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September 10, 2010

Thomas G. Snow
Acting Director
U.S. Department of Justice
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

Dear Director Snow:

On behalf of the American Bar Association (ABA) and its nearly 400,000 members, I write to express our serious concerns about the recently announced privacy requirements for accessing the Executive Office of Immigration Review's (EOIR) automated case information system. According to the August 16, 2010 EOIR press release, this new measure will require anyone using the call-in number to provide not only an individual's Alien Registration Number (A Number), but also the date on his or her charging document.

We are gravely concerned that this new policy will have a number of unintended consequences, including: (1) preventing respondents from learning or confirming their upcoming court dates; (2) preventing ethical attorneys and accredited representatives from obtaining critical information about potential clients in order to determine whether to undertake representation before EOIR or USCIS; (3) making noncitizens even more vulnerable to unscrupulous practitioners who will charge fees and make commitments without being able to ascertain a person's immigration history, regardless whether they are or ever have been in proceedings and whether they have been ordered removed.

We know that EOIR has already heard concerns from a number of other organizations about this new requirement, and we appreciate the delay of the implementation date until October 1, 2010. We believe there are alternative options available that would protect the privacy of those individuals whose case information currently is available through the automated system, without precluding access by those individuals who need it for themselves or the attorneys and other representatives who seek to help them. Basic information such as upcoming hearing dates, past decisions and appeal status should be available to callers with readily available personal information that cannot generally be lost or taken away from them. Other more sensitive information, such as that regarding the asylum clock, could be restricted to those possessing more detailed personal information.

The requirement for the date on a charging document date is problematic for several reasons. It will limit many individuals' access to their own immigration court records and ability to receive accurate information about benefits that may be available to them. It will prevent many

individuals from finding ethical legal counsel, and it will impair attorneys' ability to readily access case status information of prospective clients. Many detained noncitizens do not have charging documents in their possession because one has not been issued to them, or if they do have one, they may not be allowed to access their legal papers or personal possessions. When detainees are transferred from one facility to another, their legal papers frequently do not accompany them. Many other respondents do not have their charging documents because they never received one due to the negligence of their attorneys, errors by the government, problems with mail delivery or personal reasons.

The automated case information system is often the initial tool used by attorneys and advocates screening for effective representation. The ABA uses this system every day to assist the detainees who contact our office seeking assistance with locating pro bono representation or pro se legal materials. Many individuals do not know their case status, and without the ability to access the automated system, we would be unable to determine the best resources to send them. The ABA also has three direct representation projects whose staff utilize the system regularly in conjunction with the Legal Orientation Programs (LOPs) they provide and, in some cases, for direct representation. In addition, it can be critical to determine whether a person has ever been in proceedings at all. That information can be found under the current system, making it possible for an attorney or representative to know whether USCIS would have jurisdiction over a contemplated asylum or other benefits application. Of course, no charging document would exist in some cases. Under the new design of the automated system, it would not be possible to verify that a person had never been in proceedings.

In February 2010, the ABA's Commission on Immigration issued a comprehensive report, REFORMING THE IMMIGRATION SYSTEM (ABA 2010), which evaluated the removal adjudication system and identified several necessary reforms. As cited in the report, the most recent estimates show that 84% of detained immigrants do not have legal representation. The barriers detention places on access to information and counsel would be further exacerbated for detainees who could not get access to information and for advocates required to explain what a "charging document" is and how to find its date.

This new requirement would dramatically hinder noncitizens' access to counsel, particularly for detainees. Attorneys and accredited representatives would understandably be less willing to accept the cases of those lacking a copy of their charging document because they would be unable to determine the case status with any certainty. And unless they enter an appearance in the matter, they would be unable to obtain the relevant documents from the court or from ICE. This new requirement will create at the very least a severe delay for many individuals looking to find representation, and for some, prevent access to counsel entirely. The same respondents who do not have charging documents may not only be unable to find attorneys, but may also miss their immigration hearings. Missing a court hearing will typically lead to an in absentia order of removal that is difficult, if not impossible, to overcome. Detainees would be the most severely impacted.

Tragically, the most severe impact of this change may be felt by the most vulnerable populations in immigration proceedings: individuals with mental illness and children. Attorneys representing individuals who suffer from mental illness already have an often-insurmountable task of

determining what relief is available. The ability of these populations to recognize, maintain, locate and understand a charging document and its date of issue clearly imposes a heightened burden on those least able to bear it.

A similar burden would also fall on many other vulnerable groups such as asylum seekers and those eligible for VAWA, T and U visas. Many of these individuals with bona fide claims may be suffering from PTSD, may have fled their homes where any charging documents would have been sent, may have had their documents forcibly taken from them by their abusers, and may be completely unaware of prior in absentia removal orders. Although this measure may have been designed to protect some of these groups from their persecutors, it may in fact place greater obstacles in their path.

It is likely that this new requirement will only continue to strain the already overtaxed immigration courts and Immigration and Customs Enforcement (ICE). Individuals including attorneys, accredited representatives, noncitizens and their family members who are unable to access the automated information system will be forced to turn to EOIR and ICE to seek case information and to determine court dates. The number of continuances requested by attorneys will increase, as it will take them longer to determine a client's case history. This will only add more hearings to the immigration court dockets and further delay final adjudications and due process for noncitizens.

For all of the reasons stated above, the ABA respectfully requests EOIR to suspend implementation of the announced changes indefinitely, to allow additional input from stakeholders and to develop a better way to protect individual privacy without diminishing appearance rates or access to legal information and counsel.

We look forward to working with EOIR on this issue in the weeks ahead.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Susman", with a long horizontal flourish extending to the right.

Thomas M. Susman