

# New York State Defenders Association Immigrant Defense Project

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## Overview of Immigration Cases before the U.S. Supreme Court

### Unfair and Harsh Laws Tear Families Apart

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 will decide whether legal immigrants who have been convicted of low-level drug possession can be mislabeled as drug traffickers and aggravated felons under the Immigration and Nationality Act. After criminal proceedings have concluded, 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 receives no such harsh second punishment. These legal immigrants are torn from their spouses and families, who are often U.S. citizens, and removed from the careers, businesses, and communities they have built over many years in this country. For example:

#### Lindy Letisha Simon

Lindy Simon entered the United States as a lawful permanent resident when she was 11 years old and built a family and a career for the next 30 years. She is the wife of another legal immigrant, has a U.S. citizen son, and is a devoted grandmother to a U.S. citizen grandson. Ms. Simon is also a home health care aide and deeply connected to her community in Brooklyn, N.Y. Her employers describe her as hard-working and dependable. Ms. Simon faces mandatory deportation because of a conviction for marijuana possession for which she received five years probation. Ms. Simon completed her probation sentence early, and this was her first and only arrest or conviction. The Immigration Judge in her deportation case found that this conviction was “aberrational in the context of her entire life...[Ms. Simon] has been a consistently hard working woman, she has worked hard to provide the best for her family and it is very clear that her family is very supportive of her and that she is very supportive of her family.” Nevertheless, the government appealed, arguing that the judge cannot consider these factors and that Ms. Simon must be deported.

#### Martin Abundis

Martin Abundis is a popular Executive Chef at Chez Zee, an acclaimed restaurant in Austin, Texas. He came to the United States when he was a young teenager and has been a lawful permanent resident for more than 15 years. His wife and three children are U.S. citizens, and they regularly attend their local Catholic church. In 1996, Mr. Abundis was convicted of possessing less than one gram of cocaine – his first and only arrest or conviction – and sentenced to probation. Just this month, this conviction was overturned on constitutional grounds – Mr. Abundis has the resources to afford legal counsel, which not all legal immigrants are fortunate enough to have. But for the past year, the Abundis family has lived under the threat of his mandatory deportation because this 10-year-old offense was being treated as drug trafficking. The government had begun a removal (deportation) case against him in 2005. More than 20 individuals wrote letters of support for him, including two former mayors of Austin, members of Congress, employers, neighbors and family – but under the government’s misinterpretation of the law, an Immigration Judge could not consider this support or the effect of his deportation on his young U.S.-born children.

More stories profiling family and community impact appear in an *amicus* brief filed by 24 civil rights, immigrant rights and legal organizations.

[http://www.nysda.org/idp/docs/06\\_Community%20Impact%20\(Amicus\).pdf](http://www.nysda.org/idp/docs/06_Community%20Impact%20(Amicus).pdf).

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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.

To arrange an interview with legal experts or affected immigrant families, please call Margot Friedman at 202-330-9295.