

The Boston Principles on the Economic, Social and Cultural Rights of Noncitizens
("The Boston Principles")
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Annotated Version¹

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¹ Version without annotation also available at:
<http://www.northeastern.edu/law/academics/institutes/phrge/publications/boston-principles.html>

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

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

Preamble

We, as governmental authorities representing the people of subnational states, municipalities, and other localities of the United States of America,

Recognizing the need to respect and promote, without prejudice to the rights of others, the rights of persons within the jurisdiction of the United States of America who do not hold legal citizenship status there;

Considering that the United States of America is a party to the 1945 Charter of the United Nations and voted in the General Assembly to adopt the 1948 Universal Declaration of Human Rights (UDHR) according to which all human beings are born free and equal in dignity and rights and are entitled to the rights and freedoms therein without distinction of any kind;

Recognizing that the United States of America is a party to the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and is bound to the treaties to which it is a party under international law and must perform them in good faith;

Recognizing that the United States of America has signed the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR), the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 2006 Convention on the Rights of Persons with Disabilities, and the 1989 Convention on the Rights of the Child, and therefore has an obligation to refrain from acts that would defeat the object and purpose of those treaties;

Understanding that international human rights and fundamental freedoms, such as those recognized in the UDHR, the ICCPR, and the ICESCR belong to all human beings, without distinction or discrimination on any ground such as race, color, sex, gender, gender identity, sexual orientation, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, citizenship, or any other status;

Considering that ICERD defines racial discrimination broadly to include discrimination on the grounds of race, color, descent, and national or ethnic origin and that, under ICERD, domestic legal provisions of States parties that differentiate between citizens and noncitizens concerning nationality, citizenship or naturalization must not discriminate against any particular nationality;

Recognizing further, that the United Nations Committee on the Elimination of Racial Discrimination has clarified that, under ICERD, citizenship status may not be used as a basis for discrimination where rights are guaranteed to all;

Recognizing, therefore, that legal provisions on differentiation among citizenship and naturalization status under domestic law should not be interpreted to detract in any way from the rights and freedoms recognized and set forth in the UDHR, the ICESCR and the ICCPR;

Reiterating that human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of governments;

Recognizing that the United States has the obligation to respect, protect, promote, and fulfill human rights, including the human rights of noncitizens, through appropriate measures including at subnational state and local levels, in accordance with international law and its constitutional processes;

Considering that, in addition to the United States of America, international financial institutions, multilateral trade organizations, and business enterprises also have duties to adhere to a protect, respect, and remedy framework under international human rights law and to avoid impeding the realization of human rights by other actors;

Considering that the United States of America and subnational states, municipalities, and localities under its jurisdiction, have the obligation to regulate the activities of business enterprises consistently with their international human rights obligations;

Considering that the United States of America must comply with its international human rights obligations and commitments with regard to its participation in international financial institutions, multilateral trade organizations, and other international organizations;

Concerned that, nonetheless, the United States, international financial institutions, multilateral trade organizations, and certain transnational business enterprises have engaged in trade, investment, economic, immigration, and military policies and practices that result in economic, social, and political conditions in the home countries of noncitizens that can lead to human rights violations, increased involuntary migration, human trafficking, internal displacement, and "brain drain";

Understanding that deportation is one of the most severe sanctions imposed within governmental legal systems, and that it has implications for a broad range of human rights, including rights to life, physical integrity, family unity, physical and mental health, education, and a livelihood;

Concerned that the human rights of noncitizens may be violated by state, local, and non-state actors in the United States;

Concerned also, that government and private frameworks and actions purported to be based in national security can lead to torture and to inhumane or degrading treatment or punishment, racial, ethnic, and religious profiling and discrimination, invasions of privacy, violations of due process, failures to protect freedom of speech, religion, and belief, expressions of racial discrimination, xenophobia, and scape-goating and that such actions will further violate the human rights of individuals and groups in the United States and abroad;

Concerned further, that certain official and private actions within the United States will undermine respect for, and compliance with, international law, including human rights law, among federal, subnational state, and local entities;

Affirming that the full realization of individual and community economic, social, and cultural rights and well-being are public goods and that individuals, communities, and governmental authorities can and should act in solidarity in order to respect, protect, promote, and fulfill human rights for all;

Inspired by the representatives of subnational states and municipalities who, in response to calls for action by communities, scholars, activists, and other members of civil society, have adopted legislation and resolutions recognizing the obligation of the United States to respect, protect, promote, and fulfill international human rights standards, including through the implementation of appropriate measures at state and local levels;

Calling upon the United States to further recognize and to give full effect to economic, social, and cultural human rights internally and the principles set forth in the 1993 Vienna Declaration and Programme of Action on Human Rights, which declares that all human rights are universal, indivisible and interdependent and interrelated;

Resolving to act in ways that reflect and are consistent with the duties and obligations of the United States of America under international human rights and humanitarian law;

Determined to take appropriate and effective measures, in cooperation and solidarity, in our commitment to achieve substantial progress to respect, protect, promote, and fulfill human rights for all members of society, including noncitizens;

Adopt these Boston Principles on the Economic, Social, and Cultural Rights of Noncitizens.

