

STEVENS, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 97–1252

JANET RENO, ATTORNEY GENERAL, ET AL.,
PETITIONERS v. AMERICAN-ARAB ANTI-
DISCRIMINATION COMMITTEE ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[February 24, 1999]

JUSTICE STEVENS, concurring in the judgment.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) is a part of an omnibus enactment that occupies 745 pages in the Statutes at Large. 110 Stat. 3009–546. It is not surprising that it contains a scrivener’s error. See *Green v. Bock Laundry Machine Co.*, 490 U. S. 504, 511 (1989). Despite that error, Congress’ intended disposition of cases like this is plain. It must be dismissed.

The textual difficulty that is debated by my colleagues concerns the impact of IIRIRA on proceedings that were pending on the effective date of the Act. Putting those cases to one side for the moment, the meaning of 8 U. S. C. §§1252(b)(9) and (g) (1994 ed., Supp. III) is perfectly clear. The former postpones judicial review of removal proceedings until the entry of a final order¹ and the latter de-

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¹ Section 1252(b)(9) provides:

“(9) CONSOLIDATION OF QUESTIONS FOR JUDICIAL REVIEW.— Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this title shall be available only in judicial review of a final order under this section.” 110 Stat. 3009–610.

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prives federal courts of jurisdiction over collateral challenges to ongoing administrative proceedings.² Thus, if §1252 applies to these respondents, the deportation proceedings pending before the Immigration and Naturalization Service (INS) are not yet ripe for review, and this collateral attack on those proceedings must be dismissed.

If we substitute the word “Act” for the word “section” in the introductory clause of §1252(g), the impact of this provision on pending proceedings is equally clear. That substitution would remove any obstacle to giving effect to the plain meaning of IIRIRA §§306(c)(1) and 309(c)(1). The former defines the effective date of the Act and makes §1252(g)’s prohibition against collateral attacks effective immediately;³ the latter makes the new rules inapplicable to aliens in exclusion or deportation proceedings pending before the INS on the effective date of the Act.⁴ Judicial

² Section 1252(g) provides:

“(g) EXCLUSIVE JURISDICTION.— Except as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.” *Id.*, at 3009–612.

³ Section 306(c)(1) provides:

“(c) EFFECTIVE DATE.—

“(1) IN GENERAL.— Subject to paragraph (2), the amendments made by subsections (a) and (b) shall apply [as provided under section 309, except that] subsection (g) of section 242 of the Immigration and Nationality Act (as added by subsection (a)), shall apply without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings under such Act.” *Id.*, at 3009–612.

⁴ Section 309(c)(1) provides:

“(c) TRANSITION FOR ALIENS IN PROCEEDINGS.—

“(1) GENERAL RULE THAT NEW RULES DO NOT APPLY.— Subject to the succeeding provisions of this subsection, in the case of an alien who is in exclusion or deportation proceedings before the title III–A effective date—

“(A) the amendments made by this subtitle shall not apply, and

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review of those administrative proceedings remains available in the courts of appeal under the old statutory regime. See 8 U. S. C. §1105a.

Admittedly, there is a slight ambiguity in the text of §309 because it refers to the “case of an alien who is in exclusion or deportation proceedings” before the effective date of the new Act. Respondents are such aliens, and therefore the word “case” arguably could be read to include their present collateral attack on the INS proceedings as well as to an eventual challenge to the final order of deportation. Because that reading would be inconsistent with §306, however, it is clear that Congress intended §309 to apply only to the INS “exclusion or deportation” proceedings that it expressly mentions.

To summarize, I think a fair reading of all relevant provisions in the statute makes it clear that Congress intended its prohibition of collateral attacks on ongoing INS proceedings to become effective immediately while providing that pending administrative proceedings should be completed under the scheme of judicial review in effect when they were commenced.

I should add that I agree with JUSTICE SOUTER’s explanation of why §1252(g) applies broadly to removal proceedings rather than to only three discrete parts of such proceedings. See *post*, at 5–8. I do not, however, share his constitutional doubt concerning the prohibition of collateral proceedings such as this one. Of course, Congress could not authorize punishment of innocent persons because they happen to be members of an organization that engaged in terrorism. For the reasons stated in Part III of the Court’s opinion, however, I have no doubt that the Attorney General may give priority to the removal of

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“(B) the proceedings (including judicial review thereof) shall continue to be conducted without regard to such amendments.” *Id.*, at 3009–625.

deportable aliens who are members of such an organization. See *ante*, at 16–18. Accordingly, I agree that the judgment of the District Court must be vacated.