



WHITE HOUSE IMMIGRATION PRINCIPLES & POLICIES

ANNOTATED BY THE NATIONAL IMMIGRANT JUSTICE CENTER (NIJC)

Oct. 9, 2017

The National Immigrant Justice Center (NIJC) wholly rejects the Trump administration's October 8 "Immigration Principles and Policies" document. We urge Congress to uphold American values and the rights of immigrants as it debates a path forward to secure protections for 800,000 members of our communities who are losing protection as a result of the Trump administration's elimination of the Deferred Action for Childhood Arrivals (DACA) program. Our elected officials must not be complicit in advancing a legislative and policy agenda that is based in lies and anti-immigrant tropes aimed at the administration's increasingly narrow support base. Lives are in the balance, and the majority of Americans desire durable, realistic, and humane solutions to fix our outdated immigration system.

The ideas in the White House document, though disgraceful, are not new. Explicitly nativist and extremist anti-immigrant politicians have put forth these proposals for decades. It is no surprise the document is reported to have been penned by Stephen Miller, White House senior policy advisor, who has a history of openly embracing white nationalism. Furthermore, the president's principles run contrary to U.S. constitutional and statutory law.

To provide legal and historical context for these proposals, NIJC's legal staff have annotated the language from the White House's original document to note some (although not all, by far) of its most glaring falsehoods and proposed illegalities. View the annotations in highlighted italics below.

1. BORDER SECURITY

A. Border Wall. Our porous southern border presents a clear threat to our national security and public safety, and is exploited by drug traffickers and criminal cartels. The Administration therefore proposes completing construction of a wall along the southern border of the United States.

The White House furthers the myth of the "porous southern border" despite all evidence to the contrary. Only weeks before the White House issued this document, the Department of Homeland Security (DHS) released a comprehensive analysis of "southwest border security." Its findings: "With respect to border enforcement outputs, available data indicate that the southwest land border is more difficult to illegally cross today than ever before....With respect to border enforcement outcomes, available data also indicate the lowest number of illegal entries at least since 2000, and likely since the early 1970s."

i. Ensure funding for the southern border wall and associated infrastructure.

The majority of Americans oppose new funding for a border wall and with good reason. There are myriad practical reasons why building a border wall would be unfeasible and foolish, including the fact that much of the land involved is privately owned. Furthermore, this rhetoric promoting “border security” is being used to enlist Congress in supporting policies that deter bona fide asylum seekers from accessing protections on our shores. The migration flow on our southern border is largely women, men, and children seeking safety from horrific violence in Central America. As a matter of principle, building a physical barrier on our border flies in the face of our American values of welcoming people seeking refuge. Does the White House want to see children drowning when coming to the United States because we have blocked their access?

ii. Authorize the Department of Homeland Security (DHS) to raise, collect, and use certain processing fees from immigration benefit applications and border crossings for functions related to border security, physical infrastructure, and law enforcement.

U.S. Customs and Border Protection (CBP) is already the largest law enforcement agency in the nation, with staffing nearly three times what it was only 20 years ago. The agency is notorious for rampant corruption, misconduct and abuse by agents, and poor management, with internal accountability mechanisms so weak that DHS’s own Advisory Council reported in 2016 that the agency is “vulnerable to a corruption scandal that could potentially threaten the security of our nation.”

iii. Improve infrastructure and security on the northern border.

The most alarming trend at the northern U.S. border over the past year is the unprecedented numbers of asylum seekers attempting to leave the United States for Canada. In many cases, people walked northward across the border through treacherous winter conditions to avoid Canadian ports of entry because they fear being returned to the United States.

B. Unaccompanied Alien Children. Loopholes in current law prevent “Unaccompanied Alien Children” (UACs) that arrive in the country illegally from being removed. Rather than being deported, they are instead sheltered by the Department of Health and Human Services at taxpayer expense, and subsequently released to the custody of a parent or family member—who often lack lawful status in the United States themselves. These loopholes in current law create a dramatic pull factor for additional illegal immigration and in recent years, there has been a significant increase in the apprehensions of UACs at our southern border. Therefore, the Administration proposes amending current law to ensure the expeditious return of UACs and family units.

The provisions of law the White House refers to here are not “loopholes,” they are vital and minimal safeguards to ensure that children--again, in case you missed it Mr. President, CHILDREN--are granted meager due process protections and the ability to articulate their claims to protection under law when deportation would return them to harm. The ideas set forward here are recycled from bills championed by anti-immigrant lawmakers attempting to demonize Central American youth, most recently in H.R. 495, the cynically named “[Protection of Children Act](#)” introduced by Congressman John Carter. These are [shameful proposals](#) that violate the United States’ obligations under international law and our longstanding national commitment to provide a safe haven for those in need of asylum.

- i. Amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVRPA) to treat all UACs the same regardless of their country of origin, so long as they are not victims of human trafficking and can be safely returned home or removed to safe third countries.

