


May 2014

# Court of Appeals of New York - Cubas v. Martinez

Gregory Gillen

Follow this and additional works at: <http://digitalcommons.tourolaw.edu/lawreview>

 Part of the [Constitutional Law Commons](#), [Law and Society Commons](#), and the [Transportation Law Commons](#)

## Recommended Citation

Gillen, Gregory (2014) "Court of Appeals of New York - Cubas v. Martinez," *Touro Law Review*: Vol. 24: No. 2, Article 17.  
Available at: <http://digitalcommons.tourolaw.edu/lawreview/vol24/iss2/17>

This Equal Protection is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized administrator of Digital Commons @ Touro Law Center. For more information, please contact [ASchwartz@tourolaw.edu](mailto:ASchwartz@tourolaw.edu).

---

# Court of Appeals of New York - Cubas v. Martinez

## **Cover Page Footnote**

24-2

## COURT OF APPEALS OF NEW YORK

Cubas v. Martinez<sup>1</sup>  
(decided June 7, 2007)

A group of immigrants living in the State of New York challenged a September 6, 2001 Department of Motor Vehicles (“DMV”) requirement heightening the standard upon which driver’s licenses may be issued.<sup>2</sup> Under the new requirement, driver’s license applicants who are ineligible for a valid social security number (“SSN”) are required to submit immigration documents issued by the Department of Homeland Security (“DHS”) attesting to their SSN ineligibility.<sup>3</sup> The plaintiffs contended this amounted to an attempt by the DMV to deny driver’s licenses to illegal immigrants, and was essentially a denial of their constitutionally protected right to equal protection under both the United States Constitution<sup>4</sup> as well as the New York State Constitution.<sup>5</sup> The New York Court of Appeals found no

---

<sup>1</sup> 870 N.E.2d 133 (N.Y. 2007).

<sup>2</sup> *Cubas*, 870 N.E.2d at 135.

<sup>3</sup> *Id.* at 134.

<sup>4</sup> U.S. CONST. amend. XIV, § 1 states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

<sup>5</sup> N.Y. CONST. art. I, § 11 states:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed

violation and upheld the law.<sup>6</sup>

Prior to September 6, 2001, two mandatory prerequisites confronted New York State driver's license applicants: (1) the applicant was required to "furnish proof of identity, age and fitness as may be required by the [DMV] commissioner," and (2) the applicant was required to provide a valid and functional social security number.<sup>7</sup> However, this did not mean that only individuals with valid SSNs were eligible to attain a New York State driver's license.<sup>8</sup> Rather, DMV regulations require only that an applicant "submit his or her social security number or provide proof that he/she is not eligible for a social security number."<sup>9</sup> Proof of an individual's SSN ineligibility was made by submission of what is known as an L676 letter from the DHS (indicating an individual is ineligible for an SSN) to the DMV with their driver's license application.<sup>10</sup> The new requirements, made effective on September 6, 2006, required applicants ineligible for SSNs to provide their underlying DHS documents in addition to the previously-sufficient L676 letter.<sup>11</sup>

A trial court agreed with the plaintiffs and issued an injunction, finding the regulation mandating DHS documentation exceeded the legislative grant of authority to the DMV and violated the bu-

---

or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

<sup>6</sup> *Cubas*, 870 N.E.2d at 137.

<sup>7</sup> *Id.* at 135-36 (citing N.Y. VEH. & TRAF. LAW §§ 501-02 (McKinney 2008)).

<sup>8</sup> *Id.* at 136.

<sup>9</sup> *Id.* (quoting N.Y. COMP. CODES R. & REGS. tit. 15, § 3.9(a) (2007)) (emphasis omitted).

<sup>10</sup> *Cubas*, 870 N.E.2d at 136.

