



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

February 3, 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 Department of Homeland Security (DHS) Appropriations Act 2015 (H.R. 240) that is scheduled for a vote in the Senate.

H.R. 240 includes several provisions added as amendments in the House that are intended to stop 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 thousands of families, businesses and the U.S. economy. AILA welcomes, indeed urges, Congress to take up immigration reform but through robust and open debate, not a rushed process attached to a must-pass DHS spending bill.

Passage of a DHS spending bill is vital to ensure the continued operation of not only U.S. immigration programs but also border protection and national security. Holding up DHS funding to engage in a protracted debate on immigration would undermine public safety.

AILA is particularly concerned about provisions added by the DeSantis amendment, the Aderholt amendment, the Blackburn amendment, and the Schock amendment. Detailed explanations of each of these amendments is provided below.

The DeSantis Amendment 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. The amendment 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 amendment is unnecessary and repetitive. The crimes named in the amendment already fall within top enforcement priorities named in the November 20 memorandum.

Lawmakers who genuinely seek to protect domestic violence victims should recognize the DeSantis amendment 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

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release from jail and be reunited with children or other dependents. The DeSantis amendment 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."

The Aderholt Amendment prevents any executive branch agency from spending "funds or fees" made available by H.R. 240 to implement nearly all of the DHS memoranda and Presidential memoranda announced on November 20, and several Immigrations and Customs Enforcement (ICE) memoranda regarding prosecutorial discretion and other enforcement policies issued in recent years. By striking no less than 15 agency and presidential memoranda, the amendment instantly stops programs and policies that would benefit nearly every aspect of the immigration system. In particular the amendment would do the following:

- Halt the implementation of the Deferred Action for Parental Accountability (DAPA) and the 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;
- 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 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. Repealing the memoranda setting enforcement priorities is effectively a mass deportation strategy that requires DHS to treat all 11 million undocumented individuals as equally justified for deportation without regard to individual circumstances.

The Blackburn Amendment prevents the use of any funds, resources or fees to consider or adjudicate new DACA applications, renewals or reapplications by those previously denied under the DACA policy announced in 2012. In essence the Blackburn amendment would bring to an end the DACA program and put the 600,000 Dreamers, young people who were brought to the United States as children and granted deferred action, back at risk of deportation.

Young people granted DACA are not priorities for enforcement. To the contrary, they are typically productive individuals who have families and jobs and strong ties to the U.S. and have passed criminal background and security checks. Stripping them of their deferred action status and their work authorization would send them back into the underground cash-economy. The Blackburn amendment resorts to an enforcement-only, mass deportation approach that both Republican and Democratic leaders have criticized as impractical and disastrous for the American economy.

The Schock Amendment 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. The Schock amendment 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. The Schock amendment 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