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July 24, 2006

VIA FACSIMILE: (703) 305-0443

Mary Beth Keller
General Counsel
Executive Office for Immigration Review
Office of the Director
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Subject: Revised General Practice Regarding First Briefing Deadline Extension Request for Detained Aliens, 71 FR 135 (July 14, 2006).

Dear Ms. Keller:

The Catholic Legal Immigration Network, Inc. (CLINIC), and its NGO partners in the BIA Pro Bono Project, the American Immigration Law Foundation (AILF), the National Immigration Project of the National Lawyers Guild (NIPNLG), and the Capital Area Immigrants' Rights (CAIR) Coalition object to EOIR's recently published announcement in the Federal Register regarding changes to extension requests filed in detained cases pending before the Board. Among other things, we are concerned about the adverse impact this development will have on the BIA Project's ability to recruit pro bono volunteers and continue its successful work.

While we support your stated goal of reducing the amount of time a detained alien is in proceedings, we believe that the revised practice will not achieve this goal. Instead, it will unjustly penalize detained individuals by making it more difficult for them to comply with briefing deadlines and secure counsel. It will make it more difficult for busy practitioners to take on cases before the Board, and for the BIA Pro Bono Project partners to recruit volunteers to participate in the Project. We urge you to reconsider implementation of this change.

Shortened extension periods will significantly weaken the BIA Project's ability to recruit pro bono counsel to represent detained immigrants before the Board. Many of the lawyers recruited and trained to participate in the BIA Project have limited prior experience in immigration law and rely greatly on the entire current 42 days (initial 21-day briefing period and one 21-day extension) to become familiar with the law and issues involved in their cases, to strategize with more experienced practitioners and mentors, and to develop articulate legal arguments in their briefs.

The majority of our Project participants have stated that they rely upon and use all 42 days to prepare their cases. Their well prepared briefs have been recognized as particularly beneficial to the Board and as having increased efficiency at the Board.¹ Such briefs are

¹ See U.S. Department of Justice. (October 2004). *The BIA Pro Bono Project is Successful*. In this study of the BIA Project, DOJ found that the Project generates quality briefs that articulate the key issues on appeal, which facilitates the Board's review of a case and leads to increased efficiency.

likely to result in more thorough opinions by the BIA that will not invite further review (which would further prolong the time a detainee spends in removal). Jeopardizing such gains by reducing the extension period by six days, to the detriment of the detainee, is unfair. Many Project participants have indicated that the reduced amount of time will be problematic for their continued participation in the Project. For example, law schools are very active participants in the BIA Project. Under the current system, participants generally have only six weeks (including the extension) or in the case of a student, less than half a semester, to complete a brief. Further reducing this time period will detract from a law school's ability to provide their students a meaningful educational experience through a BIA Project case. Other project participants have stated that when faced with a request to take on a complicated pro bono case involving multiple or particularly complex issues, the shortened time frame in which they have to complete a brief would deter them from accepting such a pro bono referral. Ironically, such cases are those in which pro bono counsel can make the most difference, both for the Board in terms of increasing its efficiency by providing a thoroughly researched and well articulated brief, and for the respondent in terms of fairness and justice. Others have stated that if they were undecided as to whether or not they could fit a pro bono case into their schedules, this change would result in the decision to decline a case. This change will inevitably undermine the efforts of this highly successful project, which to date, has secured representation for well over 400 individuals before the Board.

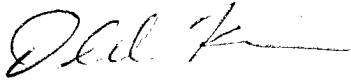
We are additionally concerned about the impact this change will have on pro se detainees. Detained immigrants are among the most vulnerable individuals with case appeals pending before the BIA. The existing briefing and extension periods leave them with minimal time to submit a brief to the BIA or to attempt to secure legal counsel. When the BIA issues a briefing schedule, it mails the transcript and schedule to a detained immigrant via regular mail. It can often take up to one week (especially if the detainee is located on the west coast and the mailing involves a large transcript) for a transcript and briefing schedule to reach a detainee by regular mail. This time period, as well as the amount of time a detainee must allot to ensure his or her brief reaches the BIA by the brief deadline, significantly detracts from the amount of time a detainee has to prepare a brief. Furthermore, an attorney who did not represent an individual before the Immigration Judge is often reluctant to represent that person before the BIA without having had the opportunity to review the transcripts of the Immigration Court Hearing and the oral decision of the Immigration Judge. Therefore, detainees must often wait until they receive their transcript from the BIA to attempt to secure counsel. The shortened extension period will make it even more difficult for pro se individuals to attempt to do this.

Lastly, we note that the regulation concerning the BIA briefing schedules permits the BIA to extend the period for filing a brief "for up to 90 days." 8 C.F.R. section 1003.3(c)(1). The regulation says nothing about the BIA uniformly limiting extensions to 21 days or 15 days. We question whether the BIA's original or this amended policy is in compliance with this regulation.

For all of the reasons noted above, we request that the BIA refrain from implementing changes to detained briefing periods/extensions, especially from reducing extension periods in detained cases from 21 to 15 days. The goal of reducing the amount of time a detainee spends in removal proceedings is laudable. However, reducing this time at the expense of the detained individual is fundamentally unfair and unjustifiable. Shortening the time period for preparation of the record and briefing schedule at the BIA would have a more significant and principled impact on your stated goal. We urge you not to implement these changes.

We would welcome the opportunity to discuss this with you in more detail and look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald Kerwin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Donald Kerwin
Executive Director
Catholic Legal Immigration Network, Inc.

Submitted with the support of:

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