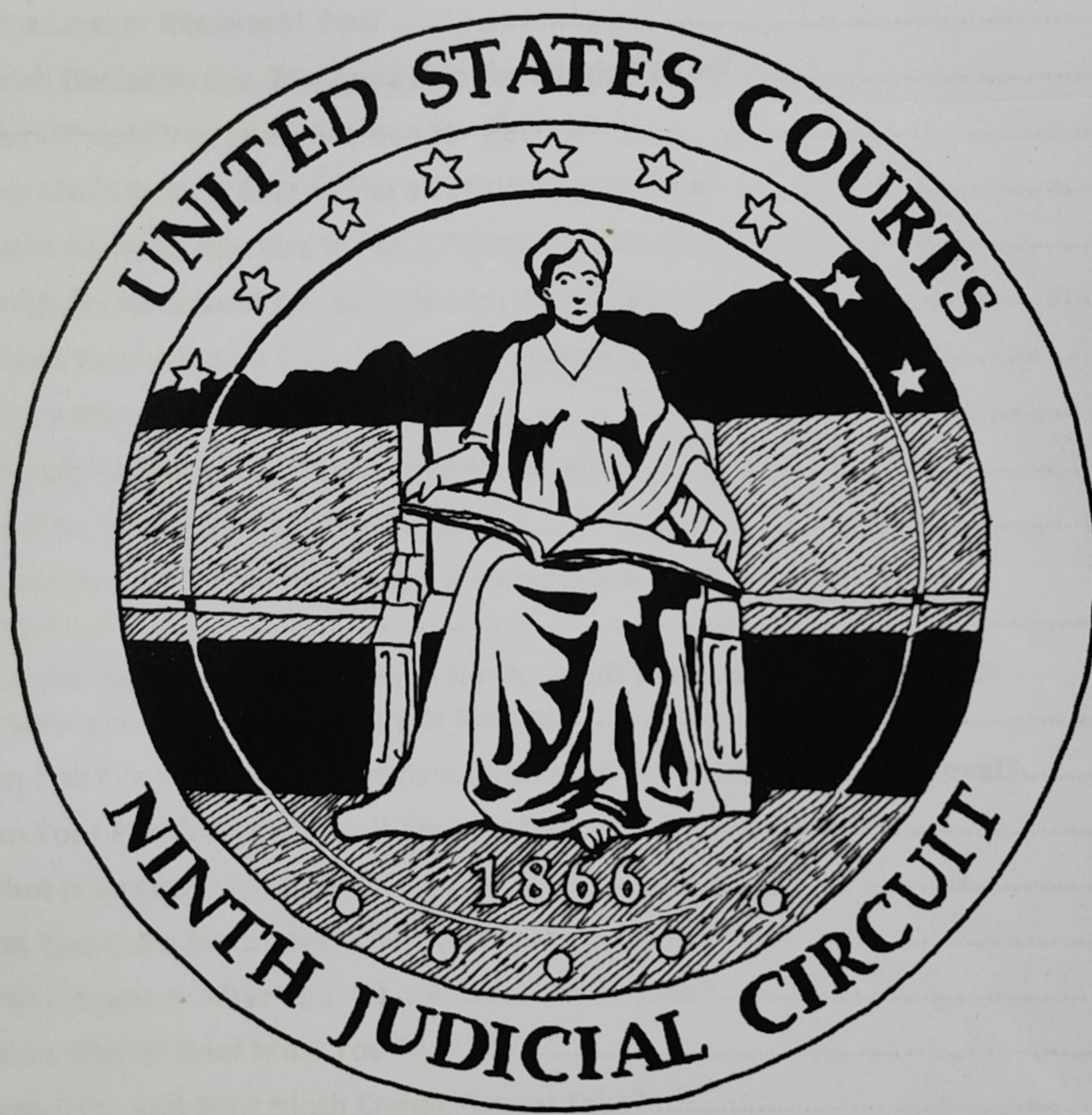


How to File a Petition for Review in the Ninth Circuit Court of Appeals



The **Florence Immigrant & Refugee Rights Project** is a nonprofit legal services organization that works with adults and children in immigration custody in Arizona. The staff of the Florence Project prepared and updated this guide for immigrant detainees who represent themselves in their removal proceedings. We do not charge for our services. To see our guides, go to: www.firrp.org.

