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September 19, 2014

Vice President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. Vice President:

I write on behalf of the Association of Pro Bono Counsel ("APBCo"), the American Immigration Lawyers Association (AILA) and several leading legal services organizations with which our law firms work to provide pro bono representation to children and families in immigration proceedings.

Last month, in a meeting at the White House, you appealed to law firms, bar associations and non-profit legal service providers to step up their efforts to represent children and families seeking asylum or other relief after being taken into custody along the United States/Mexico border. Your call for "trained lawyers" to increase legal representation in asylum and other immigration proceedings provides key leadership on one of the most critical challenges relating to the children seeking protection at our borders. We are writing to offer recommendations for what the Administration can do to help facilitate legal representation for these children and families.

For many years, our non-profit legal and pro bono organizations have partnered with the nation's leading law firms to provide pro bono representation to asylum seekers and other immigrants in their immigration proceedings. Additionally, in recent years, we have been working hard to provide representation to unaccompanied immigrant children trying to navigate the complexities of our legal system. Many of us now are striving to significantly expand our efforts to provide pro bono legal representation for immigrant children and families who lack counsel to help them navigate our asylum, immigration and family court proceedings. One of our organizations, the Association of Pro Bono Counsel, consists of the pro bono leaders of many of the nation's leading law firms. We wholeheartedly agree with you that counsel makes a difference and that the government has a role to ensure that representation is effective.

Your request of us cannot be achieved, however, if the federal government (including the Department of Homeland Security and the immigration courts) does not address unnecessary barriers that impede pro bono lawyers' ability to provide effective and efficient counsel to these populations. In order to realize our mutual goal, we urge the Administration to consider the impact of a number of policies and practices that are currently impeding access to counsel and making it more difficult for the U.S. legal community to answer your call to provide pro bono legal services. We suggest that the following steps should be taken:

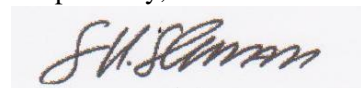
- **Prioritize and champion funding for counsel and Legal Orientation Presentations.** The Administration should advocate for full funding for counsel for children, the referral and support of cases for representation by pro bono volunteer attorneys and the expansion of the effective ORR “DCS Legal Access Project” and the EOIR “Legal Orientation Program.” Several leaders of the pro bono practices at major law firms, members of the Association of Pro Bono Counsel (APBCo), stressed in an August 11 piece in The Hill (see <http://bit.ly/HillAPBCo>) that access to justice will be greatly enhanced if there is greater support of the legal services infrastructure and non-profit organizations that can train and mentor volunteer attorneys. The pro bono community is ready to provide increased representation for these unaccompanied children but its ability to do so is directly dependent on the capacity of the legal services network of providers to fully screen, evaluate, and supervise the ensuing immigration proceedings.
- **Allow attorneys time necessary to gather evidence and prepare their cases.** While all cases should move ahead in a timely manner, immigration judges should not deny counsel the time necessary to gather the evidence required to meet the relevant legal standards and otherwise prepare a case. EOIR should affirm to its judges, through written guidance, that while the cases of unaccompanied children and other border cases have been prioritized for initial master calendar hearings, these cases should not be rushed through the process on “rocket dockets,” nor denied adjournments to secure counsel, pursue related state court proceedings or gather evidence necessary to meet the relevant legal standards. The White House’s messaging should be consistent with this approach.
- **Support access to counsel in credible fear process.** USCIS and ICE should make readily available the information necessary to facilitate prompt access by attorneys to newly detained asylum seekers prior to their credible fear interviews. EOIR should also adjust its guidance to make clear that attorneys can participate at credible fear review hearings. Some pro bono attorneys have been prohibited from participating meaningfully in these reviews, even though their ability to alert the court to mistranslations, overlooked documentation or other relevant information would benefit both the court as well as the impacted asylum seekers.
- **Revise detention policies and practices that impede access to counsel.** Multiple studies have confirmed that immigrants who are not held in immigration detention are much better able to secure counsel. Access to counsel is undermined by the “no bond,” “high bond” or other blanket approaches that keep many asylum seekers – including women and children – in immigration detention regardless of whether they meet the eligibility criteria for release. The detention of families, as well as the new blanket approach to detention which relies on the reasoning of former Attorney General John Ashcroft in *Matter of D-J-*, 23 I & N Dec. 272 (2003), should be abandoned in favor of assessments based on an asylum seeker’s individual circumstances and the potential to assure appearance through the use of alternatives to detention, if needed. DHS should locate detention facilities in locations that promote legal services, rather than in remote locations that impede access to counsel.
- **Prioritize and champion full funding for the immigration courts and the asylum office.** The administration should advocate with Congress for funding that will eliminate the multi-year delays in both the immigration courts and USCIS asylum office, and to assure that all hearings and affirmative asylum interviews – not just those that originate at the border – occur in a timely manner. The under-resourced courts already had a substantial multi-year backlog; and now non-border cases will be delayed for years more so border cases can be prioritized. Pro bono leaders at major law firms expressed their concern, in a June 2013 letter to U.S. Senators, about the negative impact of court delays on the recruitment of pro bono counsel. See <http://bit.ly/APBCoS744Ltr>. These delays can also undermine the integrity of the system and leave refugees who have fled persecution in many other places – including China, Congo (DRC), Iraq and Syria – waiting for years to have their cases resolved and their children brought to safety in this country. Resources for USCIS asylum staffing should also be further increased so that affirmative asylum interviews can occur within several months of filing.

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We share your belief that the United States has an opportunity to demonstrate to the rest of the world what a humane and fair response to this challenge looks like. By taking the steps outlined above, the United States can both assure meaningful access to counsel and set a better example for other nations. Thank you again for your leadership on this important matter, and for your continued support of APBCo's work. We look forward to continuing work with you and can be contacted at sschulman@AKINGUMP.com or acere@humanrightsfirst.org.

Respectfully,



Steven H. Schulman
President, Association of Pro Bono Counsel

Submitted also on behalf of:

American Immigration Lawyers Association (AILA)
Catholic Legal Immigration Network (CLINIC)
Human Rights First
Kids in Need of Defense (KIND)
National Immigrant Justice Center (NIJC)

Cc: Jeh Johnson, Secretary, Department of Homeland Security (DHS)
Alejandro Mayorkas, Deputy Secretary, DHS
Esther Olavarria, Senior Counselor to the Secretary, DHS
Serena Hoy, Senior Counselor, Office of the Deputy Secretary, DHS
Julie McEvoy, Deputy Associate Attorney General, Department of Justice (DOJ)
Juan Osuna, Director, Executive Office for Immigration Review (EOIR), DOJ
Steve Lang, Program Director, Office of Legal Access Programs, EOIR/DOJ
Megan Mack, Officer for Civil Rights and Civil Liberties, DHS
Cecilia Muñoz, Assistant to the President and Director, White House Domestic Policy Council
Julie Rodriguez, Deputy Director, White House Office of Public Engagement