

Unusual Immigration-Related Cases at the US Supreme Court

By [Margaret Stock](#) on January 5th, 2012

Two **unusual immigration-related cases currently before the United States Supreme Court** involve **how non-citizens participate in American political processes**. This year's Presidential election makes these cases particularly noteworthy.

In [Bluman v. Federal Election Commission](#), the plaintiffs argue that non-citizens living legally in the United States but who don't yet have Lawful Permanent Resident (LPR) status ("green cards") should have a First Amendment right to contribute to political candidates. The plaintiffs, Benjamin Bluman and Asenath Steiman, are both foreign nationals who lawfully live and work in America but don't yet have green cards. **Current federal law prohibits foreign nationals (other than green card holders) from making political contributions in connection with any federal, state or local election** in the United States. Violating the law is a crime and can result in jail time and substantial fines. **The plaintiffs claim that the foreign national ban violates the First Amendment** and want the U.S. Supreme Court to declare the law unconstitutional.

In [Louisiana v. Bryson](#), the plaintiffs argue that **non-citizens—both authorized and unauthorized—should not be counted by the U.S. Census unless they have attained Lawful Permanent Resident status**. Louisiana filed the lawsuit—an original action in the United States Supreme Court—because **the State believes that it has lost one seat in Congress as a result of the Census practice of counting all residents**. Louisiana contends that other States such as California have disproportionate numbers of foreign nationals who are not Lawful Permanent Residents, and those States have an advantage in the political process—and in the Electoral College—over States that have fewer foreign nationals without LPR status.

Although the cases may appear to be relatively straightforward to a layperson, in reality, **both cases involve complex issues of U.S. immigration law**: Few members of the public know of the multitude of different immigration statuses; these statuses are not easily categorized as "temporary" or "permanent." While the immigration laws try to distinguish between "immigrants" (those who intend to reside permanently) and "non-immigrants" (those who enter the U.S. with an intent to be here temporarily), **there are a multitude of "gray area" statuses**, and [the "dual intent" doctrine](#) allows some "non-immigrants" to have an intent to remain permanently. Is an H-1B professional worker a "temporary" or a "permanent" resident for Census purposes if he has an approved immigrant visa petition but is on a seven-year waiting list for his green card? What about an El Salvadoran who has held Temporary Protected Status (TPS) for ten years, has U.S. citizen children, but who can't adjust status because she entered the U.S. without inspection when she fled from the conflict in her country years ago? Should the Census count an asylum seeker who has had his asylum application pending for many years, and who has permission to live and work in the United States until his asylum case is decided? What about those who have a treaty-based right to live and work in the U.S., such as Native Americans born in Canada or citizens of Micronesia, Palau, and the Republic of the Marshall Islands? Should the Federal Election Commission allow political contributions from an E-2 treaty investor who owns a U.S. restaurant and has been living and paying taxes in the United States

for twenty years, but who can't qualify for a green card because his business is too small to meet the complex and difficult EB-5 immigrant investor requirements?

Many Americans are aware that [millions of unauthorized immigrants live in the United States](#), but few understand that **there are also millions of foreign nationals who live legally in the United States for years at a time, but cannot obtain "green cards."** These two Supreme Court cases have the potential to affect both the authorized and the unauthorized foreigners among us.

Recently, **the Supreme Court recognized that [non-citizens in removal proceedings have a Sixth Amendment right to counsel](#)**, but it is not clear what the Court will do with their First Amendment rights, or with their right to be counted as residents in the Census. Reading the briefs for both the *Bluman v. FEC* and the *Louisiana v. Bryson* cases, one is struck by the complexity of the issues potentially facing the Supreme Court. Although styled as a First Amendment case, *Bluman* could affect other Constitutional protections that are routinely afforded to non-citizens who have not yet obtained Lawful Permanent Resident status. And *Louisiana v. Bryson* could change the results of a Presidential Election, depending on how it is decided, and vastly increase the complexity of U.S. Census questionnaires (if Louisiana prevails, the Census Bureau will have to account for more than one hundred different types of immigration statuses that residents of the U.S. currently hold).

With its decisions in these cases, [the U.S. Supreme Court could create even more chaos in the currently dysfunctional American immigration system](#). Potentially, for example, **the Court could rule that a Treaty NAFTA professor at Louisiana State University has a right to contribute to Louisiana Governor Bobby Jindal's political campaign, but can't be counted in the U.S. Census as a resident of Louisiana.** These two cases are ones that all immigration practitioners should be watching closely.