Supplementary Material

Chapter 7: The Republican Era—Democratic Rights/Citizenship

Fong Yue Ting v. U.S., 149 U.S. 698 (1893)

The regulation of immigration into the United States was not a major constitutional issue during the country's first century. Congress in 1790 limited naturalization to "free white persons," but passed no law similarly limiting immigration. There was a brief concern about the presence of "radical" French in the late 1790s that led Congress in the Alien Acts to authorize the president to deport aliens he considered a threat to the country, but that power was never exercised and the authority expired in 1800. After that, Congress's immigration policy was limited to establishing naturalization procedures and requiring that accurate statistics of immigrant arrivals be kept. In the wake of a surge of Irish refugees in the 1830s and 1840s some states attempted to limit immigration at local ports. The Supreme Court eventually rejected these efforts. Henderson v. New York *(1876) held that the regulation of immigration was the exclusive right of Congress. Justice Miller's unanimous opinion declare, "whenever the statute of a State invades the domain of legislation which belongs exclusively to the Congress of the United States, it is void. . . ." Americans during the Republican Era turned their attention to immigrants from Asia. , Caucasians in California bitterly resented local Chinese workers. They pressured the Congress to prohibit Chinese laborers from entering the United States and in 1882 Congress responded by passing the Chinese Exclusion Acts. With the passage of these acts sustained debates over immigration policy began in earnest. They have not yet subsided..*

Fong Yue Ting v. U.S. *confirmed the right of Congress to treat aliens as it wished. Fong and two other Chinese men were arrested for violating the provisions of the 1892 amendments to the Chinese Exclusion Act that required Chinese aliens in the United States to obtain a certificate of residence from an internal revenue officer. Without such a certificate a person of Chinese ancestry had to be deported unless he could prove with the aid of "at least one credible white witness" that he was a resident of the United States at the time of the passage of the law and that he had a good excuse for not obtaining the required document. The court's decision was 6–3, with blistering dissents from Justices David J. Brewer, Stephen Field, and Chief Justice Fuller. The dissents sought to distinguish Congress's acknowledged power to exclude immigrants from the power to expel or "banish" people who were legal residents of the country. In reading over these competing opinions, consider the significance of these discussions for contemporary questions about the scope of the national government's authority over immigrants living in the United States. What constitutional protections should exist for noncitizens who are (nevertheless) lawfully residing in the United States? Justice Field wrote that, under the majority's theory, Congress could "have sanctioned towards these laborers the most shocking brutality conceivable." Is that correct?*

JUSTICE GRAY delivered the opinion of the court.

The general principles of public law which lie at the foundation of these cases are clearly established by previous judgments of this court, and by the authorities therein referred to.

In the recent case of *Nishimura Ekiu v. U. S* (1892)., the court, in sustaining the action of the executive department, putting in force an act of congress for the exclusion of aliens, said: "It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. In the United States this power is vested in the national government, to which the constitution has committed the entire control of international relations, in peace as well as in war. It belongs to the political department of the

government, and may be exercised either through treaties made by the president and senate or through statutes enacted by congress."

The same views were more fully expounded in the earlier case of *Chae Chan Ping v. U.S.* (1889), . . . In the elaborate opinion delivered by Mr. Justice Field in behalf of the court it was said: "Those laborers are not citizens of the United States; they are aliens. That the government of the United States, through the action of the legislative department, can exclude aliens from its territory, is a proposition which we do not think open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence. If it could not exclude aliens, it would be to that extent subject to the control of another power." "The United States, in their relation to foreign countries and their subjects or citizens, are one nation, invested with powers which belong to independent nations, the exercise of which can be invoked for the maintenance of its absolute independence and security throughout its entire territory.". . .

The right of a nation to expel or deport foreigners who have not been naturalized, or taken any steps towards becoming citizens of the country, rests upon the same grounds, and is as absolute and unqualified, as the right to prohibit and prevent their entrance into the country. . . .

The right to exclude or to expel all aliens, or any class of aliens, absolutely or upon certain conditions, in war or in peace, being an inherent and inalienable right of every sovereign and independent nation, essential to its safety, its independence, and its welfare, the question now before the court is whether the manner in which congress has exercised this right in sections 6 and 7 of the act of 1892 is consistent with the constitution.

