



Statement for the Record

House Judiciary Committee – Subcommittee on Immigration and Border Security

“Interior Immigration Enforcement Legislation”

February 11, 2015

The National Immigration Forum (the Forum) works to uphold America’s tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

The Forum appreciates that the Subcommittee is holding this hearing as part of its efforts to fix America’s broken immigration system and urges the Subcommittee – and the Judiciary Committee as a whole – to take up a broad immigration reform approach.

In 2013, the Forum launched Bibles, Badges and Business for Immigration Reform (BBB), an alliance of conservative faith, law enforcement and business leaders, to achieve the goal of broad immigration reform. This network developed through outreach in the evangelical community, the development of state compacts, and regional summits convened across the country which formed a new consensus on immigrants and America. Targeting key states through a combination of field events, media coverage and direct advocacy, BBB and its partners have had more than 700 meetings with Members of Congress and their staffs and have held 303 events in key congressional districts across 40 states.

As the Subcommittee – and the Judiciary Committee as a whole – works on reforming our immigration system, it is important that the discussion does not become solely focused on enforcement. A singular focus on immigration enforcement will not result in an immigration system that works.

The Strengthen and Fortify Enforcement Act (SAFE Act) Is Misguided

One bill under discussion today, the Strengthen and Fortify Enforcement Act (SAFE Act), introduced in 2013 as H.R. 2278, is of particular concern to the Forum. The SAFE Act's primary focus on locating, detaining and removing immigrants is an approach that punishes undocumented individuals while failing to address many other aspects of our broken immigration system. Already, a record amount of our tax dollars is being spent tracking down, detaining, and deporting undocumented immigrants. Half of the immigrants being deported today have no criminal record, or have been arrested for minor violations, such as a traffic infraction. National security and public safety are undermined as time and money are spent finding, detaining, and removing parents, caregivers, and service workers. The price tag: \$4.5 billion in 2010 alone for detaining and deporting undocumented immigrants with no criminal record.

As an enforcement-only approach, the SAFE Act fails to address crucial issues, doing nothing to address the workforce needs of our country that would encourage future immigrants to come legally, or to address the status of millions of unauthorized immigrants who would come forward and be registered to become productive members of our society and economy. It would distract local law enforcement from their core public safety mission and threaten to undermine trust between immigrant communities and local law enforcement.

By requiring state and local law enforcement to become immigration agents, the SAFE Act distracts local law enforcement from their core public safety mission. Immigration enforcement on the state and local levels diverts limited resources from public safety. Local law enforcement agencies face tight budgets and should not be charged with duplicating the federal government's role in enforcing federal immigration laws.

Requiring state and local law enforcement agencies to enforce immigration laws also threatens to imperil trust between law enforcement and immigrant communities, undermining community policing. Immigrants should feel safe in their communities and comfortable calling upon law enforcement to report crimes, serving as witnesses, and calling for help in emergencies. However, if undocumented residents understand that state and local law enforcement are actively seeking to arrest, detain, and remove immigrants, they will be hesitant to cooperate with law enforcement. This undermines trust between law enforcement and these communities, creating breeding grounds where criminal enterprises will thrive.

Additionally, the SAFE Act represents a dramatic departure from decades of legal authority establishing the federal government's exclusive role in establishing priorities and implementing a unified system of immigration regulation. *See Arizona v. United States*, 132 S. Ct. 2492 (2012). While our broken immigration system is a national problem, the SAFE Act deals with it on a decidedly narrow level, providing states and localities with extensive and unprecedented authority to enact individual immigration laws, select from any number of enforcement models, and enforce federal, state, and local laws. By delegating enactment and enforcement of internal immigration law to states and localities operating under varying models emphasizing differing goals, the SAFE

Act would establish an uneven and confusing enforcement regime that would prove to be less effective. Neighboring regions, states, and even towns may prioritize and enforce contradictory goals, limiting progress on crucial matters and sowing uncertainty in the system.

The SAFE Act threatens to impair the federal government from carrying out a coherent, unified immigration policy. It hamstring the federal government, limiting executive and agency discretion to provide relief to deserving applicants, and even restricts the pardon power of the president (as well as state governors). This will prevent future presidential administrations – both Democratic and Republican – from carrying out a coherent, effective immigration policy.

The SAFE Act compels the Department of Homeland Security (DHS) to enter into agreements providing support to states and localities without guidance as to what constitutes “good cause” for rejecting or terminating such agreements. This standard provides the federal government no leverage to negotiate with states and localities to promote common priorities or unified enforcement efforts and prevents it from ensuring that federal tax dollars and resources do not go to waste.

The SAFE Act also prevents DHS from applying prosecutorial discretion in determining which immigrants to exclude or deport first. DHS and before that Immigration and Naturalization Service (INS) has always exercised prosecutorial discretion as it relates to immigration enforcement. Discretion strengthens enforcement. Prosecutorial discretion allows law enforcement to go after priorities, to target those who would do America harm and reasonably deal with humanitarian cases. The SAFE Act would limit this important discretion capability, resulting in DHS and DOJ using limited taxpayer resources on chasing people who pose no threat to public safety.

