

AN ARGUMENT AGAINST PRUDENTIALY DECLINING TO RECOGNIZE STANDING TO SUE FOR ILLEGAL IMMIGRANTS

Jason Gourley*

I. INTRODUCTION

The debate concerning illegal immigration has become a highly charged political issue, receiving significant attention from both proponents of legislation designed to curb illegal immigration and opponents of such legislation. Perhaps naturally, this debate has found its way into legislatures, from the national to state and local levels. The rate at which these individual legislatures move to address the issue of illegal immigration is staggering: by November of 2007, 1,562 bills addressing immigration were introduced in state legislatures in that year and 244 became law.¹ The resulting legislation, however, is anything but consistent, leaving the United States with jurisdictions applying a myriad of different approaches to the issue.

Supporters of legislation designed to combat illegal immigration often argue that states and local government must enact such measures because the federal government has failed to address the issue.² Opponents of legislation directed against illegal immigration, among other arguments, point to the unintended consequences of such legislation. For instance, some opponents suggest that these laws unfairly target all Hispanic individuals.³ Beneath this debate, though, is another question: if a legislative body enacts a law addressing illegal immigration, is it possible to challenge that law, and who may bring such a challenge? Advocates on both sides of the immigration debate have argued this issue, and a resolution of the question seems far from apparent. One element of this issue is whether courts should prudentially decline to recognize standing to sue for illegal aliens who seek to challenge laws addressing illegal immigration.

* Graduating from Southern Illinois University in May of 2009. The author would like to thank Professor Paul McGreal for all of his help with this Comment.

1. Julia Preston, *In Reversal, Courts Uphold Local Immigration Laws*, N.Y. TIMES, Feb. 10, 2008, at A22.

2. Julia Preston, *Immigration Is at Center Of New Laws Around U.S.*, N.Y. TIMES, Aug. 6, 2007, at A12.

3. Preston, *supra* note 1, at A22.

This Comment argues that courts should not prudentially decline to hear challenges to laws concerning illegal immigration simply because the individuals raising the claims entered the country illegally. Section II of this Comment provides an overview of the standing doctrine as a background. Section III discusses two recent cases, one in which the court prudentially declines to hear challenges against immigration legislation from individuals in the country illegally, and another in which the court rejects that same argument. These cases illustrate some of the arguments for and against recognizing a prudential limitation in such situations. Section IV argues that the federal courts, as an appropriate venue for adjudicating disputes over the constitutionality of laws concerning illegal immigration, should generally not prudentially decline to hear these cases.

II. BACKGROUND ON STANDING

Article III of the Constitution limits the American judicial system to hearing only “cases and controversies,” and courts consider this limitation fundamental to their role in government.⁴ Requiring a litigant to have standing to sue ensures that a plaintiff meets Article III’s “case or controversy”⁵ requirement by demonstrating a case or controversy against the defendant.⁶ A plaintiff must satisfy three elements in order to demonstrate that he has standing to sue.⁷ First, a plaintiff must have suffered an injury in fact, described as “an invasion of a legally protected interest which is concrete and particularized and actual or imminent, not conjectural or hypothetical.”⁸ Second, the injury suffered by the plaintiff must bear a causal connection with the conduct of which the plaintiff complains.⁹ Third, it must be likely, not speculative, that the injury will be redressed by a decision in favor of the plaintiff.¹⁰

In addition to Article III standing, courts also invoke prudential limitations on standing. These limitations allow a court to decline to hear a case even if the party bringing the suit has established standing to sue under

4. Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 37 (1976).

5. U.S. CONST. art. III, § 2 (stating “[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States”).

6. Warth v. Seldin, 422 U.S. 490, 498 (1975).

7. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1993).

8. *Id.*

9. *Id.*

10. *Id.* at 561.

