June 20, 2017

The Honorable Michael McCaul
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Bennie G. Thompson
Ranking Member
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Conyers
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman McCaul, Chairman Goodlatte, Ranking Member Thompson, and Ranking Member Conyers,

We, the undersigned organizations, write to express our opposition to provisions in pending House legislation that would authorize the Immigration and Customs Enforcement (ICE) and United States Citizenship and Immigration Services (USCIS) agencies, specifically, H.R. 2406 and H.R. 2751 (authorizing ICE) and H.R. 2407 and H.R. 2752 (authorizing USCIS). The bills contain many provisions that would dramatically redirect the nation's immigration agencies toward their enforcement functions and away from the customer service and benefits functions that are also vital to their mission. The primary purpose of these authorization bills should be to establish in statute the organizational structure of the agencies as they are currently constituted. Authorizing legislation should not be used to facilitate the implementation of an enforcement-only immigration policy designed to deport massive numbers of immigrants. Since these bills would authorize USCIS and ICE for the first time, they should give greater recognition to the important role immigrants have played in our nation's history and emphasize the federal government's role in promoting immigration and welcoming immigrants.

ICE Authorization bills (**H.R. 2406 and H.R. 2751)**

Hiring of additional ICE officers

We strongly oppose any increase in hiring of ICE Enforcement and Removal Office (ERO) officers, much less the massive increases mandated in H.R. 2406. That bill would require an additional 10,000 deportation officers and 2,500 detention officers, as well as an additional 700 support staff and 60 prosecutors. The increase would more than double ICE's contingent of ERO officers, and add hundreds of millions if not billions to the nearly $3.71 billion Americans spend annually on interior immigration enforcement. Any additional ERO personnel are unnecessary given the already-substantial build up in

ICE personnel over the past 13 years. In fact, the number of immigration enforcement agents increased from 2,710 in FY 2003 to 7,995 in FY 2016. Based on the substantial declines in border apprehension rates, there is not a demonstrated need for additional officers. Moreover newly hired officers would be used to expand further on the recent increases in apprehensions of long-time residents, families, and others with strong ties to the country who pose no threat to public safety.

Expanding ICE's warrantless arrest authority

H.R. 2406 authorizes warrantless arrests for civil immigration offenses under all circumstances, thereby eliminating the statutory requirement that ICE have reason to believe that the noncitizen is likely to escape before a warrant can be obtained.[1] Federal courts have held that civil immigration arrests are subject to the same Fourth Amendment requirements that apply to other arrests.[2] The Fourth Amendment requires the issuance of an arrest warrant by a neutral magistrate on a finding of probable cause or, in the case of a warrantless arrest, review by a neutral magistrate within 48 hours of arrest.[3] In comparison, the elimination of any limitations on warrantless arrests by ICE renders the agency's civil immigration arrest authority unencumbered by any 4th Amendment safeguards. Removing even the minimal procedures mandated by Congress would give unacceptably broad authority to rank-and-file officers to make arrests.

Codifying Detainer Authority

Increasing numbers of federal courts raise constitutional concerns about ERO's use of immigration detainers, yet the ICE authorization bills would codify ICE's practice of issuing these detainers. ICE immigration detainers result in individuals who often have not been charged with any crime being subject to prolonged detention by state or local law enforcement, entangling officers in federal immigration enforcement and undermining community trust. The provision puts state and local law enforcement agencies in the position of violating the Constitution by detaining people absent probable cause or a warrant issued by a neutral judge. Congress should not codify this practice given the shaky legal foundation on which ICE detainer practices now rest.

Access to all DHS databases

We oppose the inclusion of the provision in H.R. 2406 that provides ERO officers with unfettered access to any DHS database, so long as ERO determines the information will assist it in carrying out its duties. A number of government databases maintained by other Departments are walled off from federal law enforcement agencies because the sensitive personal information they contain was collected for a non-law enforcement purpose, and because sharing it would undermine the program that is collecting the information. We are particularly concerned that the provision could be interpreted to provide ERO with direct access to USCIS information. This provision, without any limiting parameters, could allow

[1] *See* 8 USC §1357(a)(2)

[2] *See Olivia-Ramos v. Atty Gen of U.S.*, 694 F.3d 259, 284-85 (3d Cir. 2012) (noting that immigration officials can conduct immigration enforcement actions so long as the actions are "consistent with the limitations imposed by the Fourth Amendment.")

