AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 8: The New Deal/Great Society Era – Individual Rights/Due Process

**Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206** (1953)

*Ignatz Mezei was born in Gibraltar to either Hungarian or Romanian parents. He came to the United States in 1923, though the government denied that he was ever a lawful resident. He married an American citizen and resided in Buffalo, New York without incident for twenty-five years. In 1948, he attempted to travel to Romania to visit his dying mother, but he was refused entrance to Romania and detained for over a year in Hungary. When he was eventually able to return to the United States, he was stopped at Ellis Island. The attorney general determined that he was a security threat and permanently excluded him from the United States. Efforts to find a country that would take him failed, however.*

*In 1951, Mezei petitioned a federal district court to have the exclusion order lifted. A trial court ruled that his nearly two-year detention on Ellis Island was excessive and that he had to be either successfully deported or released into the United States. A divided circuit court agreed. In a 5-4 decision, the Supreme Court reversed, concluding that the prolonged detention of an alien at the border while deportation efforts continued required no more process to justify than the mere exclusion of an alien at the border.*

*Mezei’s case of a “man without a country” received considerable publicity, but congressional interest in providing legislative relief to Mezei faded when the executive shared some of its confidential information regarding his security threat. Indeed, the executive revealed that Mezei had been the president in Buffalo of an organization the federal government considered to be a front group for the Communist Party. In the early years of the Cold War, the government was actively deporting alien residents who were in the leadership of that organization. The attorney general arranged a review board to conduct a hearing on Mezei’s case, which concluded that he was excludable under federal law. Nonetheless, the attorney general released him on parole to Buffalo.*

JUSTICE CLARK delivered the opinion of the Court.

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Courts 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. In the exercise of these powers, Congress expressly authorized the President to impose additional restrictions on aliens entering or leaving the United States during periods of international tension and strife. That authorization, originally enacted in the Passport Act of 1918, continues in effect during the present emergency. Under it, the Attorney General, acting for the President, may shut out aliens whose "entry would be prejudicial to the interests of the United States.” And he may exclude without a hearing when the exclusion is based on confidential information the disclosure of which may be prejudicial to the public interest. The Attorney General in this case proceeded in accord with these provisions; he made the necessary determinations and barred the alien from entering the United States.

It is true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law. *The Japanese Immigrant Case* (1903). But an alien on the threshold of initial entry stands on a different footing: "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *United States ex rel. Knauff v. Shaughnessy* (1950). And because the action of the executive officer under such authority is final and conclusive, the Attorney General cannot be compelled to disclose the evidence underlying his determinations in an exclusion case; "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." In a case such as this, courts cannot retry the determination of the Attorney General.

Neither respondent's harborage on Ellis Island nor his prior residence here transforms this into something other than an exclusion proceeding. . . .

To be sure, a lawful resident alien may not captiously be deprived of his constitutional rights to procedural due process. . . .

But respondent . . . simply left the United States and remained behind the Iron Curtain for 19 months. . . . In such circumstances, we have no difficulty in holding respondent an entrant alien or "assimilated to [that] status" for constitutional purposes. That being so, the Attorney General may lawfully exclude respondent without a hearing. . . .

There remains the issue of respondent's continued exclusion on Ellis Island. . . . While the Government might keep entrants by sea aboard the vessel pending determination of their admissibility, resulting hardships to the alien and inconvenience to the carrier persuaded Congress to adopt a more generous course. By statute it authorized, in cases such as this, aliens' temporary removal from ship to shore. But such temporary harborage, an act of legislative grace, bestows no additional rights. . . .

Thus we do not think that respondent's continued exclusion deprives him of any statutory or constitutional right. . . . That exclusion by the United States plus other nations' inhospitality results in present hardship cannot be ignored. But, the times being what they are, Congress may well have felt that other countries ought not shift the onus to us; that an alien in respondent's position is no more ours than theirs. Whatever our individual estimate of that policy and the fears on which it rests, respondent's right to enter the United States depends on the congressional will, and courts cannot substitute their judgment for the legislative mandate.

*Reversed*.

JUSTICE BLACK, with whom JUSTICE DOUGLAS joins, dissenting.

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No society is free where government makes one person's liberty depend upon the arbitrary will of another. Dictatorships have done this since time immemorial. They do now. Russian laws of 1934 authorized the People's Commissariat to imprison, banish and exile Russian citizens as well as "foreign subjects who are socially dangerous.” Hitler's secret police were given like powers. German courts were forbidden to make any inquiry whatever as to the information on which the police acted. Our Bill of Rights was written to prevent such oppressive practices. Under it this Nation has fostered and protected individual freedom. The Founders abhorred arbitrary one-man imprisonments. Their belief was—our constitutional principles are—that no person of any faith, rich or poor, high or low, native or foreigner, white or colored, can have his life, liberty or property taken "without due process of law." This means to me that neither the federal police not federal prosecutors nor any other governmental official, whatever his title, can put or keep people in prison without accountability to courts of justice. It means that individual liberty is too highly prized in this country to allow executive officials to imprison and hold people on the basis of information kept secret from courts. It means that Mezei should not be deprived of his liberty indefinitely except as the result of a fair open court hearing in which evidence is appraised by the court, not by the prosecutor.