Application

These Boston Principles reflect and are intended to be consistent with international law. They provide guidance to:

- (a) Representatives of the legislative, judicial, and administrative branches of subnational states, municipalities, and localities of the United States of America;
- (b) All other authorities, groups and persons in their relations with natural persons under United States jurisdiction, including noncitizens; and
- (c) Intergovernmental and non-governmental organizations when addressing human rights, including the human rights of noncitizens, within U.S. jurisdiction and/or on U.S. territories.

These Boston Principles should be disseminated and applied as widely as possible.

Part I. General Principles

Principle 1—Equality and Non-discrimination

1. All human beings are born free and equal in dignity and rights.
2. These Boston Principles on the Economic, Social, and Cultural Rights of Noncitizens apply without discrimination of any kind, such as race, color, sex, sexual orientation, gender or gender identity, disability status, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, property, birth, or other status.

Understandings:

A. Multidimensionality. These Boston Principles should be applied using a multidimensional approach in efforts to end discrimination, considering that individuals can experience multiple forms of discrimination in combination in different social settings, under different circumstances, and at different times in their lives.

B. Differential Treatment. Differential treatment based on citizenship or immigration status shall not constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the international human rights and fundamental freedoms provided in the Universal Declaration of Human Rights, are applied for a legitimate aim, and are proportional to the achievement of this aim.

C. Affirmative Action Measures. Affirmative action, or special measures, taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals, including noncitizens, who require such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Principle 2—Obligations and Duties

The enforcement of immigration laws and policies should not have the purpose or effect of discriminating against persons on the basis of race, color, descent, national or ethnic origin, age, language, sex, gender or gender identity, sexual orientation, disability, religion or belief, or political or other opinion.

Understandings:

A. Obligation to Review and Revise Legislation. Principle 2 recognizes the obligation of governmental authorities to take measures to review and revise legislation within its jurisdiction in order to ensure that it is in full compliance

with international human rights law and with human rights principles such as the full participation of rights-holders and the accountability of duty-bearers.

B. Obligation to Ensure Equal Protection of Anti-discrimination Laws.

Principle 2 recognizes the obligation of governmental authorities to ensure, under the laws of the United States and international law, that legislative guarantees against racial discrimination apply equally to noncitizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect.

C. Obligation to ensure that Security Measures are not Discriminatory.

Principle 2 recognizes the obligation of governmental authorities to ensure that any measures within their jurisdiction taken against threats to national or public security do not discriminate, in purpose or effect, on the grounds of race, color, religion or belief, descent, or national or ethnic origin and that noncitizens are not subjected to racial, ethnic, or religious profiling or stereotyping.

D. Obligation to Address Multiple Forms of Discrimination. Principle 2 recognizes that governmental authorities should take appropriate measures to address the combined impact of multiple forms of discrimination. In this regard, it recognizes the obligation to take all appropriate measures to end discrimination against the children and spouses of noncitizens, to refrain from applying gender discriminatory treatment to noncitizen spouses of citizens, to refrain from engaging in racial, ethnic, and religious profiling, and to take steps to prevent these and similar practices;

E. Interpretation of the Boston Principles as Consistent with International Human Rights and Humanitarian Obligations. These Boston Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic constitutional law. These Boston Principles are without prejudice to the right to seek and enjoy asylum and other forms of human rights protection in other countries.

F. Limitations. In the exercise of their rights and freedoms everyone shall be subject only to those limitations that are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of the general welfare in a democratic society.

G. Consistency with UN Purposes and Principles. These rights and freedoms should in no case be exercised contrary to the purposes and principles of the United Nations.

H. No Right to Engage in Acts Aimed at Destruction of Other Rights. Nothing in the Boston Principles should be interpreted as implying for the United States, any subnational state, municipality, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth in the Principles.

Principle 3—The Right to Recognition as a Person before the Law

All human beings, including noncitizens, have the right to recognition everywhere as a person before the law.

Understandings:

A. The Right to be Recorded and Counted. Principle 3 includes the right to recording at birth and the right to be counted in a public census.

B. Obligation to Issue Legal Documents. To give effect to the right in Principle 3, governmental authorities are obligated to issue to all persons all documents necessary for the enjoyment and exercise of their legal rights on the basis of equality and non-discrimination on the grounds of citizenship status, such as personal identification documents, birth certificates, marriage certificates, travel documents, and driver's licenses. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, detention, or deportation, without imposing unreasonable conditions.

C. Obligation to Ensure the Right to Obtain Legal Documents. Principle 3 recognizes the obligation of governmental authorities to ensure that all individuals of legal age shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

D. Rights Recognized. Principle 3 recognizes that all persons, including noncitizens have the right to the enjoyment of the following rights:

- (1) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (2) The right to associate freely and to participate equally in community, governmental, and public affairs that affect their interests or those of their families, and the right to have access to the means necessary to exercise this right; and
- (3) The right to communicate in a language they understand.

