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Court bars automatic deportations in drug cases

By David G. Savage
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WASHINGTON — The Supreme Court on Tuesday rejected the Bush administration's aggressive use of immigration laws to automatically expel legal immigrants for minor drug crimes, a decision that could spare thousands from being deported.

Immigrant-rights lawyers said the resounding 8-1 decision will allow noncitizens who have a family, a job and an otherwise clean record to appeal to immigration judges to stay in this country, despite a drug conviction.

"This ensures these lawful residents will have their day in court," said Benita Jain, a lawyer for the New York State Defenders Assn. in Brooklyn.

Federal judges in nine Western states, including California, have previously rejected the government's position on the language in the law. Immigrant-rights experts said Tuesday's decision doesn't change anything for legal immigrants in those states.

Since 1996, the more than 12 million legal immigrants in the United States have been subject to mandatory deportation if they are found guilty of an "aggravated felony," including a "drug trafficking crime." Four years ago, the government expanded the reach of this law to include state drug crimes that can result in a one-year jail term, even if the offense is simple drug possession.

In Tuesday's decision, the high court said that broad interpretation ignored the plain words of the law.

Noting Humpty Dumpty's use of words to mean whatever he wanted them to mean in author Lewis Carroll's "Through the Looking-Glass," the justices said it did not make sense to interpret the words "aggravated felony" and "drug trafficking crime" to mean simple drug possession.

Justice David H. Souter, who wrote the opinion, said the government's interpretation was incoherent and is "just what the English language tells us not to expect, and that result makes us very wary of the government's position."

The court said the automatic deportation rule should be triggered only by drug offenses that are the equivalent of drug crimes "punishable as a felony under federal law."

The decision reopened the case of Jose Antonio Lopez, an immigrant from Mexico who had lived as a permanent resident of South Dakota since 1990. He was married with two children and had owned a grocery store.

In 1997, he pleaded guilty to aiding and abetting another person's possession of cocaine. This was a felony in South Dakota but a misdemeanor under federal law.

After serving 15 months in prison, Lopez was released, but U.S. immigration authorities deported him to Mexico.

His lawyer, Patricia G. Mattos of St. Paul, Minn., said she told Lopez on Tuesday about the decision and his right to file a request to cancel his removal. "He was speechless. It was very emotional. He was very pleased the system had worked in the United States and that he will have his day in court," she said.

The ruling does not shield immigrants who commit minor drug crimes from being deported in all instances.

However, without the trigger of the automatic deportation rule, they can seek relief from an immigration judge.

It's unclear how many legal immigrants have been deported for minor drug crimes. Last year, the government said 77,000 legal immigrants were deported because they had criminal records, about 10% of which involved drug crimes.

From mid-1997 to May 2006, federal officials used the aggravated felony provisions to deport an estimated 156,713 people through court proceedings, according to the Transactional Records Access Clearinghouse, which is associated with Syracuse University.

Of that number, a third had criminal convictions for a controlled substance.

Immigrant-rights advocates say the stepped-up enforcement has collared many legal residents who are generally law-abiding and often well established in their adopted communities.

The Washington Legal Foundation, which had supported the government's view, called Tuesday's ruling a disappointment. Lopez was initially charged with more serious drug crimes, said Richard Samp, the group's general counsel.

"One would hope that immigration judges will grant 'cancellation of removal' to aliens convicted of felonies only in the rarest of circumstances," he said.

Tuesday's ruling is the second in three years in which the high court has limited the law's reach. The immigration law requires the government to expel those who commit a "crime of violence," but in 2004, the high court said that drunk driving is not a crime of violence.

In recent years, federal judges have split over whether an immigrant's conviction for a low-level state drug crime can be deemed an "aggravated felony" under immigration laws. Judges in the South and Midwest had adopted the government's view, but judges on the West Coast had rejected it.

"This does not change the situation for folks in California and the 9th Circuit," said Jayshri Srikantiah, a lawyer and director of the Immigrants Rights Clinic at Stanford University.

The Supreme Court justices did not focus on whether it was fair to deport longtime legal immigrants for a low-level drug offense.

Instead, they parsed the words in the federal law.

Souter said that "normal English usage" suggests Congress meant to punish and deport those who sell drugs, not those who simply possess them.

Justice Clarence Thomas was the sole dissenter, saying the law also makes reference to "any felony," which he said could mean both state and federal drug offenses that carry the felony label.

Lawyers who worked on the case said they were uncertain whether those who had been deported several years ago could reopen their cases.

By coincidence, the court heard arguments Tuesday in a related case involving the deportation of a legal Peruvian immigrant who was convicted of stealing a car in Marin County.

A ruling on that issue is due in several months.

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Times staff writer Nicole Gaouette contributed to this report.