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NEW JERSEY v. UNITED STATES
91 F.3d 463 (3d 1996)
United States Court of Appeals for the Third Circuit

I. FACTS

The State of New Jersey brought an action against the United States seeking reimbursement for expenses incurred in the incarceration and education of illegal aliens within the state. New Jersey alleged that because "the federal government's failure to control its international borders and [to] implement and abide by its laws, the state of New Jersey is improperly forced to bear the financial and administrative costs of imprisonment of illegal aliens . . . and the costs of education of illegal aliens."¹ New Jersey spent \$50.5 million on incarcerating and \$162 million on educating illegal aliens in fiscal year 1994.² It sought a declaratory judgment from the court recognizing its right to have its costs refunded and an injunction requiring the United States Treasury to disburse these funds to the state. The eight count complaint was grounded primarily in the Invasion Clause and the Guarantee Clause of Article IV § 8 of the United States Constitution³; the Naturalization Clause of Article I, § 8⁴; the Tenth Amendment⁵; and the Takings Clause of the Fifth Amendment.⁶

In addition, New Jersey based its complaint on sections of the Immigration Reform and Control Act of 1986,⁷ which provides for the Attorney General with the authority to collect penalties and expenses for the cost of the imprisoning illegal aliens convicted of state felonies. It contended that parts of Congress' fiscal year 1994 lump-sum appropriation of one billion dollars to the Attorney General for INS administration and enforcement should have been allocated to New Jersey under the Act.⁸ New Jersey contended that money collected by the Attorney General pursuant to her authority under 8

U.S.C. § 1365(a)⁹ should also have been used to reimburse the state.¹⁰

New Jersey was the sixth state with a large number of undocumented aliens to bring such an action. Texas, New York, Arizona, California and Florida had sued prior to New Jersey.¹¹ Like its predecessors', New Jersey's case was dismissed under Fed. R. Civ. P. 12(b)(6) for failing to state a claim upon which relief could be granted.¹² The District Court for the District of New Jersey found that New Jersey's constitutional claims were non-justiciable political questions and that its statutory claims were not subject to judicial review under the Administrative Procedure Act.¹³ The state appealed to the United States Court of Appeals for the Third Circuit.

II. HOLDING

The Third Circuit held that the indirect costs imposed on some states from congressional actions did not amount to unconstitutional infringement on state sovereignty.¹⁴ The Naturalization Clause could not be construed to impose an affirmative duty on the federal government to protect states from harm caused by illegal aliens.¹⁵ The federal government's failure to stem the tide of illegal immigration did not interfere with New Jersey enough to be considered a "taking" of state resources; nor was it a violation of the federal government's constitutional obligation to protect each of the states from invasion. Furthermore, Congress had not commanded New Jersey to incarcerate or to educate illegal aliens within its borders. Hence, New Jersey did not have a claim under the Tenth Amendment.¹⁶ The court also recognized that all the constitutional claims

¹ *New Jersey v. United States*, 91 F.3d 463, 465 (3d Cir. 1996).

² *New Jersey*, 91 F.3d at 465.

³ U.S. Const. art. I, § 8.

⁴ U.S. Const. art. I, § 8.

⁵ U.S. Const. art. X.

⁶ U.S. Const. art. V.

⁷ 8 U.S.C. § 1365(a) (1994). The Act states that, "subject to the amounts provided in advance in appropriation acts, the Attorney General shall reimburse a State for the costs incurred by the State for the imprisonment of any illegal alien or Cuban national who is convicted of a felony

by such State." *Id.*

⁸ *New Jersey*, 91 F.3d at 466.

⁹ 8 U.S.C. § 1330 (1994) authorizes the Attorney General to collect fines from people violating immigration laws.

¹⁰ *New Jersey*, 91 F.3d at 470.

¹¹ *Id.* at 466.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 467.

¹⁵ *Id.*

¹⁶ *Id.*

presented non-justiciable political questions. Particularly, the state's claim for reimbursement of immigration-related expenses under the Immigration Reform Control Act was a non-justiciable political question.