<sup>11</sup> *Id.* at 135.

reau's own rule-making requirements.<sup>12</sup> The Appellate Division reversed and dismissed, finding "the procedures used by the [DMV] Commissioner to be within his authority and enforceable."<sup>13</sup>

In the subsequent appeal to the New York Court of Appeals, the plaintiffs conceded the DMV had the right to determine the eligibility of applicants for SSNs, and that the method previously employed for verification, via the L676 letter demonstrating ineligibility, was also valid.<sup>14</sup> Instead, the plaintiffs' main contention concerned the new requirement, that they must submit their DHS documents as proof of ineligibility.<sup>15</sup> Yet, based upon these concessions, the New York Court of Appeals refused to find that an applicant who had already submitted DHS documents to the Social Security Administration ("SSA") could not submit these same documents to the DMV. The court found no indication that individuals would be further burdened under the new requirement.<sup>16</sup> Also, the court found a valid rationale behind the DMV Commissioner's argument that the policy change was made to pursue the legitimate objective of eliminating fraudulent L676 submissions.<sup>17</sup> The nexus advanced between the policy change and the stated objective was the Commissioner's belief that the DHS documents were more difficult to counterfeit than a simple publicly-available letter stating an individual was ineligible

---

<sup>12</sup> *Id.* at 135.

<sup>13</sup> *Id.* See *Cubas v. Martinez*, 819 N.Y.S.2d 10, 26 (App. Div. 1st Dep't 2006).

<sup>14</sup> *Cubas*, 870 N.E.2d at 136. The plaintiffs were entitled as a matter of right to present their claim to the New York Court of Appeals because the decision of the New York State Appellate Division was a matter of constitutional interpretation. *Id.* See also N.Y. C.P.L.R. 5601 (McKinney 2008).

<sup>15</sup> *Cubas*, 870 N.E.2d at 136.

<sup>16</sup> *Id.* at 137.

<sup>17</sup> *Id.* at 136-37.

for SSN.<sup>18</sup>

Despite this, the plaintiffs maintained that application of the new requirement was essentially an act of discrimination against aliens and undocumented aliens, and amounted to a violation of their right to equal protection of the law.<sup>19</sup> The court rejected these assertions and held no such issue was presented because the “policy the plaintiffs challenge is only between applicants who submit L676 letters unaccompanied by the underlying DHS documents, and those who submit the underlying documents with the letters.”<sup>20</sup> The court concluded, the “classification of applicants plainly creates no suspect class, infringes no fundamental right, and raises no serious equal protection questions.”<sup>21</sup>

Equal protection of the law is guaranteed under both the Fourteenth Amendment to the United States Constitution,<sup>22</sup> as well as by the New York State Constitution.<sup>23</sup> These provisions extend protections beyond U.S. citizens, applying to all persons within its borders.<sup>24</sup> As the New York Court of Appeals articulated, “[i]t is axio-

---

<sup>18</sup> *Id.* at 136.

<sup>19</sup> *Id.* at 137.

<sup>20</sup> *Cubas*, 870 N.E.2d at 137.

<sup>21</sup> *Id.* (citing *Affronti v. Crosson*, 746 N.E.2d 1049, 1052 (N.Y. 2001)).

<sup>22</sup> U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment provides protection against state circumscription of federal rights afforded by the Constitution to all persons. Although states are free to provide greater freedom to their citizens, the Fourteenth Amendment essentially provides that they may not obviate those minimal rights provided for by the United States Constitution.

<sup>23</sup> N.Y. CONST. art. I, § 11. Here the New York State Constitution provides an almost identical provision to that of the United States Constitution. Article I, section 11 essentially ensures that the legislature may not circumscribe the freedoms and rights afforded to individuals by the state. It provides equal protection to all persons under the laws of the state.

<sup>24</sup> *Aliessa v. Novello*, 754 N.E.2d 1085, 1094 (N.Y. 2001) (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not confined to the protection of citizens.”)).

matic that aliens are ‘persons’ entitled to equal protection.”<sup>25</sup>

The New York State Constitution has an almost identical provision to that found in the Fourteenth Amendment of United States Constitution, providing, “no person shall be denied the equal protection of the laws of this state or any subdivision thereof.”<sup>26</sup> As the New York Court of Appeals made clear in *Dorsey v. Stuyvesant Town Corp.*,<sup>27</sup> the similarity in language was intentional. “[T]he first sentence of section 11 ‘in effect embodies in our Constitution the provisions of the Federal Constitution which are already binding upon our State and its agencies.’ ”<sup>28</sup> The court noted the consistency between application of the federal provision in accordance with the state provision, as seen in previous cases concerning equal protection.<sup>29</sup> For this reason, New York courts look to the standards employed by the federal courts when dealing with equal protection issues.