The protections [afforded to immigrant children by the TVPRA](#) are minimal and should be expanded, not restricted. These protections include placing children in non-expedited deportation proceedings so they receive an opportunity to be heard by an immigration judge and ensuring that children are exempted from some of the technical procedural requirements that would otherwise bar legitimate refugee children from receiving protection. Immigrant children arriving alone are uniquely vulnerable--fleeing violence at a tender age without a caregiver to guide them--yet they are not entitled to appointed counsel. Some children, including those who have been sexually abused or who have witnessed the murder of friends, struggle to explain their stories to border guards and/or under interrogation by government prosecutors. [Most advocates say it's impossible.](#) These kids need more protections, not fewer.

- ii. Clarify that alien minors who are not UACs (accompanied by a parent or legal guardian or have a parent or legal guardian in the United States available to provide care and physical custody) are not entitled to the presumptions or protections granted to UACs.

Such a radical overhaul would subject many children to indefinite detention in Immigration and Customs Enforcement (ICE) custody, rather than the Office of Refugee Resettlement which currently provides care for unaccompanied children. ICE, as [widely](#) and [continually documented](#), is incapable of providing a safe and appropriate environment for children. Let’s be very clear about what the White House is proposing here: they want to make it easier to deport children to their death.

iii. Terminate the Flores Settlement Agreement (FSA) by passing legislation stipulating care standards for minors in custody and clarify corresponding provisions of the TVPRA that supersede the FSA.

Even after repeated federal court rebukes of its immigration agenda, the administration still has yet to learn it does not get to just dismiss judicial mandates it does not like. While a good faith effort to codify appropriate standards of care for children in immigration custody would be welcome, this section demonstrates a bad faith indifference to whether children are harmed in custody. DHS regularly and consistently fails to comply with the standards of care under the Flores Settlement Agreement for children in ICE and CBP custody. Even were Congress to pass evidence-based care standards for noncitizen children in civil immigration detention, both history and the present strongly suggest that DHS would be incapable of compliance.

iv. Amend the definition of “special immigrant,” as it pertains to juveniles, to require that the applicant prove that reunification with both parents are not viable due to abuse, neglect, or abandonment and that the applicant is a victim of trafficking. The current legal definition is abused, and provides another avenue for illicit entry.

This is not only false, but deliberately misleading. There is no evidence that Special Immigrant Juvenile Status (SIJS) spurs so-called “illicit entry.” What appears to bother Stephen Miller, Jeff Sessions, and their fellow travelers is that juvenile judges with child welfare expertise are recognizing the abuse, neglect, and abandonment suffered by some children in accordance with a law intended to protect those very children. Here, the White House raises the false specter of abuse of that law to shield its true purpose: eliminate protection for children fleeing harm. Requiring that children seeking SIJS protection not only suffer abuse, abandonment, or neglect, but also human trafficking--a complex legal definition--is a deliberate poison pill intended to prevent as many noncitizen children as possible from obtaining protection in the U.S.

v. Repeal the requirement that an asylum officer have initial jurisdiction over UAC asylum applications to expedite processing.

The “unaccompanied alien child” designation ensures limited but crucial protections for young survivors of torture and other abuse. Efforts to weaken these protections are cruel. NIJC client Natalie (pseudonym) suffered years of sexual and emotional abuse at the hands of a family member in her country of birth before she fled to the United States when she was twelve. Because of the depth of the trauma she endured, Natalie was not able to articulate the reasons for her flight to any immigration official she encountered. Only after rebuilding trust with her mother and learning to feel safe in her surroundings did Natalie reveal why she had fled her country. Because of the protection afforded to her as an unaccompanied immigrant child under current immigration laws, Natalie was able

to present her asylum claim in a non-adversarial interview with an asylum officer trained to interview children. She remained eligible for protection despite having applied more than a year after arriving in the United States, a lapse of time that disqualifies most adults from asylum protection. Natalie was ultimately granted asylum, protection that would have been denied her were the policies described here in place.

C. Asylum Reform. The massive asylum backlog has allowed illegal immigrants to enter and stay in the United States by exploiting asylum loopholes. There are more than 270,000 pending cases in the asylum backlog before USCIS, and approximately 250,000 asylum cases before EOIR. Therefore, the Administration proposes correcting the systemic deficiencies that created that backlog.

We are shaking our heads at the duplicity of the White House blaming immigrants for the crippling backlog in the nation's asylum adjudication system that is due entirely to the government's failure to [properly fund the immigration court system](#) and the agency's own [mismanagement](#). The proposals put forward here incorporate many of the most hateful provisions of bill introduced over the years to undermine the United States' standing as a refuge for those in need, such as H.R. 391, the so-called "[Asylum Reform and Border Protection Act](#)", a repeat player introduced yet again this session in the House of Representatives.

i. Significantly tighten standards and eliminate loopholes in our asylum system.

We invite any of the White House staffers involved in the drafting of this document to take on pro bono representation of a detained asylum seeker and find out just how difficult it is to win asylum in the United States, even for those with the strongest of claims. In [some parts of the country](#) where immigration judges grant asylum to fewer than five percent of applicants, it's nearly impossible for most bona fide asylum seekers to obtain protection. If reform is needed, it's to ensure that more--not fewer--legitimate asylum seekers who seek asylum receive it.

ii. Elevate the threshold standard of proof in credible fear interviews.

