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***Califano v. Aznavorian*: Social Security Residence Requirement Does Not Impair the Right of International Travel**

In 1978, the United States Supreme Court, in *Califano v. Aznavorian*,¹ upheld the constitutionality of section 1611(f) of the Social Security Act,² which denies Supplemental Security Income (SSI) benefits to a recipient for any entire month during which he is outside the United States.³ Deciding that section 1611(f) of the Act rested on a rational basis, the Supreme Court ruled that the provision did not impermissibly infringe upon the freedom of international travel.⁴ Under the Court's analysis, a statute which impinges on the right to international travel need only pass the scrutiny of the "rational relationship" test, rather than the more stringent scrutiny of the "fair and substantial relationship" test.⁵

Grace Aznavorian, an American citizen, was a resident of California in 1974 and a recipient of SSI benefits.⁶ On July 21, 1974, she left the United States for a trip to Mexico and, due to unexpected illness, did not return until September 1, 1974. Denied SSI benefits for the months of August and September,⁷ Ms. Aznavorian sought administrative remedies but was unsuccessful.⁸ She then filed suit on behalf of herself and all similarly situated persons in the United States District Court for the Southern District of California,⁹ asserting that the denial of payments by

¹ 439 U.S. 170 (1978).

² 42 U.S.C. § 1382(f) (1976).

³ *Id.*

⁴ 439 U.S. at 175.

⁵ *Id.* at 176-77.

⁶ 42 U.S.C. § 1382 (1976) contains the requirements an individual must meet to be eligible for SSI benefits. An individual who does not have an eligible spouse must not have an income exceeding \$1,752 for the calendar year 1974 or any year thereafter. *Id.* § 1382(a)(1)(A). The recipient's resources may not exceed \$2,250 in the case of an individual who has a spouse with whom he is living, or \$1,500 where there is no spouse. *Id.* § 1382(a)(1)(B).

⁷ The challenged section reads:

[N]o individual shall be considered an eligible individual for purposes of this subchapter for any month during all of which such individual is outside the United States For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

Id. § 1382(f). Thus, section 1611(f) operates to deprive an SSI recipient of benefits not only for the time that the recipient is absent from the United States, but also for thirty days after the recipient's return to the United States.

⁸ 439 U.S. at 172.

⁹ *Aznavorian v. Califano*, 440 F. Supp. 788 (S.D. Cal. 1977), *rev'd*, 439 U.S. 170 (1978).

Secretary of Health, Education and Welfare, Joseph Califano, deprived her and the class of equal protection, due process, and the right of international travel as guaranteed by the fifth amendment.¹⁰ Ms. Aznavorian requested declaratory relief and her withheld benefits.

The district court reasoned that, because international travel is a basic constitutional right, the statute must bear a fair and substantial relationship to the purpose it seeks to achieve.¹¹ The court concluded that the limitations on benefits contained in section 1611(f) were not substantially related to its objective of confining payments to bona fide residents of the United States and granted summary judgment to the plaintiff class.¹² The court noted that the provision creates a conclusive presumption of abandonment of residency for any departure from the country lasting a month or longer which causes an individual travelling outside of the United States for the prescribed period to lose SSI benefits regardless of intent to maintain residency.¹³ Legitimate reasons for remaining outside of the United States for over thirty days, such as business purposes, ill health, or the existence of other evidence that residency was not in fact abandoned, are not taken into consideration.¹⁴ Secretary of HEW Califano appealed directly to the United States Supreme Court, contending that section 1611(f) did not violate the fifth amendment because it rested on a rational basis.¹⁵ In reversing the lower court decision, the Supreme Court concluded that the provision need only pass the rational basis test and not the more exacting fair and substantial relationship test.¹⁶

In support of its decision the Court noted that the rational basis test had consistently been used in the past to determine the constitutionality of welfare legislation.¹⁷ In *Dandridge v. Williams*,¹⁸ the Supreme Court recognized that a state does not violate the equal protection clause simply because the classifications made by its laws are imperfect.¹⁹ A classification having a reasonable basis will be respected although it is "not made with mathematical nicety or . . . results in some inequality."²⁰ The Court in *Dandridge* held that a Maryland regulation providing a ceil-

¹⁰ *Id.* at 791. The class action was allowed by the district court but was limited to those individuals who had received an explicit decision denying, interrupting, or terminating their benefits based solely on the terms of the challenged statute. *Id.* at 792-93.

¹¹ *Id.* at 797.

