Backgrounder

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Center for Immigration Studies

Citizenship Up for Grabs

The Supreme Court and Immigration

By Mark R. Levin

The Constitution does not constitute us as 'Platonic Guardians' nor does it vest in this Court the authority to strike down laws because they do not meet our standards of desirable social policy, 'wisdom,' or 'common sense.' ... We trespass on the assigned function of the political branches under our structure of limited and separated powers when we assume a policymaking role.

— Chief Justice Warren Burger[1]

If there is one area of law that should be universally understood as being largely outside the purview of the Supreme Court's social engineering reach, it is immigration. Article I, Section 8, of the Constitution states that Congress shall have the power to "establish an uniform Rule of Naturalization."[2]

That, however, is not how events have transpired. For the last several decades, the Supreme Court has effectively trampled on Congress's constitutionally mandated, separate, and exclusive power and taken upon itself the task of rewriting America's immigration laws. The Court has abused its limited authority and has become, effectively, the architect of the rules governing not only how immigrants enter and remain in America, but whether those immigrants can avail themselves of social benefits that states and even Congress have sought to limit to U.S. citizens.

Thanks to succeeding Supreme Courts, illegal immigration—not legal immigrants but aliens who have broken U.S. law to enter this country—are entitled to a public school education at the U.S. taxpayers' expense. The Court has also ruled that despite laws to the contrary, noncitizens who are legally in the U.S. can qualify for welfare, can seek tuition assistance to attend colleges and universities, and can take competitive civil service jobs and practice law.

According to the Federation for American Immigration Reform (FAIR), Arizona spends $1.3 billion each year on illegal immigrants.[3] The same FAIR study reported that every Arizonan essentially pays a $700 annual tax to support the direct costs of illegal immigration. *The New York Times* reported in 2002 that "a wave of immigrants in the last 10 years, particularly in rural areas far from traditional immigration hubs, has left school districts across the country desperately short of people qualified to teach English."[4] In fact, the number of students who have limited English skills has doubled to approximately five million in the past ten years.[5] Educating illegal immigrants in the public schools costs the states at least $7.4 billion annually, according to FAIR.[6] California alone spends an estimated $2.2 billion annually to educate illegal immigrant children.[7] And the *Washington Times* reported that hospitals near the U.S.-Mexican border spent, in 2000, almost $190 million to treat illegal aliens and another $113 million in ambulances and follow-up fees.[8]

Before American independence, each of the thirteen colonies developed its own immigration policies. Most of these policies were geared toward encouraging immigration from Europe to help alleviate severe labor shortages throughout the vast expanse of the colonial territories.[9] Land grants and exemptions from taxes were popular enticements to immigrants

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to settle in the New World. However, most of the colonies also had laws in place to discourage certain types of immigrants—specifically Roman Catholics.[10] Many of the colonies levied head taxes on ship captains for any Catholic they brought ashore. Certain colonies offered land grants and tax benefits only to Protestants.[11] As a result, the majority of the early immigrants came from Protestant England and Germany.

After 1776, the new Congress did not preempt the states' existing immigration and naturalization policies.[12] The only modification to the status quo came in Article IV of the Articles of Confederation (the forerunner to the Constitution), which provided that the citizens of each state were given the same privileges and immunities as citizens of every other state. But each state retained its own naturalization and immigration laws and standards. This arrangement created a de facto briar patch of policies and practices that inhibited commerce and limited America's potential role on the world stage. The problem was rectified at the Constitutional Convention in 1787. Article I, Section 8, of the new constitution gave Congress the power "To establish an uniform Rule of Naturalization."[13]

The noted nineteenth-century associate justice of the Supreme Court and constitutional scholar Joseph Story spoke eloquently of the need for congressional oversight and exclusive jurisdiction over immigration:

> *The power of naturalization is, with great propriety, confided to Congress, since, if left to the States, they might naturalize foreigners upon very different, and even upon opposite systems; and, as the citizens of all the States, have common privileges in all, it would thus be in the power of any one State to defeat the wholesome policy of all the others in regard to this most important subject. Congress alone can have the power to pass uniform laws, obligatory on all the States; and thus to adopt a system, which shall secure all of them against any dangerous results from the indiscriminate admission of foreigners to the right of citizenship upon their first landing on our shores. And, accordingly, this power is exclusive to Congress.*[14]

