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CIVIL RIGHTS

Without review, president becomes king

By Ira J. Kurzban

On Sunday at sundown, members of the Jewish faith throughout the world will begin a one-day fast in compliance with Yom Kippur, the Day of Atonement. On this day we ask for forgiveness for the sins we have committed against our fellow men and women.

This morning, however, many of us will also participate in another one-day fast. On Sept. 30, 1996, the U.S. Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act. As the Congress today considers new legislation aimed at immigrants, it should look back at the disaster it created 10 years ago.

Although IIRIRA was another piece of legislation that was supposed to stop "illegal immigration" into the United States, it unleashed, instead, a series of bad policy choices that have destroyed families, made it virtually impossible to permit illegal immigrants to become legal, and rendered our legal system impotent to stop the worst abuses by government officials who may now run amok without any judicial oversight.

As I write this commentary, a client from Mexico has been incarcerated at the Krome immigration detention center in Miami-Dade County for many months. Although he has been a lawful permanent resident for 15 years, worked two jobs to support his wife and children — who are all U.S. citizens — and served no time in prison for a minor drug possession charge, the government under IIRIRA has subjected him to mandatory detention and will remove him from the United States. The government offers no relief or consideration of his family because his conviction is considered under IIRIRA an "aggravated felony."

Another client, a 63-year-old man from Rwanda seeking political asylum, has sat in detention for two-and-a-half years.

Under IIRIRA, the government's "discretionary" decision to detain the Rwandan asylum-seeker is not reviewable in federal court; nor is the decision to subject the Mexican lawful resident to mandatory detention if it is fact-based. Similarly, IIRIRA provides that

there is no judicial review of virtually any action the immigration authorities take. If an applicant seeks political asylum in the United States but files his application one day late, the federal courts have been stripped of the right to review whether the denial was proper — even if it is certain he would be executed upon his return to his country. If a U.S. employer wishes to bring a world famous concert violinist or medical specialist to the U.S. and immigration authorities wrongly deny his application, the courts have been stripped of the right to intervene because the denial may be a discretionary decision. If the government mistakenly determines that a marriage to a U.S. citizen is not valid and bases it on false or incorrect facts, those "facts" are not reviewable.

There is no more fundamental principle in our constitutional system than the right to challenge government authority in court. "No man in this country," the Supreme Court wrote in *United States vs. Lee*, "is so high that he is above the law." All the officers of the government from the highest to the lowest are creations of the

law and are bound to it. It is the only supreme power in our system of government ..."

Last year, Congress abolished habeas corpus for persons in immigration removal proceedings. Taking away the right of judicial review is tantamount to ending democracy, because if no one may review the executive's power, then the president becomes a king.

Too many Americans have lost their lives to preserve freedom in this country to allow unchecked executive authority. Whatever one's views may be on immigrants, the right of judicial review is at the core of our democracy.

Join us today in our fast to preserve our judicial system and our democratic institutions and ask that the Congress stop passing laws that end judicial review and reverse those that have.

Ira Kurzban is a former national president of the American Immigration Lawyers Association and is the author of Kurzban's Immigration Law Sourcebook.