



AMERICAN IMMIGRATION LAW FOUNDATION

PRACTICE ADVISORY¹ Updated August 13, 2009

HOW TO FILE A PETITION FOR REVIEW AILF's Legal Action Center

I. HIGHLIGHTS OF THIS ADVISORY

This Practice Advisory addresses the current procedures and general requirements for filing and litigating a petition for review. In addition, the advisory addresses the following fundamental points of which counsel should be aware when filing a petition for review:

- Petitions for review must be filed no later than 30 days after the date of the decision of the Board of Immigration Appeals (BIA) or the U.S. Immigration and Customs Enforcement (ICE). This deadline is jurisdictional and generally *cannot* be tolled. The petition for review must be received by the clerk's office on or before the thirtieth day and not merely mailed by that date.
- The 30-day deadline for filing a petition for review of the underlying decision is *not* extended by the filing of a motion to reopen or reconsider nor is it extended by the grant or extension of voluntary departure. To obtain review of issues arising from a BIA decision and issues arising from the denial of a motion to reopen or reconsider, separate petitions for review of each BIA decision must be filed.
- Filing a petition for review does *not* stay the individual's removal from the country.
- Filing a petition for review terminates the voluntary departure order.\
- ICE can deport an individual *before* the 30-day deadline expires. \
- If in doubt about whether the court of appeals has jurisdiction, it may be prudent to timely file the petition for review to preserve the individual's right to seek review.

Sample petitions for review are attached as Appendices A and B. A list of websites for the courts of appeals is attached as Appendix C. A list of national addresses for service of the petition is attached as Appendix D.

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II. INTRODUCTION

A petition for review is the document filed by, or on behalf of, an individual seeking review of an agency decision in a circuit court of appeals. In the immigration context, a petition for review is filed to obtain review of a decision of deportation, exclusion, or removal issued by the BIA. In addition, a petition for review may be filed to obtain review of a removal order issued by ICE under certain provisions of the Immigration and Nationality Act (INA).

Section 242 of the INA, 8 U.S.C. § 1252, as enacted by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA)² and amended by the REAL ID Act,³ contains the jurisdictional basis for petitions for review and sets out rules and procedures governing petitions for review.⁴ In addition, the Federal Rules of Appellate Procedure (FRAP) and local court rules provide petitioners with additional court procedures and requirements. The circuit courts post the FRAP and local rules on their website. See a list of the court websites in Appendix C.

III. COURT OF APPEALS JURISDICTION OVER PETITIONS FOR REVIEW

The courts of appeals have jurisdiction to review “a final order of removal,” except an expedited removal order entered under INA § 235(b)(1).⁵ INA § 242(a)(1), 8 U.S.C. § 1252(a)(1). The following are examples of the types of decisions that may be reviewed through a petition for review:

A BIA decision to:

- issue a final removal order (including the finding of removability and the denial of any applications for relief);
- deny a motion to reconsider or a motion to reopen; or

² Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of the Omnibus Appropriations Act of 1996 (H.R. 3610), Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996).

³ REAL ID Act, Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005).

⁴ Prior to the enactment of the REAL ID Act, judicial review of final deportation or exclusion orders (i.e., where proceedings commenced before April 1, 1997), was governed by transitional rules set forth in IIRAIRA §309. Subsequently, the REAL ID Act said that petitions for review of orders of deportation or exclusion filed under the transitional rules “shall” be treated as if filed as a petition for review under new INA §242 (as amended by REAL ID Act §106(d)). Thus, regardless whether the person has a removal order, deportation order, or exclusion order, the same rules should apply.

⁵ Whether a decision is “final” for purposes of judicial review sometimes is not clear. Yet, if an order is not final at the time the petitioner filed the petition for review, most court of appeals will dismiss the petition as prematurely filed. However, if the individual foregoes the opportunity to file a petition for review when one should have been filed, later review in the court of appeals may be precluded. Read an in-depth discussion of the finality requirement in AILF’s Practice Advisory, “‘Finality’ of Removal Orders for Judicial Review Purposes” (Aug. 5, 2008) at http://www.ailf.org/lac/lac_pa_topics.shtml.