Principle 4—Equal Protection of the Laws

All persons subject to the jurisdiction of the United States of America, including noncitizens, have, in full equality, the same rights and fundamental freedoms under international human rights law and international humanitarian law.

Understanding:

Non-discrimination. Principle 4 recognizes the obligation not to discriminate against any person in the enjoyment of any international human rights and fundamental freedoms on the ground that they are noncitizens.

Principle 5—Rights in Immigration Proceedings and Enforcement Actions

All persons subject to immigration enforcement actions and proceedings have the right to full protection of the core human rights at stake in such actions and proceedings, including the right to life, security and bodily integrity, physical and mental health, family unity, livelihood, and education. Humanitarian factors, including length of

residence in the United States and family ties, should be given due consideration in any proceeding that may result in deportation.

Understandings:

A. Obligation to Guarantee Certain Rights in Removal Proceedings.

Principle 5 recognizes the obligation of governmental authorities to ensure that immigration policies guarantee to all an individual removal proceeding:

(1) That complies with internationally-recognized norms of due process, including full and timely information about the nature of the proceedings in a language understood by the individual,

(2) That includes due consideration of the human rights to life, security and bodily integrity, physical and mental health, and family unity, as well as the rights of persons with disabilities to reasonable accommodations and of persons subject to vulnerabilities such as minor children, unaccompanied minors, elderly people, persons with disabilities, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, to special measures of protection, and

(3) That provides for full administrative and judicial review of removal proceedings without regard to an individual's territorial presence within the United States.

B. The Right to Counsel. Under Principle 5, all persons, including noncitizens, have the right to counsel and translation and interpretation in removal proceedings. Minor children and persons not fully capable of understanding the proceedings have the right to the appointment of a guardian ad litem. Principle 5 should be interpreted to recognize the obligation of governmental authorities to ensure the provision of free government-appointed counsel, translation and interpretation, and guardians for those individuals who cannot afford them.

C. Individualized Determination of Eligibility for Release. Principle 5 should be interpreted to require that every individual detained by immigration authorities has the right to receive an individualized determination of eligibility for release on bond or personal recognizance. Principle 5 recognizes the obligation not to impose immigration detention except on those individuals who are determined by a court or administrative proceeding to pose a danger to themselves or others or a flight risk.

D. Appropriate Measures. Principle 5 recognizes the obligation of governmental authorities to take appropriate legislative, administrative, and other measures to ensure:

(1) Respect for principles of family life and unity for persons in detention, including the use of detention facilities local to the detainee's family and legal counsel, translators, and guardians.

(2) The right to the highest attainable standard of physical and mental health, including the underlying determinants of health in accordance with Principle 20;

(3) The workplace rights of detained persons who work during their detention in accordance with Principles 10-15.

(4) The right to worship, access religious texts, and religious services in the religion of one's choice and the right not to participate in religious services or observances.

E. Means of Return. Under Principle 5, competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow noncitizens to return voluntarily, in safety and with dignity, to their home countries or places of habitual residence, or to resettle voluntarily in another country. Principle 5 should be interpreted to require such authorities to endeavor to facilitate the reintegration of returned or resettled noncitizens in their home countries. Noncitizens should be provided adequate information to enable them to make informed decisions about return to the country of habitual residence or to a third country being considered for resettlement. Special measures should be taken to ensure that minor children who are returned or resettled to their home countries or who resettle voluntarily in another country do so in full compliance with their rights as children under international law and in accordance with Principle 25.

F. Participation in Resettlement Plans. Under Principle 5, special efforts should be made to ensure the full participation of noncitizens in the planning and management of their return or resettlement and reintegration.

Principle 6—The Right to Access Public Benefits without Fear

All persons, including noncitizens, have the right to seek assistance from public agencies that provide services, benefits, or assistance to the general public without fear that applying for benefits or assistance may result in referral to an immigration enforcement authority.

Understandings:

A. Translation and Interpretation Rights and Right to Respect. Principle 6 recognizes that access to public benefits without fear requires that governmental authorities provide applications, services, benefits, or assistance in a language understood by the applicant. Further, we recognize the obligation of such agencies and employees of such agencies to treat all applicants with respect.

B. Obligation to take Special Measures. Principle 6 recognizes that such public agencies should be required to take special measures to assure the right to seek assistance or public benefits without fear:

In particular,

(1) the obligation of public agencies to put in place effective measures so that neither the agencies nor their employees inquire about immigration or citizenship status unless necessary to the provision of such services, benefits, or assistance. Inquiry about immigration or citizenship status of persons applying on behalf of another person (for example, a parent applying on behalf of a minor child or a dependent adult) is not necessary or required.

(2) Where such an inquiry is determined to be necessary, we recognize the obligation of governmental authorities to ensure that information obtained from individuals regarding immigration or citizenship status shall be kept strictly confidential, and shall not be shared with other government authorities, including immigration enforcement authorities.

