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Kathleen Ann Harrison

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# *LeClerc v. Webb*: Rational Scrutiny Analysis of Equal Protection Claims by Nonimmigrant Aliens

*Kathleen Ann Harrison*[1]

## I. Overview

Plaintiffs, nonimmigrant aliens seeking permission to sit for or be admitted to the Louisiana Bar, filed suit in the United States District Court for the Eastern District of Louisiana in 2003.[2] The suit was filed as two separate actions.[3] Both challenged the validity of Louisiana Supreme Court Rule XVII, Section 3(B), which provides that "[e]very applicant for admission to the Bar of this state shall . . . [b]e a citizen of the United States or a resident alien thereof."[4] In 2002, the Louisiana Supreme Court had overturned its prior interpretation of the term "resident alien," redefining it to refer exclusively to an alien holding permanent resident status.[5] Under this definition of "resident alien," Section 3(B) would prohibit the plaintiffs in these actions, legally admitted nonimmigrant aliens, from eligibility for admission to the Louisiana Bar.[6]

In the first action, *LeClerc v. Webb*, the district court found that Section 3(B) withstood the plaintiffs' equal protection challenges.[7] Choosing to apply rational basis review, it held Section 3(B) to be rationally related to the state's legitimate interests.[8] The *LeClerc* district court also held that federal law does not preempt Section 3(B), dismissed one plaintiff's claim under the North American Free Trade Agreement (NAFTA), and found that plaintiffs did not state a claim for violation of the Due Process Clause of the Fourteenth Amendment.[9] In the second action, *Wallace v. Calogero*, the judge disagreed with the *LeClerc* district court, finding that strict scrutiny, rather than rational basis scrutiny, should apply to plaintiffs' equal

1. J.D. candidate 2007, Tulane University School of Law; M.A. Latin American Studies 1999, Tulane University; B.A. 1994, University of Virginia. The author sincerely wishes to thank Mike, Nicole, and Kayleigh Harrison for their support and encouragement during the preparation of this Note.

2. LeClerc v. Webb, 419 F.3d 405, 410–13 (5th Cir. 2005), *reh'g denied*, 444 F.3d 428 (5th Cir. 2006). Named defendants were the Louisiana Supreme Court and the chairman and vice-chairman of the Louisiana Committee on Bar Admissions. *Id.* at 411.

3. *Id.* at 410 n.1 (citing LeClerc v. Webb, 270 F. Supp. 2d 779 (E.D. La. 2003); Wallace v. Calogero, 286 F. Supp. 2d 748 (E.D. La. 2003)). The Eastern District denied plaintiffs' motion to consolidate the two cases. *Id.* at 413.

4. *Id.* at 410 (alterations in original) (internal quotations omitted).

5. *Id.* (citing *In re* Bourke, 819 So. 2d 1020, 1022 (La. 2002)). The Louisiana Supreme Court's prior interpretation of "resident alien" was "a 'foreign national[ ] lawfully within the United States.'" *Id.* (quoting *In re* Appert, 444 So. 2d 1208, 1208 (La. 1984) (alteration in original)).

6. *See id.* The plaintiffs held J-1 student visas or H-1B temporary worker visas at the time of the Fifth Circuit's decision. *Id.* at 410–12.

7. *See id.* at 412.

8. *Id.*

9. *Id.*

protection claims.[10] Determining that the state had not chosen the least restrictive means to achieve its compelling interests, the *Wallace* court held Section 3(B) unconstitutional.[11] The *Wallace* court also found the plaintiffs' due process claims moot and granted the defendants' motion to dismiss on a preemption claim.[12] The *LeClerc* and *Wallace* actions were consolidated on appeal.[13] The United States Court of Appeals for the Fifth Circuit held that nonimmigrant aliens are not a suspect or quasi-suspect class subject to strict or intermediate scrutiny under the Equal Protection Clause of the Fourteenth Amendment, and that Rule 3(B) survives rational basis review.[14]

