

U.S. Supreme Court to Consider Circuit Split on Voluntary-Departure Deadline

By Michael H. Neifach, Kimberly M. Bennett & David Alejandro Calles

September 30, 2024

Meet the Authors



Michael H. Neifach

Office Managing Principal
(703) 483-8300
Michael.Neifach@jacksonlewis.com



Kimberly M. Bennett

(She/Her)
Associate
412-338-5158
Kimberly.Bennett@jacksonlewis.com



David Alejandro Calles

Noncitizens present in the United States illegally and facing deportation can request voluntary departure instead of a removal order under certain circumstances. If granted, an individual who follows the court's directive will not be subject to the usual repercussions of deportation. Indeed, they might even be able to return to the United States quickly with proper sponsorship. But they must leave the country voluntarily within the period directed. If they do not, they can be subject to steep fines and be barred from returning to the United States for up to 10 years.

What happens when a noncitizen's voluntary-departure period ends on a weekend or public holiday and, instead of leaving the country, the noncitizen files a motion to reopen the process on the next business day? The U.S. Supreme Court will hear oral argument on Nov. 12, 2024, in *Velazquez v. Garland*, No. 23-929, addressing this scenario and the existing circuit split.

The U.S. Court of Appeals for the Tenth Circuit held that, regardless of what day of the week a voluntary-departure period expires, the law requires a noncitizen moving to reopen or reconsider removal proceedings to file within the calendar-day period set in the voluntary departure order. This holding, however, conflicts with a decision by the U.S. Court of Appeals for the Ninth Circuit. In *Meza-Vallejos v. Holder*, 669 F.3d 920 (2012), the Ninth Circuit held that when a noncitizen's deadline for voluntary departure falls on a weekend or holiday, the noncitizen has until the next business day to file a post-decision motion to reopen or reconsider.

In the case under review, the Department of Homeland Security (DHS) initiated removal proceedings against a noncitizen alleged to be unlawfully present in the United States. On the noncitizen's request, voluntary departure within 60 days was granted in lieu of DHS removal. The noncitizen filed a timely appeal requesting other relief. The appeal was dismissed but another 60-day voluntary departure period was granted. The final day fell on a Saturday. However, a motion to reopen was filed on the following Monday.

The Board of Immigration Appeals (BIA) ruled that because the motion to reopen was filed outside the voluntary-departure period, eligibility for other immigration relief terminated.

On appeal, the Tenth Circuit agreed with the BIA, finding that extending the departure deadline to allow filing of post-relief motions would require rewriting the statute.

The Supreme Court's decision in this case will have important implications. The Tenth Circuit's ruling conflicts with the long-standing practice within the courts that, when a deadline falls on a weekend or holiday, it is extended through the next business day. This principle is reflected in federal regulations, official practice manuals, and secondary source materials. Consistent with this practice, Courts of Appeals have

(Cah-jess • He/Him)

Associate

(402) 827-4225

David.CallesSmith@jacksonlewis.com

Related Services

Immigration

extended immigration deadlines to the next business day. Countless noncitizens, who have relied on this long-standing practice, and whose departures were timely under the Ninth Circuit's rule, would not be considered timely under the Tenth Circuit's rule. If the Supreme Court adopts the Tenth Circuit's rule, confusion will ensue regarding whether those departures were timely at all.

The Supreme Court's ruling in this case could also have implications beyond relief specific to voluntary departure, particularly following the Court's decision in *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), that deference need not be given to agencies' interpretation of an ambiguous statute. A Supreme Court ruling in *Velazquez* in favor of the government could create uncertainty as to filing deadlines set by administrative agencies. For example, USCIS has exercised discretion to extend filing deadlines where it must close its offices because of severe weather, preventing acceptance of filings until offices reopen. Under such circumstances, USCIS has treated filings received when the office reopens as timely filed. If the Supreme Court rules that administrative agencies have no discretion to extend the period to file post-order motions seeking relief, agencies may also lose discretion to extend other deadlines, such as the previous example.

Jackson Lewis attorneys will monitor and provide updates in this case. Please contact us if you have any questions.

©2024 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.