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Dear Senator:

I write on behalf of the American Bar Association to urge you to support comprehensive immigration reform legislation that will provide essential changes to our immigration system. We appreciate Senator Reid's initiative to bring a bill to the Senate floor to begin the debate. However, we understand that this bill, S. 1348, reflects legislation passed by the Senate last year (S. 2611) which we believe was seriously flawed and should be amended during consideration on the floor. We hope the Senate will pass a comprehensive bill that includes a fair and practical program to address our nation's need for immigrant labor as well as the undocumented population currently living and working in the United States, ensures family unity, promotes national security, and provides crucial due process safeguards for immigrants and asylum seekers.

### **Comprehensive Immigration Reform**

Several essential building blocks are necessary for successful and effective reform. These include an earned adjustment program for undocumented individuals currently in the United States and a new temporary worker program to meet future labor needs. These programs must include needed labor protections and job portability for the workers, along with measures to ensure that U.S. workers will not be displaced. Most importantly, the programs must provide a path to permanent residence for those individuals who meet specified criteria for eligibility.

The ABA opposes proposals, including the White House proposal, requiring workers to physically depart from the U.S. in order to earn residency because such a requirement would be cost prohibitive for many and would effectively prevent them from securing the status that any reform program seeks to provide. Implementing such provisions would require extensive logistical planning and would needlessly consume scarce government resources that could otherwise be spent on national security efforts. We recommend excluding such requirements from the bill and permitting adjustment of status within the U.S. for eligible applicants.

The ABA also opposes the White House and other proposals to restrict family-based immigration. Family unity is a core principle of our immigration system and our nation's values, and should be supported in immigration reform by retaining the current system for U.S. citizens and residents to reunite with non-citizen family members and by providing sufficient visas for the system to function properly. The ABA also supports including the DREAM Act in the Senate bill.

## **Due Process and Judicial Review**

The ABA strongly supports restoring due process protections to our immigration system. Despite the fact that immigration cases often involve issues of life and liberty, basic due process protections that we take for granted in our American system of justice have been scaled back in recent years. Access to the courts is an essential feature of our system of government, and judicial review is important in protecting immigrants' rights and civil liberties and correcting improper execution of the immigration laws. However, several provisions of S. 1348 would undermine due process by failing to provide for administrative and judicial review. These provisions should be excluded from the final bill.

The ABA continues to oppose the "expedited removal" summary deportation process in S. 1348. During expedited removal an individual does not have the right to legal counsel, an interpreter, or review by an impartial adjudicator. These removal decisions are made by low-level immigration officers, without the opportunity for judicial review. A removal proceeding, on the other hand, provides due process protections by providing an evidentiary inquiry to determine whether an individual is eligible for immigration relief. The ABA strongly believes that our American system of justice must be preserved by providing that only impartial adjudicators, preferably immigration judges, have the authority to enter removal orders, following a formal hearing that conforms to accepted norms of due process, and that any decision should be subject to administrative and judicial review.

## **Legal Access and Detention**

The ABA opposes detaining non-citizens except in extraordinary circumstances, such as when national security or public safety is threatened or when a non-citizen presents a substantial flight risk. The mandatory detention provisions in S. 1348 should be replaced by effective alternative means of ensuring appearances at court proceedings, such as supervised prehearing release and bond based on risk of flight, which can save the Department of Homeland Security (DHS) and taxpayers significant and unnecessary costs. For those immigrants who remain in immigration detention, the ABA would support an amendment requiring the Department of Homeland Security to house immigration detainees near their attorneys, or in areas where immigration legal assistance is available.

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 the allowable duration of detention. We continue to oppose provisions in S. 1348 that conflict with these decisions and expand the grounds for indefinite detention. Full compliance with these decisions is particularly important in light of poor detention conditions<sup>1</sup> and documented failures in custody review procedures.<sup>2</sup> We urge you to amend the bill to bring it into agreement with the Supreme Court case law in order to avoid unnecessary indefinite detention.

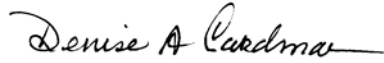
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<sup>1</sup> See Department of Homeland Security, Office of Inspector General, "Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities," OIG-07-01 (December 2006) (detailing instances of noncompliance with the ICE Detention Standards, including legal access requirements), available at [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_07-01\\_Dec06.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_07-01_Dec06.pdf).

<sup>2</sup> See Department of Homeland Security, Office of Inspector General, "ICE's Compliance With Detention Limits for Aliens With a Final Order of Removal From the United States," OIG-07-28 (February 2007) ("required custody decisions were not made in over 6% of cases, and were not timely in over 19% of cases), available at [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_07-28\\_Feb07.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_07-28_Feb07.pdf).

The ABA is hopeful that the Senate will pass a comprehensive bill that recognizes our pressing need for immigrant labor, family unity, national security, due process, and humanitarian protections, and that can restore the rule of law to our broken immigration system. We look forward to working with you to ensure passage of immigration reform legislation this year.

Sincerely,

A handwritten signature in cursive script that reads "Denise A. Cardman". The signature is written in black ink and has a fluid, connected style.

Denise A. Cardman  
Acting Director