

Due Process Rights of Non-Citizens: How U.S. Immigration Policies Protect, Don't Protect Them



Immigration Blog

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The due process clauses in the Fifth and 14th Amendments of the U.S. Constitution were established to protect all persons from being deprived of “life, liberty, or property” without due process of law.

Protecting “all persons” doesn’t end at U.S. citizens; it also extends to non-citizens who are present in the United States. However, the way these rights are applied varies depending on a person’s immigration status and where they are in the immigration process. While current immigration policies provide due process protection in many cases, they can also limit those protections in other situations.

Due process is a constitutional guarantee that the government is required to follow when it wants to take away your life, liberty, or property. The Fifth Amendment applies to all “persons,” so it extends to non-citizens who entered the U.S. In the immigration system, this means that the government cannot simply remove or detain a person without following certain procedures. Due process gives non-citizens the right to receive notice of legal proceedings, the right to a hearing, access to judicial review, and habeas corpus protections to challenge unlawful

detention. However, the amount of protection a person receives can depend on certain factors such as their immigration status, length of time in the U.S. and type of immigration proceeding involved.

Current immigration policies provide several protections that allow non-citizens to defend their rights before the government acts against them. Many individuals facing removal from the U.S. are entitled to appear before an immigration judge, respond to the allegations set against them, present evidence and challenge the reasons for their removal. These procedures help ensure that immigration decisions are not made without review and give individuals an opportunity to explain their circumstances. Asylum procedures also provide an important safeguard by allowing individuals who fear persecution in their home countries to present their claims and seek protections under U.S. law. Similar protections apply to many non-citizens who enter the U.S. through employment-based immigration programs. Temporary workers and other visa holders must comply with specific requirements related to their immigration status, and due process provides an opportunity for individuals to respond if the government questions their eligibility or seeks to act against their status.

Simultaneously, immigration policies also can create limits on these protections. Immigration cases are considered civil matters, not criminal, so individuals do not have the right to a government-appointed attorney if they cannot afford one. This creates a difficult challenge many non-citizens face as they must then navigate a complex legal system on their own. Delays within the immigration system can create uncertainty for non-citizens. For example, prolonged processing times for green card applications can leave individuals waiting extended periods before receiving a decision about their future in the U.S. These delays may affect employment opportunities, family planning and other important parts of a person's life, even when they have followed the required legal process. In addition, certain immigration enforcement policies can limit access to protections.

Expedited removal allows certain non-citizens to be removed through a faster process with little to no access to a hearing before a judge. Because this process can happen quickly, some individuals may have limited time to find legal assistance, gather documents or explain circumstances that could affect their case. These limitations can create challenges for individuals who may have valid reasons for remaining in the U.S., including employment, family ties and other obligations.

Overall, due process remains an important part of the immigration system because it ensures that non-citizens have an opportunity to understand and respond to decisions that greatly affect their lives. Although current policies provide protections through hearings, reviews and other legal procedures, certain enforcement practices can limit how much access individuals have to those protections.

As immigration policies continue to change, maintaining due process protections is an important part of making sure the decisions are handled fairly and that non-citizens have an opportunity to participate in the processes from which the decisions are derived.

If you are ready to speak with an immigration attorney about any matters you may have encountered, please contact Lippes Mathias immigration team members Elizabeth M. Klarin (eklarin@lippes.com) or Eileen M. Martin (emartin@lippes.com).

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