
Supreme Court Narrowly Interprets Statute That Criminalizes Encouraging or Inducing Foreign Individuals to Enter the U.S. Illegally While Upholding First Amendment Overbreadth Doctrine

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On June 23, 2023, in *United States v. Hansen*, the United States Supreme Court rejected a First Amendment overbreadth challenge to 8 U.S.C. §1324(a)(1)(A)(iv) (“clause (iv)”), which forbids “encourag[ing] or induc[ing] an alien to come to, enter, or reside in the United States” if one knows or recklessly disregards the fact that such entry would violate the law. In so holding, the Court interpreted the scope of the criminal statute narrowly — concluding that the terms “encourage” and “induce” were used as terms of art in the statute and referred solely to criminal solicitation and facilitation. As a result, the Court held that, when read narrowly, the statute does not prohibit a substantial amount of constitutionally-protected speech and was not legally overbroad. While the Court did not eliminate the First Amendment overbreadth doctrine altogether — as some commentators had predicted — the Court’s decision, and Justice Thomas’s concurrence in particular, demonstrate the continued erosion of the overbreadth doctrine and signal that it may be on its final legs.

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