The first effort to control immigration and naturalization came with the Naturalization Act of 1790, when Congress set the residency requirement for U.S. citizenship at two years. In 1795, the requirement was increased to five years. The Alien and Sedition Acts of 1798 were dramatic attempts by Congress, then controlled by the Federalist Party of John Adams and Alexander Hamilton, to address both a national security threat and a political challenge to the Federalists' power.[15] The first was the imminent threat of war with France and the second was the trend of new immigrants to ally with the Republican Party headed by Thomas Jefferson. Among the many things these acts did was criminalize criticism of the federal government and increase the time an immigrant had to live in the United States before becoming a citizen from five to fourteen years. They also provided for the deportation of aliens from "enemy" states and allowed the president to imprison enemy aliens during wartime.[16]

When Jefferson won the presidency and his party took control of both houses of Congress in 1800, the Alien and Sedition Acts were repealed. Congress also returned the residency requirement for U.S. citizenship to five years. Beyond these actions, no real effort was made by Congress to limit immigration in this country until 1875, when Congress passed the first immigration act that restricted entry of aliens to the United States.[17] The act prohibited immigration by slaves, prostitutes, and Chinese "coolies."[18] Later laws imposed temporary or permanent restrictions on entry by Chinese emigrants and other groups.

Congressional legislation has repeatedly, over the last two centuries, added, modified, or removed the residency, gender, race, and age requirements to become a U.S. citizen. The Naturalization Act of 1855, for example, opened U.S. citizenship to immigrant women who married a citizen or whose husband became naturalized.[19]

More recently, in 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which gave immigration officers the authority to summarily deport an alien if the officer determines that the alien has engaged in fraud or misrepresentation, or that the alien does not possess valid documents.[20] It also delegated to the attorney general—not to the Supreme Court—*sole* authority to naturalize individuals. Congress specifically stated in the IIRIRA that courts could no longer review an attorney general's decision to remove an alien "on the basis of most criminal convictions."[21]

Congress's rationale for keeping naturalization an executive branch function is that deportation hearings do not determine whether an alien is guilty of any crime. By simply kicking someone out of our country, the federal government is not, in a legal sense, punishing that person.

Unfortunately, while recognizing in some cases Congress's basic authority to write immigration law, a majority of justices on the Supreme Court have on several occasions used two constitutional provisions to insert the Court's institutional nose under the immigration tent. The Court discovered that the equal protection and due process clauses in the Fifth[22] and Fourteenth[23] Amendments granted the judiciary all of the authority it will ever need to rewrite America's immigration laws.

However, the Supreme Court has chosen in successive decisions to extend the premise of equal protection and due process to include equal access to social benefits as well. In fact, in *Graham v. Richardson,* a 1971 case, the Court said "this Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege.'"[25]

This wasn't always the case. The Court, particularly in the years leading up to World War I, recognized the importance of distinguishing between citizens and noncitizens and in making and managing public policy. In 1915, in *Heim v. McCall,* the Supreme Court decided in favor of New York's authority to show preference in hiring citizens for transit authority projects. Justice Joseph McKenna wrote:

> *The basic principle of the decision of the Court of Appeals was that the State is a recognized unit and those who are not citizens of it are not members of it. Thus recognized it is a body corporate and, like any other body corporate, it may enter into contracts and hold and dispose of property. In doing this, it acts through agencies of government. These agencies, when contracting for the State, or spending the State's moneys, are trustees for the people of the State. ... And it has hence decided that in the control of such agencies and the expenditures of such moneys it could prefer its own citizens to aliens without incurring the condemnation of the National or the state constitution.*[26]

In *Heim,* in fact, the Court specifically rejected the argument that the Fourteenth Amendment precluded states from discriminating against non-citizens in the distribution of public benefits. "[I]t belongs to the State, as the guardian of its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities."[27]

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In other words, the Supreme Court of 1915 deferred to the judgment of the state governments to determine how public funds should be distributed—exactly as the framers of the constitution intended.

