

# The Burger Court Opinion Writing Database

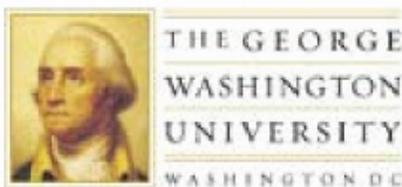
## *Rogers v. Bellei*

401 U.S. 815 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

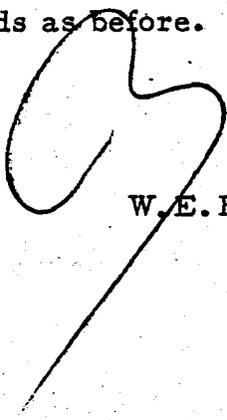
CHAMBERS OF  
THE CHIEF JUSTICE

February 20, 1970

Re: No. 179 - Rogers v. Bellei

MEMORANDUM TO THE CONFERENCE:

My position stands as before.

  
W. E. B.

WJB

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HUGO L. BLACK

February 13, 1970

MEMORANDUM FOR THE CONFERENCE

From: H. L. B.

In re: No. 179 - Rogers, Secretary v. Bellei.

My tentative vote at conference in this case was to reverse and it was therefore assigned to me to write as a reversal. The difficulty of the task of a reversal finally appeared to me to be insurmountable. Under these circumstances I concluded that the best thing for me to do was to write a memorandum for the Court as I would write an opinion for affirmance. Then, too, the thought occurred to me that it might be possible to command a majority of the present Court basing the opinion squarely on Afroyim, although the conference vote on the case is now 4 to 4.

H. L. B.

Memorandum attached

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
~~Mr. Justice Brennan~~  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

From: Black, J.

2

Circulated: FEB 13 1970

SUPREME COURT OF THE UNITED STATES

Recirculated: \_\_\_\_\_

No. 179.—OCTOBER TERM, 1969

William P. Rogers, Secretary } On Appeal From the  
of State, Appellant, } United States Dis-  
v. } trict Court for the  
Aldo Mario Bellei. } District of Columbia.

[February —, 1970]

Memorandum from MR. JUSTICE BLACK.

Section 301 (a) of the Immigration and Nationality Act of 1952<sup>1</sup> and its predecessors have for many years conferred United States citizenship at birth upon the foreign-born children of American citizens. However, in the case where one of the parents of the foreign-born

<sup>1</sup> 8 U. S. C. § 1401 (a). Generally, this section enumerates the classes of persons who become United States citizens at birth. The provision relevant to this case is § 1401 (a)(7), which grants citizenship to the children born abroad of one American and one alien parent:

“(a) The following shall be nationals and citizens of the United States at birth:

“(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totalling not less than ten years, at least five of which were after attaining the age of fourteen years . . . .”

The earlier form of this provision in effect when appellee was born in 1939 is set out in n. 3, *infra*. Similar provisions conferring citizenship on the foreign-born children of citizens go back to 1790. See 1 Stat. 103, 104.

No significant  
changes  
TR

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
~~Mr. Justice Brennan~~  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

From: Black, J.

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

No. 179.—OCTOBER TERM, 1969

Recirculated: **FEB 17 1970**

William P. Rogers, Secretary } On Appeal From the  
of State, Appellant, } United States Dis-  
v. } trict Court for the  
Aldo Mario Bellei. } District of Columbia.

[February —, 1970]

Memorandum from MR. JUSTICE BLACK.

Section 301 (a) of the Immigration and Nationality Act of 1952<sup>1</sup> and its predecessors have for many years conferred United States citizenship at birth upon the foreign-born children of American citizens. However, in the case where one of the parents of the foreign-born

<sup>1</sup> 8 U. S. C. § 1401 (a). Generally, this section enumerates the classes of persons who become United States citizens at birth. The provision relevant to this case is § 1401 (a)(7), which grants citizenship to the children born abroad of one American and one alien parent:

“(a) The following shall be nationals and citizens of the United States at birth:

“(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totalling not less than ten years, at least five of which were after attaining the age of fourteen years . . . .”

The earlier form of this provision in effect when appellee was born in 1939 is set out in n. 3, *infra*. Similar provisions conferring citizenship on the foreign-born children of citizens go back to 1790. See 1 Stat. 103, 104.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

3

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 179.—OCTOBER TERM, 1969

Circulated: \_\_\_\_\_  
Recirculated: **FEB 17 1970**

William P. Rogers, Secretary } On Appeal From the  
of State, Appellant, } United States Dis-  
v. } trict Court for the  
Aldo Mario Bellei. } District of Columbia.

[February —, 1970]

Memorandum from MR. JUSTICE BLACK.

*Forced  
all*

Section 301 (a) of the Immigration and Nationality Act of 1952<sup>1</sup> and its predecessors have for many years conferred United States citizenship at birth upon the foreign-born children of American citizens. However, in the case where one of the parents of the foreign-born

<sup>1</sup> 8 U. S. C. § 1401 (a). Generally, this section enumerates the classes of persons who become United States citizens at birth. The provision relevant to this case is § 1401 (a) (7), which grants citizenship to the children born abroad of one American and one alien parent:

“(a) The following shall be nationals and citizens of the United States at birth:

“(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totalling not less than ten years, at least five of which were after attaining the age of fourteen years . . . .”

The earlier form of this provision in effect when appellee was born in 1939 is set out in n. 3, *infra*. Similar provisions conferring citizenship on the foreign-born children of citizens go back to 1790. See 1 Stat. 103, 104.

February 16, 1970

Re: No. 179 - Rogers v. Bellel

Dear Hugo:

I have read with interest and, if I may say so, with admiration your memorandum giving the reasons which have led you to affirmance in this case. With deference, I feel obliged to adhere to my vote to reverse, adding only that I consider this course wholly consistent with bowing to the basic holding in Afroylin.

Sincerely,

J. M. H.

Mr. Justice Black

CC: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

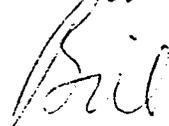
February 16, 1970

RE: No. 179 - Rogers v. Bellei

Dear Hugo:

I voted to come out as you have in  
your Memorandum in the above, and will  
join you if the Memorandum becomes an  
opinion.

Sincerely,

  
W. J. B. Jr.

Mr. Justice Black

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

February 16, 1970

No. 179 -- Rogers v. Bellei

Dear Hugo,

Despite your eloquent blandishments,  
I continue to believe that the judgment in this  
case should be reversed.

Sincerely yours,

P.S.  
✓

Mr. Justice Black

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 16, 1970

Re: No. 179 - Rogers, Secretary v. Bellei

Dear Hugo:

I would be happy to join your  
Memorandum as an opinion for affirmance.

Sincerely,

  
T.M.

Mr. Justice Black

cc: The Conference