This guide is not intended to provide legal advice. It is not a substitute for legal counsel.

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What Is the Ninth Circuit?

The Ninth Circuit is the federal appeals court that decides immigration cases for people whose cases were decided in the western part of the United States. That means the Ninth Circuit decides cases in Arizona.

What Is a Petition for Review?

A *petition for review* is an appeal of a decision that ordered you removed from the United States.

Usually, a petition for review challenges a decision that the Board of Immigration Appeals (BIA) made, but rarely it can appeal removal orders from other immigration officials.

An appeal of an immigration case usually goes from the immigration judge to the BIA and then to the Ninth Circuit.

Can a Lawyer Represent You?

You can ask the court to appoint a pro bono lawyer to represent you in your petition for review. A pro bono lawyer would work for you for free. But only a small number of cases are actually assigned a pro bono lawyer.

To get a pro bono lawyer, file a *motion to appoint pro bono counsel* with your petition for review. To see a copy of this motion that the Florence Project created, go to your law library or ask us for a copy.



Which Decisions Can You Appeal to the Ninth Circuit?

Unfortunately, not all of the decisions by immigration judges that can be appealed to the BIA can also be appealed to the Ninth Circuit.

Usually, you cannot appeal decisions to the Ninth Circuit that are discretionary — such as decisions about if you deserve **Cancellation of Removal**.

But, **as long as you argued it to the BIA, you can appeal to the Ninth Circuit decisions on legal issues**, such as if:

- You should have been granted **asylum, Withholding of Removal, or Convention Against Torture (CAT)**;
- You may be deported because you had a criminal conviction; or
- You are eligible to apply for relief from deportation.

When Should You File a Petition for Review?

Immediately!

Once the BIA dismisses your appeal, ICE can deport you. So, if you wish to file a petition for review to the Ninth Circuit, do it immediately after you learn that the BIA dismissed your appeal.



If you are a Mexican citizen, you must file immediately because if you are in immigration detention near the border you can be deported very quickly.

Contact the Ninth Circuit and ask permission to file an emergency petition for review if:

- You are detained and you are a Mexican citizen, or
- You are notified that you will be deported in the next 2 days. The Ninth Circuit will not give you permission to emergency file unless you will be removed in the next day or so.

Call: (415) 355-8020

Email: emergency@ca9.uscourts.gov

If you are a Mexican citizen and you are detained:

- explain that your BIA appeal was dismissed,
- you are detained in Arizona, and
- ICE buses deport people to Mexico every day.



If you get permission to emergency file, either fax or email your petition for review, your motion for a stay, and all other motions to the Ninth Circuit. Since you are detained, you may not have access to a fax or email. Give a family member, friend, lawyer, or someone else signed copies of all of your paperwork and ask them to do fax or email for you.

Within 30 days of the date of the BIA's decision, you must file a petition for review at the Ninth Circuit. For example, if the BIA dismisses your case on January 1, the Ninth Circuit must receive your petition for review by January 31.

The Ninth Circuit cannot consider late petitions. You cannot ask for an extension of time to file your petition for review. So, you MUST make sure your petition is filed within 30 days.

BIA打了你，30天内你必须上诉到九区

How can you find out when BIA dismissed your case?

To find out the date that the BIA dismissed your case:

- Look on the front page of the BIA's decision, or
- Call 1-800-898-7180, enter your "A" number, and press the number "4."

How Much Does It Cost to File a Petition for Review?

As of 2022, a petition for review costs \$500.