In 1927, in *Ohio ex rel. Clarke v. Deckebach Auditor,* the Court reinforced the *Heim* decision, specifically rejecting the equal protection argument advanced under the Fourteenth Amendment, and rejected the premise that the Court should exercise unfounded authority and write new law through its opinions.[28] An 1815 treaty between the United States and Britain guaranteed that "the merchants and traders of each nation…shall enjoy the most complete protection and security for their commerce."[29] A merchant in Cincinnati, who was a resident alien and a subject of the British Empire, was denied a license to operate a pool hall because city ordinances required that such licenses be issued only to U.S. citizens. Justice Harlan Stone, in a unanimous decision, stated:

> *Some latitude must be allowed for the legislative appraisement of local conditions...and for the legislative choice of methods for controlling an apprehended evil. It was competent for the city to make such a choice, not shown to be irrational, by excluding from the conduct of business an entire class rather than its objectionable members selected by more empirical methods.*[30]

But the Court, in a number of cases over the last four decades, has determined not only that aliens—even illegal aliens—are "persons" as defined in the Fifth and Fourteenth Amendments, but also that their status is increasingly indistinguishable from that of citizens. So while the Constitution gives to Congress the sole authority to determine how many immigrants may enter the country, how immigrants can become citizens of the United States, and whether those immigrants should be able to avail themselves of the benefits of U.S. citizenship, the Court has chosen on several

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The first of these cases was *Graham v. Richardson*, which involved the rules established by two states for aliens to receive welfare benefits.[31] In the 1960s, Pennsylvania and Arizona required that permanent resident aliens in those states meet minimum residency requirements in order to receive certain welfare benefits. Arizona, for example, required that to qualify for welfare a resident alien must have lived in the state for fifteen years.[32] State officials were concerned that, without minimum residency requirements, aliens would move from state to state depending on the benefits they could receive.[33]

In 1969, Carmen Richardson, a sixty-four-year-old Mexican native who had legally emigrated to Arizona thirteen years before, became disabled. She filed for welfare benefits but was turned down because she did not meet the state's fifteen-year residency requirement.[34] Richardson subsequently filed suit in federal court in Arizona, claiming that the residency requirement violated the equal protection clause of the Fourteenth Amendment and her constitutionally protected right to travel. Richardson's case was joined with other cases in Arizona and Pennsylvania and heard by the U.S. Supreme Court after lower courts accepted her arguments and ruled in her favor.[35]

In rejecting the established principle that states have a right and a responsibility to husband their limited resources for their citizens and long-standing legal residents, Justice Harry Blackmun wrote:

> *We agree with the three-judge court in the Pennsylvania case that the justification of limiting expenses is particularly inappropriate and unreasonable when the discriminated class consists of aliens. Aliens like citizens pay taxes and may be called into the armed forces...aliens may live within a state for many years, work in the state and contribute to the economic growth of the state.... There can be no "special public interest" in tax revenues to which aliens have contributed on an equal basis with the residents of the state.... Accordingly, we hold that a state statute that denies welfare benefits to resident aliens and one that denies them to aliens who have not resided in the United States for a specified number of years violate the Equal Protection Clause.*[36]

Blackmun also invoked a test for courts to use to decide whether a citizenship requirement for benefits from a state or federal agency is permissible. "The Court's decisions have established that classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial security."[37] In other words, lawmakers could only use noncitizenship if they could demonstrate a compelling government interest in doing so—a hurdle that would be nearly impossible to overcome.

The real question the Court should have addressed—and the one that would have profound constitutional implications—is: Who gets to determine whether aliens are eligible for certain benefits? Who sets policy? Clearly, if there is a desire to create a national standard for eligibility of federal programs, Congress should make that decision. If the program is exclusive to a particular state, the relevant state government should make that decision. The Court simply abrogated the explicit and inherent authority of those elected legislative bodies and imposed its own preference.

