AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 7: The Republican Era – Individual Rights/Due Process

**Nishimura Ekiu v. United States, 142 U.S. 651** (1892)

*Nishimura Ekiu, a Japanese subject, arrived at the port of San Francisco. The federal commissioner of immigration for the state did not allow her to land in the United States and detained her at a mission house until she could be placed on a return transport. She was denied entry in accordance with the Immigration Act of 1891 on the grounds that she was an alien with no means of support and thus a person “likely to become a public charge.” She petitioned a federal trial court for a writ of habeas corpus. She contended that she was entitled to a judicial hearing to present evidence that she had been improperly excluded under the law and improperly detained without due process. The government responded that the determination of the immigration commissioner was conclusive and unreviewable by a court (though it could be reviewed and reversed by superior officers in the executive branch). The trial court declined to intervene, and she appealed to the U.S. Supreme Court. In an 8-1 ruling, the Court affirmed the trial court’s decision and upheld the immigration law, holding that the due process clause did not require that aliens excluded at the border receive a judicial hearing.*

JUSTICE GRAY delivered the opinion of the Court.

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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, upon whom the constitution has conferred 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 declare war, and to provide and maintain armies and navies; and to make all laws which may be necessary and proper for carrying into effect these powers and all other powers vested by the constitution in the government of the United States, or in any department or officer thereof.

The supervision of the admission of aliens into the United States may be intrusted by congress either to the department of state, having the general management of foreign relations, or to the department of the treasury, charged with the enforcement of the laws regulating foreign commerce; and congress has often passed acts forbidding the immigration of particular classes of foreigners, and has committed the execution of these acts to the secretary of the treasury, to collectors of customs, and to inspectors acting under their authority.

An alien immigrant, prevented from landing by any such officer claiming authority to do so under an act of congress, and thereby restrained of his liberty, is doubtless entitled to a writ of habeas corpus to ascertain whether the restraint is lawful. . . . And congress may, if it sees fit, as in the statutes in question in *U. S. v. Jung Ah Lung* (1888), authorize the courts to investigate and ascertain the facts on which the right to land depends. But, on the other hand, the final determination of those facts may be in trusted by congress to executive officers; and in such a case, as in all others, in which a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to re-examine or controvert the sufficiency of the evidence on which he acted. . . . It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government. As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law.

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Putting her in the mission-house as a more suitable place than the steam-ship, pending the decision of the question of her right to land, and keeping her there, by agreement between her attorney and the attorney for the United States, until final judgment upon the writ of habeas corpus, left her in the same position, so far as regarded her right to land in the United States, as if she never had been removed from the steam-ship.

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*Affirmed*.

JUSTICE BREWER dissented.