Focus On Opportunity:

*Immigration Policy Solutions*
Acknowledgments

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About The Opportunity Agenda

The Opportunity Agenda was founded in 2004 with the mission of building the national will to expand opportunity in America. Focused on moving hearts, minds, and policy over time, the organization works with social justice groups, leaders, and movements to advance solutions that expand opportunity for everyone. Through active partnerships, The Opportunity Agenda synthesizes and translates research on barriers to opportunity and corresponding solutions; uses communications and media to understand and influence public opinion; and identifies and advocates for policies that improve people’s lives. To learn more about The Opportunity Agenda, go to our website at www.opportunityagenda.org.

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Focus on Opportunity: Immigration Policy Solutions

Immigrants have always been a part of our country’s story, and their contributions are what make our history unique and our collective future promising. Many Americans are understandably frustrated with our immigration policies, but instead of offering real solutions, some politicians are exploiting fears and playing on prejudices, touting extreme approaches that will not work in practice and do not uphold American values. Meanwhile, we know from research and experience around the country that there are concrete solutions that address the challenges posed by current immigration policies. Painting a picture of what our country can look like with these in place is crucial. Merely criticizing current policies is not enough. In fact, with no other solutions available to them, many voters will support the kinds of harsh policies that we know are harmful to immigrants and citizens alike. They are hungry for solutions of some kind, so it is up to us to supply them with real, commonsense solutions that uphold our values and move us forward together.

This document\(^1\) 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. This is a living document that will be updated periodically as good ideas continue to be developed by immigration advocates. We invite readers to submit their ideas for proactive, commonsense solutions. Some of the solutions proposed include the following:

- Providing workplace protections for all
- Reforming U.S. labor law to protect all workers
- Ending forced collaborations between local and federal law enforcement agencies
- Restoring judicial discretion in immigration court and implementing prosecutorial discretion by the agencies tasked with immigration enforcement
- Reforming the Immigration and Nationality Act to reflect U.S. criminal law policies
- Integrating immigrants into their local communities by offering English-language learning programs, driver’s licenses that do not require proof of immigration status, and identity documents that would allow individuals to participate in day-to-day civic engagement
- Promoting community policing programs that involve immigrant outreach
- Expanding access to social services and all levels of education
- Rethinking border policies and demilitarizing the border
- Opening doors to fair housing and equitable banking practices

\(^1\) The research cited in this document is current as of April 2012. This document is intended as general guidance only. It is not intended to, and does not, constitute specific legal advice to lawyers in their capacity representing clients, prospective clients, or other individuals, nor is it intended to be, and does not constitute, specific legal advice to any other individuals. This document does not, and is not intended to, establish an attorney-client relationship. Prior to using this information to provide legal advice to any client, you should verify the information set forth herein, including the application of the information set forth herein to your client’s particular circumstances and the applicability of the information set forth herein in the applicable jurisdiction. Individuals and groups seeking legal advice for themselves with respect to the matters referenced in this document should consult with counsel and should not rely on this document. This document is provided “as is” without warranty of any kind and The Opportunity Agenda assumes no liability for the use or interpretation of information set forth herein.
Prioritizing family reunification

Developing a clear path to citizenship

Wages and Working Conditions

All Americans have the right to be protected against workplace wage and safety violations, regardless of their immigration status. However, some corporations and employers use workers who do not have immigration status to maintain low wages and poor working conditions. States and localities should enforce wage and hour laws and ensure that all workplaces are safe, healthy, and nondiscriminatory.

**Enforcing labor law protections and giving priority to these protections during workplace enforcement actions**

Immigration laws should not be used to prevent workers from reporting or organizing to stop dangerous or unfair working conditions. Disruptive workplace immigration raids harm whole communities, threatening the due process rights of American citizens and immigrants alike. “Silent raids,” or audits of companies’ records, including I-9 employment eligibility verification documentation for all employees, by Immigration and Customs Enforcement (ICE) under the Obama administration—as opposed to the mass arrests of employees at workplaces under the Bush administration—have resulted in the firing of thousands of undocumented workers and increased exploitation of such workers. In the wake of these arrests and firings and the devastating impact they have had on the ability of these workers to support their families, activists and legal scholars argue that employer sanctions, the basis for such workplace raids, should be repealed and labor protections should be enforced. To protect what should be the basis of our economy—enforceable wage standards and safe workplaces for all people in the United States—we must urge the U.S. Department of Labor to:

- Enforce wage and overtime protections for domestic workers.
- Work closely with ICE to ensure that the enforcement of labor laws is given priority over immigration enforcement where there are conflicts in ongoing labor disputes or investigations of labor law violations.