- deny asylum in asylum only proceedings.

An order of removal issued by ICE under:

- INA §241(a)(5); or
- INA §238(b).

A challenge to a BIA or ICE decision may involve legal, constitutional, factual, and/or discretionary claims. In general, (1) legal claims assert that BIA/ICE erroneously applied or interpreted the law (*e.g.*, the INA or the regulations); (2) constitutional challenges assert that BIA/ICE violated a constitutional right (*e.g.*, due process or equal protection); (3) factual claims assert that certain findings of fact made by BIA/ICE were erroneous; and (4) discretionary claims assert BIA/ICE reached the wrong conclusion when exercising discretion.

Whether a particular claim is reviewable in the court of appeals often requires a complicated legal analysis and is informed by evolving case law. The first question to consider is whether the INA contains a bar to review that is related to the decision, nature of the claim, or the person bringing the challenge. For example, INA §208(a)(3), 8 USC §1158(a)(3), bars review of determinations regarding whether an asylum application was timely filed within one year of arrival; INA §242(a)(2)(B), 8 USC §1252(a)(2)(B), bars review of certain discretionary judgments; and INA §242(a)(2)(C), 8 USC §1252(a)(2)(C), bars petitions for review filed by, or on behalf of, individuals found removable due to certain criminal offenses.

Importantly, even where a statutory bar applies, courts still have jurisdiction to review questions of law or constitutional claims. *See* INA § 242(a)(2)(D), 8 U.S.C. § 1252(a)(2)(D) (added by REAL ID Act). In addition, courts retain jurisdiction to determine whether they have jurisdiction over the petition for review. As discussed below, following the REAL ID Act amendments, few, if any, issues remain reviewable via habeas corpus. Thus, it is advisable to *timely* file a petition for review to preserve petitioner’s right to seek review.⁶

IV. PETITION REQUIREMENTS

Filing Deadline

A petition for review “*must be filed not later than thirty days after the date of the final order*” of removal or the final order of exclusion or deportation. *See* INA §242(b)(1), 8 USC §1252(b)(1) (removal orders).

The 30-day deadline for filing a petition for review of the underlying decision is *not* extended by the filing of a motion to reopen or reconsider, nor is it extended by the grant or extension of voluntary departure. To obtain review of issues arising from a BIA decision and issues arising from the denial of a motion to reopen or reconsider, separate petitions for review of each BIA decision must be filed. If separate petitions are not filed, the court’s review may be limited to the

⁶ Courts have held that review of detention issues still is available in habeas corpus proceedings. *See* AILF’s practice advisory titled “Introduction to Habeas Corpus” (April 2006), at http://www.aifl.org/lac/lac_pa_topics.shtml.

issues arising from the BIA decision for which review is sought. For example, if a petition for review of the BIA's decision denying a motion to reopen or reconsider has been filed, but a petition for review of the BIA decision underlying the motion has *not* been filed, the court may not review issues arising from the underlying BIA decision.

The deadline for filing a petition for review is "mandatory and jurisdictional" and is "not subject to equitable tolling." *Stone v. INS*, 514 U.S. 386, 405 (1995). Because the 30-day deadline is jurisdictional, circuit courts lack authority to consider late-filed petitions for review.⁷

The 30-day time period begins running from the date of the BIA's decision affirming the immigration judge's ruling. If the BIA denied a motion to reopen or reconsider, the 30-day time period begins running from the date of the BIA decision denying the motion. In reinstatement cases under INA §241(a)(5), or administrative deportation cases under INA §238(b), the 30-day deadline begins running from the date of the final ICE order. The petition for review must be received by the clerk's office on or before the thirtieth day and not merely mailed by that date.

