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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

Nos. 609, 727

JOHN O. GRAHAM, Commissioner, Department of Public Welfare, State of Arizona,

Appellant,

—v.—

CARMEN RICHARDSON, for herself and all others similarly situated,

Appellees.

WILLIAM P. SAILER, *et al.*,

Appellants,

—v.—

ELSIE MARY JANE LEGER, BERYL JERVIS,

Appellees.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of *Amicus**

The American Civil Liberties Union is a nationwide non-partisan organization dedicated solely to the defense of the Bill of Rights. In its fifty-year existence, the ACLU

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* Letters of consent to the filing of this brief, from all counsel in both cases, have been filed with the Clerk of the Court.

has been particularly concerned with the right of aliens to enjoy the full protection of our Constitution. The ACLU has participated in numerous cases in this and other courts to challenge deprivations imposed upon non-citizens. The Union is also deeply concerned with laws that impose invidious discriminations upon distinct classes in our society in violation of the guarantee of equal protection of the laws. Finally, the ACLU is committed to the principle that the right to travel shall be as unrestricted as possible.

This case involves the interrelationship of all three principles: the rights of aliens, the guarantee of equal protection and the right to travel. The proper application of these rights is of great importance to the ACLU.

Statement of Facts

Both cases at bar involve challenges to state laws that exclude persons from welfare benefits solely because of their status as aliens. In *Sailer* v. *Leger,* No. 727, the appellees are members of a class of lawfully admitted aliens residing within the Commonwealth of Pennsylvania who would otherwise be eligible for a form of public assistance known as general assistance but for the statutory provision that such general assistance is payable only to citizens of the United States.[1] A three-judge United States Dis-

[1] Pennsylvania has two major public assistance programs. One is known as categorical assistance, for which approximately half the funds are supplied by the federal government. Categorical assistance includes aid to the blind, aged, permanently and totally disabled and to families with dependent children. Aliens are fully eligible for categorical assistance. General assistance is designed to provide aid to persons who are not eligible for categorical assistance but are otherwise in need. This program is financed entirely with state funds and is limited to citizens of the United States. Pa. Pub. Wel. Code, Section 432(2).

trict Court held that the exclusion of aliens from the general assistance program was unconstitutional and enjoined the enforcement of that portion of the statute.

In *Graham* v. *Richardson,* No. 609, also instituted as a class action, appellee is a lawfully admitted alien who has resided in the State of Arizona continuously for thirteen years. At the time of the filing of the suit she would have been eligible for benefits under welfare programs providing for Aid to the Permanently and Totally Disabled or Old Age Assistance, but for the requirement of state law that the recipient of such benefits be a United States citizen or, if an alien, have resided in the United States for fifteen years. A three-judge United States District Court held that the fifteen year residency requirement for resident aliens was unconstitutional and granted injunctive and declaratory relief against its enforcement.

Summary of Argument

1. The denial of welfare benefits to aliens solely because of their status is inherently suspect, and the state bears a very heavy burden of justifying the discrimination. The alien's need for welfare benefits is no less than that of the citizen. To deny such benefits to him will not save welfare costs, even if this were a constitutionally permissible objective, which it is not. The discrimination cannot be justified on the ground that public funds are involved, since even if such funds constituted "state resources," a state may not constitutionally exclude aliens from the enjoyment of such resources. The exclusion of aliens from welfare benefits constitutes invidious discrimination, which can in no way be justified and, therefore, falls within the

Fourteenth Amendment's prohibition against the denial of equal protection of the laws.

2. The denial of welfare benefits to aliens by a state inhibits aliens from taking up residence in that state and serves to penalize those aliens who have already chosen to live there. Aliens, as well as citizens, have the constitutional right to travel within the United States. State laws that operate to restrict or discourage interstate travel are unconstitutional, and the state may not allocate welfare benefits in a manner that has this effect.

3. A state's power to act upon aliens as a class is restricted to the narrowest of limits. State laws which impose discriminatory burdens upon the entrance or residence of aliens conflict with the power of Congress to regulate immigration, and for that reason are invalid. Under federal law an alien has the right to remain in this country notwithstanding that he becomes indigent due to circumstances arising after his admission, and under federal law aliens are entitled to the "full and equal benefits of state laws." The state laws in question discriminate against aliens because of their status and deny welfare benefits to them although the need for such benefits may be due to causes arising after the alien has been admitted. There is a clear conflict between state and federal law, and the inconsistent provisions of state law must yield.

