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Ms. MaryBeth Keller
General Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

**Re: Revised General Practice Regarding First Briefing Deadline
Extension Request for Detained Aliens**

Dear Ms. Keller:

On behalf of the American Bar Association, I write to express our deep concern that the revised general practice requiring shorter briefing extension periods for detained immigrants imposes significant, undue hardships on this already vulnerable population. The revision will discourage counsel from representing detainees before the Board of Immigration Appeals (BIA), and leave insufficient time for *pro se* respondents to thoroughly prepare their cases.

While we appreciate that reducing briefing times reduces the length of proceedings, it is crucial that detained immigrants have full, meaningful access to the legal process. Even for those who are at least able to obtain legal materials or secure representation, the change will cause substantial hardship. Further, if detainees are unable to present their cases effectively given the short time frame, cases may be decided wrongly, including those where an individual's life is at stake.

Detained immigrants already face numerous obstacles to preparing their cases, which are amplified for those who are *pro se*. This is the case for the majority of detainees. Detained immigrants regularly inform the ABA that they do not receive mail, including court documents, in a timely manner. This delay already reduces the very short time a detainee has to review the court transcript and prepare a brief, and compounds the difficulties posed by a lack of experience with legal research and writing, general unfamiliarity with the U.S. legal system, highly complex and frequently changing immigration laws, and language barriers. In addition, detainees' access to legal reference materials, typewriters, and other

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relevant resources is often severely limited.¹ Government attorneys are not similarly disadvantaged.

The reduced briefing period will also make it even more difficult for detainees to secure legal counsel.² Detainees across the country frequently write to the ABA because they are unable to find counsel. The revision will result in even fewer attorneys, both paid and *pro bono*, who are willing or able to take detainees' cases, because they will not have adequate time to prepare briefs. Having counsel can make an enormous difference in an individual's case; represented detainees are four times more likely to be granted asylum than those without counsel.³ Furthermore, briefs prepared by experienced counsel facilitate more accurate decision-making. The simultaneous briefing schedule for detained cases already makes it difficult to prepare cases properly. Further reduction in briefing times will likely lead to increased appeals, and will only prolong, rather than reduce, the time that detained immigrants are in proceedings.

For these reasons, we urge you to refrain from implementing this change. We encourage you to seek other means of reducing processing times for detainees' cases that aren't at the expense of their full, meaningful access to the legal process.

Sincerely,


Robert D. Evans

¹ This lack of legal materials is a persistent problem in spite of the provision in the ICE Detention Standards requiring that such materials be available to detained immigrants. See ICE Detention Operations Manual, Detainee Services Standard 1, Access to Legal Material, at <http://www.ice.gov/partners/dro/opsmanual/index.htm>.

² The ABA Commission on Immigration's *American Justice Through Immigrants' Eyes* describes some of the impediments as follows: "The government's detention practices make it exceedingly difficult for detained persons to secure and communicate with counsel and pursue relief. Immigration authorities frequently transfer detainees to distant locations, often without notifying their lawyers and without regard for their need to prepare for a hearing or to be close to their families and support systems. Many of the more than 900 facilities used for immigration detention are in rural locations, far from private and pro bono lawyers and non-profit legal programs, making access to lawyers, families, and legal materials even more difficult. Without representation, detained persons often cannot access the extensive documentation and other information necessary to meet their burden of proof and apply for most forms of relief, including asylum." American Bar Association, Commission on Immigration, *American Justice Through Immigrants' Eyes* (2004) at 68 [citation omitted].

³ See *id.* at 54.