Where the 30-day deadline has expired due to ineffective assistance of counsel, new counsel may consider filing a motion to reopen to the BIA (provided the motion is filed within the 90-day statutory time period for filing motions to reopen). *See Matter of Compean*, 25 I&N Dec. 1, 3 (AG 2009) (finding that BIA may consider claims of ineffective assistance based on conduct that occurred after the entry of a removal order). Counsel also may consider filing a motion requesting that the BIA rescind and re-issue its decision to allow petitioner to seek judicial review.⁸

Attachments and Contents

Under INA §242(c), 8 USC §1252(c), a petition for review must and need only: (1) include a copy of the final administrative order; and (2) state whether any court has upheld the validity of the order, and if so, state which court, the date of the court's ruling, and the type of proceeding.

The petition should state the name of each individual petitioning for review and should not use "et al." to reference more than one petitioner. Federal Rule of Appellate Procedure (FRAP)

⁷ There are very few situations in which a court might excuse a late-filed petition for review: (1) where the court or the BIA provided misleading information as to the deadline for filing a petition for review; and (2) where the BIA failed to comply with the applicable regulations regarding mailing the decision to petitioner or petitioner's counsel. For further information on these situations and potential remedies, see AILF's Practice Advisory, "Suggested Strategies for Remediating Missed Petition for Review Deadlines or Filings in the Wrong Court" (April 20, 2005) at http://www.ailf.org/lac/lac_pa_topics.shtml.

⁸For further information regarding motions to rescind and re-issue, see AILF's Practice Advisory, "Suggested Strategies for Remediating Missed Petition for Review Deadlines or Filings in the Wrong Court" (April 20, 2005) at http://www.ailf.org/lac/lac_pa_topics.shtml. In addition, the Ninth Circuit has said that there is habeas jurisdiction to consider a claim of ineffective assistance relating to counsel's failure to file the petition for review. *See Singh v. Gonzales*, 499 F.3d 969 (9th Cir. 2007)

15(a)(2)(A). For example, where a family is in immigration proceedings, but the BIA decision only references the lead respondent, the petition for review should name each family member whose case was decided by that order, even if not specifically mentioned in the order.

A sample petition for review is attached as Appendix A. Although it is not necessary at this stage to discuss the jurisdictional basis or merits of the petition, a more detailed sample petition for review, containing the basis for jurisdiction and venue, also is provided as a reference and is attached as Appendix B.

V. STAY OF REMOVAL AND TERMINATION OF VOLUNTARY DEPARTURE

Stay of Removal

Immigration and Customs Enforcement (ICE) may deport an individual as soon as the BIA issues its order; ICE need not wait until the 30-day period for filing a petition for review has run. Likewise, in reinstatement cases under INA §241(a)(5), and administrative removal cases under INA §238(b), deportation may occur as soon as ICE issues its removal order. In the post-AEDPA⁹ and IIRAIRA era, serving the petition for review does *not* stay deportation, “unless the court orders otherwise.” Compare former INA §106(a)(3) (1995), 8 USC §1105a(a)(3) (1995) with INA §242(b)(3)(B), 8 USC §1252(b)(3)(B). Thus, petitioner also may want to file for a stay of the removal order pending the petition for review. The court must grant the stay request to prevent petitioner’s removal from the country.

In *Nken v. Holder*, 129 S. Ct. 1749 (April 22, 2009), the Supreme Court held that a court of appeals should apply the traditional criteria governing stays when adjudicating a stay of removal. In doing so, the Court rejected the government’s argument that the stringent standard in INA § 242(f)(2) (“clear and convincing evidence” that the removal order “is prohibited as a matter of law”) applies. The Court’s decision reversed the Fourth and Eleventh Circuits, which had held that INA § 242(f)(2) applies to stays of removal pending petitions for review.

Under the traditional standard for stays, the court shall consider (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. The Court noted that the first two factors are most critical. The last two factors merge because the government is the respondent. In addition, the Court advised “that the burden of removal alone cannot constitute the requisite irreparable injury” and that courts should not assume that “ordinarily, the balance of hardships will weigh heavily in the applicant’s favor.”

