

High court: Immigrants can be held without bail

Jan Crawford Greenburg
Chicago Tribune (KRT)

WASHINGTON — Handing the government greater power to detain legal immigrants, the Supreme Court narrowly ruled Tuesday that legal immigrants convicted of crimes may be held without bail throughout the course of their deportation proceedings, even where they are not a danger to society or flight risk.

By a 5-4 vote, the court ruled that a 1996 immigration federal law that provides for mandatory detention of legal immigrants facing deportation did not violate their constitutional rights. It rejected a challenge by 25-year-old Hyung Joon Kim, who immigrated to the United States from South Korea as a child and is a lawful permanent resident.

The Immigration and Naturalization Service incarcerated Kim and began deportation proceedings against him after he was convicted of burglary and petty theft. Kim argued he was entitled to a bond hearing and should be released on bail during his deportation proceedings. He maintained that detention violated his constitutional rights to due process because he was not a dan-

ger to society or a flight risk.

He urged the court to overturn the federal law, which requires the INS to detain non-citizens convicted of felonies or other deportable crimes during their deportation hearings. Since President Bill Clinton signed the law into effect, some 75,000 legal immigrants have been detained without a bond hearing.

But the court, in a majority opinion by Chief Justice William Rehnquist, said Congress was justified in passing the law because it was responding to the "near-total inability" of the INS to remove deportable criminal immigrants. It said the law was a valid response to "wholesale failure by the INS to deal with increasing rates of criminal activity by aliens" and that it did not violate Kim's constitutional rights.

"Detention during removal proceedings is a constitutionally permissible part of the process," wrote Rehnquist, who was joined by Justices Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy and Clarence Thomas.

The case came about before the Sept. 11, 2001, terrorist attacks and does not directly touch on issues that have arisen in the gov-

ernment's war on terrorism, including the secret detention of hundreds of immigrants, though some observers said it could support the Justice Department's detention of terrorist suspects.

Dissenting justices, led by Justice David Souter, decried the decision, which they said was "devoid of even ostensible justification" and was "at odds with the settled standard of liberty." Souter said a legal resident had more rights than an illegal immigrant.

"The court's holding that the Constitution permits the government to lock up a lawful permanent resident of this country when there is concededly no reason to do so forgets over a century of precedent acknowledging the rights of permanent residents, including the basic liberty from physical confinement lying at the heart of due process," Souter wrote.

He was joined by Justices John Paul Stevens and Ruth Bader Ginsburg. Justice Stephen Breyer wrote separately.

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News brief

Democrats say they'll filibuster nomination of Priscilla Owen

WASHINGTON — Senate Democrats deployed their strongest weapon against another judicial nominee Tuesday, vowing to filibuster Texas Supreme Court Justice Priscilla Owen as a conservative activist who doesn't deserve a seat on a federal appeals court.

Republicans decried the tactic as "obstructionist." But, Senate Democratic leader Tom Daschle of South Dakota said, "Her record is so egregious that we have no choice but to filibuster."

Democrats are already using the parliamentary tactic to keep conservative lawyer Miguel Estrada off the U.S. Circuit Court of Appeals for the District of Columbia, the court widely regarded as second only to the Supreme Court in prestige and influence.

Republicans have tried four times in the last three months to force a vote on Estrada, but they haven't come up with the 60 votes needed under Senate rules. Democrats say they also have enough votes to block a confirmation vote on Owen — a boast that Republicans plan to test Thursday.

President Bush named Owen to the 5th U.S. Circuit Court of Appeals in New Orleans nearly two years ago. But Democrats say her record on Texas' highest court indicates a pro-business bias.

"Her record on the Texas Supreme Court is one of activism and hostility to civil rights," said Sen. Edward Kennedy, D-Mass. "It's shameful and shocking that the administration is so bent on packing the judiciary with nominees like ... Priscilla Owen."