III. ANALYSIS/APPLICATION

Five of the seven states with the largest numbers of illegal immigrants sued the United States before New Jersey. New Jersey's arguments were similar to Florida's which the Eleventh Circuit rejected in *Chiles v. United States*.¹⁷ As the first state to bring such a cause of action, Florida claimed that it should be reimbursed for providing public benefits to illegal aliens within its borders. It argued that the disproportionately large number of immigrants arriving on its shores created an unfair burden on its resources.¹⁸ Florida claimed its only option was to seek relief alternate to an injunction forcing the federal government to reimburse the state for services provided until the government could properly enforce immigration laws.¹⁹ The United States argued that the case presented the non-justiciable political question—a policy dispute over the proper allocation of federal funds.²⁰ The district court dismissed Florida's claims because it would have had to determine how the federal government distributed funds and enforced its immigration policy.²¹ These issues were political questions on which the court could not rule. The district court did acknowledge Florida's difficulties: if the state did not provide medical and educational services to illegal aliens, or incarceration for illegal acts, the impact on the state could be disastrous. If Florida did pay, it would face financial ruin.²²

With the results of the Florida case obviously in mind, the state of New Jersey set about crafting arguments and claims which would not be recognized immediately as non-justiciable. Unlike Florida's focus on statutory provisions, New Jersey focused on the United States Constitution. The state sought to have the court declare the federal government's failure to act was unconstitutional.

The Tenth Amendment reserves to the states those "powers not delegated to the United States by the Constitution, nor prohibited by it to the States respectively or to the people."²³ Although the federal government can encourage states to promulgate certain programs by conditioning the receipt of federal funds on enactment, it cannot command the states to act according to its wishes.²⁴ New Jersey argued that the federal government had, in fact, "commandeered the legislative processes of the State by directly compelling [it] to enact and enforce a federal . . . program."²⁵ In New Jersey's view, the federal government had "forced the taxpayers of the State of New Jersey to absorb the costs of incarcerating and educating illegal aliens...[and] ha[d] usurped the taxpayers of the State of New Jersey of their rights, under the Tenth Amendment, to determine the manner in which their tax funds and state resources are expended."²⁶

The Third Circuit Court of Appeals rejected all of New Jersey's claims. First, the court dismissed the state's statutory claims, based on 8 U.S.C §§ 1330 and 1365(a), because they were not subject to review under the Administrative Procedure Act (APA).²⁷ The court then addressed the state's constitutional arguments. The court found that Congress had not issued a directive to the state which commanded it to incarcerate illegal aliens.²⁸ On the contrary, the state had itself decided to prosecute criminals for violations of the its criminal code.²⁹ Along the same lines, the education of illegal aliens did not derive from a Congressional order. Rather, it came from the Constitution as construed by the Supreme Court in *Plyler v. Doe*.³⁰ In *Plyler*, the Court held that a Texas statute denying public education to undocumented alien children violated the Equal Protection Clause of the Fourteenth Amendment because the state did not have a "compelling interest" in excluding them.³¹ *Plyler* undermined New Jersey's position that it should be reimbursed for educating illegal aliens; for it was the Fourteenth Amendment, not a law passed by the federal gov-

¹⁷ *Chiles v. United States*, 874 F. Supp. 1334 (S.D. Fla. 1994), *aff'd*, 69 F.3d 1094 (11th Cir. 1995), *cert. denied*, 116 S. Ct. 1674 (1996).

¹⁸ *Chiles*, 874 F. Supp. at 1335.

¹⁹ 874 F. Supp. at 1335.

²⁰ *Id.* at 1338.

²¹ *Id.* at 1344.

²² *Id.*

²³ U.S. Const. amend. X.

²⁴ *New York v. United States*, 505 U.S. 144, 167 (1992).

²⁵ *New York*, 505 U.S. at 161 (quoting *Hodel v. Virginia Surface Mining & Reclamation Assn.*, 452 U.S. 264, 288 (1981)).

²⁶ *New Jersey*, 91 F.3d at 466.

²⁷ *New Jersey*, 91 F.3d at 470.

²⁸ 91 F.3d at 467.

²⁹ *Id.*

³⁰ *Plyler v. Doe*, 457 U.S. 202 (1986).

³¹ *Plyler*, 457 U.S. at 218.

ernment, which required New Jersey to educate illegal aliens.

