tutional problem, the Court in another case held that Congress had not evidenced clear intent to eliminate federal court habeas corpus jurisdiction to determine whether the Attorney General retained discretionary authority to waive deportation for a limited category of resident aliens who had entered guilty pleas before IIRIRA repealed the waiver authority.[1790] "[At] the absolute minimum," the Court wrote, "the Suspension Clause protects the writ as it existed in 1789. At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."[1791]

Clause 3. No Bill of Attainder or ex post facto Law shall be passed.

BILLS OF ATTAINDER

"Bills of attainder . . . are such special acts of the legislature, as inflict capital punishments upon persons supposed to be guilty of high offences, such as treason and felony, without any conviction in the ordinary course of judicial proceedings. If an act inflicts a milder degree of punishment than death, it is called a bill of pains and penalties. . . . In such cases, the legislature assumes judicial magistracy, pronouncing upon the guilt of the party without any of the common forms and guards of trial, and satisfying itself with proofs, when such proofs are within its reach, whether they are conformable to the rules of evidence, or not. In short, in all such cases, the legislature exercises the highest power of sovereignty, and what may be properly deemed an irresponsible despotic discretion, being governed solely by what it deems political necessity or expediency, and too often under the influence of unreasonable fears, or unfounded suspicions."[1792] The phrase "bill of attainder," as used in this clause and in clause 1 of § 10, applies to bills of pains and penalties as well as to the traditional bills of attainder.[1793]

The prohibition embodied in this clause is not to be narrowly construed in the context of traditional forms but is to be interpreted in accordance with the designs of the framers so as to preclude trial by legislature, which would violate the separation of pow-

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[1790] INS v. St. Cyr, 533 U.S. 289 (2001).

[1791] 533 U.S. at 301 (internal quotation marks and citation omitted).

[1792] 3 J. Story, Commentaries on the Constitution of the United States 1338 (1833).

[1793] Cummings v. Missouri, 71 U.S. (4 Wall.) 277, 323 (1867); *cf.* United States v. Brown, 381 U.S. 437, 441–442 (1965).