[3] *Gerstein v. Pugh*, 420 U.S. 103, 116 (1975).

immigration enforcement officers to search files related to recipients of the Deferred Action for Childhood Arrivals (DACA) program, sensitive information collected from air travelers and maintained by TSA, even information stored by the DHS Inspector General or the ICE Office of Professional Responsibility. It is also important to remember that USCIS is not a law enforcement agency. We believe the same restrictions that apply to other law enforcement agencies must be retained for ERO as well.

Treatment of Specific ICE offices

H.R. 2406 takes the extraordinary step of statutorily prohibiting the creation of any ICE office that would perform essential functions once performed by the ICE Public Advocate, such as stakeholder engagement and community outreach, while mandating the creation of an office, VOICE, that has no relationship whatsoever to the agency's core mission. The bill is silent on the Trump Administration's plans to eliminate a third office, the Office of Detention Policy and Planning (ODPP), which has developed reforms to the nation's still-troubled immigration detention system. We urge Congress to establish in statute offices that can help promote a positive vision of the agency and to reject an office that merely seeks to exploit our fears for political ends.

VOICE: We oppose statutory authorization of President Trump's "Victims of Immigration Crime Engagement Office". The office's unique purpose is to provide services to the victims of crimes (most often state and not federal crimes), but only if the perpetrator of the crime was a non-citizen. The VOICE program provides preferential treatment to victims based on the citizenship status of the aggressor. We are concerned this new office will foster the scapegoating of immigrants by drawing disproportionate attention to a small number of serious crimes committed by non-citizens. Instead of singling out crimes committed by non-citizens, Congress and the Administration should devote greater resources to existing federal programs that support victims of crimes without regard to the nationality or citizenship status of the perpetrator.

Public Advocate: In 2012, when ICE announced the appointment of a Public Advocate within ERO, the official responsibilities were:

> "assisting individuals and community stakeholders in addressing and resolving complaints and concerns in accordance with agency policies and operations, particularly concerns related to ICE enforcement actions involving U.S. citizens; informing stakeholders on ERO policies, programs and initiatives, and enhance understanding of ERO's mission and core values; engaging stakeholders and building partnerships to facilitate communication, foster collaboration and solicit input on immigration enforcement initiatives and operations; and advising ICE leadership on stakeholder findings, concerns, recommendations and priorities as they relate to improving immigration enforcement efforts and activities."

H.R. 2406 does not explain why the functions of the Public Advocate were objectionable but nonetheless prohibits by law "any successor office that carries out the same duties as the former Office of Public Advocate." We urge you not to retain language that would prevent ICE from striving to

improve its relationships with the communities it serves.

Office of Detention Policy and Planning: Although not mentioned in the legislation, we encourage Congress to consider authorizing in statute an ICE office that has, over the prior eight years, developed numerous policies to improve immigration detention policies and practices. The Administration has stated that the detention reforms ODPP helped implement will remain in effect, but that ODPP itself will be eliminated. The need for such an office is even greater now that ICE seeks to increase detention capacity and to eliminate the longstanding requirement that detention facilities comply with national detention standards.

ICE Advisory Council

H.R. 2406 would establish a seven-member ICE Advisory Council with three members appointed by the union that represents ERO officers and one member from the union representing prosecutors. The President appoints only one member and Congress the other two; and no representation is provided for the thousands of other non-ERO ICE employees (including HSI officers). The provision offers a disproportionately influential voice for Council 118, the ERO employee union that has in recent years engaged in highly partisan activities in opposition to the policies of the prior Administration. According Council 118 such weight cannot be justified on policy grounds.

Electronic Field Processing

H.R. 2406 would mandate a pilot program in at least five of the ten busiest ERO field offices to allow officers to electronically process and serve charging documents while in the field, rather than after taking someone into custody at a field office. Such a program could further erode due process protections by allowing field officers to circumvent or water down important screening functions, and make crucial decisions that result in deprivation of a person's liberties and eventual removal, without the presence of supervisors or any other safeguards against abuse. During the book-in process at field offices, ICE officers may discover that based on certain characteristics and special vulnerabilities it may not be appropriate to place an individual in a custodial setting. The proposed pilot could bypass these important screenings, which have become part of ICE policies and procedures during book-ins at field offices. We are also concerned that this type of pilot could lead to increased incidences of racial profiling, including against U.S. citizens and Lawful Permanent Residents.

