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Aliessa v. Novello

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COURT OF APPEALS OF NEW YORK

Aliessa v. Novello[1]
(Decided June 5, 2001)

Plaintiffs, a group of permanent resident aliens in New York State, commenced a class action suit[2] alleging that they were denied state funded Medicaid benefits under Social Services Law section 122[3] and that such denial violated the Equal Protection Clause of both the United States[4] and the New York State[5] Constitutions as well as Article 17, Section 1 of the New York State Constitution.[6] The New York Supreme Court granted summary judgment for the plaintiffs, holding that Social Services Law section 122 violated the Equal Protection Clause of both the United States and the New York Constitutions.[7] In addition, the supreme court also held that the statute violated Article 17, Section 1 of the New York State Constitution.[8] The appellate division reversed the supreme court's decision.[9] On appeal to the New York Court of Appeals, the court held that Social Services Law section 122 improperly discriminated based on alien status and violated the Equal Protection Clause of both the federal and

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[1] 96 N.Y.2d 418, 754 N.E.2d 1085, 730 N.Y.S.2d 1 (2001).

[2] Aliessa v. Whalen, 181 Misc. 2d 334, 694 N.Y.S.2d 308 (Sup. Ct. N.Y. County 1999).

[3] N.Y. SOC. SERV. LAW § 122 (McKinney's 1998 & Supp. 2000).

[4] 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."

[5] N.Y. CONST. art. I, § 11. This section provides in pertinent part 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."

[6] N.Y. CONST. art. XVII, § 1. This section provides: " [T]he 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."

[7] *Aliessa*, 96 N.Y.2d at 422, 754 N.E.2d at 1088, 730 N.Y.S.2d at 4.

[8] N.Y. CONST. art. XVII, § 1.

[9] Aliessa v. Novello, 274 A.D.2d 347, 712 N.Y.S.2d 96 (1st Dep't 2000).

state constitutions as well as Article 17, Section 1 of the New York State Constitution.[10]

Pursuant to Social Services Law, section 122, New York State denied state funded Medicaid benefits to lawful aliens despite the fact that they would have been eligible for these benefits if not for the exclusion provided by the new law.[11] The twelve plaintiffs, all of whom were suffering from potentially life threatening illnesses, were permanently in the United States under color of law.[12] The plaintiffs filed a class action seeking a declaration that section 122 violated the Equal Protection Clause.[13] They alleged that, but for the statute, they would have been eligible for the Medicaid benefits that were completely funded by New York State, even if they were not eligible for federally funded Medicaid benefits.[14]

Shortly after the lower court granted the plaintiffs' motion for summary judgment, the appellate division decided *Alvarino v. Wing*,[15] a similar case involving a denial of food assistance benefits to resident aliens based on a state statute.[16] The appellate division held in *Alvarino* that since the state statute was enacted as a direct response to a federal statute, any challenge based on the Equal Protection Clause should be held to a standard of rational basis instead of strict judicial scrutiny.[17] *Alvarino* was relevant because Social Services Law section 122 was enacted by New York State in response to the Federal

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[10] *Aliessa*, 96 N.Y.2d at 436, 754 N.E.2d at 1099, 730 N.Y.S.2d at 15.

[11] *Id.*, *see also id.* at 427, 754 N.E.2d at 1092, 730 N.Y.S.2d at 8.

[12] *Id.* Residing in the United States under color law is distinguishable from illegal aliens who are subject to deportation. The Immigration and Naturalization Services ("INS") is aware of their alien status yet does not intend to deport them, while "lawfully admitted" refers to those aliens who have been granted a green card. *Id.* n.2.

[13] *Aliessa,* 96 N.Y.2d at 422, 754 N.E.2d at 1089, 730 N.Y.S.2d at 5.

[14] *Id.*

[15] 261 A.D.2d 255, 690 N.Y.S.2d 262 (1st Dep't 1999).

[16] Alvarino v. Wing, 261 A.D.2d 255, 256, 690 N.Y.S.2d 262, 263 (1st Dep't 1999) (holding that Social Service Law § 95 was enacted in direct response to a federal bill and that for equal protection purposes, the State law should be examined under a rational basis standard).

[17] *Id.*

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter "PRWORA").[18] As Social Services Law section 122 was enacted pursuant to congressional legislation, New York argued that the statute should receive deferential treatment.[19] PRWORA[20] provides that federally funded benefits are no longer available to aliens residing in the United States under color of law, and Social Services Law section 122 extends that federal legislation and applies it to state funded benefits.[21] The supreme court responded to the *Alvarino* decision by vacating that portion of its decision based on equal protection. The court found that as in the *Alvarino* case, Social Services Law section 122 was to be reviewed under rational basis scrutiny and, therefore, did not violate the equal protection guarantees of the Fourteenth Amendment of the United States Constitution or Article 1, Section 11 of the New York Constitution.[22]

The Supreme Court of New York, while vacating its decision related to equal protection, retained its holding that Social Service Law section 122 violated Article 17, Section 1 of the New York Constitution.[23] Article 17, Section 1 of the New York Constitution mandates that the state provide assistance to needy families.[24] The Supreme Court of New York held that Social Services Law section 122 did not meet that mandate.[25]

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[18] *Aliessa*, 96 N.Y.2d at 424, 754 N.E.2d at 1089, 730 N.Y.S.2d at 6.

