

**THE NEW YORK TIMES**

December 6, 2006

# **Court Rejects Interpretation of Immigration Drug Law**

By LINDA GREENHOUSE

WASHINGTON, Dec. 5 — The Supreme Court rejected the government's interpretation of immigration law on Tuesday, ruling that a noncitizen is not subject to mandatory deportation for a drug crime that, while a felony in the state where the crime was prosecuted, is only a misdemeanor under federal law.

The 8-to-1 decision restored to one category of immigrants, caught in the nearly impenetrable maze where immigration law and criminal law meet, the ability to avoid automatic deportation and the other dire consequences of being guilty of an "aggravated felony."

The category is made up of immigrants convicted of simple drug possession in states that treat those offenses as felonies. Federal law treats possession in most instances as a misdemeanor. But in the government's view, possession when deemed a felony under state law became a "drug trafficking crime," which under federal immigration law is an "aggravated felony" that strips an immigrant of the right to seek relief from automatic deportation, to seek asylum, or ever to return legally to the United States.

Writing for the majority on Tuesday, Justice David H. Souter said the government's interpretation was based on a strained and implausible reading of the definition of "drug trafficking crime" in the federal criminal code.

Thousands of immigrants every year might benefit from the ruling, according to Jayashri Srikantiah, a law professor who heads the Immigrants' Rights Clinic at Stanford Law School and who filed a brief on behalf of Jose Antonio Lopez, the immigrant whose Supreme Court appeal led to the decision, *Lopez v. Gonzales*, No. 05-547.

In an interview, Ms. Srikantiah said the decision was informed by "a sense of proportionality" and of the "real world consequences" of subjecting legal residents convicted of minor offenses to automatic deportation.

The Immigration and Nationality Act contains a list of aggravated felonies that includes "a drug trafficking crime." This phrase, in turn, is defined not in the immigration law, but in the criminal code as "any felony punishable under the Controlled Substances Act," the basic federal narcotics law.

The government's position was that "any felony" meant any crime that was considered a felony either under federal law or in the state where the prosecution took place. In this way, a conviction for simple possession could become a drug trafficking offense and hence an aggravated felony, which is what happened to Mr. Lopez.

A Mexican who was a permanent legal resident of the United States, Mr. Lopez pleaded guilty in a South Dakota state court to aiding and abetting another person's possession of

cocaine. That crime is a felony in South Dakota, although the analogous offense is a misdemeanor under federal law.

Mr. Lopez served 15 months in state prison and was then placed in federal deportation proceedings as an aggravated felon. After unsuccessfully contesting the designation before the immigration service and the United States Court of Appeals for the Eighth Circuit, in St. Louis, he was deported to Mexico.

The Supreme Court's decision makes Mr. Lopez eligible to apply for the administrative relief from deportation known as "cancellation of removal," an option that was foreclosed by his designation as an aggravated felon.

In analyzing the government's position that any offense "punishable" under the Controlled Substances Act therefore became a "drug trafficking" felony, Justice Souter said that "there are a few things wrong with this argument, the first being its incoherence." While "trafficking" ordinarily meant "some sort of commercial dealing," he said, "commerce, however, was no part of Lopez's South Dakota offense of helping someone else to possess."

Justice Souter continued that while the government's argument appeared implausible, that was "not to deny that the government might still be right; Humpty Dumpty used a word to mean 'just what he chose it to mean — neither more nor less,' and legislatures, too, are free to be unorthodox."

But in this instance, he said, if Congress meant to define drug trafficking in such an "unexpected" way, "Congress would need to tell us so, and there are good reasons to think it was doing no such thing here."

Justice Souter said that under the government's interpretation, a central part of federal immigration law, deportation, would depend not on a federal judgment about the seriousness of an offense, but on "varying state criminal classifications." He added, "We cannot imagine that Congress took the trouble to incorporate its own statutory scheme of felonies and misdemeanors if it meant courts to ignore it whenever a state chose to punish a given act more heavily."

The court's conclusion was that "a state offense constitutes a 'felony punishable under the Controlled Substances Act' only if it proscribes conduct punishable as a felony under that federal law."

Justice Clarence Thomas was the lone dissenter, observing in his opinion that "without doubt, Congress could have written the definition with this limitation, but it did not."

This was not the first time the Supreme Court has resisted a categorical interpretation of immigration law by the executive branch. In a unanimous opinion two years ago, the court ruled that contrary to the government's view, driving under the influence of alcohol was not a "crime of violence" for which an immigrant could be subjected to automatic deportation.