The Court also found that the Civil Rights Act of 1866, which guaranteed equal rights to every citizen in every state, included a protected right to travel among the states.[38] The Court ruled that creating residency requirements for aliens would inhibit their right to travel. Again, the Court simply created a new constitutional right—the right to travel—and then extended that "right" to aliens.

In 1976, the Supreme Court ruled in the case *Hampton v. Mow Sun Wong* that citizenship was an unconstitutional requisite to holding a government job.[39] In 1970, five resident alien civil service employees were dismissed from their jobs in the Post Office,[40] the Heath, Education, and Welfare Department,[41] and other federal agencies because it was discovered that they were not U.S. citizens as required by Civil Service Commission regulations. The five sued the commission in federal court.

The Supreme Court ruled unanimously that the citizenship requirement violated the due process and equal protection clauses and legal aliens' right to liberty. Justice John Paul Stevens wrote:

> *The rule enforced by the Commission has its impact on an identifiable class of persons who, entirely apart from the rule itself, are already subject to disadvantages not shared by the remainder of the community. Aliens are not entitled to vote and, as alleged in the complaint, are often handicapped by a lack of familiarity with our language and customs. The added disadvantage resulting from the enforcement of the rule—ineligibility for employment in a major sector of the economy—is of sufficient significance to be characterized as a deprivation of an interest in liberty.... By reason of the Fifth Amendment, such a deprivation must be accompanied by due process....It follows that some judicial scrutiny of the deprivation is mandated by the Constitution.*[42]

The unanimous vote of the Court notwithstanding, the reasoning behind the *Hampton* decision is another example of the Court reaching into an area the Constitution reserves for Congress—and that Congress in successive immigration and naturalization acts delegated to the executive branch. The legislative history cited—yet ignored—by Stevens in the *Hampton* decision even demonstrated that it was the intention of Congress that civil service jobs be reserved for U.S. citizens or, at least, to aliens who had pledged permanent allegiance to the country.[43]

The Court had to manufacture the premise that denying resident aliens a civil service job somehow infringed on their liberty to obtain a job at all, and that there was no valid reason for ensuring that government jobs go primarily to U.S. citizens.

In 1973, in *Sugarman v. Dougall*, New York's civil service law included the requirement that all state civil servants be U.S. citizens.[44] Four low-level state employees, who were resident aliens, were dismissed from their positions once their citizenship status became known.[45] They then sued the state, claiming that the statute violated their Fourteenth Amendment due process rights.[46]

In an 8-1 decision (only Justice William Renquist dissented) the Supreme Court built on the *Graham* and *Hampton* decisions and continued to reverse the position it took in the 1915 cases that states have the right to distinguish between citizens and noncitizens in their public expenditures. In *Sugarman*, the Court found that while states could indeed differentiate between citizens and noncitizens in certain types of jobs, those jobs had to be very narrowly defined and limited specifically to the functions of the government—such as law enforcement and senior policymaking positions. Citizenship was not a material requirement for other civil service positions, so requiring it for those positions violated an immigrant's Fourteenth Amendment rights.[47]

Renquist, however, offered a brilliant response in his solitary dissent:

> *The Court, by holding…that a citizen-alien classification is 'suspect' in the eyes of our Constitution, fails to mention, let alone rationalize, the fact that the Constitution itself recognizes a basic difference between citizens and aliens. That distinction is constitutionally important in no less than 11 instances in a political document noted for its brevity…. Not only do the numerous classifications on the basis of citizenship that are set forth in the Constitution cut against both the analysis used and the results reached by the Court in these cases; the very Amendment which the Court reads to prohibit classifications based on citizenship establishes the very distinction which the Court now condemns as 'suspect.'* [48]

The 1982 *Plyler v. Doe* decision is perhaps the most egregious of the Court's immigration rulings.[49] In the 1960s and 1970s, a rising tide of illegal immigrants crossed the border from Mexico into Texas to take advantage of the better economic climate and quality of life in the United States. By 1975, the financial strain of the influx had started to choke the already crowded school systems in Texas border towns. In response, Texas enacted a new law concerning children not legally admitted to the United States that allowed local school districts to deny their enrollment and withheld from local school districts state funds to educate these children.[50]

