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June 12, 2009

Hon. Eric H. Holder Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

RE: *Matter of Silva-Trevino*, A013 014 303 (A.G. opinion dated Nov. 7, 2008; motion for reconsideration summarily denied, Jan. 15, 2009; request for vacatur pending)

Dear Attorney General Holder:

On behalf of *amici curiae* in the above-referenced case, we write to urge you to vacate *Matter of Silva-Trevino*, 24 I & N Dec. 687 (A.G. 2008) in light of your recent decision in *Matter of Compean*, 25 I&N Dec. 1 (A.G. 2009). Your decision in *Compean* to vacate the prior Attorney General's final days' opinion reaffirms the importance of a full and fair process in agency adjudication and deliberation. Given the even greater lack of a full and fair process prior to the former Attorney General's similar final days' opinion in *Silva-Trevino*, we respectfully request that you similarly vacate the *Silva-Trevino* opinion, as *amici* requested on February 9, 2009. See attached *amici* letter dated February 9, 2009 (urging withdrawal, vacatur or stay of the A.G. opinion in this case).

In *Compean*, you reversed former Attorney General Mukasey's opinion due to the need for "a thorough consideration of the issues involved, particularly for a decision that implemented a new, complex framework in place of a well-established and longstanding practice that had been reaffirmed by the Board . . . after careful consideration." *Compean*, 25 I&N Dec. at 2. As you explained, "[t]he preferable administrative process . . . is one that affords all interested parties a full and fair opportunity to participate and ensures that the relevant facts and analysis are collected and evaluated." *Id.* Because that process was lacking, you withdrew the former Attorney General's decision.

As with *Compean*, former Attorney General Mukasey's final days' adjudication in *Silva-Trevino* also implemented "a new, complex framework in place of a well-established and longstanding practice that had been reaffirmed by the Board . . . after careful consideration." *Compean*, 25 I&N Dec. at 2. *Silva-Trevino* abandoned the approach that federal courts and the Board have used to determine whether a conviction constitutes a "crime involving moral turpitude" for nearly a century. See attached Memorandum of Law of *Amici Curiae* in Support of Reconsideration of *Silva-Trevino* (filed on December 5, 2008) (describing the long history of

courts at the federal and agency level applying the categorical approach in immigration law since 1914). The result is an unworkable framework that is fundamentally unfair for non-citizens, leads to inefficiency in immigration court, and burdens the agency and officials within the immigration and criminal justice systems. *See id.*

Moreover, the opinion in *Silva-Trevino* was issued without the “full and fair opportunity” for participation that your decision in *Compean* reaffirms as the “preferable administrative process.” *Compean*, 25 I&N Dec. at 2. The opinion in *Silva-Trevino* was issued without any advance notice of the important issues that it would address or any opportunity offered to the interested public to provide input. Even after concerned organizations learned of the opinion and offered legal briefing as *amici* in support of reconsideration, former Attorney General Mukasey refused to consider any briefs. In a stunning, one-paragraph order dated January 15, 2009 (two business days before the past administration left office) and not faxed to counsel until January 22, 2009, Attorney General Mukasey denied the motion, explaining only that “. . . this matter was properly certified and decided in accordance with settled Department of Justice procedures, and *there is no entitlement to briefing* when a matter is certified for Attorney General review.” *See* attached Attorney General Order No. 3034-2009, *Matter of Silva-Trevino*, A013 014 303 (emphasis added).

Such a process failed to afford even the minimum standards of due process, drawing concern from a wide coalition of organizations and law firms. *See* attached letter dated March 3, 2009 signed by 40 organizations and 24 law firms. In light of your recognition of the importance of a full and fair process for agency adjudication and deliberation in *Compean*, we respectfully request that you vacate the *Silva-Trevino* opinion and remand the case to the Board of Immigration Appeals with a full and fair opportunity for all parties, including any interested *amici*, to brief any legal issues or new legal developments that any party wishes to raise.

Respectfully submitted,

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On behalf of *Amici* American Immigration Lawyers Association, Florence Immigrant and Refugee Rights Project, Immigrant Defense Project, Immigrant Legal Resource Center, National Immigration Project of the National Lawyers Guild,

National Immigrant Justice Center, and Washington
Defender Association Immigration Project

cc: Lisa Brodyaga, Esq.
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