

Automatic Deportation Law Isn't Retroactive, Judge Says

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Body

The Government cannot use the 1996 antiterrorism law to automatically deport legal immigrants who were convicted of some crimes before it was enacted, a Federal judge ruled yesterday.

The judge, Jack B. Weinstein of United States District Court in Brooklyn, ruled that the Justice Department cannot retroactively deny those immigrants the chance to ask an immigration judge to allow them to stay in the country on humanitarian grounds, or the chance to ask a Federal district court to review the deportation order for a legal error.

His ruling rejected an order Attorney General Janet Reno issued last year that the law be applied even if the crime was committed decades ago and, in some cases, even after an immigration judge had already blocked the deportation.

In a stinging rebuke to Ms. Reno, Judge Weinstein characterized her legal reasoning as irrational and her order as "an arbitrary abuse of power." He said the Reno policy would be cruel to immigrants who may have come to this country as children, committed a crime, rehabilitated themselves and have families here who depend on them.

Lawyers for the Government said an appeal was likely. "We believe the Government's position is consistent with Supreme Court precedent and Congress's reasonable efforts to streamline the often abused deportation process so that aliens convicted of serious crimes can be expeditiously deported," said Scott Dunn, an assistant United States attorney.

Judge Weinstein's ruling comes at a time when the law on deportation of immigrants with criminal records is in a highly unsettled state, immigration law experts say. Dozens of legal challenges to laws adopted last year are pending around the country. But the experts said they knew of no other ruling that had addressed the issue of retroactivity.

Congress twice changed the law last year on the deportation of criminal aliens, first in April in the antiterrorism law and again in September. Both times, it significantly broadened the offenses that lead to mandatory deportation, but the two laws defined those crimes differently. Immigration lawyers and Federal officials disagree about which law should apply in which cases.

The resolution of these legal quandaries will affect the lives of thousands of immigrants. As the Government has moved more aggressively to deport immigrants with criminal records, the number asking immigration judges to waive their deportation on humanitarian grounds has risen sharply, to 6,517 last year. In the 1990's, immigration

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judges have typically allowed more than 40 percent of immigrants who sought waivers to remain in the country. But since October, the approval rate has fallen to 18 percent.

Judge Weinstein set aside the **deportation** orders for the two plaintiffs in the case before him: Saul Navas, a 22-year-old Panamanian convicted of driving a stolen car and snatching a purse, and Guillermo Mojica, a 56-year-old Colombian convicted of conspiring to distribute cocaine in 1988. Both were longtime legal residents of the United States whose immediate families live in this country.

The **judge** also ruled that Federal district courts have broad authority to review immigration **judges' deportation** orders against immigrants with criminal records -- an authority that other Federal **judges** have interpreted more narrowly.

Advocates for immigrants and civil libertarians who have sued the government around the country **said** yesterday that they hoped the force of **Judge** Weinstein's legal reasoning in his 103-page ruling would influence courts beyond his jurisdiction.

"The Justice Department is asking for the unprecedented power to act as **law** enforcement and then as **judge** if anyone challenges the legality of its actions," **said** Lee Gelernt, an attorney with the American Civil Liberties Union's Immigrants' Rights Project, which helped represent the men. "We are fighting to insure that no one is erroneously **deported** based solely on the word of the Justice Department."

Until Congress adopted the antiterrorism **law** in April 1996, legal permanent residents who had committed crimes defined by Congress as "aggravated felonies" and who had served five years or more in prison were generally the only ones subject to mandatory **deportation**. Immigrants who had committed other crimes or who had served less than five years could ask an immigration **judge** to waive their **deportation** on humanitarian grounds.

But the antiterrorism **law** barred those waivers for a greatly expanded range of crimes, including ones that **Judge** Weinstein called relatively minor offenses -- for example, one minor drug possession charge or two misdemeanor petty theft charges.

Lawyers for the Federal Immigration and Naturalization Service contended that the antiterrorism **law** should apply to all pending applications for waivers of **deportation**, even if the crimes had been committed long ago. The Board of Immigration Appeals, the highest administrative tribunal in the immigration system, disagreed.

Ms. Reno then overruled the board, deciding that the **law** should be **retroactive**, though she noted that nothing in the **law** "specifies either that it is to be applied in pending proceedings or that it is not."

Judge Weinstein found that Congress had included explicit language making other sections of the **law retroactive**, but had not done so on the issue of eligibility for waivers of **deportation**. Without a clear expression of Congress's intent, the **law** cannot be applied retroactively, he **said**.

"**Retroactive** application would create a situation in which people who have lived in the community, have established themselves as valuable members of society, and who are needed to support their families, are summarily **deported** without regard to the present and future interests of their families or the community at large," the **judge** wrote.

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