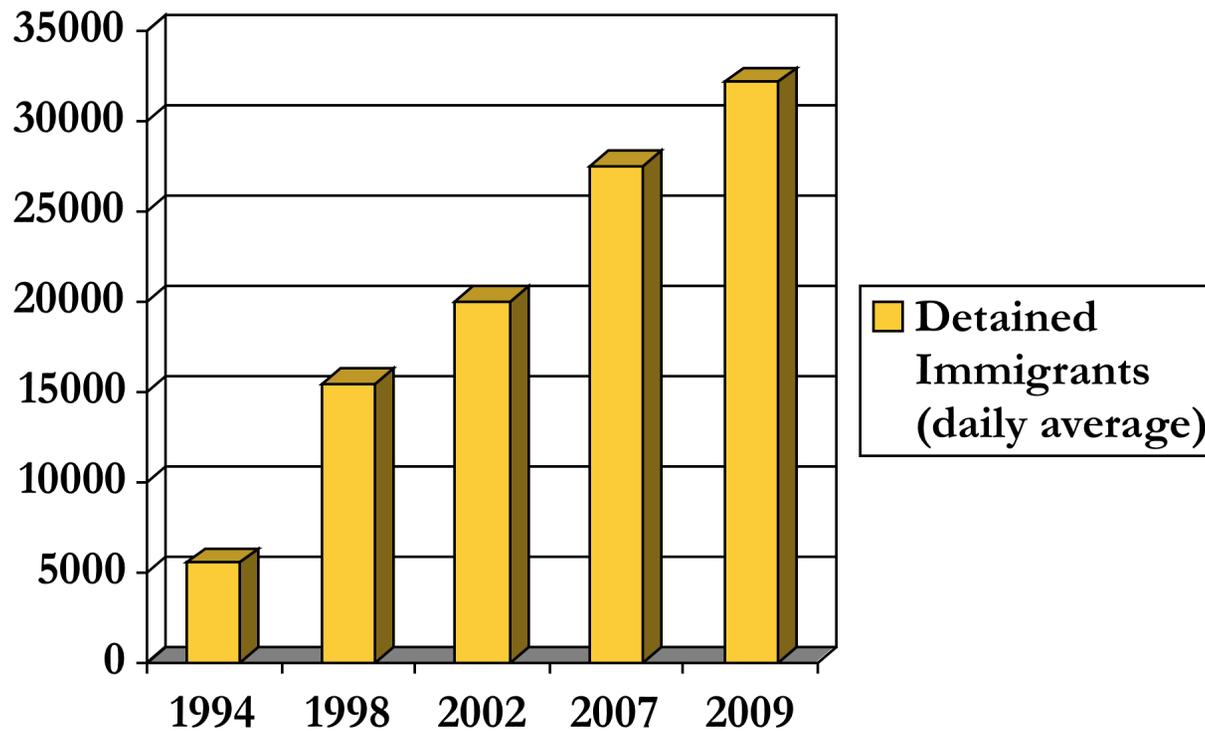
- Rise in racial and religious profiling
- Localization of immigration enforcement
 - 287(g) program
 - SB 1070 and other state laws
 - S-Comm

