AMERICAN IMMIGRATION LAWYERS ASSOCIATION

February 24, 2015

U.S. Senate
Washington, DC

Dear Senator:

As the national bar association of more than 13,000 immigration lawyers and law professors, the American Immigration Lawyers Association (AILA) writes to express our opposition to the Immigration Rule of Law Act of 2015 (S.534) introduced by Senator Collins.

S.534 is intended to stop the Department of Homeland Security (DHS) from implementing the administrative reforms announced on November 20, 2014 which will ameliorate serious, long-standing problems with our nation's immigration system. These reforms are urgently needed and preventing their implementation will hurt hundreds of thousands of families, businesses and the U.S. economy.

The President acted well within his legal authority in announcing these reforms. It is AILA's judgment that the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and the Deferred Action for Childhood Arrivals (DACA) programs are valid exercises of prosecutorial discretion that rest within DHS's legal authority to prioritize enforcement. Prosecutorial discretion ensures the smart use of finite enforcement resources. DHS cannot possibly deport everyone who is living unauthorized in the United States. Such 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.

AILA is particularly concerned about Sections 2, 3 and 5 of S.534. Detailed explanations of each of these sections are provided below.

Section 2 prevents any executive branch agency from spending "funds or fees" made available to the Secretary of DHS to implement nearly all of the DHS memoranda and Presidential memoranda announced on November 20. This section instantly stops programs and policies that would benefit nearly every aspect of the immigration system. In particular this section would do the following:

- Halt the implementation of the Deferred Action for Parental Accountability (DAPA) and the Expanded 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;

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- 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 implementation of a new regulation allowing for 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.

Section 3 is packaged as a victim protection measure but it does little if anything to protect victims of violence and would cause actual harm to victims. This section prohibits funding for DHS to carry out any immigration enforcement policy--including the November 20, 2014 enforcement priorities memorandum--that does not treat as the "highest civil enforcement priorities" people who are convicted of any offense involving domestic violence, child exploitation or molestation, or sexual abuse. To begin with, this section is unnecessary and repetitive. The crimes named in this section already fall within top enforcement priorities named in the November 20 memorandum.

Lawmakers who genuinely seek to protect domestic violence victims should recognize this section will actually discourage victims from seeking help from law enforcement. Victims are themselves frequently convicted of domestic violence due to language and cultural barriers. Victims who are arrested may end up pleading to a domestic violence offense to obtain release from jail and be reunited with children or other dependents. This section prohibits consideration of such facts and would force DHS to pursue actual victims and even deport them. By contrast, the November 20, 2014 memorandum allows for consideration of a person's past victimization as a "mitigating factor."

Section 5 states a sense of Congress that the adjudication of any and all petitions or applications submitted by someone who is unauthorized should be halted. If implemented, this policy would result in terrible consequences since many vulnerable individuals that Congress has protected could no longer have their petitions or applications decided. For example, asylum seekers commonly enter the U.S. without the required documents and remain in unauthorized status until their asylum claim is granted. This section would also harm victims of domestic violence who are petitioning for protection under VAWA, trafficking victims, victims of serious crimes, and other categories of individuals who typically lack lawful status at the time they apply. Congress has established by law specific methods for these individuals to obtain lawful status despite initially having been in an unauthorized status.

In addition, thousands of individuals with valid legal status inadvertently fall out of status because of problems with the current system or mistakes made by the government. For example, someone with an H-1B visa who is terminated from her job is technically out of status immediately because there is no grace period. Similarly, if someone with a valid visa files an extension application but accidentally files it with the wrong agency office (or if the government agency makes a mistake), that person could fall out of status. The person may have children in school or own a house, and thus cannot depart the country on that day. As a result they fall out of status.

There would be devastating consequences if Congress barred everyone who is not in an authorized status from having future petitions or applications adjudicated. Section 5 fails to recognize that Congress has over the decades demonstrated the clear intent to facilitate the conversion of someone's unauthorized status into a lawful one.

We would be pleased to address any questions you or your staff may have. Please contact Gregory Chen, Director of Advocacy, gchen@aila.org, 202-507-7615.

Sincerely,

Leslie Holman
President

Crystal Williams
Executive Director