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Statement of the American Immigration Lawyers Association

Submitted to the Committee on the Judiciary of the U.S. Senate Hearing on "Keeping Families Together: The President's Executive Action on Immigration and the Need to Pass Comprehensive Immigration Reform"

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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.

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. 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.

The executive actions announced by President Obama on November 20 are a welcome first step toward a more humane immigration system. These actions have the potential to provide temporary relief to millions of families who have been kept in legal limbo with the threat of deportation and separation hanging over them. AILA's statement specifically describes how the families of Brenda Gutierrez and Janelle Ngo Chin, who have long resided in the U.S., can be protected under the President's Deferred Action for Parental Accountability (DAPA) plan.

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. During this time, 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.

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Every day families are kept separated because of long backlogs in the visa system. AILA hears daily from businesses that cannot hire workers and are stymied by the slow and dysfunctional operations of the immigration 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, the Department of Homeland Security (DHS) has deported hundreds of thousands of parents of U.S. citizens—approximately 23 percent of all deportations—causing painful separations of families. The President's announced plans should bring temporary relief from the fear of removal that hangs over millions of people's lives.

Brenda Gutierrez

Ms. Gutierrez is the mother of three children, two of whom are U.S. citizens and a third who received a temporary reprieve from deportation through the President's 2012 Deferred Action for Childhood Arrivals (DACA) initiative. One of Brenda's U.S. citizen children has a rare blood disorder that requires constant medical attention. Ms. Gutierrez and her husband, Jose, have both been trained by their doctors to give their child injections when needed.

Ms. Gutierrez does not have legal immigration status. Many years ago, shortly after she arrived in the U.S., she applied for asylum. When she missed the deadline for filing her application, the government tried to deport her. She ultimately lost her asylum case. She is now in removal proceedings.

Ms. Gutierrez is a long-time U.S. resident with children who are U.S. citizens, a spouse who has his green card. She has never been arrested or convicted of any crime. Ms. Gutierrez could be eligible for a statutory form of relief called "Cancellation of Removal," but a technical rule that was triggered when the government initiated removal proceedings against her now prevents an immigration judge from granting her this relief. ICE has temporarily stayed her removal, but Ms. Gutierrez never knows whether ICE will renew her stay. She lives in fear of being torn apart from her family and the child who needs her.

Under the President's newly announced Deferred Action for Parental Accountability (DAPA) program, she should be eligible to receive a grant of deferred action enabling her to live and work in the U.S. for a three-year period. The long-standing fear of deportation threatening her and family would be removed for a temporary period.

Janelle Ngo Chin

Janelle Ngo Chin has lived in the U.S. for over 25 years, since she was 10 years old. She attended elementary, middle, and high school here. She now has three U.S. citizen children. As the mother of three and common-law wife to a hardworking noncitizen with Temporary Protected Status (TPS), Janelle now also takes care of her aging and ailing parents (who are both lawful permanent residents), who live with her. Her father has already had two heart attacks and suffers from coronary heart disease and many other health problems that interfere with his ability

to accomplish everyday tasks. Janelle's mother has diabetes, a history of cancer, and debilitating psychological problems.

Janelle does not have legal immigration status, and she is in removal proceedings. Our existing immigration system is so broken that, even with all of her compelling equities and hardships, the immigration judge found that Janelle could not meet the extremely high standard for Cancellation of Removal. She asked DHS to exercise prosecutorial discretion (PD), given that she should not be a high priority for enforcement – her only brush with the law was a petty theft conviction for stealing a pair of sunglasses when she was 19 – and she has compelling equities. But DHS declined. The federal court of appeals intervened on her behalf, and Janelle is now back before the immigration judge, trying desperately to make her case.

Like Brenda, Janelle should be eligible for DAPA and would be able to receive a reprieve from the removal proceedings that would put not only her life at risk but that of her children, spouse and parents.

Legal Authority for Deferred Action

In creating the DACA and DAPA programs, 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 House 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.

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.

Family Detention

While the President's plans will protect hundreds of thousands of families from deportation, many of his current policies are causing great harm to families. Since July 2014, DHS has massively increased the detention of mothers and their children fleeing extreme violence in the Northern Triangle region of Central America – many of whom seek the safety of close relatives here in the U.S. DHS has set up a rapid deportation system that deprives these families fair and meaningful access to asylum and other humanitarian protection guaranteed by our laws.

The President's executive actions emphasized border enforcement and pledged to continue the "surge" in enforcement resources to the southern border that began this summer, in response to the high numbers of unaccompanied children and families seeking out Border Patrol agents to find safety in the U.S. This enforcement surge has had dire consequences for many asylum-seeking families. Many of these families continue to be detained despite suffering from serious medical and psychological ailments in detention, and despite the presence of close relatives here in the U.S. who are willing and able to support them. At extremely high rates, these families qualify for asylum. In fact, of the twelve cases volunteer AILA attorneys have brought to a final hearing, all twelve were [granted asylum](#).

The detention of families has been a humanitarian and due process disaster. AILA urges the Administration to abandon this costly strategy and instead to implement policies reflecting longstanding consensus that detention is a wholly inappropriate place for asylum seekers, families and children.