

GUIDE TO PETITIONS FOR REVIEW IN THE NINTH CIRCUIT

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, which includes Arizona.



What is a “petition for review”?

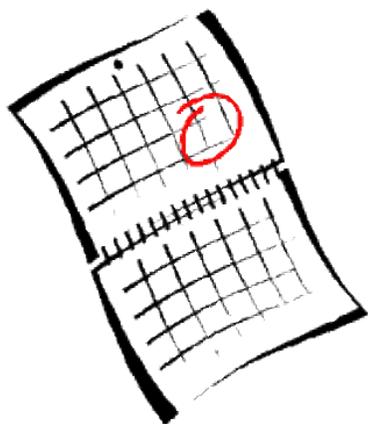
A petition for review is an appeal of a decision ordering you removed from the United States. Usually a petition for review challenges a decision by the Board of Immigration Appeals (“BIA”), but in very rare instances it can sometimes appeal removal orders from other immigration officials. Your immigration case usually goes from the Immigration Judge, to the BIA, to the Ninth Circuit.

What kinds of decisions by judges can I appeal to the Ninth Circuit?

Unfortunately, not all of the Immigration Judges decisions that can be appealed to the BIA can also be appealed to the Ninth Circuit. Decisions that are “discretionary,” such as decisions about whether you deserve Cancellation of Removal, usually cannot be appealed to the Ninth Circuit. But decisions regarding whether you should have been granted asylum, withholding of removal, or CAT; whether you are deportable for a criminal conviction; or whether you are eligible to apply for relief from deportation can be appealed to the Ninth Circuit as long as you argued it to the BIA.

When should a petition for review be filed?

A petition for review **MUST** be filed at the Ninth Circuit within 30 days of the date of the BIA’s decision. So if the BIA dismisses your case on January 1, the Ninth Circuit must *receive* your petition for review by January 30. The date that the BIA dismisses your case



is the date on the front page of the BIA's decision. You can also find out the date of the BIA's decision by calling 1-800-898-7180, entering your "A" number, and pressing the number "4." The Ninth Circuit cannot consider late petitions, and there is no way to ask for an extension of time to file your petition for review. Therefore, you **MUST** make sure your petition is filed within 30 days.

What form do I use to file a petition for review?

The Florence Project has a petition for review form, along with accompanying motions, that is available in the law library of your detention facility. You can also file a document that says it is a "petition for review" along with the date of the BIA's decision.

Where do I send the petition for review?

If you are sending the petition by regular mail, send it to:

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

Should I include a copy of the BIA's decision with my petition for review?

The instructions say that you should submit a copy of the BIA's decision with your petition for review. However, if you fear that you may be deported before you receive a copy of the BIA's decision in the mail, it is possible to file your petition for review without it. If you do this, you should send the Ninth Circuit a copy of the BIA's decision as soon as you receive it.



How much does it cost to file a petition for review?

A petition for review costs \$450. However, if you are detained and cannot pay \$450, you can file a motion to proceed "*in forma pauperis*." A motion to proceed "*in forma pauperis*" is a fee waiver in which you must show that you do not have the resources to 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, which is an affidavit to send along with your motion to proceed *in forma pauperis*.



Does a petition for review automatically keep me 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. You must file a separate Motion for a stay of removal along with your petition for review in order to remain in the U.S. during your appeal. In this Motion

you must explain to the court 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 of removal while it decides your Motion. The court will then give the government the opportunity to argue that you should not be granted a permanent stay of removal. If the government opposes your request for a stay of removal, you may file a reply to the government’s opposition within 5 days. The court will usually decide whether to grant you a permanent stay of removal within several months of filing your Motion.

Can I be deported before the Ninth Circuit receives my 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. Therefore, it is a good idea to 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. It is



also a good idea to call the EOIR automated system at 1-800-898-7180 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. You should also keep a copy of your petition and motion for a stay of removal in order to show your deportation officer that you are appealing your case to the Ninth Circuit.

Can I file a petition for review before the BIA dismisses my appeal?

No. The Ninth Circuit can only consider your case once the BIA has dismissed your appeal. If you file a petition for review before the BIA makes a decision, the Ninth Circuit will dismiss your petition when it finds out that the BIA has not yet decided your case. You will then have to file a new petition for review to the Ninth Circuit once the BIA dismisses your appeal. Do NOT assume that the Ninth Circuit will simply hold your petition for review and use it when the BIA dismisses your appeal. If you assume this, you may miss your opportunity to file a petition within 30 days and lose your right to appeal to the Ninth Circuit altogether.

Can my petition for review continue if I'm physically deported to my country?

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. It may be more difficult to send or receive mail from outside the U.S., so if you do not have a lawyer, you may want to give the court an address of a friend or family member inside the U.S. who can receive your mail for you.

Can I get a lawyer to represent me?