The court also considered New Jersey's Tenth Amendment claim. New Jersey asserted that its expenses were the result of the federal government's failure to enforce its own immigration laws.³² The state claimed that because of this congressional and executive failure to enforce these laws, a large number of illegal aliens entered the United States.³³ This failure to act violated the Tenth Amendment because the state was forced to provide financial support for illegal aliens contrary to the desires of the citizens of New Jersey.³⁴ The Third Circuit however, refused to interpret the Tenth Amendment as putting an affirmative duty on the federal government to protect the interests of individual states.³⁵ Its ruling followed the Second Circuit's holding in *Padavan v. United States*,³⁶ in which New York's attempt to recover funds from the federal government for the state educating and incarcerating illegal aliens was unsuccessful. Only a few months before the decision in *New Jersey v. United States*, the Second Circuit found that the Tenth Amendment did not permit states to avoid constitutional requirements.³⁷

New Jersey also asked the court to interpret the Naturalization Clause of Article I, §8 of the United States Constitution as conferring an affirmative duty upon the federal government to spread the state's burden of providing for illegal aliens across the states.³⁸ The state reasoned that it was powerless to resolve economic problems in New Jersey because immigration was the exclusive province of the federal government.³⁹ The circuit court, however, refused to force the federal government under the Naturalization Clause to come to New Jersey's aid.⁴⁰

Furthermore, New Jersey argued that the federal government's inaction forced the state and its taxpayers to expend revenue and amounted to a taking without compensation in violation of the Takings Clause of the Fifth Amendment.⁴¹ In *Penn Central Transp. Co. v. New York City*⁴², the Supreme Court identified several factors in determining

whether the government has effected a taking: the economic impact of a regulation, the actual physical interference with property, and any government action that takes property from a party in order to permit "uniquely public functions."⁴³ The circuit court rejected New Jersey's argument because it found that New Jersey's expenses resulting from federal inaction had not physically interfered with state property.⁴⁴

Another count in the complaint alleged that the United States' failure to prevent the illegal entry of aliens into New Jersey violated the federal government's obligation under Article IV, § 4, to "protect each of [the states] against Invasion."⁴⁵ New Jersey failed to convince the circuit court that the term "invasion" should be construed as anything other than a military invasion.⁴⁶ The Third Circuit cited the Second Circuit decision in *Padavan v. United States*⁴⁷ to support its refusal to find that New Jersey was being invaded by illegal aliens: "In order for a state to be afforded the protections of the Invasion Clause, it must be exposed to armed hostility from another political entity . . . New York State is not being subjected to the sort of hostility contemplated by the framers."⁴⁸ Even if all the illegal aliens in its prisons had been convicted of violent crimes, New Jersey was faced with the difficult task of establishing the existence of violent invasion that would conform to the traditional meaning under the Invasion Clause.

Finally, New Jersey argued that the federal government's failure to halt illegal immigration threatened its right to a "republican form of government"⁴⁹ under Article IV, section 4.⁵⁰ The great cost incurred by the state in dealing with the "invasion" of illegal aliens deprived New Jersey citizens of exercising their rights in the same manner as residents of states without illegal aliens.⁵¹ The court of appeals, however, could not imagine how New Jersey's expenses for illegal aliens could interfere with the daily functioning of state government.⁵²

³² *New Jersey*, 91 F.3d at 467.

³³ 91 F.3d at 466.

³⁴ *Id.*

³⁵ *Id.* at 467.

³⁶ *Padavan v. United States*, 82 F.3d 23, 29 (2d Cir. 1996).

³⁷ *Padavan*, 82 F.3d at 29.

³⁸ *New Jersey*, 91 F.3d at 467.

³⁹ 91 F.3d at 467.

⁴⁰ *Id.* at 467-68.

⁴¹ U.S. Const. amend. V.

⁴² *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).

⁴³ *Penn Central Transp. Co.*, 438 U.S. at 127.

⁴⁴ *New Jersey*, 91 F.3d at 468.

⁴⁵ U.S. Const. art. IV, § 4.

⁴⁶ *New Jersey*, 91 F.3d at 468.

⁴⁷ *Padavan v. United States*, 82 F.3d 23 (2d Cir. 1996).

⁴⁸ *Padavan*, 82 F.3d at 28.

⁴⁹ *New Jersey*, 91 F.3d at 468.

⁵⁰ U.S. Const. art. IV § 4.

⁵¹ 91 F.3d at 469.

⁵² *Id.* at 468-69.