Deportations 1995-2009



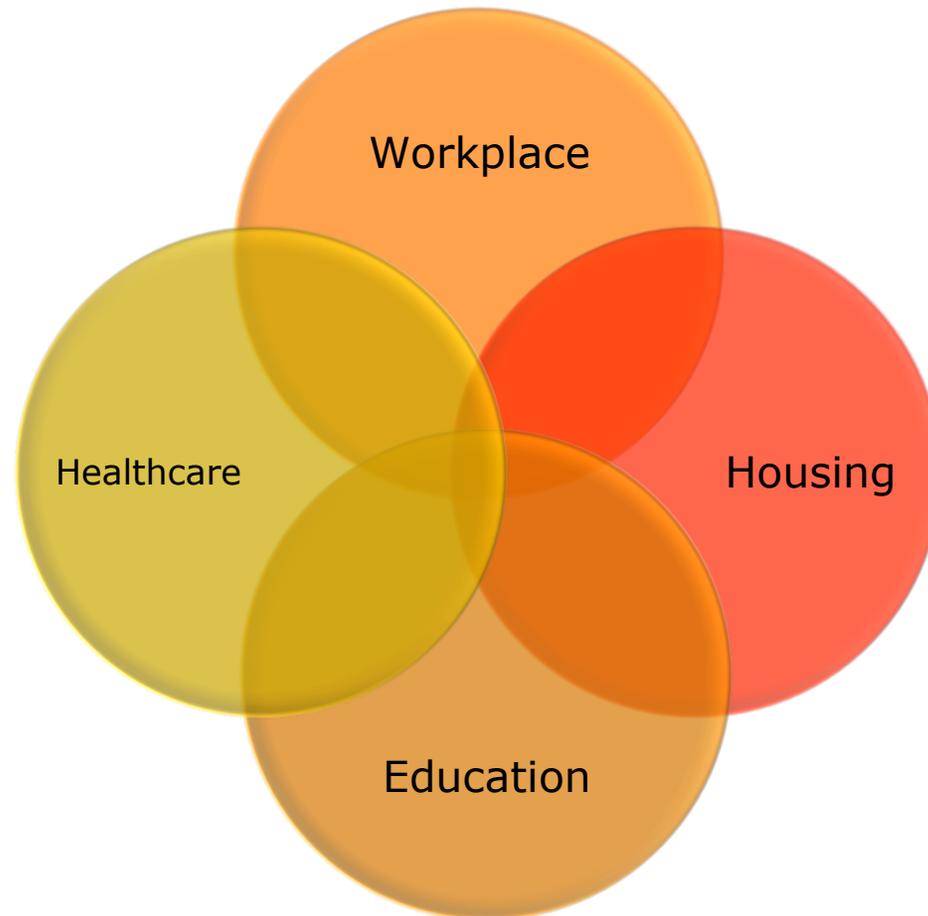
Source: DHS FY2000 Statistical Yearbook; DHS FY2009 Statistical Yearbook.

Detention: 1994-2009



Source: *Immigration-Related Detention: Current Legislative Issues*, Congressional Research Service.

Subnational Legislation



Example: Alabama HB 56

- ❑ Bars undocumented immigrants from enrolling in state colleges and universities
- ❑ Obligates K-12 public schools to determine the immigration status of all students
- ❑ Requires public schools to publish figures on the number of immigrants — both documented and undocumented — who are enrolled and any costs associated with the education of undocumented immigrant children
- ❑ Makes it a crime to knowingly rent housing to an undocumented immigrant
- ❑ Bars businesses from taking tax deductions on wages paid to immigrants who are not authorized to work
- ❑ Prohibits transporting or harboring undocumented immigrants
- ❑ Authorizes state and local police officers to ask about the immigration status of anyone they stop based on a “reasonable suspicion” the person is an undocumented immigrant

Proven strategies

- ❑ Shadow reports
- ❑ Testimony before the Human Rights Council in Geneva
- ❑ Cases brought to the Inter-American Commission
- ❑ Incorporating international standards into domestic legal briefs
- ❑ Using human rights as conceptual framework for education, organizing, media

