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LEGALLY SPEAKING

Alien raids violate basic rights

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A few weeks ago, New York newspapers reported that several "illegal aliens" were apprehended in surprise raids in Astoria, Queens. The arrests apparently constituted the government's answer to the increasing public clamor to eliminate competition posed by these "illegal aliens" in the American labor market.

Since then, the legality of the dragnet searches has been questioned in light of the constitutional protection from unreasonable arrests, searches and seizures. Quite disturbing was the revelation that two-thirds of those interrogated were found to have been legally staying in this country.

How were the raids conducted? An immigration director describes the method as used in earlier raids as follows: investigators, acting on the basis of information received, station themselves at the top and bottom of subways and elevated stairs. Foreign-looking persons are then stopped and are asked to present green-card or other identification. If no valid identification is presented and this is not satisfactorily explained, these persons are taken to the nearest police precinct and detained. When enough aliens are gathered, they are transported to the immigration headquarters at 20 West Broadway where deportation hearings would be scheduled.

The query is posed: Can the government conduct search operations without warrant? Or, in simple terms, may an alien be searched without reasonable ground as determined by a judicial magistrate? Pertinent is a provision of the Immigration and Nationality Act which states: Any officer or employee of the Immigration Service has the power without warrant to interrogate any alien as to his right to remain in the United States and to arrest the same when he has violated any law or regulation on admission or exclusion of aliens. Does this law

justify the manner by which the arrests were conducted?

Notwithstanding some court decisions to the contrary, I think the arrest procedure is not free from constitutional attack. At the outset, it must be emphasized that criminals are treated even better, and that aliens are not criminals but are only trying to earn a living. And the provision in the U.S. Constitution against unreasonable searches and seizures has been construed to be applicable to "citizens and aliens alike and hence the foreigner, equally with the native-born, may invoke [its] aid to guard against the assaults of arbitrary power."

I do not argue that the above mentioned law permits searches without warrant. There is, however, no clear authority to justify the arbitrary manner by which the raids were carried out. To my mind, the power must be exercised only under exceptional circumstances and when reasonable ground exists to support a suspicion of an alien's illegal presence in this country. Short of such showing, no detention or interrogation must be made. Otherwise, abuses may be perpetrated against the foreign-looking citizens and immigrants who unquestionably are not within the contemplation of the evil intended to be curbed.

From the description of the arrest method as given above, it is clear that the interrogation and arrest are solely dependent upon the person's foreign appearance and use of a foreign language. Where is the reasonable ground here? This is like saying that the Constitution employs a different standard in the treatment of aliens and other foreign-looking persons. Certainly, such is contrary to the American tradition of holding sacred the rights of every individual.