¹² *Id.*

¹³ *Id.* at 795.

¹⁴ *Id.*

¹⁵ 439 U.S. at 174. Appeal was taken under 28 U.S.C. § 1252 (1976), which allows any party to appeal to the Supreme Court from an interlocutory or final judgment, decree, or order of any court of the United States holding an act of Congress unconstitutional in any suit to which the United States or any of its officers or employees is a party.

¹⁶ 439 U.S. at 178.

¹⁷ *Id.* at 174.

¹⁸ 397 U.S. 471 (1970).

¹⁹ *Id.* at 485.

²⁰ *Id.* (quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911)).

ing of \$250 per month under the Aid to Families with Dependent Children program (AFDC), regardless of family size or actual need, did not violate the equal protection clause.²¹ The Court found it unnecessary to explore all of the reasons advanced in justification of the regulation;²² the conclusion that it was free from invidious discrimination was sufficient to uphold its constitutionality.²³ Although the *Dandridge* Court noted that the administration of public welfare assistance involves the most basic economic needs of the poor, it refused to apply a strict scrutiny test and concluded that the proper test was one of reasonableness.²⁴ The Court limited its own power by recognizing that the myriad social and economic problems presented by the task of allocating limited funds to a large number of potential recipients should not be the business of the Supreme Court.²⁵

The Supreme Court has continued to uphold the rational basis test in cases involving challenges to welfare legislation. In *Jefferson v. Hackney*,²⁶ a decision by the state of Texas to provide somewhat lower welfare benefits for AFDC recipients than for the aged or infirm who were in other categories was held not to be invidious or irrational.²⁷ As long as its judgments are rational, wrote Justice Rehnquist, "the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straitjacket."²⁸ Legislation adopted to improve the general welfare is entitled to a strong presumption of constitutionality.²⁹ The discretion to make decisions regarding the distribution of funds belongs to Congress unless its determination is plainly arbitrary.³⁰

Another Supreme Court decision reiterating the idea that social welfare legislation will be measured by the rational basis test is *Mathews v. Lucas*.³¹ At issue was the provision of the Social Security Act conditioning the eligibility of certain illegitimate children for insurance benefits upon a showing that the deceased wage earner was the claimant child's

²¹ 397 U.S. at 486.

²² *Id.*

²³ *Id.* at 487.

²⁴ *Id.* at 485. The strict scrutiny test requires the government to show it is pursuing a "compelling interest . . . one whose value is so great that it justifies the limitation of a fundamental constitutional value." J. NOWAK, R. ROTUNDA, & J. YOUNG, HANDBOOK ON CONSTITUTIONAL LAW 524 (1978).

²⁵ 397 U.S. at 487.

²⁶ 406 U.S. 535 (1972).

²⁷ *Id.* at 549.

²⁸ *Id.* at 549-50. The Court concluded that there was no constitutional or statutory requirement that relief categories be treated exactly alike. *Id.* at 549.

²⁹ *Mathews v. DeCastro*, 429 U.S. 181, 185 (1976). In *Mathews*, a provision of the Social Security Act granting benefits to a married woman with a dependent child in her care whose husband retires or becomes disabled, while denying the same to a divorced woman, was found to have rested on a rational basis. *Id.* at 189.

³⁰ *Helvering v. Davis*, 301 U.S. 619, 640 (1937). A Social Security Act provision granting benefits to persons who reach the age of 65 was found to be valid as long as it was not arbitrary. When money is spent to promote the general welfare, the concept of welfare is shaped by Congress. *Id.* at 645.

³¹ 427 U.S. 495 (1976).

parent and, at the time of his death, was living with the child or contributing to his support.³² The mother of two illegitimate children by the deceased filed suit on the ground that the denial of benefits where paternity was clear violated the equal protection clause because other children, including all legitimate children, were entitled by statute to benefits without proof of actual dependency.³³ The Supreme Court rejected this argument and held that the challenged statutory classification was reasonably related to the likelihood of dependency at death.³⁴

While not disputing that the rational relationship test is generally the appropriate one for determining the constitutionality of welfare legislation, Ms. Aznavorian argued that section 1611(f) should nevertheless be judged by the more stringent substantial relationship test because it interfered with freedom of international travel.³⁵ A right to international travel has been recognized by the Supreme Court in at least three decisions. In *Kent v. Dulles*,³⁶ the U.S. Supreme Court held that Congress had not given the Secretary of State the discretion to deny passports to an individual because he was a Communist or was suspected of going abroad to further Communist causes.³⁷ The right to travel was found to be part of the "liberty" of which a citizen may not be deprived without due process of law.³⁸ Where activities natural and necessary to the well-being of the citizen are involved, the Court will narrowly construe all delegated powers which seek to curtail them.³⁹ The *Kent* Court, however, did not decide issues of constitutionality; it merely concluded that the Secretary did not have the discretion to curtail the free movement of citizens in order to satisfy himself about their beliefs or associations.⁴⁰

