

The Boston Principles on the Economic, Social and Cultural Rights of Noncitizens
("The Boston Principles")
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(Without annotations)¹

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¹ Annotated version 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 Noncitizens²

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

² Program on Human Rights and the Global Economy (Northeastern University School of Law), THE BOSTON PRINCIPLES ON THE ECONOMIC, SOCIAL, AND CULTURAL RIGHTS OF NONCITIZENS (May 1, 2011). Annotated version and version without annotation available at: <http://www.northeastern.edu/law/academics/institutes/phrge/publications/boston-principles.html> . See also Hope Lewis & Rachel Rosenbloom, *The Boston Principles: An Introduction*, 1 NOTRE DAME JOURNAL OF INTERNATIONAL, COMPARATIVE, AND HUMAN RIGHTS LAW (April, 2011) and *A Guide to the Boston Principles*, available at: <http://ndintl.wordpress.com/>

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Principle 12—Prohibition on Slavery and Forced Labor

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

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.

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.

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.

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.

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.

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.

Principle 22—Family Life

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

Principle 23—Protection of Family Unity

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

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.

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.

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.

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.

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.

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.

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.

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 reflect 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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Susan Ostrander, Tufts University
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