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## High court affirms legal protections for immigrants

Two Supreme Court rulings affect thousands of people facing deportation from the U.S.

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By Julie Sullivan of The Oregonian staff

The U.S. Supreme Court on Monday ruled that legal immigrants convicted of crimes have the right to fight their deportation orders in court.

In a 5-4 split, the court ruled that two 1996 immigration laws did not strip federal courts of the ability to review immigration orders -- nor did Congress intend them to when it got tough on illegal immigration.

The justices also rejected the argument that 1996 immigration laws apply retroactively to immigrants who made plea bargains before the laws took effect.

The rulings, offered in two separate cases, affirm basic legal protection for immigrants whose criminal convictions make them deportable, experts say. The decision should also protect thousands of people facing deportation -- often for minor crimes, including shoplifting and drunken driving -- because of the 1996 laws.

The dramatic -- and unintended -- consequences of the 1996 immigration laws were featured last year in an Oregonian series, "Liberty's Heavy Hand," which detailed how the rules and their enforcement by U.S. Immigration and Naturalization Services divided families and sometimes resulted in deportation of longtime residents, often for minor crimes committed decades ago.

The two cases argued before the Supreme Court in April concerned four immigrants convicted of drug crimes in New York and Connecticut.

Attorneys for the Department of Justice argued that in passing the Anti-

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Terrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Acts of 1996, Congress intended to strip courts of their jurisdiction in such cases in order to speed the deportation of convicted criminals.

But in the majority opinion issued Monday, Justice John Paul Stevens stated that given the lack of a "clear, unambiguous and express statement of congressional intent, to preclude judicial consideration of habeas of such an important question of law . . . would raise serious constitutional questions."

Stevens was joined in the majority by Justices Anthony Kennedy, David Souter, Ruth Bader Ginsburg and Stephen Breyer. Dissenting were Chief Justice William Rehnquist and Justices Sandra Day O'Connor, Antonin Scalia and Clarence Thomas.

Lucas Guttentag, director of the National ACLU Immigrants' Rights Project, who argued both cases before the court, called the opinion "a ringing endorsement of the principle of judicial review and the right to challenge the legality of a deportation order."

The power of the courts to review the application of the law under the writ of habeas has been a standard since colonial times, when it was first used to challenge what the government had done in order to prevent or end arbitrary or illegal detention, said Richard Boswell, professor at Hastings College of the Law at the University of California in San Francisco.

While Boswell said the ruling "preserves the power of the court to intervene," others called the ruling a vote for fairness. Before 1996, some people convicted of a crime could petition for a waiver and argue their case in court. That option disappeared under the new laws.

But Justice Stevens wrote that aliens who entered plea bargains under the old law "almost certainly relied" on that right "in deciding whether to forgo their right to a trial." The "elimination of any possibility of relief has an obvious and severe retroactive effect."

Greg Siskind, an immigration attorney, said, "If someone pleaded guilty in 1995, they were cooperating with the prosecutor and to now say, we're going to change all the rules, is fundamentally unfair." Siskind publishes Siskind's Immigration Bulletin, a leading resource on changes in immigration law.

Under the ruling, those immigrants who were eligible for the waiver under the old law can still apply, even though the waiver no longer exists.

The ruling is likely to help Charles Jaramillo, a West Chester, Pa., contractor who pleaded guilty to delivering \$40 worth of cocaine in 1996 and who served home detention and probation but no jail time. Jaramillo, who has lived in the United States since he was 8 months old, has been fighting deportation to Colombia. He was born in the South American nation but neither reads nor writes in Spanish.

"I hope this ruling helps. I've been living with this nightmare for five years," he said Monday.

Laurie Kozuba, director of Citizens and Immigrants for Equal Justice, which represents more than 1,000 families of legal immigrants grappling with the 1996 laws, said that Monday's ruling was a victory in fixing the 1996 laws but

that it does not address mandatory detention or the thousands of people who've already been deported.

"Let's not forget this is just the first step. Congress still has a lot to do," Kozuba said.

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You can reach Julie Sullivan at 503-221-8068 or by e-mail at [juliesullivan@news.oregonian.com](mailto:juliesullivan@news.oregonian.com)

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