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## JUSTICES UPHOLD SELECTIVE DEPORTING OF ALIENS

By LINDA GREENHOUSE

WASHINGTON -- The government does not violate the Constitution by selecting aliens for deportation on the basis of their political views and associations, the Supreme Court ruled on Wednesday in a 6-3 vote.

The surprisingly broad constitutional ruling, in a case that had appeared to present only narrower procedural issues, was a significant victory for the government in its 12-year-long effort to deport a group of supporters of the Palestinian cause who have become known as the Los Angeles Eight.

The group, seven Palestinians and a Kenyan, have avoided deportation by convincing the lower federal courts in California that their claim of having been singled out for their political activities raised serious First Amendment issues. The 9th U.S. Circuit Court of Appeals, in San Francisco, twice issued injunctions to keep the deportation proceedings from moving ahead and to require the government to show that it had not "impermissibly targeted" the eight, all members of the Popular Front for the Liberation of Palestine.

But writing for the Court on Wednesday, Justice Antonin Scalia said that "an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation."

Scalia said that even in ordinary criminal cases, selective prosecution defenses were rarely accepted and faced a very high burden of proof because "such claims invade a special province of the Executive, its prosecutorial discretion."

"These concerns are greatly magnified in the deportation context," he continued, adding that deportation decisions can depend on sensitive foreign policy or intelligence considerations. "The Executive should not have to disclose its 'real' reasons for deeming nationals of a particular country a special threat," Scalia said.

He added that there might be "a rare case in which the alleged basis of discrimination is so outrageous" that a selective enforcement defense should be allowed. But this is not such a case, he said.

Scalia's opinion on this issue was joined by Chief Justice William H. Rehnquist and by Justices Sandra Day O'Connor, Anthony M. Kennedy and Clarence Thomas. Justice John Paul Stevens, concurring separately, said that while "of course, Congress could not authorize punishment of innocent persons because they happen to be members of an organization that engaged in terrorism," for the reasons given in Scalia's opinion, "I have no doubt that the Attorney General may give priority to the removal of deportable aliens who are members of such an organization."

The three other members of the Court -- Justices Ruth Bader Ginsburg, David H. Souter and Stephen G. Breyer -- did not so much dissent on the selective enforcement issue as refuse to

endorse the majority's view, objecting that the court should not have taken up the issue after indicating that it would not do so in this case.

The government regards the Popular Front for the Liberation of Palestine as a terrorist organization. While the eight have spoken and raised money for the group, none have been charged with any acts of violence. Several were students when the case began, and were initially charged with offenses like not taking enough college credits to maintain their legal status as foreign students.

While losing this phase of the case, the eight do not face immediate deportation and have several layers of administrative review available. The Court made clear, however, in a part of the opinion from which only Souter dissented, that judicial review would be limited, for these and all other aliens facing deportation, to a single appeal at the end of the process, once a final order of deportation has been issued.

This part of the ruling is likely to affect many more people than the ruling on selective enforcement. Few courts have ever accepted a selective enforcement defense in a deportation case. But there has been widespread confusion over how to interpret the densely worded, internally contradictory provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the restrictive new immigration law that governed the case.

The decision on Wednesday marked only the beginning of the Supreme Court's consideration of the sweeping 1996 law, which made major changes and has spawned hundreds of court cases. Federal appeals courts across the country have in varying ways expressed concern that Congress went too far in stripping the federal courts of jurisdiction to review aliens' constitutional challenges to deportation proceedings. The administration has appealed three of these rulings to the Supreme Court, which is now likely to accept at least one of them for review soon.

The question for the Court on Wednesday was whether the new law's limitations on judicial review, which clearly apply to deportation cases that began after its enactment, also apply to the tens of thousands of cases that were pending when the law took effect. The Court's answer, by a vote of 8 to 1, was yes.

What was surprising about the decision, *Reno v. American-Arab Anti-Discrimination Committee*, No. 97-1252, was not so much either part of the ruling but the fact that the Court ruled at all on the selective enforcement issue. The administration included that issue when it appealed the 9th Circuit's latest ruling to the Supreme Court last year, but the justices, in granting the case last June, issued an order limiting their review to the statutory question of the timing of appeals.

Consequently the selective enforcement issue was no longer part of the case, as Ginsburg pointed out in her separate opinion on Wednesday criticizing the majority for reaching an issue on which the court had declined to seek briefs or argument. She said she would have left the question "an open one."

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Orange County Register  
625 North Grand Avenue

Santa Ana, CA 92701-4347  
or faxing to (714) 565-3681

Immigrants as targets  
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The U.S. Supreme Court's 8-1 ruling Wednesday, bolstering the Immigration and Naturalization Service's ongoing attempt to deport several Los Angeles-area immigrants, dealt a devastating blow to the idea that legal immigrants have the same free-speech rights as U.S. citizens.

And by endorsing the idea that foreign nationals have no right to make legal claims of "selective enforcement" of U.S. immigration law, the court has given federal officials broad authority to target immigrants for deportation based on the flimsiest reasons.

This exceedingly complex case, involving a variety of procedural and jurisdictional issues, stems from a 1987 effort by the INS to deport a group known as the L.A. Eight -- seven Palestinians and a Kenyan accused by the government of aiding and abetting an international terrorist organization. All eight were in the country legally.

One member of the group, Michel Shehadeh of Garden Grove, apartment with guns drawn while he was with his 3-year-old son. Yet in the 12 years since that frightening event, federal authorities have provided no evidence substantiating their terrorism charges against those individuals.