ARGUMENT

I.

The denial of welfare benefits to indigent residents of a state solely on the ground that they are aliens or on the ground that they have not satisfied a residency requirement which is not applicable to citizens constitutes invidious discrimination and deprives such persons of equal protection of the laws.

In both cases welfare benefits have been denied solely because the recipient was an alien. Both states have established two categories of indigent residents, citizens and aliens, and distinguish between eligibility for the benefits solely on that basis. It has long been settled that discrimination against aliens, like discrimination on the basis of race, color or nationality is inherently suspect. *Takahashi* v. *Fish & Game Commission,* 334 U.S. 410, 420 (1948); *Oyama* v. *California,* 332 U.S. 633, 640 (1948). It is, therefore, subject to strict judicial scrutiny, with the state bearing a very heavy burden of justification. *Takahashi* v. *Fish & Game Commission, supra.* Since the benefits have been denied on a basis that is inherently suspect, the state must bear that burden, and it cannot rely on the "reasonable basis for the distinction" test. *Dandridge* v. *Williams,* 397 U.S. 471, 485 note 17 (1970).

This nation has not readily countenanced discrimination against resident aliens. Once an alien lawfully enters and resides in this country, "He becomes invested with the rights, *except those incidental to citizenship* guaranteed to all persons within our borders." *Eisler* v. *United States,*

170 F.2d 273, 279 (D.C. Cir., 1948) (emphasis added). The power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits. *Takahashi* v. *Fish & Game Commission, supra,* 334 U.S. at 420. As early as 1915 this Court invalidated a state law which required discrimination against aliens in private employment, *Truax* v. *Raich,* 239 U.S. 33 (1915), and as has been observed, "The courts stand ready to safeguard aliens against unreasonable discriminations." *Nielsen* v. *Secretary of the Treasury,* 424 F.2d 833, 846 (D.C. Cir., 1970).

In light of the above principles, what possible justification can there be for a state's denying welfare benefits to an indigent resident solely because he is an alien? His need for the benefit is certainly no less than the need of the citizen. *Truax* v. *Raich, supra.* As this Court has observed: "Welfare, by meeting the basic demands of subsistence can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community." *Goldberg* v. *Kelly,* 397 U.S. 254, 265 (1970). These benefits are a matter of statutory entitlement, more akin to property than to a "gratuity." *Goldberg* v. *Kelly, supra,* 397 U.S. at 262, note 8. Since the alien's need for the benefit is no less than the citizen's, he is presumptively entitled to it, and it may not be denied solely because of his status. *Sherbert* v. *Verner,* 374 U.S. 398 (1963).

In today's society the denial of welfare benefits to aliens is no different from the denial of employment opportunity that was invalidated in *Truax* v. *Raich, supra.* Welfare benefits, generally speaking, represent interim assistance to those who are temporarily unable to find work, or represent the substitute for the income that would be obtained

from employment if it were not for the disability that makes employment impossible. If a state may not deny the alien the right to work, it may not, when it has made welfare benefits available to meet the needs that otherwise would be met from employment income, deny those benefits to the alien lawfully resident there.

The states may contend that denying aliens welfare benefits reduces the total cost of the welfare program. The short answer to that contention is that the saving of welfare costs cannot justify an otherwise invidious discrimination. *Shapiro* v. *Thompson,* 394 U.S. 618, 633 (1969).[2] Moreover, no real savings are involved, because the number of aliens seeking public assistance is infinitesimal. The present restrictive immigration policy of Congress sharply limits the number of aliens that are admitted, and they are not concentrated in any single state. As the Court below pointed out in *Sailer* v. *Leger,* alien applicants for general assistance in Pennsylvania are less than 100 a year; some 85,000 people are on general assistance. In Arizona some 21 aliens applied for public assistance during the last fiscal year. Even if it were permissible for a state to exclude aliens from welfare benefits in order to achieve economies, such exclusion does not have that effect. The present cases, therefore, are in no way remotely similar to *Dandridge* v. *Williams, supra,* where the Court found that there was a rational basis for the maximum grant limitation, other than conservation of funds, namely the avoidance of discrimi-

[2] In *Shapiro* this Court referred to "invidious distinctions between classes of citizens". 394 U.S. at 633. Since the Court has previously characterized distinctions between citizens and aliens as "invidious," it cannot be contended that the reference to "citizens" implies that distinctions between citizens and aliens are no longer "invidious."

nation between welfare families and the families of the working poor. The denial of welfare benefits to aliens represents discrimination for discrimination's sake and is patently unjustifiable.

