

New York State Defenders Association

Immigrant Defense Project

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Key Legal Precedents in *Lopez v. Gonzales* and *Toledo-Flores v. U.S.*

On Oct. 3, the U.S. Supreme Court will hear oral arguments in two cases, *Lopez v. Gonzales* and *Toledo-Flores v. U.S.*, that challenge the unfair and harsh punishments imposed on legal immigrants for crimes that result in little or no jail time for others. After criminal proceedings have concluded and their sentences have been successfully served, legal immigrants face a second punishment – mandatory deportation with no chance to present mitigating evidence before an immigration judge. A U.S. citizen convicted of the same crime who has completed his sentence does not receive this harsh second punishment. Established legal precedents weigh in favor of overturning the government's harsh application of the Immigration and Nationality Act when it comes to low-level drug possession.

- All courts, including the Supreme Court, are required to follow the “plain meaning” rule. That is, they must read a statute based on the common understanding of the words that Congress used. Under the plain terms of the Immigration and Nationality Act, drug possession does not constitute “drug trafficking.”
- According to dictionary definitions and a long line of case law, “illicit trafficking” and drug “trafficking” apply to sale or dealing. Possession, without distribution, does not constitute “trafficking.”
- The two federal Courts of Appeals in the cases before the Supreme Court have misapplied the law and characterized first-time, low-level drug possessors as illicit drug trafficking “aggravated felons,” a label that triggers mandatory deportation with no opportunity to present mitigating factors, such as the best interests of U.S. citizen children, service in the U.S. military or rehabilitation.
- The majority of Federal Courts of Appeals that have considered the government's recent extension of the “drug trafficker” label to immigrants convicted of low-level state simple possession offenses have concluded that state drug-related offenses that do not involve trafficking are not drug trafficking crimes unless they would be so considered under federal law. See *Gerbier v. Holmes*, 280 F.3d 297 (3d Cir. 2002); *Cazarez-Gutierrez v. Ashcroft*, 382 F.3d 905 (9th Cir. 2004); *U.S. v. Palacios-Suarez*, 418 F.3d 692 (6th Cir. 2005); *Gonzales-Gomez v. Achim*, 441 F.3d 532 (7th Cir. 2006).
- Even Judge Posner of the Seventh Circuit Court of Appeals – widely considered to be a conservative judge – has held that simple possession does not constitute drug trafficking under the Immigration and Nationality Act. *Gonzales-Gomez v. Achim*, 441 F.3d 532 (7th Cir. 2006).
- Judge Posner noted: “The only consistency that we can see in the government's treatment of the meaning of “aggravated felony” is that the alien always loses.” *Id.*

- Moreover, a recent Supreme Court case, *Leocal v. Ashcroft*, 543 U.S. 1 (2004), strongly supports Lopez and Toledo-Flores' position. In *Leocal*, the Court held that an offense punishing accidental or negligent conduct is not a "crime of violence" under the Immigration and Nationality Act and reversed the deportation order of a lawful permanent resident. In so doing, the Court relied on the "ordinary meaning" of the "crime of violence" term at issue in that case and stated that interpreting the term to encompass accidental or negligent conduct would blur the distinction between the "violent" crimes Congress sought to distinguish for heightened punishment and other crimes. *Leocal* was a rare unanimous decision written by Chief Justice Rehnquist.
- The *Lopez* and *Toledo-Flores* cases are the latest in a line of recent cases that challenge the government's harsh application of 1996 amendments to the detention and deportation provisions of the Immigration and Nationality Act. The Supreme Court has rejected many of these harsh interpretations. See *INS v. St. Cyr*, 533 U.S. 289 (2001) (rejecting retroactive application of mandatory deportation provision); *Zadvydas v. Davis* and *Ashcroft v. Ma*, 533 U.S. 678 (2001) (striking down indefinite detention of immigrants); *Demore v. Kim*, 538 U.S. 510 (2003) (upholding detention of immigrants during deportation proceedings but leaving open the possibility of constitutional challenge where the immigrant has raised a valid defense to deportation or detention is unreasonably prolonged); *Leocal v. Ashcroft*, 543 U.S. 1 (2004) (unanimously striking down expansive interpretation of the aggravated felony "crime of violence" mandatory deportation ground); *Clark v. Martinez*, 543 U.S. 371 (2005) (rejecting government refusal to apply earlier *Zadvydas* decision to end indefinite detention of another class of immigrants).
- Even if the Court decides that the Immigration and Nationality Act is ambiguous in the current cases, it still must find in favor of Lopez and Toledo-Flores because of the "rule of lenity." That rule requires any lingering ambiguities in a statute be construed against deportation.
- Justice Scalia has called the rule of lenity one of the most "widely held value-judgments in the entire history of human thought." See *Rogers v. Tennessee*, 532 U.S. 451, 467-68 (2001) (Scalia, J., dissenting). He has stated "where it is doubtful whether the text includes the penalty, the penalty ought not be imposed." *United States v. R.L.C.*, 503 U.S. 291, 309 (1992)(Scalia, J., concurring).

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The Immigrant Defense Project provides training, counseling and publishes reference materials on immigration law for defense lawyers and others who represent or assist immigrants in criminal justice and immigration systems, as well as to immigrants themselves.