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**SUPREME COURT OF NEW YORK
NEW YORK COUNTY**

Khrapunskiy v. Doar¹
(decided August 11, 2005)

Plaintiffs, a group of permanent resident aliens in New York State, commenced a class action suit alleging that they were denied state funded Additional State Payments (ASP) under Social Services Law section 209² because of their status as legal aliens.³ The plaintiffs asserted that such denial violated article 17, section 1 of the New York State Constitution,⁴ as well as the Equal Protection Clause of both the United States⁵ and the New York State⁶ Constitutions.⁷ The New York Supreme Court granted summary judgment for the plaintiffs, holding that Social Services Law section 209 improperly discriminated based on alien status and violated the Equal Protection Clause of both the United States and the New York State

¹ 2005 N.Y. Misc. LEXIS 1970, No. 404175/04, aff'd 2005 N.Y. App. Div. LEXIS 14026 (App. Div. 1st Dep't 2005).

² N.Y. SOC. SERV. LAW § 209 (McKinney 2005). This section sets forth the eligibility criteria and the standard of need for New York State ASP benefits, and is adjusted annually.

³ *Khrapunskiy*, 2005 N.Y. Misc. LEXIS 1970, at ***10.

⁴ N.Y. CONST. art. XVII, § 1. This section provides: "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine."

⁵ U.S. CONST. amend. XIV, § 1. This section provides in pertinent part that no state shall "deprive any person of life, liberty or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

⁶ N.Y. CONST. art. I, § 11, which states that no "person shall, because of race, color, creed or religion, be subjected to any discrimination in his 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."

Constitutions.⁸ In addition, the court also held that the statute violated article 17, section 1 of the New York State Constitution.⁹

When Congress established Title XVI of the Social Security Act¹⁰ (SSI Act) in 1972, it “provided for a standard of need far lower than the standard of need set out, at that time, in New York’s programs for the needy aged, blind, and disabled.”¹¹ In 1974, in response to the SSI Act, the New York State Legislature enacted the Additional State Payments for Eligible Aged, Blind, and Disabled Persons program (ASP), as a mechanism designed to meet the needs of both SSI recipients and persons “whose income and resources, though above the standard of need for the [SSI] program, is not sufficient to meet those needs.”¹² Both recipients of federal SSI benefits and “persons whose income made them ineligible for SSI benefits” were eligible to receive ASP benefits sufficient to meet their state-determined income needs.¹³ In addition to being over sixty-five years of age, blind, or disabled, and lacking “income equal to or exceeding the standard of need set out in section 209,” or “resources equal to or greater than the maximum allowed for purposes of SSI eligibility,” a person needed to be “a resident of the state and . . . either a citizen of the United States or . . . an alien who has not been determined by an appropriate federal authority to be unlawfully residing in the United States” in order to qualify for ASP

⁷ *Khrapunskiy*, 2005 N.Y. Misc. LEXIS 1970, at ***10.

⁸ *Id.*, at ***21.

⁹ *Id.*

¹⁰ 42 U.S.C. § 1381 *et. seq.* (1972).

¹¹ *Khrapunskiy*, 2005 N.Y. Misc. LEXIS 1970, at ***3.

¹² *Id.*, at ***4 (quoting N.Y. SOC. SERV. LAW § 207 (McKinney 2005)).

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benefits.¹⁴

In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which significantly “limited the eligibility of certain categories of aliens to receive the benefits of certain federal programs, including SSI.”¹⁵ The 1997 Balanced Budget Reconciliation Act “eliminated the disqualification from eligibility of aliens who were lawfully residing in the United States on August 22, 1996, and of certain ‘qualified aliens’ and who were lawfully residing in the United States on August 22, 1996, and who later became disabled.”¹⁶ However, most ‘qualified aliens’ and all other immigrants remained ineligible for SSI benefits.¹⁷

The following year, the New York State Legislature enacted the Welfare Reform Act of 1997 (WRA), which was amended in 1998, in response to Congress’ enactment of PRWORA.¹⁸ The WRA stipulates that “an alien who is not ineligible for federal [SSI] benefits by reason of alien status shall, if otherwise eligible, be eligible to receive additional state payments for aged, blind or disabled persons under *section* [209] of this chapter.”¹⁹ Concurrently, section 209 “was amended to provide that only a person who ‘is a resident of the state and is either a citizen of the United States or is not an alien who is or would be ineligible for

¹³ *Id.*, at ***5.

¹⁴ *Id.*, at ***6 (quoting N.Y. SOC. SERV. LAW § 209 (McKinney 2005)).

¹⁵ *Id.*, at ***7.

¹⁶ *Khrapunskiy*, 2005 N.Y. Misc. LEXIS 1970, at ***7-8.

