## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

YOHANI ANTONIO TAVERAS-LOPEZ, :

Petitioner

vs. : CIVIL ACTION NO. 3:CV-00-0236

: (CHIEF JUDGE VANASKIE)

JANET RENO, ATTORNEY GENERAL; DORIS MEISSNER, INS COMMISSIONER; and M. FRANCIS HOLMES, INS DIRECTOR

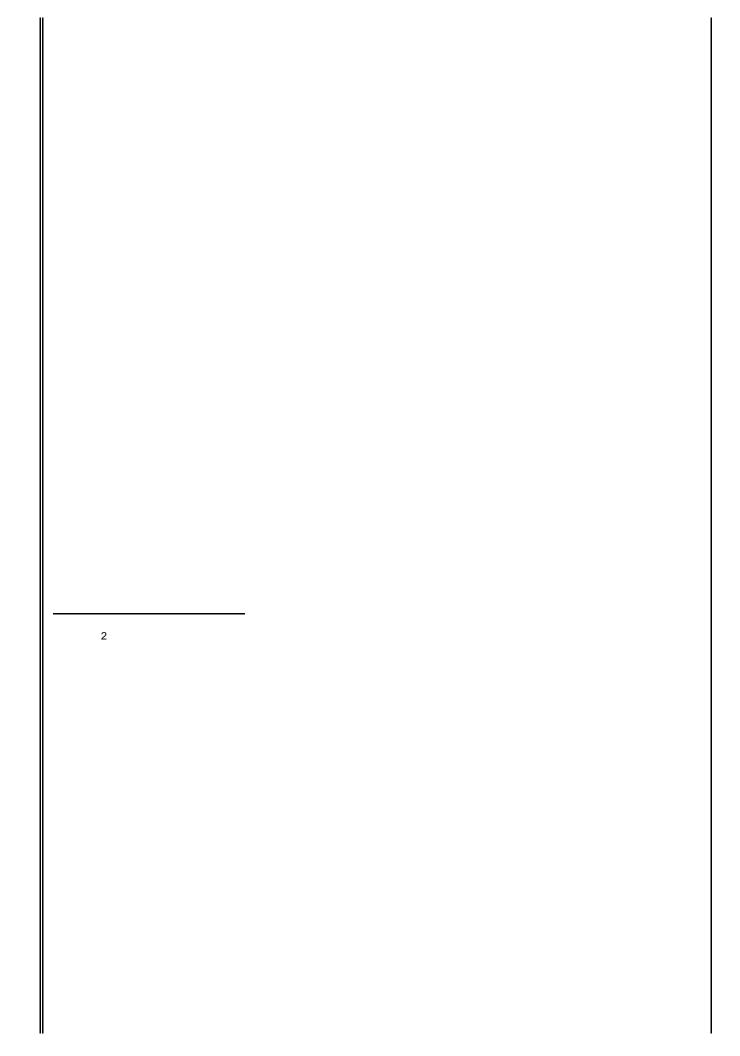
PHILADELPHIA DISTRICT

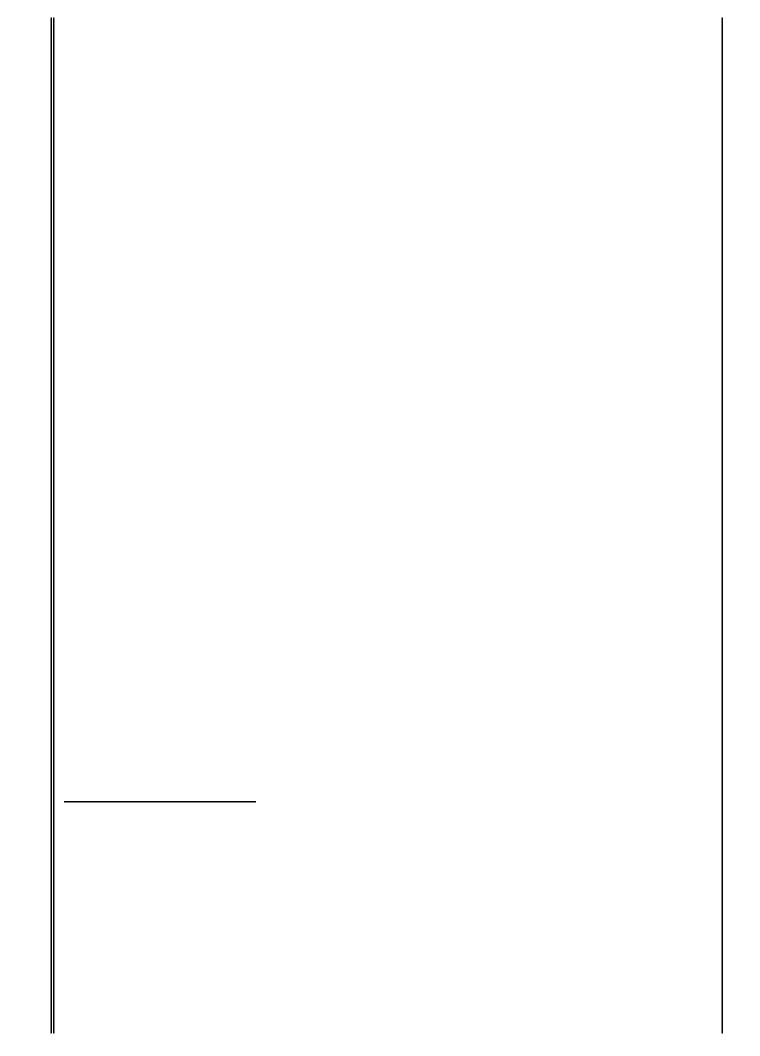
Respondents

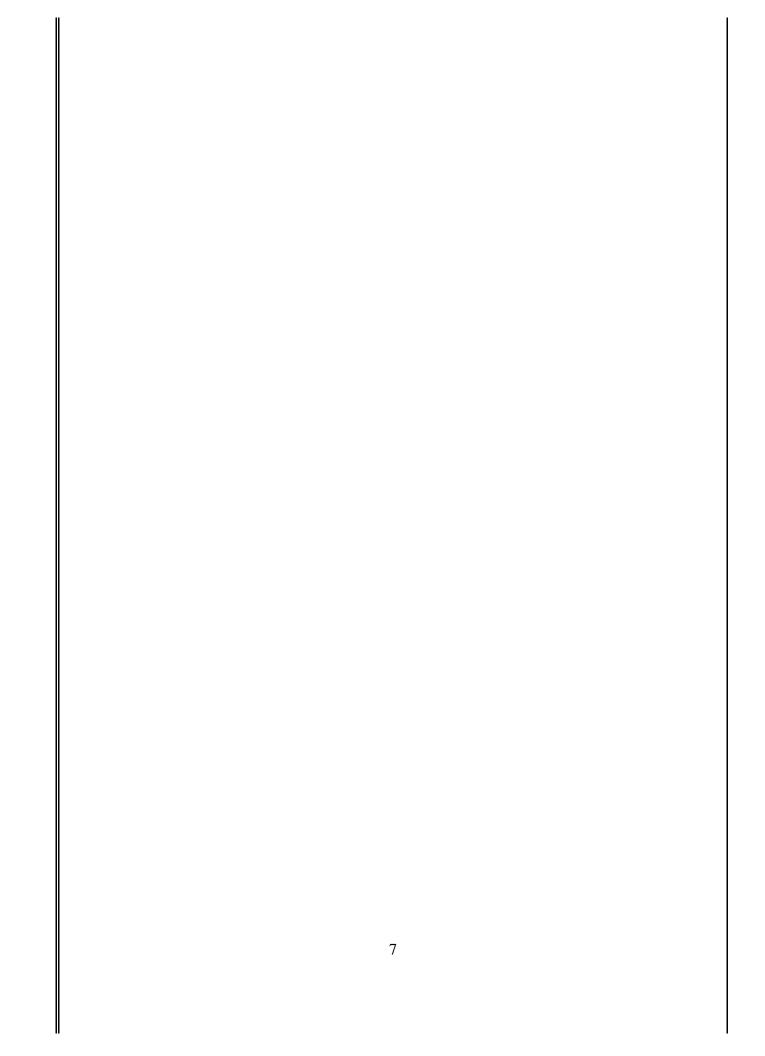
## MEMORANDUM

This is each abreas 28 pulls proceed in under 28 ud. S. Ones 120 120 (Ab jass 2 for interval 1800 of 120 ud of 1800 24

