

No. 00-2599

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RAMON GAVILAN-CUATE

Petitioner-Appellee,

v.

CHUCK YETTER, Jail Administrator,
Washington County Jail, and
CURTIS ALJETS, Director,
Immigration and Naturalization Service,

Respondents-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT DISTRICT OF MINNESOTA

REPLY BRIEF FOR APPELLANT

I. INTRODUCTION

Appellants, Chuck Yetter and Curtis Aljets, hereby respond to the jurisdictional arguments raised by the Appellee, Ramon Gavilan Cuate, in his brief.

challenge their removal orders. Indeed, the Supreme Court described Section 1252(b)(9) in Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471, 483 (1999) (AADC), as an “unmistakable ‘zipper’ clause” that channels judicial review to the courts of appeals.

As stated in Appellant’s Brief, Congress also restricted, to a considerable degree, judicial review of criminal aliens’ removal orders. Section 1252(a)(2)(C) provides that “[n]otwithstanding any other provision of law” -- broad language not limited to Section 1252 or even the INA -- “no court shall have jurisdiction to review any final order of removal against” an aggravated felon. Mr. Cuate’s contention and the district court’s ruling that he could obtain review in the district court of his final order of removal is flatly inconsistent with Congress’s framework for judicial review of removal orders and its specific ban on review for criminal aliens.²

² As stated in Appellant’s Opening Brief, there still remains a split in the circuits concerning whether IIRIRA eliminated habeas corpus jurisdiction in removal cases. Compare Max-George v. Reno, 205 F.3d 194, 202-03 (5th Cir. 2000), reh’g en banc denied (5th Cir. May 26, 2000); Richardson v. Reno, 180 F.3d 1311, 1315 (11th Cir. 1999), cert. denied, 120 S. Ct. 1529 (2000); with Flores-Miramontes v. INS, 212 F.3d 1133, 1137 (9th Cir. 2000); Liang v. INS, 206 F.3d 308 (3d. Cir. 2000), reh’g en banc denied (June 9, 2000). Since the filing of Appellant’s Opening Brief, the Second Circuit has decided two cases under the permanent rules

involving this jurisdictional issue. See

³ Aliens proceeding in district court pursuant to Section 2241 have markedly greater opportunities for delay than those proceeding directly in the courts of appeals. Section 2241 contains no express time limit on the filing of a petition for a writ of habeas corpus, in contrast with the strict time limit. *Cvernilih theexclusive-reviews produxpri oh thINA, meb*(1) (Supp. pue, thaa(Ali who is unsuccprefulng in district courcanor) Tj T* appen

contained structure of judicial review that Congress has
erected in Section 1252 -- requiring that judicial review of

This argument is wrong. On November 17, 1999, Mr. Cuate filed a one-page petition for review in this Court challenging the Board's finding that he is deportable due to his conviction of an aggravated felony. App. 245. The Board construed the statute at issue and determined that it was an "aggravated felony." App. 220. On December 17, 1999, the government filed an extensive motion to dismiss the petition for lack of jurisdiction. App. 298-311. In this motion, the government clearly stated that this court has jurisdiction to review the jurisdictional question whether Mr. Cuate's crime renders him removable as an "aggravated felon." App. 298-311.

The Court then correctly dismissed the petition for lack of jurisdiction.

violation of our law are effectively taking immigration opportunities that might otherwise be extended to others, . . . whose presence would be more consistent with the judgment of the elected government of this country about what is in the national interest. Those who are reluctant to enforce the immigration laws should keep this reality in mind.

S.Rep. No. 249, 104th Cong., 2d Sess. 14 (1996).

For these reasons, there is no merit to Mr. Cuate's argument that the rule of lenity should be applied to construe whether his crime constitf.aan te agmigvCuad felonyte nt wiinisFor t dns

Pursuant to Federal Rule of Appellate Procedure 32 and Eighth Circuit Rule 28A, I certify that the Reply Brief For Government:

- (1) was prepared using Courier type;
- (2) was prepared using Corel Word Perfect 7.0 software;
- (3) complies with the type-volume limitation;
- (4) contains approximately 3,728 words; (if that disk was deposited)

CERTIFICATE OF SERVICE

I certify that on November 13, 2000, one copy of the
Reply Brief for Appellant and Disk was served upon Appellee by