¹⁷ *Id.*

¹⁸ *Id.*, at ***8.

federal [SSI] benefits solely by reason of alien status' is eligible for ASP benefits."²⁰ The result of these enactments was that "certain aged, blind, and disabled residents of the State, *who are not eligible for SSI benefits solely because of their alien status*, do not receive benefits from the State sufficient for them to meet what the State has determined to be the standard of need of the aged, blind, and disabled."²¹

In the instant action, eighteen of the plaintiffs received SSI and ASP benefits "until such payments were stopped, because of those plaintiffs' immigration status."²² Two of the plaintiffs, disabled individuals, were never eligible for SSI or ASP solely because of their immigration status.²³ The plaintiffs challenged "the State's failure to provide them with benefits at the level that the State has determined to be appropriate, as a general matter, for the aged, blind, and the disabled" based solely on their alien status as violative of article 17, section 1 of the New York State Constitution.²⁴ This section states that "the aid, care and support of the needy are public concerns and shall be provided by the state . . . in such manner and by such means, as the legislature may from time to time determine."²⁵ The court agreed with the plaintiffs, and stated that this provision "imposes upon the State an affirmative duty to aid the needy . . . [and] unequivocally prevents the Legislature from simply refusing to

¹⁹ *Id.* (quoting N.Y. SOC. SERV. LAW § 122(1)(f) (McKinney 1997)).

²⁰ *Id.*, at ***9 (quoting N.Y. SOC. SERV. LAW § 209(1)(a)(iv) (McKinney 1997)).

²¹ *Khrapunskiy*, 2005 N.Y. Misc. LEXIS 1970, at ***9 (emphasis added).

²² *Id.*

²³ *Id.*, at ***9-10.

²⁴ *Id.*, at ***12-13.

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aid those whom it has classified as needy.”²⁶ The court rejected the defendant’s argument that it was relieved of this duty because the federal government “now has chosen to deny SSI benefits to a particular subgroup of those the State classifies as the needy aged, blind, and disabled,” stating that:

Defendant’s view would lead to the perverse result that the *SSL § 209 (2)* standard of need would be met for some persons whose income is too high for them to be eligible for SSI benefits, while aged, blind, and disabled people with lower incomes excluded from SSI solely because of their immigration status would be consigned to the far lower level of benefits available as public assistance.²⁷

The court thus ruled that the state’s “failure to provide assistance to plaintiffs and the class at the standard of need for the elderly, blind, and disabled, set out in *Social Services Law § 209 (2)* violates *Article XVII, § 1 of the Constitution of the State of New York.*”²⁸

In response to the plaintiffs’ equal protection claim, the defendant argued “that the right to equal protection is not violated where only a subgroup of aliens is denied a benefit that is available to other aliens.”²⁹ Relying on both state and federal case law, the court rejected this argument and declared that “the State’s exclusion of persons from a benefit that is available to persons similarly situated, except with respect to immigration status,” pursuant to section 209,

²⁵ N.Y. CONST. art. XVII, § 1.

²⁶ *Khrapunskiy*, 2005 N.Y. Misc. LEXIS 1970, at ***13-14 (quoting *Tucker v. Toia*, 371 N.E.2d 449, 458 (N.Y. 1977)).

²⁷ *Id.*, at ***15-16.

²⁸ *Id.*, at ***21.

²⁹ *Id.*, at ***17.

violated the plaintiffs' right to equal protection.³⁰

In *Graham v. Richardson*, the Supreme Court declared unconstitutional state laws denying welfare benefits to aliens based solely on their alien status.³¹ Arizona and Pennsylvania argued that they had a "special public interest" in preserving their limited resources for citizens, justifying their "restrictions on the eligibility of aliens for public assistance."³² The Court held that a strict scrutiny analysis should be applied to discrimination against aliens, stating that "classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny . . . Aliens as a class are a prime example of a 'discrete and insular minority' for whom heightened judicial solicitude is appropriate."³³ The Court found that the state laws at issue violated the equal protection clause, and that "a State's desire to preserve limited welfare benefits for its own citizens is inadequate" to justify the discrimination against aliens.³⁴ Moreover, the Court announced the rule that "a state statute that denies welfare benefits to resident aliens and one that denies them to aliens who have not resided in the United States for a specified number of years violate[s] [sic] the Equal Protection Clause."³⁵

In *Nyquist v. Mauclet*, the Supreme Court used strict scrutiny analysis to invalidate a New York law that limited financial aid for

³⁰ *Id.*

³¹ *Graham v. Richardson*, 403 U.S. 365, 367-68 (1971).

³² *Id.* at 372.

³³ *Id.* (citing *United States v. Carolene Products Co.*, 304 U.S. 144, 152-53 n.4 (1938)).

³⁴ *Id.* at 374.

