
of circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion”: (1) where such requirement would subject an individual to an unreasonable or indefinite time frame for administrative action, (2) where the administrative agency lacks the competence to resolve the

is deportable by reason of having committed any offense covered in section

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³ This case is also distinguishable from *Parra* in that El-Banna plans to contest his deportability. In *Parra*, Parra had been convicted of a violent sexual offense and conceded the unavailability of relief from removal. As discussed above, El-Banna has challenged his deportability on the basis that he is not an “aggravated felon” within the meaning of the immigration laws. *Parra* is arguably inapplicable to aliens such as El-Banna who do not have a conviction for a violent sexual offense. See *Parra*, 24 F.3d 1081, 1085 (9th Cir. 1994).

accord

⁴ The Court cited to *United States v. Salerno*, 481 U.S. 739 (1987), *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992), and *Kansas v. Hendricks*, 521 U.S. 346, 356

1:99CV1871 at 2 (N.D. Ohio Sept. 21, 2000) (Report and Recommendation) (finding that petitioner had

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the community.” 481 U.S. at 751, 107 S.Ct. 2095. Even in *Carlson*, where the Court upheld the detention of aliens deportable based upon their membership in the Communist Party, the detention was the result of a discretionary decision after an individualized determination that the individual posed a danger to the community. 342 U.S. at 538, 72 S.Ct. 525 (finding that “purpose to injure could not be imputed generally to all aliens subject to deportation” and thus required the exercise of discretion).

Finally, INA § 241(a)(6), which governs aliens

would allow the court to avoid a constitutional issue in the 75th Amendment. Furthermore, given that § 236(c) provides for mandatory detention without the possibility of bail, the court does not find any way to avoid reaching the constitutional issues raised by El-Banna.

III. CONCLUSION

The court finds that § 236(c), which deprives aliens of their fundamental right to freedom, is not narrowly tailored to meet the goals articulated by the government -- preventing the substantial risk of national security. The government's goal is to protect the country from terrorism.

⁵ Because the court finds that El-Banna's as applied substantive due process challenge to § 236(c) is well-taken, it is unnecessary for the court to reach either his facial attack on § 236(c) or his claim that § 236(c) deprives him of procedural due process.

