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The Honorable Hannah-Beth Jackson
Chair, Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, CA 95814

Re: AB 60 (Gonzalez)
OPPOSE ***As Amended March 26, 2015***

Dear Senator Jackson,

The Northern California Chapter, Southern California Chapter, San Diego Chapter, and Santa Clara Valley Chapter of the American Immigration Lawyers Association (AILA) urge you to oppose AB 60 (Gonzalez) when it comes before the Senate Judiciary Committee for a vote. The measure inappropriately undermines the ability of well-trained attorneys to provide critical assistance to thousands of Californians.

Collectively we represent the largest segment of immigration attorneys in California. We are all committed to assuring the best outcomes for our clients. Unfortunately, AB 60 will likely harm many of the families we work with to navigate the immigration process.

1. **At a minimum, preparatory work should be permitted.**

In part the bill is premised on the notion that preparatory work is unnecessary until an application process has been officially launched. However, the United States Citizenship & Immigration Services (USCIS) has specifically advised otherwise. The USCIS website states that advance preparation may be conducted for executive action programs, notwithstanding the fact the applications are unavailable.

While USCIS is not accepting applications at this time, individuals who think they may be eligible for one or more of the new initiatives may prepare now by gathering documentation that establishes factors such as their: Identity; Relationship to a U.S. citizen or lawful permanent resident; and Continuous residence in the United States over the last five years or more." See http://www.uscis.gov/immigrationaction, at A-1.

AB 60 conflicts with this directive in its prohibition of "other initial processes" contained in Section 6240 (b)1.

Shortly after the executive action announcements, many foreign nationals consulted with immigration attorneys to determine whether they would potentially benefit from the new programs, and sought advice on the required documents. Even if they are not able to file for any benefits now, knowing whether they may be able to benefit is vital. Not only is the information in and of itself vital, but would-be applicants may wish to gather or retain crucial documents, or save money for anticipated filing fees.

Notably, some nonprofits have planned clinics to provide consultations regarding DAPA and expanded DACA, two of the numerous initiatives announced in President Obama's Executive Actions on Immigration, and the focus of the AB 60 amendments. The AFL-CIO[1] is one such organization. These clinics demonstrate that there is a valid need for those services; if these services are being made available through these workshops, licensed professionals should also be permitted to conduct such activities.

Even though the legislation allows for services with a value "independent" of an immigration act application, an initial consultation to determine eligibility may be necessary to determine which further steps – whether information gathering, Freedom of Information Act (FOIA) requests etc. – will be necessary in the particular case. Our ability to provide effective representation often demands that we explore options for our clients. As drafted, AB 60 is overly vague, and jeopardizes our ability to do so without fear of violating the law.

Our chapters took a position of neutrality on the predecessor bill AB 1159 only after significant revisions to the proposed bill, and after an agreement to provide a statement of legislative intent in the Assembly Journal, intended to clarify that preparatory work was legitimate and not illegal under the bill. Should AB 60 be passed, the same such statement should be provided, clearly allowing attorneys to

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[1] [1] The AFL-CIO began a nationwide campaign last month to help thousands of undocumented immigrants sign up for President Obama's programs to protect them from deportation and allow them to work legally in the USA. The massive effort is moving forward despite the fact that two of Obama's three executive actions on immigration have been put on hold because of court challenges. More than 200 union members from 25 states gathered in a Holiday Inn in Washington for three days of training designed to allow them to return home and begin helping undocumented workers seek legal status. "If anyone asks you why we're holding this training now, while we wait for a judge to either clear the way or put up another hurdle, tell them this progress can be stalled but it cannot be stopped," AFL-CIO President Richard Trumka told members of two dozen unions. "We've come this far. We're going forward. We will not be turned back." - ***Erin Kelly, USA Today, Mar. 31, 2015***.

protect our clients by doing background checks and other work to assess eligibility for immigration relief, in order to clearly permit us to effectively represent the interests of our clients and their families.

2. **Repayment terms for any fees already accepted for work under the November 20 Executive Actions should not be applied retroactively.**

When the U.S. Senate passed its Comprehensive Immigration Reform bill (S. 744), many of the provisions represented significant change to the immigration law landscape. Accepting advance legal fees for many of the services outlined in S. 744 might have been inappropriate in light of the indeterminate nature of the process and requirements of the various provisions of the bill. However, under expanded DACA and DAPA, where there does not exist that degree of ambiguity, an experienced and reputable attorney could reasonably know what work would need to be conducted.

Application eligibility and filing requirements for expanded DACA and even DAPA are not without context. ***Original DACA is an existing, widely-used program***, and also the product of an executive mandate; the USCIS has continually expressed in telephonic informational sessions that expanded DACA and DAPA will very closely mirror the original DACA application process and guidelines. The government form for DACA applications is Form I-821D; the USCIS stated in at least one informational session that the form it would use for DAPA was Form I-821P. The government confirmed many other specific similarities between the programs as well, including the documentary evidence that could be used to prove residency and the probable use of Advance Parole travel documents. In short, the USCIS has provided consistent and meaningful context for the expanded DACA and DAPA programs.

This framework has allowed experienced attorneys to begin critical preparation, and in accordance with the information provided by the federal government. Many experienced and reputable attorneys provided full disclosure to clients regarding the expanded DACA and DAPA cases. Refunding fees to clients in these instances does not afford any added protection to these individuals, and should not be required.