The group's members never belonged to any terrorist group, Mr. Shehadeh told us this week. He said he "abhors terrorism," but was merely involved in political activism on behalf of Palestinian rights. And he believes the authorities are picking on "the weakest link in the civil liberties chain... ." They'll "just kick out some Palestinians and claim terrorism. And use us to start the legal precedent and use it against anybody."

Essentially, the government has been trying to keep the group from raising constitutional issues, such as a First Amendment right to free speech, in their defense. Which means their defense against INS charges has been confined to immigration hearings or appellate courts, where procedural rather than constitutional issues are the focus.

The Supreme Court overturned an appeals court verdict that had halted the government's deportation actions. The high court made an 8-1 jurisdictional ruling -- that aliens may not bring selective-enforcement claims before federal courts. And then, by a separate 5-4 vote, it made a substantive ruling vastly limiting any selective-enforcement claims. What especially rankles the L.A. Eight's supporters is that the court made the latter ruling even though it had restricted legal arguments to jurisdictional issues.

"If you're being deported for your political beliefs, essentially the way in which you would challenge that is by making a claim of selective enforcement," Hussein Ibish told us; he is the media director for the American-Arab Anti-Discrimination Committee, the Washington-based group that brought the case on behalf of the L.A. Eight.

"In other words, [you say] that you're being targeted by a bunch of laws and provisions that exist but are not enforced generally. But when someone comes along whose political views the government doesn't agree with, these things are dusted off and hauled out. That would be the standard way in which the government would seek to silence noncitizens."

What does this mean for noncitizens? If the government decides to start deportation proceedings, noncitizens have virtually no right to take their case to federal court. And since the Supreme Court has given the government broad latitude in trying to deport them, noncitizens could be targeted for speaking out on political causes.

Writing for the majority, Justice Antonin Scalia argued that the government "should not have to disclose its 'real' reasons for deeming nationals of a particular country a special threat -- or indeed for simply wishing to antagonize a particular foreign country by focusing on that country's nationals."

That, according to ADC's Mr. Ibish, allows immigration officials to target certain groups of unfavored immigrants for "undisclosed political reasons." And it will undoubtedly put a chill on political expression in America's immigrant communities.

It's a deeply troubling ruling that could lead to wide injustices against people who are in the country legally, but not citizens. For instance, although Mr. Shehadeh's legal options may have not all been closed, he may eventually face deportation, which could separate him from his wife and family, who are citizens.

One remedy now is that Congress address the issue directly, by restoring to legal immigrants their ability to defend their free-speech rights in the federal courts.

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

By Joan Biskupic and William Branigin  
Washington Post Staff Writers  
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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."

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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U.S. Supreme Court Allows Palestinian Deportations  
By James Vicini

WASHINGTON (Reuters) - The U.S. Supreme Court ruled Wednesday that the U.S. government may deport seven Palestinians and a Kenyan linked to what the government has alleged is a Palestinian "terrorist" group.

The high court, by an 8-1 vote, overturned a U.S. appeals court ruling that blocked the U.S. government from deporting the eight aliens allegedly affiliated with the militant Popular Front for the Liberation of Palestine (PFLP).

The decision was a victory for the U.S. Justice Department, which argued that a 1996 change in the immigration law meant that federal courts no longer have jurisdiction over the case involving the aliens known as the "L.A. (Los Angeles) 8."

The Justice Department said the law stripped the federal courts of the authority to review the immigrants' constitutional claims.

In a sweeping 21-page ruling that upholds the government's broad powers to deport aliens, Justice Antonin Scalia agreed with that argument. The 1996 law "deprives the federal courts of jurisdiction" over the lawsuit by the aliens, he said, adding, "Judicial review .. of these proceedings is unavailable."

Scalia also sided with the government by ruling there was no requirement to permit immediate review of the claims by the aliens that they were unfairly singled out for enforcement because of their political views.

"As a general matter -- and assuredly in the context of claims such as those put forward in the present case -- an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation," Scalia wrote.

The Immigration and Naturalization Service (INS), an agency which is part of the Justice Department, has sought to deport the eight since 1987, alleging that the PFLP is "an international terrorist" organization.

The federal government says the eight have violated a series of laws, including failing to maintain student status, working without authorization and overstaying a visit.

The eight maintain that they have not violated any laws, and are being targeted for deportation solely because of their political beliefs, in violation of their constitutional free-speech rights under the First Amendment.

A federal judge in Los Angeles ruled against the government, concluding that the PFLP, a radical offshoot of the Palestine Liberation Organization, had been engaged in a wide range of lawful activities. The judge blocked the deportations.

The San Francisco-based appeals court upheld the decision. It ruled that the mere act of raising money for a group such as the PFLP does not justify deportation unless the fund-raisers specifically intended to support terrorism.

The Supreme Court reversed the appeals court's decision.

In a separate concurring opinion, Justice John Paul Stevens said the intended disposition by Congress under the 1996 law of cases like this one  
``is plain. It must be dismissed."

In dissent, Justice David Souter said it was ``highly improbable that Congress actually intended to raise a permanent barrier to judicial review for aliens" whose proceedings were pending when the 1996 law took effect.

The eight immigrants are Aiad Barakat, Naim Sharif, Khader Hamide, Michel Shehadeh, Bashar Amer and brothers Ayman and Amjad Obeid -- all Jordanian nationals -- and Hamide's wife, Julie Mungai from Kenya.

They were arrested by the FBI and immigration agents in 1987 in Los Angeles even though a lengthy FBI investigation failed to turn up any evidence of plans to commit criminal or terrorist acts.