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2-6-2023

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Cardozo Journal of Equal Rights and Social Justice

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Recommended Citation

Gutow-Ellis, Noa, "The Concerning Implications of Texas's Claim to Standing in United States v. Texas" (2023). *ERSJ Blog*. 44.

<https://larc.cardozo.yu.edu/ersj-blog/44>

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The Concerning Implications of Texas's Claim to Standing in *United States v. Texas*

In a sign of the case's importance, oral arguments stretched over two hours when the Supreme Court heard *United States v. Texas* on November 29, 2022.[1] *United States v. Texas* concerns "the Biden administration's authority to set immigration policy." [2] Department of Homeland Security ("DHS") Secretary Alejandro Mayorkas enacted the policy at issue: prioritizing groups of noncitizens to be detained and deported.[3] This prioritization is rooted in the fact that DHS does not have the resources to detain and deport the "over 11 million noncitizens currently in the United States who could be subject to deportation." [4] Texas sued the federal government, arguing that it "does not have the authority to prioritize some unauthorized immigrants for deportation while downplaying others." [5]

A critical issue in *United States v. Texas* is whether Texas had Article III standing to bring the lawsuit in the first place.[6] Article III of the United States Constitution requires a party to a lawsuit have "standing," meaning that the plaintiff suffered an actual injury, can show a "causal connection between the injury and the conduct complained of," and is likely to have that injury "redressed by a favorable [court] decision." [7] Here, Texas claimed that the injury giving rise to standing was the state's increased costs on public expenditures, like schools and healthcare, for all residents—including noncitizens—as a result of federal immigration enforcement priorities that did not detain and deport as many noncitizens as Texas would have liked.[8] Forty-eight immigrant and civil rights organizations, community groups, law school clinics and centers, legal service providers, and labor unions filed an amicus brief in support of the federal government highlighting that Texas's claim to standing is premised on a "discriminatory objection to noncitizen residents." [9]

There are two concerning implications should the Supreme Court accept Texas's discriminatory claim to standing. First, if the Court finds that Texas has standing to challenge the federal government's immigration policy on the basis of increased costs for providing public services, then, as Justice Kagan put it during oral argument: states could "bring immigration policy to a dead halt" [10]— "not to mention all the other policies in the world." [11] Second, the Court would legitimate Texas's argument that a rational response to an increase in the cost of public services is to exclude noncitizens from accessing those services.[12] In local government law, decisions about rendering services to residents are only subject to rational basis review.[13] Put another way, noncitizens are not a protected class such as race or gender that trigger heightened or strict judicial scrutiny.[14] This essay posits that municipalities could refuse to provide noncitizen residents with access to public services and justify this choice as a rational cost-saving measure if challenged in court.

Allowing the exclusion of nonresidents to be a rational basis for municipal cost-cutting is concerning because anti-immigrant sentiment is rising.[15] For example, in a Texas county over 500 miles from the Mexico-United States border, the local government passed a judicially-approved resolution: “The health, safety and welfare of Hopkins County residents are under imminent threat of disaster from the unprecedented levels of illegal immigration...coming across the U.S. border from Mexico.”[16]

The Supreme Court will issue its consequential decision in *United States v. Texas* this summer.

[1] Amy Howe, *Justices delve into a trio of thorny issues in states’ challenge to federal immigration policy*, SCOTUSblog (Nov. 29, 2022, 4:55 PM), <https://www.scotusblog.com/2022/11/justices-delve-into-a-trio-of-thorny-issues-in-states-challenge-to-federal-immigration-policy/>.

[2] Amy Howe, *In U.S. v. Texas, broad questions over immigration enforcement and states’ ability to challenge federal policies*, SCOTUSblog (Nov. 28, 2022, 3:43 PM), <https://www.scotusblog.com/2022/11/in-u-s-v-texas-broad-questions-over-immigration-enforcement-and-states-ability-to-challenge-federal-policies/>.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992) (internal quotations omitted) (citations omitted).

[8] *Id.*

[9] Brief for Immigrant and Civil Rights Organizations, Community Groups, Law School Clinics and Centers, Legal Service Providers, and Labor Unions as Amici Curiae Supporting Petitioners at 4, 13, *United States v. Texas* (No. 22-58), https://www.supremecourt.gov/DocketPDF/22/22-58/238121/20220916165033339_NIP_Amicus%20Document%20September%2016%202022%20EFile.pdf.

[10] Adam Liptak, *Supreme Court Weighs Reviving Biden Immigration Guidelines*, *The New York Times* (Nov. 29, 2022), <https://www.nytimes.com/2022/11/29/us/politics/supreme-court-biden-immigration.html>.

[11] Amy Howe, *Justices delve into a trio of thorny issues in states’ challenge to federal immigration policy*, SCOTUSBlog (Nov. 29, 2022, 4:55 PM), <https://www.scotusblog.com/2022/11/justices-delve-into-a-trio-of-thorny-issues-in-states-challenge-to-federal-immigration-policy/>.

[12] *See* Brief for Respondents at 13-14, *United States v. Texas* (No. 22-58),

https://www.supremecourt.gov/DocketPDF/22/22-58/243365/20221018140615698_US%20v.%20Texas%20-%20Brief%20for%20Respondents.pdf.

[13] *E.g.*, *Mount Prospect State Bank, Trustee v. Village of Kirkland*, 467 N.E.2d 1142, 1144-1145 (Ill. App. Ct. 1984) (holding that excluding mobile homes from garbage collection services was reasonable given the greater amounts of garbage produced by mobile home communities in comparison with single-family homes). Rational basis review only requires a court to find that the government’s basis for classifying a group of people bears a “rational relationship to a legitimate governmental purpose.” *Id.* at 802 (citation omitted).

[14] *Foley v. Connelie*, 435 U.S. 291, 295 (1978) (“It would be inappropriate, however, to require every statutory exclusion of [noncitizens] to clear the high hurdle of ‘strict scrutiny,’ because to do so would ‘obliterate all the distinctions between citizens and [noncitizens], and thus depreciate the historic values of citizenship.’”) (citation omitted). “The State need only justify its classification by a showing of some rational relationship between the interest sought to be protected and the limiting classification.” *Id.* at 296.

[15] *See* Gabriel R. Sanchez and Carly Bennett, *Anti-immigrant campaign ads negatively impact Latinos’ mental health and make them feel unwelcome in the United States*, *Brookings Inst.: FixGov Blog* (Nov. 1, 2022), <https://www.brookings.edu/blog/fixgov/2022/11/01/anti-immigrant-campaign-ads-negatively-impact-latinos-mental-health-and-make-them-feel-unwelcome-in-the-united-states/>.

[16] Pooja Salhorta, *A growing number of Texas counties are declaring local immigration “disasters,”* *The Texas Tribune* (Dec. 1, 2022, 5:00 AM), <https://www.texastribune.org/2022/12/01/texas-local-disasters-immigration/>.