Principle 7—Access to Justice and the Right to an Effective Remedy

All persons, including noncitizens, have the right to effective, adequate and appropriate remedies for violations of their human rights.

Understandings:

A. Measures for Effective Remedies. Under Principle 7, measures taken for the purpose of providing reparation are integral to the right to effective remedies and redress. Principle 7 recognizes the obligation of governmental authorities to take appropriate and effective measures to:

- (1) Establish the necessary legal procedures, including through the revision of legislation and policies, the establishment of ombudsman, national, state, or local human rights commissions, and other mechanisms, to ensure that victims of human rights violations, including noncitizens, have access to full redress through restitution, compensation, rehabilitation, satisfaction, guarantee of non-repetition, and/or any other means as appropriate;
- (2) Ensure that remedies are enforced and implemented in a timely and well-coordinated manner;
- (3) Ensure that effective institutions and standards for the provision of remedies and redress, including, but not limited to, courts, legislatures, administrative mechanisms, human rights commissions, and ombudsmen, are established, and that all personnel are trained in issues of human rights violations based on citizenship status.
- (4) Ensure that all persons, including noncitizens, have access to all necessary information about the processes for seeking remedies and redress (including language translation and interpretation and reasonable accommodations);
- (5) Ensure that financial aid or free government-appointed counsel is provided to those who are unable to afford the cost of securing redress, and that any other obstacles to securing such redress, financial or otherwise, are removed;
- (6) Ensure training and awareness-raising programs, including measures aimed at teachers and students at all levels of public education, at professional bodies, and at potential violators of human rights, to promote respect for and adherence to international human rights standards in accordance with these Boston Principles, as well as to counter discriminatory attitudes based on citizenship status.

Principle 8--Accountability

All persons whose human rights are violated are entitled to have those directly or indirectly responsible for the violation, whether they are government officials or not,

held accountable for their actions in a manner that is proportionate to the seriousness of the violation.

Understandings:

A. No Impunity for Violations of Human Rights. There should be no impunity for perpetrators of human rights violations related to citizenship status or national origin.

B. Obligation to Establish Appropriate Mechanisms. Principle 8 recognizes the obligation of governmental authorities to:

- (1) Establish appropriate, accessible, well-coordinated, and effective criminal, civil, administrative and other procedures, as well as monitoring mechanisms, to ensure the accountability of perpetrators for human rights violations related to citizenship status;
- (2) Ensure that all allegations of crimes perpetrated on the basis of the actual or perceived citizenship status of the victim are investigated promptly and thoroughly, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished;
- (3) Establish independent and effective institutions and procedures to monitor the drafting, implementation, and enforcement of laws and policies to ensure the elimination of discrimination on the basis of citizenship status;
- (4) Remove any obstacles preventing persons responsible for human rights violations based on citizenship status from being held accountable.

Part II—Specific Areas of Protection

Principle 9—The Right to an Adequate Standard of Living

Everyone has the right to an adequate standard of living.

Understandings:

A. Minimum Core Obligations. To give effect to this right to noncitizens, at the minimum, regardless of the circumstances, and without discrimination, Principle 9 recognizes the obligation of competent authorities under our jurisdiction to provide noncitizens with, and to ensure safe access to, at least the following in a respectful manner:

- (1) Essential food and potable water;
- (2) Adequate housing;
- (3) Appropriate clothing; and
- (4) Essential medical services and sanitation.

B. Participation of Women and Persons with Disabilities. Principle 9 recognizes the obligation to make special efforts to ensure the full participation of women and persons with disabilities in the planning and distribution of these basic rights.

Principle 10—The Right to Decent Work

All persons, including noncitizens have the right to decent work, which includes the right of everyone, including a noncitizen, to the opportunity to gain a living by decent work which the individual freely chooses or accepts.

Understandings:

A. Obligation to Safeguard the Right. Principle 10 recognizes the obligation of governmental authorities to take appropriate steps to safeguard this right.

B. Steps to Achieve Full Realization. Principle 10 recognizes the obligation to take steps to achieve the full realization of this right, including technical and vocational guidance and training programs, adequate and effective English as a second occupational language educational programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Principle 11—Just and Favorable Conditions of Work

All persons, including noncitizens, have the right to the enjoyment of just and favorable conditions of work.

Understandings:

Under Principle 11, just and favorable conditions of work should ensure, in particular:

- (1) Remuneration which provides all workers, at a minimum, with:
 - (a) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (b) A decent living for themselves and their families in accordance with the provisions of these Principles;
- (2) Safe and healthy working conditions;
- (3) Equal opportunity for every individual to be promoted to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (4) Family hardship, medical, and maternity leave in accordance with the provisions of Principle 22.
- (5) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.
- (6) Accommodations for religious practice and dress, except in situations of compelling and clearly articulated security and safety concerns.

