

## **Do Illegal Aliens Have Constitutional Rights?**

In the recent debate over local enforcement of immigration law, the issue that seems to have caused the most shock is the assertion that illegal aliens have rights. A simple reading of the Constitution will not reveal the words "illegal alien," so many people assume the constitution does not apply in this debate.

Unfortunately, Constitutional Law is not that easy. The Constitution has been described as a "Living Document" that is continuously interpreted to meet the changing circumstances of American life. The Courts of Appeal and/or the Supreme Court rule on the application of laws in particular situations and these rulings become precedents we must all follow. Congress is free to write or modify laws in response to these rulings, but those new laws are again subject to court scrutiny.

One of the arguments against the idea of rights for illegal aliens is the wording of the Constitution itself. People focus on use of the words "the people" in the Constitution, and say this means it applies only to citizens. The courts have disagreed with this approach, as cited in *Johnson v. Eisentrager*, (339 U.S. 763, 771(1950)) where the court said, "in extending constitutional protections beyond the citizenry, the Court has been at pains to point out that it was the alien's presence within its territorial jurisdiction that gave the Judiciary power to act."

There are several Court opinions mentioning "resident aliens." A surface reading may tempt one to interpret this as applying to aliens who have the administrative classification under immigration law as "Resident Alien." In fact, deeper research shows the court refers to resident aliens as those who have established a form of practical residency in the US, regardless of their status as undocumented or "illegal" aliens. Court of Appeal and the Supreme Court have consistently extended constitutional protections to these "resident aliens."

An exhaustive discussion of court rulings regarding the rights of illegal aliens would take tens of pages, and would be so full of legalese it would be difficult to understand. In the interest of brevity and readability, I have summarized below some of the court precedents that affirmed the rights of illegal aliens.

The right of Habeus Corpus has been raised many times in the courts, usually relating to long-term detention of illegal or criminal aliens awaiting hearings or deportation. The courts have consistently held that aliens within the United States, regardless of legal status, do have a right to Due Process and Habeus Corpus. To be sure, their rights follow a different path than US Citizens because citizens are not subject to removal, but the basic rights still apply to illegal aliens.

In *Wong Wing v. U S*, 163 U.S. 228 (1896), the Supreme Court stated (in citing a previous case and affirming 14<sup>th</sup> Amendment rights):

“The fourteenth amendment to the constitution is not confined to the protection of citizens. It says: 'Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or nationality; and the equal protection of the laws is a pledge of the protection of equal laws.' Applying this reasoning to the fifth and sixth amendments, it must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by those amendments, and that even aliens shall not be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a grand jury, nor be deprived of life, liberty, or property without due process of law. “

Other Supreme Court cases on First Amendment rights repeatedly refer to the 5<sup>th</sup> and 14<sup>th</sup> Amendments to provide guidance based on the principle of “Equal Protection.” In other words, the Equal Protection clause helps extend First Amendment protections for everyone protected by the 5<sup>th</sup> and 14<sup>th</sup> Amendments. Since the Court has ruled that illegal aliens are protected by the 5<sup>th</sup> and 14<sup>th</sup> Amendments, they also have First Amendment rights.

In fact, in the *Plyler V. Doe*, 457 U.S. 202 (1982), the Supreme Court struck down a Texas law prohibiting enrollment of illegal aliens in public school. In its ruling, the Court said:

“The illegal aliens who are plaintiffs in these cases challenging the statute may claim the benefit of the Equal Protection Clause, which provides that no State shall ‘deny to any person within its jurisdiction the equal protection of the laws.’ Whatever his status under the immigration laws, an alien is a ‘person’ in any ordinary sense of that term... The undocumented status of these children *vel non* does not establish a sufficient rational basis for denying them benefits that the State affords other residents.”

Some have argued the intent of Congress in drafting the 14<sup>th</sup> Amendment was to limit protection to citizens, and the use of the word “persons” was merely semantic. The Court has rejected this argument, and referred to the language used by the Congressional Committee drafting the amendment:

“The last two clauses of the first section of the amendment disable a State from depriving not merely a citizen of the United States, but any person, whoever he may be, of life, liberty, or property without due process of law, or from denying to him the equal protection of the laws of the State. This abolishes all class legislation in the States and does away with the injustice of subjecting one caste of persons to a code not applicable to another. . . . It will, if adopted by the

States, forever disable every one of them from passing laws trenching upon those fundamental rights and privileges which pertain to citizens of the United States, and to all persons who may happen to be within their jurisdiction."

Courts of Appeal have consistently found that illegal aliens within the boundaries of the United States are protected from unreasonable search and seizure. This is affirmed by assumption in the Supreme Court case of *INS v. Lopez-Mendoza*, 468 U.S. 1032 , and again in *US v. Verdugo-Urquidez*, 494 U.S. 259 (1990).

While it is true illegal aliens do not have all the rights enumerated under the Constitution, such as the right to vote and the right to keep and bear arms, it is also true that not all Americans have those rights. When one examines the rights actually enjoyed by ALL Americans, including convicted felons for example, illegal aliens enjoy the same rights while they are within the boundaries of the United States.

An example of this comes from the U.S. Equal Employment Opportunity commission. In a 1999 memo, the EEOC stated that while it is illegal to hire undocumented aliens, "if an employer does hire an undocumented worker, and harasses or otherwise exploits or abuses that worker because of, for example, race, color, sex, religion, national origin, age or disability, it must pay the consequences of that discrimination."

It is also clear that an alien's rights differ at the border and after they successfully cross the border. When crossing the border, immigration authorities have the unfettered authority to stop, detain, and demand identification. Once inside the United States, however, the aliens have the same protections as all Americans.

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