

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

DRAFT FOR PUBLIC COMMENT

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Please submit comments by January 17, 2011.

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## Introduction

The Boston Principles on the Economic, Social, and Cultural Rights of Noncitizens (“Boston Principles”) are a proactive response to two significant trends in the treatment of noncitizens in the United States. Beginning in the mid-1990s, and gaining momentum after September 11, 2001, the federal government imposed increasingly harsh deportation policies, dramatically expanded the enforcement of immigration laws, and delegated more and more immigration enforcement power to state and local police — all in the name of national security.

During the same period, a wave of state and local laws has taken aim at the rights of noncitizens in areas such as employment, housing, health, family life and education. On both fronts, immigrant communities and their supporters throughout the United States are increasingly turning to the international human rights framework in response.

These developments led a group of human rights and immigrants rights scholars and advocates to organize an institute titled “Beyond National Security: Immigrant Communities and Economic, Social, and Cultural Rights” at Northeastern University School of Law in Boston, Massachusetts (United States of America) on October 14-15, 2010. Convened by the Program on Human Rights and the Global Economy (PHRGE) with the sponsorship of the Ford Foundation and the Human Rights Interest Group of the American Society of International Law, the institute brought together leading immigrants’ rights attorneys, human rights advocates, and scholars of law, political science, and sociology to discuss these developments during the course of an intensive two-day meeting.

The institute resulted in the drafting and circulation for adoption of the Draft Boston Principles. The Draft Boston Principles are an initiative of the Program on Human Rights and the Global Economy in coalition with community-groups, immigrants’ rights organizations, human rights NGOs, workers’ rights organizations, practitioners, and scholars throughout the United States as well as abroad.

Initial drafts were circulated for discussion and comments before, during, and after the October institute. During closed working sessions at the institute, 40 participants shared information and experiences about the impact of recent federal, state and local laws and policies on the human rights of noncitizens. The group also strategized on ways that international human rights-based approaches

to housing, healthcare, education and workers' rights can support or strengthen existing social justice work. Participants explored responses to discrimination and violence targeted at particular groups within immigrant communities — including racial, sexual, ethnic, religious, or linguistic minorities, indigenous peoples, children, women and persons with disabilities — and how such discrimination undermines other human rights.

We also welcomed the public—students, community groups, and people from local neighborhoods--to two roundtables (and a student-organized session on access to higher education) for further discussion of these critical issues. Institute participants are associated with a wide variety of social justice organizations and projects. We look forward to building on this network for the widespread adoption of these Principles and for future collaboration.

We believe that courtroom advocacy, law reform, administrative policy, scholarly inquiry, popular education and civil society activism are critical tools for sustaining social justice movements. We benefited from the work of scholars,<sup>1</sup> international experts,<sup>2</sup> and local advocates who have worked to adopt international human rights standards in state and local resolutions or legislation.<sup>3</sup> The timing of the institute was also inspired by advocacy and activism surrounding the November 2010 review of U.S. human rights compliance by the United Nations Human Rights Council (the “Universal Periodic Review” (UPR)).<sup>4</sup>

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<sup>1</sup> See, e.g., David Weissbrodt, *Human Rights of Non-citizens*, Oxford University Press, 2008

<sup>2</sup> See, e.g., UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXX on Discrimination Against Non Citizens, 1 October 2002, available at: <http://www.unhcr.org/refworld/docid/45139e084.html> [accessed 5 December 2010]; UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante: addendum : mission to the United States of America, 5 March 2008, A/HRC/7/12/Add.2, available at: <http://www.unhcr.org/refworld/docid/47d647462.html> [accessed 5 December 2010]; UN Sub-Commission on the Promotion and Protection of Human Rights, The Rights of Non-citizens: Final Report of the Special Rapporteur, David Weissbrodt, submitted in accordance with Sub-Commission decision 2000/103, Commission resolution 2000/104 and Economic and Social Council decision 2000/283, 26 May 2003, E/CN.4/Sub.2/2003/23, available at: <http://www.unhcr.org/refworld/docid/3f46114c4.html> [accessed 6 December 2010].

<sup>3</sup> See, e.g., International Museum of Women, “CEDAW in San Francisco,” available at: <http://www.imow.org/wpp/stories/viewStory?storyid=1849> [accessed 5 December 2010] (discussing San Francisco’s municipal ordinance adopting the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women; Meiklejohn Civil Liberties Institute, “CA Votes for Human Rights,” *Human Rights Now*, August 27, 2010, available at: <http://mcli.org/> [accessed 5 December 2010] (discussing California state legislation agreeing to publicize the text of 3 international human rights treaties ratified by the United States).

