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COURT URGED TO UPHOLD DEPORTATION OF ALIENS WHO COMMIT DRUG FELONIES

(Lopez v. Gonzales)

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to permit the U.S. government to deport all aliens who commit felonies that are drug-related. WLF urged the Court to rule that such crimes are "aggravated felonies," which bar the alien from pleading extenuating circumstances as a reason to avoid deportation.

In a brief filed in *Lopez v. Gonzales*, WLF argued that the rights of the public to be protected from the threat posed by dangerous alien felons outweigh whatever rights such felons may have to avoid removal. WLF argued that Congress has made clear its desire that *all* aliens convicted of serious crimes be deported, but that some lower courts appear intent on undermining that policy.

"As a result of aberrant appeals court decisions, thousands of criminal aliens at this moment are walking freely on the nation's streets, despite having been convicted of serious felonies," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Congress has adopted a series of statutes over the past 20 years that mandate automatic deportation for a broad categories of alien felons; the Supreme Court ought to put its foot down and insist that lower courts comply with those statutes," Samp said.

The case before the Supreme Court involves Jose Lopez, a Mexican citizen who sneaked into the country illegally in 1985 or 1986. Under the amnesty statute adopted by Congress in 1986, Lopez was able to obtain permanent resident alien status in 1990 and has lived in South Dakota ever since.

In 1997, Lopez was indicted in South Dakota state court on serious drug charges: one count of possessing cocaine, one count of distributing cocaine, and one count of conspiracy to distribute cocaine. In September 1997, Lopez pleaded guilty to a felony under South Dakota law: aiding and abetting the possession of a controlled substance (cocaine); in return, the distribution and conspiracy charges were dropped. He was sentenced to five years incarceration and served 15 months.

The INS then initiated deportation proceedings against Lopez. He conceded that he was deportable based on his criminal conviction. He insisted, however, that his felony

conviction was not an "aggravated felony" within the meaning of 8 U.S.C. § 1101(a)(43), and thus that he was eligible to seek "cancellation of removal" -- a procedure that allows otherwise deportable aliens to plead extenuating circumstances. The key issue in this case is whether Lopez's drug felony should be deemed an "aggravated felony." If so, he is statutorily ineligible for "cancellation of removal" and thus subject to automatic deportation.

The U.S. Court of Appeals for the Eighth Circuit in St. Louis agreed with the government that Lopez's crime was, indeed, an "aggravated felony," and thus it upheld Lopez's deportation order. The Supreme Court agreed to review the case because the Eighth Circuit's decision conflicts with decisions from other appeals courts regarding what constitutes an aggravated felony.

Under immigration law, any drug crime is an "aggravated felony" if it is a "felony punishable under the Controlled Substances Act." Lopez points out to the Court that the crime of which he was convicted would not have been a "felony" if he had been prosecuted under the federal Controlled Substances Act. In response, WLF argued that it is sufficient, to qualify as an "aggravated felony," if the drug crime is a felony under either State or federal law. WLF argued that because Lopez was convicted of a felony under South Dakota law, and because his crime was "punishable under the Controlled Substances Act" (albeit as a misdemeanor, punishable by only one year in prison), his crime is an "aggravated felony" that subjects him to automatic deportation.

WLF is a public interest law and policy center with supporters in all 50 States. It devotes a significant portion of its resources to combatting illegal immigration and ensuring that aliens who engage in criminal activities are excluded from American society. WLF filed its brief in this case on behalf of itself and the Allied Educational Foundation.

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For further information, contact WLF Chief Counsel Richard A. Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.