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

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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.

The research cited in this document is current as of February 2013.
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