<sup>4</sup> United States Government, 2010 Universal Periodic Review Report, available at: <http://www.state.gov/g/drl/upr/> [accessed 5 December 2010]; United States Human Rights Network, “Universal Periodic Review Project,” [http://www.ushrnetwork.org/campaign\\_upr](http://www.ushrnetwork.org/campaign_upr) [accessed 5 December 2010].

The Draft Boston Principles draw extensively on existing international human rights and humanitarian standards as well as on the perspectives, observations, and experiences of the participants, many of whom work closely with noncitizens and their communities. As part of the growing movement to “bring human rights home,”<sup>5</sup> we believe that such principles can be used by advocates as a persuasive organizing tool and can be adopted by state and local governments in the United States.

Among the many international, regional, and domestic sources from which we drew draft language are the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the 1990 Convention on the Rights of the Child (CRC), the 2006 Convention on the Rights of Persons with Disabilities (CRPD), the 2003 International Convention on the Protection of the Rights of All Migrant Workers and Their Families (CRMWF), the Constitution of the United States of America, the 1993 Vienna Declaration and Programme of Action on Human Rights (Vienna Declaration), the 2004 General Recommendation No. 30 on Discrimination Against Noncitizens by the UN Committee on the Elimination of Racial Discrimination, the 1998 Guiding Principles on Internal Displacement, the 1996 Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (Yogyakarta Principles), the 1984 Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, the Report of the Special Rapporteur on the Human Rights of Migrants, Dr. Jorge Bustamante: Mission to the United States of America, The Rights of Non-citizens, Final Report of the Special Rapporteur, Mr. David Weissbrodt,<sup>6</sup> the Council Directive 2003/9/EC, Laying Down Minimum Standards for the Reception of Asylum Seekers (European Union), and other legal, advisory, and interpretive statements.

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<sup>5</sup> See, e.g., *Bringing Human Rights Home: A History of Human Rights in the United States*, Cynthia Soohoo, Catherine Albisa, and Martha F. Davis, eds., University of Pennsylvania Press, 2009; *Human Rights and the Global Marketplace: Economic, Social, and Cultural Dimensions* 841-930, Jeanne M. Woods & Hope Lewis, eds., Transnational Publishers/Brill USA, 2005.

<sup>6</sup> E/CN.4/Sub.2/2003/23, (26 May 2003).

International law imposes legally binding as well as political obligations on the United States with regard to the human rights of noncitizens under its jurisdiction. The U.S. voted in the UN General Assembly to adopt the UDHR in 1948. It is a party to the ICCPR, the ICERD, and the 1967 Protocol to the 1951 Convention on the Status of Refugees. It has signed, but not ratified, the ICESCR, CEDAW, CRC, and the CRPD. However, the U.S. has neither signed nor ratified the CRMWF.

We hope that the Draft Boston Principles will highlight existing human rights of noncitizens as well as support advocacy for the recognition of additional rights. The Draft will be circulated to a broad network of U.S. immigrants' rights and human rights advocates, scholars, and practitioners for comments through January 17, 2011. The final version will be circulated subsequently to legislators, administrators, ombudsmen, and other policymakers at state and local levels for adoption or endorsement.

We thank the many institute participants, PHRGE staff, students, and colleagues who contributed to, or commented on, this Draft. The listing of participants and commentators in the Appendix, however, does not necessarily reflect the endorsement of any individual or organization. We look forward to your further comments, which may be sent to the attention of Mr. Richard Doyon, Faculty Administrative Assistant, Program on Human Rights and the Global Economy, Northeastern University School of Law, 400 Huntington Avenue, Boston, MA 02115, (phone) 617.373.2023, (e-mail) [r.doyon@neu.edu](mailto:r.doyon@neu.edu).

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PREAMBLE

Whereas there is a need to recognize 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;

Whereas the United States of America is a State Party to the Charter of the United Nations and voted in the United Nations General Assembly to adopt the 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 enshrined therein without distinction of any kind;

Whereas the United States of America is a State Party to the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and has signed the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities;

Whereas 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;

Whereas ICERD defines racial discrimination broadly to include discrimination on the grounds of race, color, descent, and national or ethnic origin;

Whereas, 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;

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

*Considering*, 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 enunciated in particular in the UDHR, the ICESCR and the ICCPR;

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

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

*Whereas* the United Nations has declared that Member States, international financial institutions, multilateral trade organizations, and transnational business enterprises have the duty not to negatively impact the realization of human rights and fundamental freedoms.