3. **The proposed starting dates to begin substantive work on expanded DACA and DAPA cases unduly delay accrual of benefits and put our clients at risk.**

USCIS estimated a **one-year processing time** for executive action applications. See http://www.uscis.gov/immigrationaction, at A.4. Given the considerable benefits to our foreign clients under expanded DACA or DAPA, our members would quite reasonably attempt to file many applications on the first days USCIS accepts applications. This necessarily requires we commence work on executive action applications after USCIS issues formal guidance but perhaps

before the official date of acceptance of requests. The federal government routinely provides briefing calls on immigration laws to ensure that qualified individuals are given appropriate lead-up time to prepare. **As drafted, AB 60 may unnecessarily delay the ability of California residents to apply for newly created relief, putting them far behind residents of other states.** Since applications will likely be adjudicated on a first-come-first-serve basis a few weeks or month difference in filing will likely result in a disproportionate delay in application processing when the backlog of adjudications grows and stalls, as USCIS accepts more applications.

The benefit of these programs to foreign nationals is tremendous – a lawful work permit and protection from deportation – and it is understandable that eligible applicants want to apply as soon as possible. If fees cannot be accepted until the date of filing, attorneys are faced with an unusual position of perhaps commencing legal work without being ethically able to accept appropriate fees for services.

This proposed effective date harms the conscientious attorney more than it punishes the unethical practitioner, but ultimately it is the consumer who is the most at risk. The unethical predator will not be deterred by these amendments and will "represent" and take moneys from the foreign national – maybe even without fully vetting eligibility. The supply of responsible attorneys will be short because our hands will be tied while we wait for some date certain to begin the substantive work for our remaining clients.

4. **Attorneys should be permitted to prepare for expanded provisional waivers prior to implementing regulations.**

The proposed amendment prohibits collecting fees in preparation of the expanded provisional waiver program prior to the implementing regulations. Attorneys, however, will often begin working on provisional waivers well before they can be filed as a standard practice. In some cases, it can take several months to gather documents, especially if medical or mental health evaluations are needed. Even the basic discussions central to a waiver application – whether the couple would live apart or relocate as a family, how the family would survive financially, potential threats to their safety – are extremely difficult and may require clients an extended period to decide.

Also, it is unclear whether filing an immigrant visa petition in anticipation of an expanded provisional waiver application would be prohibited. It should be noted, however, that visa petitions can take several months to be approved, and that the beneficiaries of most categories of immigrant visa petitions are unable to apply for residency and any applicable waivers for years after beginning the process. Therefore, clients may reasonably begin the immigrant visa petition process, in anticipation of being able to file an expanded provisional waiver in the future.

It is vital to remember that executive actions are, by definition, extensions of presidential authority, and can be terminated after a new President takes office.

The real effect of this is that any applications based on executive actions that are not approved by January 2017 may effectively be denied if the programs are not extended by the new President. Accordingly, any delays resulting from this legislation may have disastrous effects for our clients.

5. **AB 60 is overly broad, especially because it misuses several immigration terms.**

Another concern is that the new legislation applies to "any future executive action or order that authorizes an undocumented immigrant who either entered the United States without inspection or who did not depart after the expiration of a nonimmigrant visa to attain a lawful status under federal law." It is highly troubling that the law will therefore apply to any number of unspecified executive actions, apparently in perpetuity. Given the concerns raised for provisions related to the November 20, 2014 programs, it is exceedingly likely that there may be similar issues for future executive actions.

This problem is compounded by presenting a description which so misstates two key aspects of immigration law that it will not be clear what future executive actions are covered under this provision and which are not.

First, a "visa" is a document that permits entry into the United States; it is not a status in and of itself. Visas may be valid for many years to permit entries as a nonimmigrant, but only allow individual stays of a limited duration. For example, a foreign national may have a ten-year visitor visa, authorizing stays of up to six months. Someone with a visitor visa issued in 2008 and valid for ten years as is standard, could enter in 2010 for an authorized stay of six months, but overstay that period of lawful admission. That person has not remained after the expiration of the visa (which is in 2018), but is certainly out of status.

Moreover, the "deferred action" in DAPA and DACA is arguably not a lawful "status," which usually references a specific classification designated by the Immigration and Nationality Act. Rather that person is "lawfully present," though without an official status. In fact, USCIS has explicitly said "deferred action does not confer lawful status upon an individual."
See http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions, at Q. 1.

While highly technical, this is vital. The proposed legislation seeks to bind attorneys to significant restrictions that do not present accurate legal terminology and are ultimately unworkable. Should attorneys apply the law literally, which would make the description inapplicable to nearly any future action? Alternately, we will be required to guess what the legislature probably meant but improperly described?

Conclusion

Like the authors of this bill, our goal is to protect immigrants from bad actors, whether attorneys or individuals who are not attorneys and who are engaged in the unauthorized practice of law. We are concerned that this bill limits the vast majority of "good" attorneys' ability to better assist these individuals who need our assistance the most. It is probably not a generalization to say that most immigration attorneys we know are passionate about immigrants' rights and came into this profession as a result of wanting to uplift this population. Many immigration lawyers are solo practitioners or work in small offices (fewer than 10 attorneys is very normal for this profession, with a significant percentage of 2-3 attorney firms). We volunteer our time at weekend immigration law clinics, we take on low or pro bono cases regularly, and we follow the news and are outraged at the injustices our nation's immigrants face. In short, we care about these individuals as people – and families – and do our work with an intention to help, not hurt. The bad actors should be targeted and punished, but this broad sweeping amendment is not the right means to that end.

Thank you for consideration of our position.

Respectfully Submitted:

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