Voluntary Departure

Under regulations that took effect on January 20, 2009, an order of voluntary departure will terminate automatically upon the filing of a petition for review or other judicial challenge and the

⁹Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214 (April 24, 1996).

alternate order of removal will take effect.¹⁰ 8 C.F.R. § 1240.26(i). However, if a person then departs within 30 days of filing the petition for review and provides DHS with proof of departure and evidence that he or she remains outside of the United States, the departure will not be deemed a removal. *Id.* See 73 Fed. Reg. at 76933 for a discussion of what proof and evidence may be sufficient.

VI. WHERE TO FILE THE PETITION FOR REVIEW

Venue is restricted to the court of appeals for the judicial circuit in which the IJ completed the proceedings. INA §242(b)(2), 8 USC §1252(b)(2). If a case is conducted by video hearing, the immigration judge must state on the record the location of the hearing, which may be different from where the IJ and the parties are located. *See* OPPM 04-06, Creppy, Chief IJ, EOIR (August 18, 2004) available at <http://www.usdoj.gov/eoir/efoia/ocij/oppm04/04-06.pdf>.

VII. FILING FEE

The filing fee for a petition for review is \$450. Petitioner may request leave to proceed *in forma pauperis* by filing a motion and supporting affidavit with the court. *See* FRAP 24(b) and corresponding local circuit rules.

VIII. SERVICE ON RESPONDENT

Whom to Sue

The INA states that “[t]he respondent is the Attorney General.” INA §242(b)(3)(A), 8 USC §1252(b)(3)(A).

Whom to Serve

The petition must be served “on the Attorney General and on the officer or employee of the Service in charge of the Service district in which the final order of removal under section 240 was entered.” INA §242(b)(3)(A), 8 USC §1252(b)(3)(A).¹¹

Serve the Attorney General by sending a complete copy of the petition for review to the address set forth in Appendix D. Attorneys from the Office of Immigration Litigation (OIL), a division within the Civil Division of the Department of Justice, litigate on behalf of the Attorney General. Thus, it is advisable to also serve a copy of the petition on OIL at the address listed in Appendix D. After receiving a copy of the petition, the OIL attorneys assigned to the case will enter their appearance before the court and should inform petitioner’s counsel.

¹⁰ This rule applies prospectively only, and therefore does not apply to cases where the voluntary departure was ordered prior to January 20, 2009. *See* 73 Fed. Reg. at 76936.

¹¹ If the order of removal was entered under another section of law, for example, INA §§238(b) or 241(a)(5), counsel presumably is bound by the service requirements of INA §242(b)(3)(A), 8 USC §1252(b)(3)(A).

To serve the officer in charge of the district, counsel should serve the ICE Field Office Director for Detention and Removal with jurisdiction over the district where the final administrative order was issued. Counsel may need to make inquiries to learn the name of the officer in charge of detention and removal in their area. Counsel also will need to ascertain the proper mailing address for the ICE Field Office Director in order to serve this official.

At the same time, petitioner must file a certificate of service listing the names and addresses of those served and the manner of service. Federal Rules of Appellate Procedure (FRAP) 15(c). Addresses for the Attorney General and the Office of Immigration Litigation are attached as Appendix D. Counsel may contact the local ICE office to get the correct address of that office. FRAP 15(c) further requires that petitioner must give “the clerk enough copies of the petition . . . to serve each respondent.” Presumably, an original plus one copy of the petition must be filed where the Attorney General is the only named respondent. However, counsel should verify the number of copies required by checking local procedures or contacting the clerk’s office. *See also* FRAP 25 (Filing and Service) and corresponding local court rules.

