



Immigrant Defense Project

Fourth Quarter Report: July - October 2023

Mr. A-J- is an older gentleman living with his extended family in California. He has survived difficult times in his life, and the injustices of living in overpoliced communities. This led the government to issue a deportation order against him, based on prior convictions. He has lived in the United States as a green card holder for decades. A state court then overturned his prior convictions under a California wrongful conviction law. When Mr. A-J- tried to then reopen his prior deportation case, the federal government refused, saying that for immigration purposes a conviction remained, even though it had been eliminated by the state court. The government has issued several decisions that take this position against other longtime green card holders and residents with families in the United States. Several were then appealed to the Ninth Circuit. The court designated *A-J-* as the lead case to decide this justice system question: whether Congress wrote immigration law to give full legal effect to a state wrongful conviction law that eliminates prior convictions and sentences. While briefing was ongoing, the government settled *A-J-* in early 2023. Subsequently, the court designated new cases as the lead cases, and the government settled them too, as well as several other cases. Several now await decisions from federal agency adjudicators. Last month the government issued a public statement beginning the process to issue a federal regulation over laws similar to the California wrongful conviction law. In the next month, IDP and criminal and immigration stakeholders and any member of the public may submit a public comment regarding the government's questions about appropriate regulations and legal rules in wrongful conviction cases for noncitizens. The government will then decide whether to issue a regulation on this issue. In addition, several cases remain fully briefed before federal agency adjudicators, and several others have been appealed to federal courts of appeals, including the Ninth Circuit.

Mr. P-V- had lived in New York with his son. He lived in the United States for a decade with his green card until the government ordered him deported based on a misdemeanor conviction and sentence that had been eliminated by a New York law. New York had reformed its sentencing laws to lower the maximum possible sentence for misdemeanors. Mr. P-V- had not been sentenced to any time in jail, but the new law lowered his sentencing classification, as it did for 100% of A-misdemeanors in New York State, past and present. In Mr. P-V-'s immigration proceedings, the government held that the new law was not effective for immigrants, and that his prior sentencing classification remained unchanged. He appealed to the Second Circuit, which unfortunately denied his appeal in a split decision in September in *Vasquez v. Garland*, No. 21-6380 (2d Cir. 2023). The case had been pending for a full year after oral argument in September 2022 before Judges Robinson, Chin, and Jacobs. Mr. P-V- submitted several notices of supplemental authorities to the court during that year, regarding recent decisions of the Supreme Court that supported Mr. P-V-'s legal arguments. In a 2-1 opinion, Judges Jacobs and Chin held

that the federal immigration provisions at issue in his case intended to look at his conviction at the time of the conviction, regardless of any subsequent change in law. Judge Robinson dissented, squarely disagreeing with the majority, instead explaining that the immigration laws at issue fully respect New York's decision to lower its sentencing maximum on misdemeanor offenses. Since the decision, Mr. P-V- has asked the court to extend the period of time for him to file a request that the Second Circuit rehear the case. In addition, the period of time for Mr. P-V- to file a petition for a writ of certiorari with the Supreme Court remains open. The Ninth Circuit has joined the Second Circuit in *Velasquez Rios v. Barr & Desai v. Barr*. There is a case pending on this matter before the Eleventh Circuit, *Edwards v. Attorney General*.

The Foundation should feel free to contact IDP through Andrew Wachtenheim, Nabilah Siddiquee, or Marie Mark for any further information about the *A-J- v. Garland* or *P-V- v. Garland* litigation.

Media links:

Immigration Review Podcast: <https://www.kktplaw.com/immigration-review-podcast/cases-discussed-on-the-immigration-review-podcast/>

Federal Defenders of New York Blog: <https://blog.federaldefendersny.org/a-panel-of-the-second-circuit-holds-over-a-dissent-that-a-non-citizen-is-removable-for-a-crime-involving-moral-turpitude-for-which-a-sentence-of-one-year-or-longer-may-be-imposed/>

Congressional Research Service,
Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (September 11, 2023–September 17, 2023): <https://crsreports.congress.gov/product/pdf/LSB/LSB11042>