

Justices open term, hear case about drugs, deportation

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Body

WASHINGTON -- The Supreme Court heard its first arguments of the 2006-07 term on Tuesday in a spirited session that focused on whether foreigners who are in this country legally should be deported automatically if they are convicted of drug possession.

All of the justices except the typically silent Clarence Thomas jumped into the discussion, which revealed some of the ideological divisions on the nine-member court.

The case tests provisions of anti-drug and immigration laws and could have significant consequences for legal permanent residents, or "green card" holders, who are found guilty of relatively low-level crimes. If the justices rule that drug possession could amount to an "aggravated felony," it would cause many convicted immigrants to be routinely deported, and prevent them from appealing to an immigration judge.

Tuesday's dispute involves legal immigrants, but it arises against a backdrop of concern over policies related to border security and illegal immigration.

The question for the justices is whether a drug-possession offense that is a felony under state law but would be a misdemeanor under federal law rises to the level of illicit trafficking, making it an "aggravated felony" and requiring mandatory banishment for a legal immigrant who is not a U.S. citizen.

Jose Antonio Lopez, a Mexican national, was convicted in South Dakota of aiding and abetting possession of cocaine. Reymundo Toledo-Flores, also from Mexico, was convicted in Texas of possessing cocaine. Federal appeals courts ruled that their offenses could be considered aggravated felonies for deportation purposes, based on the respective states' laws. Other appeals courts, however, have ruled the opposite, saying that an offense qualifies as an "aggravated felony" only if it would be punishable as a felony under the federal Controlled Substances Act. Drug possession is a misdemeanor under the act.

Attorneys for Lopez and Toledo-Flores argued that Congress did not want possession of a drug to be regarded as an aggravated felony for deportation purposes. They stressed the importance of uniform standards tied to federal law, rather than to state codes that would cause some legal immigrants who had committed the same offenses to be automatically deported in some states, but not in others.

Deputy U.S. Solicitor General Edwin Kneedler argued that Congress intended "any felony" to trigger the automatic deportation provision, whether under state or federal law. He said Congress sought to cover large categories of state criminal conduct.

The court's more liberal justices appeared most skeptical of that argument.

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"It seems to me unseemly in the immigration context," **Justice** Ruth Bader Ginsburg said, "to say that two people who have committed the identical act" can be treated differently "because of the happenstance of the states in which they were convicted."

Justice David Souter questioned whether Congress would have written laws that classified **drug** possession as a misdemeanor, but then allowed it to be **termed** an "aggravated felony" for **deportations**. "The problem here is that state and federal laws are at odds on determining the gravity of the offense," he said.

The court's newest conservative **justices**, Chief **Justice** John Roberts and Samuel Alito, joined **Justice** Antonin Scalia in appearing most sympathetic to the government's position.

Roberts suggested by his questions that the automatic **deportation** provision could be triggered by state or federal felonies. Alito, beginning his first full **term** on the bench, said Congress could have wanted the **term** "illicit trafficking" broadly interpreted "so that it can include mere possession offenses."

Graphic

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