

10-1211 VARTELAS V. HOLDER

DECISION BELOW: 620 F.3d 108

LOWER COURT CASE NUMBER: 09-0649-ag

QUESTION PRESENTED:

Prior to the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), 110 Stat. 3009 (1996), April 1, 1997, 8 U.S.C. § 1101(a)(13), provided:

The term "entry" means any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that his departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by him or his presence in a foreign port or place or in an outlying possession was not voluntary.

In *Rosenberg v. Fleuti*, 374 U.S. 449 (1963), this Court held that a lawful permanent resident ("LPR") who made an "innocent, casual, and brief" trip across an international border did not "intend" a "departure" within the meaning of 8 U.S.C. § 1101(a)(13).

However, effective April 1, 1997, 8 U.S.C. § 1101(a)(13)(C)(v) repealed 8 U.S.C. § 1101(a)(13). The amended 8 U.S.C. § 1101(a)(13)(C)(v) provides:

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for the purpose of the immigration laws unless the alien, (v) has *committed* an offense identified in section 212(a)(2), unless since offense the alien has been granted relief under section 212(h) or 240A(a). (Emphasis added)

Two other Circuit Courts of Appeals have held that the amended 8 U.S.C. § 1101(a)(13)(C)(v) cannot be retroactively applied to an alien who pled guilty to a crime involving moral turpitude prior to the effective date of IIRIRA.

The question presented is:

Should 8 U.S.C. § 1101(a)(13)(C)(v), which removes LPR of his right, under *Rosenberg v. Fleuti*, 374 U.S. 449 (1963), to make "innocent, casual, and brief" trips abroad without fear that he will be denied reentry, be applied retroactively to a guilty plea taken prior to the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), 110 Stat. 3009 (1996)?

CERT. GRANTED 9/27/2011