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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 "President Obama's Executive Overreach on Immigration"**

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The American Immigration Lawyers Association (AILA) is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members. AILA has over 13,000 attorney and law professor members.

### **Legal Authority for Deferred Action**

This hearing will address the President's legal authority to implement the reforms to the immigration system announced on November 20, 2014. Given the partisan controversy surrounding the deferred action components of the President's plan, AILA's statement focuses on deferred action and the principle of prosecutorial discretion.

To begin with, it is AILA's judgment that the President has acted well within his legal authority. The executive branch's authority to grant deferred action is derived from the federal immigration statute and regulations as well as the long-standing principle of prosecutorial discretion used by every law enforcement agency. It is common practice for law enforcement agencies and their individual officers to decide how and to what extent to pursue a particular case based on established priorities. A law enforcement officer who declines to pursue a case against a person has favorably exercised prosecutorial discretion. In a 1999 letter, 28 Republican and Democratic members of Congress (including the Chair of the Judiciary Committee at that time, Lamar Smith) called for prosecutorial discretion in immigration enforcement: "The principle of the prosecutorial discretion is well-established."

Prosecutorial discretion ensures the smart use of finite enforcement resources. The Department of Homeland Security (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

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against the idea of deporting over 11 million undocumented immigrants. DHS and every other enforcement agency must choose priorities. Keeping America safe by focusing on those who present real threats to our national security and public safety is the right focus.

Over the past 50 years, Republican and Democratic presidents have designated various groups of people for temporary relief from immigration enforcement by granting deferred action or using a similar tool. In 1990, President Bush provided blanket protection from deportation for up to 1.5 million unauthorized spouses and children of immigrants, about 40 percent of the total unauthorized population at the time. Other presidents have provided temporary protection to victims of domestic violence, the family members of military service members, widows and widowers, as well as people from specific countries or regions such as Cuba, Haiti, Southeast Asia or the Persian Gulf.

Deferred action is a vital tool that has been used historically to protect vulnerable populations. If DHS could not grant deferred action it would be unable to ensure that victims of domestic violence, sexual assault, human trafficking, and other crimes are protected from deportation while their applications for protections under the Violence Against Women Act (VAWA) are processed.

Many have alleged that these grants of deferred action amount to a grant of amnesty. Such a comparison is inaccurate. Unlike the 1986 amnesty President Reagan signed into law, deferred action does not confer formal legal status to the individual but merely a reprieve from immigration law enforcement, specifically deportation. Moreover the grant is temporary, so those granted the status could be at risk of deportation if the status expires. Finally, deferred action, by itself, does not provide a path to a green card or citizenship.

### **Why is it necessary for the President to act now?**

Almost two decades have passed since a major reform was enacted to the country's immigration laws. In the absence of reform, the immigration system has become increasingly broken and is failing American families, businesses and communities. Nationwide polling has shown that Americans want major reform. A January 2014, Fox News poll showed that 68 percent of Americans support allowing illegal immigrants to remain in the country and eventually qualify for citizenship if they meet certain requirements like paying taxes, learning English, and passing a background check. After the November election, Edison Research, which does exit polling for the consortium of major news networks, found that 57 percent of voters preferred that "illegal immigrants working in the U.S." be offered legal status instead of deportation.

AILA hears daily from businesses that cannot hire workers and are stymied by the slow and dysfunctional operations of the immigration system. Everyday families are kept separated because of long backlogs in the visa system. Now 11.5 million people are living in the country without legal status. Most have families and jobs but cannot work legally and must exist in the

shadows. These individuals are also subject to immigration enforcement and deportation. In the past several years, DHS has deported hundreds of thousands of parents of U.S. citizens—approximately 23 percent of all deportations—causing painful separations of families.

America's immigration system is in urgent need of reform. AILA supports the enactment of legislation, the only way to provide lasting change. In recent years, however, Congress has not been able to pass a bill. It would be irresponsible for the President to wait and do nothing while American families, businesses, and communities languish under the current system. AILA welcomes the opportunity to work with Congress and the President to make our system better for America.