Seizure of Property

Both ICE authorization bills include codification of civil forfeiture authority for ICE to use based on criminal, civil, and administrative offenses. They use vague and vast language permitting ICE to "seize any property, whether real or personal, that is involved in any violation or attempted violation, or which constitutes proceeds traceable to a violation, of those provisions of law which U.S. Immigration and Customs Enforcement is authorized to enforce." We oppose what appears to be an unprecedented federal expansion of agency power to apply civil forfeiture to non-criminal offenses.

OPLA reporting to ICE Director

We are also concerned about the proposal to shift the reporting for the ICE Principal Legal Advisor to the

ICE Director. The Principal Legal Advisor should report to the General Counsel not to the ICE Director. The legal advisor for a law enforcement agency must be able to provide independent legal expertise and advice to its client. The OPLA will not be able to exercise that independent authority if it reports to the ICE Director, who would have authority over compensation, hiring, and other fundamental supervisory functions. No other DHS agency has its legal advisors reporting to the client as is now being proposed.

USCIS bills (H.R. 2407 and H.R. 2752)

Overall, the USCIS authorization bills shift the focus of USCIS away from customer service and benefits adjudication towards enforcement. H.R. 2407 states that the agency shall render its decisions "in a manner that detects and prevents fraud, protects the jobs and working conditions of American workers, and ensures the national security and welfare of the American people." (Sec. 2) We are alarmed by the lack of commitment to due process and fairness for applicants and petitioners and the move away from the provision of effective, accurate, and useful information to customers, as promised in USCIS's current mission statement.

Customer Service, Stakeholder Engagement, and Transparency

USCIS has a significant customer service function, which makes sense given that more than 90% of the agency's activities are funded by customer fees. Millions of petitions and applications for immigration benefits are accepted and processed annually from individuals who in some instances pay thousands of dollars with the expectation of a prompt and fair review by USCIS officials. Robust and meaningful community and stakeholder engagement is critical to further USCIS's mission. We are concerned that these measures in H.R. 2407 would mandate unduly burdensome processes and impose penalties that would effectively discourage this critical function.

Additionally, the establishment of onerous transparency requirements and restrictions on agency communications with external stakeholders in H.R 2407 would deter USCIS from meeting with groups of interested parties on specific legal, policy, or procedural issues of concern, as well as from speaking to elected representatives and other stakeholders about individual cases. Both private and public organizations with a core customer service function depend on meaningful feedback to ensure that they are being responsive and accountable to those using their services. This measure would impede those critical interactions and harm constituents that rely on the availability of congressional assistance to resolve issues related to USCIS benefits adjudications, particularly those that do not have legal representation. Finally, H.R. 2407 requires adjudicators to include in case files, actual or electronic copies of all case-specific communications (government and private) with non-DHS persons or entities advocating for benefits applications or petitions. This is an extremely burdensome requirement to impose upon USCIS officers that would increase already lengthy processing times.

E-Verify

H.R. 2407 would make E-Verify permanent without implementing any of the important due process

protections to ensure authorized workers are not mistakenly identified as unauthorized. These errors have long been recognized within the E-Verify pilot system and have wrongfully hindered many U.S. workers in their efforts to seek employment. E-Verify is a powerful enforcement tool, but it should only be made permanent after these problems are addressed to ensure that Americans and other authorized workers are not harmed.

Agency Organization

The bills codify much of the current structure of USCIS, thus preventing future USCIS Directors from making organizational changes that would be cost-effective and improve efficiencies. For example, the bill codifies the existence of the Field Office Directorate and the separate Service Center Operations Directorate. This rigid codification would prevent a future director from combining both offices into one larger directorate that covers all applications and adjudications.

CIS Ombudsman

H.R. 2407 removes the requirement that the Director "meet regularly with the Ombudsman … to correct serious service problems" and "to establish procedures requiring a formal response to Ombudsman recommendations." We maintain that this is an important responsibility of the Director of USCIS as the Ombudsman's office provides an important oversight function to USCIS. As such, this language should not be removed from Sec. 451 of the 2002 Homeland Security Act.

Sincerely,

American Civil Liberties Union

American Immigration Lawyers Association

America's Voice

Asian Americans Advancing Justice – AAJC

Asian Pacific Institute on Gender-Based Violence

ASISTA

Casa de Esperanza: National Latin@ Network

Immigrant Legal Resource Center

NAFSA: Association of International Educators

National Council of La Raza

National Immigrant Justice Center

National Immigration Law Center

National Network to End Domestic Violence (NNEDV)

Service Employees International Union