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## **Statement of the American Immigration Lawyers Association**

**Submitted to the Committee on Homeland Security of the U.S. House of Representatives  
Hearing on "Open Borders: The Impact of Presidential Amnesty on Border Security"**

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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.

On November 20, 2014, President Obama announced a package of reforms to the immigration system. AILA welcomes this plan which, for the most part, provides critically needed changes to many aspects of our broken system. Almost two decades have passed since a major reform was enacted to the country's immigration laws, and despite efforts in recent years, Congress has been unable to complete the task. Though the Senate passed a comprehensive bill in 2013, the House has not yet passed any bills, including a border security bill that was passed by the Homeland Security Committee. 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.

### **Border Security**

The President's announcement calls for additional border security measures at a time when the border has never been more secure. In the past decade, the Department of Homeland Security (DHS) has deployed unprecedented amounts of personnel, resources, and technology to secure the nation's borders. Last year, in our report "Border Security: Moving Beyond Past Benchmarks," AILA urged lawmakers to stop the massive expenditure of resources on border security. AILA is disappointed that the President highlighted the plan in the 2013 Senate bill to add 20,000 more Border Patrol but offered no explanation for such an incredible increase. Until DHS provides justification for the need for such resources, this request for a dramatic increase in border personnel appears to be an unnecessary and wasteful expenditure of taxpayer resources.

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AILA also opposes the planned surge in resources to the border that began this summer in response to the spike in families and unaccompanied children fleeing violence in the Northern Triangle in Central America. The surge included a massive expansion in family detention in gross violation of U.S. asylum and humanitarian law. It is undeniable that the violence in Guatemala, Honduras, and El Salvador has reached crisis proportions. Through AILA's volunteer project which provides legal representation for hundreds of families now detained in Artesia, NM, AILA has found that these families qualify for asylum at extremely high rates. Immigration judges have rendered decisions in 10 asylum cases where the mothers and children were represented by AILA attorneys, and in all 10 of those cases, the judges granted asylum. America is not confronted with a border security problem but a humanitarian crisis that affects the entire region. The crisis demands a humanitarian response not a deterrence-driven, border lockdown.

In the coming weeks and months, there will almost certainly be efforts to blame the continuing flow of unaccompanied minors and families fleeing violence in Central America on the President's two newly announced deferred action programs (Deferred Action for Childhood Arrivals and Deferred Action for Parental Accountability). Such claims came during the summer despite the overwhelming evidence that what drove the surge in families and children to our country was the violence in those Central American countries. It is important to recognize that the United States has not seen large numbers of refugees from other extremely poor countries, such as Nicaragua, because Nicaragua has not experienced the same levels of uncontrollable violence.

Finally, the President's announcement, as of yet, includes nothing to address the grave and long-standing concerns about the lack of oversight and accountability of Border Patrol. Reports persist of Border Patrol abuses—including the excessive use of force resulting in civilian deaths at the border—deplorable detention conditions, racially motivated arrests, coercive interrogation tactics, and the denial of access to asylum and the right to counsel. AILA recommends that the Committee turn greater attention to these problems that are likely to grow more severe once DHS adds even more Border Patrol agents to the southern border.

### **Amnesty and Legal Authority**

The President's announcement has already engendered partisan debate and controversy. Many have alleged that his actions amount to a grant of amnesty. It is AILA's judgment that the President has acted well within his legal authority and that the deferred action programs do not constitute an amnesty. 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.

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. 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. Keeping America safe by focusing on those who present real threats to our national security and public safety is the right focus.

In 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.

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

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 supported allowing illegal immigrants to remain 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 2014 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. Until that happens AILA applauds the efforts of the President and DHS to improve the system and implement reforms to the fullest extent permitted by law. AILA welcomes the opportunity to work with Congress and the President to make our system better for America.