| conviction on which the order of removal depends. Even if a deportable alien could challenge |
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| the deportation-causing conviction in a § 2241proceeding brought afcti90oval deportatioe     |
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deportable defense. The validity <u>vel non</u> of the removal-causing conviction is not within the purview of the question of whether the alien is subject to removal. To allow a § 2241 proceeding involving an alien in INS custody to serve as the vehicle for a collateral attack to a state court conviction would require involvement of the state court prosecutors. Because the sentence for the underlying conviction has been fully served, state court prosecutors may have no invemc3the il attcating their convictions. Congmc3sional policy to remove from the United States those who have committed serious crimes may thus be thwarted. Finally, the strong congmc3sional invemc3the istreamlining the removal process would be circumvented by allowing § 2241 to be the avenue for a collateral challenge to an underlying state court conviction.

There are, however, counvemvailing conderations. Deportation is a drastic sanction.

As described by Judge Gertner e i<u>Wallace v. Reno</u>, 24 F. Supp. 2d 104, 112 (D. Mass. 1998):

Deportation, in the words of the Supreme Court, is 'at times equivalent of banishment or exile . . . .' Perhaps nowhere outside of the criminal law are the consequences for the attvidual so serious. It may deprive the alien of 'all that makes life worth living,' including the 'right to stay and live and work in this land of freedom,' or the po3sibility of living with her immediate family, 'a right that ranks high among the invemc3ts dhe attvidual.' [Citations omitted.]

Courts should be reluctant to permit the bare fact of conviction to resulthe iremoval whee there may not have been an opportunity to mount an attack on a constitutionally-suspect conviction.

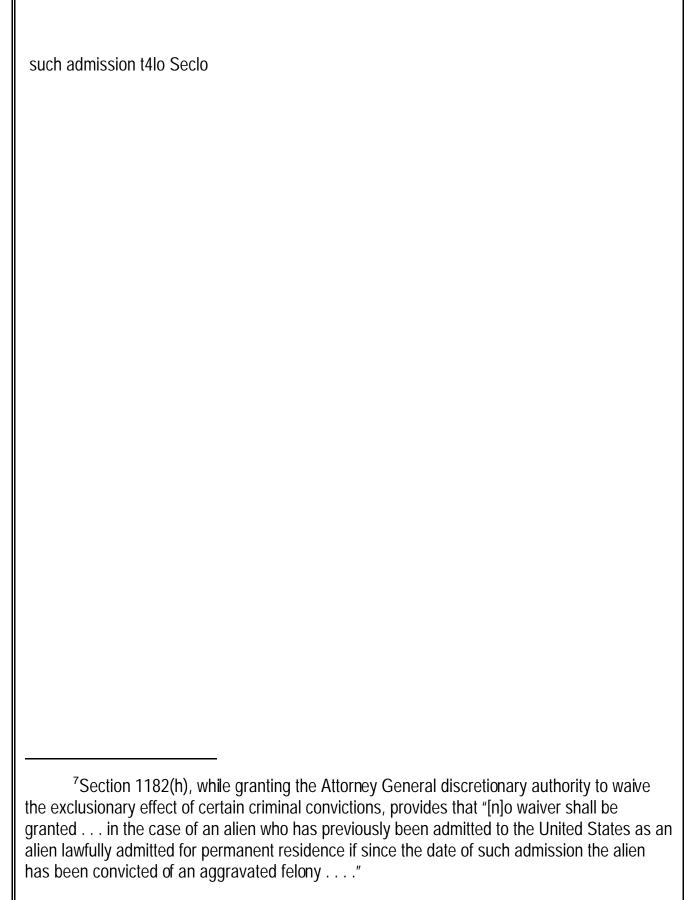
This may be especially true where, as here, a gDnitpleae i(esus h)Tj90.9200 0.0000 TDi on s sour(sen