After the Court of Appeals disposed of all New Jersey's arguments on constitutional grounds, it discussed the political question doctrine. In *Baker v. Carr*,⁵³ the Supreme Court discussed nonjusticiability and the political question doctrine.⁵⁴ An issue is declared nonjusticiable when a subject is inappropriate for judicial consideration.⁵⁵ Consideration of a claim is not totally foreclosed, but a court will inquire only to the point of deciding whether the duty asserted can be judicially identified, and whether protection for the right can be judicially determined.⁵⁶ The judiciary may not interfere with political questions that are best left to Congress or the Executive branch. It can confront only those problems for which a judicial remedy may be fashioned.⁵⁷ The dominant considerations in determining whether a political question exists is, first, the appropriateness under our system of attributing finality to the action of the political departments and, second, the lack of satisfactory criteria for a judicial consideration.⁵⁸ The United States Supreme Court identified six factors which signal the presence of a political question. Any one indicates the existence of a nonjusticiable issue: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving the problem; (3) the impossibility of resolving an issue without an initial policy determination which clearly involves nonjudicial discretion; (4) the impossibility of a court's undertaking independent resolution without expressing lack of the respect toward coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; and (6) the potential embarrassment from multifarious pronouncements by various departments attempting to resolve one question.⁵⁹ In *New Jersey v. United States*, the district court found three of these factors.⁶⁰ It found that the Constitution left immigration to the exclusive province of the federal government.⁶¹ It found no standards for deciding whether the government's

actions in managing immigration were improper.⁶² It also found that its undertaking an independent review of federal immigration policy would show a lack of the respect it owed to Congress and the Executive Branch.⁶³

The Third Circuit agreed with the Second Circuit's decision in *Padavan v. United States*⁶⁴ that the Naturalization Clause gave Congress the responsibility of managing immigration.⁶⁵ The Third Circuit also found that the Court had long recognized that "decisions [such as immigration] are frequently of a character more appropriate to either the Legislature or the Executive than to the judiciary."⁶⁶ The court found that New Jersey's claims about immigration would require the judiciary to question and evaluate how the executive branch implemented immigration policies.⁶⁷ Such decisions, the court found, were best left to the political branches of government.⁶⁸ In order to avoid a potential separation of powers problem, the Third Circuit refused to infringe upon congressional and executive duties.⁶⁹

IV. CONCLUSION

The Third Circuit correctly ruled that the Constitution leaves the federal government's decisions about its immigration policy to Congress and the Executive Branch. Courts cannot and should not fashion a remedy for a matter out of the judicial sphere. Had the Third Circuit decided in New Jersey's favor, each state would be able to call every federal mandate or federal failure to act into question as a violation of its Tenth Amendment rights. If a state could recover funds from the federal government anytime it perceived a threat to any economic interest, it would drastically limit the government's ability to implement or enforce programs. At the same time, the nation must find a way to deal with the underlying problem of nearly unchecked illegal immigration into a few financially overburdened states. When five of the most populated states in the country feel they have no recourse but to sue

⁵³ *Baker v. Carr*, 369 U.S. 186 (1962).

⁵⁴ *Baker*, 369 U.S. at 209.

⁵⁵ 369 U.S. at 198.

⁵⁶ *Id.* at 198.

⁵⁷ *Id.* at 211.

⁵⁸ *Id.*

⁵⁹ *Id.* at 217.

⁶⁰ *New Jersey*, 91 F.3d at 469-70.

⁶¹ 91 F.3d at 469.

⁶² *Id.* at 470.

⁶³ *Id.*

⁶⁴ *Padavan v. United States*, 82 F.3d 23 (2d Cir. 1996).

⁶⁵ *New Jersey*, 91 F.3d at 469, citing *Padavan*, 82 F.3d at 27.

⁶⁶ *Mathews v. Diaz*, 426 U.S. 67, 81 (1976).

⁶⁷ *New Jersey v. United States*, 91 F.3d 463, 470 (3d Cir. 1996).

⁶⁸ *New Jersey*, 91 F.3d at 470.

⁶⁹ *Id.* at 470.

the federal government, the depths of the economic and social burdens the states believe the illegal immigrants cause becomes clear. *New Jersey v. United States* indicates that states have no judicial remedy but that they may be able to persuade Congress that it is only fair to relieve them from their disproportionate burden.

Summary and Analysis Prepared by:

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