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Dear Representative:

On behalf of the American Bar Association, I write to urge you to oppose the immigration-related bills introduced by Representative James Sensenbrenner on September 19, 2006, in their present forms.<sup>1</sup> These bills are the Community Protection Act of 2006 (H.R. 6094) and the Immigration Law Enforcement Act of 2006 (H.R. 6095). The ABA strongly opposes several key provisions in these bills that would further diminish procedural and due process protections afforded to individuals in the immigration system. These provisions may have serious, even life-threatening, consequences for immigrants and asylum-seekers.

### **Comprehensive Immigration Reform**

The ABA supports comprehensive immigration reform that includes a path for undocumented individuals to adjust to lawful immigration status without departing the U.S., adequate channels for necessary future workers, and avenues for family reunification. By focusing exclusively on border security while failing to offer a worker program, these bills do not address our nation's need for immigrant labor or the estimated 12 million undocumented people currently living and working in the United States. Further, the bills severely restrict due process protections, including administrative hearings and judicial review, for immigrants. Immigration reform should, and can, preserve national security and family unity without sacrificing due process protections or our nation's economic viability.

### **State and Local Police Enforcement of Immigration Laws**

The ABA opposes the State and Local Law Enforcement Cooperation in the Enforcement of Immigration Law Act, Title I of H.R. 6095, which authorizes state and local police to enforce federal immigration laws. State and local enforcement of immigration laws undermines public safety by diverting already limited resources and distracting law enforcement officers from their primary mission of protecting the public safety and apprehending those who commit crimes.

Moreover, this provision will strain police-community relations and deter people who are victims and witnesses from reporting crimes. Victims of domestic violence and other crimes, who may in fact be eligible for immigration relief, will legitimately fear contacting the police, which will in turn compromise law enforcement efforts.

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<sup>1</sup> Representative Sensenbrenner introduced three bills on September 15, 2006, the Illegal Alien Deterrence and Public Safety Act of 2006 (H.R. 6089), the Effective Immigration Enforcement and Community Protection Act of 2006 (H.R. 6090), and the Border Security Enhancement Act of 2006 (H.R. 6091), which have been repackaged in H.R. 6094 and H.R. 6095.

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## **Limit on Injunctive Relief**

The ABA opposes the limitations on injunctive relief included in the Ending Catch and Release Act of 2006, Title III of H.R. 6095. This act would impose on the courts very short deadlines for acting on immigration cases and would put immigrants in danger of being deported before their claims are heard on the merits. The Act accomplishes this by terminating preliminary injunctions against the government after 90 days, regardless of the complexity of the case. Thus, if the court were unable to adjudicate a claim very quickly, the court would have no power to stop the government from deporting an individual. This provision has serious due process implications, and would result in grave, potentially life-threatening consequences for legitimate asylum seekers, if they were deported before they had a chance to receive a final adjudication on the merits.

## **Indefinite Detention**

The ABA supports full compliance with the Supreme Court's decisions in *Zadvydas v. Davis* (2001) and *Clark v. Martinez* (2005) which place limits on allowable duration of detention. We oppose provisions in the Dangerous Alien Detention Act of 2006, Title I of H.R. 6094, that conflict with these decisions and expand the grounds for indefinite detention, and that apply these changes retroactively. Full compliance with the Supreme Court decisions is particularly important in light of documented failures in custody review procedures, lengthy administrative delays, and poor detention conditions. Furthermore, applying these provisions retroactively is a fundamental violation of due process.

## **Expansion of Expedited Removal and Elimination of Judicial Review**

Title II of H.R. 6094, the Criminal Alien Removal Act, would permit expedited removal of individuals determined by DHS officials, not by immigration or other courts, to be inadmissible for criminal and other specified reasons. The provision would not require that the individual be convicted of any crime; instead, it would permit low-level immigration officers to decide whether an individual has admitted to committing acts which constitute the elements of a crime, and then to issue removal orders, without the safeguards provided by the judicial review of either the underlying criminal allegations or the removal order.

Access to the courts is an essential feature of our system of government, and the implementation and execution of the immigration law has often been corrected by such judicial oversight. Judicial review also has been important historically in protecting immigrants' rights and civil liberties. During the expedited removal process, an individual does not have the right to legal counsel, an interpreter, an impartial adjudicator, or judicial review. A removal proceeding, on the other hand, is an evidentiary inquiry that involves both fact-finding and legal analysis to determine a person's identity and citizenship; whether or not he or she is admissible to or removable from the United States or is eligible for an immigration benefit or relief; and to what country the individual would be removed if ineligible to remain here. Although expedited removal procedures allow for credible fear determinations for potential asylum seekers, many individuals fleeing persecution may be unable or reluctant to express their fears upon arrival due to trauma, language barriers, or cultural or gender considerations. The ABA strongly believes that only impartial adjudicators, preferably immigration judges, should have the authority to enter removal orders following a formal hearing that conforms to accepted norms of due process. The decisions of these immigration judges, moreover, must be subject to administrative and judicial review. The expedited removal provisions in Title II of H.R. 6094 fail in those regards and should be rejected.

## **Consolidation of Judicial Review**

The Dangerous Alien Detention Act of 2006, Title I of H.R. 6094, provides that its provisions may be challenged only in habeas corpus proceedings in the United States District Court for the District of Columbia. Such a geographic consolidation should occur, if at all, only after careful study, as it could have a potentially negative impact on court resources, due process, and the rights of immigrants. Consolidation of these cases in Washington, D.C. may be particularly burdensome or even prohibitive for immigrants represented by non-profit agencies or pro bono counsel.

We urge you and your colleagues to reject these proposals and to support comprehensive, realistic immigration reform.

Sincerely,

  
Robert D. Evans