Service of Future Pleadings

After opposing counsel has entered his or her appearance, future pleadings “must be made on the party’s counsel” by a prescribed method. FRAP 25(b) and (c). Such pleadings must be filed with either: (1) an acknowledgement of service by the person served; or (2) a statement by the person effectuating service attesting to the date and manner of service, the names of those served, and the appropriate mail, e-mail or delivery address or facsimile number, depending on the manner of service. The proof of service may appear on or be affixed to the pleading. *See* FRAP 25(d)(3). The local rules set out acceptable methods of service. Many courts of appeals now require electronic filing as permitted under FRAP Rule 25(a)(2)(D); *see also* AILF Practice Advisory, “Electronic Filing and Access to Electronic Federal Court Documents” (April 13, 2009) at http://www.aifl.org/lac/lac_pa_topics.shtml.

IX. LITIGATING THE PETITION IN THE COURT OF APPEALS

Admission and Entry of Appearance

Attorneys must be admitted to practice before the court of appeals in which the petition for review is filed or, in some courts, must file an application for admission either simultaneously or within a prescribed time period. Some courts allow an attorney who is not admitted to appear pro hac vice.

The courts of appeals require counsel to enter an appearance in each case. Entry of Appearance forms are available on the court’s website and from the clerk’s office.

For further information regarding admission and appearance requirements, counsel may consult FRAP 46 and corresponding local circuit rules. Information also is available on court websites. *See* Appendix C, listing websites for the courts of appeals.

Federal Rules of Appellate Procedure

The rules and procedure for litigation in the courts of appeals are governed by the Federal Rules of Appellate Procedure in conjunction with each circuit's local rules. This advisory provides a brief overview of appellate procedure related to petition for review litigation; however, it does not address all of the Federal Rules of Appellate Procedure nor does it address local circuit rules.

Certified Record of Proceedings and Briefing Schedule

Once a petition for review is filed, the court generally issues an order/schedule for the parties to file: (1) the Certified Record of Proceedings (also known as the "Administrative Record"); (2) Petitioner's Opening Brief (and possibly Excerpts of Record); (3) Respondent's Answering Brief (and possibly Excerpt of Record); and (4) Petitioner's Reply Brief (optional).

The agency is obligated to file the Certified Record of Proceeding within 40 days of service of the petition for review. FRAP 17(a). The record must include: (1) the order involved; (2) any findings or report on which it is based; and (3) pleadings, evidence, and other parts of the proceeding before the agency, including the transcripts of hearings. FRAP 16(a). Where the petition seeks review of a BIA order, the record is prepared by the Executive Office for Immigration Review and filed by OIL.

INA §242(b)(3)(C), 8 USC §1252(b)(3)(C), states that petitioner must serve and file the opening brief no later than 40 days after the date on which the administrative record is available, and further states that petitioner may serve and file a reply brief within 14 days *after service* of the government's brief. *See also* FRAP 31(a)(1) ("The appellant must serve and file a brief within 40 days after the record is filed."). The statute and rule say these deadlines may only be extended by motion upon a showing of good cause. INA §242(b)(3)(C); FRAP 31(a)(1). Also, if the brief is not filed, INA §242(b)(3)(C) instructs courts to dismiss the appeal unless a manifest injustice would result.

Importantly, most courts do not rely on the time frame in the statute or rule; instead, they issue a schedule setting out due dates for the filing of both the administrative record and the briefs. Further, it is common for counsel on either side or both sides to move to extend the briefing schedule or move to hold briefing in abeyance. Written motions are governed by FRAP 27 and corresponding local rules. Some courts also allow telephonic motions for an extension of time to file a brief. In addition, the briefing schedule may be delayed or vacated if the government files a motion to dismiss for lack of subject matter jurisdiction claiming that petitioner is barred from review in the court of appeals.

When filing briefs in the circuit courts, counsel should consult FRAP 28 (Briefs), 30 (Appendix to the Briefs), 31 (Serving and Filing), and 32 (Form of Briefs, Appendices, and Other Papers), as well as all corresponding local rules. A list of websites for the courts of appeals is attached as Appendix C.