Article III.¹¹ Prudential limitations act as self-imposed judicial limits on what cases a court may hear, with an eye toward the proper limited role of the judiciary in the government.¹² Courts have defended this limitation as necessary because the absence of such judicial self-governance would demand that courts decide significant public issues that other branches of the government are more capable of handling, even in cases where the plaintiff presents no individual rights to protect.¹³

Recognized elements of the prudential standing limitation include “the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.”¹⁴ The Supreme Court has indicated, though, that courts may need to prudentially decline to hear cases in unique situations, so the Court has not articulated the exact dimensions of the prudential limitation.¹⁵

III. STANDING ISSUES IN CASES CONCERNING ILLEGAL IMMIGRATION LAWS

Two recent cases illustrate the debate over whether a plaintiff's status as an illegal alien should require the court to prudentially decline to hear the plaintiff's case. These cases include *Lozano v. City of Hazleton*, holding that a court should not prudentially decline to hear a case from a plaintiff due to his illegal presence in the country,¹⁶ and *National Coalition of Latino Clergy v. Henry*, holding that a court should prudentially decline to hear a case from a plaintiff due to his status as an illegal alien.¹⁷ Further, the fact that these cases were both decided within less than a year of one another indicates the liveliness of the issue.

A. *Lozano v. City of Hazleton*

In *Lozano v. City of Hazleton*, the United States District Court for the Middle District of Pennsylvania considered the City of Hazleton's (“Hazleton's”) authority to regulate the presence and employment of illegal

-
11. *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 99 (1979).
 12. *Bennett v. Spear*, 520 U.S. 154, 162 (1997).
 13. *Warth v. Seldin*, 422 U.S. 490, 500 (1975).
 14. *Allen v. Wright*, 468 U.S. 737, 751 (1984).
 15. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004).
 16. 496 F. Supp. 2d 477, 504 (M.D. Pa. 2007).
 17. No. 07-CV-613-JHP, 2007 WL 4390650 at *9 (N.D. Okla. Dec. 12, 2007).

aliens by means of city ordinances.¹⁸ Hazleton had enacted a series of ordinances designed to combat a perceived illegal immigration problem.¹⁹ These ordinances, among other things, prohibited the employment and harboring of illegal immigrants in the city, and required individuals living in apartments to obtain an “occupancy permit” which proved they were U.S. citizens or lawful residents.²⁰ A group of plaintiffs, including lawful U.S. residents, landlords, business owners, associations, and individual tenants present in the United States illegally, challenged the validity of these ordinances, alleging they violated the Supremacy Clause, Due Process Clause, and Equal Protection Clause of the Constitution.²¹ The defendant, Hazleton, argued that all of the plaintiffs lacked standing to sue under either an Article III or prudential standing analysis.²²

The court first found that the landlord plaintiffs had standing to sue.²³ Because the landlord plaintiffs could demonstrate that they had more difficulty retaining current tenants and obtaining new tenants after Hazleton passed the ordinance requiring an “occupancy permit,” they demonstrated an injury in fact.²⁴ Additionally, the landlord plaintiffs established an injury in fact because when hiring individuals to do repairs to their property, the ordinance required the plaintiffs to use more time and expense to determine whether a potential employee was an illegal immigrant.²⁵ The defendant argued that these alleged injuries should be rejected because they amounted to a complaint about a prohibition on renting to illegal immigrants, but the court noted that no evidence was introduced that lost tenants were illegal immigrants, and that tenants could have left for a variety of reasons associated with the new ordinances.²⁶ Thus, the court rejected the defendant’s characterization of the ordinances.²⁷

The court found that these plaintiffs established causation between the lost tenants and the ordinances because the plaintiffs demonstrated that renters’ concerns with the new ordinances undermined the landlords’ ability to obtain tenants.²⁸ When these plaintiffs informed the prospective tenants that they would need to demonstrate lawful presence in the United States to

18. 496 F. Supp. 2d 477, 484 (M.D. Pa. 2007).

19. *Id.*

20. *Id.*

21. *Id.* at 485–86.

22. *Id.* at 487.

23. *Id.* at 488.