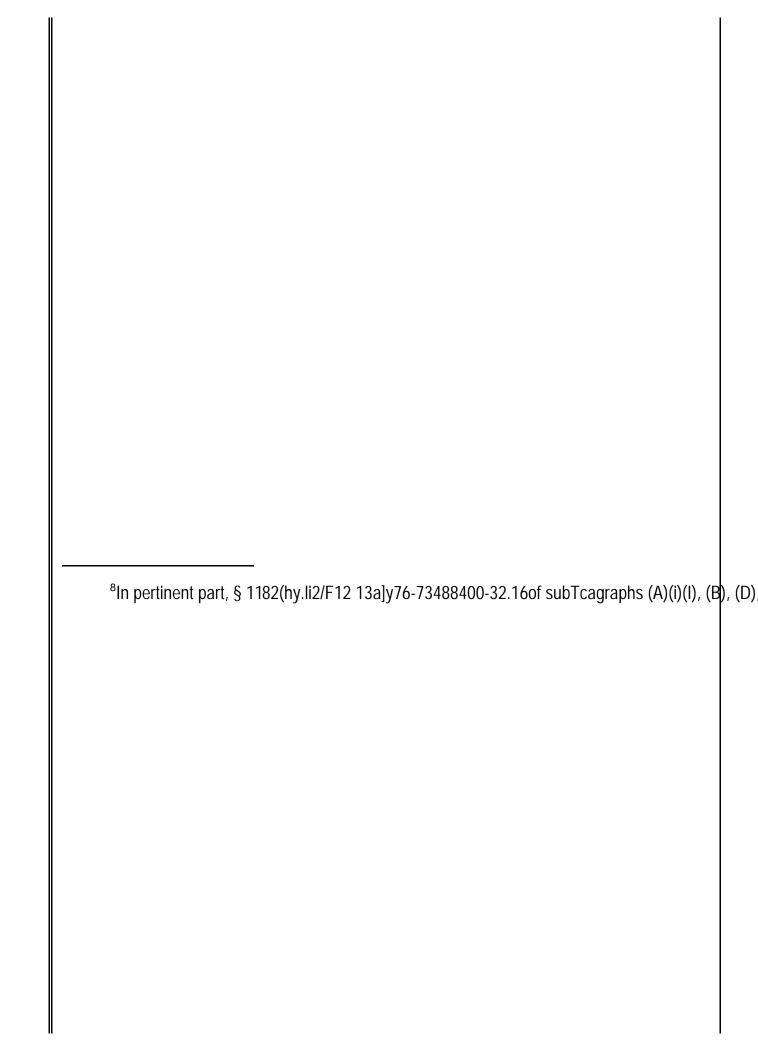
| lurking in the background. The fact that a removal order could impose on state prosecutors the   |
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| burden of defending the constitutionality of their conviction should not mean that an individual |
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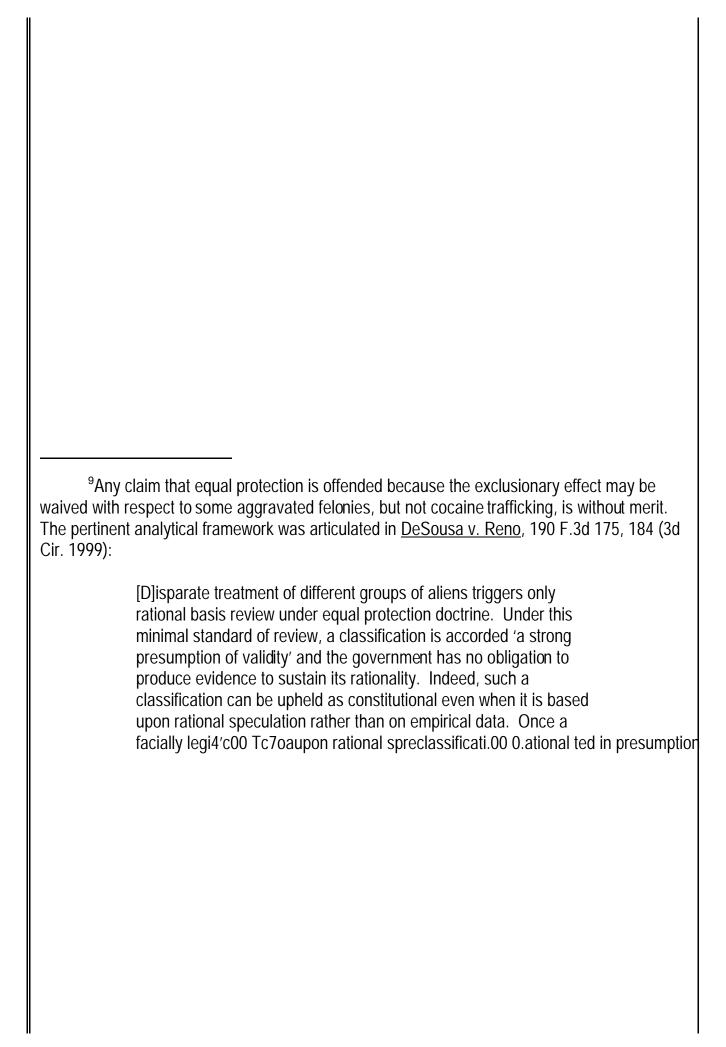
| of state court remedies. |
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| of state count remedies. |
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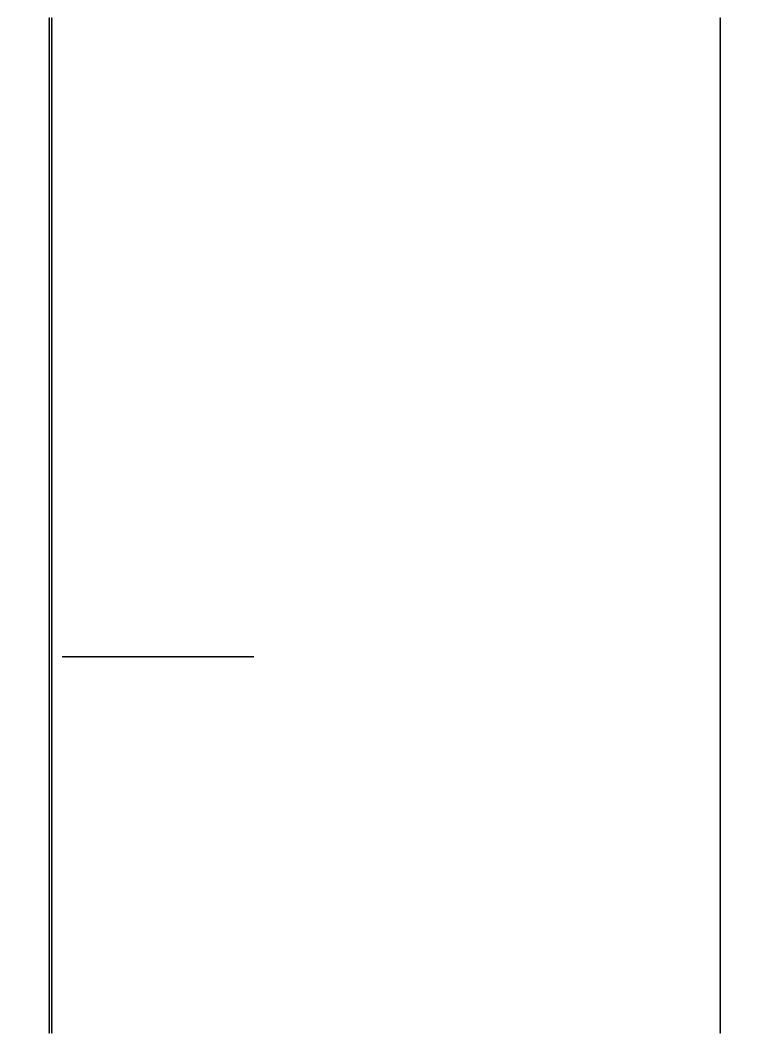
deportation consequences of a plea constitutes ineffective assistance of counsel, <u>see United States v. Nino</u>, 878 F.2d 101, 105 (3d Cir. 1989), the New York Court of Appeals has explicitly rejected the contention advanced by Taveras-Lopez. In <u>People v. Ford</u>, the Court of Appeals held that, in the absence of affirmative misstatements by defense counsel, failure to advise of the deportation consequences of a conviction does not constitute ineffective assistance of counsel. The Second Circuit, <u>United States v. Santelises</u>, 509 F.2d at 704, and other federal courts have reached the same ruling. <u>See</u>, <u>e.g.</u>, United States v. Banda

<sup>&</sup>lt;sup>6</sup>Taveras-Lopez does not contend that his lawyer affirmatively misled him as to the deportation consequences of a guilty plea.









| [;i]f it chooses to do so, it may legislate [contrary to] the limits posed by international law"); In re |
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| fe | ew such norms. | The Restatement | (Third) of Foreig | n Relations Law | <u> </u> |  |
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