Supplemental Authorities—28(j) Letters

If pertinent and significant authorities come to petitioner's attention after briefing is completed or after oral argument, but before the court issues a decision, counsel should advise the court of the supplemental citations pursuant to FRAP 28(j). The advisal is made by letter and copied to opposing counsel. "The letter must state the reasons for the supplemental citations, referring

either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.” FRAP 28(j).

Oral Argument

Pursuant to FRAP 34, any party may file, or a court may require by local rule, a statement explaining why an oral argument should, or need not, be permitted. Oral arguments must be permitted unless a panel of three judges decides that:

- the appeal is frivolous;
- the dispositive issue(s) have already been decided; or
- the facts and arguments are adequately presented in the briefs and records.

The court clerk will notify the parties of the date, time, place, and amount of time allotted for argument if the court determines oral argument is necessary.

Judgment and Post-Judgment Review

The judgment (or decision) is entered on the docket by the clerk after he or she receives the court’s opinion or upon the court’s instruction (where judgment is rendered without opinion). FRAP 36 (Entry of Judgment). A petition for rehearing or petition for rehearing en banc may be filed within 45 days after entry of judgment, unless otherwise specified by the court or local rule. FRAP 35 (En Banc Determination) and FRAP 40 (Petition for Panel Rehearing). Unless the court directs otherwise, the mandate will automatically issue seven calendar days after the time to file a petition for rehearing expires, or seven calendar days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. FRAP 41. For additional information regarding petitions for panel and en banc rehearing, see AILF’s July 31, 2008 Practice Advisory, “How To File A Petition For Rehearing, Rehearing En Banc And Hearing En Banc In An Immigration Case” at http://www.aif.org/lac/lac_pa_topics.shtml.

APPENDIX A: SAMPLE PETITION FOR REVIEW

Notes:

1. Complete ALL underlined spaces (except “Case File No.”) as appropriate, depending on whether petitioner seeks review of a final order of removal, deportation, or exclusion. The Court Clerk’s Office will assign a Case File Number.
2. Attach a copy of the BIA decision. If seeking review of an order of removal under INA §§ 241(a)(5) or 238(b), attached a copy of the ICE decision (see n.4).
3. Attach a Certificate of Service, attesting to service on (1) the Attorney General; (2) the Office of Immigration Litigation; and (3) ICE Field Office Director for Detention and Removal.
4. Always check local circuit court rules regarding filing fee amount, pleading format, the number of copies required for submission, rules regarding admission and entry of appearance as counsel, and electronic filing requirements.

UNITED STATES COURT OF APPEALS FOR THE _____CIRCUIT

| | | |
|------------------------------|---|--------------------------------------|
| [Name of Petitioner], |) | |
| |) | |
| Petitioner, |) | Case File No. _____ |
| |) | |
| v. |) | |
| |) | Immigration File No.: A _____ |
| Eric H. HOLDER, |) | |
| Attorney General, |) | |
| |) | PETITION FOR REVIEW |
| Respondent . |) | |
| _____ |) | |

The above-named Petitioner hereby petitions for review by this Court of the final order of removal / deportation / exclusion entered by the Board of Immigration Appeals / Immigration and Customs Enforcement (ICE) (if ordered removed under INA § 241(a)(5) (see n. 4) or INA § 238(b)) on date of decision. A copy of the decision is attached.

To date, no court has upheld the validity of the order. (Note: If the validity of the order has been upheld, state name of the court, date of court’s ruling, and the kind of proceeding).

Dated: _____

Respectfully submitted,

Attorney/s Name
Firm / Organization

Address
Telephone:
Facsimile:
Attorney/s for Petitioner

APPENDIX B: SAMPLE PETITION FOR REVIEW (MORE DETAILED)

Notes:

1. Complete ALL underlined spaces (except “Case File No.”) as appropriate, depending on whether petitioner seeks review of a final order of removal, deportation, or exclusion. The Court Clerk’s Office will assign a Case File Number.
2. Attach a copy of the BIA decision. If seeking review of an order of removal under INA §§ 241(a)(5) or 238(b), attached a copy of the ICE decision (see n. 4).
3. Attach a Certificate of Service, attesting to service on (1) the Attorney General; (2) the Office of Immigration Litigation; and (3) ICE Field Office Director for Detention and Removal.
4. Always check local circuit court rules regarding filing fee amount, pleading format, the number of copies required for submission, rules regarding admission and entry of appearance as counsel, and electronic filing requirements.