The United States are a sovereign and independent nation, and are vested by the constitution with the entire control of international relations, and with all the powers of government necessary to maintain that control, and to make it effective. The only government of this country which other nations recognize or treat with is the government of the Union, and the only American flag known throughout the world is the flag of the United States.

The constitution of the United States speaks with no uncertain sound upon this subject. That instrument, established by the people of the United States as the fundamental law of the land, has conferred upon the president the executive power; has made him the commander in chief of the army and navy; has authorized him, by and with the consent of the senate, to make treaties, and to appoint ambassadors, public ministers, and consuls; and has made it his duty to take care that the laws be faithfully executed. The constitution has granted to congress the power to regulate commerce with foreign nations, including the entrance of ships, the importation of goods, and the bringing of persons into the ports of the United States; to establish a uniform rule of naturalization; to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; to raise and support armies, to provide and maintain a navy, and to make rules for the government and regulation of the land and naval forces; and to make all laws necessary and proper for carrying into execution these powers, and all other powers vested by the constitution in the government of the United States, or in any department or officer thereof. And the several states are expressly forbidden to enter into any treaty, alliance, or confederation; to grant letters of marque and reprisal; to enter into any agreement or compact with another state, or with a foreign power; or to engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. . . .

The power to exclude or to expel aliens, being a power affecting international relations, is vested in the political departments of the government, and is to be regulated by treaty or by act of congress, and to be executed by the executive authority according to the regulations so established, except so far the judicial department has been authorized by treaty or by statute, or is required by the paramount law of the constitution, to intervene.

In *Nishimura Ekiu's Case*, it was adjudged that, although congress might, if it saw fit, authorize the courts to investigate and ascertain the facts upon which the alien's right to land was made by the statutes to depend, yet congress might intrust the final determination of those facts to an executive officer; and that, if it did so, his order was due process of law, and no other tribunal, unless expressly authorized by

law to do so, was at liberty to re-examine the evidence on which he acted, or to controvert its sufficiency. . . .

The power of congress, therefore, to expel, like the power to exclude, aliens, or any specified class of aliens, from the country, may be exercised entirely through executive officers; or congress may call in the aid of the judiciary to ascertain any contested facts on which an alien's right to be in the country has been made by congress to depend.

Congress, having the right, as it may see fit, to expel aliens of a particular class, or to permit them to remain, has undoubtedly the right to provide a system of registration and identification of the members of that class within the country, and to take all proper means to carry out the system which it provides. . . .

Chinese laborers, . . . like all other aliens residing in the United States for a shorter or longer time, are entitled, so long as they are permitted by the government of the United States to remain in the country, to the safeguards of the constitution, and to the protection of the laws, in regard to their rights of person and of property, and to their civil and criminal responsibility. But they continue to be aliens, having taken no steps towards becoming citizens, and incapable of becoming such under the naturalization laws; and therefore remain subject to the power of congress to expel them, or to order them to be removed and deported from the country, whenever, in its judgment, their removal is necessary or expedient for the public interest. . . .

For the reasons stated in the earlier part of this opinion, congress, under the power to exclude or expel aliens, might have directed any Chinese laborer found in the United States without a certificate of residence to be removed out of the country be executive officers, without judicial trial or examination, just as it might have authorized such officers absolutely to prevent his entrance into the country. But congress has not undertaken to do this.

The effect of the provisions of section 6 of the act of 1892 is that, if a Chinese laborer, after the opportunity afforded him to obtain a certificate of residence within a year, at a convenient place, and without cost, is found without such a certificate, he shall be so far presumed to be not entitled to remain within the United States that an officer of the customs, or a collector of internal revenue, or a marshal, or a deputy of either, may arrest him, not with a view to imprisonment or punishment, or to his immediate deportation without further inquiry, but in order to take him before a judge, for the purpose of a judicial hearing and determination of the only facts which, under the act of congress, can have a material bearing upon the question whether he shall be sent out of the country, or be permitted to remain. . . .

