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

**United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537** (1950)

*Ellen Raphael was born in Germany in 1915 and fled to England in 1939, and at the end of World War II took a civilian job with the United States Army working in occupied Germany. In Frankfurt in 1948, she married Kurt W. Knauff, a naturalized American citizen who was also working as a civilian employee of the army. A few months later she petitioned the federal government to be made a naturalized citizen. She was, however, detained at Ellis Island and then permanently excluded from the United States as a security risk by then-Attorney General Tom Clark, in accord with a 1941 federal statute that authorized executive officers to exclude any alien from the United States if they are believed to “endanger the public safety.”*

*She petitioned for a writ of habeas corpus at a federal district court, but her petition was denied. That ruling was affirmed by a circuit court. In a 4-3 decision, the U.S. Supreme Court affirmed that ruling, holding that the executive had inherent authority to exclude without judicial hearing aliens who were thought to pose a security risk and that Congress had bolstered that authority with statute.*

*Her case became a political* cause celebre*. Although the government repeatedly moved to deport her, the courts stayed those efforts. Congress called her to testify in a public hearing, where she rebuffed “gossip” that she was a paid agent of the Czechoslovakian government while working for the American army in postwar Germany. The executive declined to discuss its evidence against her. As Congress debated a private bill to give her entry into the United States, the Immigration and Naturalization Service gave her a public hearing to resolve her case, and in 1951 the attorney general eventually reversed the decision to exclude her on the grounds that she was unlikely to engage in subversive activities in the United States. The government continued to oppose her efforts to become a naturalized citizen, but she remained a legal resident.*

JUSTICE MINTON delivered the opinion of the Court.

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At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right. Admission of aliens to the United States is a privilege granted by the sovereign United States Government. Such privilege is granted to an alien only upon such terms as the United States shall prescribe. It must be exercised in accordance with the procedure which the United States provides. *Nishimura Ekiu v. United States* (1892).

Petitioner contends that the 1941 Act and the regulations thereunder are void to the extent that they contain unconstitutional delegations of legislative power. But there is no question of inappropriate delegation of legislative power involved here. The exclusion of aliens is a fundamental act of sovereignty. The right to do so stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation. When Congress prescribes a procedure concerning the admissibility of aliens, it is not dealing alone with a legislative power. It is implementing an inherent executive power.

Thus the decision to admit or to exclude an alien may be lawfully placed with the President, who may in turn delegate the carrying out of this function to a responsible executive officer of the sovereign, such as the Attorney General. The action of the executive officer under such authority is final and conclusive. Whatever the rule may be concerning deportation of persons who have gained entry into the United States, 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 to exclude a given alien. . . . Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.

In the particular circumstances of the instant case the Attorney General, exercising the discretion entrusted to him by Congress and the President, concluded upon the basis of confidential information that the public interest required that petitioner be denied the privilege of entry into the United States. He denied her a hearing on the matter because, in his judgment, the disclosure of the information on which he based that opinion would itself endanger the public security.

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The War Brides Act does not relieve petitioner of her alien status. Indeed, she sought admission in order to be naturalized and thus to overcome her alien status. The Act relieved her of certain physical, mental, and documentary requirements and of the quota provisions of the immigration laws. But she must, as the Act requires, still be "otherwise admissible under the immigration laws." In other words, aside from the enumerated relaxations of the immigration laws she must be treated as any other alien seeking admission. Under the immigration laws and regulations applicable to all aliens seeking entry into the United States during the national emergency, she was excluded by the Attorney General without a hearing. In such a case we have no authority to retry the determination of the Attorney General.

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*Affirmed*.

JUSTICE DOUGLAS and JUSTICE CLARK took no part in the decision of this case.

JUSTICE FRANKFURTER, dissenting.

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. . . . We are reminded from time to time that in enacting legislation Congress is not engaged in a scientific process which takes account of every contingency. Its laws are not to be read as though every *i* has to be dotted and every *t* crossed. The War Brides Act is legislation derived from the dominant regard which American society places upon the family. It is not to be assumed that Congress gave with a bountiful hand but allowed its bounty arbitrarily to be taken away. In framing and passing the War Brides Act, Congress was preoccupied with opening the door to wives acquired by American husbands during service in foreign lands. It opened the door on essentials —wives of American soldiers and perchance mothers of their children were not to run the gauntlet of administrative discretion in determining their physical and mental condition, and were to be deemed nonquota immigrants. Congress ought not to be made to appear to require that they incur the greater hazards of an informer's tale without any opportunity for its refutation, especially since considerations of national security, insofar as they are pertinent, can be amply protected by a hearing *in camera*. An alien's opportunity of entry into the United States is of course a privilege which Congress may grant or withhold. But the crux of the problem before us is whether Congress, having extended the privilege for the benefit not of the alien but of her American husband, left wide open the opportunity ruthlessly to take away what it gave.

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JUSTICE JACKSON, with whom JUSTICE BLACK and JUSTICE FRANFURTER join, dissenting.

I do not question the constitutional power of Congress to authorize immigration authorities to turn back from our gates any alien or class of aliens. But I do not find that Congress has authorized an abrupt and brutal exclusion of the wife of an American citizen without a hearing.

Congress held out a promise of liberalized admission to alien brides, taken unto themselves by men serving in or honorably discharged from our armed services abroad, as the Act, set forth in the Court's opinion, indicates. The petitioning husband is honorably discharged and remained in Germany as a civilian employee. Our military authorities abroad required their permission before marriage. The Army in Germany is not without a vigilant and security-conscious intelligence service. This woman was employed by our European Command and her record is not only without blemish, but is highly praised by her superiors. The marriage of this alien woman to this veteran was approved by the Commanding General at Frankfurt-on-Main.

Now this American citizen is told he cannot bring his wife to the United States, but he will not be told why. He must abandon his bride to live in his own country or forsake his country to live with his bride.

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Security is like liberty in that many are the crimes committed in its name. The menace to the security of this country, be it great as it may, from this girl's admission is as nothing compared to the menace to free institutions inherent in procedures of this pattern. In the name of security the police state justifies its arbitrary oppressions on evidence that is secret, because security might be prejudiced if it were brought to light in hearings. The plea that evidence of guilt must be secret is abhorrent to free men, because it provides a cloak for the malevolent, the misinformed, the meddlesome, and the corrupt to play the role of informer undetected and uncorrected.

. . . .

Congress will have to use more explicit language than any yet cited before I will agree that it has authorized an administrative officer to break up the family of an American citizen or force him to keep his wife by becoming an exile. Likewise, it will have to be much more explicit before I can agree that it authorized a finding of serious misconduct against the wife of an American citizen without notice of charges, evidence of guilt and a chance to meet it.

I should direct the Attorney General either to produce his evidence justifying exclusion or to admit Mrs. Knauff to the country.