The credible fear interview is a preliminary screening that is always followed by a full adjudication of the applicant's asylum claim. These screenings are already challenging for recently arrived asylum seekers, often young women, men, and children not yet ready or able to discuss the trauma they have fled. The non-partisan United States Commission on International Religious Freedom [has repeatedly found that](#) the flawed expedited processing in place at our southern border already returns bona fide asylum seekers to harm. Elevating the credible fear standard will mean returning more men, women and children to their persecutors.

iii. Impose and enforce penalties for the filing of frivolous, baseless, or fraudulent asylum applications, and expand the use of expedited removal as appropriate.

There is [no evidence](#) supporting the White House's asylum fraud claims, which here are recycled from anti-immigrant voices over the decades.

iv. Close loopholes in the law to bar terrorist aliens from entering the country and receiving any immigration benefits.

Loopholes?! The existing so-called “terrorism-related” bars to protection under the asylum laws [are so broad](#) that a woman who made a sandwich for a former freedom fighter--decades ago and under duress --could be denied asylum.

v. Clarify and enhance the legal definition of “aggravated felony” to ensure that criminal aliens do not receive certain immigration benefits.

The “aggravated felony” definition is [bloated and over-broad](#). It includes dozens of offenses, many of which are neither felonies nor aggravated, which not only trigger deportation but preclude eligibility for asylum and myriad other protections. Are we really a nation that denies asylum to a bona fide refugee on the basis of a shoplifting offense? We have been since 1996, when the current “aggravated felony” definition was written.

vi. Expand the ability to return asylum seekers to safe third countries.

vii. Ensure only appropriate use of parole authority for aliens with credible fear or asylum claims, to deter meritless claims and ensure the swift removal of those whose claims are denied.

By this, the White House means: Continue the now-entrenched [Trump-era practice](#) of jailing all asylum seekers for the duration of their immigration court proceedings, regardless of individual factors. Such blanket denial policies are being applied even when asylum seekers win their cases before immigration judges. [Human Rights First recently told the stories](#) of those impacted by this senseless policy change, including: “a gay man detained for fourteen months after fleeing his West African country, a torture survivor from Burkina Faso detained for seventeen months, a Cuban political opposition activist detained for seven months, a political activist from Singapore who was detained for seven months, a Honduran grandmother with two U.S. citizen relatives who was denied parole, and a Venezuelan human rights lawyer detained for nearly six months...” Continued detention exacerbates physical and emotional trauma that many asylum seekers experience. This policy [violates international human rights norms](#) and endangers the lives of those held in a [vast and poorly managed network](#) of prisons and jails.

viii. Prevent aliens who have been granted asylum or who entered as refugees from obtaining lawful permanent resident status if they are convicted of an aggravated felony.

This proposal undermines the spirit of an immigration law provision which recognizes that refugees and asylees have endured unusual harms and ought to be given at least the opportunity to ask an immigration judge to waive a past criminal conviction in order to ensure family unity and humanitarian protections.

ix. Require review of the asylee or refugee status of an alien who returns to their home country absent a material change in circumstances or country conditions.

D. Ensure Swift Border Returns. Immigration judges and supporting personnel face an enormous case backlog, which cripples our ability to remove illegal immigrants in a timely manner. The Administration therefore proposes providing additional resources to reduce the immigration court backlog and ensure swift return of illegal border crossers.

i. Seek appropriations to hire an additional 370 immigration judges.

ii. Establish performance metrics for immigration judges.

Though performance metrics should, on their face, be the sort of thing that immigration advocates would support, experience tells us that this language is shorthand for the imposition of unrealistic and impossible-to-administer case-completion goals that thwart due process. In recent months, the administration has issued guidance instructing immigration judges to refuse continuances in many instances, and detailed judges to border courts without adequate notice and without taking into account any of the due process considerations implicated. These measures strip immigration judges of crucial independence and discretion to administer their own dockets. NIJC represents a refugee from Sierra Leone who suffered in detention for nine months while inefficiencies and misguided case prioritization policies caused his case to be bounced around for months of delay. An immigration judge's mission should be focused on the fair adjudication of cases. Docketing requirements and performance metrics linked to anything other than this goal are driven by politics and have no place in our legal system.

iii. Seek appropriations to hire an additional 1,000 U.S. Immigration and Customs Enforcement (ICE) attorneys, with sufficient support personnel.

iv. Ensure sufficient resources for detention.

What this administration wants is \$2.7 billion to lock up more than 50,000 immigrants each day, a historic bid for the mass incarceration of immigrants at a time when the number of individuals already jailed each day is historically high. And while planning

this expansion, ICE has been unnervingly up front about its plans to weaken basic standards for health, safety, and civil rights in immigration detention. ICE uses its detention beds to hold asylum seekers in punishing conditions and to tear long-time community members from their families; now is the time to dismantle and reform this system, not expand it.

E. Inadmissible Aliens. The current statutory grounds for inadmissibility are too broad, and allow for the admission of individuals who threaten our public safety. Therefore, the Administration proposes expanding the criteria that render aliens inadmissible and ensure that such aliens are maintained in continuous custody until removal.

i. Expand the grounds of inadmissibility to include gang membership.

