

Supreme Court's Decision Will Help Many Immigrants

By Ajay Choudhary

A ruling that a non-citizen's crime is considered to be an "aggravated felony" is like a death sentence under the immigration laws. If a non-citizen is convicted of an "aggravated felony," it will be extremely difficult for the non-citizen to avoid being deported. Therefore, whether a particular crime is considered to be an "aggravated felony" is a critical issue.

In a recent decision, the United States Supreme Court clarified the meaning of the term "aggravated felony." The name of the case that was decided by the Supreme Court is Lopez v. Gonzales. In that case, Jose Lopez was granted permanent residence (a "green card") in 1990. In 1997, Lopez was convicted of a drug possession crime. Lopez's conviction was a felony under state law, but his crime would have been a misdemeanor under federal law. As a result of Lopez's conviction, the government deported him. However, after Lopez was deported, he appealed his deportation order to the Supreme Court.

In the Supreme Court, the government argued that because Lopez's conviction was a felony under state law, his conviction should be considered to be a "felony punishable under the Controlled Substances Act" (a federal law). The Supreme Court rejected this argument. The Supreme Court ruled that if a drug possession crime is not a felony under federal law, the drug possession crime will not be considered to be an "aggravated felony," even if the drug possession crime is a felony under state law.

The Supreme Court's decision is especially important in Texas because prior to the Supreme Court's decision, the Court of Appeals that governs federal cases in Texas

– the Court of Appeals for the Fifth Circuit – had ruled that a drug possession crime that is a felony under Texas law would be considered to be an “aggravated felony.”

As a result of the Supreme Court’s decision, most first-time drug possession crimes will now not be considered to be an “aggravated felony.” Any non-citizen who has been arrested for a drug crime or who has been convicted of a drug crime should ask a qualified attorney how the Supreme Court’s decision will affect his case.

Ajay Choudhary is an attorney at Coane and Associates, 1900 West Loop South, Suite 820, Houston, Texas 77027. His e-mail address is ajay.choudhary@coane.com and his phone number is (713) 850-0066.