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Trump Administration Immigration Policy Priorities

On October 8, 2017, the Trump Administration released a set of “Immigration Policy Priorities,”—a list of demands to be included in legislation that would address the status of young adults benefiting from the Deferred Action for Childhood Arrivals (DACA) program, which the Trump Administration announced that it will end on March 5, 2018. Many of the proposals included in the White House’s principles and priorities have previously been introduced, but ultimately rejected, by Congress. Others have been ruled unconstitutional by the federal courts.

If enacted into law or otherwise implemented, these provisions would block access to refugee protection in the United States, penalize asylum seekers, send children and other vulnerable asylum seekers back to danger, and severely damage the integrity of the U.S. immigration and asylum systems.

Among the many proposed changes to law and policy, the new White House “principles” would:

Block Access to Asylum

In accordance with U.S. treaty obligations under the Refugee Convention and its Protocol, the U.S. asylum system has protected thousands of refugees from returning to places where they would face political, religious, or other forms of persecution. They include: victims of religious persecution from China; women targeted for honor killings, trafficking, and horrific domestic violence; gay men attacked in countries where they face constant threats; human rights advocates who stand up against oppression in Syria or against the perpetrators of brutal violence in Central America; and ordinary people who are persecuted for who they are or what they believe. Some of the ways in which the new White House principles would prevent individuals from even accessing the U.S. asylum system include:

- **Raising the expedited removal screening standard.** The “credible fear” standard, which was designed to ensure that asylum seekers are not improperly deported under expedited removal, already denies some legitimate asylum seekers access to the U.S. system due to the conditions under which these screening interviews are conducted—in immigration detention facilities, often over the phone and without legal counsel, with traumatized applicants, using interpreters of variable quality. The White House principles seek to raise the standard even higher—as does a provision included in H.R. 391, the Asylum Reform and Border Protection Act, which has not passed Congress. Such a radical change in law would deny access to protection for even more refugees and asylum seekers and would make the U.S. system—which already violates international law and standards—an even poorer example for the rest of the world.
- **Allowing asylum applicants, including children, to be bounced to a “third country” (such as Mexico).** The White House principles seem to call for the enactment of provisions in the Asylum Reform and Border Protection Act, referenced above, which would allow the United States to unilaterally declare other countries, such as Mexico, a “safe third country.” If adopted, the principles would allow the United States to return asylum seekers to countries that they

passed through regardless of their lack of asylum or permanent protection there. Such an approach would allow the Trump Administration to send asylum seekers who had traveled through Mexico on their way to the United States back to Mexico. As Human Rights First detailed in a July 2017 report, Mexico lacks safeguards necessary to protect refugees from return to persecution, and refugees often face grave risks of harm in Mexico.

- **Facilitating deportations from Latin American countries to prevent asylum seekers from reaching the United States.** In 2014, the U.S. government supported the Mexican government in its implementation of the “Southern Border Program” which aimed to increase migration enforcement at the southern Mexican border and led to the deportation of asylum seekers. Increased border externalization will send many asylum seekers back to countries where they face persecution or leave them stranded in transit in countries that are unwilling or unable to provide permanent protection. The White House principles propose increasing cooperation with other countries to block asylum seekers and other migrants from reaching the United States.

Penalize Asylum Seekers

U.S. treaty obligations prohibit the penalization of refugees for their unauthorized presence or entry into the country. The White House principles would penalize asylum seekers by:

