

IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF HEALTH AND
REHABILITATIVE SERVICES,

Petitioner,

vs.

LUISA SOLIS,

Respondent.

Case No. 75,553

FILED
JUL 24 1991
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ON CERTIFIED QUESTION FROM THE DISTRICT COURT OF APPEAL,
THIRD DISTRICT

BRIEF FOR THE MIAMI COALITION FOR THE CARE TO THE HOMELESS
AS AMICUS CURIAE

THOMAS EUGENE ZAMORANO
Attorney for the Miami Coalition
for the Care to the Homeless
225 N.E. 34th Street, Suite 300
Miami, Florida 33137
Florida Bar No. 320447

TABLE OF CONTENTS

	<u>Page</u>
Table of Citations	ii
Interest of Amicus Curiae	1
Statement of Facts	2
Summary of Argument	3
Argument	4
I. THIS COURT'S DECISION WILL NOT AFFECT IMMIGRATION TRENDS OR OVERBURDEN THE FEDERAL WELFARE SYSTEM4
II. THE FEDERAL GOVERNMENT SHOULD SHARE IN WELFARE COSTS FOR ASYLUM APPLICANTS	7
Conclusion	10
Certificate of Service	11

TABLE OF CITATIONS

Cases

Plyler v. Doe, 457 U.S. 202 (1981) 4,6
U.S. v. Posner, 694 F. Supp. 881 (S.D. Fla. 1987) 2
Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972) 7
Sudomir v. McMahon, 767 F.2d 1456 (9th Cir. 1985) 8

Statutes

§420.625(1) Fla. Stat. (1989) 2, 10
§420.627(1)(a)(b) Fla. Stat. (1989) 3
§409.325(1) Fla. Stat. (1989) 6
§420.627(1)(d) Fla. Stat. (1989) 10

Rules

Fla. Admin. Code Rule 10C-1.103 3
54 Fed. Reg. 49, 358 (1989). 8

Congressional Record

118 CONG. REC. 33,959 (daily ed. Oct. 5, 1972) 10

Studies and Articles

Bhagwati, Behind the Green Card, THE NEW REPUBLIC,
May 14, 1990 at 31 5
Bring on the Wretched Refuge, The Wall Street Journal
Jan. 26, 1990 5
Calvo, Alien Status Restrictions on Eligibility for
Federally Funded Assistance Programs, 16 N.Y.U. Rev.
of L. & Soc. Change 395 (1987-88). 8
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Eligibility for Public Benefits, 14 Nova L. Rev. 1031)
(1990). 6
Fike, The South Florida Homelessness Studies for 1989
(unpublished manuscript) 2
Holden, Homelessness: Experts Differ on Root Causes, 232
SCI 569 (1986) 3
Mathews, Homeless in America: What can be done?,
NEWSWEEK, March 21, 1988 at 57. 2

OFFICE OF POLICY DEV. & RESEARCH, U.S. DEPT. OF HOUSING & URBAN DEV., A REPORT TO THE SECRETARY ON THE HOMELESS AND EMERGENCY SHELTERS (1984)	2
OFFICE OF THE SECRETARY FOR PLANNING AND EVALUATION, DEPT. OF HEALTH AND HUMAN SERVICES, THE PRESIDENT'S COMPREHENSIVE TRIENNIAL REPORT ON IMMIGRATION (1989).	5
Rossi, Wright, Fisher & Willis, <u>The Urban Homeless: Estimating Composition and Size</u> , 35 SCI 1136 (1987).	3
Rubin, <u>Walking a Gray Line: The "Color of Law" Test Governing Non-citizen Eligibility for Public Benefit</u> , 24 San Diego L. Rev. 411 (1986).	7, 9
SIMON, THE ECONOMIC CONSEQUENCES OF IMMIGRATION (1989)	5
U.S. DEPT. OF LABOR BUREAU OF INTERNATIONAL LABOR AFFAIRS, THE EFFECTS OF IMMIGRATION ON THE U.S. ECONOMY AND LABOR MARKET, THE PRESIDENT'S COMPREHENSIVE TRIENNIAL REPORT ON IMMIGRATION (1989)	5, 7
U.S. GENERAL ACCOUNTING OFFICE, POLITICAL ASYLUM APPLICANTS, FINANCIAL EFFECT ON LOCAL SERVICES IN THE MIAMI AREA (FEBRUARY 1989)	9

