

August 25, 2013

AB 1159 — OPPOSE

To: All Members of the California State Assembly and State Senate

John A. Perez, Speaker of the Assembly
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Kevin De Leon, Senator
22nd Senate District
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Luis Rodriguez, Vice President
State Bar of California
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Re: Statement of the California Chapters of the American Immigration Lawyers Association and Other Organizations in Opposition to AB 1159 Concerning Immigration Services

To Whom It May Concern:

The undersigned organizations urge the California State Legislature to vote “no” on Assembly Bill 1159. While it is being touted as a “consumer protection measure” aimed at reducing fraud in immigration services under comprehensive immigration reform,¹ we oppose AB 1159 because it would have a harmful effect on the very population it purportedly seeks to protect. Additionally, it would set two bad precedents: a State Bar imposing an extra layer of regulation on a subset of attorneys based only on their practice area, rather than for a valid reason such as malfeasance, and a State Bar restricting the ability of attorneys who are not among its members to practice law in California.

AB 1159 Would Fail to Curb Fraud and Would Detract from Enforcement of Existing Laws

AB 1159 remains problematic because it would make it more difficult for ethical immigration attorneys to represent their clients. While some of the bill’s most troubling provisions have been removed, it still would have this effect by driving up immigration attorneys’ cost of doing business, through provisions such as requiring a written contract translated into the client’s native language, and making it unlawful for attorneys to accept any advance fees for immigration reform act services, even where advance work is prudent or necessary in order to ethically represent the client. This chilling extra layer of regulation would drive good attorneys away from the practice of immigration law, and the good attorneys remaining would need to pass on the additional costs to their clients. Lacking the means to pay the higher fees, clients would be driven to predatory lawyers and consultants, or notarios, who would offer lower fees but perform inept or fraudulent work.

¹ It bears mentioning that S.B. 744, named in AB 1159, 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.

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). We believe our legislative representatives can better achieve the stated aims by providing incentives for local and state prosecutors to enforce existing regulations. County and city prosecutors' offices need to step up their enforcement of existing laws in California that protect against consumer fraud. New legislation targeting licensed attorneys is not the solution to address this problem.

As for the provision requiring a written contract translated into the client's native language, we recommend a more reasonable solution: that the State Bar produce and make available in various languages a general advisement form for attorneys to give to their clients. As for the provision forbidding acceptance of advance fees for immigration reform act services, we recommend that "preparatory work" and "investigative work" be exempted. Attorneys need to send out FOIA and background check requests and do other related work to evaluate potential obstacles to clients gaining lawful status, such as previous deportations, previous detentions at the border, crimes and other issues.

AB 1159 Would Unfairly Single Out Immigration Attorneys and Would Regulate Non-California Attorneys

Additionally, the bill would establish two dangerous precedents: a State Bar imposing an extra layer of regulation on a subset of attorneys based only on their practice area, and a State Bar restricting the ability of attorneys who are not among its members to practice law in California. The task of regulating the practice of law generally is entrusted to each state. 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 — by requiring them to incur additional costs, and by imposing additional rules that are not applied across the board to all licensed attorneys —violates Equal Protection rights. Section 1 of the Fourteenth Amendment to the U.S. 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 on this specific group of attorneys, and could have a chilling effect on the practice of immigration law as a whole.

Further, the bill would regulate attorneys who are not members of the California State Bar but who are providing immigration reform act services in California, and who are authorized to practice law or are authorized by federal law to represent people before the Board of Immigration Appeals or the U.S. Citizenship and Immigration Services. The bill overreaches under equal protection principles because the State Bar cannot regulate immigration attorneys who are not its members without also regulating non-member attorneys in other federal practice areas such as bankruptcy law and patent law.

The aforementioned organizations call upon the California State Legislature to act responsibly by preventing the passage of this bill, which would have significant negative ramifications on the practice of immigration law and on consumers in the State of California. Instead, we urge the State Bar and legislative representatives to work with attorneys engaged in the authorized practice of law to incentivize enforcement of existing laws. Your consideration is greatly appreciated.

Sincerely,

**Northern California Chapter of the American Immigration Lawyers Association
Southern California Chapter of the American Immigration Lawyers Association
San Diego Chapter of the American Immigration Lawyers Association
Santa Clara Valley Chapter of the American Immigration Lawyers Association**

AIDS Legal Referral Panel
Asian American Bar Association of the Greater Bay Area
Asian Law Alliance
Asian Pacific Islander Legal Outreach
CARECEN (Central American Resource Center)
Northern California Chapter of the Iranian American Bar Association
San Diego Chapter of the Iranian American Bar Association
Justice for Our Neighbors — Bay Area Immigration Taskforce
National Lawyers Guild Bay Area Chapter
National Center for Lesbian Rights
Omid Advocates
Pangea Legal Services

cc: Toni Atkins, Majority Leader, California State Assembly
Marty Block, California State Senator
Ben Hueso, California State Senator
Alec Y. Chang, State Bar of California Board of Trustees
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