Here the White House is referring to H.R. 3697, the so-called “Criminal Alien Gang Removal Act” which passed the House of Representatives in September, was endorsed by the White House, and included in S. 1937, the “Border Security and Deferred Action Recipient Relief Act” recently introduced by Senator Jeff Flake. This bill is poisonous--purporting to use concerns for public safety as cover for a legislative vehicle that targets young Central American men and women for deportation, without regard to whether such deportation will return them to persecution or death. The bill renders people--including children--who have never committed or supported a single criminal act subject to deportation simply because of where they live or with whom they spend their time. 350 civil society organizations including the NAACP joined a letter condemning this bill prior to its passage in the House.

ii. Expand the grounds of inadmissibility to include those who have been convicted of an aggravated felony; identity theft; fraud related to Social Security benefits; domestic violence; child abuse; drunk driving offenses; failure to register as a sex offender; or certain firearm offenses, including the unlawful purchase, sale, possession, or carrying of a firearm.

iii. Expand the grounds of inadmissibility to include former spouses and children of individuals engaged in drug trafficking and trafficking in persons, if the official determines the divorce was a sham or the family members continue to receive benefits from the illicit activity.

Here’s a fact we want to scream from the rooftops: the grounds of deportability and inadmissibility are already tragically overbroad. First and foremost, these grounds give the government unfettered authority to attempt to remove individuals without lawful permission to enter or remain in the United States. On top of that, the criminal and conduct-based grounds of removability are so punishing as to be triggered by conviction

for possession of one joint of marijuana. There is no reasonable policy justification to expand these grounds; proposals to do so are driven by anti-immigrant animus.

F. Discourage Illegal Re-entry. Many Americans are victims of crime committed by individuals who have repeatedly entered the United States illegally, which also undermines the integrity of the entire immigration system. Therefore, the Administration proposes increasing penalties for repeat illegal border crossers and those with prior deportations.

Illegal reentry is a nonviolent offense, consisting of an unlawful entry or attempt to enter the United States after a prior removal. Illegal reentry is already the second most prosecuted federal offense in the United States with an average sentence of 15 months. Increasing the scope and severity of such prosecutions is bad policy in every sense, ballooning the U.S. prison population for political gain.

G. Facilitate the Removal of Illegal Aliens from Partner Nations. Current barriers prevent the Federal Government from providing assistance to partner nations for the purpose of removing aliens from third countries whose ultimate intent is entering the United States. Therefore, the Administration proposes authorizing DHS to provide foreign assistance to partner nations to support migration management efforts conducted by those nations. This will allow DHS to improve the ability of Central and South American countries to curb northbound migration flows and to interrupt ongoing human smuggling, which will also substantially reduce pressures on U.S. taxpayers.

What this amounts to is a request to authorize the payment of United States taxpayer funds to other countries to detain and deport people seeking asylum, in violation of international treaties. It is also a request in denial of reality, which is that the majority of migrants originating from the northern triangle of Central America are refugees. Mexico, which already receives United States funding to assist in its immigration enforcement activities, received more asylum applications in the first three months of 2017 than it did in all of 2015. Rather than pursue myopic and counterproductive foreign policy goals, the White House should engage in meaningful regional collaboration to address the humanitarian crisis in Central America.

H. Expedited Removal. Limited categories of aliens are currently subject to expedited removal, which erodes border integrity and control by impeding the ability of the Federal Government to efficiently and quickly remove inadmissible and deportable aliens from the United States. The Administration seeks to expand the grounds of removability and the categories of aliens subject to expedited removal and by ensuring that only aliens with meritorious valid claims of persecution can circumvent expedited removal.

Expedited removals amount to summary removals without a hearing before an immigration judge--an immigration officer issues the removal order and there is no review of the order. This absolute lack of review means that immigration agents can deprive individuals of due process

with impunity. One of the most troubling yet common examples of this is the summary removal of bona fide asylum seekers. The denial of a fair day in court is often a component of the repressive regimes or failed states that the asylum seekers we serve are fleeing. In August 2016, the independent and bipartisan United States Commission on International Religious Freedom reported on evidence indicating that DHS officials deliberately deny individuals facing expedited removal the opportunity to express a fear of persecution or torture.

2. INTERIOR ENFORCEMENT

A. Sanctuary Cities. Hundreds of sanctuary jurisdictions release dangerous criminals and empower violent cartels like MS-13 by refusing to turn over incarcerated criminal aliens to Federal authorities.

There is literally no evidence to support this provocative claim. There IS evidence demonstrating that sanctuary jurisdictions (defined as counties that do not cooperate with federal immigration enforcement by holding individuals in jail longer than they would otherwise--that is, beyond when they would be released) have lower crime rates and stronger economies than similar jurisdictions without such policies. The policies below--mirrored in worrisome legislative proposals like H.R. 3003, the so-called "No Sanctuary for Criminals Act"--ignore the voices of local law enforcement officials who understand that entwining local law enforcement and federal immigration enforcement further undermines community trust in the police.

