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Prior to April 30, 1996, a person was deportable upon<sup>5</sup>

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<sup>5</sup> The statutory definition of "aggravated felony" was amended by the AEDPA in ways not relevant to this case.

the sentence. AEDPA, Pub. L. No. 104-132, 110 STAT 1277-78 (1996). According to one treatise, "This essentially bars § 212 (c) relief for virtually anyone convicted of a crime." 1 Charles Gordon, Stanley Mailman, & Stephen Yale Loehr, Immigration Law and Procedure §2.04[14][b][v](Matthew Bender rev. ed. 2000).

Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA")<sup>6</sup> on September 30, 1996, with an effective date of April 1, 1997.<sup>7</sup> A form of discretionary relief is now called "cancellation of removal." It replaced § 212(c) relief and applies to resident aliens with domicile of at least five years who have not been convicted of an aggravated felony. IIRIRA, Pub. L. No. 104-208, § 304, 110 STAT 3009, 587-97 (1996).

For the first time under IIRIRA, Defendant's conviction qualifies both as a deportable domestic violence conviction and as an "aggravated felony" under the current law, 8 U.S.C. § 1227 (a)(2) (E) and (a)(2)(A)(iii); 8 U.S.C. § 1101(a)(43). Under these circumstances, Defendant asserts that IIRIRA's abrogation of § 212 (c) discretionary relief cannot fairly be applied to him and that he received erroneous advice at the immigration hearing, thus rendering the proceeding fundamentally unfair. He contends, by

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<sup>6</sup> IIRIRA is part of the Omnibus Appropriations Act 1997, Pub. L. No. 104-208, §§ 321, 322, 110 STAT 3009, 627-28 (1996).

<sup>7</sup> The transitional rules are not relevant to this case because deportation proceedings were not commenced until after the effective date.





putatively erroneous decision did not "effectively" rob Vieira of his right to review. Vieira filed a notice of appeal. He later deliberately withdrew the appeal. He



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

:

:

v.

:Criminal No. DKC 2000-0371

:

CARLOS ALBERTO SUAZO-MARTINEZ :

**ORDER**

For the reasons stated in the foregoing Memorandum Opinion, it is this 20<sup>th</sup> day of December, 2000, by the United States District Court for the District of Maryland, ORDERED that:

1. Defendant's motion to dismiss BE, and the same hereby IS, DENIED; and

2. The clerk will transmit copies of the Memorandum Opinion and this Order to counsel for the parties.

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DEBORAH K. CHASANOW  
United States District Judge