



Restoring Due Process to the Immigration System A Message Guide for Members and Allies – March 2007

INTRODUCTION

Members of the *Liberty & Justice for All* campaign have chosen to hone in on five policy priorities for the immigration reform debate – policies that will restore due process to our immigration system. To win on those issues we have to engage the general public, our allies, and those who should be our allies to fully understand these issues and clearly see how they connect to their own interests.

We accomplish this through two main ideas:

1. **These issues are about America and what kind of a country it is going to be.** Will it be a place where the government exercises its power arbitrarily or will it be a country that follows its system of rules and laws in a fair way?
2. **Due process is a core American value.** Even those of us who don't fully understand the legal aspects of "due process" are still fully committed to it as the idea of justice and a fair system in our courts.

OVERALL MESSAGE FRAME

Below is the overall message that uses those two main ideas. All of the following specific messages for each issue follow the same format which is A) starting with a shared value (in this case due process), then B) explaining the problem and our solution, and C) finishing with a reminder of what is at stake for all of us:

Current reactionary laws against immigrants go too far and deny basic due process to millions of people who live in the U.S. Denying due process to people in America is unconstitutional, unnecessary, and demeans all of us who are proud to live in America. (A)

For example, right now, low-level government clerks are deporting residents of this country without giving them a hearing, no second opinion, no judge. These mean spirited policies do nothing to solve the overall immigration issue.

(B)

Americans need to know their government is doing these things – so we can put an end to them. Because when we let the government violate the Constitution and deny due process for some, all of our freedoms are at risk. (C)

If you have think on your feet or not sure what to say, you can use the A-B-C pattern to help you structure your message and get maximum impact.

POLICY PRIORITIES

1. Stop forcing judges to deport U.S. residents without considering the circumstances

When people have committed crimes:

Not allowing judges to consider the circumstances of a case denies basic American due process and does not solve the problem of undocumented immigration. Circumstances are different in different cases. But right now our laws do not allow judges to consider those circumstances when it comes to immigrants. If an immigrant breaks a law, whether here legally or not, the judge is required to automatically deport him. The judge is not allowed to consider how long ago the crime was committed, how minor the infraction, how long the immigrant has lived here, or whether they have a spouse or children here. Judges should be allowed to consider the circumstances of each individual case and decide what is best for that situation. When our government denies due process to anyone in this country, it threatens the freedom of all of us.

For undocumented, non-criminal immigrants:

Right now the government requires judges to automatically deport undocumented parents and leave their children here to fend for themselves or go into foster care. It does not allow judges to consider individual circumstances. America loses when the government forces judges to deport parents who are paying taxes, contributing to society, and working towards citizenship.

2. End unfair extreme punishment for minor offenses

In America the punishment should fit the crime. Not allowing judges to consider the circumstances of a case violates this principle and does not solve the problem of undocumented immigration. We need to allow judges to consider the circumstances of each individual case and decide what is best for that situation. When the government denies due process to anyone in this country, it threatens the freedom of all of us.

3. Protect due process in immigration proceedings and maintain judicial review

Automatically deporting immigrants without hearings or oversight denies basic American due process and does not solve the problems of undocumented immigration. Right now, immigration officials are deporting U.S. residents without meaningful judicial review. This system allows immigration officials to operate with no accountability to anyone when they make decisions that affect millions of people. Denying due process and removing accountability does not solve the problem, but does go against our Constitution and ultimately threatens the freedoms of all of us.

4. Uphold the U.S. Supreme Court decision against indefinite detention of immigrants

From New York City to Atlanta to Galveston, Texas, our government wants to hold people in prison without charging them with a crime and without any plan or idea for when they will be let free. Some in Congress want to indefinitely imprison hundreds of immigrants in this country. This is impractical, unconstitutional, and does not solve the

problems of undocumented immigration. Americans need to know their government is doing these things – so we can put an end to them. Because when we let the government ignore the Constitution and deny due process for some, all of our freedoms are at risk.

