ADVANCING EQUALITY

January 10, 2006

The Honorable Arlen Specter, Chairman
The Honorable Patrick J. Leahy, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Specter and Ranking Member Leahy:

On behalf of the Asian American Justice Center (formerly National Asian Pacific American Legal Consortium), a national civil rights organization dedicated to advancing and defending the civil rights of Asian Americans, we are writing to express our concern opposition to the nomination of Judge Samuel Alito to be Associate Justice of the Supreme Court of the United States. Judge Alito's record demonstrates hostility and poses grave risks to constitutional and legal rights and protections that are core to the advancement of the communities we represent.

Supreme Court decisions continue to have an immense impact on the lives of Asian Americans, ranging from *Gong Lum v. Rice* (1927), an unsuccessful challenge to school segregation that would later be overturned by *Brown v Board of Education* in 1954, to *United States v. Korematsu* (1944), where the Court upheld the internment of Japanese Americans. Often, cases where the rights and liberties of minorities are at question are decided by a very narrow 5-4 margin. Based upon materials produced by Judge Alito as well as his judicial record, we believe that he would fail to demonstrate a clear understanding of key issues important to the civil rights communities.

In 1986 Alito wrote a letter in his capacity as Deputy Assistant Attorney General to former FBI Director William Webster in which he suggested that "illegal aliens have no claim to nondiscrimination with respect to nonfundamental rights," and that the Constitution "grants only fundamental rights to illegal aliens within the United States." Alito makes no mention of *Plyer v Doe* in this letter, which ruled that a state could not discriminate against undocumented children in public education, even though education is not considered a fundamental constitutional right. This raises questions about whether he would adequately protect undocumented immigrants from unconstitutional forms of discrimination.

Judge Alito's opinions in cases involving racial discrimination and voting rights lead us to believe that he will fail to champion civil rights in a manner that would ensure that all communities will be full participants in the rights and liberties that our constitution promises. For example, in *Bray v. Marriot Hotels*, a racial discrimination case, the majority concluded that Alito's dissenting view would protect employers from suit even where the employer's belief that it had selected the best candidate "was the result of a conscious racial bias." As the majority pointed out, "Title VII would be eviscerated if out analysis were to halt where the dissent suggest." In his 1985 application to the

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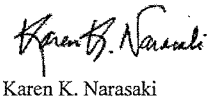
Department of Justice's Office if Legal Counsel, Judge Alito raised opposition to the Supreme Court decisions that first articulated the fundamental civil rights principle of "one person, one vote." Those decisions later paved the way for major strides in the effort to secure equal voting rights for all Americans and greater representation of racial and ethnic minorities at all levels of government.

Of great concern to us is Judge Alito's record on immigration law. In asylum cases, it appears that Judge Alito has a tendency to rule against individuals who are seeking protection in the United States, even where evidence show that they have been or would have been persecuted in their own countries. In *Chang v. INS*, Judge Alito disagreed with the court's decision to grant asylum despite the fact that Chang had presented evidence that his wife and son already faced persecution and he was threatened with prison if he returned to China. In *Dia v. Ashcroft*, Judge Alito dissented from a majority opinion granting asylum to an immigrant from the Republic of Guinea whose house was burned down and wife raped in retaliation for his opposition to the government.

For the above reasons, we must oppose his confirmation as Associate Justice. We appreciate your consideration of our views. If you have any questions, please feel free to contact AAJC Deputy Director Vincent A. Eng at (202) 296-2300, x121 or AAJC Director of Programs Aimee J. Baldillo at (202) 296-2300, x 112. We look forward to working with you.

Sincerely,



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