Principle 12—The Prohibition on Slavery and Forced Labor

All persons, including noncitizens, have the right not to be held in slavery or servitude.

Understanding:

Principle 12 recognizes the obligation to ensure that no one, including noncitizens or members of their families, shall be required to perform forced or compulsory labor.

Principle 13—Work Permits and Residency Authorization

All persons, including noncitizens, have the right not to be deprived of residence authorization or work permit and the right not to be expelled merely on the ground of failure to fulfill an obligation arising out of a work contract unless fulfilling that obligation constitutes a condition for that authorization or permit.

Principle 14—Equal Treatment in the Workplace

Noncitizen workers have the right to enjoy treatment not less favorable than that which applies to nationals of the United States of America in respect of remuneration and other conditions of work and terms of employment.

Understandings:

A. Other Conditions of Work. Under Principle 14 “other conditions of work” means overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship, collective bargaining agreements, and any other conditions of work which, according to law and practice, are covered by these terms;

B. Other Terms of Employment. Under Principle 14, “other terms of employment” means, minimum age of employment, restriction on home work and any other matters which, according to law and practice, are considered a term of employment.

C. Private Contracts. Principle 14 recognizes that it is not lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in the Principle.

D. Irregularity of Status. Principle 14 should be interpreted to recognize the obligation to take all appropriate measures to ensure that noncitizen workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

E. Right to Complain about Conditions. Principle 14 should be interpreted to recognize the obligation to ensure that the immigration status of noncitizen workers will not be affected by their exercise of the right to complain about wages or working conditions or their right to collective bargaining, freedom of assembly, and membership in a union.

Principle 15—Equal Treatment in Unemployment

Without prejudice to the terms of their authorization of residence or

their permission to work, we recognize that noncitizen workers have the right to enjoy equality of treatment with citizens in respect of:

- (a) Protections afforded by collective bargaining agreements;
- (b) Protection against dismissal;
- (c) Unemployment benefits;
- (d) Access to public work schemes intended to combat unemployment;
- (e) Access to alternative employment in the event of loss of work or termination of other remunerated activity.

Principle 16—The Right to Freedom of Association

All workers, including noncitizens, have the right:

- (a) To take part in meetings, collective bargaining, and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests;
- (b) To join freely any trade union and any such association;
- (c) To seek the aid and assistance of any trade union and of any such association to engage in collective bargaining, or otherwise.

Understanding:

Obligation Not to Place Excessive Restrictions. Principle 16 recognizes the obligation not to place restrictions on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of the protection of the rights and freedoms of others.

Principle 17 —Temporary Absence

Governmental authorities should make every effort to authorize noncitizen workers and members of their families to be temporarily absent without effect upon their authorization to stay or to work.

Understanding:

A. Special Family Needs. Principle 17 should be understood to require that governmental authorities should take into account the special needs and family obligations of noncitizen workers and members of their families, in particular in their states of origin.

Principle 18—Deportation of Noncitizen Workers

Deportation shall not be resorted to for the purpose of depriving a noncitizen worker of the employment rights arising out of the authorization of residence and the work permit, nor in retaliation for the exercise of workers' rights or for seeking the protection of other human rights.

Principle 19—The Right to Education

All persons, including noncitizens, have the right to education.

Understandings:

A. Obligations of Relevant Governmental Authorities. To give effect to this right for noncitizens, Principle 19 recognizes the obligation of relevant governmental authorities to ensure that such persons, in particular noncitizen children, receive education which shall be free and compulsory at the primary and secondary levels. Higher education shall be made equally accessible to all, including noncitizens, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education. Education should respect their cultural identity, language and religion.

B. Special Efforts to Ensure Participation. Principle 19 should be interpreted to recognize the obligation to make special efforts to ensure the full and equal participation of women and girls, members of minority groups, and persons with disabilities in educational programs, including the provision of accessible educational and training facilities.

Principle 20—The Right to Health

All persons, including noncitizens, have the right to the enjoyment of the highest attainable standard of physical and mental health and to the progressive realization of this right without distinction of any kind.

Understandings:

A. The Right to Health of Persons with Disabilities. Principle 20 recognizes that persons with disabilities, including noncitizens, have the right to the highest attainable standard of physical and mental health without discrimination on the basis of disability. Principle 20 recognizes the obligation of governments and private actors to take all appropriate measures to ensure access for persons with disabilities to health facilities, services, goods and information that are gender and culturally-sensitive, including health-related rehabilitation, sexual, and reproductive services, and appropriate legal representation if necessary.

B. Special Measures for Vulnerable Persons. Principle 20 recognizes the obligation to take special measures that take into account the specific situations of vulnerable persons, including noncitizens, such as persons with disabilities, minor children, unaccompanied minors, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape, trafficking, or other serious forms of psychological, physical or sexual violence, to ensure the right to health.

C. Components of the Right to Health. Principle 20 recognizes that the right to health includes the right to healthcare – for emergency, preventative, curative, sexual, reproductive, rehabilitative and palliative care that is available, accessible, affordable, and of good quality. The right to health includes the right to information about, and access to, safe and quality healthcare services.

