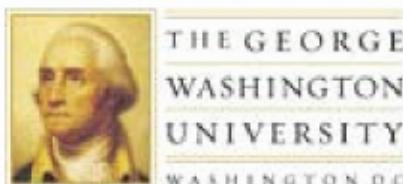


# The Burger Court Opinion Writing Database

*Rogers v. Bellei*  
401 U.S. 815 (April 5, 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

March 30, 1971

No. 24 - Rogers v. Bellei

Dear Harry:

Please join me.

Regards,

W. B.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

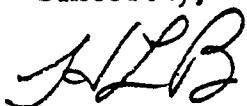
March 18, 1971

Dear Harry,

Re: No. 24 - Rogers v. Bellei

In due course I expect to circulate  
a dissent in this case.

Sincerely,



H. L. B.

Mr. Justice Blackmun

cc: Members of the Conference

1st DRAFT

Mr. Justice Clark  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

## SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 24.—OCTOBER TERM, 1970

Circulated: MAR 25 1971

William P. Rogers, Secretary  
of State, Appellant,  
v.  
Aldo Mario Bellei.

Recirculated:  
On Appeal from the United  
States District Court for  
the District of Columbia.

[March —, 1971]

MR. JUSTICE BLACK, dissenting.

Less than four years ago this Court held that

“the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.” *Afroyim v. Rusk*, 387 U. S. 253, 268 (1967).

The holding was clear. Congress could not, until today, consistently with the Fourteenth Amendment enact a law stripping an American of his citizenship which he has never voluntarily renounced or given up. Now this Court, by a vote of five to four through a simple change in its composition, overrules that decision.

The Court today holds that Congress can indeed rob a citizen of his citizenship just so long as five members of this Court can satisfy themselves that the congressional action was not “unreasonable, arbitrary,” *ante*, at 16; “misplaced or arbitrary,” *ante*, at 17; or “irrational or arbitrary or unfair,” *ante*, at 18. My first comment is that not one of these “tests” appears in the Constitution. Moreover, it seems a little strange to find such “tests”

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

2nd DRAFT

From: Black, J.

Circulated:

SUPREME COURT OF THE UNITED STATES

No. 24.—OCTOBER TERM, 1970

Recirculated MAR 26 1971

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

[March —, 1971]

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS  
joins, dissenting.

Less than four years ago this Court held that

“the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.” *Afroyim v. Rusk*, 387 U. S. 253, 268 (1967).

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

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 24.—OCTOBER TERM, 1970

Circulated:

MAR 30 1971

William P. Rogers, Secretary  
of State, Appellant,  
v.  
Aldo Mario Bellei.

On Appeal from the United  
States District Court for  
the District of Columbia.

Recirculated: ---

[April —, 1971]

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS  
and MR. JUSTICE MARSHALL join, dissenting.

Less than four years ago this Court held that

"the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship." *Afroyim v. Rusk*, 387 U. S. 253, 268 (1967).

The holding was clear. Congress could not, until today, consistently with the Fourteenth Amendment enact a law stripping an American of his citizenship which he has never voluntarily renounced or given up. Now this Court, by a vote of five to four through a simple change in its composition, overrules that decision.

The Court today holds that Congress can indeed rob a citizen of his citizenship just so long as five members of this Court can satisfy themselves that the congressional action was not "unreasonable, arbitrary," *ante*, at 16; "misplaced or arbitrary," *ante*, at 17; or "irrational or arbitrary or unfair," *ante*, at 18. My first comment is that not one of these "tests" appears in the Constitution. Moreover, it seems a little strange to find such "tests"

April 2, 1971

Dear Harry,

Re: No. 24 - Rogers v. Bellei

I have your note stating that you merely propose to announce the result in the above case on Monday, and while I do not expect to make any extended statement, it is my purpose to say enough to let it be known what the issues are and what was decided.

Sincerely,



H. L. B.

Mr. Justice Blackmun

~~cc:~~ Mr. Justice Brennan

To: ~~the~~ ~~the~~ ~~the~~  
Mr. Justice ~~the~~ ~~the~~ ~~the~~  
Mr. Justice Harlan ~~the~~ ~~the~~ ~~the~~  
Mr. Justice Brennan ~~the~~ ~~the~~ ~~the~~  
Mr. Justice Stewart ~~the~~ ~~the~~ ~~the~~  
Mr. Justice White ~~the~~ ~~the~~ ~~the~~  
Mr. Justice Marshall ~~the~~ ~~the~~ ~~the~~  
Mr. Justice Blackmun ~~the~~ ~~the~~ ~~the~~

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 24.—OCTOBER TERM, 1970

From: Black, J.

