HARVARD IMMIGRATION AND REFUGEE CLINICAL PROGRAM
of HARVARD LAW SCHOOL
1563 Massachusetts Avenue ◆ Pound Hall 408 ◆ Cambridge, Massachusetts 02138 ◆ Voice: (617) 495-5912 ◆ Fax: (617) 495-9393

March 21, 2006

Via Electronic Mail

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Members of the Committee on the Judiciary:

We are law professors and scholars who teach and study in the area of immigration law. We are following with great interest the efforts of the Judiciary Committee to draft an immigration reform bill. Many organizations and other legal scholars have written to object to the judicial review-limiting provisions of the Chairman's Mark of the "Comprehensive Immigration Reform Act of 2006." We write because we share the serious reservations of our colleagues and urge that these far-reaching provisions be withdrawn pending further study of their effect and desirability.

Among other changes, the Chairman's Mark proposes to place exclusive jurisdiction over immigration appeals in the Court of Appeals for the Federal Circuit, a specialized court that currently hears cases in areas distant from immigration law. The Chairman's Mark also establishes a system of default denials of petitions for review by a single judge, and would eliminate judicial review altogether in various other immigration matters.

We are aware of no studies or public discourse evaluating these untested measures or explaining how they would effectively address problems with the current system, or even what those problems might be. Nor has there been any explanation of how a minimally expanded Federal Circuit will provide meaningful review of a caseload many times the size of its current docket. In view of the liberty interests at stake, measures fundamentally reshaping and limiting judicial review of immigration decisions should not be lightly adopted—and certainly not without thoughtful study of the problems these measures purport to address. Such an unconsidered restriction of judicial oversight would be particularly inappropriate in light of the Attorney General's ongoing review of agency decision-making. This review was largely prompted by federal court decisions finding malfeasance by the immigration agencies, highlighting the critical role of judicial review in maintaining the system's integrity.

The judicial review provisions in the Chairman's Mark represent a fundamental restructuring of the current system and should not be undertaken without further study. Accordingly, we suggest that Section 701, Section 707, and any provisions restricting judicial review be withdrawn from the Chairman's Mark. We appreciate the opportunity to provide these brief comments.

Respectfully,

Deborah Anker
Clinical Professor of Law, Harvard Law School
Director, Harvard Immigration and Refugee Clinic
Cambridge, MA

Roberto Andreos
Adjunct Professor of Law
Lorenzo Patino School of Law, University of Northern California
Sacramento, CA

Jon Bauer
Clinical Professor of Law
University of Connecticut School of Law
Hartford, CT

Angela Bean
Adjunct Professor of Law
University of California Berkeley, Boalt Hall School of Law
Berkeley, CA

Lenni B. Benson
Professor of Law, New York Law School
Co-Director, Justice Action Center
New York, NY

Linda Bosniak
Professor of Law
Rutgers University School of Law
Camden, NJ

Mary Brittingham
Associate Professor of Clinical Law
George Washington University Law Center
Washington, DC

Stacy Caplow
Professor of Law and Director of Clinical Education
Brooklyn Law School
Brooklyn, NY

Bridgette Carr
Assistant Clinical Professor of Law
Ave Maria Law School
Ann Arbor, MI

Holly Cooper
Supervising Attorney, Immigration Law Clinic
University of California Davis School of Law
Davis, CA

Jason Perry Eyster
Assistant Clinical Professor, Asylum and Immigrant Rights Clinic
Ave Maria Law School
Ann Arbor, MI

Jill Family
Associate Professor of Law
Widener University School of Law
Harrisburg, PA

Lynne Feldman
Adjunct Professor of Law
University of Illinois College of Law
Champaign, IL

Niels Frenzen
Clinical Associate Professor
University of Southern California, Gould School of Law
Los Angeles, CA

Maryellen Fullerton
Professor of Law
Brooklyn Law School
Brooklyn, NY

Paula Galowitz
Clinical Professor of Law
New York University School of Law
New York, NY

Iris Gomez
Director, Immigration Unit
Massachusetts Law Reform Institute
Boston, MA

Jennifer Gordon
Associate Professor of Law
Forham Law School
New York, NY

Helen Harnett
Clinical Fellow, Immigrants Rights Project/Civil Advocacy Clinic
University of Baltimore School of Law
Baltimore, MD

Dina Francesca Haynes
Visiting Associate Professor of Law
University of Nevada at Las Vegas, Boyd School of Law
Las Vegas, NV

David Hudson
Professor of Law, University of Florida Levin College of Law
Director, LL.M. in Comparative Law Program
Gainesville, FL

Kate Jastram
Lecturer in Residence
University of California Berkeley, Boalt Hall School of Law
Berkeley, CA

Nancy Kelly
Managing Attorney
Harvard Immigration and Refugee Clinic at Greater Boston Legal Services
Boston, MA

