Court Hears Selective Deportation Argument by 'L.A. Eight'

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Body

With the Government's effort to ***deport*** ***a*** group of supporters of the Palestinian cause now approaching its 12th year, the Supreme ***Court*** ***heard*** ***arguments*** today on whether the seven Palestinians and one Kenyan are entitled to go before ***a*** Federal ***court*** with their claim that they were unconstitutionally selected for ***deportation*** because of their political views and lawful activities.

In ***a*** 1996 law, Congress cut back sharply on judicial review of actions by immigration officials. Where ***deportation*** is concerned, the new law made explicit ***a*** limitation that the Government had viewed as inherent in the old law: that judicial review was confined to appeal of ***a*** final order of ***deportation*** and that during the years that often precede the final order, aliens were restricted to bringing much more truncated administrative appeals that could not address constitutional issues.

There was considerable confusion in the courtroom today over the extent to which the new law applied to this long-running dispute and over what difference ***a*** ruling would make for future cases, to which the new provisions would clearly apply. Several Justices appeared to be looking for some safety valve, ***a*** way to interpret the law to make sure aliens would not be effectively forced to forfeit their constitutional ***arguments***. The lower Federal ***courts*** have begun examining the new law and have been restricting or striking down various provisions intended to cut off judicial review.

"If no review is available of these constitutional claims, it might influence our interpretation of the statute," Justice Sandra Day O'Connor told Malcolm ***L***. Stewart, ***an*** assistant solicitor general. Mr. Stewart was defending the Government's position that the lower Federal ***courts*** should not have blocked the ***deportation*** proceedings, as they have repeatedly done in this case, to enable the Palestinians to collect more evidence to bolster their ***argument*** of ***selective*** enforcement.

But other Justices expressed impatience with allowing constitutional ***arguments*** to stand in the way of moving swiftly toward ***deportation***.

"It's clear that these amendments were intended to prevent exactly what's happening here," Justice Antonin Scalia said, referring to the new law and addressing David D. Cole, the Palestinians' lawyer. "Everybody knows this is the name of the game: String it out, and the longer it's strung out, the less likely ***deportation*** will be."

Mr. Cole, a Georgetown University law professor handling this case on behalf of the Center for Constitutional Rights, a New York City-based legal organization, replied that it was the Government, and not his clients, that was prolonging the case through repeated appeals of the Palestinians' incremental legal victories.

"The irony is," Mr. Cole said, "we're the ones seeking expeditious resolution at every stage." He said that the longer the case dragged on, the longer his clients remained "chilled" in exercising their First Amendment rights to free speech and political association.

The group, often referred to as the "L.A. Eight," supports the Popular Front for the Liberation of Palestine, which the Government regards as a terrorist organization. But no member of the group has been charged with any act of violence. Several were students when the case began, and were charged with offenses like not taking enough college credits to maintain their student visas or for holding jobs not authorized by their immigration status. In their selective enforcement claim, they are arguing that other aliens with similar visa problems but lacking similar political associations have not been faced with deportation proceedings.

The United States Court of Appeals for the Ninth Circuit, which sits in San Francisco, agreed with Mr. Cole in a ruling last year that the claim of selective enforcement should not have to wait until the end of the deportation process to be heard by a Federal court, because the facts necessary to support the claim could not be adequately developed through the limited administrative appeals available in the immigration system.

During the argument today, Justice Anthony M. Kennedy asked Mr. Stewart, the Government's lawyer, whether he agreed that the Palestinians "can't make in the administrative proceeding the records necessary to make their case."

"Yes, we concede that," Mr. Stewart replied. While some useful evidence might emerge during such a proceeding, "we can't count on it," he said.

The case is Reno v. American-Arab Anti-Discrimination Committee, No. 97-1252.

In a second case today, the Court heard arguments on whether a public school district in Iowa was obliged under Federal law to provide continuous care in the classroom to a quadriplegic student who relied on a ventilator to breathe.

Under the Individuals with Disabilities Education Act, schools must provide special education and "related services" to enable students with disabilities to benefit from an education. But schools are not required to provide "medical services." The broad question in this case, Cedar Rapids Community School District v. Garrett F., No. 96-1793, is how to define the "medical services" exclusion.

The United States Court of Appeals for the Eighth Circuit, in St. Louis, ruled in this case that because the services the boy needed did not have to be performed by a doctor, they were not medical and so remained the obligation of the Cedar Rapids school district. In its appeal, the district is arguing that the continuous, one-on-one nature of the services, requiring the equivalent of private-duty nursing, met the medical test even if performed by a nurse.

"We believe that by any definition, private duty nursing is a medical service," Susan L. Seitz, the school district's lawyer, told the Justices.

Both the student, represented by Douglas R. Oelschlaeger, and the Government, represented by Beth S. Brinkmann, an assistant solicitor general, urged the Court to hold that only those services performed by a doctor qualify as medical.

The case has attracted considerable attention from other school districts, faced with rapidly rising costs of special education. The National School Boards Association filed a brief urging the Court to adopt a broader definition of the medical services for which a school district would not be responsible.

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