

Statement of Mary Meg McCarthy, Executive Director

**Submitted to the House Judiciary Committee
Hearing on H.R. 2278, the "Strengthen and Fortify Enforcement Act" (The SAFE Act)**

June 13, 2013

Chairman Goodlatte, Ranking Member Conyers, and members of the Committee: Thank you for the opportunity to submit this statement for the record. Since its founding nearly 30 years ago, Heartland Alliance's National Immigrant Justice Center (NIJC), a Chicago-based non-governmental organization, has been dedicated to safeguarding the rights of non-citizens. Each year, NIJC and its unparalleled network of 1,000 *pro bono* attorneys provide legal counsel and representation to nearly 10,000 individuals. NIJC also promotes access to justice for impoverished immigrants, refugees, and asylum seekers through impact litigation, policy reform, and public education.

On behalf of NIJC, I urge you to consider an immigration reform bill similar to S.744, which creates a path to citizenship for the undocumented individuals in the United States, contemplates smart enforcement, and reforms the legal immigration system to address our country's future needs. S.744 offers common sense, bipartisan principles for a new and effective immigration system.

In contrast, H.R. 2278 is a significant leap backwards. The SAFE Act takes a misguided enforcement-only approach. As our testimony will convey, the best way to enforce immigration laws is to *first* create a system that works. For many noncitizens, there is simply no "line" to get into if they want to come to the United States legally. This kind of system is not viable, yet H.R. 2278 does nothing to address the root of our immigration problems. Instead:

- **The SAFE Act makes virtually every police officer an immigration official, leaving room for racial profiling and undermining local policing efforts.**

Immigration law as it stands is incredibly complex, and local police are not in the best position to determine whether an individual is here unlawfully or may be removed. This responsibility falls on the Department of Homeland Security (DHS) alone and cannot be alleviated by a pocket guide to immigration law as this bill proposes.

The bill would place the principal holdings in *Arizona v. United States* in serious doubt and reignite – even encourage – new rounds of state-level immigration laws. It allows local actors to "investigate, identify, apprehend, arrest, detain, or transfer to federal custody" individuals, which opens the door for enforcement based solely on "suspected" immigration violations. In many parts of this country, we have seen this in action and it amounts to pervasive racial profiling. This may also bring into question the Fourth Amendment's requisite probable cause.

Immigration detainers have also become an important immigration enforcement tool for the Obama administration, allowing DHS to vastly increase deportations while passing the costs

on to local law enforcement. This bill contemplates the expansion of this kind of system, allowing detention of an individual for 14 days after his criminal sentence is complete for DHS to assume custody. Yet the financial costs and public safety considerations are just two reasons why state and local government in immigration enforcement is not in the best interest of these local partners. Local partners are not necessarily compensated for the prolonged detention of individuals, and in this bill we are asking local police to focus on immigration violations instead of criminal activity in their communities. As a consequence, this kind of system would discourage individuals from reporting crime if they are undocumented – a situation that does nothing to benefit the community.

- **The SAFE Act severely hinders DHS’s ability to place eligible non-citizens in secure alternatives to detention, wasting taxpayers’ dollars and ignoring law enforcement best practices.**

The bill requires DHS to take every person referred by local law enforcement into custody and calls for the expansion of immigration detention facilities. This eliminates all DHS discretion to concentrate its resources on priority cases. It also wastes taxpayers’ dollars to detain every single person in removal proceedings, without consideration of public safety or flight risk. The purpose of immigration detention is to ensure that people appear at their immigration court proceedings. Criminal justice systems across the country routinely and increasingly recognize that confinement in the pretrial context is costly to taxpayers and unnecessary to mitigating flight risk and the danger to our communities. Many states - including Texas, Georgia, and South Carolina - have passed laws that shift low-level offenders out of prison and into cost-effective and secure alternative programs.

Our immigration detention system should follow suit and conform to established best practices. Immigration detention costs taxpayers over \$2 billion annually; approximately \$5.5 million every day. On average, detention costs approximately \$164 per individual per day. Many alternatives to detention (ATD) exist that have proven effective at getting people to appear at their removal proceedings and save a great deal of taxpayer money. ATDs cost between 30 cents and \$14 per person per day, and create no risk to public safety. ICE’s current ATD contractor reported that 96 percent of individuals enrolled in their programs showed up for their final hearing in 2011.

Doris (pseudonym) was repeatedly raped by her stepfather when she was a young teenager. She eventually worked up the courage to report him and he was convicted of abusing her. Doris, now in her 20s, has two misdemeanor convictions. One is for shoplifting when she was 18, something she regrets and is ashamed of now. The other conviction was related to a domestic violence incident in which she was being attacked by her boyfriend and scratched his face in self-defense. When the police came she was very upset and was unable to adequately explain the situation. Her public defender advised her to plead guilty to domestic battery. Because of these convictions for crimes involving moral turpitude, Doris was considered to be mandatory custody and ICE refused to release her despite the fact that her U visa adjudication dragged on for many months. Doris found many of her trauma related symptoms growing worse throughout the time she was detained - she gained weight, began having nightmares, and could not speak to her attorneys without crying. Her abusive stepfather had often tried to confine her to one room, so the experience of being confined re-traumatized her. Yet ICE steadfastly refused to release her and she remained in custody for the ten months it took for her U visa to be granted, at which time she was released.

