

Immigration law's wrinkle blocks deportation in Calif.

Rogelio Servin entered deportation proceedings in San Francisco earlier this month and came home a legal resident, thanks to a little-used wrinkle in immigration law.

Servin, 32, who lives in Sacramento, Calif., was a boy when he came here from Mexico with his family without documentation. After 20 years worrying about whether he might be deported, he rushed home after the decision to celebrate with his wife, Juana, daughters Diamond and Princess, and Romeo, his baby boy.

Servin's legal team of Daniel Karalash and Janell Clayton argued that Servin, who had a felony conviction stemming from a domestic dispute, had turned his life around and deserved to stay in the country to support his wife and children, all U.S. citizens.

They also made the case that Servin, as a boy, had been "inspected and admitted" at the border, a still-developing concept in immigration law that could help thousands of undocumented immigrants on their paths to citizenship if they weren't stopped at official border crossings when they entered the United States.

Servin's case stems from a 2010 ruling by the federal Board of Immigration Appeals, which found that a woman facing deportation, Graciela Quilantan, had in fact entered the country legally when she crossed the border without documentation in 2001.

Quilantan, the wife of a U.S. citizen, was in a car driven by a U.S. citizen. Because she wasn't trying to sneak across and hadn't been questioned by the immigration officer who waved them into Texas, the court found she had been "inspected and admitted" legally.

"It's hard to speculate how many immigrants this could help because it is judged on a case-by-case basis on how they entered, but there's a vast population that has driven over in a car and entered legally," she said.

Experts are still digesting the ruling and its ramifications.

"This has many of us immigration professors scratching our heads," said Raquel Aldana, a professor at McGeorge School of Law in Sacramento.

The case doesn't apply to millions of undocumented immigrants who crossed rivers, mountains and deserts, evading U.S. immigration officials. But about half of all undocumented immigrants either walked or drove through official checkpoints and just weren't stopped and questioned, Aldana said. Some were prepared to make a case for entry; others took their chances that they would be waved through, a more common occurrence before the border inspection process tightened in 1996.

The ruling seems to apply to a narrow subset of undocumented immigrants who are immediate relatives of U.S. citizens. The idea is that they shouldn't be deported if immigration officials made a mistake letting them in in the first place, Aldana said.

The 2010 ruling "isn't a silver bullet for undocumented immigrants," said University of California-Davis Law School Dean Kevin Johnson. But under the right circumstances it could tip the balance for some of the thousands of immigrants stuck in deportation proceedings, he said. "We haven't seen a flood of these cases since the 2010 decision," he noted. "The facts of the Servin case are so extraordinary it couldn't happen very often."

There were two parts to the ruling allowing Servin to stay: He was judged to have come in legally because he was "inspected and admitted" and he was awarded his green card because he was his family's sole support.

Homeland Security officials declined to discuss the case or speculate on the impact of the Texas ruling.

But Clayton said she and Karalash have four other clients they think could benefit from the case law.

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