



AMERICAN IMMIGRATION LAW FOUNDATION

AILF Responds to New Voluntary Departure Rule

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The American Immigration Law Foundation (AILF) has carefully analyzed the Executive Office for Immigration Review's (EOIR) new voluntary departure rule and concluded that it is a mixed bag. The rule confirms AILF's long standing concerns about voluntary departure as it currently operates.

Among other things, the new rule

- specifies that voluntary departure terminates upon the filing of a motion to reopen or reconsider
- specifies that voluntary departure terminates upon seeking judicial review in the court of appeals
- mandates that immigration judges provide notice of the bond requirements *before* an immigrant decides whether to accept voluntary departure
- requires individuals with voluntary departure who seek administrative review of the removal order to provide proof of posting the voluntary departure bond

AILF appreciates that EOIR's rule will have the effect of preserving some immigrants' ability to file motions to reopen and reconsider. Circumstances may change after a person's immigration court proceedings have ended, and reopening proceedings may be the only avenue for a person to apply for newly acquired relief. If the voluntary departure were to run out before the immigration judge or Board of Immigration Appeals (BIA) could adjudicate the motion, the person may become ineligible for the very relief he or she was seeking and thus render the statutory right to file a motion meaningless.

At the same time, there are situations where the opportunity to voluntarily depart is invaluable to the person either to facilitate a reentry to the United States in the future or for the person's safety. The rule's automatic termination procedures fail to adequately preserve voluntary departure in such situations. In addition, the rule undermines the manner in which most of the federal courts handle voluntary departure for individuals seeking judicial review of their immigration decisions. EOIR's resistance to judicial oversight reflects a disregard for the fundamental protections inherent in our system.

The issues addressed in the rule have been the subject of litigation in the federal courts for several years, most recently at the Supreme Court. AILF's Legal Action Center has been involved in much of the litigation surrounding voluntary departure, including the Supreme Court case *Dada v. Mukasey*. AILF also commented on EOIR's proposed rule. AILF's Q&A and the comments filed in response to the proposed regulation are available at http://www.ailf.org/lac/lac_lit_voldeparture.shtml.

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