

June 26, 2001

## SUPREME COURT RULES THAT CRIMINAL ALIENS MAY DELAY DEPORTATION

*(Immigration and Naturalization Service v. St. Cyr)*

The U.S. Supreme Court has ruled, contrary to a brief filed by the Washington Legal Foundation (WLF), that criminal aliens may postpone their removal from this country through multiple rounds of litigation.

In a narrow 5-4 decision, the Court held that resident aliens who commit an aggravated felony may challenge the validity of a removal order in federal district court, despite Congress's repeal of the statutory provision previously offering such relief and despite a federal law that unambiguously deprives federal district courts of jurisdiction in such cases. Justices O'Connor and Scalia wrote separate dissents. Justice Scalia summarized his position in the following passage:

The Court today finds ambiguity in the utterly clear language of a statute that forbids the district court (and all other courts) to entertain the claims of aliens such as respondent St. Cyr, who have been found deportable by reason of their criminal acts. It fabricates a superclear statement, "magic words" requirement for the congressional expression of such an intent, unjustified in law and unparalleled in any other area of our jurisprudence. And as the fruit of its labors, it brings forth a version of the statute that affords *criminal* aliens *more* opportunities for delay-inducing judicial review than are afforded to non-criminal aliens, or even than were afforded to criminal aliens prior to this legislation concededly designed to *expedite* their removal.

"We are disappointed with the Court's decision," said Shawn Gunnarson, WLF's Senior Counsel for Litigation Affairs. "Congress passed a law expressing its measured judgment that the nation is safer when the most dangerous category of foreigners, those convicted of aggravated felonies, are promptly removed from our shores. Contrary to the Court's reasoning, we find nothing in the Constitution that prevents our country's elected representatives from making that choice."

This case centers on the fate of Enrico St. Cyr, a native of Haiti, who in 1996, pleaded guilty in Connecticut court to drug trafficking. Before the INS could begin removal

proceedings against St. Cyr, Congress passed a new law that dramatically changed the rules governing the removal of aliens who commit crimes.

Enacted in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) aimed to remove barriers that previously allowed criminal aliens to remain in the country by reducing the availability of discretionary relief from removal and by restricting the opportunities for judicial review. In particular, IIRIRA declared that resident aliens who commit an aggravated felony may not challenge the legality of a final removal order.

Nonetheless, St. Cyr sought a petition for habeas corpus in federal district court. Citing statutory provisions that IIRIRA expressly repealed, St. Cyr maintained that he was eligible for discretionary relief. The district court agreed with St. Cyr, and the U.S. Court of Appeals for the Second Circuit affirmed. The court of appeals held that IIRIRA did not preclude St. Cyr from seeking a petition for habeas corpus in the district court. In part the court read IIRIRA this way to avoid a perceived conflict with the Suspension Clause.

In its brief filed with the Supreme Court, WLF had argued that the Second Circuit's reading of IIRIRA should be reversed for three reasons. First, WLF pointed out that the canon of constitutional doubt is misapplied when used to thwart the evident intent of Congress. It may be invoked only when a statute fairly admits more than one reading and when a constitutional issue may be avoided by selecting one interpretation rather than another without distorting the plain meaning of the statute. Second, WLF described how the language of IIRIRA unambiguously excludes the possibility of preserving habeas corpus jurisdiction in district courts to review the final removal orders of an alien like St. Cyr, who has committed an aggravated felony. Third, WLF argued that, read according to its plain meaning, IIRIRA does not offend the Suspension Clause. That Clause was originally understood to impose a disability on Congress's power to suspend the Great Writ, not to support an inherent habeas corpus jurisdiction in federal courts. Furthermore, even if original understanding is not treated as dispositive in this case, the precise context of the question presented—a restriction on the habeas corpus jurisdiction of district courts in a narrow category of immigration cases—gives the Court additional reasons to reject the Second Circuit's invocation of constitutional doubt and, with it, the court's interpretation of IIRIRA.

The Washington Legal Foundation is a public interest law and policy center with supporters in all fifty states. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights.

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