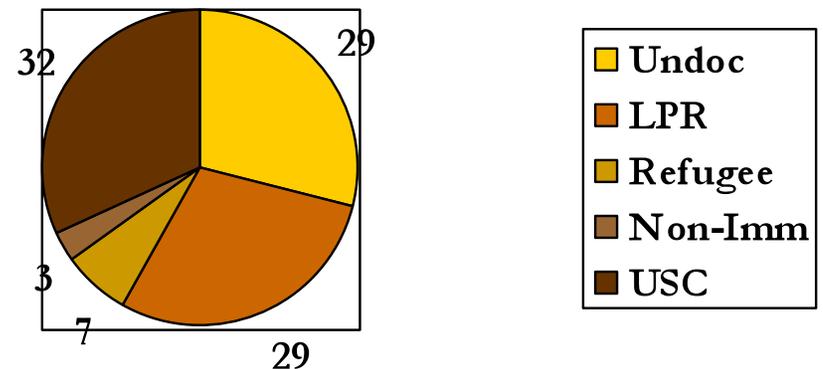
Limitations / Challenges

- ❑ Inhospitability of US legal system to international law
- ❑ Difficulties of using human rights frameworks to address corporate power

Collective aspect of rights

- 22% of children in the U.S. have at least one parent who is foreign-born.*
- Majority of immigrant families are “mixed status” – citizens and noncitizens.**
- 4.5 million children have at least one parent who is undocumented.***

