



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

## Statement of the American Immigration Lawyers Association

Submitted to the Committee on the Judiciary of the U.S. House of Representatives  
Markup of "Michael Davis, Jr. in Honor of State and Local Law Enforcement Act"

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As the national bar association of more than 13,000 immigration lawyers and law professors, the American Immigration Lawyers Association (AILA) respectfully opposes the "Michael Davis, Jr. in Honor of State and Local Law Enforcement Act" (H.R. 1148). The severity of the enforcement-only provisions contained in H.R. 1148 is fundamentally inconsistent with principles of due process and fairness grounded in the Constitution. Moreover, H.R. 1148 offers no workable solution to address the serious, long-standing problems with our nation's immigration system. The bill's only answer is a deport-them-all strategy which has been widely discredited by Republican and Democratic leaders.

H.R. 1148 not only adopts a highly punitive approach to enforcement but also would block the Department of Homeland Security (DHS) from implementing key administrative reforms announced on November 20, 2014. In so doing, H.R. 1148 prevents DHS from prioritizing enforcement resources to target serious threats to national security and public safety, effectively jeopardizing the safety of our communities rather than strengthening it. For the most part, the recently announced reforms constitute sound policy and are urgently needed. By preventing their implementation, H.R. 1148 will hurt hundreds of thousands of families, businesses and the U.S. economy.

### Regressive Enforcement-Only Approach

Resurrecting the discredited "SAFE Act" from the 112<sup>th</sup> Congress, H.R. 1148 would take us backward to a deportation-only approach. H.R. 1148 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 adopted in the notorious H.R. 4437 (Rep. Sensenbrenner R-WI) that sparked massive nonviolent protests in 2005.

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Further, H.R. 1148 would relinquish federal control over immigration enforcement and 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 separation of state and federal authority over immigration law, including the Court's 2012 *Arizona v. U.S.* decision. H.R. 1148 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.

H.R. 1148 would also be tremendously expensive. At a time when the federal government and American families are tightening their purse strings, H.R. 1148 authorizes dramatic increases in spending on federal immigration enforcement which already has a budget of \$18.5 billion annually and dwarfs expenditures on all other federal criminal law enforcement combined, including FBI, ATF, DEA, and the U.S. Marshals.

Finally, H.R. 1148 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. 1148 also substantially increases the scope of controversial enforcement practices that entangle local police in federal law enforcement. Governmental oversight agencies have criticized such partnerships for fostering discrimination against Latinos and other individuals that may appear foreign. The proposed expansion of these partnerships will engender more fear and erode trust in those who work to keep us safe.

#### Blocking Implementation of DHS Administrative Reforms

H.R. 1148 prevents the federal government from spending "funds or fees" made available by the DHS appropriations bill to implement most of the DHS memoranda and Presidential memoranda announced on November 20 as well as several Immigrations and Customs Enforcement (ICE) memoranda on prosecutorial discretion and enforcement issued in recent years. By striking no less than 15 agency and presidential memoranda, the amendment instantly stops programs and policies that would benefit nearly every aspect of the immigration system. In particular the amendment would do the following:

- Halt the implementation of the Deferred Action for Parental Accountability (DAPA) and the Deferred Action for Childhood Arrivals (DACA) programs, which combined will register and grant a temporary reprieve from deportation to hundreds of thousands, if not millions, of unauthorized families and individuals who are low enforcement priorities;
- Stop improvements to an existing waiver process that would help the close relatives of U.S. citizens and lawful permanent residents obtain green cards through existing legal channels;

- Prevent improvements to U.S. military recruitment policy that would enable U.S. citizens who want to serve in the military to do so notwithstanding the fact that they have an undocumented parent, spouse, or child;
- Stop the creation of improved pathways for job-creating entrepreneurs that would enable them to bring their ideas, products and dollars into the U.S. economy;
- Prevent the spouses of foreign high-tech workers, many who have been working in the U.S. for years, from being able to get authorization to work themselves. This makes working in U.S. a less attractive option for many needed, skilled workers.
- Hamper students who are graduating from U.S. universities from staying in the U.S. and getting training to work for companies in the U.S. These are sought-after students who were educated in the U.S., and it makes no sense to send them home when they can stay in the U.S. to help grow the U.S. economy.
- End any near-term possibility for addressing the multi-year backlog that families and businesses are subjected to as they wait for a green card to become available;
- Stop plans to strengthen border security through the creation of Joint Task Forces;
- Prevent smart and effective targeting of immigration enforcement resources to focus on those who are more likely to present real threats and dangers to public safety and national security rather than low priority cases. Repealing the memoranda setting enforcement priorities is effectively a mass deportation strategy that requires DHS to treat all 11 million undocumented individuals as equally justified for deportation without regard to individual circumstances.

H.R. 1148 would also bring to an end the original 2012 DACA program and put the 600,000 Dreamers, young people who were brought to the United States as children and granted deferred action, back at risk of deportation. It would prevent the use of any funds, resources or fees to consider or adjudicate new DACA applications, renewals or reapplications by those previously denied under DACA 2012. Young people granted DACA should not be priorities for enforcement. To the contrary, they are typically productive individuals who have families and jobs and strong ties to the U.S. and have passed criminal background and security checks. Stripping them of their deferred action status and their work authorization would send them back into the underground cash-economy.

AILA's legal opinion is that the President has the authority to institute the reforms announced on November 20. In the absence of legislation, it would be irresponsible for the President to wait and do nothing while American families, businesses, and communities languish under the current system. AILA hears daily from businesses that cannot hire workers and are stymied by the slow

and dysfunctional operations of the immigration system. The President's reforms take important steps to ameliorate these problems and should be implemented.

### Conclusion

The premise of H.R. 1148 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--as shown by the unprecedented spending and enforcement efforts that have been deployed in the past decade or more. The enforcement-only approach has failed.

Criminalizing undocumented immigrants will not make us safer. The measures proposed in H.R. 1148 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. The best way forward is for Congress to enact immigration reforms that meet our nation's needs, protect civil and human rights, and ensure due process.

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](mailto:gchen@aila.org), 202/507-7615.