

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,

WRB

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

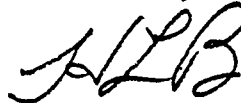
March 18, 1971

Dear Harry,

Re: No. 24 - Rogers v. Bellei

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

Sincerely,

A handwritten signature in dark ink, appearing to be 'HLB' in a stylized, cursive script.

H. L. B.

Mr. Justice Blackmun

cc: Members of the Conference

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

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

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
States District Court for
the District of Columbia.

Recirculated: _____

[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

SUPREME COURT OF THE UNITED STATES

From: Black, J.

Circulated: _____

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).

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 congres-
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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

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”

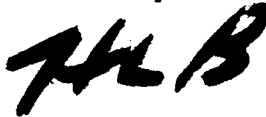
April 2, 1971

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: Mr. Chief Justice
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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
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"

Don (Sup)
I leave for
me -
C.W.U.
This is an
excellent
opinion

March 18, 1971

Re: No. 24 - Rogers v. Bellei

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.
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[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.

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4-1-71

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.
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[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.
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[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

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

Re: Rogers v. Bellei - 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.

Mr. Justice Black

cc: The Conference

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

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

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,

A handwritten signature in cursive script, appearing to read "Harry", written in dark ink.

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,
v.
Aldo Mario Bellei. } On Appeal from the United
States District Court for
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.¹

¹"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

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.¹

¹ "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.

Mr. Justice Black
Mr. Justice Brennan ✓

cc: The Conference