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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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IMMIGRATION AND NATURALIZATION SERVICE *v.* ST. CYR

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 00–767. Argued April 24, 2001– Decided June 25, 2001

Before the effective dates of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), §212(c) of the Immigration and Nationality Act of 1952 was interpreted to give the Attorney General broad discretion to waive deportation of resident aliens. As relevant here, the large class of aliens depending on §212(c) relief was reduced in 1996 by §401 of AEDPA, which identified a broad set of offenses for which convictions would preclude such relief; and by IIRIRA, which repealed §212(c) and replaced it with a new section excluding from the class anyone "convicted of an aggravated felony," 8 U. S. C. §1229b(a)(3). Respondent St. Cyr, a lawful permanent United States resident, pleaded guilty to a criminal charge that made him deportable. He would have been eligible for a waiver of deportation under the immigration law in effect when he was convicted, but his removal proceedings were commenced after AEDPA's and IIRIRA's effective dates. The Attorney General claims that those Acts withdrew his authority to grant St. Cyr a waiver. The Federal District Court accepted St. Cyr's habeas corpus application and agreed that the new restrictions do not apply to removal proceedings brought against an alien who pleaded guilty to a deportable crime before their enactment. The Second Circuit affirmed.

Held:

1. Courts have jurisdiction under 28 U. S. C. §2241 to decide the legal issue raised by St. Cyr's habeas petition. Pp. 7–24.

(a) To prevail on its claim that AEDPA and IIRIRA stripped federal courts of jurisdiction to decide a pure question of law, as in this case, petitioner Immigration and Naturalization Service (INS) must

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overcome both the strong presumption in favor of judicial review of administrative action and the longstanding rule requiring a clear and unambiguous statement of congressional intent to repeal habeas jurisdiction. Here, that plain statement rule draws additional reinforcement from other canons of statutory construction: First, when a statutory interpretation invokes the outer limits of Congress' power, there must be a clear indication that Congress intended that result; and second, if an otherwise acceptable construction would raise serious constitutional problems and an alternative interpretation is fairly possible, the statute must be construed to avoid such problems. Pp. 7–9.

(b) Construing the amendments at issue to preclude court review of a pure question of law would give rise to substantial constitutional questions. The Constitution's Suspension Clause, which protects the privilege of the habeas corpus writ, unquestionably requires some judicial intervention in deportation cases. *Heikkila* v. *Barber,* 345 U. S. 229, 235. Even assuming that the Clause protects only the writ as it existed in 1789, substantial evidence supports St. Cyr's claim that pure questions of law could have been answered in 1789 by a common-law judge with power to issue the writ. Thus, a serious Suspension Clause issue would arise if the 1996 statutes have withdrawn that power from federal judges and provided no adequate substitute. The need to resolve such a serious and difficult constitutional question and the desirability of avoiding that necessity reinforce the reasons for requiring a clear and unambiguous statement of constitutional intent. Pp. 9–14.

(c) To conclude that the writ is no longer available in this context would also represent a marked departure from historical immigration law practice. The writ has always been available to review the legality of executive detention, see *e.g., Felker* v. *Turpin,* 518 U. S. 651, 663, and, until the 1952 Act, a habeas action was the sole means of challenging a deportation order's legality, see, *e.g., Heikkila,* 345 U. S., at 235. Habeas courts have answered questions of law in alien suits challenging Executive interpretations of immigration law and questions of law that arose in the discretionary relief context. Pp. 14–17.

(d) Neither AEDPA §401(e) nor three IIRIRA provisions, 8 U. S. C. §§1252(a)(1), (a)(2)(C), and (b)(9), express a clear and unambiguous statement of Congress' intent to bar 28 U. S. C. §2241 petitions. None of these sections even mentions §2241. Section 401(e)'s repeal of a subsection of the 1961 Act, which provided, *inter alia,* habeas relief for an alien in custody pursuant to a deportation order, is not sufficient to eliminate what the repealed section did not grant– namely, habeas jurisdiction pursuant to §2241. See *Ex parte Yerger,* 8 Wall. 85, 105–106. The three IIRIRA provisions do not speak with sufficient clarity to bar habeas jurisdiction. They focus on "judicial review" or "jurisdiction to review." In the immigration context, however, "judicial review" and

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"habeas corpus" have historically distinct meanings, with habeas courts playing a far narrower role. Pp. 17–24.

2. Section 212(c) relief remains available for aliens, like St. Cyr, whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for §212(c) relief at the time of their plea under the law then in effect. Pp. 24–36.

(a) A statute's language must require that it be applied retroactively. *Bowen* v. *Georgetown Univ. Hospital,* 488 U. S. 204, 208. The first step in the impermissible-retroactive-effect determination is to ascertain whether Congress has directed with the requisite clarity that the law be applied retrospectively. *Martin* v. *Hadix,* 527 U. S. 343, 352. Such clarity is not shown by the comprehensiveness of IIRIRA's revision of federal immigration law, see *Landgraf* v. *USI Film Products,* 511 U. S. 244, 260–261, by the promulgation of IIRIRA's effective date, see *id.,* at 257, or by IIRIRA §309(c)(1)'s "saving provision." Pp. 24–30.

(b) The second step is to determine whether IIRIRA attaches new legal consequences to events completed before its enactment, a judgment informed and guided by considerations of fair notice, reasonable reliance, and settled expectations. *Landgraf,* 511 U. S., at 270. IIRIRA's elimination of §212(c) relief for people who entered into plea agreements expecting that they would be eligible for such relief clearly attaches a new disability to past transactions or considerations. Plea agreements involve a *quid pro quo* between a criminal defendant and the government, and there is little doubt that alien defendants considering whether to enter into such agreements are acutely aware of their convictions' immigration consequences. The potential for unfairness to people like St. Cyr is significant and manifest. Now that prosecutors have received the benefit of plea agreements, facilitated by the aliens' belief in their continued eligibility for §212(c) relief, it would be contrary to considerations of fair notice, reasonable reliance, and settled expectations to hold that IIRIRA deprives them of any possibility of such relief. The INS's argument that application of deportation law can never have retroactive effect because deportation proceedings are inherently prospective is not particularly helpful in undertaking *Landgraf*'s analysis, and the fact that deportation is not punishment for past crimes does not mean that the Court cannot consider an alien's reasonable reliance on the continued availability of discretionary relief from deportation when deciding the retroactive effect of eliminating such relief. That §212(c) relief is discretionary does not affect the propriety of this Court's conclusion, for there is a clear difference between facing possible deportation and facing certain deportation. Pp. 30–36.

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229 F. 3d 406, affirmed.

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. O'CONNOR, J., filed a dissenting opinion. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C. J., and THOMAS, J., joined, and in which O'CONNOR, J., joined, as to Parts I and III.