June 30, 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Smith and Representative Conyers:

On behalf of the American Bar Association (ABA), I write to express the ABA’s opposition to H.R. 1932, the Keep Our Communities Safe Act of 2011, which would expand the Department of Homeland Security’s immigration detention authority and consolidate judicial review of detention decisions in the U.S. District Court for the District of Columbia. These provisions move immigration detention in precisely the wrong direction; toward more, not less, incarceration and toward less, not more, convenient forums for judicial review.

The ABA has long opposed proposals to impose mandatory detention or to prolong detention, both while an immigration case is pending and after a final order of removal. The significant obstacles to obtaining legal representation faced by immigrants in detention, and the reports we continue to receive about serious deficiencies in conditions of detention, are key reasons why the ABA opposes the detention of noncitizens in removal proceedings except in extraordinary circumstances, such as when the individual presents a threat to national security or public safety, or presents a substantial flight risk. In addition, immigration detention imposes significant financial costs; the federal government spent almost $2 billion to detain about 400,000 individuals last year. There are cost-effective alternatives to detention available that have been proved successful in ensuring that noncitizens appear in court and for removal and that can be utilized in conjunction with appropriate measures to ensure the safety of our communities.

The ABA is also concerned about the provisions in H.R. 1932 that would consolidate judicial review of immigration detention decisions in the U.S. District Court for the District of Columbia. Equal access to justice is a cornerstone of our system of government, and the implementation and execution of the immigration laws have often been corrected by judicial oversight. Judicial review also has been important historically in protecting immigrants’ rights and civil liberties. The bill’s provisions would increase the expense of pursuing judicial review of detention for
those who are detained in facilities far distant from the District of Columbia, and would be particularly burdensome or even prohibitive for immigrants represented by non-profit agencies or pro bono counsel. These provisions also have the potential to significantly and adversely impact the D.C. District Court’s current caseload. In FY08-10, there were over 2,000 immigration habeas petitions filed in federal courts. As with so many courts around the country, the D.C. District Court is struggling to address a rising caseload with increasingly limited resources and this legislation would add to that burden. Restricting judicial review of detention decisions to habeas corpus proceedings instituted in the D.C. District Court will likely have far-reaching consequences, and the possible ramifications of such a proposal should be thoroughly studied before any such measure is considered.

The ABA believes that the overuse of immigration detention does irreparable harm to individuals and imposes unnecessary costs on U.S. taxpayers. H.R. 1932 is a step in the wrong direction and we urge the Committee to reject it.

Sincerely,

Stephen N. Zack
President
American Bar Association