



March 3, 2015

Dear Judiciary Committee Members:

Asian Americans Advancing Justice (Advancing Justice) is a national partnership of five non-profit, non-partisan organizations that work to advance the human and civil rights of Asian Americans and Pacific Islanders (APIs) through advocacy, public policy, public education, and litigation. We are based in Washington D.C., Atlanta, Chicago, Los Angeles and San Francisco. We write to express our opposition to four bills being considered by the Committee this week: (a) the Michael Davis, Jr. in Honor of State and Local Law Enforcement Act (H.R. 1148); (b) the Asylum Reform and Border Protection Act of 2015 (H.R. 1153); (c) the Protection of Children Act of 2015 (H.R. 1149); and (d) the Legal Workforce Act (H.R. 1147). Each of these bills are problematic for numerous reasons but this letter focuses on provisions of greatest concern to the AAPI community.

Asian Americans are the fastest growing racial group in the United States, currently making up about six percent of the U.S. population. More than 19 million, or the majority of, Asian Americans are foreign born. Our community members come to the United States in various ways – as students, family members, workers, or refugees and asylees. Dating back to exclusionary immigration laws of the late 1800s, the Asian American community has been and continues to be uniquely shaped by U.S. immigration laws. The Department of Homeland Security (DHS) estimates that 1.3 million Asian Americans are undocumented. And nearly 2 million of the individuals waiting in the family and employment visa backlogs are Asian nationals.

### **H.R. 1148 Hurts Communities**

The Michael Davis, Jr. in Honor of State and Local Law Enforcement Act (H.R. 1148) is a radical enforcement-only bill that will further criminalize immigrants and waste resources that could be better spent elsewhere. The Act would block President Obama's recent executive actions on immigration (and any future proposed administrative reforms). Going even further, it would prevent DHS from considering new and/or renewal applications for the existing Deferred Action for Childhood Arrivals (DACA) program. This is an unconscionable attack on immigrant and their families and it erodes civil rights and due process. We strongly urge the Committee to reject the provisions of H.R. 1148.

Title I of the Act would grant unprecedented immigration enforcement powers to states and localities by allowing them to enact and enforce criminal penalties for status-related violations, and "investigate, identify, apprehend, arrest, detain or transfer to federal custody" individuals in order to enforce any immigration violation under the Act. This would cause many members of our community, including U.S. citizens and lawful permanent residents, to undergo prolonged detention while police investigate their status, violating their procedural due process rights under the U.S. Constitution. These due process violations are already occurring under current

immigration enforcement regimes and would likely increase dramatically if H.R. 1148 were to become law. Further entangling local law enforcement in our immigration regime only makes communities less safe by stoking fear and undermining civil rights. Bills like H.R. 1148 further create distrust between local law enforcement and the communities they serve.

Title VI aims to hurt immigrants and their families by prohibiting DHS from using any funds or resources to implement the policy changes President Obama announced in November 2014, as well as for the existing DACA program announced in June 2012. Nearly half a million AAPIs are eligible for relief under the President's deferred action programs. Preventing the use of deferred action leaves many long-time residents living in fear of family separation and vulnerable to workplace exploitation. It also interferes with the executive branch's well-established authority to exercise prosecutorial discretion and prioritize limited resources.

This bill also ties the administration's hands with even modest improvements to our legal immigration system. It undermines family unity by preventing expansion of the provisional waiver that helps some close family members of U.S. citizens and legal permanent residents achieve lawful status using existing legal channels. DHS would be unable to implement the final rule extending work authorization to the spouses of H-1b temporary workers who are already on a path to a green card. The overwhelming majority of H-1b workers and their spouses are from Asia so preventing implementation of this new rule disproportionately harms Asian American families – and our overall economy that would benefit from their skill and labor.

