

American Immigration Law Foundation Condemns Attorney General's Last Minute Blow to Immigrants' Legal Rights

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Washington, DC - Late yesterday, in the waning hours of a departing Administration, Attorney General Michael Mukasey unraveled decades of legal precedent guaranteeing due process to people facing life-changing consequences-namely, deportation. With less than two weeks left in office, this Administration apparently could not resist the temptation to take one more stab at undermining fundamental Constitutional principles.

The American Immigration Law Foundation (AILF) condemns this latest and last-minute decision that is part of the Administration's ongoing strategy to not only recede due process rights, but to thwart federal court oversight of immigration courts, which have been plagued with questions about the integrity of their decisions and allegations of political cronyism.

In a decision issued Wednesday, January 7, the Attorney General declared that henceforth, immigrants, asylum seekers, and all others in removal (deportation) proceedings do not have any right under statute or the Constitution to representation by a lawyer before they can be ordered deported. The Board of Immigration Appeals (BIA) and most federal courts have for decades operated under the premise that immigrants DO have such rights. The Attorney General has reversed many years of precedent and operation by simply declaring it so.

According to the Attorney General, because there is no legal or constitutional right to a lawyer, immigrants do not have the right to legal counsel and thus no right to complain or request a new hearing when their lawyer is incompetent or fraudulent. The Attorney General does attempt to ameliorate the harsh impact of his revolutionary action by allowing reopening of cases in certain highly extreme circumstances, but his declaration will wipe out the rights of all but a handful of people with one stroke of his pen.

"We are outraged by this action" said Nadine Wettstein, the Director of AILF's Legal Action Center. "With this ruling, the Administration is attempting to undermine an immigrant's right to a fair hearing on whether he should be thrown out of the country. It is yet another in a long line of midnight changes and an example of this Administration's disregard for fundamental principles of due process of law. It is also part of an ongoing attempt to eviscerate the federal courts' role in protecting against Constitutional abuses by the immigration agency. We strongly disagree with the Attorney General's pronouncements and are confident that federal courts eventually will reject this action."

The Attorney General's decision is Matter of Compean, 24 I & N Dec. 710 (A.G. 2009) is available at <http://www.usdoj.gov/eoir/vll/intdec/vol24/3632.pdf>

The AILF brief is available at <http://www.ailf.org/lac/chdocs/IACBrief.pdf>.