Nor can the discrimination be in any way justified on the ground that public funds are involved. It is true that earlier cases have held that it was permissible for states to discriminate against aliens with respect to governmental employment. *Heim* v. *McCall,* 239 U.S. 175 (1915); *Crane* v. *New York,* 239 U.S. 195 (1915). These cases, however, were not based so much on the premise that it was reasonable for a state to bar aliens from public employment as on the view that a state was free to be as arbitrary as it wished in distributing the "privilege" of public employment. See the discussion in *Heim* v. *McCall,* 239 U.S. at 191. The notion that public employment is a "privilege" which the states can condition without limitation has been firmly repudiated by this Court in case after case. See e.g., *Wieman* v. *Updegraff,* 344 U.S. 183 (1952); *Shelton* v. *Tucker,* 364 U.S. 479 (1960); *Keyishian* v. *Board of Regents,* 385 U.S. 589 (1967). Similarly, it has been rejected as applied to federal employment. See e.g., *United Public Workers* v. *Mitchell,* 330 U.S. 75 (1947). The exclusion of aliens from all public employment, therefore, is inconsistent both with contemporary acceptance of the notion that constitutional standards do inhibit governmental power over public employment and with more recent expositions by this Court of the rights of aliens, as in *Takahashi* v. *Fish & Game Commission, supra.* Thus the Supreme Court of California *en banc* has recently held that the California statute prohibiting the employment of aliens on public works was violative of the Fourteenth Amendment. *Purdy & Fitzpatrick*

v. *State of California,* 79 Cal. Rptr. 77, 456 P.2d 645 (1969). See also *Department of Labor* v. *Cruz,* 45 N.J. 372, 212 A.2d 545 (1965). "Privilege-right" distinctions used many years ago to uphold the exclusion of anyone from public employment cannot be used today to justify the denial of welfare benefits—which are not a "privilege" by any stretch of the imagination, *Goldberg* v. *Kelly, supra*—or indeed of any benefits, to people simply because they are aliens. *Sherbert* v. *Verner, supra.*

Nor can it be contended that welfare benefits are a "state resource" from which aliens can be excluded. Denial of welfare benefits simply saves funds, not natural resources, and the saving of welfare costs cannot justify an otherwise invidious discrimination. *Shapiro* v. *Thompson, supra.* Moreover, it is now clear that the state cannot exclude aliens from the enjoyment of state resources such as fisheries, *Takahashi* v. *Fish & Game Commission, supra,* or land. *Sei Fujii* v. *State,* 38 Cal.2d 718, 242 P.2d 617 (1952). Cf. *Oyama* v. *California,* 332 U.S. 633 (1948). *A fortiori,* it cannot, on that basis, exclude them from welfare benefits. Nor can it do so on the ground that it is entitled to favor its own citizens in the disbursement of public funds. As the California Supreme Court observed in *Purdy*:

> ". . . [s]ince aliens support the State of California with their tax dollars, any preference in the disbursement of public funds which excludes aliens appears manifestly unfair. . . . [a]ny classification which treats all aliens as undeserving and all United States citizens as deserving rests upon a very questionable basis. The citizen may be a newcomer to the state who has little 'stake' in the community; the alien may be a resident who has lived in California for a lengthy

> period, paid taxes, served in our armed forces, demonstrated his worth as a constructive human being, and contributed much to the growth and development of the state." 456 P.2d at 656.

The equal protection clause forbids such invidious distinctions in the disbursement of public funds.

If the exclusion of aliens from welfare benefits is unconstitutionally discriminatory, it does not become constitutional by virtue of the fact that it may have been approved by the appropriate federal administrative agency. It is questionable whether statutory provisions such as 42 U.S.C. §302(b), which prohibit the Secretary of Health, Education and Welfare from approving any plan which excludes any citizen impliedly authorizes the states to exclude aliens. See the discussion of the analogous provision of §402(b) with respect to residency as a requirement for the receipt of Aid to Dependent Children Benefits in *Shapiro* v. *Thompson, supra,* 394 U.S. at 639-40. In any event, as in *Shapiro,* it is the responsive state legislation which infringes the constitutional rights of aliens, and certainly Congress may not authorize the states to violate the equal protection clause. 394 U.S. at 641.

