

Legal Sidebar

Home Is Where They Have To Take You In: Right to Entry For U.S. Citizens

10/16/2014

Congressional interest in [revoking passports](#) for U.S. citizens who have gone abroad to fight for foreign terrorist groups is partly motivated by concern about preventing such persons from returning to conduct terrorist activities in the U.S. Advocates of revoking a passport for a U.S. citizen who is outside the U.S. believe that this would prevent the person's reentry into the U.S. Contrary to a common misconception, however, the denial or revocation of a passport does not signify or cause a loss of citizenship. A passport only documents a person's status as a U.S. citizen; it does not literally embody the citizenship itself. Moreover, federal courts have recognized a U.S. citizen's right to enter the U.S., even without a passport. Regardless, passport denial or revocation may be effective in addressing U.S. foreign fighters by preventing potential fighters from leaving the U.S., since current [law](#) and [regulations](#) generally require a U.S. citizen to present a U.S. passport when entering or departing the country.

[Nguyen v. I.N.S.](#) is the main case cited as support for recognition by the U.S. Supreme Court of a U.S. citizen's right to enter the U.S. In that case, the Court stated, "Congress is well within its authority in refusing, absent proof of at least the opportunity for the development of a relationship between citizen parent and child, to commit the United States to embracing a child as a citizen entitled as of birth to the full protection of the United States, *to the absolute right to enter its borders*, and to full participation in the political process [emphasis added]." The U.S. Supreme Court arguably has not squarely recognized a right of entry by this assertion, since the primary issue was whether Nguyen was a citizen with the right to remain in the U.S. and not whether a U.S. citizen has the right of entry into the U.S. On the other hand, since the case involved a defense against deportation/removal predicated on U.S. citizenship, and the Court noted that being a citizen meant being entitled to the absolute right to enter U.S. borders, the Court has, arguably, recognized that there is such a right.

Lower federal courts have recognized the right of a U.S. citizen to enter the U.S. without a passport. In [Worthy v. United States](#), a federal appellate court held that imposing a criminal penalty on a U.S. citizen for entering the U.S. without a passport was unconstitutional. The court found that, "We think it is inherent in the concept of citizenship that the citizen, when absent from the country to which he owes allegiance, has a right to return, again to set foot on its soil. . . . We do not think that a citizen, absent from his country, can have his fundamental right to have free ingress thereto subject to a criminal penalty if he does not have a passport."

In [Fikre v. FBI](#), a lower federal court recognized a citizen's absolute right to enter the U.S., notwithstanding the citizen being barred from boarding a U.S.-bound international flight. The case involved inclusion on the No Fly list rather than passport deficiency as a restriction on international travel and entry into the U.S. In that case, a federal district court cited the quotation above from the *Nguyen* case as recognition by the U.S. Supreme Court that citizenship in the United States includes "an absolute right to enter its borders." Furthermore, the lower court found that, "[a]s an initial matter, Plaintiff is undoubtedly correct that the right to return to the United States is inherent in American citizenship." The plaintiff sued the U.S. Government because he was not permitted to board an airline flight to the United States due to his alleged inclusion on the No Fly list of suspected terrorists. The court found that Fikre failed to assert facts sufficient to sustain his claim that the No Fly list and boarding denial were unconstitutional deprivations of his right to reenter the U.S., noting that Fikre had a viable means of returning to the U.S. The court also rejected the plaintiff's claim that the Citizenship Clause had been violated, because the Clause only established who was entitled to citizenship status and was not the basis for the rights of citizens.

In refusing to dismiss a U.S. citizen's lawsuit against the U.S. Government for detaining and attempting to deport him despite his assertion of U.S. citizenship at a port of entry, the federal district court in [Lytle v. U.S.](#) found that the government could not deny entry to a person and put him into expedited removal if he had a credible claim to citizenship. Despite the plaintiff's presentation of a passport upon re-entry, the immigration officers decided that the passport was fraudulently obtained and did not accept it as proof of the plaintiff's citizenship and right to enter. This determination was based on the plaintiff's prior, erroneous deportation. The plaintiff was mentally disabled and had been unable to contest his prior deportation effectively. After deportation, ultimately, he had been able to prove to a U.S. consulate that he was, in fact, a U.S. citizen and the consulate had issued him a passport. Among other things, the government tried to argue that it had followed authorized procedures, but the court held that the immigration laws did not authorize the government to detain or deport U.S. citizens. Therefore, the government should not have ignored the plaintiff's credible assertion of U.S. citizenship and put him in expedited removal.

In light of these cases, if a person actually was acknowledged by the U.S. Government to be a citizen, a court might find, without addressing constitutional issues, that the government is not authorized by statute to deny entry to a citizen, it is only authorized to deny entry to inadmissible aliens. [A U.S. citizen's right to return to the U.S. has also arisen in the context of the Ebola outbreak and public health requirements.](#)

Posted at 10/16/2014 10:46 AM by [Margaret Mikyung Lee](#) | [Share Sidebar](#)

Category: [Immigration and Nationality](#), [National Security](#)