The freedom of international travel was also recognized by the Court in *Aptheker v. Secretary of State*,⁴¹ which involved the revocation of passports under section 6 of the Subversive Activities Control Act of 1950.⁴² This section made it unlawful for a member of a registered Communist organization to apply for or use a passport.⁴³ An irrebuttable presumption was established that individuals who are members of certain

³² *Id.* at 497-98. See 42 U.S.C. § 402(d) (1976).

³³ 427 U.S. at 502.

³⁴ *Id.* at 509. For other decisions illustrating the Supreme Court's traditional application of the rational basis test to welfare legislation, see *Richardson v. Belcher*, 404 U.S. 78 (1971) (provision of Social Security Act requiring reduction in benefits to reflect workmen's compensation payments rests upon rational basis); *Califano v. Jobst*, 434 U.S. 47 (1977) (termination of dependent child's social security benefits upon child's marriage as mandated by the Act rested upon reasonable assumption that a married person is less likely to depend on parents for support).

³⁵ 439 U.S. at 175.

³⁶ 357 U.S. 116 (1958).

³⁷ *Id.* at 129-30.

³⁸ *Id.* at 125. See also Note, *The Right to Travel—Its Protection and Application Under the Constitution*, 40 U. MO. KAN. CITY L. REV. 66 (1971).

³⁹ 357 U.S. at 129.

⁴⁰ *Id.* at 130.

⁴¹ 378 U.S. 500 (1964).

⁴² 50 U.S.C. §§ 781-798 (1976).

⁴³ *Id.* § 785(a).

organizations will, if granted passports, engage in activities endangering the security of the nation.⁴⁴ Factors such as individual knowledge and the purpose of the trip were ignored.⁴⁵ The Court stated that

[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose.⁴⁶

The *Aptheker* Court concluded that the statute too broadly and indiscriminately restricted the right to travel and therefore constituted a denial of liberty rights guaranteed by the fifth amendment.⁴⁷

*Zemel v. Rusk*⁴⁸ involved the validity of a regulation of the Secretary of State prohibiting the validation of passports of United States citizens for travel to Cuba.⁴⁹ Although the Court restated the position taken in *Kent* that the right of international travel cannot be taken away without due process of law, it nevertheless concluded that "the fact that a liberty cannot be inhibited without due process of law does not mean that it can under no circumstances be inhibited"⁵⁰ and, accordingly, upheld the denial of the passport.⁵¹ *Zemel* had applied for a passport after the United States had broken off diplomatic relations with Cuba in order to satisfy his curiosity about the state of affairs there.⁵² Unlike the passport refusal involved in *Kent*, *Zemel's* request was refused because of foreign policy considerations affecting all citizens rather than because of his political beliefs or associations.⁵³

Ms. Aznavorian argued that this freedom of international travel was basically equivalent to the constitutional right to interstate travel⁵⁴ and therefore deserving of the higher level of protection from infringement provided by review under the substantial relationship test. The Supreme Court, however, found that while it had recognized the importance of the right to international travel it had never granted such right the higher degree of constitutional protection accorded the right of interstate travel.⁵⁵ Instead, the Court noted that its decisions had recognized a distinction between the right of international travel and the right of in-

⁴⁴ 378 U.S. at 511.

⁴⁵ *Id.* at 514.

⁴⁶ *Id.* at 508 (quoting *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)). *Shelton* involved a state law requiring teachers to file an affidavit each year, as a condition of employment, listing every organization to which the teacher belonged. The Supreme Court held that the statute worked a deprivation of freedom of association protected by the due process clause. *Id.* at 490.

⁴⁷ 378 U.S. at 505.

⁴⁸ 381 U.S. 1 (1965). See Note, *Travel and the First Amendment: Zemel v. Rusk*, 13 U.C.L.A. L. REV. 470 (1966).

⁴⁹ 381 U.S. at 3.

⁵⁰ *Id.* at 14.

⁵¹ *Id.* at 15.

⁵² *Id.* at 4.