Therefore, the Administration proposes blocking sanctuary cities from receiving certain grants or cooperative agreements administered or awarded by the Departments of Justice and Homeland Security

- i. Restrict such grants from being issued to:
 - a. Any state or local jurisdiction that fails to cooperate with any United States government entity regarding enforcement of federal immigration laws;
 - b. Any entity that provides services or benefits to aliens not entitled to receive them under existing Federal law; and
 - c. Any state or local jurisdiction that provides more favorable plea agreements or sentencing for alien criminal defendants for the purpose of immigration consequences of convictions.

These proposals raise serious constitutional concerns and myriad federalism concerns by crippling localities from enacting sound policies that protect their communities. The 10th Amendment of the U.S. Constitution protects states and

localities from the federal government's efforts to "commandeer" their resources to enforce federal law. It is no surprise that Attorney General Jeff Sessions' first effort to formally condition the granting of federal policing grants on localities' willingness to cooperate with federal immigration enforcement was swiftly met with a preliminary injunction issued by the Northern District of Illinois.

- ii. Clarify ICE's detainer authority, and States' and localities' ability to honor that authority, so that States will continue to detain an individual pursuant to civil immigration law for up to 48 hours so that ICE may assume custody.

Here the White House is literally vowing to force states and localities to act in violation of the Fourth Amendment of the Constitution, and in many cases in violation of binding court orders and consent decrees. Holding individuals longer than they would otherwise be held so ICE can come pick them up violates the basic protections of the Fourth Amendment of the U.S. Constitution. Moreover, ICE has conceded in class action litigation that an immigration detainer confers no authority to state and localities to hold the person. Recently the highest court of Massachusetts found that compliance with immigration detainees violates state law as well.

- iii. Provide indemnification for State and local governments to protect them from civil liability based solely on compliance with immigration detainees and transportation of alien detainees.

The fact that the White House finds it necessary to require indemnification for states and localities complying with the policies put forward in this document tells us everything we need to know. Even the White House understands that the policies they are proposing are unlawful.

- iv. Require State and local jurisdictions to provide all information requested by ICE relating to aliens in their custody and the circumstances surrounding their detention.

As discussed, above, this proposal implicates serious federalism and 10th Amendment concerns. DHS already obtains the majority of this type of information through the mandatory Secure Communities information-sharing program, a controversial program previously terminated by the Obama administration after irreversibly harming community trust in local police and spurring widespread racial profiling.

- v. Clarify the definition of a criminal conviction for immigration purposes, to prevent jurisdictions from vacating or modifying criminal convictions to protect illegal immigrants, and roll back erosion of the criminal grounds of removal by courts under the "categorical approach."

The definition of “conviction” in the Immigration and Nationality Act (8 U.S.C. § 1101(a)(48)) is already so broad that many immigrants face deportation for offenses that are not considered convictions in their state criminal courts. For example, a conviction that has been vacated by a criminal court in recognition of the individual’s successful completion of a rehabilitative program remains a valid conviction for immigration purposes. In addition, the current statutory scheme covers crimes involving moral turpitude, which are sort of “know it when I see it” offenses. In many cases, these over-broad definitions have blocked immigration judges from being able to use any discretion to weigh whether other factors in an individual’s case warrants relief. Astrid, an Illinois mother and a survivor of severe abuse, faced years of detention and separation from her children as she sought protection after serving time for a criminal conviction related to a drug offense.

The “categorical approach” has been used by U.S. federal courts for over a century to determine whether a conviction triggers deportation and ensure individuals are not removed from the United States if their conviction is not tied to a crime for which Congress intended to attach immigration consequences. (See a helpful overview from the Immigrant Defense Project.) The Supreme Court has long held (most recently in 2012 in Moncrieffe v. Holder) that immigration judges must not conduct “mini-trials” during deportation proceedings to relitigate convictions already secured in criminal court.

Rolling back ample Supreme Court precedent regarding the categorical approach is another attempt by the administration to delegitimize the judicial branch. It also is contrary to the significant policy concerns that motivated the approach. Immigration judges (and worse, DHS officials) are in no position to re-adjudicate an individual’s criminal conviction, particularly in a court setting where the Sixth Amendment guarantee of appointed counsel does not apply, and where the evidentiary burdens are almost always on the noncitizen.

B. Immigration Authority for States and Localities. The prior Administration suppressed cooperative partnerships between the Federal Government and State or local governments that wanted to help with immigration enforcement, undermining the security of our communities. Therefore, the Administration proposes enhancing State and local cooperation with Federal immigration law enforcement in order to ensure national security and public safety.

- i. Clarify the authority of State and local governments to investigate, arrest, detain, or transfer to Federal custody aliens for purposes of enforcing Federal immigration laws when done in cooperation with DHS.

This proposal is not a clarification but a massive reorientation of our immigration system. As the Supreme Court held in [Arizona v. United States](#) in 2012, state and local governments have very limited, prescribed authority to participate in civil immigration enforcement.

ii. Authorize State and local governments to pass legislation that will support Federal law enforcement efforts.

iii. Incentivize State and local governments to enter into agreements with the Federal Government regarding immigration enforcement efforts.