In addition, we must tell Congress to:

- Increase the number of work visas for temporary and permanent employment and create a meaningful pathway to citizenship.
- Enact the federal Power Act—a stalled bill that seeks to prevent employers from using the threat of deportation and immigration raids to retaliate against employees who press for their rights on the job—and grant relief from deportation to qualified workers.
- Repeal employer sanctions and develop policies that provide labor protections to immigrant workers and consider more creative approaches to addressing unauthorized migration.

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5 Protect Our Workers From Exploitation and Retaliation Act, S. 1195 112th Cong. (1st Sess. 2011).

6 Bacon & Ong Hing, supra note 2, at 104-105 (2010). See also Wishnie, supra note 2, at 217.
End guest worker programs that are used to exploit workers who are bound to the employers who sponsor them and have no prospect of becoming permanent residents or U.S. citizens.\

For its part, the Obama administration should pressure DHS/ICE to:

- Give priority to enforcement of labor laws over immigration enforcement where there are conflicts in ongoing labor disputes or investigations of labor law violations.
- Grant deferred action to individuals who are identified as unauthorized in screening workers for employment eligibility during worksite raids.
- Screen and enable eligible individuals to apply for S, T, or U visa status as victims or witnesses.
- End worksite raids, which are expensive and have a disproportionately negative effect on unauthorized workers who are vulnerable to discrimination and exploitation by their employers.\

### Protecting worker safety and rights

Workers who do not have authorized work status form the backbone of some of the most essential and vital industries to our economy, such as construction, meatpacking, poultry, general contracting, and domestic work. However, some of these industries are also among the most hazardous and poorly regulated. We should encourage state legislators to follow the lead of Michigan, which has enacted a law allowing all workers to file workers’ compensation claims.\(^7\) This type of legislation will not increase costs for state Departments of Labor and will force unscrupulous employers to be responsible for workplace injuries.\(^8\)

In addition, government entities should guarantee that all workers, regardless of immigration status, are guaranteed rights consistent with international human rights standards protecting workers. All employers must guarantee their workers a safe and equitable workplace with access to all of the benefits protected by existing laws and treaties.

**State governments** should provide protection to all workers for wages and working conditions and job-related injuries by:

- Allowing undocumented individuals who have been exploited by employers to file workers’ compensation claims.\(^9\)
- Enacting legislation that provides such protections for domestic workers as wage and hour protections, overtime, and protection from sexual harassment and workplace discrimination.\(^10\)
- Vacating the convictions of unauthorized individuals caught up in immigration and/or law enforcement raids who are survivors of trafficking.\(^11\)

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13. Melissa Broudo & Sienna Baskin, Vacating Criminal Convictions for Trafficked Persons: A Legal Memorandum for Advo-
The U.S. Senate should provide for such protections of domestic workers by:

- Ratifying a recently adopted international treaty setting global standards for the protection of domestic workers’ rights.\(^{14}\)

**Ending electronic verification of employment eligibility**

Electronic employment verification systems, including E-Verify, are prone to errors and likely to lead to job losses. A December 2010 report from the Government Accountability Office found systemic inaccuracies in the federal E-Verify program, which allows employers to confirm the immigration status of newly hired workers by checking their identity data against government databases.\(^{15}\) Such systems are likely to lead to thousands of Americans losing their jobs as a result of data errors, and reports have shown that some 47 percent of participating employers unlawfully use E-Verify as a filtering tool to determine immigration status before any hiring decision is made.\(^{16}\) Congress should prevent such employment practices, particularly during an economic downturn, by taking the following actions:

- Provide rigorous oversight of electronic employment verification systems and significant penalties for employers’ misuse of such programs.
- Establish clear complaint and redress procedures for a worker to report an employer’s misuse of verification systems.
- Ensure that any verification system is accurate and workable and part of a broader reform of immigration policy.
- End E-Verify.