Circulated: MAR 25 1971

William P. Rogers, Secretary  
of State, Appellant,  
*v.*  
Aldo Mario Bellei.

On Appeal from the ~~United~~ <sup>Calculated:</sup> States District Court for the District of Columbia.

[March —, 1971]

MR. JUSTICE BLACK, dissenting.

Less than four years ago this Court held that

"the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship." *Afroyim v. Rusk*, 387 U. S. 253, 268 (1967).

The holding was clear. Congress could not, until today, consistently with the Fourteenth Amendment enact a law stripping an American of his citizenship which he has never voluntarily renounced or given up. Now this Court, by a vote of five to four through a simple change in its composition, overrules that decision.

The Court today holds that Congress can indeed rob a citizen of his citizenship just so long as five members of this Court can satisfy themselves that the congressional action was not "unreasonable, arbitrary," *ante*, at 16; "misplaced or arbitrary," *ante*, at 17; or "irrational or arbitrary or unfair," *ante*, at 18. My first comment is that not one of these "tests" appears in the Constitution. Moreover, it seems a little strange to find such "tests"

March 18, 1971

Re: No. 24 - Rogers v. Belli

Dear Harry:

Subject to the minor suggestion made to you over the telephone this morning, I am delighted to join your opinion. May I also say that I consider it an outstandingly thorough and persuasive job.

Sincerely,

J. M. H.

Mr. Justice Blackmun

CC: The Conference

Circulated  
4-1-71

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 24.—OCTOBER TERM, 1970

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

[April —, 1971]

MR. JUSTICE BRENNAN, dissenting.

Since the Court this Term has already downgraded citizens receiving public welfare, *Wyman v. James*, 400 U. S. — (1971), and citizens having the misfortune to be illegitimate, *Labine v. Vincent*, — U. S. — (1971), I suppose today's decision downgrading citizens born outside the United States should have been expected. Once again, as in *James* and *Labine*, the Court's opinion makes evident that its holding is contrary to earlier decisions. Concededly petitioner was a citizen at birth not by constitutional right, but only through operation of a federal statute. In the light of the complete lack of rational basis for distinguishing among citizens whose naturalization was carried out within the physical bounds of the United States, and those, like Bellei, who may be naturalized overseas, the conclusion is compelled that the reference in the Fourteenth Amendment to persons "born or naturalized in the United States" includes those naturalized through operation of an Act of Congress, wherever they may be at the time. Congress was therefore powerless to strip Bellei of his citizenship; he could lose it only if he voluntarily renounced or relinquished it. *Afroyim v. Rusk*, 387 U. S. 253 (1967). I dissent.

Circunstá  
4-21-71

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 24.—OCTOBER TERM, 1970

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

[April —, 1971]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS joins, dissenting.

Since the Court this Term has already downgraded citizens receiving public welfare, *Wyman v. James*, 400 U. S. — (1971), and citizens having the misfortune to be illegitimate, *Labine v. Vincent*, — U. S. — (1971), I suppose today's decision downgrading citizens born outside the United States should have been expected. Once again, as in *James* and *Labine*, the Court's opinion makes evident that its holding is contrary to earlier decisions. Concededly petitioner was a citizen at birth not by constitutional right, but only through operation of a federal statute. In the light of the complete lack of rational basis for distinguishing among citizens whose naturalization was carried out within the physical bounds of the United States, and those, like Bellei, who may be naturalized overseas, the conclusion is compelled that the reference in the Fourteenth Amendment to persons "born or naturalized in the United States" includes those naturalized through operation of an Act of Congress, wherever they may be at the time. Congress was therefore powerless to strip Bellei of his citizenship; he could lose it only if he voluntarily renounced or relinquished it. *Afroyim v. Rusk*, 387 U. S. 253 (1967). I dissent.

# SUPREME COURT OF THE UNITED STATES

No. 24.—OCTOBER TERM, 1970

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

[April 5, 1971]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS joins, dissenting.