## II. BACKGROUND

The Equal Protection Clause of the Fourteenth Amendment has been a primary vehicle through which courts have attacked state legislation discriminating against aliens.[15] The Equal Protection Clause prohibits a state from "deny[ing] to any person within its jurisdiction the equal protection of the laws."[16] The Supreme Court applies rational basis review to most classifications made in state statutes, evaluating whether a classification is rationally related to a legitimate state interest.[17] Because of the dangers of prejudice and the unlikely relevance to legitimate state purposes, however, the Supreme Court has determined that classifications on the basis of race, alienage, or national origin are suspect and subject to strict scrutiny rather than rational basis scrutiny.[18] Under strict scrutiny, a state must demonstrate that its interest is "both constitutionally permissible and substantial, and that its use of the classification is 'necessary . . . to the accomplishment' of its purpose or the safeguarding of its interest."[19] Moreover, the Court has used an intermediate level of scrutiny to examine quasi-suspect classifications based on gender and illegitimacy.[20]

In *Yick Wo v. Hopkins*, an early equal protection case involving aliens, the Supreme Court examined a San Francisco ordinance requiring operators of laundries housed in wooden buildings to obtain the consent of a board of supervisors before operating.[21] This ordinance, as applied, resulted in the denial of permission to Chinese laundry operators, while all but one of the white laundry operators received permission to operate.[22]

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10. *Id.* at 413.
11. *Id.*
12. *Id.*
13. *Id.* at 410 n.1.
14. *Id.* at 422.
15. *See In re* Griffiths, 413 U.S. 717 (1973); Takahashi v. Fish & Game Comm'n, 334 U.S. 410 (1948); Yick Wo v. Hopkins, 118 U.S. 356 (1886).
16. U.S. CONST. amend. XIV, § 1.
17. *See* City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 446 (1985).
18. *See id.* at 440.
19. *In re* Griffiths, 413 U.S. at 721–22.
20. *City of Cleburne*, 473 U.S. at 440–41.
21. Yick Wo v. Hopkins, 118 U.S. 356, 357–58 (1886).
22. *Id.* at 359.

The Court held the ordinance to be in violation of the Equal Protection Clause of the Fourteenth Amendment, since it had no legitimate purpose but instead was based on a hostile attitude to the petitioner's race and nationality, and thus arbitrarily discriminated between persons similarly situated.[23] In sum, *Yick Wo* established that the safeguards of the Equal Protection Clause apply to aliens as well as citizens.[24]

In *Truax v. Raich*, the Court examined the constitutionality of an Arizona statute that required employers with more than five employees to employ at least eighty percent "qualified electors" or native-born citizens.[25] The statute facially discriminated against aliens, potentially affecting both noncitizens and naturalized citizens who had not yet become electors in the appropriate region in Arizona.[26] The Court recognized the state's police power to protect the well-being of its residents, but insisted that the state may not

> deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. . . . [T]he right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure.[27]

Therefore, discrimination against aliens in order to preserve jobs for citizens did not constitute a "special public interest" which would justify the classification.[28] The Court also folded a Supremacy Clause argument into its equal protection analysis, finding that the statute's denial of the opportunity to work would effectively deny aliens the right to live in the state.[29] This denial would conflict with the federal government's exclusive power to control immigration and thus was not a legitimate state interest.[30] The Court held the statute to be void under the Equal Protection Clause.[31]

In *Takahashi v. Fish & Game Commission*, the Supreme Court examined a California statute that prohibited the issuance of commercial fishing licenses "to person[s] ineligible to citizenship."[32] The State of California, citing *Truax*, argued that the statute was necessary to protect a "special public interest" of the state and its citizens.[33] The Court rejected

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23. *Id.* at 374.
24. *Id.* at 367–68.
25. Truax v. Raich, 239 U.S. 33, 35 (1915).
26. *Id.* at 41.
27. *Id.*
28. *See id.* at 41, 43.
29. *See id.* at 41–42.
30. *Id.* at 42.
31. *Id.* at 43.
32. Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 413 (1948) (quoting 1945 Cal. Stat. 181) (internal quotations omitted). The California legislature originally passed the statute in 1943, prohibiting the issuance of commercial fishing licenses to "alien Japanese," but later changed the language for fear of constitutional challenges. *Id.*
33. *Id.* at 417 (internal quotations omitted).

this argument, finding California's collective ownership interest in the fish within three miles of its coast to be an inadequate basis for denying aliens lawfully residing in California the opportunity to earn a living from fishing these waters.[34] The Court found the statute unconstitutional, again folding Supremacy Clause arguments into its equal protection analysis.[35] It also made a statement that would be heeded by the Court in future cases: "[T]he power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits."[36]

