

A Bush Rule Bolstering Deportations Is Withdrawn

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Body

Attorney General Eric H. Holder Jr. on Wednesday reversed a **Bush** administration **ruling** that had weakened the ability of immigrants facing **deportation** to argue that their lawyers did a bad job.

The original order, issued just days before the inauguration of President Obama, held that immigrants did not have a constitutional right to effective lawyers in their **deportation** hearings. That 11th-hour decision abruptly closed off one of the most common avenues for appealing **deportation** decisions.

Because immigration cases are classified as civil litigation, people facing **deportation** do not have the same right to be represented by a lawyer that criminal defendants have. But before the **Bush** administration, a long line of legal opinions allowed immigrants whose lawyers had performed poorly to ask that their cases be opened on constitutional grounds. In 2003, the Board of Immigration Appeals, a part of the executive branch that reviews the rulings of immigration courts, reaffirmed that right.

The **Bush** administration, however, successfully argued in several federal appeals court cases that there was no constitutional right to have a case reopened because of ineffective legal representation.

The **Bush** administration order, issued by Michael B. Mukasey, then the attorney general, concerned three **deportation** cases known collectively as Matter of Compean, after the name of one of the people facing removal, Enrique Salas Compean.

In Wednesday's three-page order **withdrawing** the former attorney general's decision, Mr. Holder suggested that the original order did not follow proper government procedure. The process followed by the **Bush** administration, he wrote, did not thoroughly consider all the issues involved, particularly for a decision that changed a long-standing process that had been reaffirmed by the appeals board.

Wednesday's order called for a thorough review of the law in such cases, and for a period of public comment that could lead to a new **rule**.

"The integrity of immigration proceedings depends in part on the ability to assert claims of ineffective assistance of counsel," Mr. Holder said in a statement accompanying the order, "and the Department of Justice's **rule** making in this area will be fair, it will be transparent, and it will be guided by our commitment to the **rule** of law."

Immigration courts and judges are part of the Justice Department, and the decisions of those judges can be appealed, under some circumstances, to the federal courts. Mr. Holder's order instructs immigration judges and the Board of Immigration Appeals to apply the legal standards that were in effect before Mr. Mukasey's order until a final **rule** is devised.

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But Mr. Holder said Justice Department lawyers could continue to argue in **deportation** cases at the federal appeals court level that there is no constitutional right to effective lawyers for immigrants. Lee Gelernt, a lawyer for the American Civil Liberties Union, applauded the overall decision as a good beginning to restoring the legal rights of immigrants, though he criticized Mr. Holder for applying it only to immigration judges and not Justice Department lawyers.

That aspect, Mr. Gelernt said, threatens to continue "a troubling legacy of the **Bush** administration."

But Jon Feere, a legal policy analyst for the Center for Immigration Studies, said that restoring the ineffective counsel **rule** would "give aliens one too many bites at the apple" and could be used by immigration lawyers as a delaying tool.

"If this is going to result in people remaining in the country for years and years on end," Mr. Feere said, "we really have to question whether or not our immigration system is meeting the public interest of finality."

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