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Statement of the American Immigration Lawyers Association

Submitted to the Committee on the Judiciary of the U.S. House of Representatives Markup of "Asylum Reform and Border Protection Act of 2015"

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The American Immigration Lawyers Association (AILA) is the national bar association of more than 13,500 attorneys and law professors who practice and teach immigration law. AILA respectfully opposes the "Asylum Reform and Border Protection Act of 2015" (H.R. 1153). H.R. 1153 would dramatically alter U.S. asylum and humanitarian protections, and gravely harm asylum seekers; survivors of domestic violence and trafficking; military service members; and abused, neglected or abandoned children. In many cases, the bill reverses protections Congress enacted with bi-partisan support. H.R. 1153 would also disadvantage entrepreneurs and recipients of the 2012 Deferred Action for Childhood Arrivals (DACA) program.

Harms asylum seekers

The bill sets a higher standard of proof for initial asylum "credible fear" screenings requiring asylum seekers to prove their case as if they were in a court of law when most do not even understand what asylum is and do not have counsel present to explain it to them. Credible fear interviews are designed to serve as preliminary screenings for asylum eligibility to determine whether an asylum seeker is later allowed to go before an immigration judge for a full hearing. These screenings are done within days after an asylum seeker has arrived and is still recovering from a harrowing journey in a detention facility. Raising the standard as proposed by H.R. 1153, would compel the federal government to send many who need protection from violence and persecution back into harm's way.

Detains asylum seekers unnecessarily

This bill requires the unnecessary detention of asylum seekers who frequently need medical and mental health services to recover. By severely restricting parole to arriving asylum seekers, the bill requires the prolonged detention of asylum seekers and may compound or trigger further trauma they may have experienced.

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Harms survivors of domestic violence and human trafficking

Survivors of domestic violence and battered children protected under the bi-partisan Violence Against Women Act count on parole to be unified with their children or parents. Trafficking victims also rely on parole under the bi-partisan Trafficking Victims Protection Act to be reunited with their spouse, parents or children.ⁱ H.R. 1153 would severely restrict the specific parole authority Congress granted for these relatives, and as a result, keep survivors of violence separated from family members who can provide critical support in helping them cope with trauma and stabilize their lives.

Harms armed service members

The spouses, children, and parents of active duty military personnel, reserve members, and veterans, frequently depend on grants of parole to enable them to remain in the United States. A grant of parole eases the stress and anxiety placed upon military service members and veterans that is caused by the lack of immigration status of their close family members in the U.S.ⁱⁱ Ensuring that such family members are not at risk of deportation has been found to improve military preparedness. But H.R. 1153 would severely restrict the government's authority to grant parole for these relatives.

Denies protection to victims of child abuse, neglect or abandonment

H.R. 1153 seeks to undo protections Congress created for vulnerable children by granting protection only to children who suffered abuse, neglect or abandonment at the hands of **both** parents and who cannot be reunified with **either** one. Pursuant to federal law enacted by Congress, child welfare advocates and state juvenile dependency courts have helped many children obtain Special Immigrant Juvenile Status on the grounds that they have suffered terrible violence, abuse, or rape by **only one** parent. H.R. 1153 would leave these children without the vital protection that legal immigration status can provide.

Mandates the detention of thousands of unaccompanied children

H.R. 1153 would result in the long-term detention of many children who come alone to the U.S. Long-standing child welfare law requires that the federal government place children who arrive without adult accompaniment in the "least restrictive environment" while in custody. Typically, the government attempts to place unaccompanied children with relatives rather than holding them in a detention facility. This ensures a more family-like environment for the child and costs far less for taxpayers. H.R. 1153 would reclassify any child who arrives alone but has a sibling, aunt, uncle, grandparent, or cousin able to care for the child as no longer "unaccompanied." This change, ironically, would result in any child who has a relative who can take custody of and provide

care for him or her, to be held in longer-term detention.

Harms children by prolonging detention

H.R. 1153 permits the government to keep children detained even after they have been found preliminarily eligible for asylum in a credible fear screening.

Prevents DACA recipients from leaving the country to visit family

One of the benefits of DACA is that a recipient may seek permission – through a process known as “advance parole” – to travel abroad temporarily for humanitarian, educational, or employment purposes. H.R. 1153 redefines parole so narrowly as to exclude nearly all DACA recipients from obtaining advance parole.

Harms entrepreneurs, researchers and inventors

In 2014, DHS announced reforms making it easier for entrepreneurs, researchers, and investors to come to or remain in the U.S. on a grant of parole if they provide a certain amount of investment funding. While the 2014 reforms were designed to help individuals who create jobs in the U.S., H.R. 1153 would eliminate progress made by the 2014 reforms by severely restricting the availability of parole for those individuals.

Forbids the government from providing counsel to anyone facing removal including children, those who lack mental capacity and other vulnerable persons.

Despite the grave consequences that can result from immigration court removal cases, most individuals who appear in such proceedings are not represented by legal counsel. Nor does the federal government typically pay for counsel for those who cannot afford it. The government does however have the authority to provide and pay for such counsel. H.R. 1153 would bar the government from ever paying for counsel, and in so doing, would make it nearly impossible for persons who are indigent, mentally disabled, or otherwise vulnerable, including children, to obtain legal counsel. Studies have confirmed that representation increases the appearance rates at court and helps the courts process cases more efficiently, fairly and quickly.

ⁱ See INA Sections 240(A)(b)(4) and 240(A)(b)(6).

ⁱⁱ See November 15, 2013 USCIS Policy Memorandum 602-0091.