- **Increasing criminal prosecutions for “illegal entry” and “illegal reentry.”** Prosecutions for the crimes of “illegal entry” and “illegal reentry” have skyrocketed over the past decade, and have increased in the wake of President Trump’s January 25 executive order, which called for making criminal prosecutions of immigration offenses a “high priority.” These prosecutions fail to consider the circumstances of asylum seekers who engage in a legal act to seek asylum in the United States, notwithstanding their manner of entry into the country. In fact, a 2015 report by the Department of Homeland Security Office of Inspector General found that the referral of asylum seekers to Operation Streamline—a procedure that allows for multiple defendants to be prosecuted together— “may violate U.S. obligations under the 1967 Protocol Relating to the Status of Refugees, which the United States ratified in 1968.” The new White House principles call for further expansion of such prosecutions and seek appropriations for an additional 300 federal prosecutors to support immigration prosecution efforts.
- **Holding asylum seekers in prolonged, or even indefinite immigration detention.** Pursuant to U.S. treaty obligations, asylum seekers may be held initially for a limited purpose—such as to verify identity. Detention, however, must include procedures to review custody decisions and to allow for release after the shortest time possible. Blanket detention policies are contrary to the International Covenant on Civil and Political Rights—which guarantees freedom from arbitrary detention—as well as the Refugee Convention and Protocol. Moreover, the U.S. Supreme Court has ruled that immigrants may not be held indefinitely in immigration detention. The U.S. immigration system already holds many asylum seekers in prolonged detention without justification—either by failing to release “arriving” asylum seekers on parole, or by imposing unreasonably high bonds as a condition to release—despite the availability of more fiscally-prudent and humane alternatives (such as community-based programs) that have been proven effective. Human Rights First has interviewed many asylum seekers who have given up on their

claims and accepted a deportation—despite facing severe danger or even death in their home countries—due to the intolerable conditions and trauma of long-term detention.

Use the Immigration Court Backlog as a Pretext to Pursue Policies that Thwart Due Process and Fairness

The backlog in the immigration courts has been growing since 2007, largely due to a funding imbalance. As Congress increased immigration enforcement budgets to widen U.S. agencies' capacity to apprehend and charge immigrants, it did not proportionately increase the budget for systems charged with resolving those cases. Moreover, regional refugee crises, including in the Northern Triangle of Central America and more recently in Venezuela (the top nationality of asylum seekers in the United States for the past year), have added to the number of pending cases. As a result, many asylum seekers must wait years for their claims to be resolved, while family members may be stuck in danger abroad. Recent redeployments of immigration judges to the border, directed by Attorney General Sessions, exacerbated backlogs in many of the nation's busiest courts. While the Trump Administration recognizes the need to reduce the immigration court backlog, its recent statements indicate that it is using the backlog as a rationale for curtailing access to asylum, legal counsel, and the essential due process safeguard of an immigration court hearing. The administration is also using the United States Citizenship and Immigration Services (USCIS) asylum office backlog as its most recent reason for drastically cutting US refugee resettlement.

- **Expanding the use of expedited removal.** In a comprehensive report issued in 2005, as well as follow up reports issued as recently as 2016, the bipartisan U.S. Commission on International Religious Freedom (USCIRF) identified deficiencies in the implementation of expedited removal, including the failure to follow procedures to identify and safeguard individuals expressing a fear of return. For example, the Commission found that "in 15 percent (12/79) of observed cases when an arriving alien expressed a fear of return to the inspector, the alien was not referred [to a credible fear interview by an asylum officer]." Other organizations have documented a history of errors in the implementation of expedited removal, including wrongful deportations, and have maintained that the process deprives individuals of rights and safeguards, including the right to apply for temporary protected status, special immigrant juvenile status, or protections under the Violence Against Women Act. Further expanding the use of expedited removal—and blocking access to immigration court removal hearings—is not the answer to the backlog.
- **Rushing cases through the court system.** The White House principles indicate the administration will "[e]stablish performance metrics for immigration judges." Immigration judges have expressed concern over the use of mandated case completion goals for nondetained cases, without appropriate accompanying increases in resources. The White House's pledge to establish performance metrics, coupled with other recent policy guidance—such as the DHS February 20 memorandum implementing President Trump's January 25 executive order, which called for "expedited resolution" of cases, as well as the July 31 guidance from the Executive Office for Immigration Review, which called upon judges to grant fewer case continuances—signal a broader effort to rush cases through the immigration courts, without ensuring safeguards for due process.