

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## **Supreme Court Provides Some Relief from Harsh Immigration Consequences of Petty Drug Offenses**

The United States Supreme Court has overruled the 5th Circuit Court of Appeals in *Carachuri-Rosendo v. Holder*. The petitioner had agreed that he was removable because of the two simple possession convictions but had applied for cancellation of removal. The 5th Circuit ruled that the petitioner's conviction on two simple possession charges constituted an aggravated felony thereby making the petitioner ineligible for cancellation of removal. This ruling had potentially disastrous immigration consequences for thousands of non-citizens charged with petty drug offenses.

The petitioner had served 20 days on his first simple possession and 20 days on the second. The case was brought in Texas state court. The prosecutor had not sought an enhancement though enhancement as a recidivist offender was possible under both Texas and Federal law. The government argued successfully in the 5th Circuit that because the second offense could have been enhanced under the law, the second conviction constituted an aggravated felony.

The Supreme Court reversed the 5th Circuit. In short, the Court stated that in order to be convicted on an aggravated felony as a recidivist offender, the State must have provided notice of the intent enhance to the defendant so that he could have defended against those charges. The court refused to entertain the government's theoretical possibility of enhancement when in fact there had been no such allegations in the second criminal action. Nor did such a possibility factor into the plea which resulted in only a 10 day sentence under Texas law for simple possession.

This is good news for the petitioner and all non-citizens facing removal for petty drug offenses. However, this does not end the matter. Though the petitioner is now eligible for cancellation of removal, there is no guarantee that cancellation will be granted. If you find yourself or a loved one in this situation, contact an immigration attorney immediately. If you are charged with any kind of crime, especially drug offenses, then make sure you understand all possible immigration consequences of the charges and any offered plea. Even seemingly trivial offenses may have disastrous immigration consequences.

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