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## **COURT BARS AUTOMATIC DEPORTATION OF ALIENS WHO COMMIT DRUG FELONIES**

**(Lopez v. Gonzales)**

The U.S. Supreme Court ruled today that the federal government is not required to deport all aliens convicted of drug-related felonies. Rather, the Court held, a *state-court* drug-related felony conviction should not lead to *automatic* deportation unless the crime for which the alien was convicted would also have been deemed a felony under *federal* drug laws.

The 8-1 decision in *Lopez v. Gonzales* was a setback for the Washington Legal Foundation (WLF), which had filed a brief urging the 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. 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.

"As a result of courts' unwillingness to enforce Congress's get-tough-on-alien-felons policy, 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 reviewing the Court decision. "Congress has adopted a series of statutes over the past 20 years that mandate automatic deportation for broad categories of alien felons; the Supreme Court's interpretation of immigration law appears oblivious to that mandate," Samp said.

The case before the Supreme Court involved 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. There is considerable evidence that he resorted to fraud in order to obtain that status.

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 was whether Lopez's drug felony should be deemed an "aggravated felony." If so, he was 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 reversed.

Under immigration law, any drug crime is an "aggravated felony" if it is a "felony punishable under the Controlled Substances Act." Lopez pointed 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. The Supreme Court disagreed, ruling that the definition of "aggravated felony" ought to be read as being limited to "a felony punishable as a felony under the Controlled Substances Act." In dissent, Justice Thomas accused the majority of re-writing the statute by adding the words "as a felony" to the definition of an "aggravated felony."

Lopez's deportation may well be upheld despite today's ruling. He concedes that he is deportable as a result of his drug conviction. While today's ruling permits him to plead extenuating circumstances in an effort to win "cancellation of removal," it may be difficult for Lopez to demonstrate sufficient mitigating factors to overcome his criminal record, his illegal entry into this country by sneaking across the border from Mexico, and his apparent fraud in his later application for permanent resident alien status.

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 the country. 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](http://www.wlf.org).