

For Immediate Release

Another Court Upholds Immigrants' Right to Pursue Case From Outside the U.S.

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Washington, D.C. - Today, the U.S. Court of Appeals for the Third Circuit joined the growing list of courts to reject the government's attempt to bar noncitizens from seeking reopening or reconsideration of their cases from outside the United States. The American Immigration Council's Legal Action Center and the National Immigration Project of the National Lawyers Guild, which filed a joint amicus brief in the case and argued before the court, applaud the court's [ruling](#). "The court's decision is yet another step in protecting the important safeguards that Congress put in place to help ensure that noncitizens are not unlawfully separated from their families," said Beth Werlin of the Legal Action Center.

The [Legal Action Center](#) and the [National Immigration Project](#) have coordinated litigation on this issue nationwide and call on the Board of Immigration Appeals (BIA) to abandon its misguided regulation barring review of motions filed by noncitizens outside the United States. To date, six courts of appeals have rejected the departure bar. And just this week, the U.S. Court of Appeals for the Tenth Circuit, the only court with a decision at odds with the majority, granted rehearing en banc to address the validity of the departure bar. "The writing is on the wall. It's past time for the government to stop cutting off access to the BIA and immigration courts by defending this clearly unlawful regulation," said Trina Realmuto of the National Immigration Project.

Federal law gives noncitizens the right to file motions to submit new evidence or arguments after their removal orders become final. But the BIA has long maintained that it cannot consider such motions if a foreign national is outside the United States. This policy gives the government a perverse incentive to remove noncitizens from the country before they have an opportunity to submit evidence or arguments that could change the outcome of their cases. Moreover, the policy is at odds with provisions of a 1996 immigration law which made it clear that noncitizens had the opportunity to seek review of unfavorable decisions from outside the United States.

Today, however, the Third Circuit recognized that the government's position was at odds with Congress' clear intent and would undermine its policy objectives. It explained, "the plain text of the statute provides each alien with the right to file one motion to reopen and one motion to reconsider, provides time periods during which an alien is entitled to do so, and makes no exception for aliens who are no longer in this country."

For more information, see:

- [Motions to Reopen from Outside the Country](#) (LAC Litigation Page, *updated* August 2011)

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