THE INTEREST OF THE AMICUS CURIAE

The Miami Coalition for the Care to the Homeless, Inc. was granted leave to participate as Amicus on behalf of Respondent Luisa Solis. The Coalition is a federation of more than one hundred and forty agencies and organizations¹ that, along with affiliated state and national coalitions advocate nationally, state-wide, and locally to alleviate the plight of the homeless.

One of the Coalition's goals is to bring the plight of the homeless to the attention of the public and government.² The recognition and understanding of homelessness frequently translates into support for public policies that aid the homeless. Thus, the Coalition has a special interest in the issue before the Court because of its effect on the homeless.

¹Coalition members include: American Red Cross of Greater Miami, Barry University School of Social Work, Catholic Family Services, City of Miami Beach, City of Miami, Dade County Public Schools, Florida International University (Departments of Social Work and Health Administration), Health Council of South Florida, Jewish Family Services of Miami, Lutheran Ministries of Florida, Metro Dade Department of Human Resources, Metro Dade Office of Community and Economic Development, Metro Dade Office of Emergency Assistance, Miami Board of Realtors, Salvation Army, United Protestant Appeal, United Way of Dade County, and Veterans Administration Medical Center.

²The Florida Legislature directed that local homeless coalitions be designated to plan, network, coordinate, and oversee the delivery of services to the homeless. §420.623, Fla.Stat. (1989). The Coalition's statutory functions include: discussion of local issues related to homelessness and the needs of the homeless, review of services and programs in support of the homeless, identification of unmet needs, and collection of information relating to the homeless population.

STATEMENT OF FACTS

The Coalition agrees with the Statement of the Facts as set forth by Respondent but wishes to add some information regarding the nature and extent of the homeless problem.

Homelessness is a severe and growing problem in this country. A 1984 Department of Housing and Urban Development (HUD) study estimated a homeless population of up to 350,000 individuals.³ The United States Conference of Mayors estimates that thirty-three percent of all homeless are families with young children.⁴ A 1989 study found that there were about 8,000 homeless persons in the South Florida area.⁵ The Florida Legislature has recognized that the this State's homeless population is increasing. §420.625(1) Fla. Stat. (1989).

Extreme economic hardship is one of the causes of homelessness.⁶ The homelessness studies indicate that the provision of Aid to Families with Dependant Children (AFDC) benefits is a key

³OFFICE OF POLICY DEV. & RESEARCH, U.S. DEPT. OF HOUSING & URBAN DEV., A REPORT TO THE SECRETARY ON THE HOMELESS AND EMERGENCY SHELTERS. (1984).

⁴Mathews, Homeless in America: What Can Be Done?, NEWSWEEK, March 21, 1988 at 57.

⁵D. Fike, The South Florida Homelessness Studies for 1989 (unpublished manuscript). This study is a result of an order by Judge Eugene P. Spellman in United States v. Posner, 694 F.Supp. 881 (S.D. Fla. 1987).

⁶Id. at 9.

to the elimination of homelessness.⁷ The Florida Legislature acknowledges that:

[O]ften the homeless cycle begins with a family breakdown following a financial crisis ...financial assistance is needed to prevent severe family hardship, including homelessness....

§420.627(1)(a)(b) Fla. Stat. (1989).

While AFDC benefits are woefully inadequate, providing income which is 66% below poverty level (Fla. Admin. Code Rule 10C-1.103), these benefits are the only hope of escaping homelessness for many families. The denial of AFDC to asylum applicants has a profound impact, not only the individuals affected, but on society as a whole.