24. *Id.* at 489.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

rent property in Hazleton, the prospective tenants never returned to rent the property.²⁹ In addition, the landlord plaintiffs established a causal connection between the additional time and expense required to ensure that individuals hired were permitted to work in the United States and the ordinance's requirements.³⁰

The landlord plaintiffs also established redressability, because if the court declared the ordinances unconstitutional, compliance with the ordinances would not be required.³¹ Therefore, the plaintiffs would not need to ensure that their tenants were lawfully present in the United States or that their employees could legally work in the United States, relieving them of these burdens.³²

The court also considered whether two plaintiff business owners demonstrated standing to sue.³³ These plaintiffs demonstrated that they suffered an injury in fact because they experienced a loss of business after Hazleton passed the ordinances.³⁴ They established causation because the plaintiffs presented evidence that passage of the ordinances contributed at least partially to the decline in business.³⁵ While some business owners could establish that their injury could be redressed by the court's invalidation of the ordinances, others, which had closed and had no plans to reopen, could not establish that their injury would be similarly redressed and the court denied them standing to sue.³⁶

The defendant also alleged that a group of tenant plaintiffs, who attempted to proceed anonymously, lacked standing to sue.³⁷ These plaintiffs either entered the United States illegally or were unsure of their legal status.³⁸ As an injury in fact, these plaintiffs claimed that the ordinance's rental requirements and harboring provisions violated their rights under the Equal Protection Clause of the Constitution and under provisions of federal law.³⁹ Because they were forced from their rented property or told they would be evicted, the court found these plaintiffs demonstrated a sufficient injury.⁴⁰ The court also found that these tenants met the causation requirement, because

29. *Id.*

30. *Id.*

31. *Id.* at 490.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 491.

36. *Id.*

37. *Id.* at 496.

38. *Id.* at 496-97.

39. *Id.* at 497.

40. *Id.*

if the ordinances were not in effect, the plaintiffs would not face the loss of their rental property.⁴¹ Redressability was also established since a favorable decision for the plaintiffs would result in an injunction against enforcement of the ordinances that caused their injuries.⁴²

The court rejected Hazleton's argument that the tenant plaintiffs lacked standing because they had no authorization to reside in the United States and had not suffered an injury for which relief could be granted.⁴³ Because no removal proceedings had been initiated against these plaintiffs, the court stated that it would have to "ignore every principle of due process" to accept the defendant's argument.⁴⁴ Further, the court rejected an argument that illegal aliens, who broke the law to enter the country, should not have any legal recourse when the government allegedly violates rights protected by the U.S. Constitution or federal law.⁴⁵ The court stated that "[w]e cannot say clearly enough that persons who enter this country without legal authorization are not stripped immediately of all their rights because of this single illegal act."⁴⁶ The court noted that the "Fourteenth Amendment to the United States Constitution provides that no State may 'deprive any *person* of life, liberty or property, without due process of law; nor deny any *person* within its jurisdiction the equal protection of the laws.'"⁴⁷ Because the United States Supreme Court had interpreted this provision to apply to anyone present in the United States, whether legally present or not, the court held that these plaintiffs, as persons seeking to vindicate rights guaranteed them under the Constitution, had standing to sue.⁴⁸

After considering the requirements of constitutional standing with respect to each of the plaintiffs, the court considered whether prudential limitations on standing prohibited the court from hearing the case.⁴⁹ The defendant argued that the court should prudentially decline to hear the case because the plaintiffs did not fall within the "zone of interests" of the federal Immigration and Nationality Act.⁵⁰ Because this Act⁵¹ was not intended to protect landlords who harbored illegal aliens nor employers who employed illegal aliens, the defendant argued, the plaintiffs case did not fall within the

41. *Id.* at 498.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* at 499.

46. *Id.*

47. *Id.* at 498–499 (quoting U.S. CONST. amend. XIV, § 1 (emphasis added)).

48. *Id.* at 499.

