

Supreme Court Allows Discretion In Deportation For State Felonies

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Body

The **Supreme Court** ruled yesterday that an immigrant convicted of a **state felony** drug charge that would be a lesser crime under federal law may contest the government's decision to **deport** him.

The 8 to 1 ruling, with Justice Clarence Thomas dissenting, held that a **state felony** charge that would be only a misdemeanor under federal statutes is not the kind of conviction that would trigger automatic **deportation** under the federal Immigration and Nationality Act.

The **court's** action reverses lower-**court** decisions that led the government to send back to Mexico Jose Antonio Lopez, a South Dakota grocery store owner who had pleaded guilty in 1997 to aiding and abetting another person's possession of cocaine.

The decision came in one of several cases the justices are considering to reconcile conflicting lower-**court** decisions on when immigrants convicted of crimes must be **deported**. After announcing yesterday's decision, the **court** heard arguments in a separate case from California in which a Peruvian immigrant was convicted on car theft charges.

Justice David H. Souter's opinion contained something of a grammar lesson for prosecutors and said Lopez's crime could not be classified as the kind of "aggravated **felony**" that means the government must move for **deportation** without any **discretion**.

At issue was the phrase "**felony** punishable under the Controlled Substances Act."

The government held that that meant the crime could be a **felony** under **state** law, as long as it was also punishable under the act.

"But we do not normally speak or write the Government's way," Souter wrote. "We do not use a phrase like '**felony** punishable under the [CSA]' when we mean to signal or **allow** a break between the noun '**felony**' and the contiguous modifier 'punishable under the [CSA].'"

Neither, Souter wrote, should it be read as "if it said '**felony** punishable under the CSA whether or not as a **felony**.'"

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Thomas agreed with the government's view of the law and found his colleagues' arguments "unpersuasive."

Despite Lopez's victory, his future is uncertain. He entered the country illegally in 1986 and became a legal permanent resident in 1990. He married and had two children in South Dakota and, according to his attorney -- Washington lawyer Robert A. Long Jr. -- had never been in legal trouble until his conviction in 1997 for telling someone where he could buy cocaine.

The court's decision does not mean that Lopez could stay if he decided to return to this country, only that the government had discretion over whether to initiate deportation proceedings. The justices remanded the case, Lopez v. Gonzales, No. 05-547, to the lower courts.

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