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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
Hearing on “Examining the Adequacy and Enforcement of Our Nation’s Immigration
Laws”

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The American Immigration Lawyers Association (AILA) submits this statement to the Committee on the Judiciary. AILA is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has over 13,000 attorney and law professor members.

This hearing examines the adequacy of current immigration law and the enforcement of those laws. It is now well-recognized not only among lawmakers but widely within the American public that Congress needs to reform our immigration laws in several areas to ensure the system meets the needs of American families, businesses, and our nation as a whole. In November, President Obama announced a series of reforms that will affect many aspects of the immigration system. For the most part, AILA supports these reforms, but these changes are primarily ameliorative in nature and cannot replace the urgent need for Congress to act. AILA welcomes the opportunity to work with lawmakers to craft legislation that can pass both chambers and garner the President's signature.

With respect to enforcement, in the past 12 years the Department of Homeland Security (DHS) has rapidly increased enforcement activities and is functioning at unprecedented levels in nearly all areas of measurement: including removals, prosecutions for immigration-related offenses, detention, and border enforcement. This dramatic expansion of enforcement, however, has not necessarily resulted in more effective enforcement. Instead, there has been a decline in the accountability and consistency of enforcement practices. Of great concern to AILA is that the federal government has compromised fundamental constitutional values such as due process that are the core of America’s identity. In particular, the Administration's dramatic expansion of family detention and the rapid removals procedures used for family asylum seekers fleeing violence in Central America is an abhorrent practice that has grossly degraded U.S. asylum and

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humanitarian law. Congress should conduct more rigorous oversight of DHS and pass reforms to bring these enforcement practices back on track.

DHS enforcement is operating at unprecedented levels:

- Total removals in fiscal year 2013 reached an all-time high of over 438,000 individuals. In the first six years of the Obama administration, DHS removed about 2.4 million people--more than any other president during a time when net migration to the U.S. is low and border apprehensions are at a 40-year low.
- Immigration detention rates continue to rise and in fiscal year 2013 totaled about 440,000 individuals each year, at a cost of more than \$2 billion annually to American taxpayers. Last year, DHS dramatically increased the disfavored use of detention on women and their young children seeking asylum from violence in Central America.
- The Department of Justice is now prosecuting more people than at any time in history for immigration-related offenses, the vast majority of which are for illegal entry and reentry. The Obama Administration has averaged 90,000 immigration-related prosecutions each year, more than double the yearly average in President Bush's administration.
- Now the vast majority of people that DHS removes are denied due process using summary procedures like expedited removal. In fiscal year 2013, more than 363,000 were removed without an opportunity to appear before an immigration judge. That figure constitutes the 83 percent of all removals in that year.
- For the past six years DHS has maintained about 21,000 Border Patrol Agents, twice the staffing levels compared to a decade ago. In the past ten years, DHS has also greatly increased fencing, drones, and other methods of border surveillance.

Prosecutorial Discretion

Critics have argued that DHS is using its current prosecutorial discretion policy to circumvent the law and decrease enforcement of immigration law. The President's November 20 announcements have drawn severe criticism, particularly the two deferred action programs (Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parental Accountability (DAPA)) that could provide temporary relief from deportation for millions of people.

The authority of all law enforcement agencies to exercise discretion is well-accepted in both the civil and the criminal law enforcement fields. For decades, legacy Immigration and Naturalization Service (INS) and DHS, under both Republican and Democratic administrations, have issued policies on and required the use of prosecutorial discretion. Prosecutorial discretion

is such an important principle that, in 1999, twenty-eight Republican and Democratic members of Congress wrote to the Attorney General emphasizing the importance of prosecutorial discretion in the immigration field.

The appropriate exercise of discretion leads to better targeting and smarter enforcement. DHS cannot possibly deport everyone who is living unauthorized in the United States. Such a mass deportation is not only completely unrealistic but also an unwise policy choice as it would gravely fracture American society, negatively impact businesses, and hurt the economy. For these very reasons, Republican and Democratic leaders have spoken against the idea of deporting over 11 million undocumented immigrants.

DHS and every other enforcement agency must choose priorities. It is AILA's judgment that the DAPA and DACA programs are exercises of the use of prosecutorial discretion that rest within DHS's legal authority to prioritize enforcement. Keeping America safe by focusing on those who present real threats to our national and border security and public safety is the right focus.

While prosecutorial discretion is a fully appropriate framework for immigration enforcement, in the past few years, implementation of the policy has been inconsistent. AILA is encouraged by the November 20, 2014 memorandum issued by DHS on enforcement priorities, particularly its explicit inclusion of Customs and Border Protection (CBP), which has never before published any policy on prosecutorial discretion. Effective implementation of the policy, however, will depend on aggressive training and supervision within Immigration and Customs Enforcement (ICE) and CBP.

Aggressive Enforcement Has Come at Great Cost

DHS has been so aggressive in its enforcement practices that basic due process and civil rights have fallen by the wayside in critical areas. In its deportation of 438,000 people last year, DHS relied heavily on summary removal procedures that bypass immigration courts and offer extremely limited judicial review. DHS continues to hold many noncitizens, including lawful permanent residents and asylum seekers, in detention without ever providing a custody determination hearing before a judge—a fundamental deprivation of due process.

CBP itself has grown so rapidly in recent years that training, oversight, and accountability are severely lacking within its ranks. Accompanying this doubling of Border Patrol Agents in the past decade are well-documented reports of rights violations and abusive practices, most notably many examples of improper use of force, including lethal force. For example, in May 2014, the American Immigration Council released the report “No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse”:

<http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>.