**Law Enforcement Programs and Public Safety**

Citizens and immigrants alike want safe communities, and police are increasingly adopting new tools and strategies to ensure public safety. But state anti-immigrant laws that require police to stop or interrogate anyone who “looks like” an undocumented immigrant endanger public safety, diverting law enforcement resources and building distrust of law enforcement across communities, and ultimately make all of us less safe.\(^{17}\) These laws violate the principles of equal justice, fair treatment, and proportionality under our criminal justice system. Finally, it is important to remember that crime has gone down in cities like Phoenix and New York in periods during which immigrants were moving there, indicating that immigrant families often add stability to neighborhoods.\(^{18}\)

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\(^{17}\) For examples of state anti-immigrant laws that have been enacted since 2010, see Support Our Law Enforcement and Safe Neighborhoods Act, S.B. 1070, 42nd Leg., 2d Re. Sess. (Az. 2010); see also, Illegal Immigration Reform and Enforcement Act of 2011, H.B. 87 (Ga. 2011); Beason-Hammon Alabama Taxpayer and Citizen Protection Act, H.B. 56, Pub. Act No. 535 (Ala. 2011); Act No. 69, S.B. 20 (S.C. 2011).

\(^{18}\) Ruben G. Rumbuat & Walter A. Ewing, Immigration Policy Center [HEREINAFTER IPC], *The Myth of Immigrant*
Ending unworkable collaborations between state criminal and federal immigration systems

Over the past 10 years, the federal government has enforced federal immigration laws with the assistance of local law enforcement officers through such programs as “Secure Communities” and 287(g). Some state and local governments have been involved in an ongoing dispute with the Department of Homeland Security (DHS) over the mandatory nature of the federal “Secure Communities” program—a program in which biometric data (e.g., fingerprints) transmitted by state and local law enforcement agencies to the FBI are automatically shared with DHS. Not only does this take away resources from local police organizations, it also destabilizes the relationship between the police and immigrant communities. Such enforcement programs also lead to racial profiling, the targeting of Latino residents, and the erroneous arrests of U.S. citizens by ICE. With the DHS now taking the position that states and localities cannot “opt out” of “Secure Communities,” tensions have developed between state and local governments and the DHS. To further the policy objective of encouraging the cooperation of communities in maintaining public safety, state and local governments should:

► Follow the lead of the Governors of New York and Massachusetts and the commissioners in Cook County, Illinois, in refusing to participate in “Secure Communities,” despite the federal government’s current position that participation is mandatory.

► Continue pressing the Obama administration to terminate “Secure Communities.”

Increasing use of prosecutorial discretion and other forms of discretion

Law enforcement resources would be more effectively used by focusing on preventing serious and violent crimes and protecting the public. Under current immigration laws and policies, however, such resources have been wasted on deporting or removing individuals who are suspected of or found guilty of low-level offenses. Such offenses include minor drug convictions, prostitution, and shoplifting. DHS should increase the use of its discretion to prioritize serious crimes, rather than target low-level offenders, and to monitor the disproportionate sharing of data for persons “suspected” of being immigrants. Although
points of view differ on the issue of whether we as a country should be deporting people based on criminal records, at a minimum we should separate violent crimes from low-level offenses and criminal offenses from immigration violations.

A joint DHS–Department of Justice working group that was formed in August 2011 has been engaged in a case-by-case review of the approximately 300,000 cases pending before the immigration courts, the Board of Immigration Appeals, and federal courts of appeals. To ensure that local Citizenship and Immigration Services (CIS) and ICE officers will implement this policy in an effective manner that is consistent with DHS’s stated enforcement priorities of national security, public safety, and border security, the DHS should take the following actions:

- Identify on an expedited basis “low priority” removal cases that should be administratively closed, particularly in instances where an individual would be eligible for such administrative and potential legislative relief as the DREAM Act and marriage equality laws, and ensure that new cases meet DHS’s enforcement priorities.
- Issue department-wide guidance and training to the field on its prosecutorial discretion policy, including for cases in which final orders of removal have already been issued.
- Grant deferred action—a discretionary decision by ICE not to prosecute an individual who has violated the immigration laws—to undocumented individuals who do not pose a threat to the security of the United States.