[19] *Id.* at 423, 754 N.E.2d at 1089, 730 N.Y.S.2d at 5.

[20] 8 U.S.C. § 1601 (1994 & Supp. 2001). Federal Responsibility and Work Opportunity Reconciliation Act of 1996 defines a "qualified alien" as an alien who is lawfully admitted for permanent residence; an alien who is granted asylum; a refugee who has been admitted; an alien who is paroled into the United States for a period of at least one year; an alien whose deportation is being withheld; an alien who is granted conditional entry; an alien who has been subjected to extreme cruelty.

[21] *Aliessa*, 96 N.Y.2d at 424, 754 N.E.2d at 1089, 730 N.Y.S.2d at 6. Based on the PRWORA standards which denied federal benefits to certain groups of aliens, the state of New York amended its criteria and denied benefits to aliens residing in New York under color of law. *Id.*

[22] *Id.* at 423, 754 N.E.2d at 1089, 730 N.Y.S.2d at 6.

[23] *Id.*

[24] *See supra* note 6.

[25] *Aliessa*, 92 N.Y.2d at 422, 754 N.E.2d at 1089, 730 N.Y.S.2d at 5.

On appeal, the appellate division reaffirmed that Social Services Law section 122 did not violate the Equal Protection Clause of the New York State Constitution.[26] Upon review, however, the Court of Appeals reversed that portion of the decision relating to the equal protection claim and held that legal aliens living in the United States under color of law or as lawfully admitted permanent residents could not be denied state funded Medicaid benefits based on their status as aliens.[27] The court found that the proper standard of review was strict scrutiny, not rational basis.[28]

PRWORA was enacted by Congress as a reform initiative for welfare programs.[29] Title four of the PRWORA specifically relates to aliens, and claims its desired purpose is to promote self sufficiency and to discourage immigration for the purpose of receiving public benefits, including federally funded Medicaid.[30] Title IV distinguishes between aliens that are lawfully admitted permanent residents and aliens residing under color of law and, on that basis, restricts eligibility for federally funded public assistance.[31] Only immigrants lawfully admitted as permanent residents can receive assistance.[32] PRWORA also authorizes, but does not demand, that the states follow this policy for their own state funded programs.[33] New York State did not distinguish between legal aliens and state citizens until PRWORA and Social Services Law section 122 were enacted.[34]

Plaintiffs argued that as aliens residing as permanent residents under color of law, they were entitled to equal protection of the laws and that a state law that discriminated against them should be analyzed under strict judicial scrutiny.[35]

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[26] *Id.* at 423, 754 N.E.2d at 1089, 730 N.Y.S.2d at 5.
[27] *Id.* at 436, 754 N.E.2d at 1099, 730 N.Y.S.2d at 15.
[28] *Id.*
[29] *Id.* at 424, 754 N.E.2d at 1090, 730 N.Y.S.2d at 6.
[30] *Aliessa,* 92 N.Y.2d at 424, 754 N.E.2d at 1090, 730 N.Y.S.2d at 6.
[31] *Id.* at 422, 754 N.E.2d at 1089, 730 N.Y.S.2d at 5.
[32] *Id.* at 424, 754 N.E.2d at 1090, 730 N.Y.S.2d at 6.
[33] *Id.* at 426, 754 N.E.2d at 1091, 730 N.Y.S.2d at 7.
[34] *Id.* at 424, 754 N.E.2d at 1089, 730 N.Y.S.2d at 6.
[35] *Aliessa,* 92 N.Y.2d at 428, 754 N.E.2d at 1092, 730 N.Y.S.2d at 9.

By contrast, the State argued that Social Services Law section 122 implemented a federal immigration policy namely, PRWORA, and, therefore, was entitled to receive a deferential rational basis analysis.[36]

In reaching a decision on the issue of equal protection, the New York Court of Appeals looked to the Fourteenth Amendment of the United States Constitution,[37] as well as case law.[38] The Court of Appeals first turned to *Yick Wo v. Hopkins*[39] and found that legal aliens are "persons" entitled to equal protection of the laws.[40] In *Yick Wo*, Chinese immigrants who were legal residents were treated differently than state citizens under California State laws regulating laundries.[41] The Supreme Court found that the laws were enforced in a way that had a disparate, discriminatory impact on immigrants and held that aliens are persons entitled to equal protection of the laws.[42]

The Court of Appeals of New York, in deciding the issue of the proper level of scrutiny, relied on several cases, which established a general rule that state laws creating alienage classification for economic benefits and activities should receive strict scrutiny.[43] Usually the states are allowed broad discretion when creating classifications for economic or social policy programs; as long as there is a rational basis for the policy, it will

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[36] *Id.* at 432, 754 N.E.2d at 1095, 730 N.Y.S.2d at 11.