H.R. 1148 also imposes ever-harsher enforcement consequences on so-called “criminal aliens.” Title III would, among other things, further expand the definition of aggravated felonies. Of particular concern to the Asian American community is the bill's intention to add visa overstays to the list of aggravated felonies. (*See* §§ 301 and 315 (“knowingly violates the conditions of the alien's admission or parole into the [U.S.]”) of H.R. 1148). Not only would H.R. 1148 make it a crime to have overstayed a visa, it would eliminate the ability for people to adjust their status in the U.S. In fact, they would be barred permanently from returning to the U.S. This new crime will disproportionately and adversely impact Asian Americans, many of whom overstay to be with family members, to pursue economic opportunities unavailable to them in their home countries, or because it is not safe to return. Asian nationals trying to immigrate to the United States face decades-long visa backlogs and we need more avenues for people to immigrate here safely and lawfully.

### **H.R. 1153 and 1149 Undo Critical Protections for Vulnerable Populations**

Advancing Justice also opposes the Asylum Reform and Border Protection Act of 2015 (H.R. 1153). The Act would rollback critical protections for children under the Trafficking Victims Protection Reauthorization Act (TVPRA), expand the inappropriate use of immigration detention for children, limit access to both due process and the asylum process, severely restrict the use of parole, limit the availability of Special Immigrant Juvenile Status (SIJS) visas, and create unsafe conditions for the custody of children. Over the years, the AAPI community has benefitted from America's tradition of providing protection to asylees and refugees and we oppose efforts to limit these important protections. Further, as legal organizations committed to due process and

access to justice, Advancing Justice is deeply troubled by a bill that would further harm children fleeing trauma by restricting access to humanitarian protections.

This Act undermines the entire purpose of the TVPRA and harms children. The bill unnecessarily limits the definition of an unaccompanied child and the related family reunification protections. The bill also erodes due process for children as it allows Customs and Border Protection (CBP) to place children traveling alone in expedited removal proceedings. The accelerated nature of these proceedings means that these children, regardless of their age, will have to represent themselves in complex legal proceedings. We are particularly concerned with the sections of this bill that authorize detention for the duration of the child's asylum or trafficking proceeding, and even in cases where the child has already established credible fear of persecution. In addition to adding a layer of trauma to an already vulnerable population, it will be nearly impossible for children, most of whom already lack legal representation, to navigate the immigration system while detained. More fundamentally, Congress should not be in the business of detaining children, a practice antithetical to established child welfare practices.

With regard to the asylum process, this Act creates a more complicated process to obtain protection. The Act creates a higher standard for proving a threshold credible fear of persecution, applies the one-year asylum bar to children, applies Safe Third Country requirements to children, adds a provision that individuals can be denied asylum if they safely lived in another country in any status before coming to the U.S., and forces children to present their case in a trial before an Immigration Judge instead of through an interview with an asylum officer, further burdening our overly-taxed immigration courts. With regards to withholding of removal, the Act also requires applicants to provide only one central reason for the grant of withholding, and thus, strips the availability of this protection from individuals who are more likely than not to suffer persecution. These changes to the system are not necessary to avoid abuse of our asylum system as our current system already contains numerous fraud prevention and detection mechanisms.

Our organizations also oppose Protection of Children Act of 2015 (H.R. 1149) that includes many punitive provisions similar to H.R. 1153. Despite the bill's title, this bill will hurt children by making them more vulnerable to traffickers, criminals, and the negative effects of prolonged detention. The Protection of Children Act limits protections for children, places them in restrictive and inappropriate settings, and puts an almost impossible burden on children to establish a claim for relief from removal. The bill would also severely restrict the family reunification process and further limit vulnerable children's access to our asylum system. We urge this Committee to reject efforts to weaken these important protections.

### **Legal Workforce Act**

Advancing Justice opposes the implementation of a mandatory E-Verify program nationwide. Mandating E-verify will have a destructive impact on workers, employers and our economy as a whole. For the reasons below, we urge the Committee to oppose the Legal Workforce Act (H.R. 1147).

