

US Supreme Court strikes down part of deportation statute

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On Tuesday, the Supreme Court voted five to four against part of a statute that allowed the government to deport some immigrants convicted of “crimes of violence.” The decision angered the Trump administration which has fought to fast-track the deportation of all immigrants.

In a tweet Tuesday, President Trump stated, “Today’s Court decision means that Congress must close loopholes that block the removal of dangerous criminal aliens, including aggravated felons.”

In its decision, the court affirmed a Ninth Circuit Court of Appeals ruling that blocked the deportation of James Dimaya, a 25-year legal US resident from the Philippines, who was convicted of two burglaries. Dimaya came to the US when he was 13.

After he was convicted of two home burglaries in California, the government tried to deport Dimaya on the grounds that he had committed a “violent crime.” Although neither burglary involved violence or physical attacks against anyone, the statute defined a violent crime as any crime that involved a “substantial risk of force against the person or property of another.”

The Supreme Court ruled that the language was unconstitutionally vague and could be interpreted in an arbitrary and discriminatory way. The text of the statute was passed in 1984 with Democrats providing 210 of the 316 “yes” votes in the House of Representatives and 35 of the 78 “yes” votes versus just six of the 11 “no” votes in the Senate. Democrats voting “yes” on this now-unconstitutional language include then-Congresspersons Richard Durbin, Charles Schumer and Al Gore, as well as Senators Joe Biden, Daniel Moynihan, Bill Bradley and Sam Nunn.

Justice Neil Gorsuch, appointed by Trump to succeed the deceased far-right Antonin Scalia, cast the deciding vote against the law along with the four nominally

liberal judges.

In his opinion, Gorsuch wrote that “the Constitution looks unkindly on any law so vague that reasonable people cannot understand its terms and judges do not know where to begin in applying it.”

“Vague laws,” he added, “invite arbitrary power.”

The case, *Sessions v. Dimaya*, was first argued in January 2017 but was left with a split vote because of the vacancy caused by the death of Antonin Scalia the previous year. The justices were deadlocked four to four, and the case had to be reargued in October after Gorsuch joined the court.

In 2015, in a similar case called *Johnson v. United States*, the Supreme Court ruled that a key part of the Armed Career Criminals Act (ACCA) was unconstitutional on similar grounds. The ACCA was also passed with overwhelming bipartisan support in 1984.

In *Dimaya*, Justice Elena Kagan wrote in an opinion that the lower courts had been unable to apply the law consistently.

“Does car burglary qualify as a violent felony?” Kagan asked. “Some courts say yes, another says no. What of statutory rape? Once again, the circuits part ways. How about evading arrest? The decisions point in different directions. Residential trespass? The same is true.”

The government’s brief argued that immigration statutes should be treated differently than laws that treated crimes. However, Kagan pointed to a 1951 Supreme Court Decision, *Jordan v. De George*, which held that both immigration and criminal laws should be tested for constitutional vagueness “in view of the grave nature of deportation.”

Clarence Thomas wrote a scathing dissent in which he argued that immigration laws require only the most

minimal due process scrutiny.

While Tuesday's decision came as a setback to the Trump administration's plan to fast-track deportation, the defense of democratic rights cannot be entrusted to the Supreme Court.

The Supreme Court recently ruled that immigrants awaiting deportation were not entitled to due process. In a five-to-three decision, the Court ruled in *Jennings v. Rodriguez* that the government can indefinitely detain immigrants, depriving them of the right to bail. Kagan recused herself from the decision because she previously argued against granting bond hearings in the same case when she was solicitor general under the Obama administration.



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