But, if you are detained and cannot pay \$500, you can ask to have the fee waived. File a *motion to proceed in forma pauperis*. In it you must show that you cannot pay the filing fee.

- The Florence Project has a form that you can use to ask for "in forma pauperis" status, along with a declaration of your income and resources.
- You can also use the Ninth Circuit's *Form 4. Motion and Affidavit for Permission to Proceed in Forma Pauperis*. This form is an affidavit to send with your motion to proceed in forma pauperis.

For forms from the Ninth Circuit, go to

<https://cdn.ca9.uscourts.gov/datastore/uploads/forms/form04.pdf>

Which Form Do You Use to File a Petition for Review?

The Florence Project has a petition for review form, along with accompanying motions. Go to the law library of your detention facility or use the copy attached here.

You can also file a document that says it is a "petition for review" along with the date of the BIA's decision.

Which Forms Should You Submit with Your Petition?

Make copies of everything and keep a copy for yourself.

With your appeal to the Ninth Circuit, you can include the following forms:

- Petition for Review (with a copy of the BIA's decision, if you have it)
- Motion to Proceed in Forma Pauperis
- Affidavit in Support of Motion to Proceed in Forma Pauperis
- Motion for Stay of Removal *I-246 form*
- Motion to Appoint Pro Bono Counsel
- ***Certificate of Service (You MUST include this form.)***

Should You Include a Copy of the BIA's Decision with Your Petition?

Yes.

The instructions say that you should submit a copy of the BIA's decision with your petition for review.

But, if you fear that you may be deported before you receive a copy of it in the mail, file your petition without it. As soon as you receive the BIA's decision, send a copy to the Ninth Circuit.

Where Should You Send it?

To send the petition by regular mail, mail it to:

Clerk
James R. Browning Courthouse
Ninth Circuit Court of Appeals
P.O. Box 193939
San Francisco, CA 94119-3939

How Do You Send Copies to the Government?

At the end of your filing, include a signed *Certificate of Service* to confirm that you mailed copies to the government.

You will need 4 copies of everything. Keep 1 for yourself and send 1 to each of the following:

- **The Ninth Circuit**
- **The Office of Immigration Litigation**
U.S. Department of Justice, Civil Division
P.O. Box 878
Ben Franklin Station
Washington, DC 20044
- **ICE District Counsel**
Department of Homeland Security
2035 North Central Avenue
Phoenix, AZ 85004

Can You Track Your Petition Online?

Yes.

With **Public Access to Court Electronic Records (PACER)**, you can see what is happening in your case. Registration is free, but a fee may be charged to review certain documents.

To register, go to www.pacer.gov and enter your case number.

Does Filing a Petition for Review Automatically Keep You from Being Deported?

No.

Unlike an appeal to the BIA, a petition for review to the Ninth Circuit does not automatically keep you in the United States while your appeal is pending.



I-246
To remain in the U.S. during your appeal, you must file a separate motion for a stay of removal with your petition for review. In this motion you must explain why you have a good chance of winning your appeal and why it will cause you or your family harm if you are deported before your appeal is decided.

If you file a motion for a stay of removal, the Ninth Circuit will automatically give you a temporary stay while it decides your motion. The court will then allow the government to argue that you should not be granted a permanent stay of removal.

If the government opposes your request, you may file a reply within 7 days. The court will usually decide whether to grant you a permanent stay of removal within several months of filing.

Can You Be Deported Before the Ninth Circuit Receives Your Petition for Review and Request for a Stay of Removal?

Yes.

Once the BIA dismisses your appeal, you can be deported at any time before the Ninth Circuit receives your motion for a stay of removal. So, have your petition for review and motion for a stay of removal ready to send to the Ninth Circuit before the BIA makes its decision.

提前准备好 I-246 form Stay of Removal

Keep a copy of your petition and motion for a stay of removal to show your deportation officer that you are appealing your case to the Ninth Circuit.