If no evidence is offered by the Chinaman, the judge makes the order of deportation as upon a default. If he produces competent evidence to explain the fact of his not having a certificate, it must be considered by the judge; and if he thereupon appears to be entitled to a certificate, it is to be granted to him. If he proves that the collector of internal revenue has unlawfully refused to give him a certificate, he proves an "unavoidable cause," within the meaning of the act, for not procuring one. If he proves that he had procured a certificate, which has been lost or destroyed, he is to be allowed a reasonable time to procure a duplicate thereof.

The provision which puts the burden of proof upon him of rebutting the presumption arising from his having no certificate, as well as the requirement of proof "by at least one credible white witness that he was a resident of the United States at the time of the passage of this act," is within the acknowledged power of every legislature to prescribe the evidence which shall be received, and the effect of that evidence, in the courts of its own government. . . . The reason for requiring a Chinese alien, claiming the privilege of remaining in the United States, to prove the fact of his residence here at the time of the passage of the act "by at least one credible white witness," may have been the experience of congress, as mentioned by Mr. Justice Field in *Chae Chan Ping's Case* (1889), that the enforcement of former acts, under which the testimony of Chinese persons was admitted to prove similar facts, "was attended with great embarrassment, from the suspicious nature, in many instances, of the testimony offered to establish the residence of the parties, arising from the loose notions entertained by the witnesses of the obligation of an oath." And this requirement, not allowing such a fact to be proved solely by the testimony of aliens in a like situation, or of the same race, is quite analogous to the provision, which has existed for 77 years in the naturalization laws, by which aliens applying for naturalization

must prove their residence within the limits and under the jurisdiction of the United States, for five years next preceding, "by the oath or affirmation of citizens of the United States."

The proceeding before a United States judge, as provided for in section 6 of the act of 1892, 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 not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. 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. He has not, therefore, been deprived of life, liberty, or property without due process of law; and the provisions of the constitution, securing the right of trial by jury, and prohibiting unreasonable searches and seizures and cruel and unusual punishments, have no application. The question whether, and upon what conditions, these aliens shall be permitted to remain within the United States being one to be determined by the political departments of the government, the judicial department cannot properly express an opinion upon the wisdom, the policy, or the justice of the measures enacted by congress in the exercise of the powers confided to it by the constitution over this subject. . . .

Upon careful consideration of the subject, the only conclusion which appears to us to be consistent with the principles of international law, with the constitution and laws of the United States, and with the previous decisions of this court, is that in each of these cases the judgment of the circuit court dismissing the writ of habeas corpus is right, and must be affirmed.

JUSTICE BREWER, dissenting.

I dissent from the opinion and judgment of the court in these cases, and, the questions being of importance, I deem it not improper to briefly state my reasons therefore. I rest my dissent on three propositions: First, that the persons against whom the penalties of section 6 of the act of 1892 are directed are persons lawfully residing within the United States; secondly, that as such they are within the protection of the constitution, and secured by its guaranties against oppression and wrong; and, third, that section 6 deprives them of liberty, and imposes punishment, without due process of law, and in disregard of constitutional guaranties, especially those found in the 4th, 5th, 6th, and 8th articles of the amendments.

And, first, these persons are lawfully residing within the limits of the United States. . . . We must take judicial notice of that which is disclosed by the census, and which is also a matter of common knowledge. There are 100,000 and more of these persons living in this country, making their homes here, and striving by their labor to earn a livelihood. They are not travelers, but resident aliens.

But, further, this section 6 recognizes the fact of a lawful residence, and only applies to those who have such; for the parties named in the section, and to be reached by its provisions, are "Chinese laborers within the limits of the United States at the time of the passage of this act, and who are entitled to remain in the United States." These appellants, therefore, are lawfully within the United States, and are here as residents, and not as travelers. They have lived in this country, respectively, since 1879, 1877, and 1874,—almost as long a time as some of those who were members of the congress that passed this act of punishment and expulsion.