The New York Court of Appeals, in *Cubas*, employed a federal standard of review for determining violations of equal protection, as illustrated by the court’s claim that the requirement imposed by the DMV “plainly creates no suspect class, infringes no fundamental

---

<sup>25</sup> *Aliessa*, 754 N.E.2d at 1094.

<sup>26</sup> N.Y. CONST. art. I, § 11.

<sup>27</sup> 87 N.E. 541 (N.Y. 1949).

<sup>28</sup> *Id.* at 548 (quoting Harry E. Lewis, chairman of the Bill of Rights Comm., New York State Constitutional Convention of 1938, where article I, section 11 was approved. 2 REV. RECORD OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK, APRIL 5, TO AUGUST 26, 1938 1065 (1938)).

<sup>29</sup> *Id.* (“It is significant that in previous New York cases arising under the Equal Protection Clauses of the Federal and State Constitutions it has not been suggested that the reach of the latter differed from that of the former.”) (citing *Kemp v. Rubin*, 81 N.E.2d 325 (N.Y. 1948); *Madden v. Queens Co. Jockey Club*, 72 N.E.2d 697 (N.Y. 1947)).

right and raises no serious equal protection questions.”<sup>30</sup> The *Cubas* court also cited to *Affronti v. Crosson*,<sup>31</sup> which in turn attributed the applicable standard to the United States Supreme Court case *Nordlinger v. Hahn*.<sup>32</sup>

The Supreme Court, in *Nordlinger*, gives a brief overview of the fundamental issues at stake in any equal protection case.<sup>33</sup> “The Equal Protection Clause does not forbid classifications. It simply keeps governmental decision makers [sic] from treating differently persons who are in all relevant respects alike.”<sup>34</sup> The Court is careful to recognize that classifications are natural occurrences within the law, and as such remain permissible so long as they do not overstep the bounds of the Constitution. Thus, the Court makes clear that, “unless a classification warrants some form of heightened review because it jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest.”<sup>35</sup>

In *Cubas*, the Court of Appeals concluded that the classification created by the statute—distinguishing between those who submit SSA letters and those who submit DHS paper work—is constitutionally permissible because that classification does not trigger any form

---

<sup>30</sup> *Cubas*, 870 N.E.2d at 137.

<sup>31</sup> 746 N.E.2d 1049, 1052 (N.Y. 2001).

<sup>32</sup> 505 U.S. 1 (1992).

<sup>33</sup> *Nordlinger*, 505 U.S. at 10.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*



of heightened scrutiny, and passes rational basis review.<sup>36</sup> Although not explicitly stated in the *Cubas* court's opinion, it appears that the DMV's purported intent to curb fraudulent L676 submissions through enactment of the challenged regulation requiring DHS documentation, was a sufficiently "plausible policy reason for the classification."<sup>37</sup> As such, with a rational policy concern as an impetus, the court seemed content with the conclusion that classification was a non-issue, and effectively avoided an in-depth discussion as to why the classification did not create a suspect class or implicate fundamental rights.

While the idea of suspect classification originated in *United States v. Carolene Products Co.*,<sup>38</sup> it was expanded by *Korematsu v. United States*.<sup>39</sup> In *Carolene Products*, the Court, in its famous footnote, first hinted that some legislation requires a higher form of Fourteenth Amendment scrutiny, especially where "prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."<sup>40</sup> The Court's concern was with regard to statutes directed toward minorities of particular religious, national, or racial backgrounds. In *Korematsu*, the

---

<sup>36</sup> *Cubas*, 870 N.E.2d at 137.

<sup>37</sup> *Id.* at 137. See *Nordlinger*, 505 U.S. at 11.

<sup>38</sup> 304 U.S. 144 (1938).

<sup>39</sup> 323 U.S. 214 (1944). While this case is now widely criticized for condoning the detention of Japanese Americans in detention facilities during the Second World War, its discussion concerning suspect classes remains relevant today. See Kelly A. MacGrady & John W. Van Doren, *AALS Constitutional Law Panel on Brown, Another Council of Nicaea?*, 35 AKRON L. REV. 371, 437 (2002).

