

The CAIR Coalition and AILA Announce the Filing of a Lawsuit Challenging New BIA Regulations

October 25, 2002

Capital Area Immigrants' Rights Coalition
and
American Immigration Lawyers Association

Press Release
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FOR IMMEDIATE RELEASE

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The CAIR Coalition and AILA File Lawsuit Challenging Department of Justice Regulations That Could Deny Meaningful Appellate Review in Immigration Cases

Washington, D.C. - Today, the Capital Area Immigrants' Rights Coalition (CAIR Coalition) and the American Immigration Lawyers Association (AILA) filed a federal lawsuit challenging the decisionmaking process used by the Department of Justice (DOJ) in promulgating new regulations that fundamentally restructured the Board of Immigration Appeals (BIA), in ways that are likely to dramatically curtail meaningful appellate review of tens of thousands of immigration decisions each year.

According to the complaint, which was filed in the United States District Court for the District of Columbia, the BIA's decisions "literally can mean the difference between life and death, family unity or family separation" for affected individuals. But the DOJ promulgated these regulations "without carefully analyzing the implications of its actions and giving serious attention to the concerns expressed by the public in rulemaking proceedings," the complaint charges. This action was arbitrary and capricious and violated the DOJ's obligations of reasoned decisionmaking,

under the federal Administrative Procedure Act that governs agency rulemaking.

The BIA is the highest administrative body within the Department of Justice for interpreting and applying U.S. immigration laws. It has the final responsibility for deciding appeals from decisions of Immigration Judges and officers of the Immigration and Naturalization Service. The BIA is frequently the final authority to consider appeals raising compelling issues, such as claims for relief from persecution or torture in the immigrants' home countries, or the interests of long-term permanent residents in remaining with their families in the United States rather than being deported to countries where they have few if any ties. The BIA's rulings also reverberate far beyond its own docket, because they provide precedent and guidance to lower level decisionmakers considering over 250,000 immigration cases each year.

The new regulations, which became final on September 25, 2002, encourage the quick disposal of appeals through the widespread use of summary dispositions, without written opinions, by single BIA Board Members in place of the BIA's traditional three-Member panels. Through this change, the DOJ intends the BIA to dispose of some 57,000 backlogged cases in just six months, while keeping current with newly filed appeals. This would require adjudications of appeals at an average rate of just 15 minutes per case. The performance of individual Board Members will be evaluated based on the speed of their dispositions. And at the end of the six-month period (i.e., in late March 2003), the size of the BIA Board will be slashed almost in half. Attorney General John Ashcroft will have complete discretion to decide which Members to retain and which to let go.

The Complaint charges that these dramatic changes to BIA structure and procedures were implemented without appropriate consideration for the views of the interested public, including nongovernmental organizations like the CAIR Coalition and AILA that filed comments on the regulatory proposal before it was finalized. Many commentators had urged the DOJ to reconsider the proposal, which they felt would sacrifice quality of appellate review in the quest for quantity, and would create tremendous pressure on BIA Board Members to decide cases summarily and in ways perceived to be consistent with the preferences of the current Administration. The commentators had urged DOJ to consider alternate proposals that would not

undermine the legal duty of Board Members to “exercise their independent judgment and discretion.”

Despite these comments, DOJ pressed forward with its dramatic restructuring plan. In the process, the complaint charges, the DOJ failed to give proper consideration and emphasis to legitimate concerns about the impact of its regulations. It also failed to articulate a reasoned basis for its own decisionmaking, in violation of federal law.

The lawsuit seeks a court order invalidating the final BIA restructuring rules, along with certain internal BIA memoranda issued in spring of 2002 while the restructuring regulations were pending, but without similar opportunity for public notice and comment.

The Capital Area Immigrants’ Rights Coalition is a not-for-profit corporation based in Washington, D.C. The CAIR Coalition seeks to advance the human and civil rights of immigrants and refugees, to foster an environment of positive human and community relations in our society, and to work for a fair and humane immigration policy. To this end, the CAIR Coalition visits indigent asylum seekers and other immigrants in jails and seeks to assist them in their immigration proceedings, including by enlisting the assistance of pro bono attorneys to represent them.

The American Immigration Lawyers Association is also a not-for-profit corporation based in Washington, D.C. AILA is a national association of attorneys and law professor practicing and teaching in the field of immigration and nationality law. AILA’s members represent individuals at all stages of immigration proceedings. AILA also advocates for fair and reasonable immigration law and policy.

Questions about this release or the organizations involved should be directed to Ms. Debi Sanders at the CAIR Coalition, (202) 756-2770, or Jeanne Butterfield at the American Immigration Lawyers Association, (202) 216-2400.