SUMMARY OF ARGUMENT

The plight of the homeless is dire. Daily life is a continual struggle to gain the minimal resources needed to meet subsistence needs. The exigencies of everyday life for the homeless turn on these essentials: a safe place to sleep, sufficient food, and access to toilet and sanitary facilities. An affirmation by this Court that asylum applicants are "permanently residing under color of law" (PRUCOL) means that some poor families, such as Ms. Solis', would receive AFDC. The Coalition agrees with the Respondent that asylum applicants are PRUCOL.

⁷Holden, Homelessness: Experts Differ on Root Causes, 232 SCI 569 (1986); Rossi, Wright, Fisher & Willis, The Urban Homeless: Estimating Composition and Size, 235 SCI 1136, 1336 (1987).

An affirmation of PRUCOL status for these aliens will neither encourage illegal immigration nor overburden the federal welfare system. In fact, aliens come to this country seeking work, not welfare benefits. They under-utilize social services compared to the general population. They enrich, rather than drain, our economy. Once the myths and prejudices regarding the alien population are dispelled, there can be no policy justification for differing interpretations of PRUCOL. Florida's statutory PRUCOL requirements for the AFDC, Medicaid, and unemployment programs should be interpreted uniformly.

The federal government should share in welfare costs for asylum applicants. The federal government, not state and local governments, controls immigration policy. It allows asylum applicants to remain in this country during a lengthy administrative process. The federal government should share the financial consequences of this policy.

ARGUMENT

I. THIS COURT'S DECISION WILL NOT AFFECT IMMIGRATION TRENDS OR OVERBURDEN THE FEDERAL WELFARE SYSTEM

The United States, as Amicus, argues that a decision which acknowledges asylum applicants' PRUCOL status will encourage illegal immigration. This unsupported argument is not factually correct. Indeed, just such a xenophobic argument has been rejected by the United States Supreme Court. In Plyler v. Doe, 457 U.S. 202 (1981) the Court invalidated a state law denying free public education to children of "illegal" aliens, noting: "The dominant incentive for illegal entry...is the availability of employ-

ment....Furthermore, the available evidence suggests that illegal aliens underutilize public services...." Id. at 228.

The Supreme Court's findings are supported by recent sociological research which indicates: immigrants pay more per family in taxes than they draw out in welfare costs; immigrants do not receive more in welfare benefits than do native born Americans⁸; immigrants do not take jobs away from natives; immigrants demonstrate economic traits considered more valuable than the native born to the economy⁹; and the percentage of this country's immigrant population has declined to less than one fifth of what it was at the turn of the century.¹⁰ As a recent Florida law review article explains:

Contrary to the public perception of immigrants as constituting a massive wave of welfare-seeking opportunists draining our national economy, statistics document the extent to which the coffers of the United

⁸Only 7% of all AFDC cases nationwide involve applicants born in another country. In Florida, more than 90% of all persons receiving AFDC are U.S. citizens. OFFICE OF THE SECRETARY FOR PLANNING AND EVALUATION, DEPT. OF HEALTH AND HUMAN SERVICES, THE PRESIDENT'S COMPREHENSIVE TRIENNIAL REPORT ON IMMIGRATION (1989) at 2, 26-27.

⁹"The economic literature draws two apparently authoritative conclusions about the effects of immigration on the United States. The first is that immigrants are successfully absorbed into the U.S. labor market.... A second conclusion...is that the overall economic contributions of immigration exceed its liabilities." U.S. DEPT. OF LABOR, BUREAU OF INTERNATIONAL LABOR AFFAIRS, THE EFFECTS OF IMMIGRATION ON THE U.S. ECONOMY AND LABOR MARKET, THE PRESIDENT'S COMPREHENSIVE TRIENNIAL REPORT ON IMMIGRATION (1989) at 191-192.

¹⁰Bring on the Wretched Refugee, The Wall Street Journal, Jan. 26, 1990; SIMON, THE ECONOMIC CONSEQUENCES OF IMMIGRATION, (1989) 132-142; Bhagwati, Behind The Green Card, The New Republic, May 14, 1990 at 31-39.