You can ask the court to appoint you a pro bono lawyer to represent you in your petition for review for free. To do so, you should file a Motion to Appoint Pro Bono Counsel along with your petition for review. A copy of this motion created by the Florence Project should be available in your law library. However, only a small number of cases are actually assigned a pro bono lawyer.

What forms should accompany my petition for review?

The following forms can be included with your appeal to the Ninth Circuit:

1. Petition for Review (with a copy of the BIA's decision, if you have it)
2. Motion to Proceed *in forma pauperis*
3. Affidavit in support of your *in forma pauperis* Motion
4. Motion for Stay of Removal
5. Motion to Appoint Pro Bono Counsel
6. Certificate of Service (required)

Can I follow my petition for review online if I have internet access?

Yes. You can register for Public Access to Court Electronic Records (PACER) at www.pacer.gov, which allows you to see what is happening in your case by going to the PACER website and entering your case number. Registration is free, but there may be a fee if you want to review certain documents.

What is an Order to Show Cause?

An Order to Show Cause is a warning by the Ninth Circuit 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. When the Ninth Circuit issues an Order to Show Cause, you have 21 days to explain to the Ninth Circuit why it should consider your appeal. If you do not respond, or if the Ninth Circuit disagrees with your response, the court will dismiss your appeal.

Can I get a bond after I 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 request a bond hearing from the Immigration Judge. This is true even if you were not eligible for a bond before the Immigration Judge or the BIA. Therefore, you have nothing to lose by asking the Immigration Judge for a bond hearing once you file a petition for review.



However, there is some disagreement among Immigration Judges about whether and when you can ask for a bond once your petition for review is filed. If the Immigration 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 and the Florence Project also has a “Pro Se Guide to Habeas Corpus”. Remember that 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.

What happens after I file a petition for review?

Once you file a petition for review, the court will set a date for the government to file the Certified Administrative Record (CAR). The CAR is a copy of all the documents that were filed in your case before the Immigration Judge and the BIA. The government will send you a copy of the CAR, which you will use to prepare your brief.

If you filed a Motion for a Stay of Removal, the court will set a date for the government to respond to your request. The government may oppose your stay of removal, or it may state that it does not oppose it. The government may also move to dismiss your case because it believes you do not have a strong argument or the court does not have jurisdiction to consider your petition. If the government does either of these, you can file a reply within 5 days. You can also ask for an extension of time to file a reply to the government’s arguments.

After the court decides whether to grant you a stay of removal, it will 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. Once the government files its Answering Brief, you have the option to submit a Reply Brief within 14 days.

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 is an argument that is held in one of the Ninth Circuit courthouses in which a lawyer explains your legal arguments and may be asked questions by the judges. It is very unlikely that the court will do this if you do not have a lawyer. However, if the court wants to hear oral argument on your case, it may appoint you a lawyer.

What kind of brief do I have to file?



If you do not have a lawyer, the Ninth Circuit allows you to file an “informal brief.” An informal brief is a form you can fill out that helps 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 one to follow but it can be done. However, if you are unsure about how to prepare a formal brief, it is better to use the informal brief form.

How long will my 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 one-and-a-half years, and sometimes up to three or four 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 I win my 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 court may send your case back to the BIA to decide other issues that remain in your case. So even though you win at the Ninth Circuit, it is possible that you could still lose once your case goes back to the BIA or even the Immigration Judge.

What happens if I lose my case in the Ninth Circuit?

If the Ninth Circuit rules against you in your petition for review, there are several documents you can file to challenge the court’s decision:

- **Petition for panel rehearing:** This is an argument you can submit to ask the same three judges to reconsider their decision on the grounds that they made a legal error in denying your case. A petition for panel rehearing must be filed within 45 days.
- **Petition for rehearing en banc:** This is an argument you can submit to request that a larger group of Ninth Circuit judges (11) reconsider the court’s first decision. However, a petition for rehearing en banc is very rarely granted. A petition for rehearing en banc must be filed within 45 days.
- **Writ of certiorari to the Supreme Court:** You have the right to ask the Supreme Court to overrule the Ninth Circuit’s decision by filing for a “writ of certiorari” to the Supreme Court. However, the Supreme Court only grants a writ of certiorari in a very small number of cases, and you do not have a right to have the Supreme Court hear your case. A writ of certiorari must be filed 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.

Guide to Petitions for Review in the Ninth Circuit was prepared and updated by the staff of the Florence Immigrant & Refugee Rights Project and was written for immigrant detainees in Arizona who are representing themselves pro se in their removal proceedings. This guide is not intended to provide legal advice or serve as a substitute for legal counsel. The Florence Project is a nonprofit legal services organization and does not charge for its services to immigrant detainees in Arizona. This guide is copyright protected but can be shared and distributed widely to assist indigent immigrants around the country. All of our guides are available to download on our website: www.firrp.org. We kindly ask that you give credit to the Florence Project if you are adapting the information in this guide into your own publication.