Since the Court this Term has already downgraded citizens receiving public welfare, *Wyman v. James*, 400 U. S. — (1971), and citizens having the misfortune to be illegitimate, *Labine v. Vincent*, — U. S. — (1971), I suppose today's decision downgrading citizens born outside the United States should have been expected. Once again, as in *James* and *Labine*, the Court's opinion makes evident that its holding is contrary to earlier decisions. Concededly petitioner was a citizen at birth not by constitutional right, but only through operation of a federal statute. In the light of the complete lack of rational basis for distinguishing among citizens whose naturalization was carried out within the physical bounds of the United States, and those, like Bellei, who may be naturalized overseas, the conclusion is compelled that the reference in the Fourteenth Amendment to persons "born or naturalized in the United States" includes those naturalized through operation of an Act of Congress, wherever they may be at the time. Congress was therefore powerless to strip Bellei of his citizenship; he could lose it only if he voluntarily renounced or relinquished it. *Afroyim v. Rusk*, 387 U. S. 253 (1967). I dissent.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 16, 1971

No. 24 - Rogers v. Bellei

Dear Harry,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

March 30, 1971

Re: Rogers v. Bellai - No. 24

Dear Harry:

Please join me.

Sincerely,

B.R.W.

Mr. Justice Blackman

cc: Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 29, 1971

Re: No. 24 - Rogers v. Bellei

Dear Hugo:

Please join me in your dissent.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Black

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 15, 1971

Re: No. 24 - Rogers v. Bellei

Dear Hugo:

A long time ago you very thoughtfully handed to me a copy of the opinion you had prepared last year for this case. It is marked "File Copy." I therefore return it to you herewith.

I am about to circulate my own attempt, which I am afraid is laborious and tentatively reaches the opposite conclusion. Actually, I found the case a most fascinating one on which to work.

Sincerely,



Mr. Justice Black

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Blackmun, J.

No. 24.—OCTOBER TERM, 1970

Circulated:

3/15/71

Recirculated:

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

[March —, 1971]

Memorandum from MR. JUSTICE BLACKMUN.

Under constitutional challenge here, primarily on Fifth Amendment due process grounds, but also on Fourteenth Amendment grounds, is § 301 (b) of the Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, 236, 8 U. S. C. § 1401 (b).

Section 301 (a) of the Act, 8 U. S. C. § 1401 (a), defines those persons who "shall be nationals and citizens of the United States at birth." Paragraph (7) of § 301 (a) includes in that definition a person born abroad "of parents one of whom is an alien, and the other a citizen of the United States" who has met specified conditions of residence in this country. Section 301 (b), however, provides that one who is a citizen at birth under § 301 (a)(7) shall lose his citizenship unless, after age 14 and before age 28, he shall come to the United States and be physically present here continuously for at least five years. We quote the statute in the margin.<sup>1</sup>

<sup>1</sup> "Sec. 301. (a) The following shall be nationals and citizens of the United States at birth:

"(1) a person born in the United States, and subject to the jurisdiction thereof;

"(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

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

2nd DRAFT

1,20  
pp. 1,20  
**SUPREME COURT OF THE UNITED STATES**

No. 24.—OCTOBER TERM, 1970

Circulated:

Recirculated:

3/30/71

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

[April —, 1971]

MR. JUSTICE BLACKMUN delivered the opinion of the  
Court.

Under constitutional challenge here, primarily on Fifth Amendment due process grounds, but also on Fourteenth Amendment grounds, is § 301 (b) of the Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, 236, 8 U. S. C. § 1401 (b).

Section 301 (a) of the Act, 8 U. S. C. § 1401 (a), defines those persons who "shall be nationals and citizens of the United States at birth." Paragraph (7) of § 301 (a) includes in that definition a person born abroad "of parents one of whom is an alien, and the other a citizen of the United States" who has met specified conditions of residence in this country. Section 301 (b), however, provides that one who is a citizen at birth under § 301 (a)(7) shall lose his citizenship unless, after age 14 and before age 28, he shall come to the United States and be physically present here continuously for at least five years. We quote the statute in the margin.<sup>1</sup>

<sup>1</sup> "Sec. 301. (a) The following shall be nationals and citizens of the United States at birth:

"(1) a person born in the United States, and subject to the jurisdiction thereof;

"(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

April 2, 1971

Re: No. 24 - Rogers v. Bellei

Dear Hugo and Bill:

Today's conference revealed that a large number of cases will be coming down on Monday. I therefore propose merely to announce the result, without more, in No. 24.

Sincerely,

*H.A.B.*  
H. A. B.

Mr. Justice Black  
Mr. Justice Brennan ✓

cc: The Conference