In addition, to enable this discretionary policy to be implemented, Congress should:

- Restore the exercise of discretion by immigration judges to determine an individual’s eligibility for relief from deportation.
- Enact legislation for the cancellation of removal of individuals once they have obtained authorization to stay in the United States.
- Exclude criminal misdemeanors, low-level offenses, and nonviolent crimes from the broadly defined categories of crimes for which an individual is inadmissible in Section 212(a) of the Immigration and Nationality Act (INA) and criminal offenses under INA Section 237, which provide for the removal of an individual based on such offenses.

**Due Process**

Americans understand that the right to due process under the law is a cornerstone of our commitment to freedom and fairness. Accordingly, the U.S. Constitution provides due process, habeas corpus, and equal protection under the law to all people in the United States, regardless of their immigration status.

Ensuring that every person in the United States is guaranteed fair treatment and due process means that the police can only stop a person based on evidence or reasonable suspicion of wrongdoing, not racial or ethnic stereotypes. Upon arrest, people should be informed of their legal rights in terms they understand and should be given the opportunity to inform loved ones or an attorney of their whereabouts. By law, police are not allowed to engage in coercive or unreasonable behavior to elicit a confession. At all stages of a criminal or immigration process, judicial officers should have the power to make decisions...
that are fair and reasonable under the circumstances. However, our due process guarantees have often been tenuous in practice, particularly in the immigration context. Everyone deserves his or her day in court and access to attorneys. To protect the right of everyone to fair treatment when facing deprivations of our liberty, we must restore principles of due process, including judicial discretion and review.

**Restoring judicial discretion and review**

American due process is premised on the guarantee of access to the courts and the right to a fair hearing. In 1996, Congress eliminated the discretionary relief from removal provided under Section 212(c) of the Immigration and Nationality Act (INA).\(^{27}\) Now, most immigrants are barred from seeking discretionary relief when they have a conviction for an “aggravated felony” under immigration law, regardless of whether the conviction was actually categorized as a felony, as opposed to a lower offense, under criminal law definitions.\(^{28}\) Due to the lack of discretion afforded under immigration law, many immigrants never get a chance to demonstrate their value and contributions to our communities or their significant ties to this country if they have committed a removable offense—even if that offense occurred several decades ago and even if those individuals have already paid their debts to society through serving out criminal sentences. All immigrants should be provided a fair day in court, including those currently barred from seeking relief.\(^{29}\)

Under current immigration law, federal courts lack the jurisdiction to review many decisions made by DHS personnel. For example, federal courts cannot review direct challenges to removal orders in many contexts.\(^{30}\) The inability to provide oversight has broad implications for the judiciary’s ability to check the power of immigration enforcement agencies to control the entry, presence, and work authorization of immigrants in the United States. The inability to appeal an unfair administrative decision resulting from draconian changes to the laws limits the due process available, often with significant consequences for family and community. Current law also prohibits the federal courts from hearing certain “pattern and practice” challenges of administrative actions or procedures, preventing the judiciary from prescribing remedies that would contribute to a balanced, fairer, and more efficient immigration system.\(^{31}\) To give immigrants access to a full and fair hearing, Congress should:

- Restore Section 212(c) to provide for discretionary relief in removal proceedings.
- Create a right to counsel in all stages of immigration proceedings.\(^{32}\)

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\(^{27}\) Former § 212(c) provided a way for certain permanent residents who had been convicted of a crime to avoid removal. When Congress repealed this section of the INA in 1996, they replaced it with § 240(a), under which a permanent resident convicted of an “aggravated felony” could no longer avoid removal, regardless of the circumstances.

\(^{28}\) Also note that under INA § 101(a)(48)(A), the definition of “conviction” includes any offense for which a person is found “guilty” — including when a person pleads guilty in a deferred adjudication proceeding. See also Bryan Lonegan, Immigration Detention and Removal: A Guide for Detainees and Their Families, The Legal Aid Society 9 (revised June 2007) (definition of conviction includes deferred adjudications and no contest pleas), http://www.aclu-mn.org/pdfs/Immigrant%20Resource%20Center/Immigration%20Detention%20%26%20Removal%20-%20Guide%20for%20Detainees%20and%20Their%20Families%20_English_.pdf (last visited May 7, 2012).


