

September 12, 2017

The Honorable John McCain
Chairman
Senate Armed Services Committee
18 Russell Senate Office Building
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
Senate Armed Services Committee
728 Hart Senate Office Building
Washington, DC 20510

Dear Chairman McCain and Ranking Member Reed,

We, the undersigned organizations, urge you to oppose Senate Amendment 463 to the National Defense Authorization Act for Fiscal Year 2018. This amendment, offered by Senator Jeff Flake (R-AZ), would eliminate critical polygraph requirements, widely used by federal law enforcement, for certain U.S. Customs and Border Protection (CBP) applicants. These requirements were established by Congress in the Anti-Border Corruption Act of 2010 with unanimous support precisely because CBP was plagued with serious corruption and integrity issues. The agency cannot now be trusted to weaken its hiring standards for the purpose of more rapidly building President Trump's mass deportation force.

The context for this polygraph waiver measure is important. During his first week in office, President Trump issued an Executive Order calling for the hiring of 5,000 additional Border Patrol agents. That would represent a 25 percent increase at a time when border apprehensions continue to go down, a slide that began and has remained fairly steady for the past 17 years. Border apprehensions are now running at less than 1/4th of the level they reached in 2000. The President's Executive Order says nothing about bringing on new officers at short-staffed ports of entry, an actual need, and there is nothing in Senate Amendment 463 to the National Defense Authorization Act (NDAA) for FY18 that facilitates the hiring of such officers.

Watering down CBP hiring standards through polygraph loopholes is dangerous and risks employing CBP officers and agents who would jeopardize national security and public safety and compromise the largest law enforcement agency in the country. The polygraph waiver measure in SA 463 threatens to repeat recent disastrous history when officers/agents hired during a late 2000s CBP surge were frequently found to be corrupt—some working for international drug trafficking organizations—and prone to abuses such as excessive use of force and sexual assault. In response, Congress enacted the Anti-Border Corruption Act of 2010 that mandated polygraphs for all persons applying for CBP law enforcement positions.

Indeed, former head of CBP Internal Affairs James Tomsheck (2006 to 2014) opposes the CBP polygraph waiver measure contained in SA 463, warning Congress not to “green-light lower standards for CBP recruits and worsen widespread integrity failures that already plague an agency with the biggest corruption problem in federal law enforcement.” These concerns were echoed by current DHS Inspector General John Roth, who told the New York Times that polygraph changes including the proposed legislation “could put CBP at significant risk.” Mr. Roth, whose office is currently auditing the CBP polygraph program, said CBP needs to identify other ways to make hiring “more efficient without sacrificing integrity and effectiveness.”

Other federal law enforcement agencies, including the FBI, DEA, ATF, and Secret Service, make no exceptions for polygraph testing of law-enforcement applicants. However, SA 463 would allow CBP to exempt subgroups of federal/state/local law enforcement and certain military and National Guard personnel, despite the fact that some of these applicants have never taken a polygraph exam or one as stringent as the one used in federal law enforcement. Former head of CBP Internal Affairs Tomsheck underscored that “[t]his change is being contemplated without consideration of whether these applicants pass the polygraph at a higher rate: they don’t. Nor do these groups present a lesser risk of integrity violations: they have been involved in some of the most serious CBP corruption activity and excessive force incidents.”

The polygraph is an integral component of CBP vetting and has prevented corrupt or corruption-prone applicants from being hired and deployed. Current DHS Inspector General John Roth warns that “[w]hile it may sound reasonable to say you could waive requirements from former military personnel because they have passed a polygraph, Border Patrol agents work in a different environment that is not as controlled as the military.” Two-thirds of applicants fail the CBP polygraph and hundreds have admitted to serious criminal activity during the screening process. Former CBP head of Internal Affairs Tomsheck confirmed that applicants have revealed engagement with drug cartels and smuggling activities during their polygraph exams.

CBP is facing staggering integrity and professionalism challenges. According to the Government Accountability Office, between 2005-2012 there were 2,170 reported incidents of arrests of CBP personnel for misconduct. That’s nearly one CBP officer or agent arrested for misconduct every single day for seven years. Almost 200 current or former CBP employees were arrested or indicted since October 2004 for corruption-related activities, such as the smuggling of immigrants and drugs, of whom 125 had been convicted as of October 2012.

DHS’s own CBP Integrity Advisory Panel of outside law enforcement experts concluded in 2015 that “there is data indicating that arrests for corruption of CBP personnel far exceed, on a per capita basis, such arrests at other federal law

enforcement agencies.” In its final report issued in 2016, the panel recommended that current polygraph testing be expanded to include post-employment tests that are best practices at the FBI and agencies in the U.S. intelligence community. The Integrity in Border and Immigration Enforcement Act (S. 1560), legislation recently introduced by Sen. Durbin (D-IL) and Sen. Duckworth (D-IL), responds to these recommendations by requiring polygraph exams for both CBP applicants and post-hire polygraphs for law enforcement personnel.

CBP has a horrendous track record of abuse and impunity. Since January 2010, more than 50 people have died in encounters with CBP personnel. Not only have many CBP agents and officers been implicated in excessive use of force incidents, but the rate of sexual misconduct by CBP personnel is also significantly higher than other law enforcement agencies.

CBP undoubtedly faces recruitment and retention problems, although it was recently reported that Border Patrol has succeeded in cutting hiring time by two-thirds. Instead of taking short-cuts that would increase corruption and abuse, CBP should focus on improving its accountability and transparency and diversify its applicant pool. Increasing hiring at the expense of the public’s trust would create serious national-security vulnerabilities, jeopardize public safety, and degrade the quality of life for border residents.

Please oppose Senate Amendment 463 to the National Defense Authorization Act of Fiscal Year 2018: it’s bad policy that would guarantee more CBP abuses.

Sincerely,

African American Ministers In Action
American Friends Service Committee
American Immigration Lawyers Association
Asian Americans Advancing Justice - AAJC
Bend the Arc Jewish Action
Center for American Progress
Center for Biological Diversity
Christian Church (Disciples of Christ) Refugee & Immigration Ministries
Church World Service
Congregation of Our Lady of Charity of the Good Shepherd, US Provinces
Detention Watch Network
Farmworker Justice
Immigrant Legal Resource Center
Indivisible
Interfaith Worker Justice
Kids in Need of Defense
Kino Border Initiative
La Union del Pueblo Entero (LUPE)

Latin America Working Group (LAWG)
League of United Latin American Citizens
Maryknoll Office for Global Concerns
Michigan United
Migrant Rights Collective
NAFSA: Association of International Educators
National Advocacy Center of the Sisters of the Good Shepherd
National Employment Law Center
National Immigrant Justice Center
National Immigration Law Center
NETWORK Lobby for Catholic Social Justice
New Mexico Comunidades en Accion y de Fe (CAFe)
New York Immigration Coalition
OneAmerica
PICO National Network (People Improving Communities Through Organizing)
Refugee & Immigration Ministries, Christian Church (Disciples of Christ)
Sisters of Mercy of the Americas - Institute Justice Team
Southern Border Communities Coalition
Southwest Environmental Center
University Leadership Initiative
We Belong Together
Women's Refugee Commission