[37] U.S. CONST. amend XIV, § 1.

[38] *See* Plyler v. Doe, 457 U.S. 202 (1982); Graham v. Richardson, 403 U.S. 365 (1971).

[39] 118 U.S. 356 (1886).

[40] *Yick Wo*, 118 U.S. at 368.

[41] *Id.* at 359 (finding that Chinese immigrants were arrested for violating regulations related to buildings used for laundries while citizens were not arrested for violating the same regulations).

[42] *Id.* at 369. The California State law prohibited the operation of laundries in wooden buildings. Of the 320 laundries in the city, 240 were owned by Chinese immigrants. In the process of enforcing the law, only the Chinese immigrants were subjected to arrest and fines. This arbitrary enforcement had a disparate impact on the immigrants legally residing within the state. The Court held that these immigrants were entitled to equal protection of the laws.

[43] *Aliessa*, 96 N.Y.2d at 430, 754 N.E.2d at 1094, 730 N.Y.S.2d at 10.

be upheld under this standard.[44] However, if a discrete and insular minority is adversely affected by the state classification, a strict scrutiny standard of review is triggered.[45] The Court of Appeals relied on *Graham v. Richardson*,[46] a case where a lawfully admitted resident alien was denied disability benefits based on the states imposition of long term residency requirements.[47] In finding that the regulation violated the Equal Protection Clause of the United States Constitution, the Supreme Court held that aliens were a "prime example of a discrete and insular minority . . . for when such heightened judicial scrutiny is appropriate."[48]

Exceptions exist to the rule of using strict scrutiny for reviewing state policies that classify people based on alienage.[49] In the United States Supreme Court case of *Plyler v. Doe*,[50] intermediate scrutiny was applied to a state law that denied public school education for alien children.[51] The Court held that for a discriminatory policy to withstand intermediate scrutiny, the state would need to demonstrate that the "classification is reasonably adopted to further a substantial goal of the state."[52] However, in *Aliessa*, the State did not deny that Social Services Law section 122 was unable to pass strict scrutiny, or even intermediate scrutiny, rather, it argued that a heightened judicial scrutiny standard did not apply because the state statute was enacted to implement a federal immigration policy and, as such, should be scrutinized using the lower deferential standard of rational basis.[53]

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[44] *Id.* at 432, 754 N.E.2d at 1095, 730 N.Y.S.2d at 11; *see also* Dandridge v. Williams, 397 U.S. 471, 485 (1970); U.S. v. Carolene Products, 304 U.S. 144, 152 (1938).

[45] *Aliessa*, at 432, 754 N.E.2d at 1095, 730 N.Y.S.2d at 11.

[46] 403 U.S. 365 (1971).

[47] *Id.* at 367.

[48] *Id.* at 372.

[49] *See* Plyler v. Doe, 457 U.S. 202, 224 (1982) (applying intermediate scrutiny to a state statute denying education to alien children).

[50] *Id.*

[51] *Id.* at 206.

[52] *Id.* at 224.

[53] *Aliessa*, 96 N.Y.2d at 432, 754 N.E.2d at 1095, 730 N.Y.S.2d at 12.

The United States Constitution grants Congress the power to enact statutes that regulate and control issues relating to immigration and aliens.[54] States, on the other hand, are not granted that power.[55] Additionally, Congress is not prohibited from making a distinction between citizens and aliens.[56] In *Matthews v. Diaz*,[57] the Court held that it was valid for the federal government to deny federally funded Medicaid benefits to legal aliens because the United States Constitution delegates to the federal government the responsibility for regulating immigration, entitling such regulation to be granted great deference.[58] If welfare benefits are federally funded or even funded by both state and federal joint programs, then states can be directed by the federal government to meet national immigration objectives.[59] In such a case, the state legislation would come under the umbrella of the federal government powers and would be treated with the same deference given to federal legislation related to immigration, naturalization and aliens.[60] That deference allows for rational basis analysis for an equal protection challenge.[61]

While Congress has the power to distinguish between citizens and aliens and can regulate policy related to immigrants, the states are not allowed to establish and regulate a program discriminating against legal aliens absent congressional permission unless the classification can withstand strict judicial scrutiny.[62] In *Aliessa*, New York claimed that pursuant to PRWORA, the state was authorized to enact Social Services Law section 122, rendering aliens residing under color of law

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[54] U. S. CONST, art. I, § 8. cl. 4. This section of the Constitution empowers Congress to "establish a uniform Rule of Naturalization." *Plyler*, 457 U.S. at 225. It also grants Congress the power to exclude aliens or treat them differently but denies this right to states. *Id.*

[55] *Plyler*, 457 U.S. at 219.

