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Due Process and Aliens: What They Are and Are Not Entitled to in Immigration Proceedings

Hans von Spakovsky

KEY TAKEAWAYS

Federal immigration law and court precedents make clear that aliens do not have full access to all of the constitutional rights afforded to citizens.

Immigration statutes prohibit review of specified federal actions by federal courts and limit which federal courts have jurisdiction over particular alien claims.

Federal courts that assume jurisdiction over banned, prohibited, or limited claims by aliens are violating federal law, and the Supreme Court should tell them so.

Some critics of the Trump Administration's enforcement of federal immigration law, including members of the public, the media, and Congress, have made misleading claims about the due process rights that apply in immigration proceedings. Those who claim that non-citizens, referred to in our nation's immigration laws as aliens, are entitled to the full panoply of constitutional rights enjoyed by American citizens are simply wrong and fail to differentiate between criminal prosecutions and immigration proceedings, which are civil matters.

As provided by Congress and by some court decisions interpreting the Constitution, aliens have only limited due process rights in immigration proceedings. Those rights differ depending on the alien's status and whether he or she is outside the United States and trying to enter this country or already in the country, legally or illegally.

This paper, in its entirety, can be found at **https://report.heritage.org/lm377**

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In fact, several federal immigration statutes specifically bar aliens from even asserting certain claims in federal courts. Federal courts assuming jurisdiction over such claims by aliens are violating federal law, and any orders they issue ought to be declared void *ab initio,* or invalid, by an appellate court.

Immigration Proceedings: Criminal vs. Civil Actions

Regardless of their legal status, aliens are entitled to the same constitutional due process rights provided to criminal defendants who are citizens when they are being *criminally* prosecuted for assault, rape, burglary, kidnapping, murder, or other crimes.

However, immigration proceedings to bar an alien's entry or to remove or deport[1] an alien present inside the United States are *not* criminal proceedings. As the Supreme Court of the United States first outlined in 1893 in *Fong Yue Ting v. U.S.*, a decision in which it rejected habeas corpus petitions filed by Chinese citizens who claimed that they were being unlawfully detained by U.S. marshals "without due process of law":

> The [immigration] proceeding…is in no proper sense a trial and sentence for a crime or offense. It is simply the ascertainment, by appropriate and lawful means, of the fact whether the conditions exist upon which Congress has enacted that an alien of this class may remain within the country. The order of deportation is not a punishment for crime.... It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the Government of the nation, acting within its constitutional authority, and through the proper departments, has determined that his continuing to reside here shall depend.[2]

The Court added that an alien being removed by the government is not being "deprived of life, liberty, or property" and that "the provisions of the Constitution securing the right to trial by jury and prohibiting unreasonable searches and seizures and cruel and unusual punishments [therefore] have no application."[3] That is also why federal immigration officers do not need a warrant issued by a judge before arresting and detaining aliens and why aliens are not entitled to be advised of their *Miranda* rights or to the assistance of a government-appointed lawyer during their deportation proceedings.[4]

The fact that the removal process is a civil proceeding was reaffirmed by the Supreme Court in 2010 in *Padilla v. Kentucky*.[5] The Court held in

that case that a criminal defense attorney provided ineffective assistance of counsel when he misinformed his client, a permanent resident alien charged with transporting drugs, of the possible immigration consequences of pleading guilty. While that guilty plea in his criminal prosecution made "his deportation virtually mandatory" under federal immigration law, the Court noted that it had "long recognized that deportation is a particularly severe 'penalty'" and is not "in a strict sense, a criminal sanction." The Court emphasized that "[r]emoval proceedings are civil in nature."[6]

Aliens are not even entitled to the protection of the Ex Post Facto Clause of the Constitution. Article I, Section 9, Clause 3 provides that no "ex post facto Law shall be passed" by Congress.[7] Ex post facto laws impose criminal punishments on conduct that was lawful when it was done. In 1954, in a case involving the deportation of an alien who had been a member of the Communist Party before such membership had been made a deportable offense, the Supreme Court held that "it has been the unbroken rule of this Court that [the Ex Post Facto Clause] has no application to deportation."[8]

Aliens also cannot claim "selective prosecution" when they are contesting removal. In 1999, the Supreme Court held that "an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation."[9]

