



SINK OR SWIM TOGETHER: STATES HAVE NO LEGAL BASIS TO REFUSE SYRIAN REFUGEES

Posted on November 23, 2015 by Cyrus Mehta

Since the Paris attacks, [31 states have objected to Syrian refugees](#) being resettled within their boundaries. This is so even after these refugees have been carefully selected after demonstrating a well founded fear of persecution, and have undergone a security vetting procedure that takes almost two years.

The Supreme Court held just over a century ago in [Truax v. Raich](#) that a state could not pass a law that deprived employers from hiring only a certain percentage of non-citizens in their work force. *Truax v. Raich* stands for the proposition that once a non-citizen has been admitted under federal law, this individual has a right to live anywhere in the United States, and to also enjoy equal protection under law. Thus, the Arizona law that would result in the criminal prosecution of an employer who hired foreign nationals over the percentage limit was found unconstitutional. *Truax v. Raich* further upheld the doctrine of federal preemption of state laws that conflicted with the ability of the federal government to admit non-citizens, and which also conflicted with the Fourteenth Amendment that guaranteed foreign nationals within the jurisdiction of the United States equal protection of the laws.

In [Edwards v. California](#), a case not involving a foreign national, the Supreme Court held invalid a California statute making it a misdemeanor for anyone knowingly to bring or assist in bringing into the State a nonresident indigent person. This case involved a US citizen and resident of California who traveled to Texas with the intention of bringing back to California his wife's brother, who was also a US citizen and an indigent person. This person was charged under the California statute that the Supreme Court found unconstitutional, and which cited the famous words of Justice Cardozo from a [prior case](#):

“The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together, and that, in the long run, prosperity and salvation are in union, and not division.”

Thus, under both *Truax v. Raich* and *Edwards v. California*, states cannot refuse refugees who have been lawfully admitted into the United States. Refugees, and the programs that assist them, can still defy a state’s refusal to welcome them, although, unfortunately, a state is not obligated to cooperate with the Office of Refugee Resettlement assistance programs and other private charities. They don’t have to help administer the refugee program if they’re determined not to, in the same way that states can refuse to have their employees enforce federal gun control laws (as in [Printz v. United States](#)) or federal marijuana laws (as in Colorado at the moment) even though they cannot actually bar refugees from entering their states.

This makes it all the more important that the Supreme Court overturns the Fifth Circuit decision in [Texas v. United States](#), which upheld Texas’s standing to sue the federal government over its implementation of deferred action programs. Texas [dubiously](#) relied on [Massachusetts v. EPA](#) for claiming standing by analogizing greenhouse gas pollutants that Massachusetts would be harmed by due to EPA non-action with deferred action recipients who would request driver’s licenses and thus make it more financially burdensome for Texas. Just like Texas claimed that it would be injured due to additional expenses it would incur in granting licenses to non-citizens granted deferred action, a state may also sue the federal government for being harmed for resettling refugees within its boundaries due to security reasons. Whether the state can succeed is a different matter, especially since there are strong precedents against it by way of *Truax v. Raich* and *Edwards v. California*, but a state can still try. It may raise a novel theory that these two precedents involved economic issues, while a state’s ability to protect its citizens from terrorist attacks is distinguishable from economic issues. The government in its recent [petition for certiorari](#) correctly states that if the Fifth Circuit majority decision prevailed “Texas could claim standing to sue the government for making an individual decision to grant asylum and would clearly have standing to sue the government any time it adopted immigration policies providing relief to a substantial number of aliens in Texas in any of these categories.” States should not get standing in another law suit against the federal government on another

manufactured theory of harm if refugees still settle within their boundaries in defiance.

In addition to the states refusing to accept refugees, the House on November 20, 2015 overwhelming passed [HR 4038](#) 289-137 (with 47 Democrats voting in favor) that would already make an already arduous vetting process even more difficult. It would require both the director of the FBI and of Homeland Security to personally certify each person being admitted has been fully vetted and they're confident they're not going to be terrorists. This would in effect negate the ability of the United States to admit any refugees from Syria. Both the refusal by more than half of the states and the House bill go against the long held notion of America being a nation of immigrants as well as the shining beacon, as represented by the Statue of Liberty, for the world's oppressed. Syrian refugees are some of the world's most vulnerable people, and taking only 10,000 refugees who have been so carefully vetted, is already a small drop in the ocean in comparison to Germany admitting over 800,000 Syrian refugees, and France still accepting 30,000 refugees even after the horrific attacks. America should be doing more, and ought not be overcome by political hysteria after the attacks, which were carried out by people of French and Belgian nationality. We fortunately have strong Supreme Court precedents that render the refusal by states to take in Syrian refugees legally dubious, and a strong balances in our political system (the Senate still have to vote and the President has veto power), that may ultimately block the passage of the House bill. Let's keep fingers crosses in favor of upholding long cherished American values.