SUPREME COURT OF THE UNITED STATES

Syllabus

RENO, ATTORNEY GENERAL, ET AL. *v.* CATHOLIC SOCIAL SERVICES, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 91–1826. Argued January 11, 1993—Decided June 18, 1993

Under the alien legalization program created by Title II of the Immigration Reform and Control Act of 1986, an alien unlawfully present in the United States who sought permission to reside permanently had to apply first for temporary resident status by establishing, *inter alia,* that he had resided continuously in this country in an unlawful status and had been physically present here continuously for specified periods. After the Immigration and Naturalization Service (INS) issued regulations construing particular aspects of, respectively, the ``continuous physical presence'' and ``continuous unlawful residence'' requirements, two separate class actions were brought, each challenging one of the regulations on behalf of aliens whom it would render ineligible for legalization. In each instance, the District Court struck down the challenged regulation as inconsistent with the Reform Act and issued a remedial order directing the INS to accept legalization applications beyond the statutory deadline. The Court of Appeals, among other rulings, consolidated the INS's appeals from the remedial orders, rejected the INS's argument that the Reform Act's restrictive judicial review provisions barred district court jurisdiction in each case, and affirmed the District Courts' judgments.

Held: The record is insufficient to allow this Court to decide all issues necessary to determine whether the District Courts had jurisdiction. Pp. 9–23.

(a) The Reform Act's exclusive review scheme—which applies to ``determination[s] respecting an application for adjustment of status,'' 8 U. S. C. §1255a(f)(1), and specifies that ``a denial'' of such adjustment may be judicially scrutinized ``only in the . . . review of an order of deportation'' in the Courts of Appeals, §1255a(f)(4)(A)—does not preclude district court

jurisdiction over an action which, in challenging the legality of an INS regulation, does not refer to or rely on the denial of any individual application. The statutory language delimiting the jurisdictional bar refers only to review of such an individual denial. *McNary* v. *Haitian Refugee Center, Inc.,* 498 U. S. 479, 494. Pp. 9–12.

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(b) However, the promulgation of the challenged regulations did not itself affect each of the plaintiff class members concretely enough to render his claim ``ripe'' for judicial review, as is required by, *e.g., Abbott Laboratories* v. *Gardner,* 387 U. S. 136, 148–149. The regulations impose no penalties for violating any newly imposed restriction, but limit access to a benefit created by the Reform Act but not automatically bestowed on eligible aliens. Rather, the Act requires each alien desiring the benefit to take further affirmative steps, and to satisfy criteria beyond those addressed by the disputed regulations. It delegates to the INS the task of determining on a case-by-case basis whether each applicant has met all of the Act's conditions, not merely those interpreted by the regulations in question. In these circumstances, a class member's claim would ripen only once he took the affirmative steps that he could take before the INS blocked his path by applying a regulation to him. Ordinarily, that barrier would appear when the INS formally denied the alien's application on the ground that a regulation rendered him ineligible for legalization. But a plaintiff who sought to rely on such a denial to satisfy the ripeness requirement would then still find himself at least temporarily barred by the Reform Act's exclusive review provisions, since he would be seeking ``judicial review of a determination respecting an application'' under §1255(a)(f). Pp. 12–17.

(c) Nevertheless, the INS's ``front-desking'' policy—which directs employees to reject applications at a Legalization Office's front desk if the applicant is statutorily ineligible for adjustment of status—may well have left some of the plaintiffs with ripe claims that are outside the scope of §1255(a)(f). A front-desked class member whose application was rejected because one of the regulations at issue rendered him ineligible for legalization would have felt the regulation's effects in a particularly concrete manner, for his application would have been blocked then and there; his challenge to the regulation should not fail for lack of ripeness. Front-desking would also have the untoward consequence for jurisdictional purposes of effectively excluding such an applicant from access even to the Reform Act's limited administrative and judicial review procedures, since he would have no formal denial to appeal administratively nor any opportunity to build an administrative record on which judicial review might be based. Absent clear and convincing evidence of a congressional intent to preclude judicial review entirely, it must be presumed that front-desked applicants may obtain district court review of the regulations in these circumstances. See *McNary, supra,* at 496–497.

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However, as there is also no evidence that particular class members were actually subjected to front-desking, the jurisdictional issue cannot be resolved on the records below. Because, as the cases have been presented to this Court, only those class members (if any) who were front-desked have ripe claims over which the District Courts should exercise jurisdiction, the cases must be remanded for new jurisdictional determinations and, if appropriate, remedial orders. Pp. 17–23.

956 F. 2d 914, vacated and remanded.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined. O'CONNOR, J., filed an opinion concurring in the judgment. STEVENS, J., filed a dissenting opinion, in which WHITE and BLACKMUN, JJ., joined.