

SUPREME COURT OF THE UNITED STATES

RENO, ATTORNEY GENERAL, et al.

v.

AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE et al.

**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT****No. 97-1252 Argued November 4, 1998 – Decided February 24, 1999**

Respondent resident aliens filed this suit claiming that petitioners, the Attorney General and other federal parties, targeted them for deportation because of their affiliation with a politically unpopular group. In violation of their First and Fifth Amendment rights. After the District Court preliminarily enjoined the proceedings against respondents, but while an appeal by the Attorney General was pending, Congress passed the illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA) which, *inter alia*, repealed the old judicial-review scheme in the Immigration and Nationality Act, and instituted a new provision, § 1252 (g) which restricts judicial review of the Attorney General's "decision or action" to "commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act" [e]xcept as provided in this section." The Attorney General filed motions in both the District Court and the Ninth Circuit, arguing that § 1252 (g) deprived them of jurisdiction over respondents' selective-enforcement claim. The District Court denied the motion. The Ninth Circuit consolidating an appeal from that denial with the pending appeal, upheld jurisdiction and affirmed the District Court's decision on the merits.

Held: Section 1252 (g) deprives the federal courts of jurisdiction over respondents' suit.

(a) Although IIRIRA , § 309 (c)(1)'s general rule is that the revised procedures for removing aliens, including , § 1252's judicial-review procedures, do not apply in exclusion or deportation proceedings pending on IIRIRA's effective date, IIRIRA , § 306(c)(1) directs that a single provision, , § 1252(g), shall apply "without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings. Section , § 1252(g) applies to three discrete actions that the Attorney General may take her "decision or action" to commence proceedings, adjudicate cases, or execute removal orders.*(Emphasis added). The provision seems designed to give some measure of protection to such discretionary determinations providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process designed by Congress. Respondents' challenge to the Attorney General's decision to "commence proceedings" against them falls squarely within § 1252(g), and § 1252 does not otherwise provide jurisdiction.

(b) The doctrine of constitutional doubt does not require that § 1252(g) be interpreted in such fashion as to permit immediate review of respondents' selective-enforcement claims. An alien unlawfully in this country has no constitutional right to assert such a claim as a defense against his deportation. 119 F. 3d 1367, vacated and remanded.