



American Immigration Lawyers Association (AILA) California Chapters

Northern California, Southern California, Santa Clara Valley, San Diego

July 30, 2013

To:

All Members of the California State Assembly

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RE: **Statement of the American Immigration Lawyers Association California Chapters in Opposition to AB 1159- Immigration Reform Act**

To Whom It May Concern:

The California Chapters of the American Immigration Lawyers Association (AILA) urge the California State Legislature to vote against AB 1159. AB 1159, entitled the Immigration Reform Act is being touted as a "consumer protection measure" aimed at reducing or eliminating fraud in immigration services prompted by the ongoing Congressional efforts of federal immigration reform.¹ One of the troubling aspects of the current proposed State legislation is that it does not distinguish between licensed immigration attorneys, who are already subject to stringent State Bar rules, and immigration consultants. The proposed additional regulations on attorneys are both costly and do little to avert fraud on the immigrant community. The adverse and perhaps unintended consequence of this legislation that needs to be considered is the harmful effect it will have on the consumers who are in most need of qualified legal services- the very population this law purportedly intends to protect.

The undersigned include four AILA Chapters in the State of California, representing the majority of licensed immigration attorney members across all geographic areas of this State. The Northern California Chapter is comprised of approximately 716 members throughout the Bay Area, San

¹ It bears mentioning that S.B. 744 has not been enacted into law, and the prospect of Congressional federal immigration reform remains speculative as it is still being debated in the House. To hinge a State law on a Federal law that has yet to be enacted, and the contents of which remain uncertain, seems premature.

Francisco, Sacramento, and the majority of Northern California counties. The Southern California Chapter is comprised of approximately 997 members throughout Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, San Luis Obispo, and Ventura Counties. The Santa Clara Chapter, with approximately 200 members, covers the areas Monterey, San Benito, Santa Clara, and Santa Cruz Counties. The San Diego Chapter includes approximately 218 members throughout San Diego and Imperial Counties. Together, our Chapters constitute over 2,131 immigration attorneys in this diverse State, which is home to over 10.2 million immigrants.² According to a report by the Pew Hispanic Center, unauthorized immigrants comprised roughly 6.8% of the state's population (or 2.5 million people) in 2010.³

AREAS OF CONCERN

Reducing Affordability of Legal Services to Those Most in Need & Failing to Curb Fraud

Among the groups most concerned about fraud in immigration services, the professional Bar of licensed immigration attorneys is at the forefront. As the nation's largest association of immigration lawyers established as a leader in promoting justice, and advocating for fair and reasonable immigration law and policy, AILA has at the core of its mission the quality of immigration practice, and has an established record of enhancing the professional development of its members. AILA has long worked to ensure that immigrants are competently represented, so they are not driven into the often-unscrupulous claws of a local notario or unauthorized immigration consultant, who is neither licensed nor trained on the complex nuances of federal immigration law. Among its many efforts to prevent fraud on the immigrant community, AILA has created StopNotarioFraud.org, a comprehensive consumer website providing information and resources to immigrants to avoid being defrauded by a notario, and where to get help if they are harmed. Consumer protection information is available in the form of Public Service Announcements and through local Chapter liaisons working to identify and address these concerns in the most vulnerable communities on a daily basis. AILA also has regular pro-bono clinics in local communities throughout California with AILA member attorney volunteers for those unable to afford competent legal services to prevent those individuals from turning to unscrupulous notarios. It is a fact that immigration laws and regulations are complex and challenging, and the public needs access to attorneys who know immigration law.

A major concern among immigration attorneys facing the proposed changes stemming from AB 1159 lies in the far-reaching and burdensome regulation this bill imposes on any attorney providing "immigration reform act services," which are broadly defined as "consultation or representation services related to immigration and citizenship status, benefits, or relief under the federal immigration reform act of 2013 (S. 744)." This legislation threatens to single out immigration attorneys by possibly requiring them to post bonds to practice in this area despite already having adequate malpractice insurance, by making them subject to additional regulatory fees by the State Bar to administer and enforce new provisions, requiring all immigration attorneys to register with this State's Bar, and by creating more stringent requirements for trust accounts limiting access to earned legal service fees, among other provisions. However, the scope of this proposed regulation is so broadly defined to include any attorney providing "immigration reform act services," that it could also affect countless

² According to the U.S. Census Bureau, California was home to 10.2 million immigrants in 2011.

