Supreme Court Upholds Law Prohibiting 'Encouraging or Inducing' Illegal Immigration

The U.S. Supreme Court recently handed down a significant ruling in a 7-2 decision, affirming the constitutionality of a federal law that bans "encouraging or inducing" illegal immigration. Justice Amy Coney Barrett authored the majority opinion, joined by Chief Justice John Roberts and Justices Clarence Thomas, Samuel Alito, Elena Kagan, Neil Gorsuch, and Brett Kavanaugh.

The case revolved around Helaman Hansen, who had been convicted under the law for promoting "adult adoption" as a means for noncitizens to obtain U.S. citizenship. Barrett highlighted that Hansen had amassed nearly $2 million by enticing over 450 noncitizens into his fraudulent scheme.

Previously, the 9th U.S. Circuit Court of Appeals in San Francisco had ruled that the law violated the First Amendment, arguing that it criminalized immigration advocacy and other protected speech. However, Barrett deemed the 9th Circuit's conclusion as erroneous.

See also: Supreme Court Upholds Biden Administration's Immigration Enforcement Policy, Dismissing State Challenges

Barrett explained that when properly interpreted, the law only prohibits intentional solicitation or facilitation of specific unlawful acts. Contrary to the 9th Circuit's finding, the law does not impede a substantial amount of protected speech. Barrett emphasized that the law's wording does not warrant overturning its "plainly legitimate sweep."

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The law in question forbids "encouraging or inducing" a noncitizen to come to, enter, or reside in the United States, with knowledge or reckless disregard that such actions violate the law. Barrett noted that the terms "encourage" and "induce" have long-standing and pervasive usage in criminal statutes to describe criminal solicitation and facilitation. Criminal solicitation refers to intentionally encouraging an unlawful act, while facilitation, also known as aiding and abetting, entails providing assistance to a wrongdoer with the intent to further the commission of an offense.

Barrett stressed that in this case, these terms are employed in their specialized sense within criminal law, which includes the requirement that the defendant intends for a specific act to be carried out. Hansen had urged the Supreme Court to adopt a broader interpretation of "encourage" and "induce," but Barrett rejected his plea, emphasizing the importance of seeking harmony between legislation and the Constitution rather than manufacturing conflict.

However, Barrett left open the possibility for the law to be challenged as applied to specific defendants. She acknowledged that Hansen sought to discard too much of the law based on speculation but stated that as-applied challenges could address those concerns.

Justice Ketanji Brown Jackson dissented, and Justice Sonia Sotomayor joined in the dissenting opinion. Jackson argued that it was not the Court's role to reinterpret

federal statutes in a manner inconsistent with Congress' choices. She further contended that by accommodating the government's attempt to narrow the statute to save it, the majority undermined the objective of the overbreadth doctrine, which aims to prevent overly broad statutes from chilling constitutionally protected speech.

The U.S. Supreme Court, with a 7-2 majority, upheld the federal law banning "encouraging or inducing" illegal immigration. In writing for the majority, Justice Barrett clarified the law's proper interpretation, highlighting its focus on intentional solicitation or facilitation of unlawful acts. While the ruling deemed the law constitutional, it also left room for potential challenges regarding its application to specific defendants. The dissenting opinion, authored by Justice Jackson and joined by Justice Sotomayor, expressed concern over reinterpreting federal statutes and the potential chilling effect on constitutionally protected speech.

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