Foreign-born population of the United States

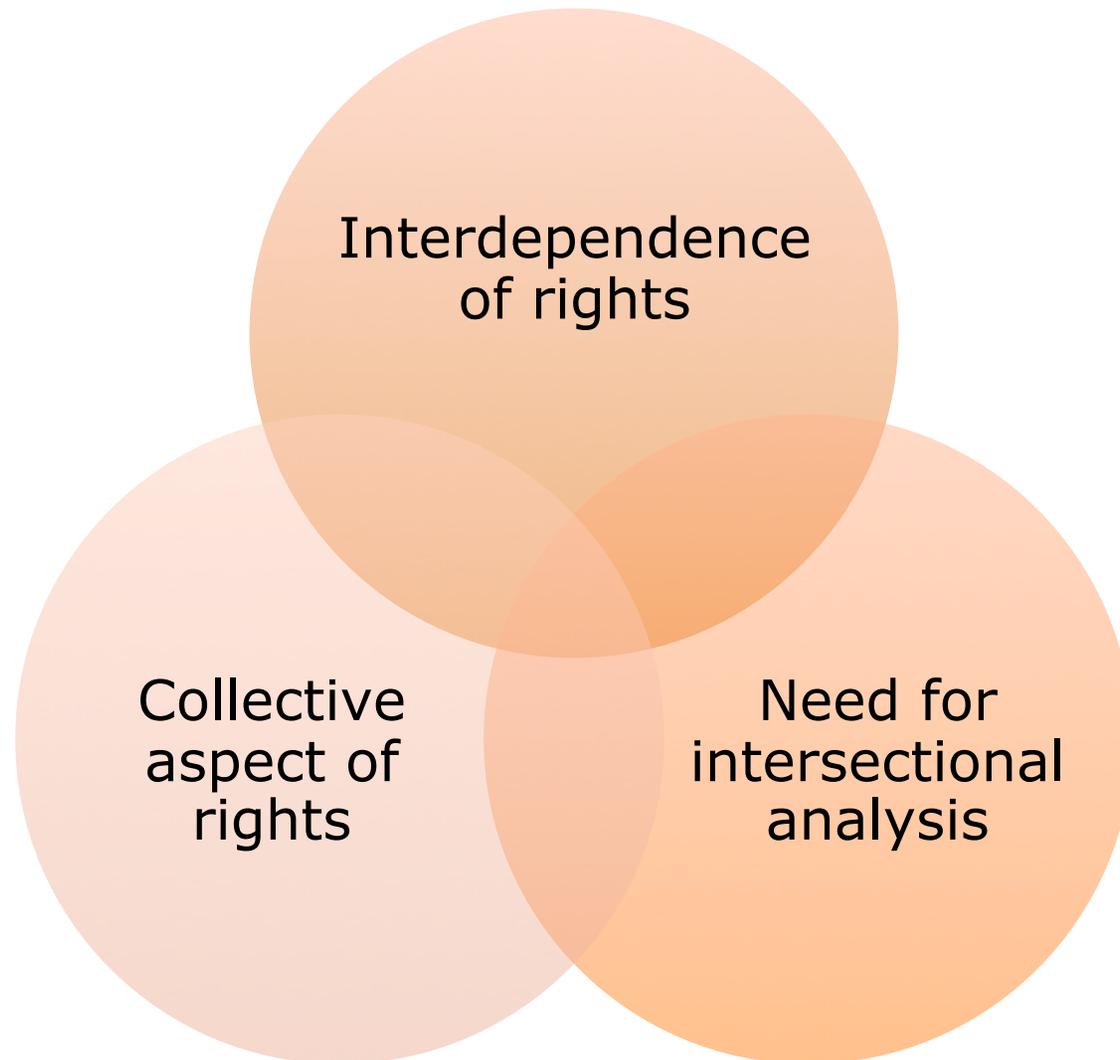


* US Dept of Health and Human Services

**Urban Institute, *All Under One Roof: Mixed-Status Families in an Era of Reform* (1999)

*** PEW Hispanic Center, *A Portrait of Unauthorized Immigrants in the United States* (2009).

Overarching Themes





TOP 10 KEYS TO THE BOSTON PRINCIPLES ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS OF NONCITIZENS

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10. International Law:

- The Boston Principles place the rights of U.S. Noncitizens in International Perspective.
 - The Principles take international law in the United States seriously.
 - The US contributes to international law and should be bound by it.

9. Globalization:

- The Boston Principles place the rights of U.S. Noncitizens in Transnational Perspective.
 - The Global Economy influences transnational migration and the rights of Noncitizens.
 - War and Armed Conflict
 - Trade Policy
 - Climate Change & Natural Disasters (Environmental Refugees)
 - Global North's Pull on Human Resources
 - "Brain drain"
 - "Nanny Chain"
 - Human Trafficking

8. Discrimination:

- The Boston Principles draw on universal rights that apply to all human beings; they also respond to targeted discrimination against Noncitizens and their communities.
 - Continuing legacy of racial, ethnic, and linguistic discrimination against Asian-Americans and Latino/as
 - “Model minorities” and the manipulation of stereotypes
 - Stereotyping and profiling of Caribbean-Americans (Haitian-Americans, Jamaican-Americans, etc.)
 - Post-9/11 scape-goating and profiling of Muslims, South Asians, and Arab-Americans as potential “terrorists”

7. Complex Identities:

- The Boston Principles recognize that Noncitizen identity (like all identity) is “intersectional” or “multidimensional.”
 - Race
 - Sex and Gender Identity
 - Sexual Orientation
 - Immigration Status
 - Nationality
 - Language
 - Religion
 - Disability

6. Interdependence:

- The Boston Principles reflect the interdependence of rights.
 - Violations in detention or deportation process can also lead to violations of the rights to health or family unity.
 - Fear of deportation may lead to inability to access public goods that should be available to all human beings (*e.g.*, disaster relief, health care, education, food, housing, labor rights, and protection from violence).

5. Priorities Based on Experience:

- The Boston Principles are based on lived experience and reflect the priorities of the participants.
 - Family Unity
 - Children's Rights
 - Education
 - The Right to Health
 - Disability Rights
 - Women's Rights; Protection from Gender-based Violence
 - Community Economic Development/Housing
 - Workers' Rights (wages, collective bargaining, safety)
 - Rights in Detention/Deportation
 - Racial and Religious Profiling/Cultural Discrimination

4. Think Globally, Act Locally:

- The Boston Principles encourage subnational state and local authorities and community organizations to recognize human rights and to take action to protect them.
 - International legal obligations are adopted at the federal level, but the nation must take effective measures to make human rights a reality at all levels.

