

US Supreme Court issues anti-immigrant ruling

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On June 22, the US Supreme Court upheld in an 8-1 decision the deportation of Humberto Fernandez-Vargas. US immigration authorities had deported the 53-year-old Mexican citizen under the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which established that undocumented immigrants who reenter the country after a previous deportation must be deported again, denied all appeals or changes in immigrant status, and barred from reentry for ten years. Vargas had entered the United States illegally in 1982 after having been previously deported.

Vargas based his challenge to the deportation order on the laws in place in 1982, which allowed undocumented immigrants without criminal records to remain in the US while applying for legal status. He argued that his summary deportation, after having lived many years in the US, amounted to an ex-post-facto application of the law. The sole dissenting justice, John Paul Stevens, accepted this argument, stating that “the court usually did not apply new laws to old cases.”

The vindictive nature of the ruling is underscored by the specifics of Vargas’ circumstances. Following his reentry to the United States 24 years ago, he opened a small business, maintained a clean criminal record, married a US citizen and had a son by her.

He applied for legal status on the basis of his marriage to a US citizen. That alerted immigration authorities, who took him into custody and deported him to Juarez, Mexico two years ago. His wife, Rita, has continued the legal battle on his behalf.

The eight justices who ruled against Vargas included three of the nominal liberals. One of them, Justice David Souter, wrote the majority opinion, arguing that Vargas was a “continuous lawbreaker” who should have had “ample warning” of the IIRIRA.

Justice Stevens’ dissenting opinion highlighted the

cruelty and dubious legality of the majority position. “At the time of his entry, and for the next 15 years,” Stevens wrote, “it inured to petitioner’s benefit for him to remain in the United States continuously, to build a business, and to start a family. After April 1, 1997, the date on which the applicable reinstatement provision became effective, all of these activities were rendered irrelevant in the eyes of the law.”

The effects on Vargas and his family have been devastating. According to *desertnews.com*, Vargas said in a phone interview: “I need my family... I wish I could be with my family.” Vargas’ wife “described her family as ‘destroyed,’” according to the web site.

Jennifer Chacon, a law professor at the University of California at Davis, said, “This concerns the people we should be the least concerned about. They are stable people with jobs; grandparents, parents, husbands. These people are not security threats.”

The American Civil Liberties Union and several immigrant-rights organizations had urged the Court not to apply the 1996 retroactively.

Vargas and his attorneys will continue to appeal to the Supreme Court, as a footnote in the decision allows him to apply for a waiver that would enable him to return to the US legally. However, his attorneys are not optimistic, given the difficulty in obtaining such waivers.

The IIRIRA was passed in 1996 by the Republican-controlled Congress and signed into law by President Clinton, a Democrat. The provision of the bill that was applied retroactively to Vargas is only one of several draconian measures.

The bill sharply curtails judicial review of deportation cases, and threatens deportation for permanent legal residents arrested for petty crimes such as shoplifting or marijuana possession. It also authorizes state and local

governments to deny social benefits to “aliens.”

The ruling will affect tens of thousands of undocumented immigrants in the United States. Workers who have lived in the United States for years will be separated from their families and friends and deprived of their livelihoods as a result of the retroactive enforcement of this reactionary law.

The effects of the right-wing campaign against immigrants as well as the elevation of two Bush nominees to the high court can be seen in the difference between last week’s ruling and the Supreme Court decision in 2001 in a case that involved the same law. In *INS v. St. Cyr*, the Court ruled that the 1996 law could not be applied retroactively to permanent legal residents who had been charged with a crime. In the 5-4 ruling, Stevens, arguing for the majority, wrote that “a statute may not be applied retroactively... absent a clear indication from Congress that it intended such a result.”



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