49. *Id.*

50. *Id.* at 500.

51. 8 U.S.C. § 1101 (2006) (at issue in this case was the definition of an "illegal alien" under the Act).

zone of interests of the Act.⁵² The court rejected this argument because the plaintiffs protested a local legislative enactment which they argued violated their rights under federal and state law, an enactment which was aimed directly at the operation of their businesses, their ability to work in the city, or their ability to rent property in the city.⁵³ Because the plaintiffs fell within the zone of interests of the statutes at the center of the lawsuit, the court held the plaintiffs possessed prudential standing to sue.⁵⁴ Because all of the plaintiffs, aside from two of the business owner plaintiffs, had both constitutional and prudential standing to sue, these plaintiffs were allowed to proceed with their claims.⁵⁵

B. National Coalition of Latino Clergy v. Henry

In *National Coalition of Latino Clergy v. Henry*, the United States District Court for the Northern District of Oklahoma considered whether a group of plaintiffs had standing to sue to challenge a set of Oklahoma laws designed to combat a perceived illegal immigration problem.⁵⁶ The Oklahoma statutes, among other things, criminalized the transportation, concealment, harboring, or sheltering of an illegal alien, limited the distribution of certain forms of identification to those lawfully present in the United States, required public employers to verify the legal status of employees, and required those seeking federal, state or local benefits to verify their legal status.⁵⁷ The group of plaintiffs challenging these Oklahoma statutes included an association, businesses, churches, and illegal aliens.⁵⁸

In considering whether the association had standing to sue, the court focused on whether any individual members of the association had standing to sue.⁵⁹ The association argued that because members of the association transported illegal aliens as part of church work, they suffered an injury because they feared prosecution under provisions of the Oklahoma statutes which criminalized the transportation of illegal aliens.⁶⁰ But because the association failed to identify particular members who may suffer such an

52. *Lozano*, 496 F. Supp. 2d at 500.

53. *Id.* at 502.

54. *Id.*

55. *Id.* at 504.

56. No. 07-CV-613-JHP, 2007 WL 4390650 at *1 (N.D. Okla. Dec. 12, 2007).

57. *Id.* at *2.

58. *Id.* at *4-*6.

59. *Id.* at *4.

60. *Id.*

injury under the statute, the court held that the association lacked standing to sue.⁶¹

The churches also alleged that they feared prosecution under the statutes for the transportation of illegal aliens, but because the statutes only could punish persons, and not entities like churches, the court decided this fear was unfounded.⁶² One church also argued that it suffered injury as an employer due to burdensome requirements under the act that would require it to verify the legal status of employees, but the court dismissed this argument.⁶³ Because that provision was not yet in effect, and because events leading to liability under that section of the statute were too speculative, as the court would need to assume the church would hire an illegal alien, fire a U.S. citizen, retain the illegal alien, and then be sued by a U.S. citizen, the court held that the injury alleged did not support standing.⁶⁴ The court held that the business plaintiffs lacked standing to sue for these same reasons.⁶⁵

The individual plaintiffs, all illegal immigrants, alleged a variety of injuries.⁶⁶ Some of these plaintiffs alleged that their landlords either evicted them or threatened them with eviction as a result of the statute because their landlords feared prosecution.⁶⁷ The court found that the plaintiffs alleged a sufficient injury, and held that these plaintiffs had standing to sue under an Article III analysis.⁶⁸ The court held that an illegal alien plaintiff who argued her driver's license would soon expire, and who by terms of the statute could not renew her license by mail, did not have standing to sue because she did not state she intended to renew her license by mail.⁶⁹ The court also held that another illegal alien, who argued that the state denied him a driver's license because of the statute, had standing to sue under an Article III analysis.⁷⁰

The court then considered whether the remaining plaintiffs also had standing to sue under a prudential standing analysis.⁷¹ The court noted the three categories of prudential standing articulated by the Supreme Court, including "the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement

61. *Id.*

62. *Id.* at *5.