States are enriched rather than depleted by the influx of aliens into our country.

Carton, The PRUCOL Proviso in Public Benefits Law: Alien Eligibility for Public Benefits, 14 Nova L. Rev. 1031, 1032, (1990).

The existence of aliens who are allowed to stay in the country as a source of cheap labor, but are nevertheless denied the benefits that society makes available to its citizens and lawful residents, raises the troubling specter of a permanent underclass of resident aliens. Such a caste situation "presents most difficult problems for a nation that prides itself on adherence to principles of equality under law." Plyler v. Doe, 457 U.S. 202 (1981).

AFDC benefits are primarily intended to alleviate the financial hardships on children who are deprived of the support of one or more parents. §409.325(1) Fla. Stat. (1989). Luisa Solis' five minor children should not be penalized in their receipt of AFDC (for which they are otherwise eligible), because of their manner of entry into this country. The denial of a benefit to a child based on a legal characteristic over which children have no control, imposes a discriminatory burden. "It is thus difficult to conceive of a rational justification for penalizing these children for their presence within the United States." Plyler, 457 U.S. at 220. The Court states:

Imposing disabilities on the...child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the...child is an ineffectual - as well as unjust - way of deterring the parent (sic).

Id. (quoting Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 175 (1972)).

The issue of controlling our national borders is serious and complex. In addressing this issue, it is vital that we not allow xenophobic hysteria to cloud our judgment of the real needs of noncitizens in this country. Denying subsistence benefits to those lawfully present in this country serves only to create hardship and despair while undermining the fair and just application of our laws.¹¹

Unsupported fears of increased immigration cannot justify an impermissibly narrow PRUCOL interpretation. Once the myths and prejudices surrounding the alien population are dispelled, there is no policy justification for a more restrictive PRUCOL standard in the AFDC program. Florida's statutory PRUCOL requirements for the AFDC, Medicaid, and unemployment programs should be interpreted uniformly.

II. THE FEDERAL GOVERNMENT SHOULD SHARE IN WELFARE COSTS FOR ASYLUM APPLICANTS

While most immigrants, like Ms. Solis, come to this country to work (R. 20-21, 96),¹² there are welfare costs associated with their presence in this country. It is proper that the federal government share these costs. It is the federal government's policy which permits asylum applicants to remain in this country while

¹¹Rubin, Walking a Gray Line: The "Color of Law" Test Governing Noncitizen Eligibility for Public Benefits, 24 San Diego L. Rev. 411, 477 (1986).

¹²"The vast majority of all immigrants and refugees eventually enter the U.S. labor force." U.S. DEPT. OF LABOR, supra, at 24.

their asylum claims are processed, a period that often lasts six years or longer (R. 60). See also Sudomir v. McMahon, 767 F.2d 1456, 1407 (9th Cir. 1985) (Canby, J. dissenting). Indeed, the Immigration and Naturalization Service (INS) informs each applicant, "You may remain in the United States until a final decision is made on your case." INS Form I-589. (Respondent's Appendix 1).

The federal government, not the state and local governments, controls immigration policy. The federal government, not the state and local governments, sanctions asylum applicants' continued presence in this country. As Petitioner notes, Florida is an "involuntary host" to these aliens. Petitioner's Initial Brief at 12. Yet under Petitioner's PRUCOL policy, the federal government bears none of the costs for providing welfare benefits to asylum applicants.¹³ As a commentator notes, "the federal government does not take responsibility for the consequences of its immigration policy, thereby imposing undue burdens on state and local governments." Calvo, Alien Status Restrictions on Eligibility for Federally Funded Assistance Programs, 16 N.Y.U. Rev. of L. & Soc. Change 395, 431 (1987-88). The commentator concludes:

[PRUCOL] criterion should be interpreted to include all aliens with a status which allows an alien to reside in the United States under immigration law, policy or practice....This interpretation would serve two important interests. The federal government would bear a fair share of the cost of its immigration program, and those aliens allowed to live in

¹³In contrast, the federal government pays 54.46% of AFDC costs. 54 Fed. Reg. 49,358(1989).

the United States would bear the responsibilities and enjoy the entitlements of their residence.