Here the White House is referring to “287(g) agreements,” named after the section of the Immigration and Nationality Act that allows localities to enter into agreements with DHS to deputize their local police to enforce federal immigration law. [Investigation](#) after [investigation](#) has found 287(g) agreements to result in rampant racial profiling and civil rights abuses. Department of Justice investigations in [Maricopa County, AZ](#) and [Alamance County, NC](#) found that in both jurisdictions the sheriff’s offices, working under 287(g) agreements, engaged in unconstitutional police practices including racial profiling and the unlawful detention and arrests of Latinos.

iv. Provide the same extent of immunity to State and local law enforcement agencies performing immigration enforcement duties within the scope of their official role as is provided to Federal law enforcement agencies.

C. Visa Overstays. Visa overstays account for roughly 40 percent of illegal immigration. The Administration therefore proposes strengthening the removal processes for those who overstay or otherwise violate the terms of their visas, and implementing measures to prevent future visa overstays which may account for a growing percentage of illegal immigration.

i. Discourage visa overstays by classifying such conduct as a misdemeanor.

This proposal makes unlawful presence a criminal offense. If put into practice, it would immediately criminalize hundreds of thousands of individuals purely on the basis of status. This idea—one floated from time to time by extremist anti-immigrant lawmakers such as Congressman James Sensenbrenner—would mark a [radical departure](#) from the existing immigration law structure and subject entire communities to pointless prosecutions.

ii. Require that all nonimmigrant visas held by an alien be cancelled when any one nonimmigrant visa held by that alien is cancelled, to ensure that if an alien abuses one

type of visa, he cannot circumvent the immigration system by then relying on another type of visa to enter the United States.

iii. Bar all visa overstays from immigration benefits for a certain period of time with no waiver.

This proposal is intended to preclude spouses of United States citizens with deep ties to their communities from obtaining lawful status. Depriving U.S. citizens of the right to live with their spouses--in many cases the parents of their children--is distinctly un-American. Our laws should protect family integrity; not needlessly create single-parent households.

iv. Clarify that the government does not bear any expense for legal counsel for any visa overstay in removal or related proceedings.

This is already the law. No immigrant facing removal proceedings is entitled to appointed counsel, regardless of her age or vulnerability or how remote the location of the jail where she is held. For this reason, only 37 percent of all immigrants nationally have a lawyer by their side as they defend against deportation in front of an immigration judge, opposed by a government-funded prosecutor. Apparently the White House just wanted to remind us of this grim reality.

v. Require DHS to provide all available data relating to any deportable alien to the Department of Justice's National Crime Information Center for purposes of that alien's inclusion in the Immigration Violators File, with the exception of aliens who cooperate with DHS on criminal investigations.

vi. Enhance the vetting of bond sponsors for those aliens who enter without inspection, to ensure that bond sponsors undergo thorough background checks prior to being eligible to post or receive a bond.

This proposal will have a chilling effect on people who would otherwise pay the bond for a detained noncitizen to get out of immigration detention, with the ultimate goal of making it even harder than it already is to secure release from immigration detention. Given that bond sponsors must already have lawful immigration status in the U.S., a background check requirement would amount to a fishing expedition designed to scare people off.

vii. Permit the Department of State to release certain visa records to foreign governments on a case-by-case basis when sharing is in the U.S. national interest.

viii. Permit the Department of State to review the criminal background of foreign diplomats or government officials contained in the National Crime Information Center

database before visa adjudication, regardless of whether the applicant's fingerprints are in the database.

D. Necessary Resources. The relatively small number of ICE officers is grossly inadequate to serve a nation of 320 million people with tens of millions of tourists and visitors crossing U.S. ports of entry every year. Therefore, the Administration proposes providing more resources that are vitally needed to enforce visa laws, restore immigration enforcement, and dismantle criminal gangs, networks and cartels.

It is long past time for Congress to cut, not expand ICE's bloated budget. The number of ICE agents has already tripled since 2003, reflecting a growth in spending by 85%, from \$3.3 billion when the agency was created to \$6.1 billion today. With new agents, ICE will expand interior enforcement operations that target grandmothers like Genoveva Ramirez, teenagers en route to the prom like Diego Puma, and DACA recipients like Juan Montel Montes.

- i. Seek appropriations to hire an additional 10,000 ICE officers.
- ii. Seek appropriations to hire an additional 300 Federal prosecutors to support Federal immigration prosecution efforts.
- iii. Reforms to help expedite the responsible addition of new ICE personnel.

E. Detention Authority. Various laws and judicial rulings have eroded ICE's ability to detain illegal immigrants (including criminal aliens), such that criminal aliens are released from ICE custody into our communities. Therefore, the Administration proposes terminating outdated catch-and-release laws that make it difficult to remove illegal immigrants.

ICE's ability and authority to detain immigrants is broad and overreaching and in many instances constitutionally suspect. What the White House refers to as "erosions" are efforts by the courts to put minimal constitutional checks on a rogue agency's ability to engage in unlawful indefinite detention practices for those facing civil removal charges. ICE operates a sprawling network of more than 200 jails and prisons and routinely whitewashes the abuses that occur inside its walls. The United Nations Working Group on Arbitrary Detention (UNWGAD) recently found that the United States' expanding use of immigration detention is "excessive" and "cannot be justified based on legitimate necessity." Further, the UNWGAD found the government's drive to expand detention "influenced by economic incentives" driven by the use of privately owned prisons contracting with ICE. The average length of detention, UNWGAD found, is similarly problematic, often so severe as to "deter individuals from continuing their immigration claims" and resulting in "asylum seekers revoking their legitimate immigration claims."