⁵³ *Id.* at 13.

⁵⁴ 439 U.S. at 176.

⁵⁵ *Id.*

terstate travel.⁵⁶

Freedom to travel throughout the United States has long been recognized as a basic right under the Constitution⁵⁷ and worthy of consideration under the strict scrutiny test. In *Shapiro v. Thompson*,⁵⁸ the Supreme Court had before it a fact pattern in the context of interstate travel similar to that in *Aznavorian*. The validity of state and federal provisions denying welfare benefits to individuals who had resided in the administering jurisdictions for less than a year was challenged. The Court held that imposition of the durational residency requirements for the purpose of inhibiting migration of indigents into a state was an unconstitutional restriction of the right to travel and created an invidious discrimination that denied equal protection.⁵⁹ As Justice Stewart noted in his concurring opinion, the right of interstate travel is not a mere conditional liberty subject to regulation under conventional due process or equal protection standards; it is a virtually unconditional personal right guaranteed by the Constitution.⁶⁰ The Court concluded that less drastic means were available to minimize the risks of fraudulent collection of benefits.⁶¹ Where a fundamental right such as travel is at stake, the Court will require the government to show a compelling interest to uphold the validity of legislation which seeks to dilute that right.⁶² In his concurring opinion, Justice Stewart stated that the right of international travel is subject to less protection than the right of interstate travel.⁶³ Thus, on similar facts, where the right of interstate travel is implicated, the Court requires a showing of a compelling state interest to uphold the legislation, while the right of international travel is not accorded this same treatment.

Another recent Supreme Court case illustrating the Court's unwillingness to subject the validity of legislation interfering with the freedom

⁵⁶ *Id.*

⁵⁷ *United States v. Guest*, 383 U.S. 745, 758 (1966). Early cases found that the right to interstate travel was grounded upon the Privileges and Immunities Clause of the fourteenth amendment. See *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 49 (1868); *Passenger Cases*, 48 U.S. (7 How.) 283, 492 (1849).

⁵⁸ 394 U.S. 618 (1969). For more discussion of *Shapiro*, see Note, *Durational Residence Requirements from Shapiro through Sosna: The Right to Travel Takes a New Turn*, 50 N.Y.U.L. REV. 622 (1975); Note, *Shapiro v. Thompson: Travel, Welfare, and the Constitution*, 44 N.Y.U.L. REV. 989 (1969).

⁵⁹ 394 U.S. at 627, 629.

⁶⁰ *Id.* at 642-43 (Stewart, J., concurring).

⁶¹ *Id.* at 637.

⁶² *Id.* at 638. The Court also stated:

This court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.

Id. at 629.

⁶³ *Id.* at 643 & n.1 (Stewart, J., concurring). Relying on *Kent*, *Aptheker*, and *Dulles*, Justice Stewart considered the right of international travel to be no more than an aspect of the "liberty" protected by the due process clause and thus subject to regulation within the bounds of due process. *Id.*

of international travel to the same tests applied to restrictions on the right of interstate travel is *Califano v. Torres*.⁶⁴ In that case, the Court held that a provision which denied SSI benefits during any month a person was outside the United States, defining "United States" as the fifty states and the District of Columbia, was not an unconstitutional interference with the right to travel.⁶⁵ Again, as in *Kent*, the Court noted that, although the right of interstate travel is virtually unqualified, "the 'right' of international travel has been considered to be no more than an aspect of the 'liberty' protected by the Due Process Clause As such this 'right' . . . can be regulated within the bounds of due process."⁶⁶

The *Aznavorian* Court distinguished the decisions in *Kent*, *Aptheker*, and *Zemel* on the ground that unlike the provisions involved in those cases, the challenged legislation in *Aznavorian* only incidentally affected the freedom of international travel.⁶⁷ Section 1611(f) "does not limit the availability or validity of passports. It does not limit the right to travel on grounds that may be in tension with the first amendment. It merely withdraws a governmental benefit during and shortly after an extended absence from this country."⁶⁸ Therefore, despite its effect on international travel, the Court found a rational basis sufficient to uphold its constitutionality.⁶⁹

In determining that the denial of SSI benefits does not offend the liberty to travel abroad, the Court followed the established notion that a classification made by Congress involving welfare legislation need only rest upon a rational basis.⁷⁰ The Court failed, however, to address the arguments of the district court in support of its decision that the challenged statute should be subjected to the more stringent fair and substantial relationship test.⁷¹ The district court relied on *Reed v. Reed*,⁷² which involved the validity of a state probate law giving a mandatory preference to males over females and thus allowing a probate court no discretion in the appointment of administrators.⁷³ The *Reed* Court held that the statute must bear a fair and substantial relationship to the purposes it