Asian American authorized workers – including citizens and green card holders – already face a higher risk of being flagged as undocumented by E-Verify than U.S-born workers. Lawful

Permanent Residents (LPRs) and other work-authorized noncitizens receive erroneous E-Verify determinations at much higher rates than U.S. citizens.<sup>1</sup> According to the most recent DHS-commissioned study, the tentative nonconfirmation (TNC) error rate for LPRs is 0.9 percent and for other noncitizens who are legally authorized to work (e.g. asylees) it is 5.4 percent.<sup>2</sup> This means that an LPR is *four times* more likely to receive an erroneous TNC than a U.S. citizen. For other noncitizens, this discrepancy is even more pronounced, as a noncitizen legally authorized to work in the U.S. is over *twenty-seven times* more likely to receive a TNC than a U.S. citizen. Because workers who receive a TNC often face negative impacts such as suspension from work or reduced pay, the heightened TNC error rate for LPRs and other work-authorized noncitizens results in discrimination.<sup>3</sup> This is particularly troubling to the more than 8 million foreign born AAPIs who live in the United States.<sup>4</sup>

Workers falsely flagged as unauthorized to work under proposals such as the Legal Workforce Act have almost no job protections or recourse. In fact, the Legal Workforce Act bars workers from bringing any claim under virtually any law—including laws explicitly designed to provide labor protections—for loss of their job or violations that occur as a result of an employer’s use of the program.<sup>5</sup> No one should lose his or her job due to governmental error.

Moreover, E-Verify depresses working conditions for all workers. E-Verify builds on the flawed employer sanctions framework and incentivizes employers to pay workers “off the books,” resulting in increased labor abuses. A mandatory system will drive existing vulnerable undocumented immigrant workers further underground and subject to exploitation. Such conditions are ripe for wage theft, indentured servitude, unsafe working conditions, debt-bondage, and other workplace abuses. This results in a race to the bottom that hurts all workers, disadvantages law abiding employers, and by at least one government estimate, promises to decrease federal tax revenue by more than \$17.3 billion over ten years. The billions employers will need to spend to implement E-Verify also unduly and disproportionately falls on small businesses.

Instead of expanding E-Verify – a system that hurts the economy and promotes workplace exploitation – we should establish full labor and workplace rights and protections for all workers regardless of immigration status, repeal employer sanctions, and fix our broken immigration system through broad reform that includes a clear and fair roadmap to citizenship for all 11

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<sup>1</sup> *Evaluation of the Accuracy of E-Verify Findings* (Westat Corporation, July 2012), at p. 24 [http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/EVerify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf](http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/EVerify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf), pp. X, 23 (hereinafter Westat 2012). Though dated July 2012, this report was not released to the public until July 2013.

<sup>2</sup> *Id.* By comparison, the TNC error rate for U.S. citizens for the same time period is 0.2 percent.

<sup>3</sup> *Id.* at pp. 205-206, which documents that nearly 40 percent of workers surveyed experienced some form of adverse action by their employer as a result of a TNC.

<sup>4</sup> U.S. Census Bureau, *We the People: Asians in the United States: Census 2000 Special Reports*, 20 available at <http://www.census.gov/prod/2004pubs/censr-17.pdf>.

<sup>5</sup> The only avenue of redress that the bill allows workers who unjustly lose employment because of an E-Verify error is to sue the federal government under the Federal Tort Claims Act (FTCA) for lost wages. However, this is an empty remedy, given the procedural hurdles to bringing an FTCA claim, see 28 U.S.C. § 2675, the FTCA’s restrictions on attorney’s fees, and the limits of the “discretionary function exception” of the FTCA, see 28 U.S.C. § 2680(a).

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The text of these bills makes clear that their sponsors are not interested in seriously improving our immigration system. Advancing Justice urges this Committee to reject these bills as short-sighted and not representative of our history as a nation of immigrants. We pledge to work with all members of Congress who are committed to passing legislation that keeps families together, protects workers, and prioritizes due process and human rights. Thank you.

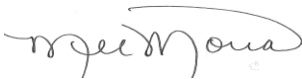
Sincerely,



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