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July 21, 2006

Honorable David L. Neal
Acting Chief Immigration Judge
U.S. Department of Justice
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

RE: Stipulated Removal Orders

Dear Judge Neal:

I write to respectfully request your assistance in helping to ensure that Salvadorans in Section 240 proceedings detained at the Port Isabel Detention Center (PIDC) receive due process. The ABA's South Texas Pro Bono Asylum Representation Project (ProBAR) regularly encounters Salvadoran detainees at PIDC who were previously in the custody of the U.S. Marshal Service following conviction for unlawful entry under 8 U.S.C. §1325. It has come to our attention that Immigration & Customs Enforcement (ICE) officers routinely present those in custody at the Val Verde and Crystal City Detention Centers with stipulated removal orders before they receive EOIR-funded legal rights presentations, as required by the nationwide *Orantes* Injunction.¹

Detainees report that prior to their transfer to PIDC, U.S. Marshals and ICE agents warn that if they do not sign the stipulated orders, they will be detained for long periods of time and ultimately deported. As a result, these individuals, who may be eligible for remedies such as asylum, perceive that they have no other choice but to sign the orders to avoid prolonged detention and certain deportation. It is our understanding that the orders are then routed to Immigration Judges in Harlingen and perhaps elsewhere for signature. ProBAR gives daily rights presentations at PIDC; for attendees from El Salvador, the presenter signs and dates an *Orantes* verification form, which is immediately placed in an individual's EOIR file. ProBAR personnel, however, do not sign the form if they are aware that the individual has already signed a stipulated order prior to attending the presentation.

¹ *Orantes-Hernandez v. Gonzales*, No. 82-1107KN (C.D.Cal.).

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Stipulated orders indicate that the signer understands that he or she is forgoing the right to a removal hearing and/or pursuit of relief, and is opting for a written order instead. Nonetheless, 8 C.F.R. §1003.25 requires Immigration Judges to determine that an unrepresented individual's waiver is voluntary, knowing, and intelligent. Individuals who sign stipulated orders, however, do not have the opportunity to appear before an Immigration Judge. Evidence that a respondent was given a legal rights presentation prior to signing a stipulated order therefore provides the Judge with some assurance that the respondent's waiver is voluntary and informed. The *Orantes* Injunction requires that all Salvadorans be given legal rights presentations *prior to* being ordered removed.

Despite the regulations ultimately permitting Immigration Judges to sign stipulated removal orders, Judges cannot meaningfully verify that a respondent voluntarily and knowingly signed a stipulated order without the opportunity to speak directly with the respondent, and with no record of the respondent's receipt of a legal rights presentation. With no other source of information than the removal order itself, and with federal agents indicating that the only option is to sign the order 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. In some cases, this may literally mean the difference between life and death.

In light of the above, I respectfully request that EOIR consider implementing a policy requiring Immigration Judges in Harlingen, and elsewhere if necessary, to refrain from signing stipulated removal orders if they are unable to verify that *pro se* Salvadoran respondents were given legal rights presentations prior to signing the orders.

As background, I am attaching an August 2004 letter and memorandum from the ABA to former Chief Immigration Judge Creppy that raised related issues. Assistant Chief Immigration Judge Dean's response to our letter indicated that, should EOIR follow our suggestion (informing Judges about the possibility of coerced signing of stipulated orders), this would constitute *ex parte* communication. Neither our former nor our current requests suggest that EOIR engage in *ex parte* communication. While ProBAR represents particular individuals detained at PIDC, the ABA's request in this letter relates to broad policy considerations and basic due process safeguards for detainees. This communication does not concern a specific individual or party, and Immigration Judges can easily confirm whether Salvadorans have received rights presentations by determining whether there is a signed *Orantes* verification form in their files.

Although the *Orantes* injunction pertains only to Salvadorans, we are supportive of any measures that enable Immigration Judges to verify that all *pro se* respondents

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have received legal rights presentations prior to signing stipulated orders. The presentations provide crucial access to the legal system for those who might not otherwise know of their eligibility for relief.

Thank you for your time and consideration of this request; and please do not hesitate to contact Irena Lieberman, Director of our Commission on Immigration, at 202-662-1008, for additional information.

Respectfully,


Robert D. Evans

cc: Larry Dean, Assistant Chief Immigration Judge, EOIR
Steven C. Lang, Legal Access Coordinator, EOIR