Artl.S8.C18.8.8.5 Immigration-Related State Laws

Article I, Section 8, Clause 18:

> *[The Congress shall have Power . . .] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.*

While the Supreme Court has generally shown deference to Congress's authority over aliens, the Court has shown less deference to state government regulation of aliens. In *Graham v. Richardson*, the Supreme Court in 1971 held that state laws denying welfare benefits to noncitizens, or conditioning such benefits on a long period of residence, violated equal protection.[1] Recognizing that both U.S. citizens and aliens were entitled to the equal protection of the laws of their state of residence, the Court determined that a state's desire to preserve limited welfare benefits for its citizens was not a sufficient justification for denying benefits to aliens.[2] The Court, moreover, observed that only Congress had the power to formulate policies with respect to the admission of aliens and the conditions of their residence in the United States, and concluded that by denying welfare benefits to aliens, the state laws "conflict[ed] with these overriding national policies in an area constitutionally entrusted to the Federal Government."[3]

Similarly, in *Plyler v. Doe*, the Supreme Court in 1982 struck down a Texas statute that withheld funds for the education of children who were not "legally admitted" into the United States, and a school district policy that denied enrollment to such children.[4] The Court noted that aliens present within the United States, even unlawfully, "have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments."[5] Thus, the Court held, the plaintiffs challenging the state law and school district policy that denied them a basic education were entitled to equal protection.[6] The Court concluded that, because the state failed to show that its school enrollment policies advanced a substantial state interest, those policies could not survive constitutional scrutiny.[7] Further, the Court observed that Congress uniquely had the power to create "a complex scheme governing admission to our Nation and status within our borders," and that the state's policy of restricting access to education for aliens "d[id] not operate harmoniously within the federal program."[8] But the Court suggested that the state's policy would have been permissible if it had advanced an "identifiable congressional policy" to limit access to education for unlawfully present aliens.[9]

Although the Federal Government has the exclusive power to regulate immigration, not every state law that pertains to aliens is necessarily a regulation of immigration that is "per se preempted" by that federal power.[10] But state laws that conflict with or pose an obstacle to the federal regulatory scheme are preempted.[11] For example, in *Arizona v. United States*, the Supreme Court in 2012 held that Arizona laws that made it a misdemeanor to fail to comply with federal alien-registration requirements, that made it a misdemeanor

for an unlawfully present alien to seek or engage in employment in the state, and that authorized police officers to arrest aliens on the grounds that they were potentially removable were preempted by federal law.[12] Citing the Federal Government's "broad, undoubted power over the subject of immigration and the status of aliens," the Court determined that the Arizona provisions intruded into areas that Congress already regulated, and conflicted with Congress's existing statutory framework governing aliens.[13]

The Supreme Court's greater scrutiny of state laws reveals an important "distinction between the constitutional limits on state power and the constitutional grant of power to the Federal Government" with respect to immigration.[14] The Court's jurisprudence suggests that the Court is willing to give more deference to Congress's policy choices in the immigration context because "it is the business of the political branches of the Federal Government, rather than that of either the States or the Federal Judiciary, to regulate the conditions of entry and residence of aliens."[15] Conversely, the Court is willing to exercise less judicial restraint when the constitutional challenge in question involves the relationship between aliens and states rather than aliens and the Federal Government, especially if the state's policy encroaches upon the Federal Government's authority.[16]

Footnotes

1. ^ Graham v. Richardson, 403 U.S. 365, 374–80 (1971).

2. ^ *Id.* at 374–75.

3. ^ *Id.* at 376–78; *see also* Sugarman v. Dougall, 413 U.S. 634, 646 (1973) (holding that New York statute excluding aliens from permanent positions in the competitive class of the state civil service violated equal protection).
4. ^ Plyler v. Doe, 457 U.S. 202, 226–30 (1982).
5. ^ *Id.* at 210 (citing Shaughnessy v. United States *ex rel.* Mezei, 345 U.S. 206, 212 (1953); Wong Wing v. United States, 163 U.S. 228, 238 (1896); Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886)).
6. ^ *Id.* at 215.
7. ^ *Id.* at 227–30.
8. ^ *Id.* at 225–26.
9. ^ *Id.* at 225.
10. ^ DeCanas v. Bica, 424 U.S. 351, 355 (1976), *superseded by statute*, Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359, *as recognized in* Arizona v. United States, 567 U.S. 387, 404–05 (2012).
11. ^ *See Arizona*, 567 U.S. at 399 (recognizing that "the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance," and that, additionally, "state laws are preempted when they conflict with federal law"); Hines v. Davidowitz, 312 U.S. 52, 66–67 (1941) ("And where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations.").
12. ^ *Arizona*, 567 U.S. at 404–07.
13. ^ *Id.* at 394, 400–10; *but see* Kansas v. Garcia, No. 17-834, slip op. 14–19 (U.S. Mar. 3, 2020) (holding that federal laws setting forth the terms and conditions in which aliens may work in the United States did not preempt state laws that allowed criminal prosecutions against aliens who provided false Social Security numbers on their tax withholding forms when they obtained employment, because the state laws only regulated the fraudulent use of tax

forms and did not purport to regulate the employment of aliens in the United States).

14. ^ Mathews v. Diaz, 426 U.S. 67, 85 (1976).
15. ^ *Id.* at 84. In Mathews, the Supreme Court explained that the Federal Government is uniquely entrusted with the responsibility of "regulating the relationship between the United States and our alien visitors," and that because the Federal Government's role in that respect implicates foreign relations and "changing political and economic circumstances," the Federal Government's immigration decisions are "frequently of a character more appropriate to either the Legislature or the Executive than to the Judiciary." *Id.* at 81.
16. ^ *Id.* at 84–85.