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April 17, 2007

The Honorable Luis Gutierrez
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Gutierrez:

I write on behalf of the American Bar Association to thank you for your leadership in promoting comprehensive immigration reform by sponsoring H.R. 1645, the Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (STRIVE Act), and to share with you our views on selected provisions of the bill. We are pleased that the STRIVE Act includes both 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. As the STRIVE Act also recognizes, comprehensive reform can and must ensure family unity, promote national security, and provide crucial due process safeguards for immigrants and asylum seekers.

Comprehensive Immigration Reform

The STRIVE Act incorporates several essential building blocks 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 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 provide a path to permanent residence for those individuals who meet the criteria for eligibility. The ABA supports, in principle, these provisions of the Act.

We are concerned however, that the Act's provisions requiring workers and their families to physically depart from the U.S. in order to earn residency will be cost prohibitive for many and will effectively prevent them from securing the status that the Act seeks to provide. In addition, implementing this provision will require extensive logistical planning and will needlessly consume scarce government resources that could otherwise be spent on national security efforts. We recommend removing this requirement from the Act and allowing for adjustment of status in the U.S. for eligible workers.

Due Process and Judicial Review

The ABA strongly agrees with the finding in Section 704 "that the United States tradition as a nation of laws and a nation of immigrants is best served by an effective, fair, and well-staffed immigration court system that upholds the rule of law and ensures that individuals and families receive fair treatment." Despite the fact that immigration cases often involve issues of life and liberty, our immigration laws lack basic due process protections that we take for granted in our American system of justice. Access to the courts is an essential feature of our system of government, and judicial review has been important in protecting immigrants' rights and civil liberties and correcting improper

execution of the immigration laws. The ABA supports the provisions of the STRIVE Act that safeguard administrative and judicial review, and provide for increased resources, including the addition of immigration judges, staff attorneys, and support personnel. The ABA also supports the provision in Section 661 providing grants to qualified non-profit organizations to educate immigrant communities regarding the dangers of seeking legal advice from those who are not authorized to provide it.

Legal Access and Detention

The ABA supports the provisions in Sections 173 and 177 of the Act that provide for prompt custody hearings and alternatives to detention for those who would otherwise be detained. 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. Effective alternative means of ensuring appearances at court proceedings, such as supervised prehearing release, can save significant and unnecessary costs to the Department of Homeland Security (DHS) and taxpayers.

The ABA strongly supports Section 175 of the Act, which provides for enforceable standards governing conditions and procedures for immigration detention. Current detention practices make it exceedingly difficult for individuals in detention to secure legal representation and communicate with counsel, or to represent themselves. In recent years, detained individuals have written the ABA over 1,000 letters from 175 facilities across the United States; many of which contain descriptions of the difficulties they have had with basic legal access: the ability to call attorneys or consulates; to receive legal mail in a timely and confidential manner; and to have access to basic legal materials. The Office of the Inspector General recently reported on these problems in its investigation of detention facility conditions.¹ Having enforceable detention standards would better ensure that minimum standards for legal access are met.

The ABA also supports Section 175 of the Act because it specifically provides for standards that require that detention facilities, to the extent practicable, are located near areas where free or low-cost legal representation with expertise in asylum and immigration law is available. We are concerned, however, that language in Section 217(a)(5) could be read as inconsistent with this requirement. As written, Section 217(a)(5) appears to provide that the sole consideration for the location of detention facilities is to effectuate the removal process. We urge you to make clear that meaningful access to legal representation must be a primary consideration in determining the location of immigration detention facilities.

The ABA further supports the provisions expanding legal assistance for asylum seekers, as well as the Legal Orientation Program of the Executive Office for Immigration Review in Section 174 of the Act. The STRIVE Act aptly recognizes that the Legal Orientation Program facilitates non-citizens' access to the legal system, improves immigration court efficiency, and saves government resources. Because of its demonstrated benefits, we recommend expanding the program to all individuals in removal proceedings, whether or not they are detained.

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. Full compliance with the Supreme Court decisions is particularly important in light of poor detention conditions and documented failures in custody review procedures.² We support the custody review procedural

¹ 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/mgmttrpts/OIG_07-01_Dec06.pdf.

² 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/mgmttrpts/OIG_07-28_Feb07.pdf.

protections in Section 231 of the Act, but find that the Act, like existing regulations, expands upon the permissible bases for extended detention established by the Supreme Court. 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.

Protection for Asylum Seekers and Vulnerable Persons

The ABA strongly believes in ensuring that legitimate refugees, asylum seekers, and other vulnerable persons are protected, and are not returned to the countries of their persecution. Refugees are often forced to use false documents to escape life-threatening conditions in their home countries, and trafficking victims are brought to the U.S. against their will by their traffickers, who often procure false documents for them without their consent. While the ABA supports the protections for refugees, asylum seekers, and other vulnerable persons in Section 222 of the STRIVE Act relating to passport fraud; we urge you to expand their scope. Sections 235 and 236 of the Act should be amended to offer similar protections for these vulnerable groups who, due to circumstances beyond their control, are forced to enter the United States unlawfully. Prosecuting legitimate refugees, victims of trafficking and related abuses, and other vulnerable individuals for entering unlawfully, without consideration of individual circumstances, is unjust, and contrary to the intent of the specific humanitarian immigration provisions designed to protect them. The ABA also supports the protections provided for children and women at risk of harm in Section 517 of the bill.

Preparing for Citizenship

The ABA supports the citizenship provisions in Sections 662 and 663 of the STRIVE Act that facilitate integrating immigrants into the United States, preparing them for citizenship, and acculturating them in core U.S. civic values.

Once again, the ABA commends you and all of the co-sponsors of the STRIVE Act for supporting key elements of comprehensive reform and recognizing that a realistic approach to our need for immigrant labor, family unity, national security, due process, and humanitarian protections 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 black ink that reads "Denise A Cardman". The signature is written in a cursive, flowing style.

Denise A. Cardman
Acting Director