That those who have become domiciled in a country are entitled to a more distinct and larger measure of protection than those who are simply passing through, or temporarily in, it, has long been recognized by the law of nations. It was said by this court in the case of *The Venus* (1814): "The writers upon the law of nations distinguish between a temporary residence in a foreign country, for a special purpose, and a residence accompanied with an intention to make it a permanent place of abode. The latter is styled by Vattel 'domicile,' which he defines to be 'a habitation fixed in any place, with an intention of always staying there." Such a person, says this author, becomes a member of the new society,

at least as a permanent inhabitant, and is a kind of citizen of the inferior order from the native citizens; but is, nevertheless, united and subject to the society, without participating in all its advantages. . . .

[W]hatever rights a resident alien might have in any other nation, here he is within the express protection of the constitution, especially in respect to those guaranties which are declared in the original amendments. It has been repeated so often as to become axiomatic that this government is one of enumerated and delegated powers; and, as declared in article 10 or the amendments, "the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people."

It is said that the power here asserted is inherent in sovereignty. This doctrine of powers inherent in sovereignty is one both indefinite and dangerous. Where are the limits to such powers to be found, and by whom are they to be pronounced? Is it within legislative capacity to declare the limits? If so, then the mere assertion of an inherent power creates it, and despotism exists. May the courts establish the boundaries? Whence do they obtain the authority for this? Shall they look to the practices of other nations to ascertain the limits? The governments of other nations have elastic powers. Ours are fixed and bounded by a written constitution. The expulsion of a race may be within the inherent powers of a despotism. History, before the adoption of this constitution, was not destitute of examples of the exercise of such a power; and its framers were familiar with history, and wisely, and it seems to me, they gave to this government no general power to banish. Banishment may be resorted to as punishment for crime; but among the powers reserved to the people, and not delegated to the government, is that of determining whether whole classes in our midst shall, for no crime but that of their race and birthplace, be driven from our territory. . . .

Whatever may be true as to exclusion . . . I deny that there is any arbitrary and unrestrained power to banish residents, even resident aliens. What, it may be asked, is the reason for any difference? The answer is obvious. The constitution has no extraterritorial effect, and those who have not come lawfully within our territory cannot claim any protection from its provisions; and it may be that the national government, having full control of all matters relating to other nations, has the power to build, as it were, a Chinese wall around our borders, and absolutely forbid aliens to enter. But the constitution has potency everywhere within the limits of our territory, and the powers which the national government may exercise within such limits are those, and only those, given to it by that instrument. . .

In the case of *Yick Wo v. Hopkins* (1886), it was said: "The fourteenth amendment of the constitution is not confined to the protection of citizens. It says: 'Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws." . . .

If the use of the word "person" in the fourteenth amendment protects all individuals lawfully within the state, the use of the same word, "person," in the fifth must be equally comprehensive, and secures to all persons lawfully within the territory of the United States the protection named therein; and a like conclusion must follow as to the sixth.

I pass, therefore, to the consideration of my third proposition: Section 6 deprives of "life, liberty, and property without due process of law." It imposes punishment without a trial, and punishment cruel and severe. It places the liberty of one individual subject to the unrestrained control of another. Notice its provisions: It first commands all to register. He who does not register violates that law, and may be punished; and so the section goes on to say that one who has not complied with its requirements, and has no certificate of residence, "shall be deemed and adjudged to be unlawfully within the United States," and then it imposes as a penalty his deportation from the country. Deportation is punishment. It involves—First, an arrest, a deprival of liberty; and, second, a removal from home, from family, from business, from property. . . .

But it needs no citation of authorities to support the proposition that deportation is punishment. Every one knows that to be forcibly taken away from home and family and friends and business and property, and sent across the ocean to a distant land, is punishment, and that oftentimes most severe and cruel. . . .

But punishment implies a trial: "No person shall be deprived of life, liberty, or property without due process of law." Due process requires that a man be heard before he is condemned, and both heard and condemned in the due and orderly procedure of a trial, as recognized by the common law from time immemorial. . . .

. . . It cannot be due process of law to impose punishment on any person for failing to have that in his possession, the possession of which he can obtain only at the arbitrary and unregulated discretion of any official. It will not do to say that the presumption is that the official will act reasonably, and not arbitrarily. When the right to liberty and residence is involved, some other protection than the mere discretion of any official is required. . . .