³ <http://pewhispanic.org/files/reports/133.pdf#page=25>

other California attorneys in cross-over areas to immigration including but not limited to who practice international and domestic business transactions, taxation, real estate, criminal defense, family law, estate planning and securities law, among other practice areas given the size of the immigrant population in need of legal services in this State. Ultimately, there are already safeguards in place regulating attorneys and the practice of law, including existing civil and penal code laws that punish and criminalize fraud in the course of immigration matters, i.e. Cal P.C. §§ 653.55-653.61, and felony provisions that target the unauthorized practice of law, i.e. Cal. B&P § 6126(c).

It is a fact that those most commonly associated with fraud in immigration services include notarios and immigration consultants who do not follow the law and are unauthorized to provide legal advice. According to a study of low-income immigrant households, 13 percent of immigrants surveyed consulted a notario for legal assistance.⁴ Even the Los Angeles District Attorney's Office has cited in its training materials on the prosecution of this type of fraud, that the California State Bar receives thousands of complaints every year about unauthorized practice of law by non-attorneys who are victimizing immigrants.⁵ Such groups engaged in the unauthorized practice of law are less likely to be in compliance with requirements and yet find themselves outside of the State's regulatory reach, circumventing the purpose of this bill intended to curb fraud. Thus, while it is noble in its intent, this bill proves futile by targeting those who are already regulated as licensed attorneys by the State Bar, and instead, would dangerously lead the consumer to lower cost legal services by non-attorneys. The imposition of additional registration fees on attorneys will increase costs for licensed attorneys, which will have to be passed on to potential clients reducing the affordability to those most in need. This proposed bill will further deter attorneys from entering into this field to begin with, directly reducing the amount of competent immigration attorneys willing and available to help serve this population. The majority of clients in immigrant communities will not be able to find or afford "good attorneys" who are in compliance, increasing the likelihood that those clients seek out less expensive services by "notaries" or unlicensed and unregistered attorneys.

Constitutional Challenges to Singling Out Attorneys Practicing in a Specific Area of Law

The task of regulating the practice of law, in general, is entrusted to each State. As a matter of practice, all attorneys licensed to practice law are considered equally qualified, and cannot be treated differently based on their area of practice. State Bar Rules are intended to govern the practice of law and, as such, include a framework for disciplinary measures for any divergence or violation of those rules. Singling out immigration attorneys or those who engage in "immigration reform act services" by requiring them to pay additional fees, and by imposing additional rules and restrictions that are not applied across the board to all licensed attorneys is unconstitutional and a violation of equal protection rights. Section 1 of the Fourteenth Amendment to the federal Constitution provides that no state may deprive any person of the "equal protection of the laws." The proposed legislation would run counter to this fundamental constitutional right, by imposing unduly burdensome requirements

⁴ Fight Notario Fraud, American Bar Association,

http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud.html

⁵ Cooley, S. "Unauthorized Practice Of Law Manual for Prosecutors," Los Angeles County Office Of The District Attorney (February 2004), available at <http://da.co.la.ca.us/pdf/UPLpublic.pdf>.

on this specific group of attorneys, and potentially have a chilling effect on the practice of immigration law as a whole.

MEANINGFUL REGULATION

As a professional association of the largest group of immigration attorneys in the United States, AILA stands out as a reputable association involved in the management of the practice of immigration law, as well as its enhancement on a policy and advocacy level. As such, AILA has consistently made combatting the unauthorized practice of law one of its priorities. Instead of passing sweeping and shortsighted legislation without the consultation of one of the groups most poised to continue helping to combat the unauthorized practice of law, we urge the State Bar Association and Legislative representatives to work toward improving existing regulations in this area and working with attorneys engaged in the authorized practice of law to help develop more meaningful regulation and enforcement.

The California State Legislature’s efforts would be better served, for example, in diverting focus and funds to local counties and city prosecutor offices to help enforce existing laws in California that protect against consumer fraud, and go after notarios and document preparers who are defrauding and stealing from immigrants. Given the very nature of notario businesses – which typically set up shop in immigrant communities, have nothing in writing, demand cash for all services, and may disappear a few weeks later with nothing, or a wrong or fraudulent application filed– more attention is needed at the local level to respond to these new shops before they have the means to abscond and wreak havoc in the next immigrant community. Local prosecutor offices have been effective in going after these bad actors but only to a limited extent, often constrained by budget and staff limitations. New legislation aimed at licensed attorneys is not the solution to address this area of consumer fraud.

The AILA California Chapters call upon the California State Legislature to act responsibly by considering the significant concerns and negative ramifications such an overly broad bill will have on the practice of immigration law and consumers in the State of California. Accordingly, we urge our State government to prevent its passage in its current form.

Your consideration is greatly appreciated,

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cc: Toni Atkins, Majority Leader, California State Assembly
Marty Block, California State Senator
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