<sup>40</sup> *Carolene Prods.*, 304 U.S. at 153 n.4.

holding that found the de facto imprisonment of Americans of Japanese descent during World War II constitutional, the Court stated, “all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny.”<sup>41</sup> This was the Court’s first articulation of what would later become known as “strict scrutiny.”<sup>42</sup>

The nature of suspect classification was expanded again in *Lyng v. Castillo*,<sup>43</sup> when the Court refused to confer suspect classification to “close relatives,” because they “have not been subjected to discrimination; they do not exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group; and they are not a minority or politically powerless.”<sup>44</sup> Perhaps more importantly, the Supreme Court held in *Plyler v. Doe*<sup>45</sup> that aliens are “persons” for purposes of the Due Process and Equal Protection Clauses of the Federal Constitution.<sup>46</sup>

The *Plyler* Court faced the issue of whether Texas violated the Fourteenth Amendment’s Equal Protection Clause when it refused reimbursement to local school boards for educating children

---

<sup>41</sup> *Korematsu*, 323 U.S. at 216.

<sup>42</sup> *Id.* (holding strict scrutiny requires the statute be supported by some “[p]ressing public necessity,” or it should be invalidated). See also MacGrady & Van Doren, *supra* note 40, at 437.

<sup>43</sup> 477 U.S. 635 (1986).

<sup>44</sup> *Lyng*, 477 U.S. at 638. See Emily S. Pollock, *Those Crazy Kids: Providing the Insanity Defense in Juvenile Courts*, 85 MINN. L. REV. 2041, 2057-58 n.88 (2001) (discussing the evolution of suspect classification in clarifying that strict scrutiny or “any form of heightened scrutiny can only be triggered when the person making the claim is a member of a suspect class”).

<sup>45</sup> 457 U.S. 202 (1982).

<sup>46</sup> *Plyler*, 457 U.S. at 215. See U.S. CONST. amend. XIV, § 1.

who entered the country illegally; Texas also sought to impose the burden of paying tuition for what would otherwise be a free public education upon those children and their parents.<sup>47</sup> Although the Court concluded aliens were a suspect class protected under the Equal Protection Clause, the Court did find “[u]ndocumented aliens cannot be treated as a suspect class because their presence in this country in violation of federal law is not a ‘constitutional irrelevancy.’”<sup>48</sup> The Court grounded its reasoning in the voluntariness with which an individual can move into and out of the classification, meaning designation as part of the class is not based on an “immutable characteristic.”<sup>49</sup> As the Court explained, “[u]nlike most of the classifications that we have recognized as suspect, entry into this class [of illegal aliens], by virtue of entry into this country, is the product of voluntary action. Indeed, entry into the class is itself a crime.”<sup>50</sup> Thus, depending upon the classification contained in the statute—whether legal alien versus illegal alien—different standards of scrutiny may apply.

The plaintiffs in *Cubas* argued the discrimination at issue in the statute is against aliens, or undocumented aliens, but the court ruled the facts of the case did not warrant that conclusion.<sup>51</sup> Viewed in light of the applicable federal equal protection precedent, the le-

---

<sup>47</sup> *Plyler*, 457 U.S. at 215-16.

<sup>48</sup> *Id.* at 223 (emphasis added).

<sup>49</sup> *Id.* at 219 n. 19. See, e.g., *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (explaining immutable characteristics to be those “determined solely by the accident of birth”).

<sup>50</sup> *Plyler*, 457 U.S. at 219. Despite this, the Court found the children of these illegal aliens were a “discrete class . . . not accountable for their disabling status.” *Id.* at 223. Furthermore, any negative classification against them would only be constitutional if it “further[ed] some substantial goal of the State.” *Id.* at 224.

