



NATIONAL CAMPAIGN TO **RESTORE CIVIL RIGHTS**

IMMIGRANTS' RIGHTS

Federal courts have played an important role in protecting people, including immigrants, against discrimination. Just like people born in the United States, immigrants have also been able to seek redress in the courts when their rights are violated, though the system has been far from perfect.

Many of the rights in the Constitution apply to both immigrants and citizens. In the 1880s, California passed an ordinance that prohibited the operation of Laundromats in wooden buildings. Most of the laundries were owned by Chinese people, and the law was only enforced against them. In *Yick Wo v. Hopkins*, the Supreme Court held that the ordinance was a violation of the Equal Protection clause of the Fourteenth Amendment. In 1974, the Supreme Court held in *Lau v. Nichols*, that non-English speaking students were entitled to the same education as native English speakers. Then, in another important case, *Plyler v. Doe*, in 1982, the Supreme Court further held that undocumented immigrants were entitled to a free and equal K-12 public education. Additionally, Title VI and VII of the Civil Rights Act of 1964 prohibit discrimination based on race or national origin.

The courts have continued to be instrumental in protecting the rights of immigrants today. The city of Hazelton, Pennsylvania passed legislation that ordered local businesses to investigate the immigration status of employees and tenants. If they didn't comply with the law, those businesses were fined or denied permits. Several immigrants' rights organizations (including our partners, the Puerto Rican Legal Defense and Education Fund and the American Civil Liberties Union) filed a lawsuit and in late 2006, a federal court issued a restraining order against the city prohibiting it from enforcing the law. It was a huge victory for immigrants. A District Court in Farmers Branch, Texas, is currently reviewing the same type of city ordinance.

But recently the courts have severely rolled back many important civil rights and made it harder for all people to bring civil rights lawsuits in federal courts. Many of these have involved the rights of immigrants.

For example, the Supreme Court has made it nearly impossible for undocumented workers to challenge unfair labor practices in the courts. When Jose Castro, an undocumented immigrant, began organizing a union campaign, his employer, Hoffman Plastics, fired him. The National Labor Relations Board found that Hoffman Plastics had violated federal law by firing him for unionizing and ordered the employer to pay him back pay. But in 2002, the Supreme Court in *Hoffman Plastic Compounds, Inc. v. N.L.R.B.* overruled that decision, holding Castro was not entitled to back pay because he was an undocumented worker. The Court said that workers who are not "lawfully entitled to be present and employed in the United States" did not have a right to receive any of their lost wages, even when the company that employs them violates the law. This case limits legal protection available for the many immigrants in this country who are working without documentation. Immediately following Hoffman, the Equal Employment Opportunity Commission determined that undocumented migrants do not have a right to back pay under the

federal employment discrimination laws it enforces, including Title VII. The *Hoffman* decision has been expanded by courts to other statutes and has resulted in migrant plaintiffs being denied access to courts because their immigration status is often used against them in the course of litigation.

Immigrants who are discriminated against because of the language they speak are also being negatively impacted by the rollback in the courts. A 2001 case, *Alexander v. Sandoval*, has made it extremely difficult for immigrants and U.S. citizens to bring a lawsuit for discrimination based on race or national origin. The plaintiff in the case, Alabama resident Martha Sandoval, was not a fluent English speaker. She could drive and read road signs in English, but she wanted to take part of her driving test in Spanish. But Alabama had an "English only" policy that required her to take the test in English. She sued and the Supreme Court ruled that Martha Sandoval had no right to bring her case in court. The Court decided that private individuals could only sue to enforce Title VI of the Civil Rights Act of 1964 if they can prove intentional discrimination, something almost impossible to do. This case is significant, not only because of its impact on non-English speakers, but because of the major rollback for people of color generally who can no longer challenge the adverse impacts of discriminatory actions by entities that receive federal funds.

While the federal courts have been rolling back rights for everyone, immigrants have been particularly affected. All of these cases are part of a larger backlash aimed at taking away the rights of immigrants. Besides limiting access to courts, many cases have made it much easier to detain and deport immigrants. The PATRIOT Act, adopted after the terrorist attacks of Sept. 11, has given the attorney general and the administration more power to detain non-citizens who might be perceived as a threat to national security.

Right-wing organizations have also been on the attack, succeeding in getting numerous laws passed in states across the country that discriminate against immigrants. There are English only policies, restricted housing and laws requiring police officers to question people about their legal status and notify federal immigration authorities, among others. In Kansas, a right wing group filed a lawsuit on behalf of a group of college students alleging that undocumented immigrants who live in the state of Kansas should not be allowed to attend state universities for the price of in-state tuition. The students who brought the suit were residents of states outside of Kansas, and were paying the more expensive out-of-state tuition. They alleged that they were being discriminated against because the university allowed in-state residents who were living in the country without documentation to pay the in-state rate. In a victory for the immigrant students, the Tenth Circuit, in *Day v. Bond*, threw out the case, holding that the out-of-state students did not have standing to bring the claim. Though this is a positive case for immigrants' rights, if the Supreme Court decides to hear the case the result could be short-lived. The Court may decide to reverse its decision in *Plyler v. Doe*. Regardless, the right wing groups have promised to carry on their anti-immigrant attacks using the courts as their weapon.

The United States is one of the most diverse countries in the world. In 2006, there were 37.5 million immigrants living here. Like those who landed at Plymouth Rock, people come to this country for the promise of freedom, for opportunity. But if the courts continue to deny legal protection to newcomers, the promise etched into the Statue of Liberty will be deemed meaningless.

For more information on immigrants' rights and the courts, please contact the National Campaign to Restore Civil Rights at: rollback@nylpi.org.

For detailed case information, please see the below:

- [*Langlois v. Abington Housing Authority*](#) (234 F. Supp. 2d 33 (1st Cir.), 2002)
- [*Gonzaga v. Doe*](#) (536 U.S. 273, 2002)
- [*Thompson v. HUD*](#)