*Concerned that*, nonetheless, the United States, international financial institutions, multilateral trade organizations, and transnational business enterprises have engaged in trade, investment, economic, immigration, and military foreign policies and practices that result in negative economic, social, and political conditions in the home countries of noncitizens;

*Concerned, further, that* such negative conditions in home countries of noncitizens can lead to human rights violations, increased involuntary migration, human trafficking, internal displacement, and "brain drain";

*Realizing* 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 are being violated by, or not recognized 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

inhumane 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 will further violate the human rights of individuals and groups in the United States and abroad;

Concerned further, that certain official and private actors within the United States have attempted to 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, and fulfill human rights for all;

Inspired by the representatives of subnational states and municipalities of the United States 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 recognize and give effect to economic, social, and cultural rights of noncitizens 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 co-operation and solidarity, in our commitment to achieve substantial progress to respect, protect, promote, and fulfill human rights for all members of society, including noncitizens;

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

## 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.
3. We recognize the obligation to include an intersectional and multidimensional approach in efforts to end discrimination, recognizing that individuals can experience multiple forms of discrimination in combination in different social settings, under different circumstances, and at different times in their lives.
4. Differential treatment based on citizenship or immigration status will 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 not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.
5. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals, including noncitizens, requiring 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

1. We recognize our obligation to ensure that the enforcement of immigration laws and policies within our jurisdiction do not have the intent 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.
2. We recognize our obligation to review and revise legislation within our jurisdiction, as appropriate, in order to guarantee that such

legislation 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;

3. We recognize our obligation, under the laws of the United States and international law, to ensure 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;

4. We recognize our obligation to ensure that any measures taken against terrorism 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;

5. We recognize our obligation to take appropriate measures to address the combined impact of multiple forms of discrimination on noncitizens. In this regard, we recognize our 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;

6. We recognize our obligation to take steps, individually and through domestic and international solidarity and co-operation, especially economic and technical, to the maximum of our available resources, to progressive realization of the rights recognized in these Principles by all appropriate means, including particularly the adoption of legislative measures and the implementation of existing legislation.

7. These 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 law. These Principles are without prejudice to the right to seek and enjoy asylum and other forms of human rights protection in other countries.

8. In the exercise of rights and freedoms everyone shall be subject only to such limitations as 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 public order and the general welfare in a democratic society.

9. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

10. Nothing in this Statement of 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 herein.

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

1. All human beings, including noncitizens, have the right to recognition everywhere as a person before the law, including the recording of birth and being counted for purposes of a public census.

2. To give effect to this right for noncitizens, we recognize our obligation to ensure that the authorities subject to our jurisdiction shall issue to them 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.

3. 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.

4. We recognize that noncitizens have the right to the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) 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
- (c) The right to communicate in a language they understand.

Principle 4—Equal Protection of the Laws

1. All persons, including noncitizens, subject to the jurisdiction of the United States of America shall enjoy, in full equality, the same rights

and freedoms under international human rights law, international humanitarian law, and federal, state, and local law as do other persons subject to U.S. jurisdiction. They shall not be discriminated against 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

1. We recognize that core human rights are at stake in immigration enforcement actions and proceedings, including the right to life, security and bodily integrity, physical and mental health, family unity, livelihood, and education.
2. We recognize our obligation to ensure that immigration policies guarantee to all an individual removal proceeding:
  - (a) 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, and
  - (b) 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 other vulnerable persons such as minor children, unaccompanied minors, elderly people, 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.
3. All persons, including noncitizens, have the right to counsel and translation 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. We recognize our obligation to ensure the provision of free government-appointed counsel, translation, and guardians for those individuals who cannot afford them.
4. Every individual detained by immigration authorities has the right to receive an individualized determination of eligibility for release on bond or personal recognizance. We recognize our duty to impose detention only on those individuals who are determined by a court or administrative proceeding to pose a danger to themselves or others or a flight risk. We recognize our obligation to take appropriate legislative, administrative, and other measures to ensure:

- (a) 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.
- (b) The right to the highest attainable standard of physical and mental health, including the underlying determinants of health in accordance with Principle 20;
- (c) The workplace rights of detained persons who work during their detention in accordance with Principles 10-15.
- (d) 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.

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. Such authorities shall 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 applicable international law and in accordance with Principle 25 below.