State and federal courts should:

- 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 to ensure the right to competent counsel.  

### Applying concept of due process to detention

The concept of due process should be applied to the detention of immigrants. When an immigrant is held in mandatory detention, immigration judges have no discretion to grant bond, even when the judge has determined that the person is not a danger to the community. The reach of the mandatory detention statute has been challenged with some success, but the government has been pushing its implementation as far as it can. This has resulted in countless immigrants, including families and children, being held in custody for weeks and sometimes years during the pendency of their removal case—wasting taxpayer dollars on detention and destroying community and family support structures. To restore fairness to our system, Congress should:

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

Currently, ICE issues detainers in local and state jails and prisons for individuals suspected of being removable based on inaccurate or incomplete information. Based on the issuance of a detainer, these individuals are then transferred to detention centers that are often far from legal counsel, family, and other resources. These transfers are frequently executed without notice or consideration of strong factors that weigh against such transfers. Detainers and transfers thus strip individuals of their rights to a full and fair immigration hearing and even to challenges based on whether a detainer was properly issued in the first place. These collaborations between the federal immigration system and local policing efforts incentivize racial profiling and other policing techniques that target specific racial or ethnic communities, and the resulting deprivations of liberty can have egregious consequences for family and community. Transfer of detained immigrants should also be limited to the immediate geographical area, and known family members should be made aware of the location of the transferred immigrants. Furthermore, there have been widespread reports of the abuse of immigrants held at detention facilities. To protect the rights of individuals targeted for detention and removal, the DHS should:

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

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33. In *Padilla*, the 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. *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), available at http://www.supremecourt.gov/ opinions/09pdf/08-651.pdf.

34. See In the Matter of Garcia-Arreola, 25 L&N, Dec. 267 (BIA 2010) (holding that the mandatory detention provision, INA § 236(c), applies only to individuals released from non-DHS custody after October 8, 1998 and only if that custody was for an offense listed in § 236(c)(1)(A)-(D)).


36. Id. at 36-38.

37. Id.

For its part, the Department of Justice should:

- 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.\(^{39}\)

### Resolving Inconsistency between Definitions of “Conviction” and “Aggravated Felony” under Immigration Law and Criminal Law Definitions

The notion of fairness for all under our laws dictates that individuals should receive the same treatment under both immigration and criminal laws. Under immigration law, the definition of “conviction” is considerably more expansive than under comparable state criminal law. An immigrant can be found “convicted” even when a criminal court has withheld adjudication of guilt or vacated the conviction after the individual has successfully completed a rehabilitation program.\(^{40}\) In New York State, there is often a preference for participation in deferred adjudication programs. However, participation in these programs usually requires an initial plea of guilty. For purposes of immigration law, a deferred adjudication program that results in the dismissal of all charges is still considered a “conviction” if the defendant had pled guilty.\(^{41}\) These individuals would then face mandatory removal, even though under criminal law their charges have been dismissed.\(^{42}\)

An immigrant convicted of an “aggravated felony” faces mandatory detention and likely deportation. Aggravated felonies permanently bar lawful permanent residents and non-lawful permanent residents from applying for asylum, naturalization, cancellation of removal, and voluntary departure. Over the years, the definition of “aggravated felony” has been greatly expanded to include offenses that are neither felonies nor aggravated under criminal law definitions.\(^{43}\) It is imperative that the Immigration and Nationality Act reflect our common understanding of fairness under the criminal justice system and that both the criminal laws and the immigration laws be used to protect all of our rights to due process, dignity, and fair treatment for all people, regardless of race, ethnicity, socioeconomic class, or immigration status. To restore due process in the immigration system, Congress should:

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

### A Pathway to Citizenship

Immigrants are part of the way forward to strengthening our economy and our communities. The most important way in which our immigration policies are flawed is that the estimated 12 million men, women, and children who are here without authorization have no realistic way to obtain citizenship. Our federal government has the power to change that today through a system in which undocumented immigrants register, pay taxes, and study English. State and local governments do not have the power, under the Constitution, to enact broad immigration reform. However, they should call on Washington to pass comprehensive and workable immigration laws. Legislative resolutions, like those passed in Nebraska, are an effective tool in pressuring Congress to take action now.\(^{44}\)

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40 See supra note 28.
41 Id.
42 See generally, Lonegan, supra note 28.
43 See United States v. Pacheco, 225 F.3d 148 (holding that a misdemeanor conviction with a suspended sentence of more than one year is an “aggravated felony” within the meaning of 8 U.S.C. § 1101(a)(43)(F)&(G)).
Undocumented immigrants pay taxes that add revenues to cash-strapped cities and towns—from payroll taxes to sales tax to Social Security taxes paid by their employers even though these individuals can never receive social security benefits. They also contribute to the moral, cultural, and economic fabric of our communities.