<sup>51</sup> *Cubas*, 870 N.E.2d at 137.

gitimacy of the court's succinct conclusion on the issue presented is readily apparent.<sup>52</sup> The plaintiffs conceded the DMV acted permissibly in requiring applicants to provide an L676 letter, and therefore the court precluded characterization of the provision as one uniquely burdening aliens, and instead placed it squarely between two classes the court recognized and precisely articulated: (1) driver's license applicants submitting an L676 letter with underlying DHS documentation; and (2) driver's license applicants submitting an identical letter unaccompanied by DHS the documentation.<sup>53</sup>

The court acknowledged the major significance in the plaintiffs' concession that the DMV acted lawfully in requiring a letter proving SSN ineligibility, and stated its implication outright: by making the concession, the plaintiffs "essentially concede that the Commissioner need not issue driver's licenses to undocumented aliens, because undocumented aliens cannot obtain L676 letters showing that they are ineligible for SSNs. . . . [U]ndocumented aliens lack documents, United States-issued documents at least, and the DMV's right to insist on such documents is undisputed."<sup>54</sup> Thus, the court concluded the issue involved a narrow classification, which did not implicate a "suspect class," and did not implicate fundamental

---

<sup>52</sup> See *id.*

<sup>53</sup> *Id.* at 136.

They do not challenge the DMV's right to require proof that applicants are ineligible for SSNs. They admit in their brief that the DMV may properly verify "possession of a SSN or SSN ineligibility." Indeed, they concede that the DMV's former requirement for proof of ineligibility—an L676 letter from SSA, saying that the applicant's DHS documents demonstrate ineligibility for an SSN—was valid.

*Id.*

<sup>54</sup> *Id.*

rights, which, in either event, would have raised serious equal protection questions.<sup>55</sup> The conclusion seems predominately fact-based given the plaintiffs' early concession of what turned out to be pivotal facts, and the minimal legal analysis the court extends to justify its reasoning. Despite this seemingly factual conclusion, it becomes apparent illegal aliens will be denied driver's licenses due to their inability to submit acceptable DHS documentation, and these persons within this jurisdiction will be denied their supposed equal protection of the law. Although the issue presents a valid state policy interest, the avoidance of fraud in the application process for driver's licenses by aliens residing in this country,<sup>56</sup> there is still no mention or any reason proffered for the broader outcome of this decision: the denial of driver's licenses to illegal aliens. The court altogether avoids discussion of any viable state interest or rationale as to why it is permissible to deprive illegal aliens of driver's licenses, keeping the analysis strictly within the narrow purview of the new DMV requirement.

It seems likely, however, that the outcome would have been different had the plaintiffs not made their early concessions. Fortunately, speculation is unnecessary in this situation because there are several cases on point with this issue.

Several jurisdictions have already enacted legislation for the sole purpose of denying illegal aliens driver's licenses. The United States District Court for the Northern District of Georgia faced this

---

<sup>55</sup> *Id.* at 137.

<sup>56</sup> *Cubas*, 870 N.E.2d at 137. The court makes clear that “[n]othing in the record suggests that the DMV’s concern about fraud is subterfuge.” *Id.* This is a reasonable conclusion based upon the record’s indication of the ease at which these documents can be imitated.

issue in *Doe v. Georgia Department of Public Safety*.<sup>57</sup> The court addressed whether Georgia law, which effectively denied driver's licenses to illegal aliens, was violative of equal protection standards.<sup>58</sup> The state statute required persons seeking driver's license to be state residents<sup>59</sup> and added "that no person shall be considered a resident . . . unless such person is either a United States citizen or an alien with legal authorization from the U.S. Immigration and Naturalization Service."<sup>60</sup> Although the case was based solely upon an alleged Fourteenth Amendment violation, the fact *Cubas* relied almost entirely upon federal precedents means *Doe* remains instructive.

The court in *Doe* analyzed the applicable federal case law concerning equal protection violations. In recognition of the Supreme Court's holding in *Plyler*, the *Doe* court recognized that "illegal aliens are not a 'suspect class' that would subject the Georgia statute to strict scrutiny."<sup>61</sup> The *Doe* court turned its attention to ascertaining whether the law "should be upheld if it 'mirrors federal objectives and furthers a legitimate state goal.'"<sup>62</sup> The court found several legitimate state interests for denying illegal aliens driver's licenses: preventing the appearance of a legal presence by an alien via a state issued driver's license; limiting state services to citizens and legal residents; and a "concern that persons subject to immediate deportation will not be financially responsible for property damage or

---

<sup>57</sup> 147 F. Supp. 2d 1369 (N.D. Ga. 2001).