The Supreme Court first established aliens as a suspect class subject to strict scrutiny in *Graham v. Richardson*.[37] The plaintiffs in *Graham* were lawfully admitted resident aliens who were denied state welfare benefits due to their alienage.[38] The Court noted that "[a]liens as a class are a prime example of a 'discrete and insular' minority."[39] Therefore, the Court would apply strict scrutiny regardless of whether a statute impaired a fundamental right.[40] The statutes in *Graham* did not survive strict scrutiny.[41] In so finding, the Court reasoned that aliens live, work, and pay taxes in the state just as citizens do. Since aliens contributed to tax revenues in this manner, the state did not have a "special public interest" in denying them welfare benefits funded by those revenues.[42]

In a case similar to the noted case, *In re Griffiths*, the Supreme Court examined a Connecticut rule limiting eligibility for admission to its bar to United States citizens.[43] In its preliminary statements, the Court cited the economic and social contributions of aliens, and in particular, the contributions of noncitizen lawyers.[44] It also discussed the underlying precedents of *Yick Wo*, *Truax*, *Takahashi*, and *Graham*.[45] In this case, the Court reaffirmed the suspect status of classifications based on alienage: "Resident aliens, like citizens, pay taxes, support the economy, serve in the Armed Forces, and contribute in myriad other ways to our society. It is appropriate that a State bear a heavy burden when it deprives them of employment opportunities."[46] Applying strict scrutiny, the Court held that the rule unconstitutionally discriminated against resident aliens, since disqualification on the basis of alienage was unnecessary to achieve Connecticut's goal of ensuring high professional standards for its bar members.[47] It rejected the state's argument that exclusion of aliens from the bar was justified because

34. *Id.* at 420–21.
35. *See id.* at 416–22.
36. *Id.* at 420.
37. Graham v. Richardson, 403 U.S. 365, 372 (1971).
38. *Id.* at 367, 369, 370.
39. *Id.* at 372 (quoting United States v. Carolene Prods. Co., 304 U.S. 144, 152–53 n.4 (1938)).
40. *Id.* at 376.
41. *See id.*
42. *Id.*
43. *In re* Griffiths, 413 U.S. 717, 718 (1973).
44. *Id.* at 719.
45. *Id.* at 719–21.
46. *Id.* at 722.
47. *Id.* at 718, 722–23, 725.

of the special role of the lawyer and possible divided allegiances.[48] Finally, citing *Yick Wo*, the Court warned against invidious discrimination, especially where suspect classifications are explicit.[49]

The Supreme Court again applied strict scrutiny to a classification based on alienage in *Examining Board of Engineers v. Flores de Otero*.[50] In this case, the Court found unconstitutional a Puerto Rican statute limiting the issuance of licenses for civil engineers to United States citizens.[51] Puerto Rico failed to convince the Court that its justifications for the statute were "legitimate and substantial."[52] One of these justifications was that Puerto Rico wished to ensure that civil engineers would be financially accountable to their clients.[53] To this, the Court responded that the statute swept too broadly; that there were other means to ensure financial responsibility; and that citizenship does not guarantee that a civil engineer will be financially responsible or remain in Puerto Rico or the United States.[54]

*Plyler v. Doe* is the only case in which the Court has applied heightened rational basis review to a class of aliens.[55] In *Plyler*, the Court addressed the constitutionality of a Texas statute that excluded children who were not U.S. citizens or "legally admitted" aliens from eligibility for state educational funds; the statute also permitted Texas public schools to deny admission to these children.[56] The Court began its analysis by observing that the Fourteenth Amendment's guarantee of equal protection to "any person within its jurisdiction"[57] extends to aliens, whether lawfully or unlawfully present in the U.S.[58] The Court then specifically rejected the designation of undocumented aliens as a suspect class, noting that undocumented aliens' entry into that class was both voluntary and a crime.[59] However, the Court distinguished the class targeted by the Texas statute, since, as children, the plaintiffs did not have control over their parents' decision to bring them into the country without documentation.[60] Applying a heightened rational basis level of review, the Court held that the Texas statute failed to further a substantial state interest, thereby violating the Equal Protection Clause of the Fourteenth Amendment.[61]

48. *Id.* at 724 ("Certainly the Committee has failed to show the relevance of citizenship to any likelihood that a lawyer will fail to protect faithfully the interest of his clients.").