**Developing a clear path to permanent residence and citizenship**

We should proactively develop and implement policies relating to immigrants that uphold our values as a nation and our commitment to equal justice for all. Outmoded immigration policies coupled with aggressive policing measures, such as those implemented by Arizona, Alabama, and Georgia, will only create a two-tiered system of residents in the United States. The federal government should create the opportunity for those individuals already here in the United States to more fully contribute to an open and fair society. Congress should put these individuals on the path to citizenship by taking the following actions:

- Provide safe, legal means for migration through points of entry.
- Eliminate the existing three- and ten-year bars to admissibility.
- Enact laws that create a system that allows individuals already residing in the United States, including undocumented persons, members of multistatus families, refugees, and asylees, to apply for permanent residence by registering, learning English, and continuing to pay taxes.

For its part, the DHS should:

- Issue regulations that would allow spouses and children of lawful permanent residents to file applications for waivers of the three- and ten-year bars to admissibility based on being “unlawfully present” in the United States, which would be processed by U.S. Citizenship and Immigration Services (USCIS) before these family members depart from this country to process their immigrant (green card) visas at the U.S. Consulates in their home countries.

In addition, current U.S. laws and policies make it almost impossible for individuals who plan to migrate to the United States to apply for permanent residence in this country if they have no close relatives here to petition for them. To enable those who are qualified and willing to contribute to our country to migrate to the United States in a safe and orderly manner, Congress should:

- Increase the number of employment-based immigrant visas to reflect market demand for sought-after skills and experience.
- Allow individuals outside of the United States to meet certain criteria to submit and process their applications at the U.S. Consulate in their country of residence.

**Borders**

The vast majority of Americans agree that the United States has the right to monitor and police its borders. At the same time, they want to live in communities free from fear—not in militarized zones that unnecessarily put people in danger and divert needed resources from other parts of the community. Current efforts have not worked well, in part because they rely on outdated methods such as fences; military-type tactics that disrupt the lives and often violate the rights of the people of the region; and partnerships between Border Patrol and other agencies, including local law enforcement, emergency

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45 See supra note 17.
responders, and the courts, that result in racial profiling and create fear and mistrust in immigrant communities.47

**Demilitarizing the U.S.-Mexico border to protect the quality of life of border communities**

Border enforcement practices should be guided by criteria that actively minimize the impact on border residents.48 Delays in crossing the border between the United States and Mexico have an adverse effect on commerce and communities on both sides of the border. Border paramilitary vigilante groups pose a danger not only to persons crossing the border, but also to immigrants and border residents alike. The DHS should implement a new border policy that would:

- Reflect a concern for quality of life and environmental degradation.49
- Take serious measures to disband border paramilitary vigilante organizations.50
- Scale back military-type training and tactics of ICE agents and the Border Patrol to reflect the human dimension of border enforcement.51

**Renewing our commitment to international human rights norms**

ICE agents, Border Patrol agents, police officers, and other law enforcement officers working in the border region should receive regular training in human rights, including civil rights, ethics, and community relations.52 An independent review commission should operate on the federal and local levels, providing meaningful review of immigration enforcement practices with a focus on possible human rights violations. This commission should make regular reports and recommendations on community relations and security to local and federal governments. An internal complaint process for reporting human and civil rights violations must be accessible and transparent to provide timely investigation of all claims. To facilitate the prevention of the human rights abuses that take place on the border, the DHS should:

- Provide training and certification for local and federal agents on human rights.
- Establish an independent review commission.
- Provide oversight of the complaint review process.