The due process rights in civil immigration proceedings are far more limited, as outlined and defined by Congress in federal immigration laws and the procedural rules promulgated by the Attorney General for the conduct of federal immigration proceedings. In addition, federal immigration courts are not Article III courts in which judges must be confirmed by the Senate and enjoy life tenure; rather, they are administrative "courts" within the Department of Justice. Immigration "judges" are not federal judges at all; they are employees of the Justice Department who are selected by the Attorney General and who act as the Attorney General's "delegates in the cases that come before them."[10]

Aliens Attempting to Enter or Reenter the United States

Aliens attempting to enter the United States have no constitutional due process rights to contest the government's denial of their entry, and that includes (with only very limited exceptions) previously admitted aliens who are trying to reenter. Furthermore, no federal court has the authority to overrule the decision of the executive branch to exclude an alien.

In 1950, in *U.S. ex rel. Knauff v. Shaughnessy*, a woman who had served as a civilian employee of the U.S. War Department in Germany and who was

the German war bride of an honorably discharged American serviceman, was denied entry without a hearing based on a decision by an immigration official and the Attorney General that her admission would be prejudicial to the United States.[11] The Supreme Court said that "whatever the rule may be concerning deportation of persons who have gained entry into the United States, it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien." The Court also emphasized more importantly that the due process rights of such aliens are limited to "the procedure authorized by Congress"[12] if Congress provides such a procedure.

Any alien who seeks admission "may not do so under any claim of right." Such admission "is a privilege granted by the sovereign United States Government" and will be granted "only upon such terms as the United States shall prescribe."[13] The "exclusion of aliens is a fundamental act of sovereignty" and "stems not only from legislative power but is inherent in the executive power to control the foreign affairs of the nation."[14]

In 1953, the Court emphasized this once again in *Shaughnessy v. U.S. ex rel. Mezei*, stating that "[c]ourts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."[15] *Mezei* involved an alien who had lived in the United States for 25 years but was denied reentry by an immigration official and the Attorney General without a hearing after trying to return from Hungary, which was behind the Iron Curtain at the time, "on the basis of confidential information, the disclosure of which would be prejudicial to the public interest" for security reasons.[16]

The Court declared that aliens "who have once passed our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.... But an alien on the threshold of initial entry stands on a different footing." The only "due process" to which aliens seeking to enter the country are entitled is whatever "the procedure authorized by Congress is." That is "due process as far as an alien denied entry is concerned."[17]

The Court emphasized that because the "action of the executive officer" to deny admission to an alien is "final and conclusive, the Attorney General cannot be compelled to disclose the evidence underlying his determination in an exclusion case." Thus, "courts cannot retry the determination of the Attorney General."[18] The fact that an alien has previously been admitted is irrelevant. As the Court outlined: "For purposes of the immigration laws," the Court observed, "the legal incidents of an alien's entry remain unaltered

whether he has been here once before or not. He is an entering alien just the same, and may be excluded if unqualified to admission under existing immigration law."[19]

The Supreme Court confirmed its views in 2020 in *Department of Homeland Security v. Thuraissgiam*.[20] The alien in that case was caught 25 yards inside the United States and claimed asylum; eventually, an immigration judge confirmed an immigration official's denial of his claim. The Court threw out his habeas corpus claim as barred by federal immigration law and reemphasized that more than a century of precedent establishes that a decision by an executive or administrative officer, acting within the scope of authority previously conferred by Congress, is all the process that is due for aliens seeking initial entry to our country.[21]

Congress has provided the President with virtually unfettered authority to exclude any aliens. In addition to the multiple grounds provided in 8 U.S.C. § 1182, section (f) of the statute gives the President the right to suspend the entry of "any aliens or of any class of aliens" if he determines that their entry "would be detrimental to the interests of the United States."

In 2018, the Supreme Court upheld the President's authority under that section in *Trump v. Hawaii*. President Donald Trump had suspended the entry of aliens from certain countries after "conclud[ing] that it was necessary to impose entry restrictions on nationals of countries that do not share adequate information for an informed entry determination, or that otherwise present national security risks."[22] The Court concluded that this provision gives the President "broad discretion" to bar the entry of aliens and that the language of the statute "exudes deference to the President in every clause."[23]

The one very limited exception to the ability to exclude even returning aliens was illustrated in a 1953 decision, *Kwong Hai Chew v. Colding*. In *Colding*, an alien seaman who was a permanent resident was out of the country for four months as the chief steward on an American-registered ship homeported in New York. The Supreme Court overturned the government's refusal to allow his reentry on security grounds without a hearing, treating him as a "continuously present alien" resident who was entitled to a hearing "at least before an executive or administrative tribunal." But that was because the alien had been cleared by the Coast Guard and was employed and stationed on an American ship that qualified as American soil for purposes of jurisdiction.[24] Those are highly unusual circumstances that rarely occur.

