AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

January 13, 2015

U.S. House of Representatives
Washington, DC

Dear Member of Congress:

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 four amendments to the Department of Homeland Security (DHS) Appropriations Act 2015 (H.R. 240) that have been ruled in order by the Rules Committee and may be offered on the floor for a vote.

At bottom these amendments are intended to stop DHS from implementing the administrative reforms announced on November 20, 2014 that ameliorate serious, long-standing problems with our nation's immigration system. These systemic failings include an inadequate number of employment and family visas that has resulted in extremely long multi-year waits for visas and long family separations and unfilled job openings. In the absence of reform there is now a large unauthorized population residing in the U.S. that simply cannot be deported en masse and whose presence is both integral and essential to our country. Finally, the poor allocation of finite enforcement resources has resulted in the deportation of hundreds of thousands of low priority individuals who have lived in the United States for years, when there are higher priority individuals that should be targeted, such as those who present serious threats to public safety.

The November 20 reforms will help unify and protect families, greatly benefit businesses, and enable millions of unauthorized individuals to come forward, register and obtain a temporary reprieve from deportation. In the absence of an immigration reform bill being passed, these executive branch reforms are urgently needed. Preventing the implementation of these smart reforms, which by AILA's assessment are fully within the legal authority of the executive branch, is counter-productive and will hurt thousands of families, businesses and the entire U.S. economy.

AILA also opposes these amendments as improper attempts to legislate policy on an extremely complex and controversial issue in the limited context of an appropriations 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. Playing politics with DHS funding would be unwise and could undermine public safety.

Congress should devote serious attention to the passage of immigration reform legislation, but it should do so in the proper committees that bear the responsibility for addressing immigration policy. Poll after poll has shown that overwhelming numbers of Americans--about 65 to 75

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percent--want Congress to reform the immigration system. These polls show Americans want Congress to address the needs of businesses, strengthen the economy, keep families together, and provide a way for the large unauthorized population to register and legalize their status. AILA welcomes, indeed urges, Congress to take up immigration but through an open and transparent process, not a rushed process tacked onto a must-pass spending bill.

AILA opposes the following amendments to H.R. 240:

Amendment #1 sponsored by Representatives Aderholt, Mulvaney and Barletta
Amendment #2 sponsored by Representative Blackburn
Amendment #3 sponsored by Representative DeSantis and Roby
Amendment #5 sponsored by Representative Schock

Amendment #1 sponsored by Representatives Aderholt, Mulvaney and Barletta
This amendment would prevent 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. The Aderholt amendment seeks to undo existing or planned programs and policies that fall well within the discretion of DHS. As stated above, a debate on immigration policy should happen in the proper venue and with adequate time—not within a matter of a few days on a spending bill. 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: the adjudication of business petitions and family petitions; border security and interior enforcement; the status of many who live here unauthorized; military recruitment policy. In short, the amendment halts efforts to do tremendous good for our economy and nation as a whole.

Finally, and perhaps most important, the Aderholt amendment will result in deeply harmful impacts, including the following:

- Halt the implementation of the Deferred Action for Parental Accountability (DAPA) program and important changes to the Deferred Action for Childhood Arrivals (DACA) program, 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 security in the southern border region through the creation of three 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.

<u>Amendment #2 sponsored by Representative Blackburn</u>
This 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. In addition, thousands more are awaiting decisions on their new applications and would no longer be able to register for DACA.

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 provides no solution for a complex problem with our current immigration system and instead resorts to an enforcement-only approach. Republican and Democratic leaders have criticized the deportation of hundreds of thousands of unauthorized people as impractical and disastrous for the American economy. AILA recommends members of Congress oppose this amendment and work in earnest to enact immigration reform legislation.

Amendment #3 sponsored by Representatives DeSantis and Roby

Packaged cleverly as a victim protection measure, this amendment would prohibit funding for DHS to carry out any immigration enforcement policy 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. Specifically, the amendment would prevent DHS from implementing the memorandum of November 20, 2014 regarding "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," as well as prior memoranda setting enforcement priorities.

To begin with, this amendment is unnecessary and repetitive. Already the crimes named in this amendment fall within DHS's top enforcement priorities.

Moreover, lawmakers who genuinely seek to protect domestic violence victims should recognize the DeSantis amendment will actually discourage victims from seeking help from law enforcement and ultimately do more harm to the exact populations it purports to protect. 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.

By contrast, the November 20, 2014 memorandum allows for consideration of a person's past victimization as a "mitigating factor." The DeSantis amendment prohibits this important consideration and would force DHS to pursue actual victims and even deport them.

In fact, the very purpose of key measures in the bi-partisan Violence Against Women Act (VAWA), which recently marked its 20th anniversary, was to ensure that victims of domestic violence would not face the risk of deportation. VAWA shields victims from immigration deportation to encourage them to report crimes and seek law enforcement protection. The DeSantis amendment turns the shield of protection into a sword against victims and would more likely silence them.

Equally troubling, the DeSantis amendment strips federal law enforcement agencies of the authority to establish priorities for immigration enforcement based on identified threats to public safety and national security. The amendment will more likely jeopardize public safety by

making the job of law enforcement agencies more difficult and making it harder for them to pursue more serious threats.

**Amendment #5 sponsored by Representative Schock**

This amendment states a sense of Congress that U.S. Citizenship and Immigration Services (USCIS) should stop putting the interests of unauthorized individuals ahead of those who are "following proper immigration laws and procedures." Though the amendment does not have binding effect, it states that the adjudication of any petitions or applications submitted by unauthorized persons should be stopped. In addition the amendment states that it is unfair to use fees to cover the cost of adjudicating petitions and applications submitted by unauthorized persons. Instead such funds, according to the amendment, should be used to improve processes adjudicating applications for those who are abroad or lawfully present in the U.S.

If implemented, the principle set forth in the Schock amendment would result in terrible consequences since many vulnerable individuals that Congress has protected could no longer have their petitions or applications decided by USCIS. For example, asylum seekers commonly enter the U.S. without the required documents and remain in unauthorized status until their asylum claim is granted, a period that often lasts months or years. The Schock amendment would undo decades of humanitarian policy that is well-established in U.S. law and embodied in the founding principles of our nation to serve as a refuge for those fleeing persecution.

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.

Moreover, many people with valid business visas are given dates that do not match when they enter at a port of entry and are inspected by Customs and Border Protection. As a result they inadvertently overstay their visa or work without authorization by mistake. This happens frequently for people with L-1 visas who work for an international company and come to the U.S. to work. Falling out of status takes time to resolve and sometimes cannot be resolved.

There would be devastating consequences if Congress penalized everyone who falls out of status categorically and bars them from having future petitions or applications adjudicated.

Finally, the spouses and dependents of men and women in the armed services sometimes are not in lawful status, and AILA's Military Assistance Program, a pro bono project, has assisted hundreds of them in correcting their situation. 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

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