When all is said and done, there is no basis whatsoever for the denial of benefits to indigent alien residents of a state except that of invidious discrimination. No real economies result to the state from such exclusion even if this were a constitutionally permissible justification. The need of the alien for the benefit is no less than that of the citizen, and he is not by virtue of his status, any less worthy a recipient. The welfare benefits are denied solely on the basis of his status, which is inherently suspect to begin

with, and no reasonable basis, let alone compelling justification, can be shown for the discrimination. Therefore, it comes clearly within the scope of the Fourteenth Amendment's prohibition against the denial of equal protection of the laws.

II.

The denial of welfare benefits to persons solely because they are aliens unreasonably burdens the right of aliens to travel within the United States and to settle in any of the several states.

The denial of welfare benefits to aliens by a state necessarily inhibits aliens from taking up residence in that state and serves to penalize those aliens who have already chosen to live there. In *Shapiro* v. *Thompson,* 394 U.S. 618 (1969), this Court held that a one year residency requirement as a condition of eligibility for welfare benefits violated the constitutional guarantee of freedom to travel. It observed that, "An indigent who desires to migrate, resettle, find a new job and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence when his need may be most acute." 394 U.S. at 629.

The inhibiting effect of Pennsylvania and Arizona's exclusionary rule upon resident aliens is even greater. The alien knows that if he goes to Pennsylvania and subsequently becomes destitute he can never obtain general assistance benefits; if he goes to Arizona, he cannot obtain any public assistance benefits until he has resided in the United States for fifteen years. Today it is reasonable for

people to assume that they will be able to receive public assistance benefits in case of need, and in the great majority of states aliens are entitled to such benefits. If some states exclude aliens from these benefits, it is clear that aliens may be discouraged from taking up residence there. And those who have already done so are being prejudiced for precisely that reason. As *Shapiro* makes clear, a state may not violate the constitutional right to travel by laws that discourage movement into that state. The right to travel should be deemed to have been infringed whenever the effect of a state law is to "impede or prevent the exercise of that right." Cf. *United States* v. *Guest,* 383 U.S. 745, 760 (1966). A law that denies welfare benefits to aliens as a class clearly has the effect of discouraging their movement into a state and penalizing those who have already chosen to come there, and thus violates the constitutional right to travel.

There is another perspective from which the statutes in question infringe the fundamental right to travel. Not only do these laws deter travel by aliens into the state, but they also penalize continued residence there by an alien who subsequently requires public assistance. A corollary of the right to travel among the states is the right to secure an abode and not be coerced into emigration. See, *Truax* v. *Raich,* 239 U.S. 33, 42 (1915); cf. *Ex Parte Endo,* 323 U.S. 283 (1944). Yet, the statutes here not only discourage aliens' entrance into the state, they compel exodus from the state. Indeed, in No. 727, it was stipulated:

> 2. That the citizenship bar to the receipt of General Assistance in Pennsylvania discourages continued residence in Pennsylvania of indigent resident aliens and

> causes such needy persons to remove to other States which will meet their needs (A. 23a).

Such a purpose is no different than that of a statute which required aliens who became indigent to depart the state. Not only is such a purpose inconsistent with the right to travel, but it infringes First Amendment rights of association by forcing the indigent alien to uproot himself and abandon the network of personal relationships he has acquired. No state interests have been advanced to justify such extraordinary results. It is thus apparent that the right to travel is infringed by these statutes.

Nor can it be claimed that aliens are excluded from the protections of the right to travel, for there can be no doubt that this right extends to aliens as well as citizens. This was clearly recognized in *Truax* v. *Rauch, supra,* where this Court held that a state could not deny aliens "entrance and abode." 239 U.S. at 42. Cf. *Edwards* v. *California,* 314 U.S. 160 (1941). In *Shapiro* v. *Thompson, supra,* the right to travel from state to state was found to be so fundamental as to constitute a basic generic right under the Constitution,

> "We have no occasion to ascribe the source of this right to travel interstate to a particular constitutional provision. It suffices that, as Mr. Justice Stewart said for the Court in United States v. Guest, 383 U.S. 745, 757-758, 16 L Ed 2d 239, 249, 86 S Ct 1170 (1966):
>
> > 'The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

> '. . . [The] right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.'" (Footnote omitted.) 394 U.S. at 630-31.