49. *Id.* at 725.

50. Examining Bd. of Eng'rs v. Flores de Otero, 426 U.S. 572, 602 (1976).

51. *Id.* at 575, 601.

52. *Id.* at 605.

53. *Id.* at 605–06.

54. *Id.* at 606.

55. *See* Plyler v. Doe, 457 U.S. 202, 230 (1982).

56. *Id.* at 205.

57. U.S. CONST. amend XIV, § 1.

58. *Plyler*, 457 U.S. at 210–15.

59. *Id.* at 219 n.19.

60. *See id.* at 219–20.

61. *See id.* at 224, 230.

*Toll v. Moreno* is the Supreme Court's only case that explicitly addresses a classification distinguishing between immigrant and nonimmigrant aliens.[62] In *Toll*, the Supreme Court examined the constitutionality of a University of Maryland policy barring nonimmigrant aliens from qualifying for in-state tuition, regardless of domicile in the state.[63] However, the *Toll* Court resolved the case on Supremacy Clause grounds rather than on equal protection grounds.[64] First, the Court acknowledged that "state regulation not congressionally sanctioned that discriminates against aliens lawfully admitted to the country is impermissible if it imposes additional burdens not contemplated by Congress."[65] However, since Congress had permitted G-4 aliens (unlike most nonimmigrant categories) to establish domicile in the U.S., the Court determined that the university policy had indeed imposed an additional burden on G-4 aliens.[66] In so doing, its prohibition of in-state status to G-4 aliens was in violation of the Supremacy Clause.[67] However, the Court did not invalidate the policy as it applied to other categories of nonimmigrants.[68]

## III. THE COURT'S DECISION

In the noted case, the court began by determining that the plaintiffs had standing, that the case was ripe for adjudication, and that the defendants were not immune from suit.[69] It then proceeded to focus on the plaintiffs' equal protection claims.[70] The court began its discussion of these claims by holding that nonimmigrants do not constitute a suspect class and, consequently, Section 3(B) is subject to only rational basis review.[71] To explain its rationale, the court drew a distinction between the law at issue in *Griffiths*, which excluded all aliens from practicing law in Connecticut, and Section 3(B), which excludes only "nonimmigrant aliens who are 'not entitled to live and work in the United States permanently.'"[72] The court also asserted that nonimmigrants, unlike resident aliens, do not share the same "benefits and burdens of citizenship" discussed by the *Griffiths* Court.[73]

Moreover, the court asserted that Supreme Court precedent has not applied a strict level of scrutiny to state laws affecting classes of aliens

62. *See* Toll v. Moreno, 458 U.S. 1, 3 (1982).

63. *Id.*

64. *See id.* at 10–17. *See also* DeCanas v. Bica, 424 U.S. 351, 356–58 (1976) (finding that the Immigration and Nationality Act (INA), 66 Stat. 163, as amended, 8 U.S.C. § 1101 et seq. (1952), did not preclude a California statute prohibiting the employment of illegal aliens in certain circumstances).

65. *Toll*, 458 U.S. at 12–13 (quoting *DeCanas*, 424 U.S. at 358 n.6) (internal quotations omitted).

66. *Id.* at 14, 17.

67. *Id.* at 17.

68. *See id.*

69. LeClerc v. Webb, 419 F.3d 405, 414 (5th Cir. 2005).

70. *Id.* at 415–22.

71. *Id.* at 415.

72. *Id.* (quoting *In re* Bourke, 819 So. 2d 1020, 1022 (La. 2002)).

73. *Id.*

other than "permanent resident aliens."[74] The court identified two factors emphasized by the Supreme Court to justify strict scrutiny review of classifications based on alienage.[75] First, in tension with their "status as virtual citizens," resident aliens are politically powerless.[76] Second, resident aliens share many traits in common with citizens.[77] The court opined that treating resident aliens as a suspect class resolves the tension between their inability to vote and the benefits and responsibilities accompanying resident alien status.[78] In contrast, the court found that nonimmigrants' lack of political power is a function of "their temporary connection to this country."[79] Furthermore, the court found it inaccurate to describe nonimmigrants as an insular class, given the many subcategories of nonimmigrants.[80]