**Local, state, and regional officials in the border states** should:

- Support community education programs to inform border communities about civil and human rights. The education program must be coupled with improvements in the internal complaint and review process of the DHS.53

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49 Border Network For Human Rights, supra note 19, at 21.
51 Border Network for Human Rights, supra note 19, at 7. See also Brian J. Lepore, U.S. Gov’t Accountability Office, Border Security: Observations on Costs, Benefits, and Challenges of a Dep’t of Defense Role in Helping to Secure the Southwest Land Border, GAO-12-657T (Apr. 17, 2012) (the report states that the presence of active duty military forces on the border with Mexico may lead to the perception of a militarized border, which could hinder the U.S.’s efforts to support civilian law enforcement institutions in Mexico fight crime on the border), available at http://www.gao.gov/assets/600/590173.pdf.
52 Border Network for Human Rights, supra note 19, at 18.
53 Border Network for Human Rights, supra note 19, at 19.
Integration

America’s history is one of new arrivals adapting to their new home while contributing to our economic engine and social fabric. That is just as true today, and it includes the process of learning English, understanding rights and responsibilities, and figuring out how things work. Many communities with new immigrants are thriving, in part because they are using best practices for immigrant integration.

Delivering public services—health care, in particular—should be a priority for all communities. Access to health care is a basic human right that serves as a safety net for vulnerable populations. Providing access to basic social services for immigrants, refugees, and low-wage workers stabilizes a community and benefits everyone.

Increasing protections for U.S. citizen children in families with mixed immigration status

Nearly one in 10 American families is of mixed immigration status, in which at least one parent is a non-citizen and one child is a citizen. Millions of American children already have lost parents to deportations. U.S. law dictates that, in many cases, the U.S.-born children of immigrants cannot be considered before a parent is exiled for life. In the spring of 2006, State Representative José Serrano of New York wrote and introduced the Child Citizen Protection Act (CCPA) and most recently introduced it in the 112th Congress as H.R. 250. The CCPA would provide immigration judges with broad discretion when faced with the potential removal of a citizen child’s parent. To date, the CCPA is one of only two legislative proposals to address the crisis facing American children and immigrant families caught in the raids sweeping our country. A recent report has found that the children of immigrant parents who are detained and deported are at risk of being placed in foster care and having their parents’ parental rights terminated, resulting in part from child welfare workers not knowing how to work with parents to enable them to participate in juvenile court proceedings. Immigration judges must have discretion to consider all of the circumstances of families of mixed immigration status. In order to afford protections to the U.S. citizen children of undocumented parents placed in detention and removed, Congress should:

- Enact the Child Citizen Protection Act.
- Enact the HELP Separated Children Act.

State governments should:

- Create protections for the children of undocumented parents within the child welfare system, including educating workers on ensuring access to juvenile court proceedings by an immigrant parent, or his or her legal representative, who is detained and deported.

Maximizing local education resources and providing tuition equity for undocumented college students

Higher education levels lift up communities by adding to the overall stability and economic power of the state. Community colleges increasingly serve as vehicles to integrate immigrants and prepare them to...
contribute to their communities and economies as workers through programs such as Vocational English as a Second Language (VESL). For example, VESL combines traditional English-language instruction with terminology and vocabulary tailored to the needs of the local industry and economy. With the failure of Congress to pass the federal DREAM Act, it is more critical than ever that we demonstrate support at the state level for easing pathways to education and citizenship for undocumented youth. Twelve states have already passed laws opening pathways for undocumented immigrant access to higher education, such as California’s law granting qualified students in-state tuition. To provide access to higher education for undocumented students, the DHS should:

- Halt the removal of young immigrants who would be eligible for DREAM Act protection by exercising prosecutorial discretion and granting deferred action to such individuals.

State and local governments should:

- Increase English Language Learning (ELL), VESL, and similar programs.
- Support tuition equity for immigrant college students.

Issuing driver’s licenses and identity documents to enable undocumented immigrants to participate in day-to-day civic life

The issuance of driver’s licenses that do not require proof of immigration status benefits U.S. citizens as well as undocumented residents. The increasingly restrictive identification requirements that state agencies are imposing has resulted in many citizens being rejected for driver’s licenses and Medicaid coverage. By making these identity documents available to all residents regardless of immigration status, states and localities will encourage undocumented immigrants to fully engage in civic life in the communities where they live, enabling them, for instance, to borrow books from the public library and open bank accounts. For policy reasons promoting public safety, state and local governments should:

- Issue driver’s licenses that do not require proof of immigration status.
- Make available to all residents a multipurpose municipal identification card, as the city of New Haven issued to all New Haven residents, regardless of age or immigration status.