The Forum is also concerned the SAFE Act’s broad prohibitions on “harboring” undocumented immigrants – provisions that threaten to make criminals of the family members of undocumented immigrants who assist them with everyday activities – as well as provisions that would criminalize unlawful presence in the United States. These provisions would outlaw innocent day-to-day interactions for mixed-status families, effectively requiring U.S. citizens to turn in undocumented family members for deportation, and prioritize low-priority and otherwise law-abiding individuals for removal.

Finally, the Forum opposes waivers of environmental and other laws that have appeared in various versions of the SAFE Act. These waivers are unprecedented, unnecessary and address a problem that does not exist. Since 2006, more than 650 miles of fencing has been built along the Southwest border (including double layer fencing in some areas), representing a six-fold over pre-2006 levels. Given this progress, there is no need to waive vital laws protecting the environment, historic preservation, or other important priorities. To the extent DHS security concerns are being halted by a particular environmental, historic preservation, or other law, a more targeted

approach to address such barriers would be appropriate. The SAFE Act's creation of tens of thousands of square miles of unregulated territory through waivers, including large swaths of property along the Northern and Alaskan borders, is overbroad and problematic for those living in border communities.

As stated above, the National Immigration Forum believes that the SAFE Act is the wrong approach. Congress must work to reform the system as a whole, addressing interior enforcement, border security, earned legalization and a path to citizenship, reforms to our current family and worker visa system, and the unacceptable visa backlog that can sometimes lead to decade-long waits. Movement to a piecemeal approach can be workable, provided that Congress considers a holistic package of reforms on a step-by-step basis. It is our hope that this Subcommittee will work to advance bills addressing each of these crucial issues.

The Trafficking Victims Protection Reauthorization Act (TVPRA) Safeguards Children

Another bill the Subcommittee is considering today would be to amend the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA). The Forum has concerns about prior legislative proposals to amend the TVPRA to speed deportations. The TVPRA was passed with strong bipartisan support, and signed into law by President George W. Bush in 2008. The bill protects victims of human trafficking and specifies protections for unaccompanied children. TVPRA provides important protections for migrant children, and is consistent with America's strong tradition of protecting and caring for the most vulnerable.

The increasing visibility of human trafficking in the late 1990s and 2000s led to the formation of a bipartisan consensus supporting anti-trafficking legislation, such as the TVPRA. In 2000, in response to reports that at "least 700,000 persons annually, primarily women and children, are trafficked within or across international borders, and that roughly 50,000 of them were imported into the U.S. a year," Congress passed The Victims of Trafficking and Violence Protection Act (TVPA) of 2000. The law created a comprehensive federal law to combat human trafficking and modern-day slavery, at the international and domestic level. Since that time, Congress has continued to refine protections for victims and increase penalties for traffickers in passing reauthorizations of TVPA in 2003, 2005, and 2008.

Children are particularly vulnerable as potential victims of human trafficking. An estimated 27 percent of all trafficking victims detected globally are children. The last revision of the TVPRA in 2008 expanded protections for women and children apprehended at the border, including increasing visas for victims of trafficking and abuse and toughening penalties for traffickers. Along with the Homeland Security Act of 2002, TVPRA enacted procedural changes to protect children, requiring initial screening by Customs and Border Protection (CBP) to determine whether children picked up at the border were victims of trafficking or had valid asylum claims.

Moreover, TVPRA required that after an unaccompanied child from Central America is screened by CBP officers, the child must be transferred to the custody of the Department of Health and Human Services (HHS) for care and further screening, typically within a 72-hour period. By providing children adequate time to be screened by those who are trained to address children's unique sensitivities, TVPRA helps to ensure that children are properly screened for trafficking and asylum claims and not returned to gangs, cartels, and other dangers that they were trying to escape.

Congress judged HHS, the federal agency tasked with ensuring the health and welfare of U.S. residents, to be a more appropriate custodian for these children than CBP, a law enforcement agency. As such it required in the Homeland Security Act 2002 that HHS take primary care of UAC and ensure their best interests, not CBP. Congress recognized that CBP officers serve a particular role in our immigration system, that of protecting our borders, and are not adjudicators, childcare providers, or social workers.

Some lawmakers believe they need to weaken the TVPRA to expedite the removal of the children, calling for Central American children to be treated in the same manner of those from Canada and Mexico. Proposals to change the TVPRA so that Central American children be screened in 48 hours, similar to the screening children from Mexico and Canada receive, are inadequate.

A 48-hour window to screen and process a child is wholly inadequate. Victims who face trauma – and especially child victims – need more than a few hours overcome the shock and horror of abuse, threats, sexual assault, and violence to disclose what they have experienced. Expediting the screening process of these children will result in more victims going unidentified, leading many to be sent back to unstable, dangerous situations. Honduras, Guatemala, and El Salvador are unsafe countries with spiraling crime and gang activity and some of the highest murder rates in the world.

Gangs, drug cartels and militias will prey upon hundreds, if not thousands of children who are improperly returned to Central America before they are given the chance to obtain the humanitarian relief which our laws provide for. This endangers the children, the safety of our communities, and further strains our local and federal law enforcement efforts to combat human trafficking and criminal activity. Further, relaxing enforcement of anti-trafficking policies, such as TVPRA, gives the perception that human traffickers are at low risk of detection by law enforcement.