6. 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

1. We recognize the right of everyone, including noncitizens, to seek assistance from public agencies under our jurisdiction that provide services, benefits, or assistance to the general public without fear that application for such benefits or assistance may result in referral to an immigration enforcement authority. Access to this right includes the provision of 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.

2. We recognize our obligation to require such public agencies to take

special measures, including the provision of translation, to assure the right to seek assistance or public benefits without fear:

In particular,

(a) We recognize the obligation of public agencies under our jurisdiction 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.

(b) Where such an inquiry is determined to be necessary, we recognize our obligation 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

1. All persons subjected to human rights violations, including noncitizens, have the right to effective, adequate and appropriate remedies. Measures taken for the purpose of providing reparation are integral to the right to effective remedies and redress.

2. We undertake to take appropriate and effective measures to:

(a) 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;

(b) Ensure that remedies are enforced and implemented in a timely and well-coordinated manner;

(c) 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.

(d) Ensure that all persons, including noncitizens, have access to all necessary information about the processes for seeking

remedies and redress (including language translation and reasonable accommodations);

(e) 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;

(f) 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 Principles, as well as to counter discriminatory attitudes based on citizenship status.

#### Principle 8--Accountability

1. All persons whose human rights, including rights addressed in these Principles, 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. There should be no impunity for perpetrators of human rights violations related to citizenship status or national origin.

2. We recognize the obligation to:

(a) 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;

(b) 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;

(c) 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;

(d) 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 (including

Food, Water, Sanitation, Clothing, Housing, and Humanitarian Assistance)

1. Everyone has the right to an adequate standard of living.
2. To give effect to this right to noncitizens, at the minimum, regardless of the circumstances, and without discrimination, we recognize 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:
  - (a) Essential food and potable water;
  - (b) Adequate housing;
  - (c) Appropriate clothing; and
  - (d) Essential medical services and sanitation.
3. We recognize 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

1. Everyone has 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. We recognize our obligation to take appropriate steps to safeguard this right.
2. We recognize our 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 which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) 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;
  - (ii) A decent living for themselves and their families in accordance with the provisions of these Principles;

- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in her or his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Family hardship, medical, and maternity leave in accordance with the provisions of Principle 22.
- (e) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.
- (f) 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

1. No one, including a noncitizen or member of his or her family, shall be held in slavery or servitude.
  
2. We recognize our obligation to ensure that no one, including a noncitizen or a member of his or her family, shall be required to perform forced or compulsory labor.

Principle 13—Work Permits and Residency Authorization

No noncitizen or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfill an obligation arising out of a work contract unless fulfillment of that obligation constitutes a condition for such authorization or permit.

Principle 14—Equal Treatment in the Workplace

1. We recognize that noncitizen workers have the right to enjoy treatment not less favorable than that which applies to nationals of the United States in respect of remuneration and:
  - (a) Other conditions of work, that is to say, 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, that is to say, minimum age of employment, restriction on home work and any other matters which, according to law and practice, are considered a term of employment.
  
2. We recognize that it is not lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present Principle.

3. We recognize our 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.

4. We recognize our 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, noncitizen workers shall 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

1. 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, subject only to the rules of the organization concerned;
- (b) To join freely any trade union and any such association, subject only to the rules of the organization concerned;
- (c) To seek the aid and assistance of any trade union and of any such association to engage in collective bargaining, or otherwise.

2. We recognize our 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 national security, public order or the protection of the rights and freedoms of others. We understand that national security and public order interests rely on a broader commitment to the full protection and realization of economic, social, cultural, civil, and political human

rights.

Principle 17 —Temporary Absence

We recognize our obligation to 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, as the case may be. In doing so, we shall 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 or a member of his or her family of the 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

1. Every human being has the right to education.
2. To give effect to this right for noncitizens, we recognize the obligation of relevant governmental authorities under our jurisdiction 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.
3. We recognize our 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

1. All individuals, 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.
2. We recognize 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. We

recognize 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, reproductive, and abortion services, and appropriate legal representation if necessary.

3. We recognize 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.

4. We recognize that the right to health includes the right to healthcare – for emergency, preventative, curative, reproductive, rehabilitative and palliative care – that is available, accessible, affordable, and of good quality. The right to health includes information about, and access to, safe and quality sexual, contraceptive, reproductive, and abortion healthcare services.

5. We recognize 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.

6. We recognize 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.

7. We recognize 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 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, we recognize the following:

- (a) 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.

(b) 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.

8. We recognize that 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 their families and must fulfill this obligation by appropriate monitoring and evaluation.

