

Biden administration tells Supreme Court: Providing immigrants with explanations about a visa denial is a threat to national security

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The Supreme Court will hear arguments on Tuesday in *State Department v. Muñoz*, one of the most important immigration cases in the recent period. At stake is whether or not the Constitution and due process apply in the consular process for citizen spouses. The consular process is the procedure by which immigrants apply for permanent residency at a US consulate abroad.

As part of its aggressive anti-immigrant policy, the Biden administration is seeking to lay the foundation for the sweeping denial of visas for migrants without recourse, oversight or appeal.

At the center of the case is the relationship of Sandra Muñoz, a Los Angeles workers' rights attorney, and Luis Asencio-Cordero, her El Salvadoran husband. The couple met at the wedding of a mutual friend in 2008, eventually married in 2010 and lived together in the Los Angeles area.

In 2013, they initiated the consular process for Asencio-Cordero, who had immigrated to the US without papers in 2005. In what was supposed to be the final step in obtaining Asencio-Cordero's visa, the couple went to the US Embassy in El Salvador in 2015 for an interview. Instead, the consular official arbitrarily denied Asencio-Cordero his visa and refused him leave to re-enter the United States.

The denial was given without explanation and the couple was perplexed and heartbroken. Eventually Muñoz would have to return to the United States without her husband. They have been separated for almost nine years.

Muñoz and Asencio-Cordero have been fighting the denial since 2017 when their case began in a federal district court in Los Angeles. It was only at that point when the federal government claimed that Asencio-Cordero's denial was due to his alleged history as a member of a criminal gang and a threat to national security.

The Department of Homeland Security claimed his four tattoos—a portrait of psychologist Sigmund Freud, a depiction of Our Lady of Guadalupe, a theatrical mask, and a tribal-style pattern, somehow connected him to a gang. The claim has since been destroyed by gang tattoo experts and Asencio-Cordero has no criminal record in either country.

The couple are represented by Eric Lee and Alan Diamante of Diamante Law Group, Colleen Cowgill of the National Immigrant Justice Center, Erwin Chemerinsky of the University of California, Berkeley School of Law, as well as attorneys Charles Roth, Keren Zwick, Mary Georgevich and Richard Caldarone.

The brief submitted to the Supreme Court in March by Muñoz and Asencio-Cordero's attorneys noted that in October 2022 the Ninth Circuit Court of Appeals "affirmed the district court's ruling that Muñoz's due process rights were implicated, reasoning that U.S. citizens have both 'a fundamental liberty interest in their marriage' and 'a liberty interest in residing in their country of citizenship' and that the denial violated Muñoz's due process rights because 'the cumulative effect of' the denial was 'a direct restraint on [her] liberty interests.'"

Despite the Ninth Circuit's ruling that the arbitrary denial of Asencio-Cordero's visa violated the constitution and Muñoz's fundamental right to marriage and due process, the Biden administration has aggressively pursued its appeal in the hope that the right-wing Supreme Court will hear the case and overturn the decision. The only purpose is to be able to limit immigration by denying visas without legal recourse and with those affected stripped of the right to ask questions.

Last Friday the Biden administration submitted a brief to the Supreme Court which claimed that if consular officers had to explain themselves and provide factual accounts for the denial of green cards, it would be "profoundly disruptive" to the nation's security interests. The blanket claim that specifying why a visa was rejected would somehow amount to a "national security threat" is outrageous and would be comical if the stakes were not so high.

The brief claimed that if such "sensitive information" were provided, it "could tip off transnational criminal and terrorist organizations about law-enforcement and intelligence techniques and sources, enable circumvention of measures designed to detect immigration fraud and criminality, and have a chilling effect on domestic and foreign agencies' sharing of information with the Department of State—all to the detriment of national security..."

The Biden administration also claimed that consular immigration

officers could face threats to their own physical safety if they had to explain that a visa denial was due to a supposed national security-related issue in countries with extensive gang activity.