[56] Matthews v. Diaz, 426 U.S. 67, 78 (1976).

[57] 426 U.S. 67 (1976).

[58] *Id.* at 80.

[59] *Id.*

[60] *Aliessa*, 96 N.Y.2d at 434, 754 N.E.2d at 1097, 730 N.Y.S.2d at 13.

[61] *Id.* at 432, 754 N.E.;2d at 1095, 730 N.Y.S.2d at 11.

[62] *Id.* at 433, 754 N.E.2d at 1096, 730 N.Y.S.2d at 12; *see also Plyler*, 457 U.S. at 225-26.

ineligible for state welfare assistance.[63] In opposition, plaintiffs claimed that Congress could not use PRWORA to grant New York State the power to decide for itself to what extent it can discriminate against legal aliens in determining eligibility for state funded Medicaid.[64] In other words, while Congress has the power to set standards that may classify and discriminate in the area of immigration, states are prohibited from doing so, and Congress can not authorize the states to violate the Equal Protection Clause in the process of regulating their own state programs.[65] Additionally, congressional legislation must be uniform, which limits the discretion of a state in regulating a federal program.[66] A standard of uniformity would have provided specific direction as to the treatment of aliens by the states under PRWORA.[67]

In *Aliessa*, the Court of Appeals held that Title IV of PRWORA did not establish any uniform rule for the states to follow in terms of eligibility of aliens for state funded Medicaid.[68] The court found that absent a uniform rule, PRWORA allows states too much discretion and results in wide variations among the states in terms of eligibility standards.[69] By not providing these standards, PRWORA only relates to federally funded Medicaid and, therefore, cannot be extended by the states to regulate their own programs.[70] Social Services Law section 122 only involves state funded Medicaid and is outside the scope of protection as a law enacted in response to a federal immigration policy.[71] Evaluation of section 122, on equal protection issues, requires strict judicial scrutiny because it is a state law that

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[63] *Aliessa*, 96 N.Y.2d at 434, 754 N.E.2d at 1097, 730 N.Y.S.2d at 13.

[64] *Id.*

[65] *Plyler*, 457 U.S. at 219.

[66] *Aliessa*, 96 N.Y.2d at 434, 754 N.E.2d at 1097, 730 N.Y.S.2d at 13. *See also* U. S. CONST. art. I, § 8 cl. 14; *Plyler*, 457 U. S. at 219; *Matthews*, 426 U.S. at 85.

[67] *Aliessa*, 96 N.Y.2d at 434, 754 N.E.2d at 1097, 730 N.Y.S.2d at 13.

[68] *Id.* at 436, 754 N.E.2d at 1098, 730 N.Y.S.2d at 14.

[69] *Id.* at 435, 754 N.E.2d at 1098, 730 N.Y.S.2d at 14.

[70] *Id.*

[71] *Id.* at 433, 754 N.E.2d at 1096, 730 N.Y.S.2d at 13.

discriminates against legal aliens.[72] Under strict judicial scrutiny, the statute could not stand because it violated the Equal Protection Clause of both constitutions as it acted to deny state funded Medicaid benefits to aliens based on their alien status.[73] The state was unable to show that the statute was enacted based on a compelling state interest using the least restrictive means available and admitted that Social Services Law section 122 could not meet the requirements to withstand strict judicial scrutiny.[74]

Because Congress was granted power to regulate immigration, a federal program that is related to immigration, naturalization, or aliens will receive a rational basis scrutiny standard if there is an alleged equal protection violation, which suggests that the federal statute will most likely be upheld.[75] By contrast, any state policy that is found to relate to immigration, naturalization, or aliens will receive strict judicial scrutiny and is likely to be struck down should there be a claim based on equal protection because states have not been granted the power to regulate this area.[76] Absent federal authority and uniform standards, the states cannot enact immigration policy or extend federal legislation to state programs so as to discriminate against legal aliens.[77]

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[72] *Aliessa*, 96 N.Y.2d at 436, 754 N.E.2d at 1098, 730 N.Y.S.2d at 15.
[73] *Id.* at 436, 754 N.E.2d at 1098, 730 N.Y.S.2d at 15.
[74] *Id.*
[75] *Id.* at 434, 754 N.E.2d at 1097, 730 N.Y.S.2d at 13.
[76] *Plyler*, 457 U.S. at 219.
[77] *Id.*

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