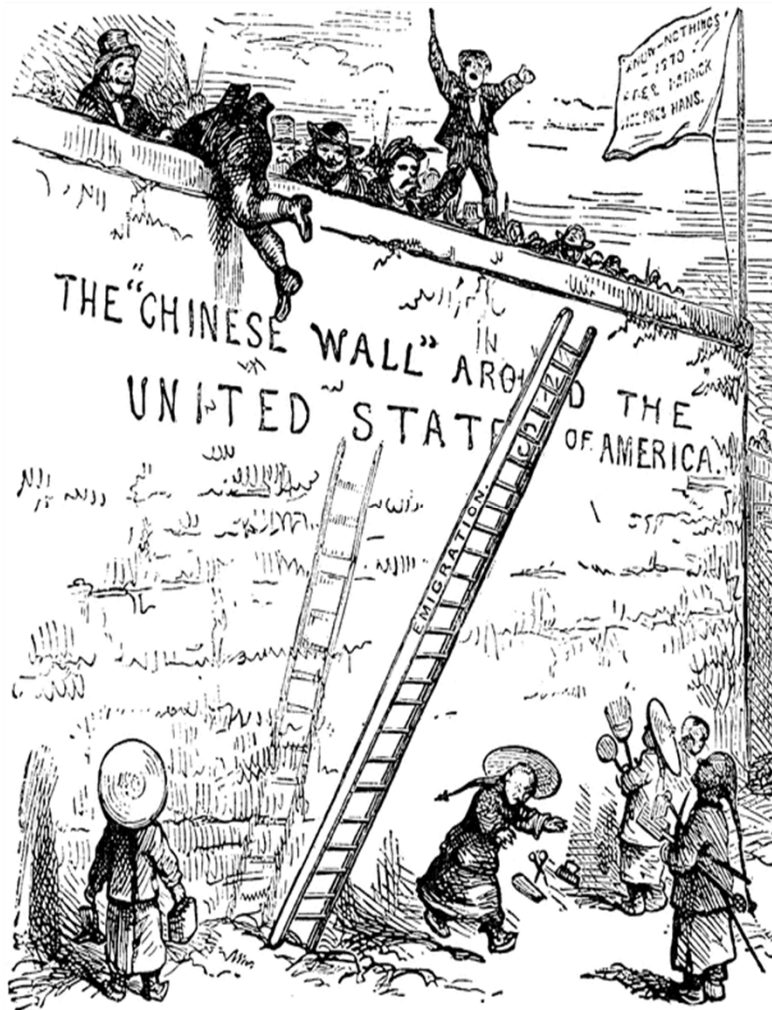


Consular Nonreviewability & the Limits of Plenary Power

Magali Suárez Candler
Christine Lockhart Poarch

The Birth of the Doctrine of Plenary Power



July 23, 1892

CHINESE?

NO! NO! NO!

Come to 10th and A Streets at 7:30
Monday evening and express your
opinion on the Chinese question.

SHALL WE HAVE

CHINESE

NO! NO! NO!

Image courtesy of the
Washington State Historical Society, Tacoma

Plenary Power in Summary

Knauff v. Shaughnessy (1950):

“[w]hatever the procedure authorized by Congress is, *it is due process* so far as an alien denied entry is concerned.”

Plenary Power in Summary

Kleindienst v. Mandel (1972):

held that the government need only state a “facially legitimate and bona fide” basis for the visa denial.

