

local, state, or federal constitutional duty to provide aid at all, or any kind or amount of aid. What we do have is a claim that a state may not discriminate by arbitrarily classifying those who shall and those who shall not be provided with aid, because such discrimination violates rights guaranteed by the first section of the Fourteenth Amendment to the Constitution of the United States.

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Plaintiff's argument based on privileges and immunities is premised primarily on the right of interstate travel. That right, so the argument goes, is abridged by Connecticut's practice of denying ADC to those in plaintiff's situation because it chills their mobility. The existence, source and dimensions of the right to travel have been the subject of much constitutional debate. In *Edwards v. California*, 314 U.S. 160 (1941), the Court struck down a California statute which made it a misdemeanor to bring an indigent non-resident into the state. The rationale of the majority was that the statute violated the Commerce Clause. Mr. Justice Jackson, concurring, would have held that the statute abridged the state citizenship and privilege and immunities clauses of the Fourteenth Amendment. 314 U.S. at 181-86. Mr. Justice Douglas, joined by Justices Black and Murphy, would also have rested on the privileges and immunities clause. 314 U.S. at 177-81. In the passport cases, which deal with the right of foreign travel, the Court relied on Fifth Amendment notions of liberty. *Zemel v. Rusk*, 381 U.S. 1, 14 (1965); *Aptheker v. Secretary of State*, 378 U.S. 500, 505-06 (1964); *Kent v. Dulles*, 357 U.S. 116, 126-27 (1958). Finally, in *United States v. Guest*, 383 U.S. 745, 759 (1966), the Court ruled that, "Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvass those differences further. All have agreed that the right exists." The Court thereby quieted any doubts that might have remained about the existence of the constitutional right of interstate travel but left unanswered questions regarding its source and dimensions. The defendant contends that the plaintiff is not deprived of the right to travel and to settle in Connecticut since she may do so freely so long as she does not seek welfare benefits until after she has resided here for a year.

Whether or not the state citizenship clause and the privileges and immunities clause² are the as yet unnamed source of the right of interstate travel, Mr. Justice Jackson's concurrence in *Edwards*, which as mentioned above was based on those clauses, delineates in timeless language the dimensions of the right.

"... it is a privilege of citizenship of the United States, protected from state abridgment, to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing.

² To abridge the privileges and immunities clause of the Fourteenth Amendment, the challenged state action must contravene a right inherent in national, as opposed to state, citizenship. *Adamson v. California*, 332 U.S. 46, 52-53 (1947). The Supreme Court has seldom defined a right of national citizenship. See, *Colgate v. Harvey*, 296 U.S. 404, 436 (1935) (Stone, J., dissenting) overruled *Madden v. Kentucky*, 309 U.S. 83 (1940); *Hague v. CIO*, 307 U.S. 496, 520-21 n.1 (1939) (Stone, J., concurring). According to Mr. Justice Douglas, "judicial reluctance to expand the content of national citizenship . . . has been due to a fear of creating constitutional refuges for a host of rights historically subject to regulation." *Bell v. Maryland*, 378 U.S. 226, 242, 250 (1964) (Douglas, J., concurring). Nevertheless, there is continuous and abundant judicial recognition that the privileges and immunities clause means something. See the cases cited *supra* in this footnote and, e.g., *United States v. Guest*, 383 U.S. 745, 762, 764-67 (1966) (Harlan, P. concurring and dissenting); *New York v. O'Neill*, 359 U.S. 1, 12, 13 (1959) (Douglas, J., dissenting). See also, *Oyama v. California*, 332 U.S. 633, 640 (1948) which speaks of "privileges as an American citizen". An *en banc* decision of the Court of Appeals for the Second Circuit. *Spanos v. Skouras Theatres Corp.*, 364 F. 2d 161, 170 (2d Cir.), cert. denied, 385 U.S. 987 (1966), stated among other reasons for its decision, that "under the privileges and immunities clause of the Constitution no state can prohibit a citizen with a federal claim or defense from engaging an out-of-state lawyer to collaborate with an in-state lawyer and give legal advice concerning it within the state." As quoted in the text, *infra*, "If national citizenship means less than" the right "to enter any State of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof . . . it means nothing." *Edwards v. California*, 314 U.S. 160, 181, 183 (1941) (Jackson, J., concurring).