JUSTICE JACKSON, with whom JUSTICE FRANKFURTER joins, dissenting.

Fortunately it still is startling, in this country, to find a person held indefinitely in executive custody without accusation of crime or judicial trial. Executive imprisonment has been considered oppressive and lawless since John, at Runnymede, pledged that no free man should be imprisoned, dispossessed, outlawed, or exiled save by the judgment of his peers or by the law of the land. . . .

What is our case? In contemplation of law, I agree, it is that of an alien who asks admission to the country. Concretely, however, it is that of a lawful and law-abiding inhabitant of our country for a quarter of a century, long ago admitted for permanent residence, who seeks to return home. After a foreign visit to his aged and ailing mother that was prolonged by disturbed conditions of Eastern Europe, he obtained a visa for admission issued by our consul and returned to New York. There the Attorney General refused to honor his documents and turned him back as a menace to this Nation's security. This man, who seems to have led a life of unrelieved insignificance, must have been astonished to find himself suddenly putting the Government of the United States in such fear that it was afraid to tell him why it was afraid of him. . . . With something of a record as an unwanted man, neither his efforts nor those of the United States Government any longer promise to find him an abiding place. For nearly two years he was held in custody of the immigration authorities of the United States at Ellis Island, and if the Government has its way he seems likely to be detained indefinitely, perhaps for life, for a cause known only to the Attorney General.

Is respondent deprived of liberty? . . . Realistically, this man is incarcerated by a combination of forces which keep him as effectually as a prison, the dominant and proximate of these forces being the United States immigration authority. It overworks legal fiction to say that one is free in law when by the commonest of common sense he is bound. . . .

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The interpretations of the Fifth Amendment's command that no person shall be deprived of life, liberty or property without due process of law, come about to this: reasonable general legislation reasonably applied to the individual. The question is whether the Government's detention of respondent is compatible with these tests of substance and procedure.

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Due process does not invest any alien with a right to enter the United States, nor confer on those admitted the right to remain against the national will. Nothing in the Constitution requires admission or sufferance of aliens hostile to our scheme of government.

Nor do I doubt that due process of law will tolerate some impounding of an alien where it is deemed essential to the safety of the state. Even the resident, friendly alien may be subject to executive detention without bail, for a reasonable period, pending consummation of deportation arrangements. . . .

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If it be conceded that in some way this alien could be confined, does it matter what the procedure is? Only the untaught layman or the charlatan lawyer can answer that procedures matter not. Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied. Indeed, if put to the choice, one might well prefer to live under Soviet substantive law applied in good faith by our common-law procedures than under our substantive law enforced by Soviet procedural practices. Let it not be overlooked that due process of law is not for the sole benefit of an accused. It is the best insurance for the Government itself against those blunders which leave lasting stains on a system of justice but which are bound to occur on *ex parte* consideration. . . .

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The most scrupulous observance of due process, including the right to know a charge, to be confronted with the accuser, to cross-examine informers and to produce evidence in one's behalf, is especially necessary where the occasion of detention is fear of future misconduct, rather than crimes committed. . . . Quite unconsciously, I am sure, the Government's theory of custody for "safekeeping" without disclosure to the victim of charges, evidence, informers or reasons, even in an administrative proceeding, has unmistakable overtones of the "protective custody" of the Nazis more than of any detaining procedure known to the common law. Such a practice, once established with the best of intentions, will drift into oppression of the disadvantaged in this country as surely as it has elsewhere. . . .

Because the respondent has no right of entry, does it follow that he has no rights at all? Does the power to exclude mean that exclusion may be continued or effectuated by any means which happen to seem appropriate to the authorities? It would effectuate his exclusion to eject him bodily into the sea or to set him adrift in a rowboat. Would not such measures be condemned judicially as a deprivation of life without due process of law? . . .

Exclusion of an alien without judicial hearing, of course, does not deny due process when it can be accomplished merely by turning him back on land or returning him by sea. But when indefinite confinement becomes the means of enforcing exclusion, it seems to me that due process requires that the alien be informed of its grounds and have a fair chance to overcome them. . . .

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Congress has ample power to determine whom we will admit to our shores and by what means it will effectuate its exclusion policy. The only limitation is that it may not do so by authorizing United States officers to take without due process of law the life, the liberty or the property of an alien who has come within our jurisdiction; and that means he must meet a fair hearing with fair notice of the charges.

It is inconceivable to me that this measure of simple justice and fair dealing would menace the security of this country. No one can make me believe that we are that far gone.