It should be noted that under 8 U.S.C. § 1101(a)(13), lawful permanent residents are not generally considered to be seeking admission to the

United States when returning from a visit abroad. That rule, however, does not apply to such residents attempting to reenter if, among other exceptions, they have:

- "Abandoned or relinquished" their status,
- Been "absent" from the U.S. continuously for more than 180 days,
- "[E]ngaged in illegal activity" abroad,
- Left the U.S. in the middle of removal proceedings, or
- Committed certain crimes.

First Amendment Rights and Aliens

Aliens seeking entry to the United States have no First Amendment right that would somehow give them the ability to contest the government's refusal to admit them because of their views, opinions, or other speech. (The citizens who may have invited them to speak also have no such right.)

In 1972, in *Kleindienst v. Mandel*, the Supreme Court upheld the Attorney General's refusal to waive the denial of a visa to Ernest Mandel, a Belgian journalist who described himself as a "revolutionary Marxist," under a provision of immigration law barring the entry of those who advocate or publish the "doctrines of World communism."[25] Mandel had previously been admitted to the United States under a waiver of this prohibition by the Attorney General and had been invited to speak at Stanford University and numerous other universities and conferences. Although a lower court determined that Mandel had no First Amendment right to entry, it held that the government's rejection of his visa violated the First Amendment rights of the professors and students who invited him.

The Supreme Court agreed that "Mandel personally, as an unadmitted and nonresident alien, had no constitutional rights of entry to this country as a nonimmigrant or otherwise."[26] However, it disagreed with the lower court's First Amendment holding. Justice Harry Blackmun's majority opinion noted that the "[Supreme] Court, without exception, has sustained Congress' 'plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.'"[27] Moreover:

> Were we to endorse the proposition that governmental power to withhold a waiver must yield whenever a bona fide claim is made that American citizens wish to meet and talk with an alien excludable under § 212(a)(28) [of the Immigration and Nationality Act of 1952], one of two unsatisfactory results would necessarily ensue. Either every claim would prevail, in which case the plenary discretionary authority Congress granted the Executive becomes a nullity, or courts in each case would be required to weigh the strength of the audience's interest against that of the Government…according to some as yet undetermined standard.[28]

The Court further found that the "dangers and the undesirability of making that determination…are obvious" and that it was "for precisely this reason" that this "decision has, properly, been placed in the hands of the Executive."[29]

Even aliens who are legally inside the United States do not enjoy the full panoply of First Amendment rights. Federal campaign finance laws, for example, prohibit foreign nationals (with the exception of permanent resident aliens) from participating in local, state, and federal elections of candidates for office by making any contributions, donations, or expenditures related to campaigns—activity in which citizens have a right to engage under the First Amendment.[30] In upholding this prohibition in 2011 in a First Amendment challenge filed by two aliens who were lawfully present in the United States with temporary work visas, the U.S. Court of Appeals for the District of Columbia Circuit explained that:

> The Supreme Court has long held that the government (federal, state, and local) may exclude foreign citizens from activities that are part of democratic self-government. For example, the Supreme Court has ruled that the government may bar aliens from voting, serving as jurors, working as police or probation officers, or teaching at public schools. Under those precedents, the federal ban at issue here readily passes constitutional muster.[31]

As the Supreme Court has said, "a State's historical power to exclude aliens from participation in its democratic political institutions [is] part of the sovereign's obligation to preserve the basic conception of a political community."[32]

Additionally, Congress has imposed restrictions on lawfully present aliens that, if violated, make those aliens deportable even though such restrictions could not be imposed on a citizen because they could violate a citizen's First Amendment rights. Under 8 U.S.C. § 1227, for example, the

Secretary of Homeland Security can order the removal of aliens "in and admitted to the United States" for activities that the Secretary of State "has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States."[33] An alien who "endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization" can also be deported.[34]

The government clearly could not prosecute and punish a citizen because of speech that the Secretary of State believes could have "serious adverse foreign policy consequences." Moreover, while providing "material support" for a terrorist organization is a criminal violation of the law,[35] the government cannot prosecute a citizen for simply publicly endorsing a terrorist organization like Hamas. But such actions would subject an alien to deportation, thereby demonstrating the difference between the First Amendment rights of citizens and the much more limited rights of aliens.

