

March 15, 2006

United States Senate Washington, DC 20510

Dear Senator,

On behalf of the more than 750,000 members and activists of People For the American Way, we write to express serious concerns over measures contained in Senator Specter's proposal on immigration reform currently being marked-up in the Senate Judiciary Committee. Although attempting to reform problematic areas such as family reunification, this bill, as currently drafted, will erode due process protections and punish hard working individuals, without offering a realistic solution to fixing our broken immigration system. We strongly urge you to support the thorough, realistic, humane, and enforceable proposals included in the Secure America and Orderly Immigration Act (S.1033). Introduced by Senators John McCain (R-AZ) and Edward Kennedy (D-MA), Secure America is true comprehensive immigration reform legislation that will keep our economy strong, the nation safe, and families united.

Our current immigration system is in chaos. Outdated and unrealistic visa allocations, and rigid arbitrary caps preventing family reunification, have created an unjust environment which encourages illegal entry into the U.S. and endangers non-citizens and citizens alike. This enforcement-only system has generated a record number of deaths in our deserts, exploitation of workers, an extensive cottage industry for fake documents, and billions of dollars squandered in ineffective enforcement.

Ultimately, this enforcement-only strategy has led to an estimated 12 million undocumented immigrants in the U.S., living in the shadows of our society, with no opportunity to earn legal status. We desperately need a new, realistic, balanced approach that recognizes the contributions of hardworking immigrants and rewards and encourages legality.

However, as currently drafted, Senator Specter's proposal does not offer that balanced solution. Senator Specter claims that the immigration proposal he introduced in February 2006 attempts to split the difference between the various immigration proposals under consideration. Unfortunately, the Specter proposal fails to include critical provisions of the McCain/Kennedy bill and tilts considerably towards an unworkable, punitive enforcement bill with no path to earned citizenship for hard-working immigrants and with serious due process and judicial review concerns.

For example, this proposal would:

• Severely limit judicial review. This bill would limit the judicial review over decisions made by the Department of Homeland Security (DHS) irrespective of whether the decision is based on factual or legal errors. Among the types of decisions as to which review would be limited are decisions to deport an individual or the denial of a citizenship application made by officers in DHS. Judicial review in these instances affects the most basic of cherished rights we expect in the U.S. The denial of this review removes a critical check to the potentially overreaching decisions of the executive branch, decisions that Judge Posner has characterized as having "fallen below the minimal standards of legal justice."

- Radically alter the current jurisdiction of U.S Courts of Appeals to hear immigration appeals by funneling all immigration cases to the Federal Circuit. Immigration law is complex and varied, and pulls from a variety of fields of law, including constitutional law, criminal law, rules of statutory construction and interpretive presumptions, and habeas corpus. Under Article III of the Constitution, Federal judges appointed to the courts of general jurisdiction are able to obtain the vast and varied experience necessary to fairly mete out justice to the immigrants who are in the U.S. Senator Specter's proposal will strip the general Article III courts of appellate jurisdiction and funnel all immigration cases to the Court of Appeals for the Federal Circuit, a specialized court of appeals that primarily hears intellectual property, veterans' benefits, and other specialized cases. This transfer of approximately 11,000 new immigration cases each year to the Federal Circuit will also likely overwhelm the court's docket and risk these immigration appeals either being delayed or failing to receive the thorough attention necessary. The proposal would also create a "certificate of reviewability" which would empower a single judge with the discretion to decide whether an immigration appeal can be heard at all. This radical shift in jurisdiction will threaten to deny immigrants balanced, thorough, and expeditious review of their cases, a review that tradition has afforded and justice demands.
- **Retroactively apply new penalties for immigrants.** For the sake of expediency, an individual who relies on existing definitions and penalties on the books at the time of an incident may plead guilty to an act that carries no immigration consequences. However, this proposal changes the of the game and assigns immigration penalties middle new retroactively to those crimes. In other words, for immigration purposes, settled expectations on existing law would become illusory, and the individual could face mandatory detention, permanent removal and a bar to all relief for minor indiscretions that carried no such consequences at the time a plea was entered. This is fundamentally unfair and inconsistent with the most basic tenets of justice.
- Provide for the indefinite detention of immigrants. This proposal would give DHS the power to detain immigrants for years, even indefinitely, without any meaningful determination that they pose a danger to the community or are flight risks. This would undermine due process and effectively overturn the critically important Supreme Court case of Zadvydas v. Davis, which stands for the principle that under current federal law, people in this country may not be detained indefinitely at the discretion of the executive branch.
- Criminalize immigration status of vulnerable immigrants. This proposal would make felons out of refugees, asylum seekers, victims of domestic violence or abuse, and trafficking victims. These vulnerable individuals often have no control over their situation or what documents are presented to immigration officials on their behalf.
- Expand the types of offenses which can be classified as an aggravated felony. Aggravated felony convictions bring severe penalties, which include mandatory detention, permanent banishment, denial of judicial review, and ineligibility for any type of immigration relief. "Aggravated felony" is a term of art in immigration law that increasingly lacks all connection to the common understanding of that phrase. To qualify as an "aggravated felony" in the immigration laws the crime need not truly be either "aggravated" or a "felony". It includes minor state misdemeanors such as shoplifting that often don't involve a single day of jail time. Under the bill's expanded definition of an aggravated felony, for example, an individual who omits information on his/her immigration applications or uses false passports to flee persecution could now be treated as an aggravated felon.

In stark contrast to this punitive and unbalanced approach, the McCain/Kennedy Secure America legislation provides a realistic solution to our immigration crises by providing:

- Clear legal channels, proper vetting, meaningful protections, and available temporary visas for future workers and their families to enter the country
- Incentives for undocumented immigrants already working and residing in the U.S. to register, pay a penalty and clear a pathway to earn citizenship
- The ability for families to reunite with loved ones on a timely basis by eliminating unrealistic quotas
- Pragmatic enforcement provisions that target smugglers and lawbreaking employers
- Programs that allow more immigrants to learn English and prepare for citizenship

America's need for immigration reform cannot be satisfied by Senator Specter's partial solution to a sweeping crisis. We urge you to support the measures included in the McCain/Kennedy comprehensive immigration reform package to make America safer and stronger.

Sincerely,

Ralph G. Neas President Tanya Clay

Director, Public Policy