NEW YORK
CITY BAR

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IMMIGRATION & NATIONALITY LAW

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Senator Charles Schumer
303 Hart Senate Office Building
Washington, D.C. 20510-3204

Re: Concerns with the Border Security and Immigration Reform Act of 2007

Dear Senator Schumer:

I am writing to you to express concerns of the Association of the Bar of the City of New York with regard to several provisions of the proposed Border Security and Immigration Reform Act of 2007 ("The Act")

Since its founding in 1870, the Association has grown to over 23,000 members. The Association works to promote the public good by advocating for political, legal and social reform, and by promoting high ethical standards for the legal profession. The letter was drafted by its Immigration and Nationality Law Committee, a standing committee of the Association.

We encourage and support the steps that the Senate has taken towards the goal of comprehensive immigration reform. There must be a pathway to legalization available to the approximately 12 million undocumented individuals whose presence in the United States is vital to our economy and to our society. We also favor reducing the backlogs in the family based categories of immigrant visas, another issue addressed in the proposed Act. The DREAM provisions, which are included as part of the proposed Act, and also have been introduced as a stand alone bill, offer an excellent solution for undocumented young people who were brought to the United

States at a young age, and now find themselves unable to work or continue their education after they graduate from high school. The City Bar has specifically endorsed the DREAM Act and recently sponsored a program on the DREAM Act, which students, educators, lawyers, and interested members of the public attended.

The proposed Act, while it contains some good provisions, is flawed, and it will not solve the current problems with our immigration laws that have resulted in 12 million undocumented people living in the United States. The proposed Act will not have the intended deterrent effect, and in the end analysis, it will not benefit the United States.

1. **The proposed Act chips away at a longstanding cornerstone of United States immigration policy—family reunification**

This is our most important concern with the Act. The Act radically alters longstanding law and policy related to family related immigration. The Act would place a 40,000 per year cap on the number of parents of United States citizens who would be permitted to immigrate to the United States to join their United States citizen children. Under the current system there are no numerical restrictions on the immigration of parents of United States citizens. In addition, other family immigration would be restricted to spouses and minor children of citizens and permanent residents. The Act would completely eliminate the possibility of sponsoring an adult son or daughter (over the age of 21) or sibling.

The current "pro family" sponsorship system, known as "family reunification" has been the cornerstone of United States immigration policy for decades, accounting for nearly two thirds of all immigrant admissions to the United States. The advocates of restricting family based immigration justify the changes as set forth in the Act by suggesting that family based immigrants do not play as important a role in the United States as employment based immigrants do , and therefore it is preferable to allocate more immigrant visas to "merit based" employment rather than family based immigration. While it is certainly true that not nearly enough work related immigrant visas are currently available (hence the backlogs), increasing the number of work related immigrant visas should not come at the expense of families.

Those who would restrict family based immigration are greatly underestimating the economic and social benefits that intact families bring to our communities. In a policy brief recently published by the Immigration Policy Center, a division of the American Immigration Law Foundation, Stewart Lawrence points out that family based immigrants are dynamic workers, who bring important work related skills to the United States and also play a key role in reversing the decline in self-employment in the non-farm sector of the United States economy over the last three decades. According to data from the Small Business Administration, immigrant women in particular are one of the fastest growing segments of small business owners in the United States. Small businesses employ not only the owners of the business, but also an increasing number of native born workers. Immigrants, both productive workers and owners of small businesses, have been responsible in large part for revitalizing large parts of Queens and Brooklyn, for example.

The economic role of family based immigrants is very important, but even more important is the family "network" that functions as a major protective factor, helping family members cope with a wide range of health and social problems. In his policy brief, Mr. Lawrence points out that restricting the immigration of parents, siblings and adult sons and daughters would foster social isolation and disconnection, rather than acculturation.

As recently as March 13, 2007, at a dinner with President Calderon of Mexico, President Bush noted that "it's important for the American citizens to understand that family values do not stop at the Rio Grande. . ." Family values have always been very important to the United States. It sends the wrong message to prospective immigrants and the world for the United States to implement a policy that restricts family reunification, particularly at a time when our country's motives and actions are already questioned around the world. It is imperative that we show the world that we place great value on keeping families intact.

