

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## Deportation on Minor Marijuana Possession Before Supreme Court

Arguments in *Carachuri-Rosendo v. Holder* began yesterday before United States Supreme Court. The case addresses the issue severe immigration consequences of removal and deportation of immigrants from the United States for minor possession of marijuana.

The case involved a situation where the defendant was convicted for simple possession of marijuana in 2004. He was sentenced to 20 days in jail. One year later, he was convicted of simple possession of xanax on a no-contest plea. Both were misdemeanors under Texas law. Despite the fact that both convictions were misdemeanors, the prosecutor argued and the Court agreed (both the district court and the 5th Circuit Court of Appeals in Texas) that successive convictions allowed for the defendant to be charged with drug trafficking for the second offense. Drug trafficking convictions are deportable offenses, with very few exceptions.

The Supreme Court will address whether or not the practice of equating two misdemeanor drug offenses to a drug trafficking offense is constitutionally allowed. Several Circuits have already ruled that it is not with the 5th Circuit (Texas, Louisiana and Mississippi) continuing the practice.

The Court's ruling will affect thousands of immigrants facing immigration for misdemeanor drug offenses. Under the current state of the law, there is an exception to removal for first time simple possession of marijuana (less than 30 grams). Any subsequent drug offenses no matter how trivial will result in removal and deportation.

The New York Times addressed an individual who is keenly interested in the case's outcome. The article addressed Jerry Lemaine who had been arrested for a small amount of marijuana as a teenager. That case was dismissed. He was caught later with a single marijuana cigarette in 2007. His public defender had advised him to plead guilty and pay the \$100 fine. This would make sense in the typical case, but in case of an immigrant, the plea resulted in Jerry being placed in removal. He has spent the next three years in confinement fighting removal to Haiti where he left when he was 3 years old. The court refused to consider his exemplary life where he was working on a nursing degree, helping to care for a brain injured United States citizen sister, and helping his mother single mother who worked two jobs to care for the family and get them out of a dangerous Bronx neighborhood to Long Island.

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There are thousands of others currently in removal proceedings for similar charges of minor possession of marijuana. The Court's ruling will affect thousands of immigrants facing immigration for misdemeanor drug offenses. Under the current state of the law, there is an exception to removal for first time simple possession of marijuana (less than 30 grams). Any subsequent drug offenses no matter how trivial will result in removal and deportation.

The immigration enforcement policies have tragic consequences for many immigrants and their families. The policies have broader policy implications that directly impact local law enforcement, prosecutor offices and the Courts. These will be addressed in the second part of this article.

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