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**FEDERAL JUDGE RULES ON U.S. SOLICITOR GENERAL'S  
ABUSE OF SUPREME COURT'S TRUST**

*Justice Department ordered to disclose the basis for the Government's misleading representation to the Supreme Court that a policy exists for returning wrongfully deported immigrants.*

Judge Jed Rakoff, of the Southern District of New York, issued a decision late yesterday rejecting the Government's attempts to shield Department of Justice emails communicating government policy for immigrants who win their cases post-deportation. On the basis of these emails, the Solicitor General had argued to the Supreme Court in 2009 that the U.S. government maintains a policy and practice for returning immigrants who are deported by ICE while their judicial appeals are pending, but are later found by the courts to have been wrongfully deported. However, the experience of immigrants trying to return home stands in stark contrast to this statement.

The decision affirms that the Government cannot play a bait and switch by making unsupported assurances to the Supreme Court that federal agencies can and will bring back people who are wrongfully deported and restore their immigration status, but then provide no information to the public or to those immigrants about how that is to be done. To do so would be "pure gamesmanship."

The opinion hints at what may be found in these emails, noting that they "evidence an attempt to cobble together a factual basis for making the representation the OSG [Office of the Solicitor General] made to the Court in *Nken*." The judge warned, "the judicial process may have been impugned if the Supreme Court relied upon what may well have been inaccurate or distorted factual representation."

"The court's order to disclose the emails shines a light on an alleged policy that the government refuses to share with the public, if it even exists. This failure prevents and

prolongs the reunion of families for weeks, months, even years after a person has won their judicial appeal,” said Trina Realmuto, an attorney with the National Immigration Project of the National Lawyers Guild, a lead plaintiff in the case. “Judge Rakoff’s decision recognizes that the Solicitor General is not above the law and that his representations to the nation’s highest court must be transparent.”

This decision is an important part of ongoing litigation aimed at uncovering the lack of policies or procedures for returning immigrants who prove their right to stay in the United States in federal court, yet remain stranded outside of its borders with no clear pathways to return and have their immigration status restored. On May 12, 2011, the National Immigration Project, the ACLU Foundation, the Immigrant Defense Project, the Post-Deportation Human Rights Project, and Professor Rachel Rosenbloom filed a complaint against the Department of Homeland Security, the Department of Justice and the State Department for their failure to produce documents under the Freedom of Information Act about the agencies’ alleged policy and practice of providing effective relief to immigrants who win their cases from abroad.

“As it stands, people who are fighting their deportation can be deported while their appeals are still pending, and even if they win their case, the government makes no effort to return them. It’s ‘heads, I win; tails, you lose,’” said Martha Saunders, a third-year law student in the NYU School of Law Immigrant Rights Clinic, the organization representing the plaintiffs. “The limited documents released by the Department of Homeland Security show deep confusion not only over how to return individuals who win their immigration cases, but whether to return them at all.”

Each year, the federal courts may reverse or vacate more than 1,000 removal orders. A significant number of these cases will be individuals who continue to fight for their right to remain in the United States from abroad, due to a policy the government maintains of deporting individuals while their appeals are pending or before individuals have time to file and appeal. It is unknown how many people are currently stuck outside of the United States, separated from their families and communities, because the government has no effective system for bringing them back.

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