

## US Supreme Court rules that law criminalizing encouragement of illegal immigration is constitutional

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The US Supreme Court ruled Friday in US v. Hansen that 8 U.S.C. §1324(a)(1)(A)(iv), a federal law that criminalizes the encouragement of illegal immigration, does not violate the First Amendment of the US Constitution.

Justice Amy Coney Barrett, writing for the majority, criticized the lower court ruling, which called the law “overbroad,” saying:

Properly interpreted, this provision forbids only the intentional solicitation or facilitation of certain unlawful acts. It does not “prohibi[t] a substantial amount of protected speech”—let alone enough to justify throwing out the law’s “plainly legitimate sweep.” [Quoting United States v. Williams.]

Justice Barrett went on to reason that the law only penalizes speech made in furtherance of a federal crime, which the First Amendment does not protect. Justice Barrett concludes, “In other words, Hansen asks us to throw out too much of the good based on a speculative shot at the bad. This is not the stuff of overbreadth—as-applied challenges can take it from here.”

Justice Clarence Thomas concurred, criticizing the judicial doctrine of overbreadth, writing, “This case demonstrates just how far courts have drifted from their original station of adjudicating the rights of the parties before them in accordance with law. In an appropriate case, we should carefully reconsider the facial overbreadth doctrine.”

Justices Ketanji Brown Jackson and Sonia Sotomayor dissented, with Justice Jackson writing:

It is neither our job nor our prerogative to retrofit federal statutes in a manner patently inconsistent with Congress’s choices. Moreover, by acquiescing to the Government’s newly minted pitch to narrow this statute in order to save it, the majority undermines the goal of the overbreadth doctrine, which aims to keep overly broad statutes off the books in order to avoid chilling constitutionally protected speech.

The case revolves around Helaman Hansen, who allegedly ran a scam that targeted immigrants without documentation, claiming that he could assist them in gaining US citizenship through adult adoption. Hansen's victims allegedly paid him over \$1 million for his services. He was found guilty of 12 counts of mail fraud, three counts of wire fraud and two counts under 8 U.S.C. §1324(a)(1)(A)(iv). He was sentenced to 20 years in prison in 2017.

Hansen appealed his charges under 8 U.S.C. §1324(a)(1)(A)(iv) in 2021, with the 9th Circuit Court of Appeals ruling in favor of Hansen in 2022, saying, "We apply the overbreadth doctrine so that legitimate speech relating to immigration law shall not be chilled and foreclosed."

The US government filed a petition for a writ of certiorari to the Supreme Court in 2022. A deluge of amicus curiae briefs were filed from a broad swath of interest groups in favor of Hansen, including the Reporters Committee for Freedom of the Press, the libertarian think-tank the Cato Institute and several immigration law organizations and scholars.

The American Civil Liberties Union (ACLU) Deputy Director of Speech, Privacy, and Technology, Esha Bhandari, celebrated the narrowed scope of the law, saying:

The Supreme Court has drastically limited the encouragement provision to apply only to intentional solicitation or facilitation of immigration law violations. As written by Congress, the law has left people wondering what they can safely say on the subject of immigration. Now we expect the government to respect free speech rights and only enforce the law narrowly going forward.

The Court remanded the case back to the lower courts for further proceedings.