UNITED STATES COURT OF APPEALS FOR THE _____ CIRCUIT

| | |
|--|---|
| <p>[Name of Petitioner],)</p> <p style="padding-left: 40px;">))</p> <p style="padding-left: 40px;">Petitioner,)</p> <p style="padding-left: 40px;">))</p> <p style="padding-left: 40px;">v.)</p> <p style="padding-left: 40px;">))</p> <p>Eric H. HOLDER,)</p> <p>Attorney General,)</p> <p style="padding-left: 40px;">))</p> <p style="padding-left: 40px;">Respondent .)</p> <p>_____)</p> | <p>Case File No. _____</p> <p>Immigration File No.: A _____</p> <p>PETITION FOR REVIEW</p> |
|--|---|

The above-named Petitioner hereby petitions for review by this Court of the final order of removal / deportation / exclusion entered by the Board of Immigration Appeals / Immigration and Customs Enforcement (ICE) (if ordered removed under INA § 241(a)(5) (see n. 4) or INA § 238(b)) on date of decision. A copy of the decision is attached.

To date, no court has upheld the validity of the order. (Note: If the validity of the order has been upheld, state name of the court, date of court’s ruling, and the kind of proceeding).

Jurisdiction is asserted pursuant to 8 U.S.C. § 1252(a)(1) (removal cases) / § 309(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) as amended by § 106 of the REAL ID Act of 2005 (deportation and exclusion cases).

Venue is asserted pursuant to 8 U.S.C. § 1252(b)(2) (removal cases) / IIRIRA § 309(c)(4)(D) (deportation/exclusion cases) because the immigration judge / ICE (in cases under INA §§ 241(a)(5) or 238(b)) completed proceedings in City, State, within the jurisdiction of this judicial circuit.

This petition is timely filed pursuant to 8 U.S.C. § 1252(b)(1) (removal) / IIRIRA § 309(c)(4)(C) (deportation / exclusion) as it is filed within 30 days of the final order of removal / deportation / exclusion.

Dated: _____

Respectfully submitted,

Attorney/s Name
Firm / Organization
Address
Telephone:
Facsimile:

Attorney/s for Petitioner

APPENDIX C: WEBSITES FOR U.S. COURTS OF APPEALS

First Circuit: www.ca1.uscourts.gov

Second Circuit: www.ca2.uscourts.gov

Third Circuit: www.ca3.uscourts.gov

Fourth Circuit: www.ca4.uscourts.gov

Fifth Circuit: www.ca5.uscourts.gov

Sixth Circuit: www.ca6.uscourts.gov

Seventh Circuit: www.ca7.uscourts.gov

Eighth Circuit: www.ca8.uscourts.gov

Ninth Circuit: www.ca9.uscourts.gov

Tenth Circuit: www.ca10.uscourts.gov

Eleventh Circuit: www.ca11.uscourts.gov

DC Circuit: www.cadc.uscourts.gov

APPENDIX D: LIST OF ADDRESSES FOR SERVICE OF A PETITION FOR REVIEW

Attorney General

Eric H. Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Office of Immigration Litigation

Thomas W. Hussey, Director
Office of Immigration Litigation
U.S. Department of Justice / Civil Division
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

ICE District Offices

Service must also be made on the Field Office Director or, where none exists, the most senior officer in the Detention & Removal Unit. Counsel will need to contact the local ICE office to obtain the name and position title of the appropriate local officer and to obtain the mailing address for service on this individual.