Artl.S8.C18.8.8.1 Overview of Modern Immigration Jurisprudence

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.*

Since the latter part of the twentieth century, the Supreme Court has distinguished between aliens who have entered the United States and aliens who have gained no legal foothold into this country in shaping the scope of Congress's immigration power.[1] Generally, the Court's jurisprudence has been based on the notion that nonresident aliens outside the United States have no constitutional or statutory rights with respect to entry and therefore no legal basis to challenge their exclusion.[2]

Supreme Court precedent establishes that inherent principles of sovereignty give Congress "plenary power" to regulate immigration. Notwithstanding the implicit nature of this authority, the Court has described the immigration power as perhaps the most complete that Congress possesses.[3] The core of this power—the part that has proven most impervious to judicial review—is the authority to determine which aliens may enter the United States and under what conditions.

The Court has also established that the Executive Branch, when enforcing the laws concerning alien entry, has broad authority to do so mostly free from judicial oversight. While the Court has recognized that aliens present within the United States generally have more robust constitutional protections than aliens seeking entry into the country, the Court has upheld federal statutes impacting the rights of aliens within the United States in light of Congress's unique immigration power, though the degree to which the immigration power is constrained by these constitutional protections remains a matter of continuing uncertainty.

Footnotes

1. ^ *See* Trump v. Hawaii, No. 17-965, slip op. at 30 (U.S. June 26, 2018) ("[T]he admission and exclusion of foreign nationals is a 'fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'") (quoting Fiallo v. Bell, 430 U.S. 787, 792 (1977)); Castro v. U.S. Dep't of Homeland Sec., 835 F.3d 422, 443 (3d Cir. 2016) (noting that "Knauff and Mezei essentially restored the political branches' plenary power over aliens at the border seeking initial admission. And since these decisions, the Court has continued to signal its commitment to the full breadth of the plenary power doctrine, at least as to aliens at the border seeking initial admission to the country").

2. ^ *See* Kerry v. Din, 576 U.S. 86 (2015) (Scalia, J.) ("[A]n unadmitted and nonresident alien . . . has no right of entry into the United States, and no cause of action to press in furtherance of his claim for admission."); Landon v. Plasencia, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application.").

3. ^ Fiallo v. Bell, 430 U.S. 787, 792 (1977) ("This Court has repeatedly emphasized that 'over no conceivable subject is the legislative power of

Congress more complete than it is over' the admission of aliens.") (quoting Oceanic Steam Navigation Co. v. Stranahan, 214 U.S. 320, 339 (1909)); Fong Yue Ting v. United States, 149 U.S. 698, 707 (1893) ("The right of a nation to expel or deport foreigners . . . is as absolute and unqualified, as the right to prohibit and prevent their entrance into the country.").