The court emphasized Supreme Court precedent's focus on the similarities between resident aliens and citizens.[81] Specifically, both citizens and resident aliens "pay taxes, support the economy, serve in the armed forces, and contribute in a myriad of other ways to our society."[82] Nonimmigrant aliens, on the other hand, are distinctly situated from permanent residents and citizens, since they may remain in the United States for a limited period, and "on the express condition they have 'no intention of abandoning' their countries of origin and do not intend to seek permanent residence in the United States."[83] In sum, the court did not interpret Supreme Court precedent as having extended suspect classification to aliens other than resident aliens.[84]

The court then proceeded to reject plaintiffs' argument that nonimmigrant aliens make up a quasi-suspect class, warranting intermediate scrutiny.[85] It also rejected the application of a heightened rational basis review for nonimmigrant aliens.[86] The court reasoned that the plaintiffs, unlike the minor plaintiffs in *Plyler*, had voluntarily and knowingly chosen to enter the United States under a temporary status.[87] It also distinguished the severity of being prohibited from engaging in a particular type of legal work from the denial of a basic education in *Plyler*.[88]

The court then proceeded to apply rational basis review to Section 3(B). It observed that Section 3(B)'s exclusion of nonimmigrant aliens

74. *Id.* The court acknowledged that *Plyler* applied a heightened rational basis review where the plaintiffs were *children* who did not hold legal status in the U.S. *Id.* at 416.

75. *Id.* at 417.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 418.

82. *Id.* (quoting *In re* Griffiths, 413 U.S. 717, 722 (1973)).

83. *Id.* at 418–19 (quoting 8 U.S.C. § 1101(a)(15)(F), (H), & (J)).

84. *Id.* at 419.

85. *Id.* at 419–20. The court cited lack of precedent, failing to find support in *United States v. Virginia*, 518 U.S. 515 (1996), which established gender classification as quasi-suspect. *Id.* at 420.

86. *Id.*

87. *Id.*

88. *Id.* at 421.

from the state bar is intended to ensure "continuity and accountability in legal representation."[89] Moreover, the immigration status of nonimmigrants may easily end, and courts would have difficulty exercising jurisdiction over nonimmigrant aliens once they depart the United States.[90] Consequently, the court held that Section 3(B) is rationally related to Louisiana's legitimate interest in "regulating the practice of those it admits to its bar."[91]

Finally, the court addressed the plaintiffs' due process and Supremacy Clause arguments.[92] The court found that the plaintiffs failed to state a procedural due process claim, since they did not appeal the denial of their equivalency applications.[93] The court rejected the Supremacy Clause arguments, finding that "Section 3(B) is unquestionably a permissible exercise of Louisiana's broad police powers to regulate employment within its jurisdiction for the protection of its residents."[94] Moreover, the Immigration and Nationality Act (INA) does not preempt Section 3(B), even though Section 3(B) concerns the employment of aliens, since unlike the statute in *Toll*, Section 3(B) is not incongruous with the federal legislation.[95]

In his dissent, Judge Stewart disagreed with the majority on two key points.[96] First, he stated that the majority should have applied strict scrutiny review to Section 3(B).[97] Judge Stewart asserted that Supreme Court precedent characterizing aliens as a suspect class encompasses nonimmigrant aliens by definition, finding it telling that the Court has declined to distinguish between immigrants and nonimmigrants when speaking of lawfully present aliens as a suspect class.[98] Moreover, Judge Stewart viewed Section 3(B) as discriminating against aliens as a class (rather than merely nonimmigrant aliens as a class), since it affects only aliens.[99] Judge Stewart also pointed out that the INA does not use the term resident alien; he viewed the Supreme Court's use of the term as referring to aliens who reside in the United States, without regard to their immigration status.[100]

Second, Judge Stewart argued that Section 3(B) fails to survive even rational basis review.[101] He found unconvincing Louisiana's argument that the admittance of nonimmigrant lawyers to the bar created a risk that lawyers would abandon their clients mid-litigation, should they be deported or choose to leave the country.[102] He pointed out that citizens and immigrant

