

US Supreme Court rules recent asylum seekers have no right to habeas corpus or due process

By Eric London
26 June 2020

On Thursday, the US Supreme Court issued an opinion declaring that recent asylum seekers have no constitutional right to due process or habeas corpus, denying them any “day in court” to challenge the legality of their deportation before they are summarily removed.

The 7-2 decision is based on a majority opinion issued by the court’s five Republican justices and supported by a concurring opinion by Democratic nominees Ruth Bader Ginsburg and Stephen Breyer.

The majority opinion written by Samuel Alito echoes the court’s infamous *Dred Scott v. Sandford* (1857) ruling in more ways than one.

As in *Dred Scott*, the court in *Department of Homeland Security v. Thuraissigiam* made the most sweeping, extreme and anti-democratic ruling possible, reaching far beyond what even the government argued was necessary in the case. Not only did the court deny Sri Lankan immigrant Vijayakumar Thuraissigiam’s petition for habeas corpus, it also ruled that all recent asylum seekers have no rights to challenge their deportation at all.

And just as the court ruled in *Dred Scott* that the constitution did not apply to slaves because they were not “people,” the court here has created a sub-class of people who are also beneath the protection of the law because they lack “established connections in this country,” as the majority opinion states.

In fact, after yesterday’s decision, new asylum seekers have *fewer* rights than fugitive slaves did in the decade before the Civil War. Runaway slaves at least had the right to appear before a judge to argue why they should not be removed from the North, and to argue exceptional reasons for being allowed to stay,

such as having served in the Continental Army during the American Revolution.

This case involved a Sri Lankan Tamil immigrant who was detained immediately after crossing the US-Mexico border. Thuraissigiam asked for asylum, telling Customs and Border Patrol (CBP) agents that he left his home country after he was kidnapped by government thugs in an unmarked van and savagely beaten for belonging to the country’s long-persecuted Tamil minority. Officials also tortured Thuraissigiam by simulating drowning (waterboarding).

An asylum officer and supervisor decided Thuraissigiam could not show a “credible fear” of removal and prepared to send him back to Sri Lanka and likely persecution or death. Under the “expedited removal” process established by Congress in the bipartisan Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), immigrants who can show credible fear of removal are placed into immigration proceedings and given the chance to seek relief, while those who cannot show credible fear are deported on the spot.

Thuraissigiam’s attorneys filed for a writ of habeas corpus in federal district court. Habeas corpus—Latin for “you have the body”—is a centuries-old democratic right whereby detainees may demand their jailers bring them before a judge to determine the legality of their detention.

In their petition, the attorneys described the Kafkaesque series of due process violations leading to the negative credible fear determination. Due to translation problems, officials did not properly understand what Thuraissigiam was telling them about his past persecution. Officials rushing to deport

Thuraissigiam gave no reasonable explanation for why he could not establish a credible fear.

The district court stated it had no jurisdiction to hear Thuraissigiam's habeas corpus petition, citing a provision of IIRAIRA that stripped immigrants captured at the border of the right to habeas corpus. The statute was passed in the House of Representatives with the "yes" votes of Nancy Pelosi, Bernie Sanders, James Clyburn and almost the entire Democratic caucus. It passed the Senate by voice vote and was signed into law by Democrat Bill Clinton.

After the district court ruled against Thuraissigiam, the Ninth Circuit Court of Appeals reversed and ruled that IIRAIRA's expedited removal and habeas-stripping provisions were unconstitutional. The Supreme Court's decision strikes down the Ninth Circuit's ruling. Writing for the majority, Justice Samuel Alito cynically mocked the terrified refugee: "the Government is happy to release him—provided the release occurs in the cabin of a plane bound for Sri Lanka."

The decision is a constitutional catastrophe.

It grants the executive branch the power to detain thousands of individuals without any judicial oversight, violating the separation of powers and granting CBP and Immigration and Customs Enforcement (ICE) license to violate the law.

It asserts that "due process" can now be satisfied without any judicial review, enshrining in Supreme Court precedent the dictatorial doctrine declared by Barack Obama's attorney general, Eric Holder, who justified drone assassinations of US citizens, saying the review of death lists by officials at the White House made court review unnecessary, because "the constitution guarantees due process, not judicial process."

The decision opens the door to the summary deportation without trial of millions of undocumented immigrants fleeing violence and poverty caused by American imperialism.

Last week, the Court of Appeals for the D.C. Circuit approved the Trump administration's decision to expand IIRAIRA's expedited removal process to cover not only asylum seekers arrested at the border and within two weeks of crossing (the present restrictions, the category into which Thuraissigiam fell), but to immigrants in any part of the country who entered in

the last two years. The decision was issued by two Democrats: Patricia Millett, an Obama appointee, and Harry Edwards, a Jimmy Carter appointee.

As a practical matter, yesterday's decision will lead to the deaths of countless refugees and asylum seekers who will be unconstitutionally deported without the right to challenge their expedited removal.

But certain political conclusions must also be drawn. The majority opinion is an ominous sign that the ruling class is preparing to meet the growing mood of social opposition in the working class with increased attacks on democratic rights.

The ruling class—speaking not through a slim 5-4 partisan breakdown but a clear 7-2 majority—views this spring's mass demonstrations over police violence and the strike wave over coronavirus-related working conditions as a threat to its class rule. Donald Trump's attempted military coup d'état earlier this month may have suffered an initial setback, but yesterday's decision shows that the underlying tendencies toward dictatorship in the ruling class are growing stronger among both Trump's Republican supporters and his Democratic rivals.

The decision is an urgent warning that the working class must unite against all efforts to divide it based on race, nationality, ethnicity or immigration status, in a common struggle for social equality and to defend democratic rights.

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