

US Justice Department rulings target immigrants' legal rights

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Last week, Attorney General Michael Mukasey issued a ruling declaring that immigrants have no constitutional right to a defense attorney in deportation proceedings. The decision, made in the last days of the Bush administration, is both an attack on the rights of immigrants, a large section of the working class, and a blow to the core democratic principle of due process. It opens the door to the possibility of mass arrests and deportations based on executive fiat, similar to the Palmer Raids (1919-1921) that targeted radical immigrant workers in the US after the Russian Revolution.

Currently, rulings regarding deportation procedures have found that the Fifth Amendment to the US Constitution makes possible an appeal for immigrants who have lost cases due to mistakes on the part of their legal counsel. This status quo has been built on decades of rulings, according to legal experts.

But in his January 7 ruling, Mukasey declared, "There is no Fifth Amendment right to effective assistance of counsel in removal proceedings" because "there is no valid basis for finding a constitutional right to counsel in removal proceedings." There exists, he argued, "a strong public interest in the expeditiousness and finality" of cases against immigrants. Decisions in individual appeals for retrials will be left to the "administrative grace" of individual courts, Mukasey said.

Mukasey's ruling outlines an assembly-line system of administrative justice for immigrants, separate and unequal to that afforded to citizens, and not subject to judicial review. But he goes further still, arguing that the basis of the lack of right to appeal arises from immigrants' lack of a right to an attorney under US law.

Immigration courts are not part of the judiciary branch of the US government, but operate within the Justice Department of the executive branch, meaning Mukasey's ruling has the effect of a diktat.

Deportation cases are not covered by the Sixth Amendment's guarantee to legal counsel because they are classified not as criminal, but civil, cases. The 1988 case *Matter of Lozada* affirmed this, ruling that "any right an alien may have in this regard is grounded in the Fifth Amendment guarantee of due process rather than the Sixth Amendment right to counsel."

Mukasey's decision has been condemned by immigrants' rights and lawyers' organizations. Immigrants very often fall prey to individuals who falsely claim to be attorneys. Due to language barriers and poverty, they are also often unable to gain access to competent representation.

The interaction of the US justice system with immigrants has become, in recent years, increasingly arbitrary and militarized. The ruling class has developed a separate prison system for immigrants. The Department of Homeland Security has undertaken what are in effect domestic military operations against immigrants, carrying out mass arrests. Immigrants in deportation proceedings are often processed in large groups, making the adjudication of individual cases impossible.

Among the organizations to condemn Mukasey's ruling are the American Civil Liberties Union (ACLU), the American Bar Association, the American Immigration Law Foundation (AILF), the American Immigration Lawyers Association and the Hispanic National Bar Association.

"We are outraged by this action," said Nadine Wettstein, the director of AILF's Legal Action Center. "With this ruling, the Administration is attempting to

undermine an immigrant's right to a fair hearing on whether he should be thrown out of the country. It is yet another in a long line of midnight changes and an example of this Administration's disregard for fundamental principles of due process of law. It is also part of an ongoing attempt to eviscerate the federal courts' role in protecting against Constitutional abuses by the immigration agency. We strongly disagree with the Attorney General's pronouncements and are confident that federal courts eventually will reject this action."

In a separate measure, the Justice Department has mandated that federal agencies collect DNA samples from detained aliens. The Justice Department envisions a massive police operation, estimating that the police-state measures will result in the collection of 1.2 million DNA samples per year.

The Justice Department's DNA collection plan took effect on Friday, but federal agencies are not yet prepared, in terms of technology and organization, to implement it. Congress made the decision possible with legislation it passed in 2005 and 2006. This plan has also drawn protests from immigrant rights groups and privacy advocates.

The forcible collecting of DNA samples from "detained" non-naturalized immigrants is a chilling prospect. The term "detained" does not imply that those forced to submit to the procedure have been arrested, much less charged or convicted, for a crime. The measure likely applies, for example, to foreign nationals who are questioned by Homeland Security at airports as they enter the US—a frequent occurrence, as anyone who has entered the US on an international flight can attest.

"We should not be taking DNA, which contains highly personal information, from people merely upon suspicion they've done something wrong," said Larry Frankel, a representative for the ACLU in Washington, D.C. "This completely reverses the notion someone is innocent until proven guilty."

Immigrant rights and legal organizations have expressed the hope that the incoming Obama administration might eventually reverse the Justice Department measures enacted in the waning hours of the Bush administration. However, every move President-elect Barack Obama has made since winning the November 4 general election has demonstrated his

commitment to continuity with the policies of the Bush administration.



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