Removing Aliens Who Are Inside the U.S.

Expedited Removal. Some aliens who are in the country illegally are subject to expedited removal, which severely limits their access to federal courts or any type of administrative hearing process. Under the Immigration and Nationality Act, an alien arriving at the border can be removed "without further hearing or review" if he or she is deemed inadmissible by an immigration officer unless the alien requests asylum or asserts a credible fear of persecution if returned to his or her native country.

This provision can also be applied to aliens who have been *inside* the country for less than two years and, instead of being properly admitted or paroled, had entered without inspection at an established border crossing. In other words, if an inadmissible alien attempts to enter or makes it into the country illegally but is found and detained within two years, that alien can be removed without a hearing or any other proceeding.[36]

There is also an expedited removal proceeding for aliens convicted of one of a specified list of criminal offenses.[37] These range from such crimes as misdemeanor shoplifting and theft all the way to felony firearms, drug offenses, domestic violence, stalking, and child abuse as well as terrorism and espionage.[38] In such cases, the Secretary of Homeland Security can order the removal of an alien who is not a permanent resident alien. The only limitation on that authority is that the order cannot be enforced for 14 calendar days and the alien must be given "reasonable notice of the charges" and "a reasonable opportunity to inspect the evidence and rebut the charges."[39]

Removal of Aliens Through the Immigration Court System. Once outside that two-year, statutorily granted grace period, aliens who are in the country illegally are entitled to the due process of a hearing in the administrative immigration court system, not the federal Article III court system. Such immigration court proceedings are conducted by the Executive Office for Immigration Reviews (EOIR), an agency inside the U.S. Department of Justice that was established in 1983. EOIR is "responsible for adjudicating immigration cases" and does so "under delegated authority from the Attorney General."[40]

Immigration judges, who are employees of the Justice Department, determine the eligibility of an alien to remain in the United States or to be removed, including the legitimacy of an asylum claim or other possible justifications for a waiver of applicable immigration provisions. Those judges are authorized by Justice Department regulations to hold *in absentia* hearings when the alien does not appear at the hearing.[41] Large numbers of aliens who are illegally in the country fail to appear for their scheduled hearings, most likely because they know they have no valid reason for overcoming removal and remaining in the country legally.[42]

Aliens are entitled to legal representation in such hearings, but "at no expense to the government."[43] Aliens can cross-examine witnesses and have a right to review and rebut the evidence presented by the government, but hearsay evidence is not barred as it is in federal and state courts. Aliens also have no right to review evidence that, "if disclosed, [would] harm the national security...or law enforcement interests of the United States."[44]

Appeals of an immigration judge's decision are filed with the Board of Immigration Appeals, which is also an administrative court within EOIR.[45] Such appeals must be filed within 30 days.[46] Deportation orders issued by immigration judges are enforced by U.S. Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security.[47]

As previously noted, immigration judges act as "delegates" of the Attorney General, as do the members of the Board of Immigration Appeals.[48] Therefore, all of their decisions are subject to the "decisions of the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to [8 U.S.C. §1103])."[49] That statute provides the Attorney General with virtually plenary power over the adjudication of all "laws relating to the immigration and naturalization of aliens," subject to the "power, functions, and duties conferred upon the President."

Thus, for example, even if an immigration judge and/or the Board of Immigration Appeals grants an inadmissible alien a waiver from removal, the Attorney General can overrule that decision and direct the

implementation of whatever other policies, procedures, and rules are required to enforce federal immigration laws against any and all aliens. As an example, this power of "referral and review" was exercised in 2008 by Attorney General Michael Mukasey to overturn a decision by the Board of Immigration Appeals in a specific case in which the judge and the Board refused to grant an alien's request for a waiver of removal.[50]

Most important, federal law prohibits what is apparently happening in federal district courts where judges are presiding over aliens with outstanding deportation orders disputing their removal from the United States. Federal district courts have no original jurisdiction to decide whether an alien may remain in the United States whether through a trial or *de novo* review of an immigration trial court's decision. Authority to review decisions by the Board of Immigration Appeals rests solely with the federal circuit courts of appeal. This is the "exclusive means of review" provided by Congress in federal immigration law for any "order of removal entered or issued" by the administrative immigration court system.[51] Thus, any order issued by a federal district court and not a court of appeals in such a case violates federal law and should be considered void *ab initio*.