5. Stop automatic imprisonment without cause and deportation without due process

Deportation without due process

Here's another example of the government's reactionary laws against immigrants that go too far. The government wants to allow low-level security guards, virtually anywhere in the U.S., to ask for identification and proof of citizenship. If someone does not have his papers, or not enough proof to satisfy the guard, the government will put that person on a plane out of the country. No hearing, no second opinion, no judge. You're gone and nobody knows. They call it "expedited removal." We call it un-American.

Automatic imprisonment

The government's blanket policy of automatically imprisoning thousands of immigrant families while they await deportation hearings is costly, cruel, and does nothing to solve the immigration problem. We don't need to take people out of the community and pay for jailers, doctors and teachers for families who have been contributing to our society. When the government denies due process, wastes money, and treats people unfairly, it hurts all of us.

RESEARCH FINDINGS

These messages were developed for us by Belden Russonello & Stewart based upon their years of vigorous research on related issues that deciphers how the general public understands these concepts. Here's what they have found:

1. Due process is the frame
 - Nearly everyone – even those who don't know the legal details – uses the concept of "due process" as their shorthand for our country's fair legal procedures
 - People automatically see our issues as due process violations
2. It's not about immigrants, it's about America
 - General public is not motivated by sympathy for immigrants, what matters to them is whether America follows its system of rules and laws in a fair way
 - NOT: Due process *for* immigrants
 - YES: Restore due process to *our immigration system*
3. Lack of knowledge is the barrier; communications must prioritize information
 - Pick one or two priorities and examples to start the conversation
 - People can't digest all of it at once and they find it hard to believe
 - Strike a tone that is credible and serious, not too strident
4. Acknowledge concern about immigration
 - People feel there is an issue with immigration in America that must be addressed – their frustration makes them want to listen to any argument that is presented as a solution
 - We have to acknowledge their frustration and assert that taking away due process does not solve the immigration problem – they quickly understand this

5. Put responsibility on the government, not “us”
 - It is the government’s responsibility to follow due process
 - “We,” America, have to hold “them,” our government accountable for their actions
6. Stories are often unnecessary and can be harmful
 - Use them tactically, not strategically – to get a reporter’s attention, not to persuade
 - Those who are not with us will look for the victim’s faults and find blame; our strongest allies often get sucked into wanting to solve individual problems rather than fixing the system.

SAMPLE Q & A

There are many difficult questions that we all deal with and will have to be ready for when we talk to the press and our lawmakers. A few sample questions that some of us have already been asked in the past are below. Remember, when in doubt, keep your answers short and rely on the overall message and the A-B-C pattern.

1. Criminals and terrorists

Q. If we support limitations on indefinite detention, we will be supporting the release of rapists, murderers and terrorists. Do you support the release of criminals?

Q. Won't this amendment just let out more criminals who have already been ordered deported?

A. We have a process for this in America. If someone has committed a crime, you charge him, try him in front of a jury, convict him, and send him to prison for a set amount of time. Holding people forever without charges denies due process and threatens American values and freedom for all of us.

[IF NECESSARY: Some of these people committed no crime. Others are people who made mistakes and have paid their debt to society, and many of them are now law-abiding contributing members of society...RETURN TO PREVIOUS ANSWER]

Q. How can we let people who commit aggravated felonies stay in this country?

A. This is another example of the government’s reactionary policies towards immigrants going too far. The government has expanded the definition of “aggravated felony” so much that it includes shoplifting and possession of small amounts of marijuana. What this is really about is that in America the punishment should fit the crime. Not allowing judges to consider the circumstances of a case violates this principle and does not solve the problem of undocumented immigration. Instead it denies due process for some and threatens the rights of all of us.

2. “Amnesty”/Immigration Reform

While many of us are involved in the immigration reform campaign and have talking points on these questions, here is a way to avoid getting pulled off the due process message when that is the subject of the discussion.

Q. Your group is really just in favor of amnesty for immigrants—is that fair to all the people who have waited in line to come to the U.S. legally?

A. There is a big debate going on across the country right now about what strategy we should take towards undocumented immigrants: should we help them integrate into society so they learn English, pay taxes and become citizens? Or should we try to deport eleven million people? Or try to make their lives so miserable they leave? And there is a lot to be said about that question.

