NEW YORK COUNTY LAWYERS' ASSOCIATION
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REPORT OF THE NEW YORK COUNTY LAWYERS' ASSOCIATION COMMITTEE ON IMMIGRATION AND NATIONALITY LAW REGARDING S.3314-B AND A.7137-B OF THE NEW YORK STATE LEGISLATURE

This Report is solely that of the Committee on Immigration and Nationality Law of the New York County Lawyers' Association. It has not been approved by the Board of Directors of the New York County Lawyers' Association and does not necessarily represent the views of the Board of Directors.

On behalf of the Committee on Immigration and Nationality Law of the New York County Lawyers' Association, this letter is being submitted to urge, as strongly as possible, the defeat of bills S.3314-B and A.7137-B. These bills, which deal with the New York State regulation of "Immigrant Assistance Services," are an attempt, intentional or not, to circumvent and pre-empt the legislative authority of the U.S. Congress and to impose the State Legislature's concept of remedial law on the U.S. Department of Justice and the Department of Homeland Security. While the intent is admirable, the effect of such laws, if adopted, would be to place the State of New York in direct competition and conflict with the Federal government in a field of law and practice solely within Federal jurisdiction. It would also seriously endanger the rights of consumers of immigration-related legal services.

The authority to regulate and control this area of law has been clearly delegated by Congress to the Secretary of Homeland Security of the United States, who has in turn delegated such authority to the US Citizenship and Immigration Services (USCIS). The regulations of the USCIS, located at Title 8 of the Code of Federal Regulations (CFR) at section 292, and of the Executive Office for Immigration Review (EOIR, also known as the Immigration Court), located at 8 CFR §1292, as well as a 1993 Opinion of the General Counsel of the former INS, make clear that only attorneys and "accredited representatives" may engage in practice before the USCIS or the EOIR.

The term "accredited representative" is defined and limited to persons or organizations who have been so certified by the Secretary of Homeland Security under 8 CFR §292 and the Board of Immigration Appeals under 8 CFR §1292, and who are performing services, *including the completion of government forms*, for only nominal fees. The Secretary of Homeland Security, a Cabinet-level appointee, and the Board, a federally appointed and regulated body under the authority of the Attorney General of the United States, have sole

and exclusive authority to recognize accredited representatives for practice before, respectively, the USCIS or before the EOIR. Section 292 defines and limits those who can qualify to represent aliens before the USCIS and section 1292 limits those who can qualify to represent aliens before the EOIR, and both sections set forth specific conditions of required experience and knowledge of immigration and naturalization law and procedure that must be met before one can be designated as an accredited representative/official of a recognized organization. No individual may submit an application on his or her own behalf. A non-profit religious, charitable, social service, or similar organization established in the United States and recognized as such by the Secretary of Homeland Security and the Board must seek and apply to both the Secretary and the Board, separately, for accreditation of an individual as that organization's representative.

The State of New York, if the above bills are enacted, would attempt to create and include its own class of accredited representatives, called "providers" under these bills. This legislation would permit these "providers" to qualify as such simply by writing a contract for their services, cancelable within three days, and containing certain specified language stating that the "provider" is neither an attorney nor an individual accredited by any State or Federal agency; a surety bond, contract of indemnity, or irrevocable letter of credit, payable to the people of the State of New York for the minimum amount of $50,000.00; and signage at the business location stating that the "provider" is neither an attorney nor an individual accredited by any State or Federal agency.

However, even if a "provider" makes a suitable contract, obtains the required surety coverage, and posts the required signs, that "provider" does not have any right or guarantee of recognition as a representative by the USCIS or the EOIR. For that to take place, the applicant must come within and qualify under the provisions of 8 CFR 292 and 1292. If the applicant does not come within the provisions of either 8 CFR 292 or 1292, that applicant will not be legally permitted to represent any person or entity before the USCIS or the EOIR, New York State authorization notwithstanding. If the applicant does come within and qualifies under the provisions of 8 CFR 292 and 1292, that applicant will be legally permitted to represent any person or entity before the INS or the EOIR, regardless of whether or not the "provider" has been authorized by the State of New York or any other state.

We also strongly believe that the enactment of these bills would seriously endanger the legal and constitutional rights of the very consumers whom they are intended to protect. The unauthorized and incompetent practice of immigration law by lay persons is a vexing and long-standing problem in the immigration field. The proposed regulating of non-lawyer "providers" would not ameliorate the existing problem; in fact, it would exacerbate it in the

following ways:

1) It would provide a false and illusory umbrella of legitimacy for the unauthorized practice of law;

2) It would encourage additional unqualified lay persons to provide unauthorized legal services because state regulation would provide the appearance of professional expertise, legitimacy, and the prospect of increased fees;

3) It would expose aliens to the increased risks of inadequate and incompetent representation and higher fees for "regulated" services;

4) It would undermine the efficiency and integrity of the USCIS and EOIR because "providers" would attempt to practice immigration law before the USCIS and EOIR in violation of existing federal regulations. This would create an additional enforcement burden on the already limited and strained resources of both the USCIS and EOIR.

The proposed laws are of questionable value and/or effectiveness. If they are enacted, they will become, almost immediately, the subject of litigation. We have no doubt that when such litigation occurs, the proposed laws will be found to be invalid.

We believe, as the New York State lawmakers who introduced and sponsored these bills apparently believe, that there should be a means to control the activities and money-taking of unqualified, and frequently unethical, "providers," but we do not believe the solution lies in S.3314-B and A.7137-B. Immigration law is Federal law, both to be made and enforced by Federal agencies. Our Association, along with other bar groups, consults and works with these Federal agencies to try to resolve this problem of unqualified, unauthorized, and unethical "providers."

We strongly urge that you vote against S.3314-B and A.7137-B because, rather than reducing existing problems, these bills will create even greater and more serious ones. We also believe that the New York State Legislature should conduct public hearings on these bills, where interested and affected parties would be either invited or permitted to give testimony. This would serve to make the legislators aware of the serious nature and damage that will be caused by these proposals, should they be enacted.

Respectfully submitted,

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