It is said that these Chinese are entitled while they remain to the safeguards of the constitution, and to the protection of the laws in regard to their rights of person and of property, but that they continue to be aliens, subject to the absolute power of congress to forcibly remove them. In other words, the guaranties of "life, liberty, and property," named in the constitution, are theirs by sufferance, and not of right. Of what avail are such guaranties? . . .

It is true this statute is directed only against the obnoxious Chinese, but, if the power exists, who shall say it will not be exercised to-morrow against other classes and other people? If the guaranties of these amendments can be thus ignored in order to get rid of this distasteful class, what security have others that a like disregard of its provisions may not be resorted to? Profound and wise were the observations of Mr. Justice Bradley, speaking for the court in *Boyd v. U*. S. (1886): "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches, and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be, '*obsta principiis*.'" [resist the beginnings]. . .

In view of this enactment of the highest legislative body of the foremost Christian nation, may not the thoughtful Chinese disciple of Confucius fairly ask, "Why do they send missionaries here?"

JUSTICE FIELD, dissenting.

I also wish to say a few words upon these cases, and upon the extraordinary doctrines announced in support of the orders of the court below. With the treaties between the United States and China, and the subsequent legislation adopted by congress to prevent the immigration of Chinese laborers into this country, resulting in the exclusion act of October 1, 1888, the court is familiar. They have often been before us, and have been considered in almost every phase. . . .

. . . [However,] between legislation for the exclusion of Chinese persons,— that is, to prevent them from entering the country,—and legislation for the deportation of those who have acquired a residence in the country under a treaty with China, there is a wide and essential difference. The power of the government to exclude foreigners from this country,—that is, to prevent them from entering it,—whenever the public interests, in its judgment, require such exclusion, has been repeatedly asserted by the legislative and executive departments of our government, and never denied; but its power to deport from the country persons lawfully domiciled therein by its consent, and engaged in the ordinary pursuits of life, has never been asserted by the legislative or executive departments, except for crime, or as an act of war, in view of existing or anticipated hostilities, unless the alien act of 1798 can be considered as recognizing that doctrine. That act vested in the president power to order all such aliens as he should adjudge dangerous to the peace and safety of the United States, or should have reasonable grounds to suspect were concerned in any treasonable or secret machinations against the government, to depart out of the territory of the United States within such time as should be expressed in his order; and in case any alien when thus ordered to depart should be found at large within the United States after the term limited in the order, not having obtained a license from the president to reside therein, or, having obtained such license, should not have conformed thereto, he should, on conviction thereof, be imprisoned for a term

not exceeding three years, and should never afterwards be admitted to become a citizen of the United States, with a proviso that if the alien thus ordered to depart should prove to the satisfaction of the president, by evidence to be taken before such person or persons as he should direct, that no injury or danger to the United States would arise from suffering him to reside therein, the president might grant a license to him to remain within the United States for such time as he should judge proper, and at such place as he should designate. . . .

The passage of this act produced great excitement throughout the country, and was severely denounced by many of its ablest statesmen and jurists as unconstitutional and barbarous, and among them may be mentioned the great names of Jefferson and Madison, who are throughout our country honored and revered for their lifelong devotion to principles of constitutional liberty. It was defended by its advocates as a war measure. John Adams, the president of the United States at the time, who approved the bill, and against whom the responsibility for its passage was charged, states in his correspondence that the bill was intended as a measure of that character. The state of Virginia denounced it in severe terms. Its general assembly passed resolutions upon the act, and another act of the same session of congress, known as the "Sedition Act." Upon the first—the alien act—one of the resolutions declared that it exercised a power nowhere delegated to the federal government, and which, by uniting legislative and judicial powers to those of executive, subverted the general principles of free government, as well as the particular organization and positive provisions of the federal constitution. . . .With reference to the alien act, after observing that it was incumbent in this, as in every other exercise of power by the federal government, to prove from the constitution that it granted the particular power exercised, and also that much confusion and fallacy had been thrown into the question to be considered by blending the two cases of aliens, members of a hostile nation, and aliens, members of friendly nations, [Mr. Madison] said: "With respect to alien enemies, no doubt has been intimated as to the federal authority over them; the constitution having expressly delegated to congress the power to declare war against any nation, and, of course, to treat it and all its members as enemies. With respect to aliens who are not enemies, but members of nations in peace and amity with the United States, the power assumed by the act of congress is denied to be constitutional, and it is accordingly against this act that the protest of the general assembly is expressly and exclusively directed." . . .