63. *Id.*

64. *Id.*

65. *Id.* at *5-*6.

66. *Id.* at *6-*7.

67. *Id.* at *6.

68. *Id.*

69. *Id.*

70. *Id.* at *7.

71. *Id.*

that a plaintiff's complaint fall within the zone of interests protected by the law invoked."⁷² But the court stated that this list was not exhaustive and that self-imposed limits may need to be imposed in unique cases.⁷³

The court found that the plaintiffs' claims did not fall into one of the three categories listed by the Supreme Court, but held that this case involved "unique facts" that should lead the court to prudentially decline to hear the case.⁷⁴ The court stated that "the proper remedy for the injuries alleged by the Plaintiffs—all of whom are in willing violation of federal immigration law—is not judicial intervention, rather, it is simple compliance with federal immigration law."⁷⁵ Thus, the court stated that the proper remedy for the plaintiffs was to seek lawful admission into the United States. While the court recognized that "illegal aliens have been deemed to be clothed with the protections of certain Constitutional rights," the court recognized a new prudential limitation on standing: "[a]n illegal alien, in willful violation of federal immigration law, is without standing to challenge the constitutionality of a state law, when compliance with federal law would absolve the illegal alien's constitutional dilemma—particularly when the challenged state law was enacted to discourage violation of the federal immigration law."⁷⁶ The court then dismissed all plaintiffs for lack of standing.⁷⁷

IV. ANALYSIS OF THE PRUDENTIAL LIMITATION ON STANDING AND ITS RELATION TO IMMIGRATION LEGISLATION

While courts have declined to give an exhaustive definition of what the prudential limitation on standing includes, an examination of the reasons behind the doctrine suggests that it is not appropriate to exercise the limitation simply because the claimant is present in the United States illegally. This section examines individually the competing factors that weigh for and against the exercise of a prudential limitation in this area. Such an analysis demonstrates that courts should not prudentially decline to hear cases from illegal aliens solely because of their illegal presence in the United States.

72. *Id.* (citing *Allen v. Wright*, 468 U.S. 737, 751 (1984)).

73. *Id.*

74. *Id.*

75. *Id.* at *8.

76. *Id.* at *9.

77. *Id.*

A. The Legislature as the Proper Means of Redress

Advocates of viewing the courts as holding a more limited role in disputes regarding immigration legislation can point to both the Constitution's grant of power to Congress to enact uniform rules of naturalization⁷⁸ and Congress's authority to exercise sovereign power over immigration⁷⁹ to support their position. The Federal District Court in *Henry* seemed to adopt this line of reasoning when it prudentially declined to hear a case brought by illegal aliens and stated that "the proper remedy for the injuries alleged by the . . . Plaintiffs . . . is not judicial intervention, rather, it is simple compliance with federal immigration law."⁸⁰ But while the Constitution guarantees that Congress may regulate immigration, it does not follow that courts must decline to hear all cases challenging laws regulating immigration. While the judicial branch does not have any power to promulgate rules or regulations concerning immigration, courts may still exercise judicial review over properly raised cases.

Although the scope with which courts may inquire into immigration legislation is limited,⁸¹ it is not eliminated. Fundamental constitutional protections including those of due process and equal protection should not be denied to an individual simply because courts must exercise a more limited review of immigration laws. And these are often exactly the sort of rights that an alien alleges are violated when challenging a law concerning immigration. Courts can balance their traditional role of providing relief where appropriate against their properly limited role in government without having to refuse to hear any case from a plaintiff simply because that plaintiff is present in the country illegally. By denying such a plaintiff access to the judiciary, courts seem to be telling legislatures that they are free to enact any legislation they wish, within very limited constraints. While illegal aliens have broken the law by entering the country, they are not devoid of constitutional protections.

