

conceded both his aggravated felon status and his ineligibility
for

Counsel

BIA discretion in passing upon applications for equitable relief from deportation, and that the BIA's failure to exercise this discretion was actionable. Id. at 268. The Court concluded:

If petitioner can prove the allegation, he should receive a new hearing before

A year later, the Supreme Court decided Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471 (1999) (AADC). There, a group of aliens sought to contest the initiation of removal proceedings on the ground that the INS had targeted

⁴Congress established certain transitional rules to apply to cases pending at the time that the IIRIRA was enacted. See IIRIRA § 309(c). Under these rules, Congress delayed the

enforcement of section 1252(b)(9) (removing jurisdiction for
judicial

jurisdiction under [28 U.S.C.] § 2241 was not repealed by AEDPA and IIRIRA.

St. Cyr, 121 S. Ct. at 2287 (citation omitted). Federal courts therefore retain subject matter jurisdiction over habeas petitions brought by aliens facing removal to the extent that those petitions are based on colorable claims of legal error, that is, colorable claims that an alien's statutory or constitutional rights have been violated.

B. The Case at Hand

considered. See Accardi, 347 U.S. at 268; Goncalves, 144 F.3d at 125. We elaborated upon this point in Goncalves:

Analytically, the decision whether

The question, then, reduces to whether, in the circumstances of this case, the petitioner has shown an established

⁵We exempt from this general proscription, of course, government misconduct that violates the Equal Protection Clause. See Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) ("[T]he conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation so long as the selection was not deliberately based upon an unjustifiable standards

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⁶Purely legal questions are suitable for habeas review because answering them does not necessitate second-guessing "the agency's factual findings or the Attorney General's exercise of her discretion." Henderson v. INS, 157 F.3d 106, 120 n.10 (2d Cir. 1998) (citing Goncalves, 144 F.3d at 125).

⁷This holding does not in any way implicate the Suspension Clause. See Delaney v. Matesanz, 264 F.3d 7, 13 (1st Cir. 2001) ("The Suspension Clause applies

a right to demand the exercise of this discretion in the first place,

on the ground that the INS refused to exercise discretion in instituting deportation proceedings. On this basis, we reverse the judgment below and remand the matter to the district court with instructions to dismiss the petitioner's habeas application for want of subject matter jurisdiction.

Reversed.