AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 10: The Reagan Era – Individual Rights/Due Process

**Landon v. Plasencia, 459 U.S. 21** (1982)

*Maria Antonieta Plasencia was a citizen of El Salvador and a permanent legal resident of the United States. She lived with her American citizen husband in Los Angeles. In 1975, she and her husband were travelling in Mexico when they agreed to illegally transport a group of aliens across the American border and provide them with fraudulent residence documents. While attempting to cross the border, they were arrested. She was charged with violating the terms of her immigration status. After a hearing, an immigration judge ordered that she be deported. Her appeal to the Board of Immigration Appeals was rejected, and she filed a petition for a writ of habeas corpus in federal district court. The district court determined that a new deportation hearing was warranted to determine whether she had “meaningfully departed” the country when visiting Mexico and thus had attempted an unlawful “entry” under the statute. The circuit court affirmed that ruling. On appeal, the Supreme Court unanimously agreed that Plasencia was not entitled to the procedurally more robust deportation hearing under the immigration statutes but could be processed with a more minimal exclusion hearing appropriate for aliens detained at the border. The Court was also in agreement, however, that as a legal resident Plasencia was likely entitled to greater constitutional procedural protections than she was granted in the exclusion hearing.*

JUSTICE O’CONNOR delivered the opinion of the Court.

. . . .

The immigration laws create two types of proceedings in which aliens can be denied the hospitality of the United States: deportation hearings and exclusion hearings. The deportation hearing is the usual means of proceeding against an alien already physically in the United States, and the exclusion hearing is the usual means of proceeding against an alien outside the United States seeking admission. The two types of proceedings differ in a number of ways. . . .

The respondent contends that she was entitled to have the question of her admissibility litigated in a deportation hearing, where she would be the beneficiary of the procedural protections and the substantive rights [particular to deportation hearings]. . . .

. . . .

Our determination that the respondent is not entitled to a deportation proceeding does not, however, resolve this case. In challenging her exclusion in the District Court, Plasencia argued not only that she was entitled to a deportation proceeding but also that she was denied due process in her exclusion hearing. We agree with Plasencia that under the circumstances of this case, she can invoke the Due Process Clause on returning to this country, although we do not decide the contours of the process that is due or whether the process accorded Plasencia was insufficient.

This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative. *United States ex rel Knauff v. Shaughnessy* (1950). Our recent decisions confirm that view. *Fiallo v. Bell* (1977). As we explained in *Johnson v. Eisentrager* (1950), however, once an alien gains admission to our country and begins to develop the ties that go with permanent residence, his constitutional status changes accordingly. Our cases have frequently suggested that a continuously present resident alien is entitled to a fair hearing when threatened with deportation, and, although we have only rarely held that the procedures provided by the executive were inadequate, we developed the rule that a continuously present permanent resident alien has a right to due process in such a situation. . . .

. . . .

The constitutional sufficiency of procedures provided in any situation, of course, varies with the circumstances. *Lassiter v. Department of Social Services* (1981). In evaluating the procedures in any case, the courts must consider the interest at stake for the individual, the risk of an erroneous deprivation of the interest through the procedures used as well as the probable value of additional or different procedural safeguards, and the interest of the government in using the current procedures rather than additional or different procedures. Plasencia's interest here is, without question, a weighty one. She stands to lose the right "to stay and live and work in this land of freedom.” Further, she may lose the right to rejoin her immediate family, a right that ranks high among the interests of the individual. The Government's interest in efficient administration of the immigration laws at the border also is weighty. Further, it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the Executive and the Legislature. The role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy. Our previous discussion has shown that Congress did not intend to require the use of deportation procedures in cases such as this one. Thus, it would be improper simply to impose deportation procedures here because the reviewing court may find them preferable. Instead, the courts must evaluate the particular circumstances and determine what procedures would satisfy the minimum requirements of due process on the reentry of a permanent resident alien.

. . . .

If the exclusion hearing is to ensure fairness, it must provide Plasencia an opportunity to present her case effectively, though at the same time it cannot impose an undue burden on the Government. It would not, however, be appropriate for us to decide now whether the new regulation on the right to notice of free legal services is of constitutional magnitude or whether the remaining procedures provided comport with the Due Process Clause. Before this Court, the parties have devoted their attention to the entitlement to a deportation hearing rather than to the sufficiency of the procedures in the exclusion hearing. Whether the several hours' notice gave Plasencia a realistic opportunity to prepare her case for effective presentation in the circumstances of an exclusion hearing without counsel is a question we are not now in a position to answer. Nor has the Government explained the burdens that it might face in providing more elaborate procedures. Thus, although we recognize the gravity of Plasencia's interest, the other factors relevant to due process analysis — the risk of erroneous deprivation, the efficacy of additional procedural safeguards, and the Government's interest in providing no further procedures — have not been adequately presented to permit us to assess the sufficiency of the hearing. We remand to the Court of Appeals to allow the parties to explore whether Plasencia was accorded due process under all of the circumstances.

*Reversed*.

JUSTICE MARSHALL, concurring in part and dissenting in part.

I agree that the Immigration and Nationality Act permitted the INS to proceed against respondent in an exclusion proceeding. The question then remains whether the exclusion proceeding held in this case satisfied the minimum requirements of the Due Process Clause. While I agree that the Court need not decide the precise contours of the process that would be constitutionally sufficient, I would not hesitate to decide that the process accorded Plasencia was insufficient.

. . . . I would first hold that respondent was denied due process because she was not given adequate and timely notice of the charges against her and of her right to retain counsel and to present a defense.

While the type of hearing required by due process depends upon a balancing of the competing interests at stake, due process requires "at a minimum . . . that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing." Permanent resident aliens who are detained upon reentry into this country clearly are entitled to adequate notice in advance of an exclusion proceeding.

To satisfy due process, notice must "clarify what the charges are" in a manner adequate to apprise the individual of the basis for the government's proposed action. Notice must be provided sufficiently in advance of the hearing to "give the charged party a chance to marshal the facts in his defense." *Wolff v. McDonnell* (1974). . . .

Respondent was not given notice sufficient to afford her a reasonable opportunity to demonstrate that she was not excludable. The Immigration Judge's decision to exclude respondent was handed down less than 24 hours after she was detained at the border on the night of June 29, 1975. . . . It was not until the commencement of the hearing that she was given notice in her native language of the charges against her and of her right to retain counsel and to present evidence.

The charges against Plasencia were also inadequately explained at the hearing itself. . . .

These procedures deprived Plasencia of a fair opportunity to show that she was not excludable under the standards set forth in the Immigration and Nationality Act. Because Plasencia was not given adequate notice of the standards for exclusion or of her right to retain counsel and present a defense, she had neither time nor opportunity to prepare a response to the Government's case. The procedures employed here virtually assured that the Government attorney would present his case without factual or legal opposition.

When a permanent resident alien's substantial interest in remaining in this country is at stake, the Due Process Clause forbids the Government to stack the deck in this fashion. Only a compelling need for truly summary action could justify this one-sided proceeding. . . .