



AMERICAN IMMIGRATION COUNCIL

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*For Immediate Release*

**Legal Action Center Urges Court to Strike Down Regulation Barring  
Post-Departure Motions to Reopen**

**March 11, 2011**

**Washington D.C.** - This week, the American Immigration Council's Legal Action Center, joined by the American Immigration Lawyers Association, submitted an *amicus* brief to the Tenth Circuit Court of Appeals in *Contreras-Bocanegra v. Holder*, urging the court to strike down the Board of Immigration Appeals' (BIA) regulation barring review of motions to reopen filed by noncitizens outside the United States. The Legal Action Center and the National Immigration Project have coordinated litigation on this issue nationwide and call on the BIA to abandon its misguided regulation.

Federal law gives noncitizens the right to file motions to submit new evidence after their removal orders become final. For many years, the BIA has wrongly determined that it cannot consider such a motion 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 that could change the outcome of their cases. Moreover, the policy is at odds with provisions of a harsh 1996 immigration law that resulted in a dramatic reduction in due process rights and expansion of expedited removal but that made it clear that noncitizens had the opportunity to seek review of unfavorable decisions from outside the United States.

In the past two months, the Second and Sixth Circuits have joined the growing list of courts to hold that the BIA has authority to consider a motion to reopen from a noncitizen who has left the U.S. The Tenth Circuit, however, is out of line with the five other circuits to consider this issue, having upheld the departure bar in a 2009 decision. The Legal Action Center's *amicus* brief calls on the Tenth Circuit to reconsider its prior case law and grant *en banc* (full court) review of the case. The Petitioner is represented by Christopher Keen and Edward Carter of Keen Law Offices, LLC. The National Immigration Project, joined by Boston College's Post-Deportation Human Rights Project, and the Rocky Mountain Immigrant Advocacy Network also submitted an *amicus* brief in support of *en banc* review.

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