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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 "Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims"

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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 14,000 attorney and law professor members.

In the aftermath of the recent tragic shooting of Kathryn Steinle in San Francisco, many are asking what additional steps federal and local law enforcement authorities should take to protect our communities. The unauthorized immigration status of the alleged perpetrator, Juan Francisco Lopez-Sanchez, has also inflamed discussions about immigration enforcement. AILA agrees that law enforcement authorities must take reasonable and lawful steps to protect the public from anyone—regardless of immigration status—who poses a threat to our safety. However, the facts and circumstances of this particular situation remain unclear. AILA cautions both local and national elected leaders from making immediate changes to law or policy based on this incident before an investigation is completed. A reactionary response in the absence of full information may undermine community safety.

AILA also hopes that this incident will not be used to scapegoat immigrants. As law enforcement officials have clearly stated the mission of law enforcement is to protect the safety of all our communities. But already, some have gone too far by labeling immigrants as criminals. This claim could not be further from the truth. The American Immigration Council and the Cato Institute recently released separate reports presenting overwhelming data that immigrants are no more likely than anyone else to commit crimes. In fact, the data demonstrate the opposite—that the rate of criminality is lower in the immigrant population, including undocumented immigrants, than in those born in the U.S.

No less faulty are the claims that the federal government is not enforcing immigration law. By nearly every objective measure, recent immigration enforcement levels have been at all-time highs. The federal government has committed unprecedented resources to enforcement efforts at

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the border and in the interior. Annually, federal immigration enforcement spending is \$18.5 billion and exceeds that of all other federal criminal law enforcement combined. As a result of the federal government's increased enforcement efforts, apprehensions at the border have decreased and are at a nearly 40-year low. At the same time removals have reached an all-time high with this Administration—it has been removing about 400,000 individuals every year, more than any other president. While the Department of Homeland Security (DHS) still targets people who have convictions for non-violent offenses and should not be priorities for enforcement, DHS has increased its focus on those with more serious offenses who pose threats to public safety.

Ensuring Public Safety and Maintaining Trust of the Community

While the federal government is charged with enforcing immigration laws, the primary function of state and local law enforcement is to ensure the safety of their communities. AILA recommends that greater examination and oversight be done of federal programs that engage local authorities in immigration enforcement to make sure the mission of protecting the public is not compromised. Many of these programs have been fraught with policy and legal problems.

Notably, the controversial Secure Communities program severely undermined community trust by making immigrants fearful of contact with local law enforcement agencies. Effective policing efforts require the building of trust between law enforcement and the communities they serve. The University of Illinois-Chicago conducted a comprehensive survey in 2013 finding that 44 percent of Latinos surveyed reported they are less likely to contact police if they have been a crime victim because they fear that police officers will inquire into their immigration status. For this reason, domestic violence organizations, such as the National Task Force to End Sexual Assault and Domestic Violence and the California Partnership to End Domestic Violence, oppose programs that intertwine local law enforcement authorities with the activity of immigration enforcement.

Many local law enforcement authorities have voiced concerns that federal immigration detainers undermine local policing efforts, strain their resources, and leave them open to liability for constitutional violations. In fact, several federal courts issued decisions last year holding that local law enforcement agencies are liable for holding people beyond their release times solely on the basis of the detainers. In November 2014, Secretary Johnson announced that these courts had found “detainer-based detention by state and local law enforcement agencies violates the 4th Amendment.” As a result of these concerns, nationwide over 320 law enforcement jurisdictions have adopted policies limiting or ending the practice of honoring immigration detainers issued by Immigration and Customs Enforcement (ICE).

Priority Enforcement Program (PEP)

In an effort to address the flaws in Secure Communities, the Secretary announced the establishment of the new Priority Enforcement Program (PEP), which is currently being introduced across the country. As of yet, DHS has not disclosed many details about how PEP

will function, making it difficult for law enforcement and other government officials to evaluate whether they should participate.

Before government officials endorse PEP, they should examine whether PEP makes meaningful changes to the Secure Communities program and detainers. Importantly, the Secretary's November 2014 memorandum states that PEP will still be used to lodge detainers. Detainers will be used to detain in more limited circumstances, but DHS has yet to define those circumstances. In the past, such detainers have not been obtained based on probable cause that is promptly reviewed by a judge or with the backing of a judge-issued warrant. As yet DHS has given no indication that PEP will correct this problem, meaning local authorities may still be liable for unconstitutional detention practices. In recent comments about PEP, Chief Thomas Manger of Montgomery County, who is also president of the Major Cities Chiefs Association, explained: "We can't hold them. Basically, you're falsely imprisoning an individual without legal foundation to hold them."

Another problem with PEP—which was a major criticism of Secure Communities—is that it will still result in enforcement against individuals with misdemeanors and non-violent offenses or offenses that are very old from which the individual has long since been rehabilitated. By its name, PEP should prioritize enforcement against those who actually pose a threat to our communities. But PEP will likely also capture first-time border crossers and non-violent misdemeanor offenders. AILA's immigration lawyer members have identified several individuals who committed an offense five or ten years ago and since then have been living without incident in the community with a family and a job. None of these individuals should be a priority for immigration enforcement let alone local law enforcement involvement.

Local officials should have flexibility to determine how to engage DHS in a way that both protects public safety and adequately responds to their community's concerns. Still, that flexibility must have a baseline. There is a vast difference between the approaches of Sheriff Joe Arpaio, who appears determined to arrest every unauthorized person no matter the consequences, and the efforts of other law enforcement officials who acknowledge that they cannot protect the public without the community's trust. A baseline for PEP practices must be established to restrain the practices of law enforcement officials who are not only willing but may be motivated to alienate the immigrant community and violate the Constitution. Before Congress or local officials endorse PEP, they should insist that DHS be more transparent about how it will implement the program to guard against these pitfalls.

Recent Congressional Proposals

AILA urges lawmakers to reject legislation that would withhold federal funding from or otherwise punish so-called "sanctuary cities," such as the proposals by Senators Vitter and Cotton. The term "sanctuary city" is used to describe localities that have passed laws and policies that limit the role that law enforcement officers should play when enforcing federal immigration law. These policies are designed to promote community safety and are premised on the community policing model. They are not designed to harbor dangerous or violent criminals.

Many local law enforcement agencies have refrained from asking about the immigration status of a victim or witness precisely to ensure public cooperation and trust. As Dayton Police Chief Richard Biehl recently wrote: inquiring about immigration status “detracts from the investigation” and “is detrimental to relations with members of our community. We must balance investigative approaches that will encourage (and not discourage) public cooperation with investigations.”

AILA also recommends that Congress refrain from mandating local participation or cooperation with federal immigration programs, not only for the policy reasons articulated by Chief Biehl and other law enforcement leaders but also to avoid 10th Amendment “commandeering” concerns that will demand local resources and commitment. In fact many localities have resisted participation in DHS programs in order to ensure their limited resources are dedicated to their primary mission of protecting the public rather than taking on the federal responsibility of immigration enforcement. State and local police know their communities best, and they should not be compelled to enforce federal immigration laws at the expense of the safety and security of their communities.

America Needs Immigration Reform

What America needs is for Congress to pass reforms to the legal immigration system and legalization, which taken together will significantly reduce illegal immigration. Effective, commonsense immigration reform would make our nation safer and bring people who are already members of our communities more completely into our society. Enactment of enforcement-only legislation is not a solution. The SAFE Act and similar proposals are premised on the criminalization of immigrants and immigrant communities and do little to improve public safety. As our nation’s leaders seek to respond to the incident in San Francisco, AILA hopes the focus will be on solutions that protect all members of our communities.