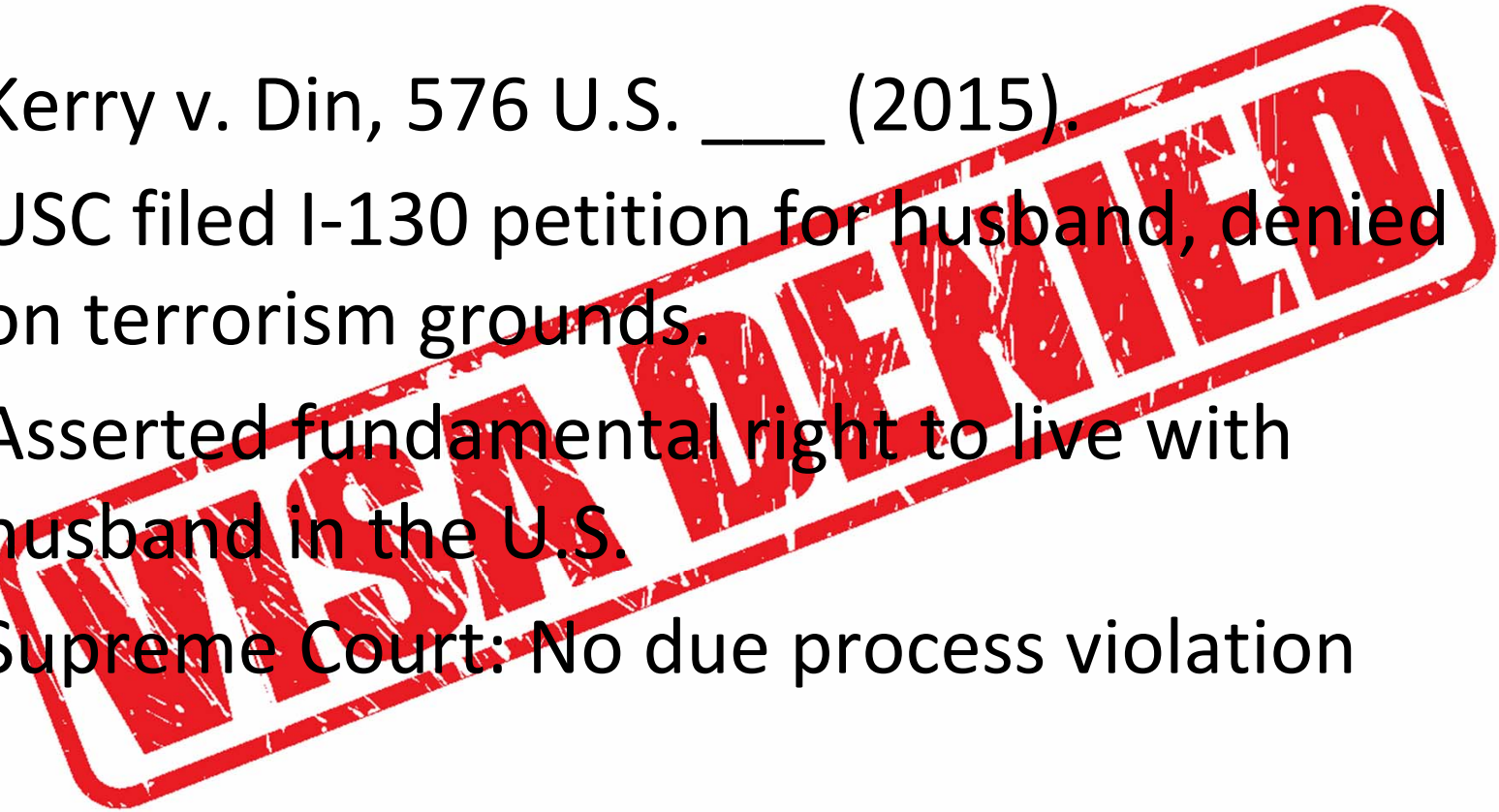
Plenary Power in Decline?

Zadvydas (2001):

The government's right to detain is subject to "important constitutional limitations" and that even deportable aliens have a "liberty interest that is, at least, strong enough to raise a serious question as to whether ... the Constitution permits detention that is indefinite and potentially permanent."

2015 Supreme Court Decisions

- Kerry v. Din, 576 U.S. ____ (2015).
- USC filed I-130 petition for husband, denied on terrorism grounds.
- Asserted fundamental right to live with husband in the U.S.
- Supreme Court: No due process violation



2015 Supreme Court Decisions

- Zivotofsky v. Kerry, 135 S. Ct. 2076 (2015).
- Right of Jerusalem-born US Citizen to have Israel recorded as place of birth on US passport.
- Question was where Congress' and the Executive's power intersect (specific to power of recognition)
- Supreme Court: Country must speak with one voice on foreign affairs, that one voice is President's as to recognition power; Congress can't force President to recognize state.