The reality is that the lion's share of the hundreds of thousands who undergo this process annually have no criminal history, are seeking a better life, and in most cases are looking to unite with spouses and other relatives. The Biden administration is attempting to use a bogeyman scenario where providing an explanation for the denial of a visa to a criminal or supposed terrorist is so risky that it puts consular officials in danger. This is supposedly such a threat to officers and so risks revealing too much about how the US gathers information that no one—even someone wrongly accused such as Ascension-Cordero—has a right to know why they have been rejected.

Another central component of the case revolves around the fact that Muñoz, as the citizen-spouse, has a right to due process, is part of the consular process, has a right to marriage, and suffers “extreme hardship” by the separation.

Muñoz and Asencio-Cordero's attorneys argue in their filing that Muñoz's liberties are at stake in her husband's consular process, and that:

The denial of Asencio-Cordero's visa directly implicates Muñoz's right to marriage, which entails the right to live with and enjoy the society of one's spouse. For over a century, federal immigration policy has favored spousal unity over all other forms of immigration, rooting the right to cohabitation in natural rights.

The Biden administration claims that Muñoz, despite being a US citizen, is not entitled to a judicial review of Ascencio-Cordero's application. The government also claims that Muñoz can easily cohabit in her marriage by moving to El Salvador where she would be unable to practice her profession as a lawyer and make a living. Not to mention the extreme financial and political crisis facing the country, in which most regions are dominated by criminal gangs. While feigning concern for the entry of MS13 members into the United States, the government takes no issue with Muñoz, a US citizen, having to face them.

The federal government, represented by Solicitor General Elizabeth B. Prelogar of the US Department of Justice, told the Supreme Court in last Friday's brief that “Muñoz does not have a legitimate claim of entitlement to an immigrant visa for her husband in El Salvador... And contrary to respondents' suggestion, visa issuance is not mandatory. The [Immigration and Nationality Act (INA)] provides that a consular officer “may issue” a visa “to an immigrant who has made proper application therefor.”

Numerous amicus briefs have been filed in support of Muñoz and Asencio-Cordero, including filings from members of the US Congress, immigration rights organizations and the American Bar Association.

Glaringly absent from the amicus brief submitted by legislators in support of the couple is the signature of Representative Alexandria Ocasio-Cortez. A member of the Democratic Socialists

of America (DSA), Ocasio-Cortez has falsely claimed in her continued defense of “Genocide Joe” that supporting Biden and the Democratic Party is necessary in order to protect immigrants.

However, it cannot be stressed enough that it is the Biden administration which has brought this case to the Supreme Court, a court dominated by Trump and Republican-appointed justices.

The Biden administration has ramped up its anti-immigrant chauvinism in an attempt to appeal to right-wing elements for votes in November's presidential election. In this, Biden seeks to be perceived as more anti-immigrant than Trump, which is itself not an easy task, and is an effort which will end up only pushing the entire political atmosphere further to the right.

Trump has already vowed that if he wins in November, among the measures he will institute on his first day in office is what he referred to as “the largest domestic deportation program in American history.”

The anti-immigrant fervor being whipped up goes far beyond the candidates, with the Republican National Committee using the URL bidenbloodbath.com to push the claim in its headline that “BIDEN IS AIDING AND ABETTING AN INVASION. INSTEAD OF PROTECTING AMERICANS, HE IS PRIORITIZING ILLEGAL ALIENS OVER U.S. CITIZENS.”

It was announced in February that Biden is considering an executive order which would prevent most immigrants from claiming asylum, the basis of which is Section 212 (f) of the INA, which provides the president sweeping authority to block immigration for anyone deemed “detrimental to the interest of the United States.” Trump cited the same legal code with his anti-Muslim travel ban a week after his 2017 inauguration.

The fact the Biden administration is so aggressively pursuing the overturning of the Ninth Circuit Court decision epitomizes the Democratic Party's embrace of the Republican campaign against immigrants.

The attacks on immigrants and asylum, if unchallenged, will lay the groundwork for a further attack on the democratic rights of the working class. Under conditions of expanding global war, the ruling capitalist parties in every country have declared war on immigrants as a scapegoat for the crisis of the capitalist system.

The international working class must respond with an alternative and take up the fight for a revolutionary socialist internationalist solution. Bound up with this is the defense of workers' right to live and work in any country in the world without fear of deportation or repression.



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