

**FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

EUDENE EUNIQUE, an Individual,  
Plaintiff-Appellant,

No. 99-56984

v.

D.C. No.  
CV-98-07787-GHK

COLIN L. POWELL,\* the Secretary  
of State for the United States,  
Defendant-Appellee.

OPINION

Appeal from the United States District Court  
for the Central District of California  
George H. King, District Judge, Presiding

Argued and Submitted

September 2001 by Plaintiff, Eudene Unique, et al. vs. Defendant, Colin L. Powell, et al. 2001--P-rv.





## **COUNSEL**

Eudene Eunique, Pro se, Lucerne Valley, California, the plaintiff-appellant.

Kristen A. Giuffreda, Office of Immigration Litigation, Washington, D.C., for the defendant-appellee.

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## **OPINION**

FERNANDEZ, Circuit Judge:

Eudene Eunique was denied a passport because she was



As a result of the statutory and regulatory requirements,

can be regulated within the bounds of due process. " Haig v. Agee





[5] Moreover, the economic problems caused by parents who fail to provide support for their children are both well known and widespread. They can be exacerbated when the

reason that the Child Support Enforcement Program, 42 U.S.C. § 651-669, was enacted in the first place, and was quite properly upheld by the Tenth Circuit, despite attacks on various constitutional grounds, not including the ground that



the proper standard"1 for testing restrictions on a person's right to leave the United States. The right to leave one's country is too important to be subject to abridgment on so permissive a standard. The practical effect of consigning the right to travel to this lowly category of constitutional protection is to grant Congress plenary power to restrict it. In this case, unlike those in which the Supreme Court has upheld restrictions on travel, the government has not offered a foreign policy or national security justification for the restriction, the government has not narrowly tailored the restriction to its purpose, and the apparent purpose of the restriction is to penalize past misconduct rather than to restrict travel as such.

The right to leave is among the most important of all human rights. In the Crito, Socrates explains his decision to stay in prison rather than accept

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abroad in Magna Carta were for "those imprisoned or out-

She has earned negligible net income from her law practice.  
She says that a Peruvian-American friend has invited her to

Travel bans aimed at specific individuals or classes of individuals must be more narrowly tailored than bans aimed at specific countries.<sup>19</sup>

The statute and regulation in this case<sup>20</sup> impose a direct restriction on travel, rather than an incidental burden, and must meet a higher standard of scrutiny than rational basis. They do not restrict travel to a specific country or region for reasons of national security or foreign policy, as in Zemel v. Rusk<sup>21</sup> and Regan v. Wald.<sup>22</sup>

members of the Communist Party.<sup>27</sup> The Communists lost in district court under rational basis review, but won in the Supreme Court because it applied a more stringent standard



The majority tries to dilute Aptheker by characterizing it as quaint, from "an early point in the development of Supreme Court jurisprudence in this area."<sup>36</sup> But 1964 is not so long ago as all that. More important, a Court of Appeals is bound by Supreme Court decisions, even if it sees them as undermined by tosequement decision.



restriction on travel to a single country, Cuba **49** -- a restriction already upheld by the Supreme Court in Regan v. Wald**50** --

The passport ban is also overbroad because, as in Aptheker, it does not take into account individual reasons that might support a passport.<sup>55</sup> For example, travel abroad would, in some businesses (importing) and some lines of professional work, be necessary to earning the money with which the parent would be able to pay child support. And it does not allow for considerations that would bear on the risk of a person traveling abroad to evade child support obligations. Were it tailored to avoiding such flight, then posting of security, owning assets fixed in the United States, or having a job or business in the United States could be considered in determining whether to issue a passport, just as they would be in a bail application.

If Ms. Eunique were a murderer who had done her time, she could get a passport.<sup>56</sup> But a person delinquent in paying child support is punished by denial of a passport. All debtors should pay their debts. Debts for child support have special moral force. But that does not justify tossing away a constitutional liberty so important that it has been a constant of Anglo-American law since Magna Carta, and of civilized thought since Plato. We should reverse. To constitutionally deny so important a liberty as the right to travel, a statute must be more narrowly tailored to protect the important gov-