D. Underlying Determinants. Principle 20 recognizes that the right to health includes the right to the underlying public health and social determinants of health, including adequate food, water, housing, clothing, sanitation, and safe

working conditions, as well as appropriate measures for the prevention of violence and the transmission of communicable disease.

E. Informed Consent. Principle 20 recognizes that the right to health entails not only the right to full and equal access to health facilities, goods, and services, but also the right to relevant health information and the right to exercise informed consent in health, including in clinical practice, public health and medical research.

F. The Right to Health of Persons in Confinement. Principle 20 recognizes that both government and private actors who administer detention centers, jails, prisons, half-way houses, group homes, hospitals, clinics, rehabilitation and nursing facilities, and other such facilities have a special obligation under ethical standards and international law not to harm patients and to provide and ensure continuity of care.

In this regard, Principle 20 should be interpreted to recognize the following:

(1) All governments have the obligation to provide all persons detained on the basis of citizenship status all needed and appropriate health care or to immediate release. Government and private actors have a duty not to discharge or repatriate noncitizens without full informed consent and without ensuring continuity of care. Provision for continuity of care must be made where the government seeks to deport a noncitizen, and availability of such care must be taken into consideration in the course of the deportation process.

(2) Essential medicines and treatments requiring regular, periodic, or continuous administration, such as, but not limited to anti-retroviral medicines, antibiotics, insulin, radiation treatments, chemotherapy, and dialysis, must be administered consistent with health or medical needs and with full informed consent of the person receiving care.

G. Obligations of the United States with regard to Devolution of Immigration Enforcement. Under Principle 20, the United States has the primary obligation to ensure that the devolution of immigration enforcement to the state and local level does not result in adverse impacts on access to healthcare or the underlying determinants of health for noncitizens and must fulfill this obligation by appropriate monitoring and evaluation at the national, subnational, and local levels.

H. Due Diligence. Under Principle 20, all government and private actors have an obligation to conduct due diligence in preventing discrimination based on citizenship status in the availability and provision of health facilities, services and goods. This includes an obligation to prevent health insurers from discriminating against applicants and policyholders on the basis of citizenship status.

I. Non-discrimination. Principle 20 should be interpreted to recognize that discrimination on the basis of health status and the discriminatory denial of the right to health or life-saving treatment on the basis of race, color, ethnicity, nationality, language, sex, gender, gender identity, sexual orientation, religion or

belief, language, disability, or age, or other status in the country of origin or habitual residence can be grounds for asylum for noncitizens who currently reside in the territory of the United States. Similarly, under Principle 20, the health status of a noncitizen or that individual's family members, along with the absence of necessary health services in the country of origin, may be grounds to delay or terminate deportation proceedings in the United States.

Principle 21--Social Security

With respect to social security, noncitizens and members of their families should have the same treatment granted to nationals of the United States in so far as they fulfill the requirements provided for by the applicable legislation of the United States and the applicable treaties entered into force for the United States.

Understanding:

A. Bilateral Arrangements. Under Principle 21, the competent authorities of the National State of origin and the United States can at any time establish the necessary arrangements to determine the means of application of this norm.

B. Absence of Legislation. Where the applicable legislation does not allow noncitizens and members of their families a benefit, the United States should examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to citizens who are in similar circumstances.

Principle 22—Family Life

All human beings, including noncitizens, have the right to establish a family and to provide for and receive their protection.

Understandings:

A. Special Protections. Principle 22 recognizes the obligation to accord special protection through legislative, administrative, and other special measures to parents during a reasonable period before and after childbirth or adoption. During such periods working parents, or other family members with responsibility for childcare, should be accorded paid leave or leave with adequate social security benefits.

B. Family Leave. Principle 22 should be understood to recognize the obligation to provide, through appropriate legislative, administrative, and other special measures, a reasonable period of leave with remuneration to workers during family hardship, and during individual or family illness.

C. Right to Know Parents. Principle 22 should be understood to recognize that all children, including noncitizen children, and children whose parents are noncitizens have the right to know and be cared for by their parents where possible, the best interests of the child being paramount. The interest of the state in expelling a noncitizen must be balanced against the interest of the individual and the individual's family to remain united.

D. Separation. Principle 22 should be understood to recognize the obligation to ensure that children are not separated from their parents against their will, except when such separation is necessary for the best interests of the child. The best interests of the child must be given due consideration in any immigration proceeding that may result in the deportation of a child or parent.

E. Special Measures of Protection. Principle 22 should be understood to recognize the obligation to take appropriate legislative, administrative, or other special measures of protection and assistance on behalf of all children and young persons without discrimination of any kind, including for reasons of parentage, unaccompanied minor status, or other conditions. Children and young persons should be protected from economic and social exploitation. Governmental authorities have the obligation to prohibit their employment in work harmful to their morals or health or dangerous to life or likely to interfere with their education. Age limits should be set below which the paid employment of child labor should be prohibited and punishable by law.