Numerous lawsuits were brought on behalf of several children challenging the new law, which were consolidated in the case *Plyler v. Doe*. In a 5-4 decision, Justice William Brennan, writing for the majority, went so far as to extend the term "person" in the Fourteenth Amendment to include illegal aliens, by virtue of their physical presence in the United States.[51]

Moreover, Brennan found that the children of illegal immigrants weren't responsible for their illegal entry into the country, therefore, "legislation directing the onus of a parent's misconduct against his children

does not comport with fundamental conceptions of justice."[52]

While the Court recognized that there is no constitutionally enumerated "right" to a free public education, Brennan stated:

> *[N]either is [a public education] merely some governmental 'benefit' indistinguishable from the other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction. The American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance…. We have recognized the public schools as a most vital civic institution for the preservation of a democratic system of government….And these historic perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists.*[53]

But Brennan wasn't done. When he moved to the question of whether the equal protection clause applied to extending social benefits to illegal aliens, he determined that because Texas had essentially delineated illegal aliens as a distinct "class" of people, they must be treated equally with every other person in the state. Not to do so in this instance—the provision of a free public education—would violate the equal protection clause.[54] In *Plyler*, the Court decided that any conglomeration of people, regardless of the reason for their classification under law, had to be treated identically with every other class of people.

Brennan also said that irrespective of the financial burden imposed on the community or the state by illegal aliens, the cost was not sufficient to justify preventing illegal immigrants from availing themselves of a free public education.[55]

Chief Justice Warren Burger, writing the dissenting opinion for himself and Justices Byron White and Rehnquist, summed up the true nature of the Court's action:

> *The Court makes no attempt to disguise that it is acting to make up for Congress's lack of 'effective leadership' in dealing with the serious national problems caused by the influx of uncountable millions of illegal aliens across our borders. The failure of enforcement of the immigration laws over more than a decade and the inherent difficulty and expense of sealing our vast borders have combined to create a grave socioeconomic dilemma. It is a dilemma that has not yet even been fully assessed, let alone addressed. However, it is not the function of the Judiciary to provide 'effective leadership' simply because the political branches of government fail to do so.*[56]

The Supreme Court has reached into other areas to find rights for immigrants that the Constitution, Congress, and the executive branch never intended. In 1973, in *In Re Griffiths*, the Court ruled that a state could not deny noncitizens the right to take the bar exam and become licensed, practicing attorneys—again thanks to the hidden meaning the Court found in the equal protection clause.[57]

In 1977, in *Nyquist v. Mauclet*, the Court decided by a 5-4 vote that it was unconstitutional for New York to require resident aliens to at least apply for U.S. citizenship before becoming eligible for financial aid for education.[58]

The Court, as a practical matter, is in no position to substitute its policy objectives for that of a legislature or Congress. It sits as an adjudicative body, insulated from the kind of give-and-take that occurs between the citizenry and their representatives. It has no responsibility for the kind of balancing act elected officials must undertake in weighing public priorities.

September 11, 2001, underscored that we need greater government scrutiny over our borders and immigration. Congress's role in drafting and the executive's authority in enforcing immigration law have never been more important, and the judiciary's interference with these constitutional roles has never been more dangerous.

