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## Justices Uphold Selective Deporting of Aliens

By LINDA GREENHOUSE

ASHINGTON -- 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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