



## A Commonsense Approach: Immigration Policy Solutions *Due Process and Fair Treatment Under the Law*

Many Americans are frustrated with our immigration policies. But research and experience show that it's not enough to focus only on the problems with our current policies. We also need to paint a picture of what the country would look like with workable, commonsense policies in place. This document identifies solutions across a spectrum of issues relating to immigrants and immigration, reflecting the importance of addressing the problems with our immigration policies as broadly as possible.

### Topline Message:

Americans understand that the right to due process under the law is a cornerstone of our commitment to freedom and fairness. Ensuring that every person in the United States, regardless of their immigration status, is guaranteed equal treatment and due process means that an individual should be able to appeal an unfair administrative decision and to receive the same treatment under both immigration and criminal laws. It also means that the police can only stop a person based on evidence or reasonable suspicion of wrongdoing, not racial or ethnic stereotypes.

### Solutions:

#### Restore judicial discretion and review

**What DHS should do:**

- ✓ Restore Section 212(c) of the Immigration and Nationality Act (INA), which enabled certain permanent residents who had been convicted of a crime to avoid removal, to provide for discretionary relief in removal proceedings.
- ✓ Create a right to counsel in all stages of any immigration proceedings.

**What state and federal courts should do:**

- ✓ Ensure the right of individuals in proceedings to present evidence of their contributions to their community and their ties to this country and the right to have a translator present.
- ✓ Apply the *Padilla* decision more broadly in post-conviction proceedings to ensure the right to competent counsel. (In *Padilla*, the U.S. Supreme Court held that criminal defendants have a right to advice from counsel about the potential immigration consequences of their convictions and that failure to provide such advice may constitute ineffective assistance of counsel, in violation of the Sixth Amendment.)
- ✓ Despite the U.S. Supreme Court's decision in *Chaidez* that *Padilla* does not apply retroactively to those convicted prior to March 31, 2010, state courts can and should apply their own state constitutional right to effective assistance of counsel or broader retroactivity principles to grant relief.

## Apply the concept of due process to detention

### What Congress should do:

- ✓ Restore the federal courts' authority to review removal orders and other administrative actions.
- ✓ Eliminate mandatory detention for immigrants with a criminal conviction

### What DHS should do:

- ✓ Limit the issuance of ICE detainers and the transfer of detainees.
- ✓ Improve conditions and end abuses at detention centers.

### What DOJ should do:

- ✓ Implement humane practices in detention by explicitly applying implementation of the regulations issued under the Prison Rape Elimination Act of 2003 to immigration detention facilities.

## Resolve the inconsistency between the definitions of “conviction” and “aggravated felony” under immigration law and criminal law definitions

### What Congress should do:

- ✓ Change the definitions of “conviction” and “aggravated felony” in the immigration law to be consistent with current federal and state criminal laws.

## End racial profiling

### What Congress should do:

- ✓ Enact the End Racial Profiling Act, which would ban profiling based on race, religion, ethnicity, national origin, and gender at the federal, state, and local levels.
- ✓ Eliminate DHS programs that result in racial profiling, e.g., “Secure Communities,” 287(g), and the Criminal Alien Program.

## Talking Points

- In this country, we believe that everyone has rights, regardless of what you look like or where you come from. Central to these rights in our justice system is due process—a day in court, access to lawyers. When we allow some states or law enforcement policies to deny due process to anyone here, we allow them to threaten our core values.
- Our justice system doesn't work unless we treat everyone equally, providing due process. When we restrict anyone's rights, it hurts us all because that's not the kind of country we want to be.

## Examples of Social Media



 **Opportunity Agenda** @oppagenda 20 Mar

This country believes in basic rights for everyone here: a fair day in court, access to lawyers. Protect due process! #humanrights



 **The Opportunity Agenda** shared a link. March 20

We must ensure that every person in the US, regardless of their immigration status, is guaranteed equal treatment and due process - a fair day in court, access to lawyers. Fighting for your rights is the American way. No exceptions.