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## **Do illegal immigrants living in the U.S. have constitutional rights?**

Certain constitutional protections apply to any “person” within the United States. For instance, a person who enters the United States illegally still has the right to a fair trial for any crime he or she is accused of committing in the United States because such rights refer to any “person” or to “the accused,” not citizens only. This does not mean that all persons may be admitted to or have a right to permanent residency in the United States. As a civil regulation, not a criminal prohibition, illegal entry to the United States is usually addressed through returning the person to the country of origin, not a criminal conviction or punishment implicating the constitutional rights dealing with criminal trials.

The Supreme Court has noted that it “is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). One of the defining features of a nation is that it has borders.<sup>1</sup> Nations have the inherent right to police their borders and enforce reasonable policies regarding who it allows to enter in order to protect those who are already present.<sup>2</sup> In the United States, Congress is given broad plenary power to regulate immigration processes.

Non-citizens who come to the United States, legally or illegally, are owed the constitutional guarantee of “due process.” *Zadvydas*, 533 U.S. at 694. However, the “process that is due” varies from situation to situation. A deportation proceeding against someone for unlawfully entering the United States does not require the same level of formal proceedings as a trial to convict someone of a felony. Fair and appropriate due process of law may very well require some non-citizens to be detained until they can be deported for their unlawful entry. The United States owes no obligation to keep non-citizens in the United States. The United States has long sought to be a protector of those who are oppressed, endangered, or persecuted overseas,

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<sup>1</sup> See for example the Montevideo Convention.

<sup>2</sup> See *Bridges v. Wixon*, 326 U.S. 135, 161, (1945) (Murphy, J., concurring).

but it also must utilize an orderly system of doing so for the protection of those here and those who will come. When the United States legally admits someone as a temporary or permanent resident, the United States takes on certain duties to that person. Those duties cannot attach to someone who the United States does not even realize is present because he or she has circumvented the legal admission system. Thus, while the Constitution is a bastion of protection for citizens and those legally present in the United States, the “Bill of Rights is a futile authority for the alien seeking admission for the first time to these shores.”<sup>3</sup>

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<sup>3</sup> *Bridges v. Wixon*, 326 U.S. 135, 161 (1945) (Murphy, J., concurring).