End Notes

1. *Plyler v. Doe,* 457 U.S. 202,242 (1982).
2. U.S. Constitution Article I, § 8.
3. Don Collins, "Illegal Immigration is ravaging Arizona," *Pittsburgh Tribune-Review,* June 22, 2004. http://www.pittsburghlive.com/x/tribune-review/opinion/columnists/guests/print_199848.html.
4. Yilu Zhao, "Wave of Pupils Lacking English Strains Schools," *The New York Times,* August 5, 2002.
5. Ibid.
6. Stephen Dinan, "States Pay $7.4 billion to Educate Illegals; Report Notes Drain on U.S. Children," *Washington Times,* August 21, 2003.
7. Ibid.
8. Jerry Seper, "Report Ties Health Care Struggles to Immigration; Increase in Uninsured Aliens Seen Straining Hospital Budgets," *Washington Times,* February 26, 2004.
9. Immigration Laws 1700-1800, "Colonial Period: Legal Authority over Immigration." www.oriole.umd.edu.
10. Ibid.
11. Ibid.
12. Immigration and naturalization are the two main classifications of law in this regard. Immigration refers to emigrants from other countries entering the United States. Naturalization concerns the process by which immigrants become citizens of the United States.
13. U.S. Constitution Amendment I, § 8.
14. Joseph Story, *Commentaries on the Constitution of the United States,* "Power Over Naturalization and Bankruptcy," § 1098.
15. The term "Alien and Sedition Acts" is commonly used as shorthand for three acts of Congress: The Naturalization Act of 1798, the Aliens Act of 1798, and the Alien Enemy Act of 1798.
16. Ibid.
17. Immigration Act of 1875.
18. Ibid. Coolies were bonded workers from China, India, and other nations in Asia.
19. Naturalization Act of 1855.
20. 8 U.S.C. § 1101 (2000).
21. 8 U.S.C. § 1103 (2000).
22. U.S. Constitution Amendment V. The Fifth Amendment delineated the limitations on the federal government's power over individuals. In addition to requiring that no person can be deprived of "life, liberty, or property" without due process of law, it provides for the use of a grand jury to indict someone and prohibits double jeopardy and self incrimination. The Fourteenth Amendment imposes similar restrictions on the authority of state governments.
23. U.S. Constitution Amendment XIV. The Fourteenth Amendment, in particular, was written to ensure that state governments did not treat individuals, or groups of individuals, unequally under the law, or that individuals or groups were not treated differently solely because of their race or ethnic heritage. It was not written to guarantee identical treatment for everyone everywhere, nor to provide for equal outcomes under the law for everyone.
24. *Graham v. Richardson,* 403 U.S. 365 (1971).
25. The *Graham* decision also cited other cases in which the premise of no distinction between benefits or privileges and rights should be made. These cases include *Sherbert v. Verner,* 374 U.S. 398 (1963), *Shapiro v. Thompson,* 394 U.S. 627 (1969), *Goldberg v. Kelly,* 397 U.S. 254 (1970), and Bell v. Burson, 402 U.S. 535 (1971).
26. *Heim v. McCall,* 239 U.S. 365 (1971).
27. Ibid., 191.
28. *Clarke v. Deckebach,* 274 U.S. 392 (1927).
29. Ibid., 395.
30. Ibid., 397.
31. Ibid.
32. Ibid., 367.
33. *Graham v. Richardson,* 403 U.S. 367.
34. Ibid.
35. Ibid., 368.
36. Ibid., 376.
37. Ibid., 372.
38. 1866 Civil Rights Act, 14 Stat. 27-30, Section 1. "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."
39. *Hampton v. Mow Sun Wong,* 426 U.S. 88 (1976).
40. In 1971, the Post Office, which was a federal agency, was semi-privatized and became the U.S. Postal Service.
41. In 1979, the federal Department of Health, Education, and Welfare was reorganized into two agencies, the Department of Education and the Department of Health and Human Services.
42. *Hampton v. Mow Sun Wong,* 426 U.S. at 102-03.
43. Ibid., 106.
44. *Sugarman v. Dougall,* 413 U.S. 634 (1973).
45. Ibid., 637. The four employees were among approximately 450 employees who actually worked for private sector nonprofit organizations that received funding through a federal agency, the United States Office of Economic Opportunity. In 1970, federal funding for those organizations was stopped and the nonprofits absorbed by a New York City agency, the Manpower Career and Development Agency (MCDA). When the jobs were moved under the city, the state's civil service requirements became applicable and the noncitizen employees were dismissed.
46. Ibid.
47. Ibid., 639-40.
48. Ibid., 651.
49. *Plyler v. Doe,* 457 U.S. 202 (1982).
50. Ibid., 205.
51. Ibid., 210.
52. Ibid., 220.
53. Ibid., 221.
54. Ibid., 222.
55. Ibid., 229.
56. Ibid., 242-43.
57. *In Re Griffiths,* 413 U.S. 717 (1973).
58. *Nyquist v. Mauclet,* 432 U.S. 1 (1977).

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