The duration of the act was limited to two years, and it has ever since been the subject of universal condemnation. In no other instance, until the law before us was passed, has any public man had the boldness to advocate the deportation of friendly aliens in time of peace. I repeat the statement that in no other instance has the deportation of friendly aliens been advocated as a lawful measure by any department of our government. And it will surprise most people to learn that any such dangerous and despotic power lies in our government,—a power which will authorize it to expel at pleasure, in time of peace, the whole body of friendly foreigners of any country domiciled herein by its permission; a power which can be brought into exercise whenever it may suit the pleasure of congress, and be enforced without regard to the guaranties of the constitution intended for the protection of the rights of all persons in their liberty and property. Is it possible that congress can, at its pleasure, in disregard of the guaranties of the constitution, expel at any time the Irish, German, French, and English who may have taken up their residence here on the invitation of the government, while we are at peace with the countries from which they came, simply on the ground that they have not been naturalized? . . .

. . . Aliens from countries at peace with us, domiciled within our country by its consent, are entitled to all the guaranties for the protection of their persons and property which are secured to native-born citizens. The moment any human being from a country at peace with us comes within the jurisdiction of the United States, with their consent,—and such consent will always be implied when not expressly withheld, and, in the case of the Chinese laborers before us, was, in terms, given by the treaty referred to,—he becomes subject to all their laws, is amenable to their punishment, and entitled to their protection. Arbitrary and despotic power can no more be exercised over them, with reference to their persons and property, than over the persons and property of native-born citizens. They differ only from citizens in that they cannot vote, or hold any public office. As men having our common humanity, they are protected by all the guaranties of the constitution. To hold that they are subject to any different law, or are less protected in any particular, than other persons, is, in my judgment, to ignore the teachings of

our history, the practice of our government, and the language of our constitution. Let us test this doctrine by an illustration: If a foreigner who resides in the country by its consent commits a public offense, is he subject to be cut down, maltreated, imprisoned, or put to death by violence, without accusation made, trial had, and judgment of an established tribunal, following the regular forms of judicial procedure? If any rule in the administration of justice is to be omitted or discarded in his case, what rule is it to be? If one rule may lawfully be laid aside in his case, another rule may also be laid aside, and all rules may be discarded. In such instances a rule of evidence may be set aside in one case, a rule of pleading in another; the testimony of eye-witnesses may be rejected, and hearsay adopted; or no evidence at all may be received, but simply an inspection of the accused, as is often the case in tribunals of Asiatic countries, where personal caprice and not settled rules prevail. That would be to establish a pure, simple, undisguised despotism and tyranny, with respect to foreigners resident in the country by its consent, and such an exercise of power is not permissible, under our constitution. Arbitrary and tyrannical power has no place in our system. . . .

I utterly dissent from, and reject, the doctrine expressed in the opinion of the majority, that "congress, under the power to exclude or expel aliens, might have directed any Chinese laborer found in the United States without a certificate of residence to be removed out of the country by executive officers, without judicial trial or examination, just as it might have authorized such officers absolutely to prevent his entrance into the country." An arrest in that way, for that purpose, would not be a reasonable seizure of the person, within the meaning of the fourth article of the amendments of the constitution. It would be brutal and oppressive. The existence of the power thus stated is only consistent with the admission that the government is one of unlimited and despotic power, so far as aliens domiciled in the country are concerned. According to this theory, congress might have ordered executive officers to take the Chinese laborers to the ocean, and put them into a boat, and set them adrift, or to take them to the borders of Mexico, and turn them loose there, and in both cases without any means of support. Indeed, it might have sanctioned towards these laborers the most shocking brutality conceivable. I utterly repudiate all such notions, and reply that brutality, inhumanity, and cruelty cannot be made elements in any procedure for the enforcement of the laws of the United States. . . .