Principle 23—Protection of Family Unity

The family is entitled to protection by society and by the State.

Understandings:

A. Measures to Protect Family Unity. Principle 23 recognizes the obligation to take appropriate legislative, administrative and other measures to ensure the protection of the unity of families whose members include noncitizens.

B. Facilitation of Unification. Principle 23 recognizes the obligation to take legislative, administrative and other appropriate measures to facilitate the reunification of noncitizen workers with their spouses or persons who have with the noncitizen worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent children.

C. U.S. Considerations. In light of Principle 23, the United States, on humanitarian grounds, should favorably consider facilitating the unification of other family members of noncitizens.

Principle 24—The Rights of Racial, Ethnic, Religious, and Linguistic Minorities and Indigenous Peoples

Governmental authorities of subnational states, municipalities, and localities have the obligation to prohibit and to eliminate racial, ethnic, religious, and linguistic discrimination and discrimination against indigenous peoples in all its forms, including against noncitizens, and to guarantee the right of everyone to equality before the law.

Understanding:

Rights Recognized. All individuals belonging to a racial, ethnic, religious, or linguistic, minority, or individuals belonging to an indigenous people, including noncitizens, have the right, in community with other members of the group, to

own, hold, or live from the land collectively, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Principle 25--The Rights of Children

Every child, including noncitizen children and citizen children of noncitizen parents, has civil, political, economic, social, and cultural rights.

Understandings:

A. Life, Survival, and Development. Principle 25 recognizes the right of each child, including noncitizen children and citizen children of noncitizen parents, to life, survival, and development.

B. Parental Roles. Principle 25 recognizes the important role of parents, legal guardians, and families in children's development and the realization of children's rights and will seek to support their efforts to help their children realize their rights and develop to their fullest potential.

C. Diversity Among Children. Principle 25 should be interpreted to recognize that children constitute a diverse population and that fulfillment of each child's rights shall take account of the age and maturity of the child and the child's right to participate in decisions affecting his or her life, consistent with the child's age and maturity.

D. Special Needs of Immigrant Children. Recognizing the special needs of children of immigrant communities and their families, Principle 25 requires that government and civil society shall pursue full implementation of children's rights and, in particular, it recognizes the obligation to take appropriate measures to ensure that:

(1) The birth of each child born in the United States is registered immediately after birth and that each child from birth has a right to a name, to appropriate documentation, the right to United States citizenship, and, as far as possible, the right to know and be cared for by their parents, the best interests of the child being paramount.

(2) Each child has the right to a life free from all forms of violence, abuse, neglect, or other harmful behaviors that interfere with the child's survival and development and the child's capacity to realize his or her economic, social, and cultural rights.

(3) Each child has the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Each child has to right to live free from all other forms of exploitation.

(4) No child shall be separated from that child's parents against that child's will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be

necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. In any such proceeding, all interested parties shall be given an opportunity to be heard and language/translation and interpretation or reasonable accommodation assistance as needed.

(5) In order to protect the rights of children, parents must have full and meaningful ability to participate in any decision-making process involving child custody. Parents have the right to be present at court or administrative hearings involving parental rights and the right to be transported there by immigration authorities if the parents are subject to detention. Immigration authorities must take affirmative steps to support efforts by the child welfare system to support parents in working toward reunification, the best interests of the child being paramount.

(6) A child who is separated from one or both parents has the right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

(7) Each child has the right to the highest attainable standard of health and the right to access the health care necessary to maintain, and when needed restore, well-being. The right to the highest attainable standard of health shall include, among other things, measures to ensure quality primary health care, environmental health standards, and appropriate prenatal and postnatal health care for mothers, and access to health information in a manner acceptable to children and their families.

(8) Each child has the right to a quality education. Governmental authorities shall strive to ensure each child's access to quality preschool, primary education, secondary education, vocational training, English as a second language training, and higher education.

(9) Each child has the right to an adequate standard of living, including nutrition, clothing, and adequate housing (including affordable safe housing), to ensure the child's physical, mental, spiritual, moral and social development.

(10) Each child has the right to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

(11) Each child and that child's family have the right to social security, including services (or translation and interpretation) in the language of the child and/or that child's parents or legal guardian.

Principle 26—The Rights of Women

We condemn discrimination and violence against women in all its forms, and recognize our obligation to pursue by all appropriate means and without delay a policy of eliminating discrimination and violence against women, including noncitizen women.

Understandings:

A. Key Obligations Recognized. To this end, Principle 26 recognizes the obligation:

- (1) To embody the principle of the equality of men and women in legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (2) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination and violence against women, including noncitizen women;
- (3) To establish legal protection of the rights of women, including noncitizen women, on an equal basis with men and to ensure through competent courts and other public institutions the effective protection of noncitizen women against any act of discrimination or violence;
- (4) To refrain from engaging in any act or practice of discrimination or violence against women, including noncitizen women and to ensure that relevant public authorities and institutions act in conformity with this obligation;
- (5) To take all appropriate measures to eliminate discrimination and violence against women, including noncitizen women, by any person, organization or enterprise;
- (6) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women, including noncitizen women. All spouses should enjoy the ability to engage in labor and a spouse's continuing legal status in the US should not be lost merely because of a spouse's loss of status.
- (7) To repeal all penal provisions which constitute discrimination against women, including noncitizen women.