Id. at 431-432.

Another commentator explains that the original PRUCOL amendments were added to ensure that the federal government accept financial responsibility. "[T]he full Senate implicitly adopted the principle enunciated by Senator Gurney: Whenever the federal government is responsible for inviting or permitting the presence of aliens in this country, the federal government should bear the costs of providing subsistence benefits to these needy aliens." Rubin, supra, at 415. PRUCOL was intended to protect asylum applicants:

These were not persons who already had been granted legal refugee status but rather applicants seeking to attain such status. In employing the color of law standard, Congress intended that a humanitarian approach be taken toward those fleeing persecution, who are permitted to remain in this country while seeking to legalize their status.

Id. at 414.

Under Petitioner's PRUCOL policy, costs properly borne by the federal government are paid by the state and local governments. Nicaraguans, for example, received an estimated \$4 million in Dade County social services in 1988.¹⁴ In 1988, the City of Miami, a Coalition member, spent approximately \$4,000 daily to establish support services and an emergency shelter for the homeless. More

¹⁴U.S. GENERAL ACCOUNTING OFFICE, POLITICAL ASYLUM APPLICANTS, FINANCIAL EFFECT ON LOCAL SERVICES IN THE MIAMI AREA (1989) at 3.

than half of the shelter residents were Nicaraguans.¹⁵ Dade County Office of Emergency Assistance, also a Coalition member, provides cash benefits to otherwise eligible asylum applicants. The Florida Legislature has recognized that local governments cannot continue to shoulder the full burden for support of the homeless:

[T]he growing numbers and increasing needs of the homeless have generally outstripped the capabilities of such local agencies to adequately respond to the problems of the homeless in Florida....

§420.625(1), Fla. Stat. (1989).¹⁶

The federal government should bear its fair share of such costs. Indeed, the original purpose of PRUCOL language was to "prevent a great and unintended hardship being placed upon the people of Dade County...." 118 CONG. REC. 33,959 (daily ed. Oct. 5, 1972)(statements of Senators Chiles and Gurney). The federal government is in a better position than local government to provide for asylum applicants. The federal government is responsible for the policy which permits aliens' residence in this country. Local government should not bear the consequential financial burden of federal immigration policy and delay.

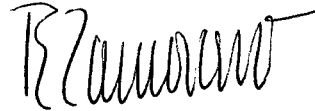
CONCLUSION

Amicus, Miami Coalition for the Care to the Homeless, Inc. prays the Court affirm the decision below.

¹⁵Id.

¹⁶ The Legislature also recognized that this state must take advantage of federal financial assistance to the homeless. §420.627(1)(d), Fla. Stat. (1989).

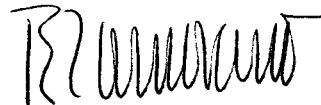
Respectfully submitted,



THOMAS E. ZAMORANO
Attorney for the Miami
Coalition for the Care
to the Homeless
c/o 225 N.E. 34 Street
Suite 300
Miami, Florida 33137
Telephone: (305) 576-0080
Fla. Bar No. 320447

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer Brief of Amicus Curiae was sent by mail this 23rd day of July, 1990, to Louis Hubener, Esquire, Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1502 Tallahassee, Florida 32399-1050; Scott D. LaRue, Assistant General Counsel, Department of Health and Rehabilitative Services, 1323 Winewood Blvd., Bldg. One, Room 407, Tallahassee, Florida 332399-0700; Frank A. Rosenfeld, Appellate Staff Attorney, Civil Division, Room 3617, Department of Justice, Washington, D. C.; Valory Greenfield, Esquire, Legal Services of Greater Miami, Inc., 225 N. E. 34th Street, Suite 300, Miami, Florida 33137; and Victor Panoff, Esquire, on behalf of the American Immigration Lawyers Association, c/o 224 Datura Street, Suite 301, West Palm Beach, Florida 33401.



THOMAS E. ZAMORANO