Stephen Knight
Senior Fellow
University of California, Hastings College of the Law
San Francisco, CA

Daniel M. Kowalski
Editor-in-Chief
Bender's Immigration Bulletin
Austin, TX

Lynn Marcus
Director, Immigration Law Clinic
University of Arizona, Rogers College of Law
Tucson, AZ

Peter Margulies
Professor of Law
Roger Williams University School of Law
Bristol, RI

Elizabeth McCormick
Assistant Clinical Professor of Law
University of Tulsa College of Law
Tulsa, OK

M. Isabel Medina
Professor of Law
Loyola University New Orleans School of Law
New Orleans, LA

Vanessa Merton
Professor of Law, Pace University School of Law
Faculty Supervisor, Immigration Justice Clinic
White Plains, NY

Andrew Moore
Assistant Professor and University Minister
University of Detroit Mercy School of Law
Detroit, MI

Nancy Morawetz
Professor of Law
New York University School of Law
New York, NY

Hiroshi Motomura
Professor of Law
University of North Carolina at Chapel Hill
Chapel Hill, NC

Karen Musalo
Resident Scholar
University of California, Hastings College of the Law
San Francisco, CA

Michael Olivas
Professor of Law, University of Houston Law Center
Director, Institute for Higher Education Law and Governance
Houston, TX

Nancy K. Ota
Professor of Law
Albany Law School
Albany, NY

Amagda Perez
Clinical Professor, University of California Davis School of Law
Faculty Director, Immigration Law Clinic
Davis, CA

Michele Pistone
Professor and Director, Clinical Program & CARES Clinic
Villanova University School of Law
Villanova, PA

Jaya Ramji-Nogales
Adjunct Professor, Georgetown University Law Center
Advocacy Fellow, Center for Applied Legal Studies
Washington, DC

Cristina Rodriguez
Assistant Professor of Law
New York University School of Law
New York, NY

Lory Diana Rosenberg
Attorney & Consultant
Immigration Defense & Expert Assistance
Rockville, MD

Mario Russel
Adjunct Professor
St. John's University School of Law
New York, NY

Theodore Ruthizer
Lecturer in Law
Columbia Law School
New York, NY

Natsu Taylor Saito
Professor of Law
Georgia State University College of Law
Atlanta, GA

John A. Scanlan
Professor of Law
Indiana University School of Law
Bloomington, IN

Michael Scaperlanda
Professor of Law and Associate Dean for Research
University of Oklahoma College of Law
Norman, Oklahoma

Philip Schrag
Professor of Law
Georgetown University Law Center
Washington, DC

Barbara Schwartz
Clinical Professor
University of Iowa College of Law
Iowa City, IA

Ragini Shah
Clinical Staff Attorney, Child Advocacy and Immigration Clinic
Columbia University Law School
New York, NY

Anna Williams Shavers
Professor of Law
University of Nebraska College of Law
Lincoln, NE

Deborah S. Smith
Adjunct Professor of Law
University of Montana School of Law
Helena, MT

James F. Smith
Professor of Law, University of California Davis School of Law
Faculty Director, Immigration Law Clinic
Davis, CA

Dan R. Smulian
Assistant Professor of Clinical Law
Brooklyn Law School
Brooklyn, NY

Gemma Solimene
Clinical Associate Professor of Law
Forham University School of Law
New York, NY

Michele Strickland
Adjunct Professor of Law
University of Connecticut School of Law
Hartford, CT

Barbara Szweda
Director, Immigration Clinic
University of Notre Dame
South Bend, IN

Margaret Taylor
Professor of Law
Wake Forest University School of Law
Winston-Salem, NC

David B. Thronson
Associate Professor of Law and Co-Director, Immigration Clinic
Boyd School of Law at UNLV
Las Vegas, NV

Christopher Todd
Supervising Attorney, Immigration Law Clinic
University of California Davis School of Law
Davis, CA

Diane Uchimiya
Assistant Professor of Law
University of La Verne
La Verne, CA

Joseph A. Vail
Associate Clinical Professor
University of Houston Law Center
Houston, TX

Leti Volpp
Professor of Law
University of California Berkeley, Boalt Hall School of Law
Berkeley, CA

Shoba Sivaprasad Wadhia
Adjunct Professor of Law
American University, Washington College of Law
Washington, DC

Jonathan Weinberg
Professor of Law
Wayne State University Law School
Detroit, MI

Virgil Wiebe
Associate Professor of Law and Director of Clinical Legal Education
University of St. Thomas School of Law
Minneapolis, MN

John Willshire-Carrera
Managing Attorney
Harvard Immigration and Refugee Clinic at Greater Boston Legal Services
Boston, MA

Lauris Wren
Associate Clinical Professor
Hofstra University Law School
Hempstead, NY

Stephen Yale-Loehr
Adjunct Professor
Cornell Law School
Ithaca, NY

Institutional affiliations provided for identification purposes only.