

08-495 NIJHAWAN V. HOLDER

DECISION BELOW:523 F.3d 387

LOWER COURT CASE NUMBER: 06-3948

QUESTIONS PRESENTED:

Whether the penalty of life time banishment for conviction of an aggravated felony may be imposed upon a lawful permanent resident under Section 101(a)(43)(M)(i) of the Immigration & Nationality Act of 1952 as amended (the "Act"), 8 U.S.C. § 1101(a)(43)(M)(i) when he was not convicted of the required loss?

Whether the rule of lenity or narrow construction should be applied to resolve an ambiguity in a deportation statute created by both the dissenting opinion below and well-reasoned decisions from other Circuits including the Circuit where the alien's conviction occurred?

CERT. GRANTED 1/16/2009

LIMITED TO THE FOLLOWING QUESTION: "WHETHER PETITIONER'S CONVICTION FOR CONSPIRACY TO COMMIT BANK FRAUD, MAIL FRAUD, AND WIRE FRAUD QUALIFIES AS A CONVICTION FOR CONSPIRACY TO COMMIT AN 'OFFENSE THAT INVOLVES FRAUD OR DECEIT IN WHICH THE LOSS TO THE VICTIM OR VICTIMS EXCEEDS \$10,000,' 8 U.S.C. 1101(a)(43)(M) (i) AND (U), WHERE PETITIONER STIPULATED FOR SENTENCING PURPOSES THAT THE VICTIM LOSS ASSOCIATED WITH HIS FRAUD OFFENSE EXCEEDED \$100 MILLION, AND THE JUDGMENT OF CONVICTION AND RESTITUTION ORDER CALCULATED TOTAL VICTIM LOSS AS MORE THAN \$680 MILLION."

EXPEDITED BRIEFING SCHEDULE.