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August 3, 2004

Michael J. Creppy
Chief Immigration Judge
Executive Office for Immigration Review
5107 Leesburg Pike, Ste. 2400
Falls Church, VA 22041

RE: Stipulated Removal Orders

Dear Judge Creppy,

As you know, the American Bar Association has a longstanding interest in ensuring that individuals receive fair treatment and appropriate due process in the U.S. immigration system. As a part of this effort, the ABA has established a program to provide *pro bono* legal services to asylum seekers detained in South Texas.

Over the past few months, attorneys there have reported a drastic change in Immigration and Customs Enforcement (ICE) policy relating to detention and removal. Large numbers of Central Americans are being prosecuted for illegal entry into the United States under 8 U.S.C. §1325. They are then sentenced to 30 days confinement, with many being held at Brooks County jail near Falfurrias, Texas. Upon serving their sentences, U.S. Marshals and ICE agents are telling these individuals that if they do not sign "stipulated removal orders," they will be further detained for months, and ultimately, deported. As a result, an overwhelming number of detainees, many who may in fact be eligible for legal remedies such as asylum, perceive that they have no choice but to sign the orders to avoid certain detention and deportation (please see attached affidavits). As you know, those who sign these orders do not have the opportunity to appear before the Immigration Court, and the orders are given to the Judge to sign at a subsequent date. The only information regarding relief from removal provided to these individuals is contained in one line on the removal order itself.

As you know, the regulations governing stipulated removal orders (8 C.F.R. §1003.25) require that, if the alien is unrepresented, the Immigration Judge must determine that the alien's waiver is voluntary, knowing and intelligent. Provided with no other sources of information, and with federal agents informing them that

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their only option is to sign the document or face months of further imprisonment and eventual deportation, these individuals are being denied the opportunity to make a truly voluntary and informed decision about their right to be heard by the Immigration Judge, which, in some cases, may mean the difference between life and death.

As you are aware, your office funds legal orientation programs for detainees in South Texas. ICE's practice of misinforming detainees about their right to pursue legal relief before the Immigration Court, however, has resulted in far fewer detainees benefiting from these programs. If a detainee signs a stipulated removal order, he or she will never have the opportunity to attend a legal rights presentation. Attorneys in South Texas report that prior to ICE's new policies taking effect, twenty or thirty individuals were scheduled for master calendar hearings at any given time, and now, that number has decreased to between three and ten.

Currently, one Immigration Judge signs stipulated removal orders in South Texas, while the others refuse to sign them. Although this Judge has been signing these orders for approximately one year, the recent sharp increase in individuals signing these orders after receiving misinformation from ICE is of great concern to the ABA. This increase calls into serious question whether individuals are truly making the informed decisions about signing the orders that they are entitled to make under the regulations. In light of this, and as an organization that is devoted to safeguarding due process rights for immigrants and refugees, I urge you to inform the Judges that these tactics are being used and that they are becoming more widespread. In doing so, it is our hope and intention that the Judges will be fully informed as to the potential consequences of the signing of these orders and will use their discretion accordingly.

Thank you for your attention to this important matter.

Sincerely


Robert D. Evans

Enclosures

cc: Charles Adkins-Blanch
Steve Lang
Larry Dean