Justice Stewart, concurring, noted that the right to travel is a "virtually unconditional personal right guaranteed by the Constitution to us all.", 394 U.S. at 643 (footnote omitted). At the very least, the right is generally a liberty within the meaning of the due process clauses of the Fifth and Fourteenth Amendments, *Kent* v. *Dulles,* 357 U.S. 116, 125 (1958), which is applicable to aliens as well as citizens. *Yick Wo Ho* v. *Hopkins,* 118 U.S. 356, 369 (1886); *Galvan* v. *Press,* 347 U.S. 522 (1954).

Moreover, the Fourteenth Amendment embodies a general policy that all persons lawfully in this country may abide "in any state on an equality of legal privileges with all citizens." *Takahashi* v. *Fish & Game Commission,* 334 U.S. 415, 420 (1948). Since citizens have a constitutional right to travel into any state, *Shapiro* v. *Thompson, supra,* there is no basis for believing that the same "basic right under the Constitution" does not extend to aliens. Any reference to "citizens" in *Shapiro* v. *Thompson, supra,* must be understood in this context. There can be no implication from the reference to "citizens" in *Shapiro* that aliens do not have the same right to travel within the United States and from one state to another. *Truax* v.

Raich, supra. As Justice Harlan concluded in dissent, "... the right to travel interstate is a 'fundamental' right which, for present purposes, should be regarded as having its source in the Due Process Clause of the Fifth Amendment." *Shapiro* v. *Thompson, supra* at 671. The protection of the due process clauses extends to "persons," not just to citizens.

Since the constitutional right to travel extends to aliens, it follows that a state may not so act as to put restraints upon the exercise of that right. In *Truax* v. *Raich, supra,* the Court, after observing that a state could not directly deny aliens the right of entrance and abode, pointed out that it could not achieve the same result indirectly by denying them the opportunity of earning a livelihood, "for in ordinary cases they cannot live where they cannot work." It went on to say:

> "And if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality." 239 U.S. at 42.

Likewise, in today's world, the state cannot achieve the result of exclusion indirectly by denying aliens welfare benefits when they are unable to sustain themselves through employment.

If aliens have the same constitutional right to travel within the United States and to take up their abode in any state, as do citizens, a state cannot impose inhibitions upon the exercise of that right by denying to aliens who

settle there welfare benefits that are afforded to citizens. All who choose to settle within a state, precisely because they have the right to make that choice, are entitled to receive the welfare benefits that the state provides. *Shapiro* v. *Thompson, supra.*

III.

The denial of welfare benefits on the part of a state to resident aliens is inconsistent with the exercise of federal power in the area of immigration and naturalization and is, therefore, pre-empted by supreme federal law.

Pursuant to its power to "establish a uniform rule of naturalization" under Article I, §8(4) of the Constitution, Congress has enacted a comprehensive scheme of legislation dealing with the immigration, naturalization and regulation of aliens. The power of Congress in this field is supreme and exclusive. As this Court has stated:

> "The federal government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization . . . . Under the Constitution the States are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States." *Takahashi* v. *Fish & Game Commission,* 334 U.S. 410, 419 (1948).

Any concurrent state power over aliens that may exist is restricted to the narrowest of limits. *Hines* v. *Davido-*

witz, 312 U.S. 52, 66 (1941); *Takahashi* v. *Fish & Game Commission, supra,* 334 U.S. at 420.

One of the reasons for this broad grant of power to the federal government is the fear that states will discriminate against aliens precisely because they are aliens. As this Court has observed in a related vein, "Opposition to laws singling out aliens as particularly dangerous and undesirable groups is deep-seated in this country." *Hines* v. *Davidowitz, supra,* 312 U.S. at 70. In this regard there is an important relationship between the rights of the alien and the foreign affairs power of the federal government. As pointed out in *Hines* v. *Davidowitz, supra,* "both treaties and international practices have been aimed at preventing injurious discriminations against aliens," 312 U.S. at 65, and "Experience has shown that international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to another's subjects, inflicted, or permitted by a government." 312 U.S. at 64. Thus, there is a *national interest* in insuring equal treatment among all aliens irrespective of where they happen to reside.[3] State laws that single out aliens for discriminatory treatment play havoc with this national interest.

