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August 27, 2008

Hon. Michael B. Mukasey  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Mr. Attorney General:

Enclosed please find a letter from national and local organizations concerning your recent certification of issues related to the legal basis and procedural requirements regarding claims of ineffective assistance of counsel. This letter seeks an extension of time for briefs and an expansion of the word limit on submissions.

We look forward to your reply.

Sincerely,



Nancy Morawetz

August 27, 2008

Hon. Michael B. Mukasey  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Mr. Attorney General:

We are writing to express our concern about the surprise certification of issues related to longstanding Board of Immigration Appeals (BIA) precedent on ineffective assistance of counsel and the compressed briefing schedule for the parties and interested amici. The undersigned organizations have learned that on August 7, 2008, you certified a total of eight questions to yourself on the legal basis and procedural requirements for asserting a claim of ineffective assistance of counsel in immigration proceedings. These questions range from broad constitutional questions about the legal foundation for claims of ineffective assistance of counsel to practice-based questions about the procedural requirements for asserting such a claim. The range, complexity, and surprise nature of these questions warrant serious attention from organizations and others concerned with immigration matters. Nonetheless, the orders state that any briefs of amici will be limited to 9,000 words, briefs will be due on September 15, 2008, and extensions will be disfavored.

We urge you to reconsider the parameters you have set for participation in your consideration of these very serious issues. Unlike many issues that have already been briefed extensively at the BIA and may require less development at the stage of certification to the Attorney General, this certification invites commentary on reversing longstanding caselaw at the BIA and the courts and creating new procedural requirements. As a result, there was no amicus participation at the BIA, as there was, for example, in *Matter of Soriano* prior to the Attorney General certifying that case. To add to the difficulties in developing amicus submissions, the certification came in August, when many people are on vacation and the resources of law school clinics are not available to assist in preparing such submissions. Furthermore, the underlying decisions are not published or available on Westlaw or Lexis. Those materials did not become publically available until a week after the order. A search of the Department of Justice website produces no copy of the order issued in these cases, no indication of why these cases were certified, who sought the certification, or what arguments were made in favor of certification.

Most importantly, the issues raised by the certification are of extreme importance and would benefit from submissions that address the nuances of the issues identified by your order. Indeed, the fact that there are eight separate questions shows that there is a great deal on which interested parties could comment and offer advice. These include the problems of compliance with proposed requirements for those arrested in newly expanded fugitive operations, those otherwise in detention, and those who otherwise lack access to documents related to ineffective assistance.

We further note that the question of ineffective assistance with respect to post-agency filings is one on which your Department is engaged in litigation. At the very least, the fact of your office's multiple roles as adjudicator and litigator require that these proceedings be handled with the utmost attention to fairness and openness to reasoned consideration of competing arguments.

We therefore request that you extend the briefing schedule to accept briefs filed no later than November 15, 2008 and that you accept briefs of up to 15,000 words.

Sincerely,

American-Arab Anti-Discrimination Committee  
American Friends Service Committee Immigrant Rights Program, Newark, N.J.  
American Immigration Lawyers Association  
Capital Area Immigrant Rights Coalition  
Center for Social Justice, Seton Hall University School of Law  
Cornell Law School, Asylum/CAT Appeals Clinic  
Families For Freedom  
Florida Coastal Immigration Clinic  
Florida Immigrant Advocacy Center  
Hebrew Immigrant Aid Society  
Human Rights First  
Human Rights Project  
Immigrant and Refugee Appellate Center  
Immigrant Defense Project of the New York State Defenders Association  
Immigrant Law Center of Minnesota  
Immigrant Legal Resource Center  
Immigrant Rights Clinic at New York University School of Law  
Immigration Equality  
Immigration Justice Clinic, Cardozo School of Law  
Immigration Law Clinic, University of Arizona Rogers College of Law  
Immigration Law Clinic, University of California, Davis  
Immigration Law Clinic, University of Detroit Mercy School of Law  
Immigration Clinic, University of Texas School of Law  
Latinos Unidos de Michigan  
Legal Services Center for Immigrants  
National Immigrant Justice Center  
National Immigration Law Center  
National Immigration Project of the National Lawyers Guild  
Northwest Immigrant Rights Project  
Political Asylum Immigration Representation Project  
The Center for Gender & Refugee Studies at University of California, Hastings  
The Legal Aid Society  
Washington Defender Association's Immigration Project