- i. Ensure public safety and national security by providing a legislative fix for the

Zadvydas loophole, and authorizing ICE, consistent with the Constitution, to retain custody of illegal aliens whose home countries will not accept their repatriation.

The Supreme Court in Zadvydas v. Davis did not create a “loophole,” but found that the government cannot indefinitely detain an immigrant in civil immigration detention. “A statute permitting indefinite detention of an alien would raise a serious constitutional problem.” Try as the White House may, congressional action cannot legislate away constitutional due process protections. To do so would mean that individuals could languish years in jail, with no justification, and would render such detention punitive. Any effort to reintroduce indefinite detention would be swiftly struck down by the Supreme Court as unconstitutional.

ii. Require the detention of an alien: (1) who was not inspected and admitted into the United States, who holds a revoked nonimmigrant visa (or other nonimmigrant admission document), or who is deportable for failing to maintain nonimmigrant status; and (2) who has been charged in the United States with a crime that resulted in the death or serious bodily injury of another person.

Here the White House proposes expanding the curious legal concept of “mandatory detention” that already subjects huge categories of immigrants--including arriving asylum seekers and long-time residents of the United States--to prolonged detention without any opportunity for a bond hearing. We would encourage Mr. Miller and other proponents of this policy to [read the stories](#) of those men, women and children whose lives are permanently impacted by this deprivation of due process. There is no reason to deny immigrants in detention the basic protection of a bond hearing.

F. Legal Workforce. Immigrants who come here illegally and enter the workforce undermine job opportunities and reduce wages for American workers, as does the abuse of visa programs. Therefore, the Administration increasing employment verification and other protections for U.S. workers.

Requiring U.S. employers to use an electronic employment eligibility verification system [will harm the American economy and American workers](#) while doing little to end the hiring of undocumented workers. Unless currently unauthorized workers are provided a path to legalizing their immigration status, E-Verify will impose new costs on employers, drive jobs into the underground economy, increase unemployment, and deprive the government of revenue. Moreover, this White House talking point relies on the falsehood that immigration hurts the economy. Instead, the [overwhelming consensus](#) is that immigration grows the economy, and that immigration restriction would harm the economy for all Americans.

- i. Require the use of the electronic status-verification system (“E-Verify”) to ensure the maintenance of a legal workforce in the United States.
- ii. Preempt any State or local law relating to employment of unauthorized aliens.
- iii. Impose strong penalties, including debarment of Federal contractors, for failure to comply with E-Verify.
- iv. Increase penalties for any person or entity engaging in a pattern or practice of violations.
- v. Require the Social Security Administration to disclose information to DHS to be used in the enforcement of immigration laws.
- vi. Expand the definition of unlawful employment discrimination to include replacement of U.S. citizen workers by nonimmigrant workers or the preferential hiring of such foreign workers over U.S. citizen workers.
- vii. Strengthen laws prohibiting document fraud related to employment or to any other immigration benefit.

G. Deportable Aliens. The categories of aliens that currently qualify for deportation are insufficiently broad to remove aliens who pose a threat to the security of the American public. Therefore, the Administration proposes expanding and clarifying the type of aliens who present a danger to Americans and should therefore be removable on an expedited basis.

The grounds of deportability, like the grounds of inadmissibility discussed above, are already so sweeping and overly expansive that they subject long-time lawful permanent residents to detention and deportation for conduct as relatively minor as a misdemeanor drug offense. Further expansion would devastate immigrant communities. Even worse, the vague reference to removals on an “expedited basis” suggests a chilling disregard for due process protections for lawfully present immigrants facing removal after years or even decades of residence in the United States.

- i. Expand grounds of deportability to explicitly include gang members.

See above discussion regarding H.R. 3697, the so-called “Criminal Alien Gang Removal Act.” This bill and the policies promoted here will subject more immigrants like Wilmer Catalan Ramirez to deportation because of false allegations of gang affiliation that derive from faulty gang databases and endemic racial profiling.

ii. Expand the grounds of deportability to include those convicted of multiple drunk driving offenses or a single offense involving death or serious injury.

iii. Expand the grounds of deportability to include those who fail to register as a sex offender.

iv. Clarify the technical definition of “aggravated felony” by referring to “an offense relating to” each of the categories of crimes, rather than specifying the crimes themselves. This will ensure certain kinds of homicide, sex offenses, and trafficking offenses are encompassed within the statutory definition.

The “aggravated felony” definition, which blocks individuals from most forms of immigration status and relief, includes more than 20 different subcategories of crime and can encompass offenses as minor as petty shoplifting. This provision, which triggers mandatory detention and frequently mandatory deportation, serves to permanently separate families even when the individual facing removal has completely turned his or her life around. Consider the case of [Kenault Lawrence](#), an all-star American high school athlete who was deported to his birth country of Jamaica on the basis of a marijuana conviction adjudicated to constitute an aggravated felony; now his United States citizen wife struggles to raise their young son alone without the father who adores him. Expanding the “aggravated felony” definition even further will mean more children separated from their parents.

