

**FOR IMMEDIATE RELEASE****June 25, 2010**

## **WLF PETITION CHARGES THAT DOJ REGS DO NOT COMPLY WITH IMMIGRATION LAW**

The Washington Legal Foundation (WLF) filed a formal petition today with the U.S. Department of Justice (DOJ), urging it to revise its regulations governing the conduct of proceedings for the removal of illegal aliens. WLF charged that DOJ has failed to implement reforms adopted by Congress 14 years ago in an effort to streamline the removal process. The result of DOJ's failure to act has been to allow aliens to linger in the country for years and sometimes decades after they have been determined to be present in the country without authorization.

WLF's petition focuses on regulations governing petitions to reopen final orders of removal. When it adopted immigration reform legislation in 1996, Congress specified that, subject to one very narrow exception, aliens subject to a final order of removal are entitled to file no more than one motion to reopen proceedings. DOJ regulations in place at the time also limited aliens to a single motion to reopen, but they recognized a far broader set of exceptions to the one-motion rule. Despite the clear inconsistency between the DOJ regulations and the 1996 immigration reform law, DOJ never saw fit to revise its regulations to comply with the law, WLF's petition explained.

WLF argued that because DOJ has failed to close its gaping loophole in the one-motion rule, the ability of immigration officials to remove illegal aliens in a timely manner has been severely compromised. Even after they have been ordered out of the country, aliens often delay the process indefinitely by filing repeated motions to reopen removal proceedings, WLF asserted. It urged DOJ to initiate proceedings to bring its regulations into compliance with the 1996 immigration statute.

The delays caused by DOJ's willingness to consider serial motions to reopen is well illustrated by a case that came before the U.S. Supreme Court earlier this year, *Kucana v. Holder*. Mr. Kucana is a citizen of Albania who arrived in the U.S. on a 90-day visitors visa in 1996. When he failed to leave the country as scheduled, he was ordered removed in 1997. His motion to reopen proceedings (based on a claim that he would be persecuted if returned to Albania and thus was entitled to asylum) was denied in 1998, but federal officials then apparently lost track of him. When they finally caught up with him in 2002, Kucana filed a second motion to reopen, again seeking asylum. His second motion to reopen should have been denied under the 1996 immigration law's one-motion rule, but DOJ regulations except most asylum seekers from that rule. The result is that Kucana remains in the country as litigation over his second motion to reopen enters its ninth year. In its January 2010 decision in Kucana's case, the Supreme Court

never had an opportunity to consider the one-motion rule because DOJ never raised it; indeed, relying on its own regulation, DOJ sided with Kucana before the Supreme Court (on a jurisdictional issue), and the Justices were forced to appoint outside counsel to defend an appeals court decision that had gone against Kucana. He would never have been able to litigate the merits of his second motion to reopen but for the DOJ regulations that permit many asylum seekers to file such motions.

WLF's petition focuses on 8 C.F.R. §§ 1003.2(c)(3)(ii) & 1003.23(b)(4), the DOJ regulations that allow aliens who face a final order of removal to file a second motion to reopen their removal proceedings, if the reason for reopening is to file another application for asylum or withholding of removal. The petition argues that those regulations are invalid because they conflict with the one-motion rule articulated in 8 U.S.C. § 1229a(c)(7), a provision adopted in 1996 as part of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA).

WLF asserted that enforcing IIRIRA (and thereby cutting off multiple asylum claims by a single alien) will not create any risk that aliens will be sent to countries where they face persecution. There is little reason to think that aliens whose initial asylum requests have been turned down could suddenly demonstrate a risk of persecution where none existed before, WLF argued. It noted, for example, that Mr. Kucana's pending asylum request is patently frivolous. He asserts that he would be persecuted if sent home to Albania because of his association (in the early 1990s) with one of the major Albanian political parties. That association is highly unlikely to lead to persecution, because a leader of that party was recently elected prime minister.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a significant portion of its resources to protecting the constitutional and civil rights of individuals. WLF also regularly litigates in support of efforts to enforce the nation's immigration laws. It litigated in the Supreme Court against Mr. Kucana's efforts to delay his removal, after the Obama Administration declined to defend its appeals court victory in that case.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's petition is posted on its web site, [www.wlf.org](http://www.wlf.org).