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CITY BAR

COMMITTEE ON AIDS

August 14, 2009

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VIA E-MAIL

Director Thomas Frieden
Centers for Disease Control and Prevention
U.S. Department of Health and Human Services
Attn: Part 34 NPRM Comments,
1600 Clifton Road, N.E., MS E-08
Atlanta, GA 30333

Email: Part34HIVcomments@cdc.gov

Docket ID: CDC-2008-0001

Docket Title: Medical Examination of Aliens – Removal of Human Immunodeficiency Virus (HIV) Infection from Definition of Communicable Disease of Public Health Significance

RIN: 0920-AA26

Dear Director Frieden:

Since its founding in 1870, the Association of the Bar of the City of New York has grown to over 23,000 members who work to promote the public good by advocating for legal reform. This letter was drafted by the Association's Special Committee on AIDS, experts with comprehensive knowledge of HIV-related law and policy issues. The Association has historically opposed any inadmissibility provision that singles out foreign nationals living with HIV.

Accordingly, we write to inform you that we fully support the proposed regulations by the Department of Health and Human Services to remove HIV from the list of "communicable diseases of public health significance."

Public health officials within the United States have acknowledged that there is no health-related justification for excluding people with HIV. When commenting on its own HIV-specific restrictions in 1991, the Centers for Disease Control and Prevention stated that: "The risk of (or protection from) HIV infection comes not from the nationality of the infected person, but from the specific behaviors that are practiced. Again, a careful consideration of epidemiological principles and current medical knowledge leads us to believe that allowing HIV-infected aliens into this country will not impose a significant additional risk of HIV infection to the U.S. population, where prevalence of HIV is already widespread."¹

¹ Public Health Service (1991), "Medical Examination of Aliens," 56 Fed. Reg 2,484 (codified at 42 CFR 34).

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Because there is no evidence that a travel ban based on HIV status is an effective public health strategy, the differential treatment based on HIV status is discriminatory and unjustified. The current policy promotes stigma against HIV-infected immigrants and causes many immigrants to avoid HIV testing or treatment for fear of deportation.

In addition, we explicitly support the removal of HIV testing from the routine medical examination of lawful permanent resident applicants. New York has long recognized that mandatory HIV testing is antithetical to a person's right to privacy and dignity. For similar reasons, people living with HIV should be allowed to enter the U.S. or adjust to permanent resident status if they meet all other conditions of admissibility. Although we recognize that there are clear and important benefits from HIV testing, such testing should not be mandated as part of the routine medical examination for admission into the United States.

For these reasons, we fully support the removal of HIV from the definition of "communicable diseases of public health significance" as well as to remove references to "HIV" from the scope of examinations in its regulations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bebe J. Anderson', with a long, sweeping horizontal line extending to the right.

Bebe J. Anderson
Committee Chair