Defending Liberty
Pursuing Justice

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The Honorable
United States Senate
Washington, DC 20510

RE: Comprehensive Immigration Reform Act of 2006, Section 227(c)

Dear Senator:

On behalf of the American Bar Association, I write to urge you to oppose inclusion of Section 227(c) in the Comprehensive Immigration Reform Act (CIRA) of 2006. This provision would prohibit any court from granting a stay of removal to an individual while his or her appeal is pending who cannot first prove by clear and convincing evidence that the relief he or she seeks will be granted. The result of this change, which greatly heightens the standard for the grant of a stay of removal, significantly increases the chances that legitimate asylum-seekers would be returned to their country of persecution.

Including Section 227(c), entitled "Limit on Injunctive Relief,"[1] in the CIRA will result in grave, potentially life-threatening consequences for legitimate asylum-seekers. Under this Section, those who are unable to prove their claims by clear and convincing evidence, even before the matter is considered on the merits by the appellate court, will be returned to their countries of persecution while they await the results of their appeals. This will cause the United States to violate the United Nations Convention and Protocol Relating to the Status of Refugees, which prohibits the return or 'refoulement' of individuals to countries where they will face persecution. Even those asylum seekers who are ultimately granted relief may be unable to obtain safe haven in the United States if denied a stay of removal under Section 227(c). Upon return to their home countries, asylum seekers will be forced to live in hiding, and will likely be retargeted for violence, torture, murder, or other severe retaliation for attempting to flee. Many will be unable to re-exit their country, or will be forced into yet another perilous journey to the United States.

The 'clear and convincing evidence' standard of proof that Section 227(c) requires for a stay of removal is more onerous than the current burden of proof required to establish the merits of an asylum claim. The United States Supreme Court has stated that even when there is as little as a one-in-ten chance of persecution, an asylum seeker can establish that his or her fear of persecution is well founded, as is required for

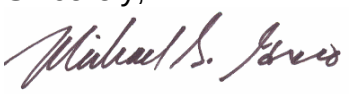
[1] Section 227 is entitled "Expedited Removal."

asylum.[2] In practice, Section 227(c) would effectively heighten the burden of proof for asylum seekers, who already face severe obstacles in securing documentation of their claims given the life-threatening circumstances of their flight. International refugee law principles,[3] as well as United States case law,[4] have consistently recognized the difficulty asylum seekers face in proving their claims. They endure forced separation from their family and country and severe mental and emotional stress, and may risk their own or their family's lives trying to obtain evidence that was left behind in the chaos as they fled.

In addition to the humanitarian concerns described above, Section 227(c) will require asylum seekers to present their entire case to the court twice – once to request a stay of removal, and then again on the merits. This will result in a significant waste of resources for the federal government, which is already overburdened given the rising rates of immigration appeals and reversals since streamlining regulations for the Board of Immigration Appeals (BIA) went into effect in 2002.[5]

Section 227(c) will put legitimate asylum seekers at additional, severe risk of harm and impose unnecessary, undue burdens on this particularly vulnerable group. The ABA strongly opposes this troubling provision and we urge you and your colleagues to ensure that it is taken out of the CIRA accordingly.

Sincerely,



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[2] See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987).

[3] The *United Nations' Handbook on Procedures and Criteria for Determining Refugee Status*, serving as a guide to the 1951 Convention and the 1967 Protocol Relating to the status of Refugees, the latter of which the U.S. is a signatory to, states that it is not possible for an asylee to prove every aspect of his or her case through corroborating evidence. Such a requirement would render the majority of asylum seekers ineligible and facing return to countries where they face persecution.

[4] With regard to producing corroborating evidence, in *Bolanos-Hernandez v. INS*, the 9th Circuit held that requiring corroborating evidence would impose too great a burden on an asylum applicant and would make it "close to impossible for [any political refugee] to make out a . . . case [for asylum]." See *Lopez-Reyes v. INS*, 79 F.3d 908, 912 (9th Cir. 1996) citing *Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1285 (9th Cir. 1984). The 9th Circuit has also said that "there is nothing novel about the concept that persecutors cannot be expected to conform to arbitrary evidentiary rules established by the Immigration and Naturalization Service ...." See *Mejia-Alvarado v. INS,* 168 F.3d 500 (9th Cir. 1990), citing *Aguilera-Cota v. INS*, 914 F.2d 1375, 1380 (9th Cir. 1990).

[5] For more information, see the American Bar Association's findings and recommendations on the BIA procedural reforms at http://www.abanet.org/immigration/bia.pdf.