B. Stereotyped Roles. Principle 26 recognizes the obligation to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of violence, prejudices and customary, modern, and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

C. Trafficking in Women and Children. Principle 26 should be interpreted to recognize the obligation to take all appropriate measures, including legislative, administrative, judicial, social, or educational, to suppress all forms of traffic in women and children and the exploitation of prostitution of women and children, including noncitizen women and children. Engaging in prostitution or having been subject to trafficking shall not be a basis for the deportation of, or criminal sanctions against, women and children, including noncitizen women and children. Special measures should be taken to provide necessary support services and human rights protections for women and children who have been trafficked.

Principle 27--Accessibility

To enable persons with disabilities, including noncitizens, to live independently and participate fully in all aspects of life, governmental authorities have the obligation to take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.

Understandings:

A. Application. The measures described in Principle 27, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, among other things:

- (1) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- (2) Information, communications and other services, including electronic services and emergency services.

B. Standards and Guidelines. Principle 27 recognizes the obligation to take appropriate measures to:

- (1) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- (2) Ensure that private entities that offer facilities and services that are open or provided to the public take into account all aspects of accessibility for persons with disabilities, including noncitizens;
- (3) Provide training for governmental authorities and other stakeholders on accessibility issues facing persons with disabilities, including noncitizens;
- (4) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- (5) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- (6) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information, information technology, and justice.

Principle 28—The Rights of Persons with Disabilities to Liberty of Movement and Nationality

All persons, including noncitizens with disabilities, have the rights to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others.

Understandings:

A. Rights to Liberty, Movement, and Nationality. Principle 28 recognizes the obligation to ensure that persons with disabilities:

- (1) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
- (2) Are not deprived, on the basis of disability, of their ability to obtain, possess and use documentation of their nationality or other identification documents, or to use relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
- (3) Are free to leave any country, including their own;
- (4) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their country.

B. Children with Disabilities. Principle 28 recognizes the right of children with disabilities to be registered immediately after birth and their right from birth to a name, to appropriate documentation, the right to U.S. citizenship, and, as far as possible, the right to know and be cared for by their parents, the best interests of the child being paramount.

C. Care for Children with Disabilities. Governmental authorities shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

Principle 29–The Right to Seek Asylum, Humanitarian Assistance, and the Right to Pursue Citizenship

1. All persons, including noncitizens, have the right:

- (a) to seek safety in another part of the country;
- (b) to leave their country;
- (c) to seek asylum in another country; and
- (d) to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

2. Noncitizens and members of their families who wish to pursue citizenship in the United States of America should be provided pathways to citizenship under due process of law and in accordance with their human rights.

Understandings:

A. Responsibilities. Principle 29 should be interpreted to recognize that national, state, and local authorities have the primary duty and responsibility to provide protection and humanitarian assistance to all within their jurisdiction, including noncitizens.

B. Right of Request. Under Principle 29, all persons, including noncitizens, have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

C. Pathways to Citizenship. Under Principle 29, noncitizens who wish to become citizens of the United States, including those who have entered the United States with irregular status, should be provided pathways to citizenship in accordance with due process of law and with regard to respect for their human rights.

Principle 30--Limitations

National security or public order shall not be used as pretexts for imposing vague or arbitrary limitations on human rights and fundamental freedoms.

Understandings:

A. Limitations. Under international law, national security may not be invoked to justify measures limiting human rights except temporarily in certain specified circumstances and only when such limited measures are taken in the most severe public emergencies. Some human rights and fundamental freedoms are non-derogable even under emergency circumstances.

B. Safeguards Against Abuse. To this end, Principle 30 should be understood to recognize that national security and public order limitations may only be taken when there are adequate safeguards and effective remedies against abuse.

C. Impact of Human Rights Violations on Security. The systematic violation of human rights undermines national security and public order and itself jeopardizes international and domestic peace and security.

D. Use of Limitations as Justifications for Abuse. Principle 30 recognizes the obligation not to invoke national security or public order as justifications for measures aimed at suppressing opposition to violations of international human rights standards or at perpetrating repressive practices against the population, including noncitizens.

Appendix: Participants in Beyond National Security Institute and Commentators

The following is a list of participants in the October 14-15, 2010 institute, "Beyond National Security: Immigrant Communities and Economic, Social, and Cultural Rights" as well as other commentators on the Draft Boston Principles. Being listed below does not necessarily indicate any participant's or commentator's endorsement of, or agreement with, the Boston Principles above in whole or in part. Organizational affiliations are provided for identification purposes only.

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