In determining whether a state law affecting aliens is pre-empted by federal law the test is whether the law "stands as an obstacle to the accomplishment and execu-

[3] In the recently-decided case of *In re Mortyr,* —— F. Supp. —— (D. Ore. 1970), 39 Law Week 2261, it was held that an alien could not be deemed of "bad moral character" because she had entered into a common-law marriage which was illegal in Oregon, where she resided, since other states recognized such marriages. The Court stated: "In the interest of uniformity in the application of federal immigration and naturalization law, petitioner should be granted that status wherever she makes her home."

tion of the full purposes and objectives of Congress." *Hines* v. *Davidowitz, supra,* 312 U.S. at 67. It is undisputed that state laws which "impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with the constitutionally-derived federal power to regulate immigration and accordingly have been held invalid." *Takahashi* v. *Fish & Game Commission, supra,* 334 U.S. at 419. The provisions of 42 U.S.C. §1981 guaranteeing to all persons within a state "the full and equal benefit of all laws" extend to aliens, and protect them from state legislation bearing unequally upon them because of their alienage. *Takahashi* v. *Fish & Game Commission, supra,* 334 U.S. at 419-20. In this regard the denial of welfare benefits has the same effect as deprivation of the right to employment, condemned in *Truax* v. *Raich,* 239 U.S. 33 (1915), for here too, "Those lawfully admitted to the country under the authority of acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission would be segregated in such of the States as chose to offer hospitality." 239 U.S. at 42.

In no sense is the conflict between the exercise of state and federal power here vitiated by the fact that under federal law *admission* to the country can be denied to an alien who is a pauper or who is likely to become a public charge, 8 U.S.C. §1182(a)(8), (15), and that an alien who becomes a public charge within five years after entry from causes not affirmatively shown to have arisen after entry may be deported. 8 U.S.C. §1251(a)(8). Quite to the contrary, the provisions of federal law clearly demonstrate how the state laws in question "stand as an obstacle to

the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz, supra.* The intent of Congress was to exclude from admission aliens who were indigent at that time or likely to become indigent because of conditions existing then. As is particularly indicated by the provisions of 8 U.S.C. §1251 (a)(8), if the causes of the indigency arose subsequent to the time of admission, the alien is not considered undesirable, and under federal law is not deportable notwithstanding that he is receiving public assistance. *Foley* v. *Ward,* 13 F. Supp. 915 (D. Mass. 1936). See generally Gordon & Rosenfield, *Immigration Law and Procedure* 4-143 (1970).

Thus, the intent of Congress was that an alien was excludable or deportable only if indigency or the likelihood of same existed at the time of entry. The provisions of 8 U.S.C. §241 and 42 U.S.C. §1981 demonstrate that the alien, wherever he resides, is entitled to public welfare benefits in the same manner as citizens. Taking the statutes together, the congressional scheme envisions the denial of admission to or the deportation of an alien who was indigent or who was likely to become indigent at the time of admission, but that if his indigency was due to factors arising after indigency, he is not only not deportable, but is entitled to the welfare benefits afforded citizens. Pennsylvania and Arizona deny welfare benefits to aliens, such as the present appellees, who became indigent *after* their admission into the country. Where the federal government has enacted a complete scheme of regulation of aliens and has provided a federal standard, "States cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal

law or enforce additional or auxiliary regulations." *Hines* v. *Davidowitz, supra,* 312 U.S. at 66. The provisions of Arizona and Pennsylvania law excluding resident aliens from welfare benefits when the cause of their indigency arose after their admission to the country do just that and "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." As such they are violative of Article VI, §2 of the Constitution and cannot stand.[4]

[4] This does not mean that they would be valid even if they were consistent with the congressional classification, *e.g.*, if Congress provided for the deportation of aliens who became indigent following their admission into the country. The fact that Congress in implementing national policy has chosen to classify aliens in certain ways does not mean that it is permissible for the states to classify them in the same way. See the discussion in *Takahashi* v. *Fish & Game Commission, supra,* 334 U.S. at 420. If aliens were deportable because of post-admission indigency, it is for the appropriate federal authority to effect the deportation. So long as that authority has not chosen to act, aliens would still be entitled to the same rights as citizens under 18 U.S.C. §241 and 42 U.S.C. §1981, and, of course, would still be entitled to be free from invidious discrimination.

CONCLUSION

The provisions of Arizona and Pennsylvania law excluding resident aliens from welfare benefits solely because of their status deprive such persons of equal protection of the laws, violate their constitutional right to travel and conflict with the exercise of federal power in the area of immigration and naturalization. The decisions of the lower courts were manifestly correct and should be affirmed.

Respectfully submitted,

ROBERT ALLEN SEDLER
3461 Keithshire Way
Lexington, Kentucky 40503

MELVIN L. WULF
JOEL M. GORA
American Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

Attorneys for Amicus Curiae

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