For example, the Supreme Court has held that Fifth and Fourteenth Amendment protections of due process apply to any person in the United States, whether they are legally present or not.⁸² Additionally, the Supreme Court rejected an argument that illegal aliens, due to their immigration status,

78. U.S. CONST. art. I, § 8, cl. 1,4 (stating "[t]he Congress shall have Power . . . To establish an uniform Rule of Naturalization").

79. *Galvan v. Press*, 347 U.S. 522, 530 (1954) (stating "[t]he power of Congress over the admission of aliens and their right to remain is necessarily very broad, touching as it does basic aspects of national sovereignty, more particularly our foreign relations and the national security").

80. *Nat'l Coalition of Latino Clergy*, 2007 WL 4390650 at *9.

81. *Fiallo v. Bell*, 430 U.S. 787, 792 (1977).

82. *Plyler v. Doe*, 457 U.S. 202, 210 (1982).

have no right to equal protection under state law.⁸³ This indicates that illegal aliens have protections under the Constitution that courts must have the ability to balance against the power of the legislative and executive branches in the area of immigration. By creating a prudential limitation on an illegal alien's standing to sue based solely on the fact that he is here illegally, courts effectively decline to ensure that any such balance is addressed before even hearing the merits of the case.

Additionally, the argument that a proper remedy lies not with the courts, but with the representative branches, seems to include the notion that the individual seeking redress is heard by that representative branch. One way that American citizens can ensure that the representative branch listens to them is by voting in elections. This is one way that American citizens can check the power of the representative branches. The established prudential limitation on standing "barring adjudication of generalized grievances more appropriately addressed in the representative branches"⁸⁴ makes sense considering the citizen's ability to check government power.

While illegal aliens should certainly not hold the same power that American citizens possess to check government power, it is important to consider that they do not have anyone in the representative branch to advocate for even basic rights. The Supreme Court has subjected laws that classify a 'discrete and insular' minority, including lawfully present aliens, to heightened judicial scrutiny,⁸⁵ and has stated that "the power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits."⁸⁶ While these cases apply to aliens lawfully present in the country, similar concerns are present with illegal aliens. Illegal aliens are a similarly discreet and insular class, as they do not enjoy many of the political protections exercised by citizens. They must look to the courts, then, as a means of protecting their basic rights. And if courts close their doors to these individuals before hearing their case, by prudentially declining to hear the case, these individuals are denied protection of those rights.

Finally, the argument that Congress has exclusive power to enact rules over immigration and naturalization, and that courts should therefore have no role in reviewing such legislation, only extends to the federal government. Constitutionally, states are granted no power to promulgate legislation relating to immigration or naturalization. Therefore, even if one views as compelling

83. *Id.*

84. *Allen v. Wright*, 468 U.S. 737, 751 (1984).

85. *Graham v. Richardson*, 403 U.S. 365, 372 (1971) (quoting *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152-53 (1938)).

86. *Id.* (quoting *Torao Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 420 (1948)).

the argument that Congress's constitutional grant of power in the areas of immigration and naturalization limits the judiciary's ability to hear the case, one cannot accept that same reasoning with respect to state or local laws addressing illegal immigration, like those at issue in *Lozano* and *Henry*.

B. Judicial Efficiency

Proponents of using the prudential limitation to decline to hear cases from illegal aliens may support their argument because by declining to hear a case, the court promotes judicial efficiency. For instance, the established prudential requirements that one not raise the rights of another person and that a plaintiff's complaint "fall within the zone of interests protected by the law invoked" both narrow the class of persons who may file suit in a particular situation. The ability of these prudential limitations to limit the class of potential plaintiffs to those best suited to bring a claim certainly promotes judicial efficiency, but this same line of reasoning should not be used to bar those who are best suited to bring a claim from actually bringing that claim.