2. The Act does not provide a path to permanent residence for the future flow of essential and skilled workers and fails to provide a true deterrent to remaining in the United States without status

The Y-1 visa classification for temporary workers is problematic for several reasons. It provides little continuity to the employer of temporary workers, as it allows the worker with a Y-1 visa to work only two years at a time, after which the worker is required to leave the United States for one year. The worker could bring a spouse and children, or the worker can renew the Y-1 visa up to two additional times, but the worker cannot do both. He or she must then choose between his/her job opportunity and family. Neither the employer nor the employee is well served by the Y-1 visa.

There is no pathway to residency for most Y-1 workers, as they would not qualify under the point system. Even the existing preference system would offer no real options for permanent residency. Without a realistic and attainable possibility of permanent resident status, there is little incentive for the foreign national to depart the United States at the end of his authorized period of stay in the Y-1 visa. This provision will do little to discourage future undocumented immigration.

3. The Act will not help America's Business Community Remain Competitive

The Act's proposed "point system" for work related visas allows for only a very few visas (approximately 40,000 per year over the next five to eight years) and favors only those with the highest level of education. It perpetuates some of the worst characteristics of the current H-1B system, and it will ultimately encourage many of the best products of the United States' university system to take what they have learned in the United States and to go to another country. We must remember that the United States is competing for the most skilled and educated workers with many other countries in the world,

particularly Europe and Asia. The point system will not help the United States remain competitive in the global economy.

Many of the categories that serve to attract the best and the brightest would be eliminated under the Act. These categories include the Extraordinary Ability category (for achievers who might not have an advanced degree), the Outstanding Professor and Researcher category, the Intracompany Transferee category (so that companies can take their best executives where needed), and the National Interest Waiver category for those serving the vital needs of the United States. The point system also eliminates the current system for labor certifications, which requires labor market tests to protect American workers. The Labor Department completely revamped its system at great cost two years ago, and the new system is faster and more efficient than the old system.

4. **The Act will not help the current problem with backlogs, as it does not provide for enough immigrant visas in the employment and family based categories to meet demand**

Current economic projections and assessments of family unity requirements suggest that the immigrant visa needs per year are at least 1.8 million visas per year. The Act provides for an initial eight year period during which most immigrant visas will be allocated to clear up the backlogs. After the eight year period, the Act calls for a fraction of the 1.8 million visas needed per year—380,000 employment based immigrant visas and 127,000 family based immigrant visas, plus some refugee/asylum based immigrant visas—slightly over 500,000—resulting in a shortfall of more than 1.3 million visas per year. As a result of this shortfall, new backlogs will form almost immediately, along with unreasonably long waits for family based immigrants, and illegal immigration will continue and even increase.

5. **The legalization process under the Act is unduly long and onerous**

The currently contemplated legalization program is less restrictive than the immigration bill passed last year in the Senate; however, it contains some onerous requirements. Applicants who are granted the Z visa would become deportable if they failed to maintain continuous full time employment or school attendance until they are able to adjust their status to permanent residents. This period could last up to 13 years for some applicants. During this extended period of time, the immigrant with the Z visa would not be able to petition for spouses and minor children who reside abroad. In order to adjust to permanent resident status the head of the household would have to return to his country of origin. This would result in the devastating loss of income for families for possibly months or years and place enormous strains on our community and our economy. The final stage of the legalization process, adjustment to lawful permanent residency, cannot be completed until the current immigration backlog has cleared for applications filed before 5/1/2005 and certain difficult to achieve immigration enforcement "triggers" have been met, resulting in all legalized immigrants having to wait between 13 and 18 years before they could apply for citizenship.

There are other points in the Act that concern us, such as the mandatory electronic employment eligibility verification system that will be implemented whether or not the necessary improvements have been made. This may result in significant increases in discrimination, unnecessary firings, and breaches of privacy. The Act provides for sharing of information between governmental agencies, such as DHS and the IRS, which will undermine confidentiality provisions and privacy rights. In addition, the increased militarization of the United States borders as contemplated in the Act should not be implemented without sufficient safeguards for the civil and human rights for immigrants, migrants, and members of border communities.

Aspects of the Act is are important steps towards much needed immigration reform, and we applaud the effort and time that have gone into the various provisions. As it stands, however, the Act will not improve the situation for immigrants or for the United States. Instead, it may lead to worse backlogs, more undocumented immigrants, and a more divided society.

The Association respectfully asks that you take the comments set forth above into consideration and work to improve the Act.

Sincerely yours,

Linda Kenepaske
Chair
Immigration and Nationality Law Committee[1]

[1] Daniel Smulian and Wenyang Austin, members of the Committee, contributed to the drafting of this letter.