ATDs have been endorsed as cost-saving from a variety of organizations, including the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy, the Heritage Foundation, the Pretrial Justice Institute, the Texas Public Policy Foundation (home to Right on Crime), and the International Association of Chiefs of Police, and the National Conference of Chief Justices.

Moreover, American communities and the U.S. taxpayer suffer when we needlessly tear families apart and detain caretakers and breadwinners. When a parent or spouse is separated from their family, it often comes at a loss to the local economy and can result in U.S. citizen family members relying on public benefits or children entering the state foster care system. We must take steps to prevent these unnecessary costs to our taxpayers and communities.

- **The SAFE Act imposes penalties that are even harsher than the criminal justice system.**

Congress has long recognized that LPRs have special rights and protections in the United States. For these reasons, LPRs are subject to unique grounds of removal and – where such grounds are triggered – to unique forms of relief from removal that reflect their strong ties and contributions to the United States. Before 1996, Congress permitted LPRs with certain types of prior convictions to seek a waiver of removal if they met stringent residency requirements and they did not necessitate prolonged punishment by sentencing courts. The 1996 curtailment of this form of relief has resulted in the disproportionately harsh consequence of removal for thousands of long-time LPRs, permanently fragmenting immediate families and destabilizing communities.

Time has demonstrated that the 1996 changes have led to unnecessarily harsh consequences for many families, and the uneven results of litigation have led to unfair retroactive consequences for decades-old offenses. Those old rules could be combined with new mechanisms, such as a period of testing or “probation,” which would better achieve our national goals.

Yet thousands of detained individuals are arriving asylum seekers or long-time lawful permanent residents who are being mandatorily detained without review. Others have been ordered removed but are mandatorily detained while they appeal those orders and/or because the government is unable to physically deport them. For these detainees, who do not pose a danger to others and are not flight risks, detention causes undue hardship to themselves and their families and is an unnecessary expense to the government. The bill categorically prohibits bond hearings for these individuals, even if they are arriving asylum seekers and individuals with non-violent criminal offenses. Detention without a bond hearing is contrary to basic due process and U.S. human rights commitment and must not be condoned.

Anatoly, (pseudonym) a citizen of the former Soviet Union (now Belarus), was brought to the United States as a refugee in 1993 at the age of 4. He became a legal permanent resident of the United States the following year. Anatoly has no family in his home country, does not speak Russian, and has never returned. Anatoly was placed in immigration proceedings and mandatory detention under INA § 236(c) after he was convicted of stealing four packs of cigarettes from a Walgreens pharmacy. Anatoly spent 103 days in ICE detention, at a cost of over \$15,000 to taxpayers, until the National Immigrant Justice Center secured cancellation of removal for him to remain in the United States with his family.

Even more concerning, the bill expressly allows an individual to be detained “without limitation” during their removal proceedings, and places the burden of proof on the detained individual to show by clear and convincing evidence that he is not a danger or a flight risk. The U.S. Supreme Court has expressed doubts about the constitutionality of indefinite detention, and has only deemed mandatory immigration detention constitutional when it is “brief” and for the purpose of speedy removal.

Conclusion

As Americans, we are defined by our values, especially respect for the rule of law and equality for all men and women, regardless of what we look like or where we came from. This bill shamelessly rejects these American values. It will be virtually impossible to create a functional immigration system as long as the government continues to arrest and detain record numbers of men and women who pose no threat to society, especially when it denies them an opportunity to live in this country with some sort of status.

Our current laws are badly broken, but disregarding our values is not the solution. This Committee has an opportunity to create an immigration system that honors due process protections and protects these beliefs for years to come. Any legislative reform must ensure due process protections and adopt proportionate punishments for individuals who violate immigration law. It must not eviscerate the line between criminal and civil law enforcement matters and encourage local law enforcement to enforce federal, civil immigration laws. Detention decisions should be based on individualized risk assessments and be made consistent with best practices in law enforcement. We live in a country that does not deprive individuals of their liberty without the chance for accountability and judicial review, yet it happens every day in our immigration system. Particularly when so many individuals go through the immigration detention system without ever being able to talk to a lawyer about their rights, those who are determined to require detention in order to mitigate flight and safety risks should still have the chance to ask a judge to review that decision.

Common sense reforms to the immigration detention system are greatly needed and are supported by the following principles: 1) save taxpayer dollars; 2) follow law enforcement best practices; and 3) ensure due process protections. The SAFE Act does not adopt any of these principles. We urge this Committee to contemplate legislation

I thank you for the opportunity to present this testimony on the urgent need to reform America’s immigration system. Should you have any questions, please feel free to contact me at mmccarthy@heartlandalliance.org or at 312.660.1351.