

04-1376 FERNANDEZ-VARGAS V. GONZALES

DECISION BELOW:394 F3d 881

LOWER COURT CASE NUMBER: 03-9610

QUESTIONS PRESENTED:

As part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 3009 (1996), Congress enacted § 241 (a) (5) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(a)(5). Under this provision, if an alien reenters the country illegally "after [previously] having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, [and] the alien is not eligible and may not apply for any relief under [the INA]." Ibid.

The question presented -- on which there is a well-established circuit split -- is whether and under what circumstances INA § 241 (a)(5) applies to an alien who reentered the United States illegally before the effective date of IIRIRA, April 1, 1997.

CERT. GRANTED 10/31/2005