89. *Id.*
90. *Id.*
91. *Id.* at 421–22.
92. *Id.* at 422–26.
93. *Id.* at 423.
94. *Id.*
95. *Id.* at 424.
96. *See id.* at 426–31 (Stewart, J., dissenting).
97. *Id.* at 426 (Stewart, J., dissenting).
98. *Id.* at 426–28 (Stewart, J., dissenting).
99. *Id.* at 427 (Stewart, J., dissenting).
100. *Id* (Stewart, J., dissenting).
101. *Id.* at 429–30 (Stewart, J., dissenting).
102. *Id.* at 430 (Stewart, J., dissenting).

aliens are also free to travel or be domiciled outside of Louisiana, and both immigrant and nonimmigrant aliens are subject to deportation.[103] In sum, Judge Stewart believed that Rule 3(B) did not use the least restrictive means to achieve its stated purpose, and, consequently, violated the Equal Protection Clause.[104]

## IV. ANALYSIS

The key issue in *LeClerc* is how to define the insular class for purposes of equal protection scrutiny. While the majority would limit the suspect class to "resident aliens," the dissent would define it as encompassing all legally admitted aliens, both immigrant and nonimmigrant.[105] The majority correctly acknowledges that Supreme Court precedent contains some ambiguity as to the level of review to which nonimmigrant aliens are subject.[106] It is true that the plaintiffs in Supreme Court precedent applying strict scrutiny were presumably "resident aliens."[107] Yet the Court's general pronouncements in some of those cases tend to refer to aliens as a class.[108] Whether the Court purposely declined to extend the suspect class to nonimmigrant aliens or implicitly included them in that class is unclear.

As the dissent points out, the term "resident alien" is not used in the Immigration and Nationality Act, and thus is somewhat open to interpretation.[109] The Supreme Court itself seems somewhat ambivalent about using precise terminology as regards immigration status, perhaps implying that the precise status is not its focus, as long as it is a legal status.[110]

The majority notes that the temporary nature of nonimmigrant alien status puts nonimmigrants in a distinct position from "resident aliens."[111] Yet it fails to recognize the many characteristics that they share with resident aliens.[112] As the dissent points out, nonimmigrant aliens, like resident aliens, pay taxes, are unable to vote, and have faced historical discrimination.[113] Given this middle-ground position, an intermediate scrutiny standard or a heightened rational review standard may be appropriate.[114] While somewhat distinct from resident aliens, nonimmigrant aliens have

103. *Id.* (Stewart, J., dissenting).

104. *Id.* at 431 (Stewart, J., dissenting).

105. *See id.* at 415, 426.

106. *See id.* at 415.

107. *See* Examining Bd. of Eng'rs v. Flores de Otero, 426 U.S. 572, 577 (1976); *In re* Griffiths, 413 U.S. 717, 718 (1973); Graham v. Richardson, 403 U.S. 365, 367, 369 (1971).

108. *See LeClerc*, 419 F.3d at 428 (Stewart, J., dissenting); *Examining Bd.*, 426 U.S. at 601–06; *Graham*, 403 U.S. at 371.

109. *See LeClerc*, 419 F.3d at 427 (Stewart, J., dissenting).

110. *See, e.g., Examining Bd.*, 426 U.S. at 578 (describing plaintiff as a "legal resident of Puerto Rico" without specifying her status or using the term "resident alien").

111. *See LeClerc*, 418 F.3d at 415–19.

112. *See id.*

113. *Id.* at 428–29 (Stewart, J., dissenting).

114. *But see id.* at 420–21 (distinguishing *LeClerc* from *Plyler*).

legal status, and are thus also distinct from illegal immigrants whose "presence in this country in violation of federal law is not a 'constitutional irrelevancy.'"[115]

*In re Griffiths* does not necessarily mandate a determination that Section 3(B) violates the Fourteenth Amendment. In *Griffiths*, the Court merely concluded that "[i]n sum, the Committee simply has not established that it must exclude *all* aliens from the practice of law in order to vindicate its undoubted interest in high professional standards."[116] Moreover, Louisiana's interest in *LeClerc* may be legitimate.[117] Yet, by excluding nonimmigrant aliens from the suspect classification of aliens, the Fifth Circuit may be setting a dangerous precedent that could serve to erode the rights of nonimmigrants in other contexts.

115. *Plyler*, 457 U.S. at 223; *see LeClerc*, 419 F.3d at 428 (Stewart, J., dissenting).
116. *In re* Griffiths, 413 U.S. 717, 727 (1973) (emphasis added).
117. *See LeClerc*, 419 F.3d at 421–22.