

Supreme Court issues ruling on "Los Angeles Eight"

Sweeping attack on the democratic rights of immigrants

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The US Supreme Court declared February 24 that the American government may selectively target immigrants for deportation based on their political beliefs.

The decision in *Reno v. American-Arab Anti-Discrimination Committee* stems from the attempt of the Immigration and Naturalization Service to deport eight Palestinian-rights activists in the Los Angeles area. They were first charged in 1987 with raising funds and providing political support for the Popular Front for the Liberation of Palestine, one of the component organizations of the PLO. Three of the eight have become permanent residents and do not now face deportation, but the INS will move against the remaining five, restarting deportation proceedings which have been stayed by lower court orders for more than five years.

The decision on the Los Angeles Eight combines witch-hunting of immigrants and an attack on democratic rights in the guise of "anti-terrorism." It reflects the increasingly aggressive role of the right-wing majority on the Supreme Court.

In the 1980s the US government classified the PLO and the PFLP as terrorist organizations, although today Yassir Arafat is welcomed at the White House and hosted Clinton's recent visit to Gaza. The eight immigrants, seven of them Palestinians and the eighth a Kenyan, were targeted for deportation, not because of violent acts, but because of their political opinions. Their political activity consisted of fundraising, public speeches and other conduct which would be perfectly legal if carried out by US citizens.

The eight activists have been routinely referred to in the press as "illegal aliens." However, none had entered

the United States illegally, and three became permanent residents in the course of the long-drawn-out court battle. They were "illegal" only in the sense that some had overstayed their residence permits, and others saw their permits expire as the case made its way through the courts.

On several occasions the Justice Department and the INS were blocked from carrying out the deportation of the Los Angeles Eight by court orders issued by the 9th US Circuit Court of Appeals in San Francisco, which found that the government had impermissibly targeted the eight immigrants for their political beliefs.

In 1996 the Republican Congress passed and President Clinton signed a new immigration law which provided sharply limited appeal rights for immigrants fighting deportation orders, and barred the federal courts from hearing a broad array of procedural challenges to such orders. Some of the provisions of the law were specifically aimed at restricting the actions of the lower federal courts in California, home to the largest US immigrant population.

Reno v. American-Arab Anti-Discrimination Committee was the first Supreme Court case in which the constitutionality of the 1996 law was at issue, and the justices ruled 8-1 not only to uphold the law, but to declare that its anti-democratic provisions apply retroactively to immigration cases already in the court system at the time the law was passed.

The 9th Circuit ruled that deportation because of political affiliation amounted to unconstitutional "guilt by association." No evidence of illegal acts was presented against the eight immigrants, only evidence that the eight were political supporters of the PFLP.

The Supreme Court overturned the Appeals Court on

two grounds. By a 5-4 margin, it found that there could be no judicial review of the INS decision to target them for deportation, because of the 1996 immigration law. By a 6-3 margin, the justices addressed the underlying issue of selective prosecution, holding that the INS could not be held accountable for a politically motivated decision to target certain immigrants because of their opposition to US foreign policy.

The second action was highly unusual in that the court did not have to rule on the substance of the selective prosecution issue since it had already barred the defendants from raising the issue on procedural grounds. Last summer, when the high court took up the case, the justices indicated they would confine their decision to the question of jurisdiction, and they did not ask for briefs on selective prosecution from either the Justice Department or the Palestinian defendants.

Given this legal history, the court decision is an overtly political intervention aimed at setting a wide-ranging precedent that immigrants fighting deportation cases have, in effect, no constitutional rights. David Cole, the Georgetown University law professor who was co-counsel for the defendants, told the *World Socialist Web Site* that under the terms of this decision, "Immigrants cannot object to being singled out for deportation. They therefore effectively lack the freedom to engage in political activity which is enjoyed by American citizens. It is very, very troubling."

The language of the majority opinion written by Justice Antonin Scalia is of such a sweeping and ultra-reactionary character that it begs historical comparison. One would have to go back to the days of the Dred Scott decision to find the Supreme Court depriving such a large group of people of judicial redress. In 1857 the pro-slavery majority on the court ruled that millions of black people were not persons under the Constitution and therefore did not have legal standing to sue for their freedom. Last Wednesday's ruling declared that millions of immigrants could not claim elementary due process rights when threatened with deportation as "illegal aliens."

"As a general matter," Scalia wrote, "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 Rehnquist and Justices Sandra Day O'Connor, Anthony Kennedy and Clarence Thomas. Justice John Paul

Stevens joined in the 6-3 ruling overturning the Appeals Court decision, but issued a separate opinion.

Scalia's opinion combines contempt for democratic rights with support for the untrammelled power of the executive branch to deport immigrants at will. "When an alien's presence in the country is in violation of the immigration laws, the government does not offend the Constitution by deporting him," Scalia wrote, in effect arguing that those facing deportation proceedings were guilty unless they could prove themselves innocent.

The other co-counsel for the Palestinian defendants, Marc Van Der Hout of the National Lawyers Guild, said, "Justice Scalia's opinion is nothing short of outrageous. It relegates immigrants to a second-class status that is reminiscent of the political witch-hunts of the McCarthy era."

The number of people deported or otherwise forcibly removed from the United States has quadrupled under the presidency of Bill Clinton, from 43,525 in 1992, the year Clinton was elected, to 169,072 last year. Deportations doubled in the first year of enforcement of the 1996 immigration law.

A further Supreme Court ruling could open the floodgates still further. The 9th Circuit has struck down another provision in the 1996 law which has much wider application, the measure which declares that the deportation of an illegal immigrant with any past criminal convictions, no matter how trivial, "shall not be subject to review by any court." The Appeals Court ruled last November, in *US v. Magana-Pizano*, that this provision violates the constitutional guarantee of habeas corpus--the right to seek a court order against unjust imprisonment. The Justice Department has asked the Supreme Court to overturn this lower court decision as well.



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