. . .[D]eportation from the realm has not been exercised in England since Magna Charta, except in punishment for crime, or as a measure in view of existing or anticipated hostilities. But, even if that power were exercised by every government of Europe, it would have no bearing in these cases. It may be admitted that the power has been exercised by the various governments of Europe. Spain expelled the Moors; England, in the reign of Edward I., banished 15,000 Jews; and Louis XIV., in 1685, by revoking the edict of Nantes, which gave religious liberty to Protestants in France, drove out the Huguenots. Nor does such severity of European governments belong only to the distant post. Within three years, Russia has banished many thousands of Jews, and apparently intends the expulsion of the whole race,—an act of barbarity which has aroused the indignation of all Christendom. Such was the feeling in this country that, friendly as our relations with Russia had always been, President Harrison felt compelled to call the attention of congress to it in his message in 1891, as a fit subject for national remonstrance. Indeed, all the instances mentioned have been condemned for their barbarity and cruelty, and no power to perpetrate such barbarity is to be implied from the nature of our government, and certainly is not found in any delegated powers under the constitution. . . .

The punishment is beyond all reason in its severity. It is out of all proportion to the alleged offense. It is cruel and unusual. As to its cruelty, nothing can exceed a forcible deportation from a country of one's residence, and the breaking up of all the relations of friendship, family, and business there contracted. The laborer may be seized at a distance from his home, his family, and his business, and taken before the judge for his condemnation, without permission to visit his home, see his family, or complete any unfinished business. . . .

There are numerous other objections to the provisions of the act under consideration. Every step in the procedure provided, as truly said by counsel, tramples upon some constitutional right. Grossly it violates the fourth amendment, which declares that "the right of the people to be secure in their persons . . . against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon

probable cause, supported by oath or affirmation, and particularly describing the . . . persons . . . to be seized."

The act provides for the seizure of the person without oath or affirmation or warrant, and without showing any probable cause by the officials mentioned. The arrest, as observed by counsel, involves a search of his person for the certificate which he is required to have always with him. Who will have the hardihood and effrontery to say that this is not an "unreasonable search and seizure of the person?" Until now it has never been asserted by any court or judge of high authority that foreigners domiciled in this country by the consent of our government could be deprived of the securities of this amendment; that their persons could be subjected to unreasonable searches and seizures, and that they could be arrested without warrant upon probable cause, supported by oath or affirmation.

I will not pursue the subject further. The decision of the court, and the sanction it would give to legislation depriving resident aliens of the guaranties of the constitution, fill me with apprehensions. Those guaranties are of priceless value to every one resident in the country, whether citizen or alien. I cannot but regard the decision as a blow against constitutional liberty, when it declares that congress has the right to disregard the guaranties of the constitution intended for the protection of all men domiciled in the country with the consent of the government, in their rights of person and property. How far will its legislation go? The unnaturalized resident feels it to-day, but if congress can disregard the guaranties with respect to any one domiciled in the country with its consent, it may disregard the guaranties with respect to naturalized citizens. What assurance have we that it may not declare that naturalized citizens of a particular country cannot remain in the United States after a certain day, unless they have in their possession a certificate that they are of good moral character, and attached to the principles of our constitution, which certificate they must obtain from a collector of internal revenue upon the testimony of at least one competent witness of a class or nationality to be designated by the government?

What answer could the naturalized citizen in that case make to his arrest for deportation, which cannot be urged in behalf of the Chinese laborers of to-day?

I am of the opinion that the orders of the court below should be reversed, and the petitioners should be discharged.

CHIEF JUSTICE FULLER, dissenting.

. . . No euphuism can disguise the character of the act in this regard. It directs the performance of a judicial function in a particular way, and inflicts punishment without a judicial trial. It is, in effect, a legislative sentence of banishment, and, as such, absolutely void. Moreover, it contains within it the germs of the assertion of an unlimited and arbitrary power, in general, incompatible with the immutable principles of justice, inconsistent with the nature of our government, and in conflict with the written constitution by which that government was created, and those principles secured.