Additionally, any appeal of a deportation order affirmed by the Board of Immigration Appeals must be filed within 60 days with the relevant court of appeals. Therefore, appeals filed by aliens years after the issuance of a deportation order contesting the finding of ineligibility due to the government's delay in enforcing the order are also invalid because they were filed long past the filing deadline.[52]

Moreover, the statute also provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the [Secretary of Homeland Security] to commence proceedings, adjudicate cases, or execute removal orders against any alien."[53] The Supreme Court upheld this provision depriving federal courts of jurisdiction in 1999 in *Reno v. American–Arab Anti-Discrimination Committee*.[54]

Temporary Protected Status. Aliens with Temporary Protected Status (TPS) are lawfully present in the country but are not included in the jurisdiction of the immigration court system. Under 8 U.S.C. § 1254a, the Secretary of Homeland Security has the authority to provide temporary lawful status to aliens who cannot safely return to their native country due to an "ongoing armed conflict"; "an earthquake, flood, drought, epidemic, or other environmental disaster...resulting in a substantial, but temporary, disruption of living conditions"; or other "extraordinary and temporary conditions" unless allowing them to remain would be "contrary to the national interest."

This statute gives the Secretary the sole discretion to make this decision by "designating," after "consultation with appropriate agencies of the Government," a foreign state as a country whose citizens will receive TPS. In fact, the statute *prohibits* federal courts from interfering in the executive branch's decision on such a designation and whether any aliens will receive TPS or such designation will be revoked. It specifically provides that "[t]here is no judicial review of any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state under this" statute.[55] Thus, aliens whose TPS is revoked have no due process rights to contest that revocation and can be removed immediately from the country.

Despite that stark prohibition on judicial review, the Ninth Circuit Court of Appeals refused to stay a blatantly unlawful decision by a California federal district court that enjoined the government's recent cancellation of TPS for certain specified Venezuelan citizens that was originally granted in 2021 and renewed in 2023. However, on May 19, 2025, the U.S. Supreme Court, acting on an emergency appeal filed by the government, issued a stay of the injunction pending disposition of the case in the Ninth Circuit and a possible writ of certiorari filed with the Supreme Court.[56]

The Alien Enemies Act

The Alien Enemies Act of 1798 (AEA) gives the President the authority to apprehend and remove any aliens 14 years old and older when "there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government" of which those aliens are "natives, citizens, denizens, or subjects."[57]

This statute imposes few limitations on the President. If an alien is "not chargeable with actual hostility, or other crime against the public safety," he shall be allowed time to recover and remove his "goods and effects," according to the time allowed for that as provided in "any treaty then in force between the United States and the hostile nation or government." If there is no such treaty, the President gets to decide how much time is reasonable "consistent with public safety, and according to the dictates of humanity and national hospitality."[58]

Moreover, no judicial warrants are necessary to arrest, detain, and remove aliens subject to the President's proclamation invoking the AEA. The AEA specifically says that federal marshals "for such removal shall have the warrant of the President."[59]

On March 15, 2025, President Trump issued a proclamation under the AEA directing the removal of members of Venezuelan-based Tren de Aragua (TdA) as a "designated Foreign Terrorist Organization."[60] The proclamation describes TdA as operating in "conjunction with Cártel de los Soles, the Nicolas Maduro regime-sponsored, narco-terrorism enterprise based in Venezuela." The "result," says the proclamation, "is a hybrid criminal state that is perpetrating an invasion of and predatory incursion into the United States, and which poses a substantial danger to the United States."[61]

After five members of TdA who were detained and being removed from the country filed a lawsuit in federal court in the District of Columbia, Chief Judge James Boasberg issued temporary restraining orders prohibiting the government from removing those five aliens or any other aliens subject to the proclamation. He also provisionally certified a class action of all similarly situated aliens with those five gang members serving as representatives of the class.[62]

However, the Supreme Court, responding to an emergency motion filed by the government, entered an order staying that ruling and vacating the restraining orders.[63] Not only that, but the Court held that Boasberg never had jurisdiction over the actions of the government. Challenges to actions under the AEA, the Court said, can be brought only by habeas corpus petitions, and such petitions can be filed only in the judicial district where the detainee is confined: "The detainees are confined in Texas, so venue is improper in the District of Columbia."[64] Thus, Boasberg had no legal authority either to consider the claims in the first place or to issue any orders against the government.[65]

