

Congress has never allowed immigration suits against the government

Washington Times, letter to the Editor, by MARK RUTZICK Reston, Virginia, Feb. 16, 2026

Andrew Napolitano's recent column asserts the existence of constitutional rights for illegal aliens that are not and never have been part of the U.S. Constitution ("The coming constitutional ICE age," Web, Feb. 11).

Mr. Napolitano seems unaware that U.S. immigration proceedings are governed by an entirely different body of federal law from other crimes, with completely different rights for the accused and a distinctly limited role for the federal judiciary.

He bizarrely claims foreign visitors who overstay the length of a visa have not violated U.S. law. In fact, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act in 1996 imposing penalties on those who stay in the United States beyond the period authorized by the government. The penalty, as everyone now understands, is deportation and potential prohibition of future return to the U.S.

Mr. Napolitano criticizes the U.S. Court of Appeals for the 5th Circuit for its recent decision that administrative arrest warrants issued by the Department of Homeland Security are a valid basis for the confinement and deportation of anyone who has already completed the legally required process and been approved for deportation. He claims this ruling violates the Constitution but never identifies the constitutional clause on which he relies.

Why? Because it does not exist. Mr. Napolitano contends that "the whole purpose of an independent judiciary is to protect moral and constitutional values." This is utter nonsense. The Constitution does not recognize "moral values" as relevant to any governmental matter. Nor does it acknowledge the existence of anything called "constitutional values." The Constitution allows judges to decide cases, not abstractions such as "moral and constitutional values."

The Supreme Court has ruled for more than two centuries that the Constitution prohibits a lawsuit against the federal government on any subject unless Congress has enacted a law specifically consenting to the legal proceeding. This prohibition is based on the traditional English common law doctrine of "sovereign immunity," which remains fully in effect under the Constitution.

Congress has never consented to allow lawsuits against the government relating to immigration issues.