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The Honorable John Boehner
United States House of Representatives
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

June 17, 2013

Dear Speaker Boehner and Minority Leader Pelosi,

The American Immigration Lawyers Association (AILA) writes to respectfully express strong opposition to H.R. 2278, the “Strengthen and Fortify Enforcement Act” (The SAFE Act) currently scheduled for markup before the Judiciary Committee on June 18. We are deeply concerned about the severity of the enforcement-only provisions contained in this bill and fear that such an approach would be fundamentally inconsistent with constructive reform. H.R. 2278 represents such an extreme approach that the House Judiciary Committee’s decision to markup the bill tomorrow could derail efforts in Congress.

America now has an historic opportunity to solve the immigration issue. You and other leaders have actively supported comprehensive reform, including bringing the estimated 11 million undocumented individuals out of the shadows through a legalization plan. True immigration reform must balance tough eligibility criteria and increased enforcement with critical due process protections and a workable plan to bring undocumented workers and family members out of the shadows to get right with the law on our terms.

By contrast, H.R. 2278 would take us backward to a deportation-only approach that leaders from both parties have long since rejected. H.R. 2278 resurrects – and in some places goes beyond – Representative Sensenbrenner’s H.R. 4437 (the “Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005”). The SAFE Act seeks to criminalize undocumented immigrants, inflate an already costly detention and enforcement apparatus, and perpetuate the failures of the existing system. The bill applies disproportionate punishments and categorical exclusions instead of common sense policies that provide solutions for the future. H.R. 2278 is not the right bill to serve America’s national interests in the 21st century.

The SAFE Act proposes a radical departure from existing immigration law by criminalizing unlawful presence and permitting the prosecution and incarceration of every undocumented individual, at immense cost to the American taxpayers. The law would dramatically change our country’s immigration policy overnight, causing the arrest and criminal prosecution of mothers and fathers, and tearing apart the families of the 4.5 million U.S. citizen children in this country who have at least one undocumented parent. This was the very approach chosen by Congressman Sensenbrenner in 2005 that sparked massive nonviolent protests.

Further, the SAFE Act would put 50 different states and thousands of individual localities in the driver’s seat to determine how our immigration laws are enforced. It directly overturns more than a century of U.S. Supreme Court precedent on the

constitutional separation of state and federal authority over immigration law, including the 2012 *Arizona v. U.S.* decision. H.R. 2278 permits states and localities to enact and enforce their own immigration laws and authorizes police to arrest and detain anyone based solely on suspicion of being unlawfully present in the U.S. Even Congressman Sensenbrenner's H.R. 4437 did not go this far. The SAFE Act would drag the public conversation back into debates about "self-deportation" and legal theories that were settled by the Supreme Court.

The SAFE Act would also be tremendously expensive. At a time when the federal government and American families are tightening their purse strings, the SAFE Act authorizes dramatic increases in spending on what is already our most expensive enforcement and detention apparatus. H.R. 2278 also requires that the federal government reimburse states for the cost of detaining any removable individual arrested by police, and in this regard places finite federal immigration enforcement resources at the whim of state and local law and practice.

Finally, the SAFE Act would sharply undermine due process and equal protection of the law. The bill expands mandatory detention, mandatory deportation, mandatory minimum prison sentences, warrantless arrest authority, and deportation procedures that lack due process. H.R. 2278 also substantially increases the scope of controversial enforcement practices and policies such as 287(g) and civil immigration "detainers" that are constitutionally suspect, have been criticized by independent federal oversight bodies, and have been used to discriminate against Latinos and other individuals who police perceive as foreign. The proposed expansion of these programs will engender more fear and erode trust in those who work to keep us safe.

The premise of the SAFE Act is that we can enforce our way out of the problem created by an immigration system that has been broken for decades. But we have tried this, and it has failed. The SAFE Act does not propose new solutions, just more of the same. Criminalizing undocumented immigrants will not make us safer. What will make us safer is to bring as many as possible of the 11 million undocumented individuals out of the shadows to register and legalize on our terms, and to focus enforcement efforts on apprehending and deporting those who pose a danger to public safety or national security. That is why the punitive measures proposed in the SAFE Act are fundamentally inconsistent with true immigration reform. These measures will drive undocumented immigrants further into the shadows and criminalize those who pose no safety risk and whose continued participation in our communities we wish to encourage.

In advancing H.R. 2278, some have criticized the Senate immigration bill, S. 744, as lacking interior enforcement provisions. This is an inaccurate characterization of S. 744. The Senate bill is a true compromise that balances tough eligibility criteria and increased enforcement with critical due process protections and a workable plan to bring undocumented workers and family members out of the shadows to get right with the law on our terms. Specifically, the Senate bill adds a long list of exclusionary measures that will bar many people from gaining legal status or a green card—many of which will have harsh consequences and exclude individuals who do not pose any public safety threat. S. 744 bars felons, those who commit "aggravated felonies," and others convicted of serious crimes, including habitual drunk driving, drug trafficking, human trafficking, and domestic violence—to name just a few. The Senate bill also heightens the criminal punishments for several immigration-related offenses, such as passport fraud and illegal entry offenses. Under S. 744, no one who presents a threat to national security or public safety will receive legal status or a green card. The full list of crime and national security provisions is posted on our website at www.aila.org/senatebill.

As reform moves forward in both chambers, AILA urges Congress to enact the best possible law that meets our nation's needs, protects civil and human rights, and ensures due process. We ask you to encourage House leaders to pursue a more constructive path toward reform.

Thank you for your attention to this important matter. If you have questions or concerns, feel free to contact Gregory Chen, AILA's Director of Advocacy, gchen@aila.org, 202/507-7615.

Sincerely,

Laura Lichter
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Cc: The Honorable Robert Goodlatte, Chair, Judiciary Committee, U.S. House of Representatives

The Honorable Trey Gowdy, Chair, Immigration and Border Security Subcommittee, U.S. House of Representatives

The Honorable John Conyers, Ranking Member, Judiciary Committee, U.S. House of Representatives

The Honorable Zoe Lofgren, Ranking Member, Immigration and Border Security Subcommittee, U.S. House of Representatives