But what we deal with at the Rights Working Group is due process and the question of whether America lives up to its ideals of fairness in how we treat immigrants – legal and undocumented – in our court system. For example...[INSERT MESSAGE]

3. Burden on the courts/cost

Q. How realistic is it to expect that eleven million people will get court hearings? We need to streamline and expedite the system so that we can deport the people who are here illegally.

Q. Isn't it too expensive to give court hearings to all these immigrants? Why should we have to pay for that?

A. Due process is not a matter of dollars and cents, it's about right and wrong. We cannot imprison or deport people without oversight and without basic due process like the opportunity to have a hearing. It violates our Constitution and what it means to live in America.

4. Too much burden on DHS

Q. Many of the changes will have a wide impact on DHS' ability to detain and remove illegal immigrants. They need operational flexibility in locating, staffing and operating detention facilities. And, DHS already has systems in place to monitor detention conditions. Won't this amendment just tie DHS' hands?

A. The question is about whether there will be meaningful oversight of our system of deportation. Will administrative officials at DHS be able to deport anyone they think is here illegally, or will there be a process to make sure that DHS is following the law and the Constitution?

5. Judicial discretion/access to the courts

Q. Doesn't judicial discretion just mean more activist judges?

A. No. Judicial discretion is a check on overactive government. The question is whether we allow judges to consider the circumstances of each case. Or instead whether we force judges to treat someone who shoplifted a CD as a teenager and is now a contributing member of society the same as a murderer.

Q. Allowing parents to stay in the U.S. because they had children in the U.S. just promotes 'anchor babies' doesn't it?

A. Right now government is requiring judges to automatically deport undocumented parents and leave their children here to fend for themselves or go into foster care and does not allow the judges to consider individual circumstances. America loses when the government forces judges to deport parents who are paying taxes, contributing to society, and working towards citizenship.

Q. Don't immigrants already have good access to the courts?

A. In fact, immigrants who are here legally can be deported without a hearing for something as minor as misfiling paperwork. Immigration officials can deport anyone they assume is here illegally and do not have to give them a hearing in court.

6. Enforcement

Q. If you don't want this type of enforcement, what type of enforcement do you want? Aren't you just protecting midnight border crossers, smugglers and criminals?

A. Of course we should enforce our laws, and people who have been convicted of a crime should be punished. But denying due process is not a question of enforcement, and denying due process is what we have when immigrants can be deported without a hearing or oversight.

7. "Catch and release"/absconders

Q. This amendment promotes the release of aliens from immigration custody thereby undermining the President's and DHS' commitment to end catch and release and decreasing absconder rates. Does your group want the same old 'catch and release' policy?

A. We agree that current immigration policies are not working. But the government's blanket policy of imprisoning immigrants awaiting hearings is not fair or practical, and it abandons basic American principles of due process. Instead, a judge should look at the circumstances of each case and decide whether jail is necessary.

Q. Our asylum system has been abused in the past by terrorists and it can be exploited again. We have made the asylum system tougher because we want to deter fraudulent applications—won't this amendment mean that it will be easier to make a fraudulent application?

A. First, none of the 9-11 terrorists came through the asylum system. But the real issue is that the government's blanket policy of imprisoning people who have not been charged with a crime is not fair or practical, and it abandons basic American principles of due process.

Q. What about the very high percentage of people who are seeking asylum who fail to attend their removal hearings once they have been to court and denied? Failed asylum seekers constitute the largest percentage of the almost 500,000 fugitive aliens. Won't this amendment just increase the number of fugitives?

A. The real issue is that the government's blanket policy of imprisoning people who have not been charged with anything is not fair or practical, and it abandons basic American principles of due process. [Instead, government should...]

8. Non-citizens do not get due process

Q. But we're not talking about citizens. Why should American due process rights apply to these people?

A. In fact, the Constitution is very clear that the United States cannot keep anyone in this country in prison without due process of law and the Supreme Court has repeatedly upheld that. Allowing our government to ignore the Constitution puts all of our freedoms at risk.

SOUNDBITES AND KEY PHRASES

We need to restore due process to our immigration system.

Automatically deporting immigrants without hearings or oversight denies basic American due process and does not solve the problems of undocumented immigration.

When we let the government violate the Constitution and deny due process for some, all of our freedoms are at risk.

The government's reactionary policies towards immigrants that go too far