H. Gang Members. Today, known gang members are still able to win immigration benefits despite the dangers they pose to American society. As such, the Administration proposes implementing measures that would deny gang members and those associated with criminal gangs from receiving immigration benefits.

The White House uses “gang members” to clothe a trojan horse they hope to use to make it as easy as possible to deport as many noncitizens as possible. In practice, being a “known gang member” or gang “associate” is as simple as [wearing the wrong t-shirt](#) or [living in the wrong neighborhood](#). Making such vague terms operable in law would hand the administration a blunt instrument, ripe for abuse, to get rid of any immigrant they do not like while largely bypassing pesky judicial branch review and substantially chilling fundamental freedoms of speech and association. This provision is likely intended to refer to H.R. 3697, the so-called [“Criminal Alien Gang Member Removal Act](#) and provisions of S. 1937, the “Border Security and Deferred Action Recipient Relief Act.” Moreover, as if attacking our bedrock Constitutional values wasn’t enough, this policy proposal is redundant, as current law already gives DHS numerous tools to identify, detain, and deport alleged gang members.

I. Visa Security Improvements. Without sufficient resources, the State Department is hindered from adequately vetting visa applicants. As such, the Administration proposes enhancing State Department visa and traveler security resources and authorities.

The United States visa system is widely regarded as one of the most vigorous in the world, making this request yet another example of a solution in search of a problem. Americans are ten times more likely to be buried alive or die in a lightning strike than be killed in a terrorist attack by a foreign-born individual. For the administration, this reality is a nuisance that hinders action they could take to hamper legal immigration and falsely package as “winning” for Americans suffering from economic difficulty.

- i. Expand the Department of State’s authority to use fraud prevention and detection fees for programs and activities to combat all classes of visa fraud within the United States and abroad.
- ii. Ensure funding for the Visa Security Program and facilitate its expansion to all high risk posts.
- iii. Increase the border crossing card fee.
- iv. Grant the Department of State authority to apply the Passport Security Surcharge to the costs of protecting U.S. citizens and their interests overseas, and to include those costs when adjusting the surcharge.
- v. Strengthen laws prohibiting civil and criminal immigration fraud and encourage the use of advanced analytics to proactively detect fraud in immigration benefit applications.

3. MERIT-BASED IMMIGRATION SYSTEM

A. Merit-Based Immigration. The current immigration system prioritizes extended family based chain migration over skills-based immigration and does not serve the national interest. Decades of low-skilled immigration has suppressed wages, fueled unemployment and strained federal resources. Therefore, the Administration proposes establishing a merit-based immigration system that protects U.S. workers and taxpayers, and ending chain migration, to promote financial success and assimilation for newcomers.

The phrase “chain migration” is a cynical rhetorical ploy by the White House that white-washes an effort to prevent families from being together. The White House has endorsed Senator Tom Cotton and Senator David Perdue’s shameful legislative vehicle toward this end, S. 1720, the “Reforming American Immigration for a Strong Economy” (RAISE) Act. The RAISE Act furthers the principles of the alt-right by slashing lawful immigration including refugee resettlement and

ensuring that many immigrants to the United States will be unable to ever reside with close family members. And if humanitarian arguments don't persuade you, consider that the University of Pennsylvania's Wharton School of Business found the RAISE Act would reduce GDP by .7 percent and reduce jobs by 1.3 million over the course of ten years.

- i. End extended-family chain migration by limiting family-based green cards to spouses and minor children and replace it with a merit-based system that prioritizes skills and economic contributions over family connections.

Family connections are at the heart of our national values. Immigration policies that separate families have devastating psychological impacts that harm children most acutely. And in this case, the “economic contributions” the White House references are not rooted in reality. Per the Wharton School study: “... the RAISE Act will lead to less economic growth and fewer jobs than otherwise. Job losses emerge because domestic workers will not fill all the jobs that immigrant workers would have filled.”

- ii. Establish a new, points-based system for the awarding of Green Cards (lawful permanent residents) based on factors that allow individuals to successfully assimilate and support themselves financially.

- iii. Eliminate the “Diversity Visa Lottery.”

The diversity visa lottery is an important tool for safe migration to the United States from underrepresented regions and for people who would otherwise not be able to even travel to the United States without it. The existence of diversity visa winners is especially critical for some small African countries largely unknown to the American people.

- iv. Limit the number of refugees to prevent abuse of the generous U.S. Refugee Admissions Program and allow for effective assimilation of admitted refugees into the fabric of our society.

Here the White House strikes at the heart of the United States' ability to serve as a moral leader. The dramatic reductions in refugee resettlement proposed by the White House will put thousands of lives at risk and harm the refugee resettlement structure for generations to come. Restrictions on refugee resettlement, particularly through a numerical cap, are antithetical to the purpose of admitting refugees to the United States in the first place. The Refugee Act of 1980 was put into place specifically to bring our country into compliance with obligations under the United Nations Refugee Convention, and a program that restricts refugees reneges on that promise, not just through the individual refugees shut out of the United States, but also through the very recognition that the crises that produce refugees often qualify as genocide and thus, by definition, are going to produce large numbers of refugees.