

Court Leaves Intact Rights for Immigrants Facing Deportation

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Body

The Supreme **Court** today left **intact** a crazy quilt of legal protections that are available to **immigrants facing deportation** orders.

In New York and other parts of the country covered by some appellate **court** rulings, **immigrants** with criminal records are allowed to appeal some **deportation** orders to judges. In other parts of the country, in different appellate circuits, those **immigrants** have no such **right**.

The Clinton Administration had asked for a prompt review, arguing for a definitive answer supporting its view that the 1996 law allowed **deportation**, without judicial review, of noncitizens who had committed drug offenses or other crimes, even some that were minor and long ago.

The **Courts** of Appeal in three Federal circuits have ruled either that Congress did not or, as a constitutional matter, could not strip the Federal **courts** of jurisdiction to hear these cases and, further, that the harsh provisions should not apply to cases that were in the pipeline when the new law took effect.

The **Court** today left **intact** those rulings from two of the circuits, covering seven states in the Northeast -- Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont. At the same time, it vacated a ruling from the United States **Court** of Appeals for the Ninth Circuit, in San Francisco, sending the case back for further consideration.

In the pipeline are thousands of cases involving the category of **immigrants** known as "criminal aliens." These are not illegal aliens in the usual sense, in that they typically entered the country legally and have been living as lawful permanent residents, often with spouses or children who are United States citizens. But Congress has decreed that people in this category have forfeited their **right** to remain here if they committed any drug offense or any of a list of other crimes.

Congress left the retroactive effect of this provision unclear, and the Board of Immigration Appeals, the top administrative review body in the immigration system, ruled that it should not be applied retroactively.

Attorney General Janet Reno exercised her power to overturn that ruling and, in a controversial executive decision in February 1997, declared that the new treatment for criminal aliens should apply to all **deportation** cases then in

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the pipeline as well as to crimes that a noncitizen had committed in the past, even if the crime had not become the occasion for a deportation proceeding.

Further, the Administration has taken the position that the Attorney General's ruling on retroactivity, the Soriano decision, is itself unreviewable in any Federal court. A growing list of lower Federal courts has rejected that position, although a few courts have accepted it. In all three of the cases before the Supreme Court today, the lower courts had ruled that the Soriano decision could not be insulated from judicial review and that immigrants were entitled to challenge deportation orders through petitions for writs of habeas corpus in Federal District Court.

Filing appeals in all three cases, the Administration urged the Justices to use at least one of the cases as a vehicle for the range of procedural and substantive issues presented. As a practical matter, the Court's denial of review in cases from the United States Courts of Appeals for the First and Second Circuits, in Boston and New York, means that within the seven states of those two circuits, the 1996 law no longer has the retroactive effect and immigrants facing deportation can be heard by a Federal district judge.

This was good news to lawyers representing immigrants.

"It's a vindication of the right to judicial review," said Lucas Guttentag, director of the immigrants' rights project of the American Civil Liberties Union, who was involved in all of today's cases.

Mr. Guttentag acknowledged that the Court's denial of review was not a ruling on the merits of the cases, and that the Justices remained free to take up a subsequent case that presented the same issues. But he predicted that the Court's action would add momentum to the trend against the Administration in the lower courts.

At the Justice Department, a spokeswoman said lawyers there "need to review these orders and how they fit together before commenting."

Reno v. Navas, No. 98-996, the New York case in which review was denied today, was a consolidated appeal of five cases. Saul Navas, a native of Panama who entered the United States as a legal immigrant in 1987, was convicted in the New York courts in 1995 of robbery and possession of stolen property, rendering him deportable even under the prior immigration law.

Mr. Navas appealed to an immigration judge, as was his right under the old law, and won relief from deportation. But his case was still pending in 1997 when, under the Attorney General's retroactive application of the new law, his relief from deportation was canceled and he was ordered deported. A Federal district judge, rejecting the Government's view that habeas corpus jurisdiction no longer applied, ordered Mr. Navas released, in a decision that the Second Circuit upheld while also rejecting the Attorney General's view on retroactivity.

In the First Circuit case, Reno v. Goncalves, No. 98-835, the immigrant, Raul Goncalves, legally entered the United States from Portugal with his parents at the age of 3. Several convictions for theft placed him in deportation proceedings in 1990. His appeal was still pending in 1997 when he was found ineligible for relief under the new law. The First Circuit ruled that the law should not be applied retroactively and that under a proper interpretation of the new law, Mr. Goncalves could still seek habeas corpus review in Federal District Court.

The Ninth Circuit, in Immigration and Naturalization Service v. Magana-Pizano, No. 98-836, took a different approach, reaching a constitutional issue that the other two courts had avoided. Unlike the others, the Ninth Circuit ruled that Congress actually had eliminated judicial review. But because Congress could not constitutionally do so, the Appeals Court said, the Federal District Courts retained their habeas corpus jurisdiction nonetheless.

The immigrant in that case, Daniel Magana-Pizano, entered the country legally from Mexico, as a 5-year-old accompanying his parents. In 1995, Mr. Magana-Pizano pleaded guilty to a single misdemeanor drug offense, thus becoming eligible for deportation. His appeals were cut off under retroactive application of the new law before the Ninth Circuit ruled that he was entitled to proceed through a petition for habeas corpus.

One possible explanation for why the Justices vacated that decision today, rather than denying review as they did in the other two cases, was the Court's general aversion to constitutional rulings when the same result can be

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achieved through statutory interpretation. The **Court** might have wanted to give the Ninth Circuit a chance to reconsider its view of the statute and find that Congress had not intended to eliminate judicial review in the first place.

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