<sup>58</sup> *Doe*, 147 F. Supp. 2d at 1371.

<sup>59</sup> *Id.* at 1372 (citing GA. CODE ANN. § 40-5-24 (2001)).

<sup>60</sup> *Doe*, 147 F. Supp. 2d at 1372 (citing GA. CODE ANN. § 40-5-15(15) (2001)).

<sup>61</sup> *Doe*, 147 F. Supp. 2d at 1372.

<sup>62</sup> *Id.* at 1376 (quoting *Plyler*, 457 U.S. at 225).

personal injury due to automobile accidents.”<sup>63</sup> The court upheld the state requirements for driver’s license applicants, and concluded the state could constitutionally bar illegal aliens from receiving driver’s licenses.<sup>64</sup>

The Iowa Supreme Court decided a matter similar to *Cubas* in *Sanchez v. State*.<sup>65</sup> In *Sanchez*, the plaintiffs argued the state driver’s license application process effectively denied illegal aliens licenses by requiring social security submissions.<sup>66</sup> While the statute provided a means for authorized foreign nationals to receive driver’s licenses, it only lasted the length of their legal stay, but not for a period longer than two years.<sup>67</sup> The statute further provided that, “[t]o determine whether the applicant is ‘authorized to be present,’ DOT [Department of Transportation] regulations require the applicant to submit one of sixteen immigration documents.”<sup>68</sup> The similarity between the requirements in *Sanchez* and *Cubas* are striking, and just as in *Cubas*, the plaintiffs in *Sanchez* alleged these requirements violated both the United States Constitution and the state constitution of Iowa.<sup>69</sup> However, the *Sanchez* court was unable to sidestep the issue

---

<sup>63</sup> *Doe*, 147 F. Supp. 2d at 1376.

<sup>64</sup> *Id.*

<sup>65</sup> 692 N.W.2d 812 (Iowa 2005).

<sup>66</sup> *Sanchez*, 692 N.W.2d at 815 (“Their unauthorized presence in the United States precludes them from qualifying for a social security number or from obtaining proper immigration documents.”).

<sup>67</sup> *Id.* (citing IOWA CODE § 321.196(1) (2006)).

<sup>68</sup> *See Id.* (citing IOWA CODE § 321.196(1) (2003)). *See also* IOWA ADMIN. CODE r. 761-601.5(2)(a)(4) 1-16 (2002).

<sup>69</sup> *Sanchez*, 692 N.W.2d at 815, 817. The plaintiffs’ Federal Constitutional claims alleged the provision violated both the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments. *Id.* at 815. *See* U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1. Additionally, the plaintiffs claimed their rights under the Iowa State Constitution’s Equal Protection and Due Process Clauses were violated. *Sanchez*, 692 N.W.2d at 817. Ar-

of driver's licenses being denied to illegal aliens, as was the case in *Cubas*.

Initially the Iowa trial court dismissed the case after finding "illegal aliens ha[d] no right to receive driver's licenses in the State of Iowa."<sup>70</sup> On appeal, the Iowa Supreme Court grappled with whether the denial of driver's licenses to illegal aliens violated equal protection.<sup>71</sup> In a thoughtful analysis of equal protection, the Iowa Supreme Court concluded the state did not violate equal protection rights by denying driver's licenses to illegal aliens.<sup>72</sup>

The *Sanchez* court began by accepting federal precedents concerning equal protection as controlling for the state, and then discussed the evolution of equal protection.<sup>73</sup> The court cited *City of Cleburne v. Cleburne Living Center* in its affirmation that, "[i]f a statute affects a fundamental right or classifies individuals on the basis of race, alienage, or national origin, it is subjected to strict scrutiny review,"<sup>74</sup> which requires the showing of a "compelling state interest."<sup>75</sup> The court recognized the class at issue was not a suspect class according to *Plyler*, and as such, strict scrutiny was not war-

---

ticle I, section six of the Iowa Constitution provides, in pertinent part: "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." IOWA CONST. art. I, § 6; *Sanchez*, 692 N.W.2d at 817. Article I, section nine of the Iowa Constitution states: "[N]o person shall be deprived of life, liberty, or property, without due process of law." IOWA CONST. art. I, § 9; *Sanchez*, 692 N.W.2d at 817.

