

Court Curbs Free Speech Of Illegal Immigrants; Government Wins On Deportation Rules

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Body

The Supreme **Court** sharply limited the First Amendment rights of **illegal immigrants** yesterday, **ruling** that people here unlawfully cannot shield themselves from **deportation** by claiming the **government** is trying to banish them simply because of their controversial political views.

The 6 to 3 decision involving a group of Palestinians living in Los Angeles goes to the heart of the American tradition of safeguarding **free speech**, no matter how unpopular, and offers one of the **court's** strongest opinions limiting the constitutional freedoms of **illegal immigrants**. But for the **government**, the case marks an important victory in its effort to keep **immigrants** who have no legal right to be here from evading **deportation** on extraneous grounds.

The two-pronged decision also forbids **illegal immigrants** to avail themselves of the federal **courts** in trying to fend off **deportation** unless they have already exhausted every other administrative procedure offered by immigration officials. That portion of the **ruling**, decided by an 8 to 1 vote, upholds a 1996 federal law aimed at speeding the **deportation** of **illegal aliens**, many of whom have managed to remain in the United States for years through lengthy legal challenges. The law has produced record **deportation** levels in the past two years; in all, 171,154 **illegal immigrants** and criminals were forced to leave the United States last year, a 50 percent jump over already increasing 1997 figures.

As a practical matter, immigration experts said yesterday's **ruling** in Reno v. American-Arab Anti-Discrimination Committee is unlikely to affect most of the thousands of **illegal immigrants** subject to **deportation** annually because few claim they are being targeted for their political views. But **immigrant** advocates said the **ruling** nonetheless has great potential to intimidate **immigrants** and make them wary of speaking out about any political matter for fear of drawing attention to their **illegal** status.

The opinion is specifically aimed at **illegal immigrants**, but advocates warn that it could have the effect of endangering the rights of those who may in fact be here legally because it curtails their rights before a final determination of their legal status has been made.

"It relegates **immigrants** to second-class citizens, and it's reminiscent of the political witch hunts of the McCarthy era," said Marc Van Der Hout, a co-counsel in the case representing the National Lawyers Guild.

The case also marks a departure from a general **court** trend of bestowing on **illegal immigrants** the same due process of law and other constitutional freedoms granted American citizens. And although the majority opinion by Justice Antonin Scalia did not address the case, dissenting justices pointed to a 1945 **court ruling** that said "freedom of **speech** and of press is accorded aliens residing in this country."

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Yesterday's case traces to 1987, when the government began trying to deport seven Palestinians and a Kenyan with ties to the Popular Front for the Liberation of Palestine. The Justice Department described the group as a terrorist organization opposed to U.S. peace efforts in the Middle East and responsible for many incidents of violence and death.

But the Los Angeles area activists contended they were selectively investigated and targeted for potential violations of immigration law because of legitimate fund-raising and other free speech activities related to the PFLP. A lower federal court blocked the deportation and said the aliens should be able to make their case that they suffered retaliation for their political views.

Yesterday, the Supreme Court reversed the 9th U.S. Circuit Court of Appeals and ruled that the 1996 immigration law bars federal courts from intervening.

On the larger First Amendment question, Scalia wrote, "As a general matter . . . an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation." He was joined by Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor, Anthony M. Kennedy and Clarence Thomas. Justice John Paul Stevens agreed with that portion of the majority opinion but wrote separately.

The court's holding, as Scalia described it, bars anyone who is subject to a deportation hearing from trying to defend himself by saying he was singled out because of political beliefs or activities that any legal resident would be free to express.

"Aliens now have no meaningful First Amendment freedoms because the government can selectively target them for expulsion from the country based on core political activities," said David Cole, the other counsel for the eight activists.

But Washington Legal Foundation lawyer Richard A. Samp, who had submitted a brief supporting the federal government's position, praised the court's decision, saying the "executive branch ought to have the right to decide which aliens are in this country lawfully and which are not, and the courts should be not interfering." The Immigration and Naturalization Service had no immediate comment yesterday.

It was a surprise to many legal observers that the court even addressed the important issue of constitutional rights, because when it agreed to hear the case, the court specifically excluded the First Amendment question and said it would only review the 1996 immigration law. Justice Ruth Bader Ginsburg noted yesterday that neither the Justice Department nor lawyers for the American-Arab Anti-Discrimination Committee had been given a chance to address this issue in their legal briefs or oral arguments before the court.

Only Justice David H. Souter dissented from the portion of the opinion saying that the new immigration law restricts access to the courts until a foreigner threatened with deportation exhausts the administrative process.

While some immigration lawyers complained that forcing any alien who wants to protest his deportation on constitutional grounds to first go through an administrative hearing might hurt efforts to gather evidence to be used in court, most advocates focused their protest on the part of the ruling that barred illegal aliens from claiming they were selectively prosecuted because of their political beliefs.

Linton Joaquin, litigation director at the National Immigration Law Center in Los Angeles, said, "It's very troubling . . . that the court is saying these claims can't be heard. There's no question that what happened in this case was purely an attack on speech."

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