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Honorable Michael J. Creppy
Chief Immigration Judge
Office of the Chief Immigration Judge
Executive Office for Immigration Review
5107 Leesburg Pike #2545
Falls Church, VA 22041

Dear Chief Judge Creppy:

The American Bar Association writes to express its great concern over a recent change in policy regarding unaccompanied minors in removal proceedings in Harlingen, Texas. We understand that there has been a directive from your office requiring detained minors to apply for relief within 30 days of the filing of their notices to appear with the Immigration Court. Such a change will prevent a large number of these minors from receiving the legal representation and due process they deserve.

As you probably know, the Harlingen Immigration Court has jurisdiction over the largest numbers of detained unaccompanied minors in the country. There are approximately 200 minors detained in this area at any one time. The number of detained children in this area is twice as large as any other region in the United States, and it encompasses approximately one third of all of the detained children in Office of Refugee Resettlement (ORR) custody.

ProBAR, the South Texas Pro Bono Asylum Representation Project, is a pro bono project sponsored by the American Bar Association, the State Bar of Texas and the American Immigration Lawyers Association. For many years, ProBAR has made it a priority to provide high-quality legal representation to all unaccompanied minors in detention. Since 1999, a ProBAR attorney has represented detained minors at the weekly detained children's dockets. No other agency in South Texas is willing or able to serve this extremely vulnerable population. Currently, ProBAR has only one attorney and a part-time volunteer paralegal to serve this entire population. It is simply impossible for ProBAR to adequately represent these minors within the parameters of this new directive.

In the past, EOIR has expressed understanding of the special needs of children respondents. As recently as September 2004, your office published and distributed "Guidelines for Immigration Court Cases Involving Unaccompanied

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Alien Children.” These guidelines recognize the need for child-sensitive procedures, a Chief separate children’s docket, and the importance of pro bono representation. Furthermore, these guidelines recognize the need to determine whether children have a sufficient mental capacity to understand the oath and give sworn testimony, as well as the fact that stress and fatigue can adversely impact a child’s testimony.

ProBAR, as the only pro bono agency dedicated to serving detained minors in South Texas, must take into account several similar constraints. We provide rights presentations to all newly arrived minors, interview those who request a private interview, and attempt to discern which children have a viable claim for relief. Clearly, children do not establish a rapport with us as quickly as do adults. They require more time to disclose the grueling and potentially shameful facts of their cases. ProBAR staff builds trust with their minor clients through frequent contact and interviews. This process takes time and patience. Furthermore, even if only a small fraction of the detained minors are eligible for any form of relief, the abbreviated filing period is insufficient to allow ProBAR to file the necessary applications, pleadings, and/or motions with the court. Consequently, minors who are not able to file the applications in time will be forced to forego relief and be sent home.

The American Bar Association is very concerned about preserving the due process rights of children, particularly those who are held in detention. All parties recognize the importance of representation in children’s cases. For these reasons, we ask that your office reevaluate this change in policy and allow the court to revert to its previous practice. Otherwise, ProBAR’s ability to continue to provide representation to detained minors will be seriously jeopardized.

Thank you for your attention.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans".

Robert D. Evans

cc: Honorable Larry R. Dean – Assistant Chief Immigration Judge
Honorable Margaret Burkhart – Immigration Judge
Susana Ortiz-Ang – Office of Refugee Resettlement