According to the Court, "judicial review under the AEA is limited," although a court can review "questions of interpretation and constitutionality" involving the AEA as applied to a specific alien, as well as "whether he or she 'is in fact an alien enemy fourteen years of age or older.'"[66] In addition, it is "well established" that aliens are entitled to due process in immigration removal proceedings, but that is limited to receiving notice that "they are subject to removal under the" AEA, and notice must be provided "within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs."[67]

In a second case involving TdA gang members, the Supreme Court issued an injunction against the government removing the aliens until sufficient notice had been given to the aliens. The Court held that "[u]nder these circumstances, notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster."[68] However, it refused to specify "the precise process necessary" to satisfy due process requirements and instead remanded the case to the Fifth Circuit U.S. Court of Appeals to make that determination.[69]

Conclusion

As federal immigration law and court precedents make clear, aliens do not have full access to all of the constitutional rights afforded to citizens. In immigration cases, which are civil and not criminal proceedings, aliens have only certain limited due process rights as defined by Congress and prior Supreme Court precedents. Those rights differ depending on the status of the aliens and whether they are outside the United States and trying to enter this country or are already in the country, either legally or illegally, as well as their visa or other status.

Moreover, a number of federal immigration statutes bar aliens from even asserting certain claims in federal courts, prohibit any federal court from reviewing specified actions of the federal government such as enforcement of deportation orders by the Attorney General, or limit which federal courts have jurisdiction over particular claims by aliens. Federal courts that try to assume jurisdiction over such banned, prohibited, or limited claims by aliens are violating federal law, and the Supreme Court, if necessary, should tell them so.

Hans von Spakovsky is Manager of the Election Law Reform Initiative and Senior Legal Fellow in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation.

Endnotes

1. "Deport" and "remove" are synonymous in federal immigration law.
2. Fong Yue Ting v. U.S., 149 U.S. 698, 730 (1893).
3. *Id.*
4. Miranda v. Arizona, 384 U.S. 436 (1966). The Supreme Court held that under the Fifth Amendment, *criminal* defendants must be warned that they have a right to be silent, that anything they say can be used against them in a court of law, that they are entitled to an attorney, and that if they cannot afford an attorney, one has to be appointed by the government to represent them before they can be questioned.
5. Padilla v. Kentucky, 559 U.S. 356 (2010).
6. *Id.* at 365 (citing INS v. Lopez-Mendoza, 468 U.S. 1032 (1984)).
7. *See* The Heritage Foundation, The Heritage Guide to the Constitution, https://www.heritage.org/constitution/#!/articles/1/essays/63/ex-post-facto.
8. Galvan v. Press, 347 U.S. 522, 531 (1954). The alien was a member of the Communist Party from 1944 to 1946, and membership in the Communist Party was not made a deportable offense until Congress passed the Internal Security Act of 1950.
9. Reno v. American–Arab Anti-Discrimination Committee, 525 U.S. 471, 488 (1999).
10. 8 C.F.R. § 1003.10.
11. U.S. ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 539–40 (1950).
12. *Id.* at 544.
13. *Id.* at 542.
14. *Id.* The Attorney General also cannot be forced by a court to reveal the evidence upon which the exclusion is based.
15. Shaughnessy v. U.S. ex rel. Mezei, 345 U.S. 206, 210 (1953).
16. *Id.* at 208.
17. *Id.* at 212.
18. *Id.* The Immigration and Naturalization Service was in the Department of Justice until creation of the Department of Homeland Security in 2003; hence the reference to the Attorney General determining admission into the country in this 1953 case.
19. *Mezei*, 345 U.S. at 213.
20. 591 U.S. 103 (2020).
21. The Supreme Court overturned the Ninth Circuit Court of Appeals holding that the bar on habeas corpus claims by aliens in federal immigration law violates the Suspension Clause of the U.S. Constitution.
22. Trump v. Hawaii, 585 U.S. 667, 675 (2018).
23. *Id.* at 683–84.
24. Kwong Hai Chew v. Colding, 344 U.S. 590, 596, 599–601 (1953).
25. Kleindienst v. Mandel, 408 U.S. 753, 755–56 (1972).
26. *Id.* at 762.
27. *Id.* at 766.
28. *Id.* at 768–69.
29. *Id.* at 769.
30. 52 U.S.C. § 30121.
31. Bluman v. FEC, 800 F.Supp.2d 281, 287 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012).
32. Foley v. Connelie, 435 U.S. 291, 295–96 (1978).
33. 8 U.S.C. § 1227(a)(4)(c).
34. 8 U.S.C. § 1182(a)(3)(B)(i)(VII).
35. *See* 8 U.S.C. §§ 2339A and B.
36. 8 U.S.C. § 1225(b). Any alien is "inadmissible" who is "present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General." 8 U.S.C. § 1182(a)(6)(A)(i).
37. 8 U.S.C. § 1228.

