

The Burger Court Opinion Writing Database

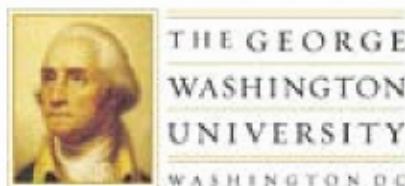
Kleindienst v. Mandel

408 U.S. 753 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



BY

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

CHAMBERS OF
THE CHIEF JUSTICE

June 22, 1972

Re: No. 71-16 - Kleindienst v. Mandel

Dear Harry:

Please join me.

Regards,

hmb

Mr. Justice Blackmun

Copies to the Conference

per
car
6-12

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-16

Richard G. Kleindienst, Acting Attorney General of the United States, et al., Appellants,
v.
Ernest Mandel et al. } On Appeal from the United States District Court for the Eastern District of New York.

[June —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

Under *The Chinese Exclusion Case*, 130 U. S. 581, rendered in 1889, there could be no doubt but that Congress would have the power to exclude any class of aliens from these shores. The accent at the time was on race. Mr. Justice Field writing for the Court said: "If therefore the government of the United States, through its legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects." *Id.*, at 606.

An ideological test, not a racial one, is used here. But neither, in my view, is permissible, as I have indicated on other occasions.¹ Yet a narrower question is raised here. Under the present Act aliens who advocate or teach "the economic, international, and governmental doctrines of world communism" are ineligible to receive visas "except as otherwise provided in this chapter."² The "except" provision is contained in another part of

¹ See *Harisiades v. Shaughnessy*, 342 U. S. 580, 598; *Galvan v. Press*, 347 U. S. 522, 533.

² Section 212 (a)(28)(G)(2) of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1182 (a)(28)(G)(v).

Wm. Douglas 6-12-71

Jack
Reed

6-13

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-16

Richard G. Kleindienst, Attorney General of the United States, et al., Appellants, <i>v.</i> Ernest Mandel et al.	On Appeal from the United States Dis- trict Court for the Eastern District of New York.
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[June —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

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² Section 212 (a)(28)(G)(2) of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1182 (a)(28)(G)(v).

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

No. 71-16

Richard G. Kleindienst, Attorney General of the United States, et al., Appellants,
v.
Ernest Mandel et al.

On Appeal from the United States District Court for the Eastern District of New York.

[June 29, 1972]

MR. JUSTICE DOUGLAS, dissenting.

Under *The Chinese Exclusion Case*, 130 U. S. 581, rendered in 1889, there could be no doubt but that Congress would have the power to exclude any class of aliens from these shores. The accent at the time was on race. Mr. Justice Field writing for the Court said: "If therefore the government of the United States, through its legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects." *Id.*, at 606.

An ideological test, not a racial one, is used here. But neither, in my view, is permissible, as I have indicated on other occasions.¹ Yet a narrower question is raised here. Under the present Act aliens who advocate or teach "the economic, international, and governmental doctrines of world communism" are ineligible to receive visas "except as otherwise provided in this chapter."² The "except" provision is contained in another part of

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² Section 212 (a)(28)(G)(2) of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1182 (a)(28)(G)(v).

2
file
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. June 16, 1972

RE: No. 71-16 - Kleindienst v. Mandel

Dear Thurgood:

Please join me in your dissent in the
above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 8, 1972

71-16, Kleindienst v. Mandel

Dear Harry,

I agree with your memorandum,
which I hope will become the opinion of the
Court.

Sincerely yours,

P.S.
P.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 19, 1972

Re: No. 71-16 - Kleindienst v.
Mandel

Dear Harry:

Please join me.

Sincerely,

Byron

Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 3, 1972

Memorandum for the Chief Justice

Re: No. 71-16 - Mitchell v. Mandel

While I appreciate the assignment of this opinion to me and have worked on it almost continuously since that time, I sincerely regret that I find myself unable to write it. As a matter of fact, I am convinced that my vote was in error.

You will remember that my vote was to agree because "we had come too far to turn back." However, my further research convinces me that I am not in accord with The Chinese Exclusion Case and do not agree that the Constitution gave to either Congress or the Executive the broad power they assert.

As I said before I am sorry, but I will have to go down as a "backslider."

JM
T.M.

cc: The Conference

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Sifford
Mr. Justice White
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

No. 71-16 - Kleindienst v. Mandel

Mr. JUSTICE MARSHALL dissenting.

From: Marshall, J.