In the context of laws directed at immigration, specifically to the extent that these laws classify on the basis of legal presence in the country, the individuals best suited to bring constitutional challenges are the illegal aliens themselves. In both *Lozano* and *Henry*, for example, virtually all of the illegal alien plaintiffs were able to assert Article III standing, indicating that they were well-situated to sue. In *Henry*, though, all plaintiffs aside from most of the illegal alien plaintiffs were dismissed for failure to meet the requirements of Article III standing.⁸⁷ This demonstrates that illegal alien plaintiffs are often those in the best position to challenge immigration laws. Judicial efficiency should not be used as a reason to deny standing to those best situated to bring a claim.

C. The "Clean Hands" Doctrine

The Federal District Court in *Henry* supported its decision to prudentially decline to hear the challenge to Oklahoma's immigration laws brought by illegal aliens because those plaintiffs did not have "clean hands."⁸⁸

87. See *Nat'l Coal. of Latino Clergy v. Henry*, No. 07-CV-613-JHP, 2007 WL 4390650 at *4, *7 (N.D. Okla. Dec. 12, 2007) (holding that every non-illegal immigrant plaintiff failed to meet the requirements of Article III standing, and therefore dismissing them from the suit, but stating that some of these plaintiffs may have the ability to cure a defect in pleading and satisfy the requirements of Article III).

88. *Nat'l Coal. of Latino Clergy v. Henry*, No. 07-CV-613-JHP, 2007 WL 4390650 at *9 (N.D. Okla. Dec. 12, 2007).

By this, the court meant that it should not hear a case brought by plaintiffs in willing violation of federal law. The court stated:

In the present case, the Court is deeply concerned by the implications of the illegal Plaintiffs' admission of violations of federal immigration laws. These Plaintiffs admit their violation of federal law, and then ask this Court to allow them to file suit *anonymously*, so as to avoid detection by the federal law enforcement agencies tasked with investigating immigration violations. Additionally, the illegal alien Plaintiffs make no attempt to validate their unlawful presence in this country. Indeed, curiously absent from their voluminous complaint is any challenge to the federal laws rendering their presence in this country illegal. Instead, these Plaintiffs seemingly concede validity of the federal immigration laws, and file this suit in order to remove any barriers the state of Oklahoma has erected to their continued violation of those federal laws. These illegal alien Plaintiffs seek nothing more than to use this Court as a vehicle for their continued unlawful presence in this country.⁸⁹

Thus, the court supported its holding due to concern with the plaintiffs' violation of federal immigration laws, coupled with the plaintiffs' failure to attempt to comply with these laws or challenge their constitutionality.

The clean hands doctrine is an equitable doctrine that "closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant."⁹⁰ The Supreme Court explained that this doctrine stems from a court of equity's role as a "vehicle for affirmatively enforcing the requirements of conscience and good faith," and that it "presupposes a refusal on its part to be 'the abetter of iniquity.'"⁹¹

The justification for the clean hands doctrine does not seem to apply to the context of standing. Standing is concerned with the proper role of the judiciary in the framework of the government. Prudential limitations on standing ensure that even when Article III standing requirements are met, courts do not overstep their properly limited role in government. The clean hands doctrine, though, concerns the proper role of a court of equity, as a means of enforcing conscionable, good faith behavior, and its corresponding duty not to act in furtherance of the motives of one acting in bad faith. Thus, the doctrine recognizes the unfairness, or unconscionability, of a court enforcing an equitable remedy in favor of a plaintiff with unclean hands, and

89. *Id.*

90. *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945).

91. *Id.* (quoting *Bein v. Heath*, 47 U.S. 228, 247 (1848)).

closes the court's doors to him. These same concerns are not implicated in a standing analysis, so there is no reason to mix this equitable principle with a prudential standing analysis. The result of the misapplication of the clean hands doctrine seems to be that courts deny plaintiffs, although present in the country illegally, the ability to challenge laws that deny them fundamental constitutional rights based on a principle of equity. When fundamental rights are at stake, rules pertaining to courts of equity have no place silencing those claims.