3. An International Indictment?:

- The Boston Principles draw on existing international legal and political obligations that are binding on the United States.
 - The Universal Declaration of Human Rights and Customary International Law
 - The Covenant on Civil and Political Rights (ICCPR)
 - The Race Convention (ICERD) and interpretations making clear that parties should not violate fundamental human rights on the basis of race to anyone, including undocumented immigrants

2. An Aspirational Vision?:

- The Boston Principles also draw on treaties, declarations, and persuasive statements that have not yet been accepted as binding federal law, or that are considered aspirational. They therefore reflect our best vision of how our society should treat other human beings—including noncitizens.
 - The Covenant on Economic, Social, and Cultural Rights (ICESCR)
 - The Women’s Convention (CEDAW)
 - The Disability Convention (CRPD)
 - The Children’s Convention (CRC)
 - The Convention on the Rights of All Migrant Workers and Their Families (CRMWF)
 - The Yogyakarta Principles on Sexual Orientation and Gender Identity
 - Principles on Business and Human Rights (The “Ruggie Principles”—as informed by NGO Advocacy)

1. Using The Boston Principles:

- ❑ Be Creative: Are there provisions that link with your organization's priorities?
- ❑ Popular Education/Awareness-Building: Could the Boston Principles help educate legislators, policymakers, judges, community leaders, and the general public about the issues noncitizens are facing?
- ❑ Build Empathy: Which economic, social, and cultural human rights are important to U.S. citizens? How are the needs and goals of noncitizens different, if at all?
- ❑ Reform: Are the Boston Principles consistent with existing local law reform efforts?
- ❑ Transform: Can the Boston Principles serve as a basis of new legislation or policies?
- ❑ Advocate: Can they be used in non-binding resolutions, sign-on petitions or endorsements to draw media and public attention to a problem?
- ❑ Empower: Can the Boston Principles be used to empower community activists, lawyers, judges, and legislators to use international human rights language and procedures (e.g., independent expert visits, petitions to international commissions, and shadow reports)?

Conclusion

□ Ongoing Issues

■ The long and short of it.

- Short version: A basic statement of the fundamental principles for advocacy/activist and educational use.
- Long version: Based on detailed concerns of lawyers involved in complex advocacy and litigation efforts.
 - Litigation before the U.S. Supreme Court on federal vs. state authority over immigration-related legislation and enforcement.
 - Legislation: Efforts to pass the DREAM Act and Comprehensive Immigration Reform.
 - Policy: *E.g.*, Political debates over coverage of noncitizens under health care reform and state and local collaboration with federal enforcement policies.
 - Economic Crisis: Continuing scape-goating of migrants during times of economic pressure (although migrants often improve economic growth.)

For More Information About the Boston Principles:

- ❑ Program on Human Rights and the Global Economy, "The Boston Principles on Economic, Social, and Cultural Rights of Noncitizens," (May 1, 2011). Short version and long annotated version available for download at: <http://www.northeastern.edu/law/academics/institutes/phrge/publications/boston-principles.html>
- ❑ Hope Lewis & Rachel Rosenbloom, *Commentary: The Boston Principles: An Introduction*, 1 NOTRE DAME JOURNAL OF INTERNATIONAL, COMPARATIVE, AND HUMAN RIGHTS LAW (April 2011), available at: <http://ndintlwp.wordpress.com/>
- ❑ Hope Lewis, "Migrants' Rights Are Human Rights...in the U.S.," *IntLawGrrls*, 1 May 2011, available at: <http://intlwp.blogspot.com/2011/05/migrants-rights-are-human-rights-in-us.html>
- ❑ Program on Human Rights and the Global Economy, "A Guide to the Boston Principles" (summary of the December 10, 2010 Draft Boston Principles), available at: <http://www.northeastern.edu/law/academics/institutes/phrge/publications/boston-principles.html>

Thank you.

For further information, or to endorse the Boston principles, please contact:

Richard Doyon

r.doyon@neu.edu

617-373-2023