⁶⁴ 435 U.S. 1 (1978). For other decisions concerning the deference given the right to interstate travel, see *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974) (Arizona statute requiring one year's residence in a county as a condition to receiving non-emergency medical care at the county's expense was held to impinge upon the right of interstate travel by denying newcomers the basic necessities of life); *Dunn v. Blumstein*, 405 U.S. 330 (1972) (absent a compelling state interest, Tennessee may not burden the right to travel by penalizing those bona fide residents in the exercise of their voting rights by virtue of their changing jurisdictions).

⁶⁵ 435 U.S. at 4. See 42 U.S.C. §§ 1382(f), 1382c(e) (1976).

⁶⁶ 435 U.S. at 4 n.6.

⁶⁷ 439 U.S. at 177.

⁶⁸ *Id.*

⁶⁹ *Id.* Cf. *Califano v. Jobst*, 434 U.S. 47, 58 (1977) (although the statute may incidentally affect an individual's decision to marry by terminating benefits, the Court nevertheless upheld its validity).

⁷⁰ See text accompanying notes 17-34 *supra*.

⁷¹ See 440 F. Supp. at 797.

⁷² 404 U.S. 71 (1971).

⁷³ *Id.* at 74.

seeks to achieve and that the probate provision failed to meet this test.⁷⁴ *Reed* established a "middle ground" standard of review for gender-based classifications, falling somewhere between the rational basis and strict scrutiny levels of review.⁷⁵

Under the traditional rational basis test, legislation will almost never be invalidated because the classification itself will always suggest a mixture of goals to which the classification is reasonably related.⁷⁶ The requirement that legislative classifications have a fair and substantial relationship to legitimate governmental purposes would prevent the Court from "exercising its imagination in developing conceivable purposes for the classification or in imagining facts which would sustain the classification's rationality."⁷⁷ The degree of fundamentality of the rights affected or the invidiousness of the classification determine the willingness of the Court to apply a stricter test.⁷⁸ The stronger the individual interests in relation to the state's interests, the more rigid the requirement that the means be substantially related to the ends.⁷⁹ As the individual interests become less important or the state interests more overriding, the requirement of precision becomes less strict.⁸⁰ To determine if this proposed means of scrutiny would have led to a different result in *Califano v. Aznavorian*, the freedom of international travel must be more closely examined to see how important a right it is in fact and whether the Court passed too quickly over the significance of the right in reaching its result.

Freedom to travel at home and abroad without unreasonable governmental restriction is a basic constitutional right of every American.⁸¹ The Universal Declaration of Human Rights, adopted by the General Assembly and approved by the United States in 1948, states in article 13:

⁷⁴ *Id.* at 76.

⁷⁵ 440 F. Supp. at 797 n.9. See generally Gunther, *The Supreme Court, 1971 Term-Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972).

⁷⁶ Bice, *Standards of Judicial Review Under the Equal Protection and Due Process Clauses*, 50 S. CAL. L. REV. 700 (1977).

⁷⁷ Coven & Fersh, *Equal Protection, Social Welfare Litigation, The Burger Court*, 51 NOTRE DAME LAW. 873, 879-80 (1976).

⁷⁸ Tigar, *The Supreme Court, 1969 Term-Forward: Waiver of Constitutional Rights: Disquiet in the Citadel*, 84 HARV. L. REV. 1, 63 (1970). Furthermore:

The requisite level of precision is uncertain, and may indeed vary according to the invidiousness of the classification or the importance of the personal interests infringed In effect, then, active review comprehends two levels of balancing. At the first level, the court will inquire whether the importance of the personal interests involved is so great as to outweigh the state's interest in being free to accomplish its objectives through rough accommodations, rather than with scientific precision. But even if the state classifies precisely, the court will inquire further whether the state interests advanced by the classification are sufficient to outweigh the injury done to the individual by the particular unequal treatment to which he is subjected.

Id. at 63-64.

⁷⁹ *Id.*

⁸⁰ Coven & Fersh, *supra* note 77, at 883.

⁸¹ *United States v. Davis*, 482 F.2d 893, 912 (9th Cir. 1973).