<sup>70</sup> *Sanchez*, 692 N.W.2d at 815-16.

<sup>71</sup> *Id.* at 814.

<sup>72</sup> *Id.* at 819.

<sup>73</sup> *Id.* at 817 ("Because neither party in this case has argued that our equal protection analysis under the Iowa Constitution should differ in any way from our analysis under the Federal Constitution, we decline to apply divergent analyses in this case.").

<sup>74</sup> *Id.* (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985)).

<sup>75</sup> *Sanchez*, 692 N.W.2d at 817 (citing *Cleburne*, 473 U.S. at 440).



ranted.<sup>76</sup> Rather, the *Sanchez* court applied rational basis review, merely requiring the law “be rationally related to a legitimate state interest.”<sup>77</sup> The court considered the state’s four arguments supporting a denial of driver’s licenses to illegal aliens:

- (1) “[N]ot allowing its governmental machinery to be a facilitator for the concealment of illegal aliens”; (2) “limiting its services to citizens and legal residents”; (3) “restricting [Iowa] driver’s licenses to those who are citizens or legal residents because of the concern that persons subject to immediate deportation will not be financially responsible for property damage or personal injury due to automobile accidents”; and (4) discouragement of illegal immigration.<sup>78</sup>

Accordingly, the court upheld the statute under rational basis review.<sup>79</sup>

In light of these holdings, it is unnecessary to speculate another outcome in *Cubas* had the plaintiffs chosen to forego their early concessions. Even if the plaintiffs had disputed the legality of the DMV Commissioner’s requirements, there are ample rational state interests to justify the resulting classification.<sup>80</sup> Perhaps most striking about *Cubas* is the court never allowed the discussion to really harp on the true issue before it: immigration. Although the case presents itself as an equal protection issue, fundamentally it is nothing more than an outgrowth of the present immigration debate. It is doubtful

---

<sup>76</sup> *Id.* at 817.

<sup>77</sup> *Id.* at 817-18 (citing *Cleburne*, 473 U.S. at 440).

<sup>78</sup> *Id.* at 818 (citing *Doe*, 147 F. Supp. 2d at 1376).

<sup>79</sup> *Id.* at 819.

<sup>80</sup> *See Sanchez*, 692 N.W.2d at 819. *See also Doe*, 147 F. Supp. 2d at 1371-76.

the Court of Appeals failed to recognize this, and more likely it chose to handle the matter in a manner that efficiently avoided any major commentary on the immigration debate. The *Cubas* court's ready acceptance of the plaintiffs' concessions coupled with the artful logic applied to the facts is perhaps especially indicative of this sort of skillful avoidance. The court succinctly, and perhaps wisely, removed the issue from a general denial of driver's licenses to illegal aliens, to a mere classification issue "between applicants who submit L676 letters unaccompanied by the underlying DHS documents, and those who submit the underlying documents with the letters."<sup>81</sup> In doing so, the court effectively removed the case from the realm of the politically polarized, and objectively disposes of the issue in a consistent non-partisan manner.<sup>82</sup> In light of the case law, originating in situations where the immigration issue was more openly addressed, there is little doubt the case could have turned out another way. It is clear the denial of state issued driver's licenses to illegal aliens does not violate the equal protection provisions of either the United States Constitution, or, as it has been shown, in other state constitutions. Thus, the inference can safely be drawn that in the company of the standard state interests for denying illegal aliens driver's licenses, an outright statutory denial in New York would likely withstand both federal and state constitutional scrutiny.

*Gregory Gillen*

---

<sup>81</sup> *Cubas*, 870 N.E.2d at 137.

<sup>82</sup> See Danny Hakim, *Spitzer Tries New Tack on Immigrants' Licenses: A Multi-Tiered System*, N.Y. TIMES, Oct. 28, 2007, at A27 (describing how, in the wake of contentious criticism, former Governor Eliot Spitzer backed off his plan to give illegal immigrants access to valid New York State drivers licenses).