³⁵ *Id.* at 376.

higher education to citizens, individuals who had applied for citizenship, and those who had declared an intent to apply as soon as they were eligible.³⁶ The plaintiffs included permanent resident aliens of the state who were denied state financial aid as a result of their decision not to apply for United States citizenship.³⁷ The Court determined that the statute at issue was discriminatory in nature, because it was “directed at aliens and . . . only aliens [were] harmed by it.”³⁸ The appellant, the Commissioner of Education of New York, argued that the statute’s bar against aliens was justified by the state’s interests in providing “an incentive for aliens to become naturalized” and in “the enhancement of the educational level of the electorate.”³⁹ The Court rejected these justifications, concluding that there “is no real unfairness in allowing resident aliens an equal right to participate in programs to which they contribute on an equal basis.”⁴⁰

In *Aliessa v. Novello*, a case strikingly similar to *Khrapunskiy v. Doar*, the New York Court of Appeals addressed a challenge to a state law that terminated state Medicaid benefits to most aliens.⁴¹ The plaintiffs were twelve lawful resident aliens suffering from potentially life-threatening illnesses who, “but for the exclusion under *Social Services Law* § 122, would allegedly qualify for

³⁶ *Nyquist v. Mauclet*, 432 U.S. 1, 3-4 (1977).

³⁷ *Id.* at 4-5.

³⁸ *Id.* at 9.

³⁹ *Id.* at 9-10.

⁴⁰ *Id.* at 12.

⁴¹ *Aliessa v. Novello*, 754 N.E.2d 1085, 1091-92 (N.Y. 2001).

Medicaid benefits funded solely by the State.”⁴² New York State “had long provided State Medicaid to needy recipients without distinguishing between legal aliens and citizens.”⁴³ Upon the enactment of PRWORA, the state amended its laws to terminate Medicaid for certain groups of aliens.⁴⁴ The plaintiffs challenged the exclusion as a violation of article XVIII, section 1 of the New York State Constitution, and under the Equal Protection Clauses of the federal and state constitutions.⁴⁵

The court in *Aliessa* began by addressing the article XVII, section 1 claim, interpreting it “as prohibiting the Legislature from refusing to aid those whom it has classified as needy.”⁴⁶ The court agreed with the state that this provision “affords the State wide discretion in defining who is needy and in setting benefit levels.”⁴⁷ Nonetheless, it concluded that “section 122 violates the letter and spirit of article XVII, § 1 by imposing on plaintiffs an overly burdensome eligibility condition having nothing to do with need, depriving them of an entire category of otherwise available basic necessity benefits.”⁴⁸

The *Aliessa* court then addressed the equal protection claims. The state argued “that section 122 implements Federal immigration policy [in response to PRWORA] and therefore must merely

⁴² *Id.* at 1088.

⁴³ *Id.* at 1090-91.

⁴⁴ *Id.* at 1091-92.

⁴⁵ *Id.* at 1092.

⁴⁶ *Aliessa*, 754 N.E.2d at 1092.

⁴⁷ *Id.* at 1093.

⁴⁸ *Id.*

withstand rational basis scrutiny.”⁴⁹ However, the court agreed with the plaintiffs that section 122 was subject to a strict scrutiny analysis since it created classifications based on alienage.⁵⁰ Because the state did not justify section 122 under a strict scrutiny standard by identifying “any ‘compelling governmental interest’ that section 122 promotes,”⁵¹ the court held that section 122 violated the Equal Protection Clauses of the United States and New York State Constitutions “insofar as it denies State Medicaid to otherwise eligible [legal aliens] . . . based on their status as aliens.”⁵²

When the federal government enacts legislation which distinguishes between aliens and citizens, such legislation will be subject to a rational basis review.⁵³ However, a state policy that distinguishes between aliens and citizens in the receipt of state funded benefits will receive strict judicial scrutiny and will be invalidated if the state does not have a compelling government interest justifying the distinction.⁵⁴ While the “Constitution does not prohibit Congress from distinguishing between aliens and citizens,”⁵⁵ a state policy involving the distribution of economic benefits is likely to be found to violate equal protection even “where only a subgroup

⁴⁹ *Id.* at 1094.

⁵⁰ *Id.*

⁵¹ *Aliessa*, 754 N.E.2d at 1095.

⁵² *Id.* at 1098-99.

⁵³ *Id.* at 1096-97.

⁵⁴ *Khrapunskiy*, 2005 N.Y. Misc. LEXIS 1970, at ***17.

of aliens is denied a benefit that is available to other aliens and to citizens.”⁵⁶

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⁵⁵ *Aliessa*, 754 N.E.2d at 1096.

⁵⁶ *Khrapunskiy*, 2005 N.Y. Misc. LEXIS 1970, at ***17.