

Excerpt from Alien Enemies Act (1798)¹

...Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever there shall be a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion shall be perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President of the United States shall make public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies. And the President of the United States shall be, and he is hereby authorized, in any event, as aforesaid, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens who shall become liable, as aforesaid; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those, who, not being permitted to reside within the United States, shall refuse or neglect to depart therefrom; and to establish any other regulations which shall be found necessary in the premises and for the public safety.

Excerpt from Congressional Debates, Rep. Albert Gallatin (DR-PA)²

The House again resolved itself into a Committee of the Whole, on the bill concerning aliens, when Mr. Gallatin rose...

...[T]he question is not whether the measure is expedient, but whether this Government has any power, under the Constitution, to remove alien friends out of the United States, or whether the power over aliens does not belong exclusively to the individual States. He was himself clearly and decidedly of opinion that no such authority was vested in the General Government, and that this bill, if passed, will be a gross violation of the Constitution...All the powers vested in the General Government are either positively specified by the Constitution, or they are such as are necessary and proper for carrying into effect some of those specific powers. For the Constitution provides that the powers not delegated by it to the United States are reserved to the States. It is not contended, in this instance, that a power over aliens is specifically and positively given to the Union; but an attempt is made, to show that it is given by implication.

¹ U.S. Congress. (1798, July 6). An act respecting alien enemies (Chapter 66, Statute II). Fifth Congress, Second Session.

² U.S. Congress. (1798, June). *Annals of Congress*, 5th Cong., 2nd sess., vol. 1, pp. 1973-1974. Government Printing Office.

...[D]id the gentleman mean that Congress ought to exercise all the powers that may be vested in Government in this country? Such a sentiment is also flatly contradicted by the Constitution, as it recognizes a division of powers between the General and State Governments. Thus, in the instance before the committee, Congress has the power to declare war, and to punish any persons guilty of treasonable practices, but what relates to aliens as suspicious characters, the Government of the United States has no cognizance of. It is a matter which remains with the State Governments; and if there was any necessity for passing a law on the subject, there could be no doubt it would be done by the proper Constitutional authority—the State Governments.

Or did gentlemen mean that the power for providing for the common defense should absorb all other powers, and that if this power was limited, the Constitution is not worth a farthing, or not worth having, as the gentleman has said. Did he wish, except the Constitution would authorize an act of this sort, it should be upset? Did he like the Constitution only for the powers it gave, and not for the restraints it put on power? Did he intend to declare himself an enemy to every part of the Constitution which restrains the power of the General Government?

Excerpt from Chinese Exclusion Act (1882)³

...Whereas in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the expiration of ninety days next after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or having so come after the expiration of said ninety days to remain within the United States.

Excerpt from Majority Opinion - *Chae Chan Ping v. US* (1889)⁴

Justice Stephen J. Field

...The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States as a part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when, in the judgment of

³ Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882).

⁴ *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

the government, the interests of the country require it, cannot be granted away or restrained on behalf of anyone.

The powers of government are delegated in trust to the United States, and are incapable of transfer to any other parties. They cannot be abandoned or surrendered. Nor can their exercise be hampered, when needed for the public good, by any considerations of private interest. The exercise of these public trusts is not the subject of barter or contract. Whatever license, therefore, Chinese laborers may have obtained, previous to the Act of October 1, 1888, to return to the United States after their departure is held at the will of the government, revocable at any time at its pleasure...

*Arizona v. US (2012)*⁵

The Federal Government's broad, undoubted power over immigration and alien status rests, in part, on its constitutional power to "establish an uniform Rule of Naturalization," Art. I, §8, cl. 4, and on its inherent sovereign power to control and conduct foreign relations... Federal governance is extensive and complex. Among other things, federal law specifies categories of aliens who are ineligible to be admitted to the United States...and specifies which aliens may be removed and the procedures for doing so...

...The Supremacy Clause gives Congress the power to preempt state law. A statute may contain an express preemption provision, ...but state law must also give way to federal law in at least two other circumstances. First, States are precluded from regulating conduct in a field that Congress has determined must be regulated by its exclusive governance.

⁵ Arizona v. United States, 567 U.S. 387 (2012)