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Abusive CBP detention practices—including keeping facilities at dangerously cold temperatures, use of verbal and physical intimidation, and lack of basic health and hygiene provisions—are routinely reported by men, women, and children held at ports of entry or in Border Patrol detention facilities. Widespread reports of racially motivated arrests, coercive interrogation tactics, and denial of the right to counsel are also of concern. These problems, which undermine the rights of both citizens and noncitizens, are made worse by the lack of any uniform or effective complaint mechanism to address misconduct by CBP officers.

Finally, in carrying out the controversial “expedited removal” procedure, Border Patrol Agents often fail to ask whether an individual has a fear of returning to his or her home country before ordering them removed – or ignoring their expression of fear entirely. These practices deny individuals who do express such a fear the ability to start the asylum application process or make it so onerous as to put asylum impossibly out of reach for those in need of life-saving protection.

Detention

Since 1996, immigration detention has increased five-fold, reaching a record high in fiscal year 2012 of 477,523 individuals detained. The United States spends \$5.6 million per day on immigration detention. The annual cost of detention is about \$2 billion.

America's immigration detention practices undermine the fundamental principles of due process and fairness, and require immediate systemic reform. Annually, DHS unnecessarily detains asylum seekers and other vulnerable people. Many detainees are held for prolonged periods despite the fact that they have families, jobs and pose no threat to public safety. Detention should be a last resort, used only when other means of supervision are not feasible, and especially when more cost effective and more humane alternatives to detention (ATDs) are available.

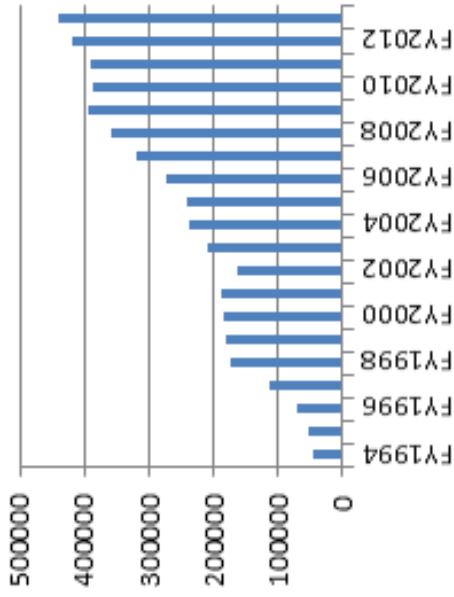
In 2014, the building refugee crisis in Central America resulted in a dramatic increase in the number of unaccompanied minors and families fleeing violence and seeking asylum in the U.S. The Obama Administration responded by escalating the use of detention on families--mothers and their children--in order to deter more asylum seekers from coming: a practice that violates U.S. asylum and humanitarian law. The refugee situation demands a humanitarian response by the United States, not a show of force. These mothers have faced unimaginable suffering and danger and have come to the U.S. seeking protection, often with close relatives in the U.S. who are willing and able to provide for them. They are not evading law enforcement--to the contrary, they are actively seeking out aid from Border Patrol Agents upon arrival.

Since last July, volunteer AILA lawyers began representing detained families at the facility in Artesia, N.M. and other detention centers, providing counsel and assistance to about 1200 individuals so far. Extremely high percentages of these detained women and their children have been granted asylum by immigration judges or been found to have a credible fear of persecution by asylum officers. See "End Artesia," by volunteer attorney Stephen Manning: <https://innovationlawlab.org/the-artesia-report/>.

These families are not a border security problem, although the Administration has continued to describe them in such terms. They are among the most vulnerable immigrants, seeking safety and the opportunity to tell their story to a judge. They should not be the centerpiece of a continued “surge” of border enforcement strength. We urge lawmakers to speak out against the massive detention of mothers and children to deter others from attempting a journey that may be necessary to save their lives.

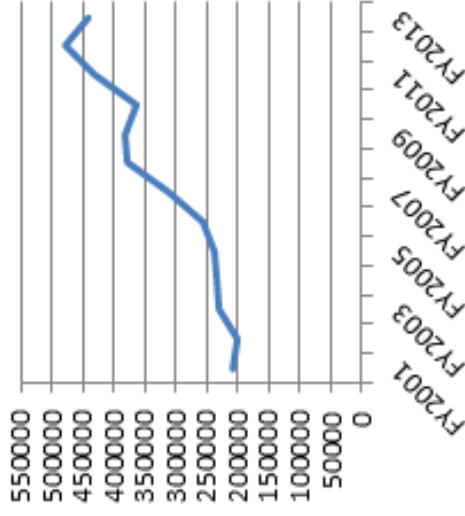
DHS REMOVAL ORDERS

Total number of people removed from the country by year



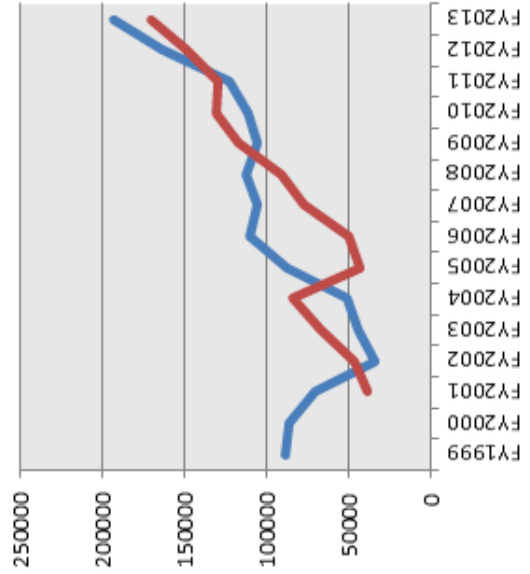
IMMIGRATION DETENTION

Number of people in immigration detention



'NO-PROCESS' REMOVALS

People removed without an opportunity to see an immigration judge



FEDERAL CRIMINAL PROSECUTIONS

Prosecutions for unlawful entry and re-entry