Also, call the Executive Office for Immigration Review (EOIR) automated system every day so that you can send your petition and motion for a stay of removal as soon as you hear that your appeal has been dismissed.

**Call: Executive Office for Immigration Review
Automated system
1-800-898-7180**

Can You File a Petition for Review Before the BIA Dismisses Your Appeal?

No.

The Ninth Circuit can only consider your case after the BIA has dismissed your appeal.

If you file a petition for review before the BIA decides your case, the Ninth Circuit will dismiss it when it finds out that the BIA has not yet decided your case. You will then have to file a new petition to the Ninth Circuit once the BIA dismisses your appeal.

The Ninth Circuit WILL NOT simply hold your petition for review and use it when the BIA dismisses your appeal. You may miss your chance to file within 30 days and lose your right to appeal to the Ninth Circuit altogether.

Can Your Petition Continue if You Are Deported to Your Country?

Normally, yes.

If you are denied a stay of removal or if you did not ask for a stay of removal, the Ninth Circuit can still consider your petition for review while you are outside the U.S.



Since it may be more difficult to send or receive mail from outside the U.S., if you do not have a lawyer, you may want to have your mail sent to a friend or family member who is inside the U.S. Give the court the address of that person.

But, if you have an asylum, Withholding of Removal or Convention Against Torture case and you return to your country while your petition for review is pending, the government may try to argue that your petition is no longer necessary. (The legal term is moot.) If the Ninth Circuit agrees, it may dismiss your petition for review.

→ Return to the Country, 未許基本控 (moot)

What Is an Order to Show Cause?

An Order to Show Cause is the Ninth Circuit's warning that it may not be able to consider your case.

Usually, the Ninth Circuit issues an Order to Show Cause when it does not have the authority to consider your argument, such as when you are appealing a discretionary denial of Cancellation of Removal or your argument lacks merit.

Generally, when the Ninth Circuit issues an Order to Show Cause, you have 21 days to explain why the Ninth Circuit should consider your appeal. If you do not respond or if the Ninth Circuit disagrees, the court will dismiss your appeal.

Can You Get a Bond After You File a Petition for Review?

Yes, in some cases.

In *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942 (9th Cir. 2008) and *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011), the Ninth Circuit held that a person who has filed a petition for review and been granted a stay of removal may ask the immigration judge for a bond hearing. This is true even if you were not eligible for a bond before the judge or the BIA. So, you have nothing to lose. Ask the judge for a bond hearing after you file a petition for review.



But some immigration judges disagree about whether and when you can ask for a bond once your petition for review is filed.

If the judge tells you that you are not eligible to ask for a bond, you may be able to file a habeas corpus petition to the district court. The Florence Project also has a Pro Se Guide to Habeas Corpus.

Remember, even if you have the right to a bond hearing, the judge may still deny you a bond on the grounds that you are a danger or a flight risk.

① judge 告诉你 不能 bond, 你才 file habeas 到 district court

② What Happens After You File a Petition for Review?

Once you file a petition for review:

- The Ninth Circuit will set a date for the government to file the **Certified Administrative Record (CAR)**. The CAR is a copy of all documents filed in your case before the Immigration Judge and the BIA.
- The government will send you a copy of the CAR. You will use it to prepare your brief.
- If you filed a motion for a stay of removal, the Ninth Circuit will set a date for the government to respond.

Then the government may decide to:

- Either oppose or not oppose your stay of removal.
- Move to dismiss your case if it believes you do not have a strong argument, or
- Move to dismiss your case if it believes the court does not have jurisdiction to consider it.

If the government does these, you can file a reply within 7 days. You can also ask for an extension of time to file a reply to the government's arguments.

What will the Ninth Circuit do next?

The Ninth Circuit will also set a briefing schedule with a date for you to file your Opening Brief and a date for the government to file its Answering Brief.