38. 8 U.S.C. § 1227.
39. 8 U.S.C. § 1228(b).
40. *See* Exec. Off. for Immigration Review, U.S. Dep't of Justice, About the Office, https://www.justice.gov/eoir/about-office (accessed June 14, 2025). Procedural rules under which the immigration courts operate are contained in 8 CFR § 1003 *et seq*.
41. 8 CFR § 1003.26(a).
42. Andrew R. Arthur, "The Massive Spike in Immigration Court 'No-Shows,'" Center for Immigration Studies (Feb. 2, 2024), https://cis.org/Arthur/Massive-Spike-Immigration-Court-NoShows (accessed June 24, 2025); Andrew R. Arthur, "GAO: One-Third of Immigration Court Aliens Are No-Shows," Center for Immigration Studies (Dec. 30, 2024), https://cis.org/Arthur/GAO-OneThird-Immigration-Court-Aliens-are-NoShows (accessed June 24, 2025).
43. 8 CFR § 1003.16.
44. 8 CFR § 1003.46 (a).
45. 8 CFR § 1003.1.
46. 8 CFR § 1003.38.
47. *See* U.S. Immigration and Customs Enforcement, U.S. Dep't of Homeland Security, Enforcement and Removal Operations, https://www.ice.gov/about-ice/ero (accessed June 24, 2025).
48. *See also* Lopez-Telles v. Immigration and Naturalization Service, 564 F.2d 1302 (9th Cir. 1977) ("Immigration judges, or special inquiry officers, are creatures of statute, receiving some of their powers and duties directly from Congress, 8 U.S.C. § 1252(b), and some of them by subdelegation from the Attorney General, 8 U.S.C. § 1103.").
49. 8 CFR § 1003.1(d)(1)(i). *See also* Andrew R. Arthur, "AG Certification Explained," Center for Immigration Studies (Nov. 5, 2019), https://cis.org/Arthur/AG-Certification-Explained (accessed June 24, 2025).
50. Matter of A-T-, 24 I&N Dec. 617 (A.G. 2008).
51. 8 U.S.C. §1252(a)(5).
52. Federal Rules of Civil Procedure, Rule 4 (a)(1)(A).
53. 8 U.S.C. §1252(g).
54. 525 U.S. 471 (1999).
55. 8 U.S.C. §1254a(b)(5)(A).
56. Noem v. National TPS Alliance, No. 24A-1059 (U.S. May 19, 2025). The lower court decisions are National TPS Alliance v. Noem, No. 25-1766 (N.D. Cal. March 31, 2025), and National TPS Alliance v. Noem, No. 25-2120 (9th Cir. April 18, 2025). The only Supreme Court justice who would have denied the stay was Ketanji Brown Jackson.
57. 50 U.S.C. § 21.
58. 50 U.S.C. § 22.
59. 50 U.S.C. § 24. When the Alien Enemies Act was passed, the U.S. Marshals Service was the first and only federal law enforcement agency, having been established by the Judiciary Act of 1789.
60. President Donald Trump, "Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua," Presidential Proclamation 10903, 90 FR 13033 (2025).
61. *Id.*
62. Trump v. J.G.G., 604 U.S. ____ (2025) (slip op.).
63. *Id.*
64. *Id.* at 2.
65. The aliens had dropped their initial habeas claims.
66. *Trump v. J.G.G.*, slip op. at 3 (citing Ludecke v. Watkins, 335 U.S. 160, 163–64, 172, n.17 (1948)).
67. *Id.*
68. A.A.R.P. v. Trump, 605 U.S. ____ (2025), slip op. at 4.
69. *Id.*