

US Supreme Court upholds arbitrary executive power in immigration visa case

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The United States Supreme Court yesterday endorsed the Obama administration's assertion of the arbitrary power to deny immigration visas based on vague invocations of the so-called "war on terror."

The Supreme Court's decision represents one further step in the abrogation of basic democratic norms and the entrenchment of absolute executive power, which the Obama administration has pursued relentlessly ever since coming to office. More specifically, the decision occurs in the midst of a global offensive against the basic right of citizenship.

The case decided by the Supreme Court yesterday involves Fauzia Din, a US citizen living in Fremont, California, and her husband Kanishka Berashk, a citizen of Afghanistan and a former civil servant in the Taliban administration. In light of their marriage, the couple applied for a visa for Berashk to travel to the United States. American law gives a special visa preference to spouses of US citizens.

The Obama administration rejected the visa application but refused to give specific reasons, simply invoking "terrorism" and "the war on terror." The couple denies having any involvement in terrorism.

In their lawsuit, *Kerry v. Din*, the couple argued that the Obama administration should have at least been required to give reasons for its denial of the visa, and that the procedure violated Mrs. Din's due process rights.

The Fifth Amendment, part of the US Bill of Rights, provides that "no person ... shall be deprived of life, liberty, or property ... without due process of law." Din's attorneys argued that her right to "liberty" included, at the very least, the right to live with her spouse. In addition, if she is not permitted to live with her spouse in the US, then that would be tantamount to revoking her US citizenship, since she would have to

live with him overseas instead.

The Ninth Circuit Court of Appeals, which had previously decided the case, found that the Obama administration failed to provide a "legitimate reason" for denying the visa. The Supreme Court's opinion, authored by Justice Antonin Scalia and available here, disagreed and reversed the Ninth Circuit's decision. In other words, the Obama administration is within its powers to refuse to issue the visa without telling the couple why.

Scalia, joined by Justices John G. Roberts, Jr. and Clarence Thomas, dismissed outright Din's claim that her constitutional rights were violated, claiming that she did not have a "constitutional right to live in the United States with her spouse."

"There is no such constitutional right," they wrote. Scalia went out of his way to ridicule those who live in "the artificial world of ever-expanding constitutional rights." This revealing line is written on behalf of the Supreme Court of the country that claims to be spreading "human rights" around the world.

Interestingly, Justice Scalia based the Supreme Court's decision yesterday on the 1972 case of *Kleindienst v. Mandel*. That case, according to the Supreme Court's syllabus, involved the denial of a nonimmigrant visa to a "revolutionary Marxist speaker."

That speaker was, in fact, none other than Pabloite leader Dr. Ernest E. Mandel. A citizen of Belgium, Mandel was prohibited from entering the United States on the grounds of the Immigration and Nationality Act of 1952, which bars those who advocate or publish "the economic, international, and governmental doctrines of world communism" from traveling to the United States.

In that case, which can be viewed here, the Supreme Court agreed that Mandel could be barred from entering

the United States, on the grounds that the government had provided a “facially legitimate and bona fide” reason for its action.

“The reasoning and the holding in *Mandel* control here,” Scalia wrote. Scalia’s citation to *Mandel*’s case hints at some of the real concerns behind the US government’s vigorous assertion of its power to arbitrarily grant or deny visas without giving reasons.

Justices Anthony Kennedy and Samuel Alito agreed with Scalia’s decision, but supplied a different rationale. Kennedy wrote that the government had satisfied “due process when it notified Din’s husband his visa was denied under the immigration statute’s terrorism bar.” In other words, the Obama administration observed the requirements of due process because it “told” the targeted individual what it had decided to do.

This decision echoes the Obama administration’s ongoing efforts to distort the basic democratic right of due process to suit the drive towards a police state. In 2012, Obama’s attorney general Eric Holder infamously asserted that assassinating American citizens on US soil without charges or trial was consistent with due process, because the president would meet in secret with his national security advisers before signing the death warrants. In reality, extrajudicial assassination represents the clearest imaginable example of depriving a person of “life ... without due process of law.”

Justice Steven Breyer filed a dissent in Monday’s ruling, which was joined by Justices Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan. “I do not deny the importance of national security, the need to keep certain related information private, or the need to respect the determinations of the other branches of Government in such matters,” Breyer wrote.

However, Breyer said, “the presence of security considerations does not suspend the Constitution.”

“I am terribly disappointed,” Din said in a statement yesterday following the ruling. “My husband and I did nothing wrong. We got married and expected to live together in the United States, my home.”

The Supreme Court is nearing the end of its term, with decisions in a number of significant cases expected by the end of the month. The issues in these cases include whether gay marriage is a constitutional right, as well as a case involving Obamacare subsidies

and others. The *World Socialist Web Site* will report and analyze these decisions as they are issued.

But by any objective standard, the Supreme Court’s docket is remarkable for what is *not* on it. One would scarcely know from looking at the list of cases the Supreme Court will decide this term that America is in the midst of a historic crisis and breakdown of basic democratic legality, and that the government is in the midst of an aggressive drive to establish the framework of a police state. When are these great “cases and controversies” going to be litigated?

Ironically, the Supreme Court’s decision yesterday was handed down on the 800th anniversary of Magna Carta, the historic charter guaranteeing “due process.”



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