- (1) Everyone has the right to freedom of movement and residence within the borders of each state
- (2) Everyone has the right to leave any country, including his own, and to return to his country.⁸²

Freedom to leave the country has always been a valuable asset enjoyed by citizens of the United States.⁸³ One authority asserts: "Our nation has thrived on the principle that, outside areas of plainly harmful conduct, every American is left to shape his own life as he thinks best, do what he pleases, go where he pleases."⁸⁴ This freedom to travel outside the country, however, has always been subject to more restrictions than travel within the United States. With the passage of the Immigration and Nationality Act of 1952,⁸⁵ the President was granted the authority to impose restrictions on the entry and departure of citizens to and from the United States without a passport.⁸⁶ In times of war or national emergency, additional restrictions are authorized.⁸⁷ Passports may be restricted for travel to a country with which the United States is at war, where hostilities are in progress, or where there is imminent danger to the public health or physical safety of U.S. travellers.⁸⁸ Therefore, although the freedom of international travel is indeed an important one, state interests may outweigh the encroachment on the individual's liberty.

In *Aznavorian*, the goals of the challenged statute appear to be legitimate and justified. Although some inequalities may arise, the scope of welfare assistance is so extensive that generalizations must be employed to make the system workable. Section 1611(f) serves to assure that an individual's residence is genuine by denying SSI benefits until one has been back in the country for thirty days.⁸⁹ The *Aznavorian* Court noted that the longer an individual is out of the country, the greater the likelihood that he is no longer a resident.⁹⁰ Residency requirements may also be justified on the basis of budgetary and recordkeeping considerations.⁹¹ The lower court recognized that objective factors such as continued home ownership or rental, continued employment in the United States, and local organizational memberships could be more effective and realistic indicators of one's residence.⁹² The Supreme Court, however, focused

⁸² Universal Declaration of Human Rights, art. 13, G.A. Res. 217 (III), U.N. Doc. A1811, at 31 (1948).

⁸³ Z. CHAFEE, JR., *THREE HUMAN RIGHTS IN THE CONSTITUTION OF 1787*, at 196 (1956).

⁸⁴ *Id.* at 197.

⁸⁵ Immigration and Nationality Act of 1952, Pub. L. No. 414, 66 Stat. 163 (codified as amended at 8 U.S.C. §§ 1101-1503 (1976 & Supp. III 1979)).

⁸⁶ *Id.* § 215(b) (codified as amended at 8 U.S.C. § 1185(b) (Supp. III 1979)).

⁸⁷ 8 U.S.C. § 1185(a) (Supp. III 1979).

⁸⁸ *Id.*

⁸⁹ 439 U.S. at 178.

⁹⁰ *Id.*

⁹¹ *Sosna v. Iowa*, 419 U.S. 393, 406 (1975). In *Sosna*, the Court upheld an Iowa statute requiring one year residency before filing a petition for divorce. *Id.* at 406-07. The district court in *Aznavorian* distinguished *Sosna* on the ground that *Sosna* only delayed the right to divorce or remarry rather than penalizing that right. 440 F. Supp. at 800.

⁹² 440 F. Supp. at 798.

on the difficulty of monitoring the continuing eligibility of citizens abroad and the probable intent of Congress that these payments should be limited to those who need them in the United States in reaching its conclusion that the statute had a rational basis.⁹³ The Supreme Court also noted that the statute was not *based* on travel; it only incidentally affected the exercise of that freedom.⁹⁴

Given section 1611(f)'s incidental effect on international travel and the greater degree of restrictions historically placed on that freedom, the Supreme Court had sufficient grounds for its decision to uphold the provision. The importance of the governmental goals furthered by section 1611(f) outweighed the burden engendered by the classification. The Court's holding, however, should not be read as establishing a lesser standard for review of welfare legislation than the rational relationship test. In a concurring opinion, Justices Marshall and Brennan expressed their concern that language in the majority opinion in *Aznavorian* could be interpreted as establishing such a lesser standard.⁹⁵ The Court had stated that "[u]nless the limitation imposed by Congress is *wholly irrational*, it is constitutional despite its incidental effect on international travel."⁹⁶ The broad scope of welfare legislation and its value to those individuals whose lives depend upon the social welfare system, however, require that any decision affecting a recipient's interests be judged by the rational relationship test rather than by some lesser standard.

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⁹³ 439 U.S. at 178.

⁹⁴ *Id.* at 177.

⁹⁵ *Id.* at 178-79 (Marshall, J. & Brennan, J., concurring).

⁹⁶ *Id.* at 177 (emphasis added).