Texas Sen. John Cornyn, a Republican who served on the Supreme Court with Justice Owen, defended her record and decried the partisanship that has stalled her nomination for nearly two years.

"By any fair measure, Justice Owen is an exceptional judge and an excellent nominee," he said. "Two years is too long."

The Democrats' move to block

her confirmation sparked a fresh round of recriminations, with Republicans accusing them of abusing Senate rules to derail appellate court nominees and Democrats

countering that the president and his Senate allies have left them little choice.

— Todd J. Gillman, *The Dallas Morning News* (KRT)

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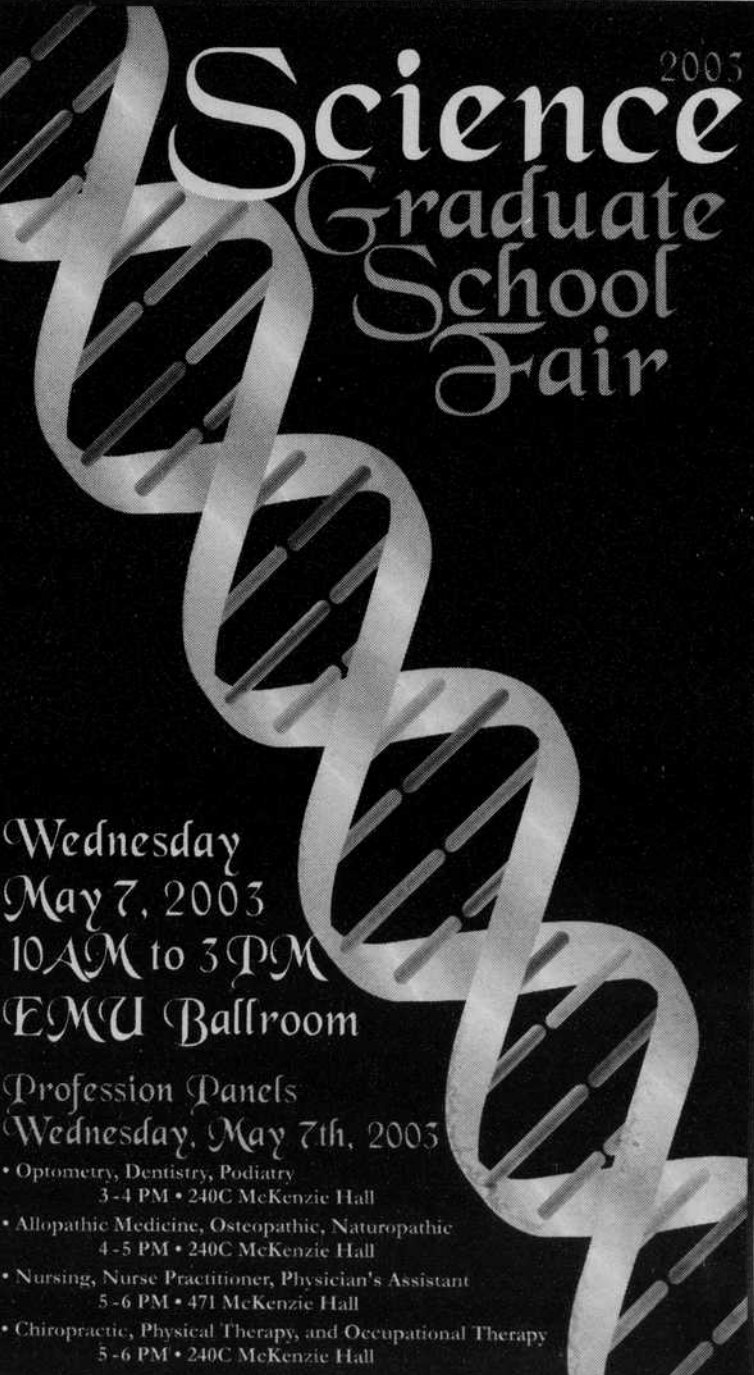
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