

Latinos Face Disparate Effects From Illegal Re-Entry Law, Federal Judge Rules

The judge ruled that the law violates the Fifth Amendment



According to a Nevada federal judge, a federal law that is racially motivated and punishes Latinos differently has been dismissed against an immigrant.

According to Section 1326, it is illegal for someone who has been deported or denied entry to the U.S. to reenter the country, punishable by fines and jail time. Specifically, this case was brought against someone charged with illegal re-entry. Having been deported multiple times, the individual had been located in the country illegally in 2019.

However, the judge ruled that the laws behind the charge of illegal re-entry were racist and discriminatory.

Because [the defendant] has established that Section 1326 was enacted with a discriminatory purpose, and the government cannot provide evidence that Section 1326 would have been adopted absent racial animus, the court will grant the motion," said Judge Miranda Du in her ruling.

Data from the Border Patrol showed that over 97% of people apprehended at the U.S.-Mexico border were Mexican in 2000, and 87% in 2010. Rather than dispute the disparate impact, the government noted its origins in geography, proportionality - thinking of Mexico's proximity to the United States - and the history of Mexican employment problems.

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Also, the government stated that it makes sense that Mexican citizens make up a high percentage of illegal entry defendants "because they make up a disproportionately high percentage of the overall illegal alien population."

"The court is not persuaded," Du wrote.

As Du points out, legislative history clearly shows that racism and eugenics played a role in the passage of the legislation in 1929, which was the basis of the 1952 legislation. Moreover, she says there has "never been an attempt at any time to deal with the racist history of Section 1326 or remove its influence on legislation."

Due to its violation of the equal protection clause of the Fifth Amendment, the judge dismissed the indictment.