While the clean hands doctrine has no traditional place in a standing analysis, one could still make an argument that courts should invoke the doctrine along with another principle, such as giving deference to Congress, and thereby prudentially decline to hear a case. One might argue, for instance, that because Congress has defined the manner in which individuals may lawfully enter the country, and because an illegal alien has chosen to enter the country illegally, a court that agrees to hear a case from such a plaintiff is encouraging the illegal conduct or sidestepping the will of Congress. Therefore, the clean hands doctrine should be invoked in support of Congressional will rather than in the interest of an individual in knowing violation of the law.

However, this argument fails on grounds similar to the above arguments in support of such a prudential limitation. Initially, simply because a court hears a case from a plaintiff does not mean that the court encourages the conduct the plaintiff engaged in. Standing acts as a barrier to one who wishes a court to hear his case, and it prevents a court from hearing a case on its merits. If one has standing to sue, it does not mean that a court agrees with the argument the plaintiff raises. It only means that the court will listen to the argument that the plaintiff presents. So if a court agrees that an illegal alien plaintiff has standing to sue, it does not mean that the court encourages, or even condones, the conduct of the plaintiff, it only means that the court agrees to hear the case.

Similarly, because a court hears a case from a plaintiff challenging a given law does not mean that the court is in effect sidestepping the will of the legislature. A proper role of the courts is to strike down laws, when properly challenged, if they violate the Constitution. A court that hears a case from a plaintiff alleging a given law is unconstitutional is merely doing its job by hearing that case. And by recognizing that an illegal alien plaintiff has standing to sue, a court is certainly not required to rule in favor of that plaintiff and against the intent of the legislature as represented by the challenged law.

By getting to the merits of constitutional challenges to laws brought by illegal alien plaintiffs, courts have the ability to develop a complete body of

case law regarding the issue. Such a development is beneficial because it will provide much more concrete answers to constitutional questions regarding the rights of illegal aliens. For instance, the Supreme Court has held that the Fifth and Fourteenth Amendment protections of due process apply to anyone present in the United States, including illegal aliens, and the Court has rejected the argument that illegal aliens, due to their illegal presence in the country, have no right to equal protection under state law.⁹² But it is far from clear exactly how these constitutional protections apply to aliens unlawfully present in the country. By invoking the clean hands doctrine, courts unnecessarily avoid answering these questions. If courts hear cases brought by illegal immigrants, they develop a body of constitutional jurisprudence, and the other branches of the government will have a better idea of what constitutional boundaries exist when creating or executing laws concerning illegal aliens.

Finally, by invoking the clean hands doctrine here, courts seem to create a strange precedent. If a court is not to hear an illegal alien's challenge to a law that uses illegal presence as a classification because the alien's presence in the country is unlawful in the first place, couldn't that same argument be presented in many other cases? Congress or state legislatures could potentially criminalize a variety of conduct, and the clean hands doctrine would indicate that a court could not hear a challenge to such a law unless the plaintiff was already in compliance with the law. Such a result could put valuable constitutional protections at risk. By invoking the clean hands doctrine here, courts seem to at least create a strange, unnatural precedent.

V. CONCLUSION

A consideration of the reasons justifying a court's refusal to hear a case based on prudential standing grounds does not support the adoption of a prudential limitation barring an illegal alien from challenging the constitutionality of a state law concerning immigration. An analysis of the proper role of the representative branches compared with the role of the judiciary does not indicate that courts should customarily decline to hear challenges to immigration laws simply because illegal aliens are the plaintiffs. Considerations of judicial efficiency do not support such a prudential limitation because illegal alien plaintiffs are generally in the best position to bring these claims. Finally, the equitable clean hands doctrine has no

92. Plyler v. Doe, 457 U.S. 202, 210 (1982).

application to the standing analysis and should not be used as a basis to deny standing.

Of course, just because an illegal alien's suit should not be barred simply because he is present in the country illegally does not mean that such suits will be successful. And aliens who are not lawfully present in this country are still subject to deportation. What this does mean, though, is that an individual should be guaranteed access to a branch of the government that can provide for some of the basic rights that America advocates.