JUN 16 1972

Dr. Ernest Mandel, a citizen of Belgium, is an internationally famous Marxist scholar and journalist. He was invited to our country by a group of American scholars who wished to meet him for discussion and debate. With firm plans for conferences, colloquia, and lectures, the American hosts were stunned to learn that Mandel had been refused permission to enter our country. American consular officials had found Mandel "ineligible" to receive a visa under §212 (a) (28) (D) and (G) (v) ^(of the Immigration Act.) which bars even temporary visits to the United States by aliens who "advocate the economic, international and governmental doctrines of world communism" or "who write or publish any written or printed matter * * * advocating or teaching * * *" such doctrines. Under §212(d) (3), the Attorney General refused to waive ineligibility.

I, too, am stunned to learn that a country with our proud heritage has refused Dr. Mandel temporary admission. I am convinced that Americans cannot be denied the opportunity to hear Dr. Mandel's views in person because their government disapproves of Dr. Mandel's ideas, and, therefore, I dissent.

P 1-4, 6-8, 10,¹¹
and *stylistic changes*
throughout

printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-16

Richard G. Kleindienst, Attorney General of the United States, et al., Appellants,
v.
Ernest Mandel et al.

On Appeal from the United States District Court for the Eastern District of New York.

[June —, 1972]

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

Dr. Ernest Mandel, a citizen of Belgium, is an internationally famous Marxist scholar and journalist. He was invited to our country by a group of American scholars who wished to meet him for discussion and debate. With firm plans for conferences, colloquia and lectures, the American hosts were stunned to learn that Mandel had been refused permission to enter our country. American consular officials had found Mandel "ineligible" to receive a visa under § 212 (a)(28)(D) and (G)(v) of the Immigration and Naturalization Act of 1952, which bars even temporary visits to the United States by aliens who "advocate the economic, international and governmental doctrines of world communism" or "who write or publish any written or printed matter . . . advocating or teaching . . ." such doctrines. Under § 212 (d)(3), the Attorney General refused to waive ineligibility.

I, too, am stunned to learn that a country with our proud heritage has refused Dr. Mandel temporary admission. I am convinced that Americans cannot be denied the opportunity to hear Dr. Mandel's views in person because their Government disapproves of his ideas; and, therefore, I dissent.

SD
Rey

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 6/18/72

No. 71-16

Recirculated: _____

Richard G. Kleindienst, Acting Attorney General of the United States, et al., Appellants,
v.
Ernest Mandel et al.

On Appeal from the United States District Court for the Eastern District of New York.

[June —, 1972]

MR. JUSTICE BLACKMUN, Memorandum.

The appellees have framed the issue here as follows:

"Does appellants' action in refusing to allow an alien scholar to enter the country to attend academic meetings violate the First Amendment rights of American scholars and students who had invited him?"¹

*In due time
will consider a
dissenting opinion
by*

Expressed in statutory terms, the question is whether §§ 212 (a)(28)(D) and (G)(v) and § 212 (d)(3)(A) of the Immigration and Nationality Act of 1952, 66 Stat. 182-185, 8 U. S. C. §§ 1182 (a)(28)(D) and (G)(v) and § 1182 (d)(3)(A), providing that certain aliens "shall be ineligible to receive visas and shall be excluded from admission into the United States" unless the Attorney General, in his discretion, upon recommendation by the Secretary of State or a consular officer, waives inadmissibility and approves temporary admission, are unconstitutional as applied here in that they deprive American citizens of freedom of speech guaranteed by the First Amendment.

¹ Brief 1.

APR 15 1972
15.71.16
To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 71-16

Recirculated: 6/31/72

Richard G. Kleindienst, Attorney General of the United States, et al., Appellants,
v.
Ernest Mandel et al.

On Appeal from the United States District Court for the Eastern District of New York.

[June —, 1972]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The appellees have framed the issue here as follows:

"Does appellants' action in refusing to allow an alien scholar to enter the country to attend academic meetings violate the First Amendment rights of American scholars and students who had invited him?"¹

Expressed in statutory terms, the question is whether §§ 212 (a)(28)(D) and (G)(v) and § 212 (d)(3)(A) of the Immigration and Nationality Act of 1952, 66 Stat. 182-185, 8 U. S. C. §§ 1182 (a)(28)(D) and (G)(v) and § 1182 (d)(3)(A), providing that certain aliens "shall be ineligible to receive visas and shall be excluded from admission into the United States" unless the Attorney General, in his discretion, upon recommendation by the Secretary of State or a consular officer, waives inadmissibility and approves temporary admission, are unconstitutional as applied here in that they deprive American citizens of freedom of speech guaranteed by the First Amendment.

¹ Brief 1.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 14, 1972

Re: No. 71-16 Kleindienst v. Mandel

Dear Harry:

Please join me.

Sincerely,

Lewis

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 12, 1972

Re: No. 71-16 - Kleindienst v. Mandel

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference