Contemporary Constitutional Issue: Deportation by private hospitals

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ABSTRACT

An indigent alien’s rights under the Constitution and Immigration and Nationality Act was traversed when a private hospital transferred him to Guatemala on an invalid order by Florida state court which violated Due Process rights entitled him to a specified proceedings delineated by Congress.
Repatriation of undocumented aliens by a Hospital: State Court’s Due Process Violation in Deportation Proceedings under the Constitution and Immigration and Nationality Act

I. Introduction

The state of Florida has a less number of undocumented alien workers than only two other states, New York and California. n1 However, the state of Florida has the highest percentage of immigrant workers among all states, 14%. n2 In this state of immigrant workers, one medical center repatriated 6 to 8 patients last year. n3

An undocumented alien, Luis Alberto Jimenez, who needed an acute 24-7 medical care for his brain damage caused by a terrible car accident by a drunk citizen of Florida. n4 A Florida medical center Martin Memorial Medical Center (“MMMC”) admitted him and took care of him on emergency basis. n5 After they found out that taking care of him would cost a fortune, MMC petitioned to a Florida state court order to permit MMMC to transfer Jimenez to Guatemala, which the court allowed. n6

Arguing that Guatemala had no comparable facility that could take care of his condition, a husband of a cousin of Jimenez, Montejo Gaspar, appealed to the order asking stay pending appeal on July 9, 2000. n7 However, it was too late because Jimenez was already in a private jet on its way to Guatemala arranged by MMMC who could not stand up with providing the service to the alien who didn’t have enough funds to pay on 7:30 AM on July 10, the next day. n8
II. Court of Appeal of Florida, Fourth District

First, the court of appeal ruled that the state court granted the permission on speculative evidence, only a letter by Dr. Julio Molina, the Vice Minister of Public Health in Guatemala, to transfer Jimenez to a facility in Guatemala. n9 Also, the court of appeal strongly showed disfavor against the admission of the evidence stating “not admissible . . . under any exception to the hearsay we know of . . . .” n10

Over MMMC’s argument that the claim is moot because Jimenez was already in Guatemala when this appeal was ongoing, the court of appeal ruled that the appeal was not moot for two reasons. n11 One reason was that this issue was likely to have importance enough to give jurisdiction to the court of appeal under the Constitution of the State Florida. n12 The other reason was that the state court lacked jurisdiction because the issue before the state court should have been preempted by federal immigration law. n13 The ruling of court of appeal implies the most important point, Due Process Rights in the U.S. Constitution.

III. Due Process Rights under the United States Constitution

A. Due Process rights to alien physically within the United States

It has been pronounced a number of times that the essence of the Due Process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and the opportunity to hear his or her case. n14 Therefore, if an illegal alien is subject to deportation he or she must be given the due process protection, including notice and the opportunity to be heard. n15 In addition to the protection by the Fifth Amendment, an alien in whose presence in the US was illegal, was entitled to the Fourteenth Amendment Due Process and Equal Protection
rights, and furthermore Civil Rights Act rights affording the alien access to the federal courts to assert a claim of violation of his protection under the Constitution. n16

The U.S. Supreme Court reversed an order of commissioner of immigration who was vested with the power to decide a status of an alien was found by the Court to have abused its power by ordering an alien to be deported because of the alien’s poverty, illiteracy, and the poor job market of Portland, all of which were not enumerated as legitimate grounds for deportation of an alien. n17 The Court stated that an inadmissible alien is entitled to the due process which mandates that the administrative deportation proceeding be followed, once he or she is found physically in the U.S. n18

B. Statutory Requirement an Immigration Judge for Deportation Proceedings by Congress

(a) Proceeding; (1) An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien. (3) Exclusive procedures; Unless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.

n19

A fundamental principle in controlling a determination of an alien facing a deportation proceeding is that the justice must be kept in the conception of Due Process under the Constitution. n20 An alien is entitled to deportation proceedings required by the Due Process under the Fifth Amendment. n21 To find that an alien is deportable, a court must follow the procedures designated in the Immigration and Nationality Act because the proceedings are designated as the sole and exclusive procedures governing the proceedings by Congress. n22 When an alien is in the United States, regardless of the status of documentation she must come to the attention of the properly authorized agency before a removal proceeding begins. n23 The Eleventh Circuit in U.S. v. Romeo found that the state court erred by ordering the alien to be
deported, because 8 U.S.C. § 1229a unambiguously manifests that an immigration judge is the sole one who is vested with exclusive power to adjudicate a status of an alien. n24

C. Statutory Requirements for Deportation Proceedings by Due Process

a. Effective Notice

An alien facing administrative deportation proceeding has the right to receive written notice, obtain legal representation, and examine the evidence against him under the Due Process Clause. n25 First, an alien must receive written notice of a deportation proceeding. n26 Second, opportunity to hear the alien’s case is the root requirement under the Due Process Clause. n27

The Ninth Circuit in United States v. Gonzales-Valeriot found that a duty of an Immigration Judge is to inform an alien of his eligibility for relief by notice, and failure to do so would constitute a violation of the alien’s Due Process rights. n28 Similar emphasis on the rights to notice was shown by the Seventh Circuit too. n29 The Seventh Circuit in Nazarova held that the notice in English which was served to non-English speaker who was facing the deportation proceeding was not proper under the former deportation statute 8 U.S.C. § 1252 because, although the notice needs not be written in every language an alien might use, the notice should have conveyed the rights of an alien in the deportation proceedings. In a CO District Court in Chacon-Corral v. Weber held that the alien was denied the Due Process rights in the proceedings because the alien was not properly advised of his rights to a removal hearing by effective notice, in addition to other procedural violations by the Immigration Judge. n30
b. Opportunity to a Full and Fair Hearing in a court

The U.S. Supreme Court has pronounced that a person whose interest is at stake has right to be heard her case to a court. \(^{n31}\) It is very expected that the Due Process Clause entitles an alien who is facing deportation proceedings to a full and fair hearing. \(^{n32}\) The Court in *Kwong Hi Chew v. Colding* held that an alien is entitled to present relevant arguments regarding adjudication of her status on a decision by the properly authorized authority, and therefore deprivation of an opportunity given to the alien is violation of Due Process rights. \(^{n33}\)

The 9th Circuit in *Salgado-Diaz v. Gonzales* found the Due Process violation by the lower court’s denying an alien a fair opportunity to a hearing on his deportation proceedings. \(^{n34}\) In *Salgado-Diaz*, the alien who was unlawfully arrested by the border patrol agent was forced to sign the voluntary departure agreement which the alien had no idea about the contents of the agreement, and subsequently the alien was denied all procedural rights including a full and fair opportunity to be heard and another rights to present evidence showing his eligibility for stay in the United States. \(^{n35}\) The 9th Circuit held that the alien had been entitled to the hearing for his wrongful deportation by the agent under the due process requirements, and so ordered. \(^{n36}\)

c. Other Rights required under the Due Process Clause

The Eighth Circuit in the *United States v. Torres-Sanchez* held that deprivation of an alien of the right to counsel in a deportation hearing is violation of Due Process rights under both of the Fifth Amendment and the Fourteenth Amendment. \(^{n37}\) Also, D.C. Circuit in *Sardo v. McGrath* held that a denial of an alien of right to cross-examine the evidence against him is violation of Due Process Clause. \(^{n38}\)
IV. Conclusion

The rule of the court of appeal of the state of Florida affected thousands of aliens and hospitals, considering the number of people known to be repatriated by hospitals because they are undocumented and, more importantly, uninsured. n39 The number of aliens who has been denied due process by this unlawful deportation proceedings by medical centers like MMC was more than 450 people only in 2007. n40 Therefore, the ruling shall be reviewed a number of courts in coming years.

As the Florida appeal court stated, an order to deport an alien to another country can be made only by authorized federal immigration courts, in which the required proceedings shall be followed. The Constitution in Due Process Clause and Congress in Immigration and Nationality Act have manifested both of the requirements that a court keep and rights that an alien shall be given in deportation proceedings. Accordingly, the state court order to permit MMC to deport Jimenez was reversed correctly based on exclusive jurisdiction reserved in federal immigration courts and violation of Due Process rights by the state court.
FOOTNOTES:


n2. Id.


n5. Id.

n6. Id.

n7. Id.

n8. Id. at 655-656.

n9. Id. at 658.

n10. Id.

n11. Id. at 656-657.

n12. Id. See also F.S.A. Const. Art. 5 § 3.

n13. Id. See also Johns v. Dep’t of Justice, 653 F.2d 884 (5th Cir. 1981).


n15. Id. See also Kaoru Yamataya v. Thomas M. Fisher, 189 U.S. 86 (1903)

n17. Gegiow v. Uhl, 239 U.S. 3, 10 (1915)


n19. 8 U.S.C. § 1229a


n22. 8 U.S.C. §§ 1229, 1229a


n24. Id.


n27. Id. See also John Chike v. INS, 948 F.2d 961 (5th Cir. 1991).

n28. United States v. Gonzales-Valerio, 342 F.3d 1051, 1054 (9th Cir. 2003).

n29. Nazarova v. INS, 171 F.3d 478, 483 (7th Cir. 1999).


n35. *Id.* at

n36. *Id.* at

n37. 68 F.3d 227 (8th Cir. 1995)

n38. 196 F.2d 20 (D.C. Cir. 1952)