9. We recognize that 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.

10. We 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, we recognize that 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.

#### Principle 21—Social Security

1. With respect to social security, we recognize that noncitizens and members of their families shall enjoy 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 bilateral and multilateral treaties entered into force for the United States. 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.

2. Where the applicable legislation does not allow noncitizens and members of their families a benefit, we recognize that the United States shall 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

1. All individuals, including noncitizens, have the right to establish a family and to provide for and receive the protection thereof.

2. We recognize our 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.

3. We further recognize our 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.

4. We 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.

5. We recognize our 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 interest of the child must be given due consideration in any immigration proceeding that may result in the deportation of a child or parent.

6. We recognize our 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. We undertake to prohibit their employment in work harmful to their morals or health or dangerous to life or likely to interfere with their education. We undertake to set age limits below which the paid employment of child labor should be prohibited and punishable by law.

Principle 23—Protection of Family Unity

1. We recognize that the family is entitled to protection by society and the State. We recognize our obligation to take appropriate legislative, administrative and other measures to ensure the protection of the unity of families whose members include noncitizens.

2. We recognize our obligation to take legislative, administrative and other appropriate measures that fall within our competence 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.

3. We recognize that the United States, on humanitarian grounds, shall favorably consider granting equal treatment, as set forth in paragraph 2 of the present Principle, to other family members of noncitizens.

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

1. We recognize our 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, without distinction as to race, color, language, or national or ethnic origin, to equality before the law, including the enjoyment of all the rights recognized or guaranteed in these Principles.

2. 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 enjoy that individual's own culture, to profess and practice that individual's own religion, or to use that individual's own language.

Principle 25--The Rights of Children

1. Every child, including noncitizen children and citizen children of noncitizen parents, has civil, political, economic, social, and cultural rights. We recognize our obligation to ensure those rights to each child without discrimination of any kind.
2. We recognize the right of each child, including noncitizen children and citizen children of noncitizen parents, to life, survival, and development.
3. We recognize 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.
4. We 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.
5. Recognizing the special needs of children of immigrant communities and their families, government and civil society shall pursue full implementation of children's rights and, in particular, we recognize our obligation to take appropriate measures to ensure that:
  - (a) 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.
  - (b) 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.
  - (c) 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.
  - (d) 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 or reasonable accommodation assistance as needed.

(e) 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.

(f) The 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.

(g) 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.

(h) Each child has the right to a quality education. We 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.

(i) 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.

(j) 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.

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

#### Principle 26—The Rights of Women

1. 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, and, to this end, recognize our obligation:

(a) 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;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination and violence against women, including noncitizen women;

(c) To establish legal protection of the rights of women, including noncitizen women, on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of noncitizen women against any act of discrimination or violence;

(d) To refrain from engaging in any act or practice of discrimination or violence against women, including noncitizen women and to ensure that public authorities and institutions under our jurisdiction shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination and violence against women, including noncitizen women, by any person, organization or enterprise within our jurisdiction;

(f) 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.

(g) To repeal all penal provisions which constitute discrimination against women, including noncitizen women.

2. We recognize our 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 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;

3. We recognize our obligation to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women, including noncitizen women. Having been subject to trafficking shall not be a basis for the deportation of, or criminal sanctions against, women, including noncitizen women.

Principle 27--Accessibility

1. To enable persons with disabilities, including noncitizens, to live independently and participate fully in all aspects of life, we recognize our 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. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

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

2. We also recognize our obligation to take appropriate measures to:

- (a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- (b) Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities, including noncitizens;
- (c) Provide training for governmental authorities and other stakeholders on accessibility issues facing persons with disabilities, including noncitizens;
- (d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

(e) 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;

(f) 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

1. We recognize our obligation to ensure the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to use relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own;

(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. We recognize 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.

3. We 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 and Humanitarian Assistance

1. Noncitizens have:

(a) The right to seek safety in another part of the country;

- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right 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. We 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.

3. 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.

#### Principle 30. National Security and Public Order Limitations

1. We recognize that, under international law, national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation, its territorial integrity or political independence against force or threat of force.

2. We recognize our obligation not to use national security or public order as pretexts for imposing vague or arbitrary limitations. To this end, we recognize that national security and public order may only be invoked when there exist adequate safeguards and effective remedies against abuse.

3. We recognize that the systematic violation of human rights undermines national security and public order and may jeopardize international and domestic peace and security.

4. We recognize our 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 under our jurisdiction, including noncitizens.

Appendix A

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" and 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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