# THE DUST BOWL AND THE SUPREME COURT (PART II)

By John S. Caragozian

(Part I from the May 1 Daily Journal included the background of *Edwards v. California*, a November 1941 U.S. Supreme Court case that struck down California's Depression-era anti-Okie law. 314 U.S. 160. The majority held that California's ban on transporting indigent citizens into the state violated the U.S. Constitution's commerce clause. Justice William Douglas's three-justice concurrence was that the ban violated the 14th Amendment's privileges and immunities clause. Justice Robert Jackson's solo concurrence was that (a) states could not discriminate on the basis of economic class and (b) military service was obligatory regardless of indigence, and the right to travel should also be regardless of indigence.)

*Edwards* had three ironic endings, none of which could have been contemplated at the time by the parties, lawyers and judges.

The first ironic ending is that *Edwards* made no real-life difference, whether in the Midwest (where the migrants wanted to leave) or in California (where the migrants wanted to move).

Why? A fortnight after the Supreme Court announced its decision, Japan attacked Pearl Harbor, and—as Justice Robert Jackson's solo concurrence foreshadowed—the United States entered World War II. California became the center of war industrialization, and its economy boomed.

For example, the town of Richmond became the location of four huge Kaiser shipyards, which, during the War, built a total of 747 Liberty Ships, Victory Ships and other ships in assembly-line fashion. To keep up this pace of turning out almost four ships a week, week after week, month after month, and year after year, the yards needed workers – eventually totaling 90,000 – working around the clock. Kaiser had to actively recruit workers from as far away as Louisiana and New York.

In southern California, aircraft manufacturing was the dominant industry. As but one example, Lockheed Aircraft's Burbank plant also employed 90,000 people and produced almost 20,000 planes during the War. A separate manufacturer, Douglas Aircraft, was headquartered in Santa Monica and, during the War, employed 160,000 people, mostly in southern California.

At the same time, many potential workers became unavailable. Over a million Californians served in the military and, accordingly, were out of the state's civilian labor pool. Some 100,000 Japanese-Americans from California were imprisoned in camps and also unavailable to join the industrial labor force.

With these twin trends – a huge and growing need for labor, but a shrinkage of the labor pool – California went from trying to keep people out to trying to lure people in, from having a labor surplus to having an acute labor shortage.

With higher employment and wages, Californians' per capita personal income doubled between 1940 and 1945, and California's total personal income tripled during those same years. State tax revenues also increased.

More broadly, those workers, including the formerly unwanted migrants, fueled California's economy and built the ships, planes and tanks that helped the Allies win World War II.

The bottom line here: even if *Edwards* had been decided the other way – if the Supreme Court had ruled that California could enforce its law to keep out indigent American migrants – California would not have used this enforcement power. The anti-Okie law, regardless of its legal enforceability, was a dead letter because the states' economic and the nation's defense needs would have overborne any legal right to bar indigent migrants.

The second ironic ending to *Edwards* followed years later. The Supreme Court's decision may have lacked any real-life effect in 1941, but a quarter of a century after it was decided, *Edwards*'s legal bases were resurrected during the Civil Rights era.

For example, in 1966 in *United States v. Guest*, 383 U.S. 745, the U.S. Supreme Court reviewed a federal statute which made it a crime to interfere with a citizen's "enjoyment of any right or privilege secured to him by the Constitution …." Several private individuals – apparently including Klansmen – were indicted for, among other activities, interfering with African Americans' right to travel on public streets and highways. In upholding the indictment, the Supreme Court held that the right to interstate travel is a privilege guaranteed by the 14th Amendment. The primary authority for that guarantee was Justice's William Douglas's concurring opinion in *Edwards*. Justice Douglas's 1941 concurrence thus became cited as precedent in 1966.

Also in 1966, the Supreme Court struck down Virginia's poll tax in *Harper v. Virginia Board of Elections,* 383 U.S. 663. What does a poll tax have to do with *Edwards*'s right to interstate travel? Here is what the Supreme Court ruled in the poll tax case: "The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, … of all races…. [¶] We say the same whether the citizen, otherwise qualified to vote, has $1.50 in his pocket or nothing at all, pays the fee or fails to pay it…. [¶] … Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race …, are traditionally disfavored." The cited authority was Justice Jackson's concurrence in *Edwards*.

Other Civil Rights-era cases also cited to *Edwards*. In 1969's *Shapiro v. Thompson*, 394 U.S. 618, the U. S. Supreme Court struck down states' one-year residency requirements for welfare eligibility, holding that such requirements violated the rights of persons to interstate travel. *Edwards* was cited as authority for this travel right.

More recently, in 1999, the Supreme Court cited *Edwards* to extend *Shaipro*. In *Saenz v. Roe*, 526 U.S. 489, the Court held that welfare residency requirements, even if countenanced by federal statute, could not be enforced, because they interfered with individuals' rights to travel under the 14th Amendment's privileges and immunities clause. In other words, over half a century after *Edwards*, the Supreme Court adopted as settled law Justice Douglas's concurrence about the privilege to travel and denied Congress, as well as states, the power to abridge that privilege.

In sum, *Edwards v. California* established a constitutional right to travel from one state to another, a right immune from federal or state interference. *Edwards* also cast at least a little doubt on laws penalizing indigence.

*Edwards*'s authority here, while not cited in 1941 or in 1951 or even in 1961, became an important and well-established principle as the United States finally began to protect Civil Rights.

*Edwards* has a third and final ironic ending. As noted in Part I, on *Edwards*'s re-argument in 1941, California's first-term attorney general urged the Supreme Court to uphold Section 2615. The Court disagreed, unanimously invalidating the statute. As noted above, the Supreme Court, a quarter of a century later, cited to the California law's unconstitutionality in some of its landmark Civil Rights cases. The irony is that the California attorney general who urged the law's validity and the Chief Justice of the United States Supreme Court which cited to the law's invalidity were one and the same person: Earl Warren.

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