Ensuring access by immigrants, refugees, and low-wage workers to public health programs and services

Some state leaders recognize that long-term investments in education and health care will result in a more skilled and healthy workforce. In these forward-looking states, bars that discriminate between
immigrants and non-immigrants in determining eligibility for such public benefits are being eliminated.\textsuperscript{65} Creating equitable access to health programs and other services requires that state and local governments:

- Offer bilingual services and training professionals in the field in cultural competency.
- Expand access to resources and information that will reach all communities, including outreach programs sponsored by local service providers.
- Target programs for the elderly and pregnant women—two groups often reticent to seek health care.

**Prioritizing family reunification, for both heterosexual and same-sex relationships**

Family reunification has long been, and must continue to be, one of the fundamental principles underlying U.S. immigration policy.\textsuperscript{66} The Obama administration upheld this principle in its decision to no longer defend in court the provision of the Defense of Marriage Act (DOMA) defining marriage as a “legal union of one man and one woman.”\textsuperscript{67} This may eventually pave the way for the recognition of the marriage of same-sex couples for immigration sponsorship purposes. To achieve the goal of family reunification, Congress should:

- Enact legislation that will significantly expand the cap on family-based visas while recapturing unused or unclaimed family visas, allowing previously separated families to reunite.\textsuperscript{68}
- Loosen eligibility requirements for spouses of deceased citizens or lawful permanent residents in favor of maintaining the family unit.
- Allow immediate family members of citizens or lawful permanent residents to regularize their status without having to leave the country.\textsuperscript{69}
- Create visa categories for same-sex partners of foreign nationals with temporary and permanent immigration status that would enable such partners to remain in the United States for a period that is coextensive with the principal visa holder.
- Repeal the Defense of Marriage Act (DOMA).\textsuperscript{70}

For its part, the Department of Justice should:

- Continue its policy of no longer defending Section 3 of DOMA in all court cases.
- Adopt a policy that explicitly recognizes domestic violence as a basis for granting asylum.\textsuperscript{71}

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68 IPC, *supra* note 66.

69 Id.


Opening pathways to fair housing and equitable banking

The Fair Housing Act currently prohibits discrimination on the basis of race, color, national origin, and familial status, among other factors. Local governments should be petitioned to pass laws explicitly prohibiting discrimination on the basis of citizenship or immigration status—serving as a model for legislators at the federal level to amend the Fair Housing Act. Furthermore, financial regulators need to monitor and flag institutions that use immigration status as a hurdle for access to services and that disproportionately offer inferior products, such as subprime loans, to immigrant communities. To provide equal access to fair housing and financial services to everyone, regardless of immigration status, the federal government and state and local governments should:

- Pass fair housing laws prohibiting discrimination on the basis of citizenship or immigration status.
- Encourage financial institutions to expand financial services to the immigrant community, including depository banking and loan lending, and remittance services and check cashing for reduced fees.

Conclusion

Most Americans agree that our current immigration policies are not working and that continuation of these policies does not reflect our shared values. Some want to change them to make it more difficult for immigrants to come, live, and work here, whereas others want to change them to acknowledge the current economic and societal realities that continue to drive immigrants, both documented and undocumented, to our country. Still many more have a hazy idea that something is wrong and are open to many different solutions, as long as they see those solutions as workable and fair. What Americans do not want to hear is the message that current policies do not work and should be discarded without an accompanying solution. The good news is that immigration advocates have many positive solutions in mind. It is important that we remember to share them as broadly as we share our critiques.

The Opportunity Agenda is proud of its work toward building a land of opportunity for all people living within our borders. In order to realize that promise for all of the people who came to our country in search of it, we must continuously strive to ensure that our judicial, administrative, and enforcement processes are fair; that they treat all people with humanity and respect; that they allow for the consideration of personal circumstances, contributions made, and debts already paid in determining how people caught in the immigration and criminal justice systems are treated; and that they both support and create realistic pathways for all people to learn, grow, and be productive members of our society.

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