- If you cannot meet the deadline for your Opening Brief, ask for a one-time extension of 30 days. Use the Ninth Circuit *Form 13. Streamlined Request for Extension of Time to File Brief*.
- If you need a second extension or more than 30 days, you must file a formal motion for extension of time using Ninth Circuit *Form 14. Motion for Extension of Time*.
- After you file your Opening Brief, the government will file its Answering Brief. Within 21 days of the government's answer, you can submit a Reply Brief, but it is not required.

Make 9 copies of your documents.

- Send the original + 6 copies (7 total) to the Ninth Circuit,
- Send 2 copies to the government, and
- Keep 1 copy for yourself.

Make sure that all of your filings have a signed Certificate of Service at the end, so the court knows that you sent copies to the government.

In a small number of cases, the court asks each side to present an oral argument to the three judges who will decide the case. This argument is held in one of the Ninth Circuit courthouses. In it a lawyer explains your legal arguments and the judges may ask questions. It is unlikely that the court will do this if you do not have a lawyer. But, if the court wants to hear an oral argument in your case, it may appoint you a lawyer.

What Kind of Brief Must You File?

If you do not have a lawyer, the Ninth Circuit allows you to file an informal brief. An informal brief is a form out that will help you explain to the court why the BIA was wrong in ordering you removed. The Ninth Circuit will automatically send you the informal brief form when you file a petition.



You may also file a formal brief, which is what lawyers submit. A formal brief has a number of different sections that explain more complicated legal aspects of your case, such as jurisdiction, venue, and the standard of review.

It is difficult to file a formal brief unless you have a sample to follow but it can be done. If you are unsure how to prepare a formal brief, it is better to use the informal brief form.

Briefs should be no longer than 50 pages, double spaced. If you cannot make your arguments in fewer than 50 pages, you must file a motion with your brief asking permission to submit extra pages. In that motion you must explain why you need them.

If the court denies your request to submit a longer brief, it may require you to file a shorter one.

你 file informal brief
Lawyer file formal brief

How Long Will Your Ninth Circuit Appeal Take?

Unfortunately, an immigration case at the Ninth Circuit can take a long time.



If you are detained during the petition for review, it is common for the petition to take at least 1½ years, and sometimes up to 3 or 4 years.

If you are not detained, either because you have been deported or released on bond, it will probably take at least 2-3 years and can last as long as 4-5 years.

What Happens If You Win Your Case in the Ninth Circuit?

If you win your case in the Ninth Circuit, the court may simply decide that you should be allowed to remain in the U.S.

But in many cases, the Ninth Circuit may send your case back to the BIA to decide other issues that remain in your case.

remand

So, even if you win at the Ninth Circuit, you could still lose once your case goes back to the BIA or even to the immigration judge.

What Happens If You Lose Your Case in the Ninth Circuit?

If the Ninth Circuit rules against you in your petition for review, you may file several documents to challenge the court's decision:

- **Petition for panel rehearing:** You can submit this argument to ask the same 3 judges to reconsider their decision on the grounds that they made a legal error in denying your case.

You must file a petition for panel rehearing within 45 days.

- **Petition for rehearing en banc:** You can submit this argument to ask that 11 judges of the Ninth Circuit judges (rather than 3) reconsider the court's first decision.

But, a petition for rehearing en banc is very rarely granted. You must file a petition for rehearing en banc within 45 days.

- **Writ of certiorari to the U.S. Supreme Court:** You have the right to ask the U.S. Supreme Court to overrule the Ninth Circuit's decision. To do that, file for a writ of certiorari to the Supreme Court. But, the Supreme Court only grants a writ of certiorari in a very small number of cases. You do not have a right to have the Supreme Court hear your case.

You must file a writ of certiorari within 90 days.

If you do not file a petition for rehearing or a writ of certiorari, the Ninth Circuit's decision will be final when the mandate issues. The mandate is the official court ruling that implements the decision.

In immigration cases, the mandate issues 45 days after the court's decision.