In celebration of Constitution Day!

Yesterday was Constitution Day, the day we celebrate the signing of the U.S. Constitution. To highlight how the Equal Protection clause of U.S. Constitution applies to noncitizens, I authored an op-ed in my local newspaper, the Indianapolis Star. I include it below with the link to the newspaper site at the bottom. The comments to the op-ed in the site make for very interesting reading.

U.S. Constitution extends protection to immigrants
By Maria Pabon Lopez
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As we celebrate today the 223rd anniversary of the signing of the U.S. Constitution, which took place on Sept. 17, 1787, let us understand what the Constitution says about immigrants. In doing so, an examination of U.S. Supreme Court case law about immigrants and equality is instructive as well, having just ended a long summer during which the immigration debate has been raging nationwide.

I believe that a close look at the Constitution — particularly its amendments, having over time been ratified by the states — demonstrates the will and wisdom of the people of the United States. Take, for example, the 14th Amendment, which in Section One, Clause Two 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.” This is the Equal Protection Clause, and it mandates that the government — both federal and state — treat persons equally when enacting legislation. If the government treats persons unequally, the Supreme Court has devised analytical tests based on the government’s reason for passing the law in order to assess whether the law complies with the Equal Protection Clause.

Notice that the clause specifically says “person,” not “citizen.” What this means is that the equality promise of the Equal Protection clause is available by its very terms not only to citizens of this country, but to any person, including those who are not U.S. citizens, as long as they are within the jurisdiction of the United States. The Supreme Court itself has recognized that immigrants are persons in cases that further outline what rights immigrants have in the United States.

In fact, the Supreme Court has confirmed the applicability of the Equal Protection Clause to those who are not U.S. citizens, whether they are present in the country in lawful immigration status or even if they are undocumented. The case is called Plyler v. Doe, and it is a 1982 decision in which the U.S. Supreme Court struck down a Texas law that excluded children of undocumented immigrants from public schools. The court found that the law violated the Equal Protection Clause without having any rational basis for so doing.

In reaching this result in Plyler, the Supreme Court delved into the history of the enactment of the 14th Amendment. In particular, the court cited language from the 1866 congressional debate recorded at the time of passage of the Amendment as follows: “Is it not essential to the unity of the Government and the unity of the people that all persons, whether citizens or strangers, within
this land, shall have equal protection in every State in this Union in the rights of life and liberty and property?” These are the words of John Bingham, Republican congressman from Ohio, the principal framer of the 14th Amendment. So we see that the Supreme Court found not only in the letter, but also in the history, of the 14th Amendment that the guarantee of equal protection under the law applies to all persons, immigrants or citizens, in the United States.

Having reviewed the history of the 14th Amendment, the Supreme Court emphasized “that a person’s initial entry into a State, or into the United States, was unlawful, and that he may for that reason be expelled, cannot negate the simple fact of his presence within the State’s territorial perimeter.” Thus, the court found that the 14th Amendment applies to those in the country unlawfully.

With this review of the past and present of the 14th Amendment, it is my hope that as the country continues to debate immigration matters into the fall, we will approach the discussion with a fuller understanding of the equality guarantee found in this amendment to the U.S. Constitution.