

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**



16017



reopen his immigration proceedings to pursue an application

Alvarenga's application for § 212(c) relief was pretermitted on the grounds that § 440(d) of the Antiterrorism and Effective Death Penalty Act (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214 (1996), precluded § 212(c) relief for any person who has committed an aggravated felony. At §

Appeals (BIA) but applied for and was granted a stay of

holding that Koray could be applied retroactively to the habeas petition. In so doing, we observed that "[b]ecause



"[a] change of law does not invalidate a conviction obtained under an earlier law." Kleve v. Hill, 243 F.3d 1149, 1151 (9th Cir.), cert. denied, 122 S. Ct. 341 (2001). We therefore agree with the district court that the new rule announced in Magana-Pizano

[4] Even if a statute does not so provide, "a collateral challenge to the use of a deportation proceeding as an element of

untarily, while under an order of exclusion, deportation, or removal

