ACLU
AMERICAN CIVIL LIBERTIES UNION

July 7, 2009

U.S. Senate
Washington, DC 20510

RE: Vote "NO" on Sessions amendment 1371 to amendment 1373 on the Homeland Security Appropriations bill (H.R. 2892)

Dear Senator:

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On behalf of the American Civil Liberties Union (ACLU), a nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals, and its hundreds of thousands of members, activists, and 53 affiliates nationwide, we urge you to vote "no" on Senator Sessions' amendment No. 1371 to amendment 1373 on the FY 2010 Homeland Security Appropriations bill (H.R. 2892). Because of the importance of this issue, the ACLU will be scoring this vote. The Sessions amendment would make the E-Verify program permanent (sec. 547) and would mandate E-verify for all federal contractors and subcontractors (sec. 546). This amendment would be disastrous for U.S. workers, employers, and our nation's struggling economy. First, expanding and making the E-verify program permanent is not supported by the agency responsible for the program. Second, the failings of the E-verify program are well-documented, including misidentifying U.S. citizens and lawful immigrant workers. Finally, an expanded or permanent E-Verify would impose huge financial burdens on businesses, large and small, at a time of economic peril.

The E-Verify Program is Highly Flawed and Is Not Ready for Prime-Time. Virtually every entity that has reviewed Basic Pilot/E-Verify carefully — including two independent evaluations commissioned by the former Immigration and Naturalization Service in 2002 and by the U.S. Department of Homeland Security (DHS) in 2007, an investigation by the Government Accountability Office, and a review by the Social Security Administration's Office of the Inspector General (SSA-OIG) — has found that E-verify has significant weaknesses including (1) reliance on government databases that have unacceptably high error rates and (2) employer misuse of E-verify. The 2007 independent evaluation, commissioned by DHS, found that the Basic Pilot/E-Verify database "is still <u>not sufficiently up to date</u>" to meet the requirements for "accurate verification." This same DHS study found that the rate of employer noncompliance with E-Verify program rules is "substantial." Against program rules, 47 percent of employers put workers through E-Verify prior

to the first day of work. 9.4 percent of employers did not notify workers of their tentative nonconfirmation ["TNC"] (E-Verify program reporting them as unauthorized to work). Seven percent of employers who notified workers of TNCs did not encourage them to correct the information because, in their view, the process of contesting the notices takes too much time. Twenty-two percent of employers restricted work assignments, 16 percent delayed job training, and two percent reduced pay on TNC notices. In short, E-Verify is not ready for expansion or permanency unless and until DHS fixes its databases and institutes penalties against U.S. employers who misuse the E-Verify system.

U.S. Workers Would Pay the Costs for a Mandatory or Expanded E-Verify Program. Under the current E-Verify program, many U.S. citizens and lawful immigrants are misidentified as unauthorized to work. For example, queries submitted to Basic Pilot/E-Verify by Intel Corporation in 2008 resulted in nearly 13 percent of Intel employees being initially flagged as unauthorized. All of these employees were eventually cleared by Basic Pilot/E-Verify as work-authorized, but only after "significant investment of time and money" by Intel and "lost productivity." In addition, SSA has estimated that if Basic Pilot/E-Verify were to become mandatory and the databases were not improved, SSA database errors alone could result in 3.6 million workers a year being misidentified as not authorized for employment. This would result in six out of every 100 workers having to visit an SSA field office to correct their records or lose their jobs. In-person visits to SSA field offices will be costly for U.S. workers, especially those living in rural areas, since this will require extensive travel and lodging costs.
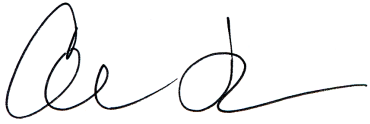
The costs of imposing a mandatory electronic employment verification system are especially high for small business. There are approximately 324,000 small businesses registered to do business with the government as contractors or subcontractors. An economic analysis commissioned by the U.S. Chamber of Commerce concluded that the net social costs of mandatory E-Verify on federal contractors would be $10 billion a year. Imposing these additional burdensome costs would be fiscally unwise at this time.

Expanding and making E-verify permanent is not supported by the Obama Administration. The President's budget calls for extension of E-verify as a voluntary, not mandatory program and focuses resources on safeguarding privacy, enhancing program efficacy, and protecting employees from discriminatory practices. The Administration has also suspended implementation of a rule that would mandate E-verify for federal contractors, until September 2009, in order to complete its review of the rule.

Making E-Verify mandatory or permanent will not solve our country's illegal immigration problems. Rather, it will exacerbate an already difficult situation faced by U.S. workers struggling to make ends meet during this economic recession. For these reasons, we urge you to vote "no" on Sessions amendment No. 1371 to amendment 1373 on the FY 2010 Homeland Security Appropriations Bill (H.R. 2892).

Sincerely,

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