

The Burger Court Opinion Writing Database

Saxbe v. Bustos

419 U.S. 65 (1974)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

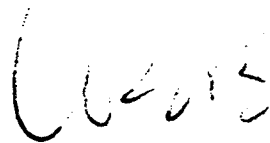
November 20, 1974

Re: 73-300 - Saxbe v. Bustos
73-480 - Cardona v. Saxbe

Dear Bill:

Please join me.

Regards,



Mr. Justice Douglas

Copies to the Conference

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

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackman
Mr. Justice
Mr. Justice

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-300 AND 73-480

11-4

William B. Saxbe, Attorney
General, et al., Petitioners,
73-300 v.

Robert Bustos et al.

Cristobal Cardona et al.,
Petitioners,

73-480 v.

William B. Saxbe, Attorney
General, et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[November —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the
Court.

Some aliens who have their homes in Canada or Mexico commute *daily* to places of employment in this country and others do so on a *seasonal* basis. The question is whether the practice on the facts of these cases conforms with the Immigration and Nationality Act. It turns on the meaning of 8 U. S. C. § 1101 (a) (27) (B) which defines "special immigrant" as one "lawfully admitted for permanent residence who is returning from a temporary visit abroad." The Regulations¹ allow such an immigrant to use a re-entry permit, in lieu of an immigrant visa and without regard to numerical limitations² if he is "returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad not exceeding one year."

¹ 8 CFR § 211.1.

² 8 U. S. C. § 1181 (a) and 8 U. S. C. §§ 1151-1153.

✓
STRIKING CHANGES THROUGHOUT.
SEE PAGES:

1, 2, 4-12

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-300 AND 73-480

Recirculated: 11-18

William B. Saxbe, Attorney
General, et al., Petitioners.

73-300 v.

Robert Bustos et al.

Cristobal Cardona et al.,
Petitioners.

73-480 v.

William B. Saxbe, Attorney
General, et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[November —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the
Court.

Some aliens who have their homes in Canada or Mexico commute *daily* to places of employment in this country and others do so on a *seasonal* basis, a practice permitted by the Immigration and Naturalization Service. The question is whether the practice on the facts of these cases conforms with the Immigration and Nationality Act. It turns on the meaning of 8 U. S. C. § 1101 (a)(27)(B) which defines as one variety of "special immigrant" an immigrant "lawfully admitted for permanent residence who is returning from a temporary visit abroad."

Those who qualify under § 1101 (a)(27)(B) may be permitted entry without the usual documentation requirements. 8 U. S. C. § 1181 (b). The Regulations¹ implement § 1181 (b) by allowing such an immigrant to use a re-entry permit, commonly called a "green card," in

¹ 48 CFR § 201.1.

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

To: Chief Justice
Justice
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

5th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-300 AND 73-480

Circulated:

Recirculated: 11-16

William B. Saxbe, Attorney
General et al. Petitioners,
73-300

Robert Bustos et al.

Cristobal Cardona et al.,
Petitioners

73-480

William B. Saxbe, Attorney
General et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[November — 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the
Court.

Some aliens who have their homes in Canada or Mexico commute *daily* to places of employment in this country and others do so on a *seasonal* basis, a practice permitted by the Immigration and Naturalization Service. The question is whether the practice on the facts of these cases conforms with the Immigration and Nationality Act. It turns on the meaning of 8 U. S. C. § 1101 (a)(27)(B) which defines as one variety of "special immigrant" an immigrant "lawfully admitted for permanent residence who is returning from a temporary visit abroad."

Those who qualify under § 1101 (a)(27)(B) may be permitted entry without the usual documentation requirements. 8 U. S. C. § 1181 (b). The Regulations implement § 1181 (b) by allowing such an immigrant to use a re-entry permit, normally called a "green card," in

USC 1181 (b)

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 5 - 7

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

NOTE: This opinion is subject to formal revision before publication in the preliminary edition of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 73-880 AND 73-480

Recirculated: 11-22

William B. Saxbe, Attorney
General, et al., Petitioners.
73-300

Robert Bustos et al.

Cristobal Cardona et al.,
Petitioners.

73-480

William B. Saxbe, Attorney
General, et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

Oct 74

142-1

[November 25, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Some aliens who have their homes in Canada or Mexico commute *daily* to places of employment in this country and others do so on a *seasonal* basis, a practice permitted by the Immigration and Naturalization Service. The question is whether the practice on the facts of these cases conforms with the Immigration and Nationality Act. It turns on the meaning of § 1101 (a) (27) (B) which defines as one variety of "special immigrant" an immigrant "lawfully admitted for permanent residence, who is returning from a temporary visit abroad."

Those who qualify under § 1101 (a) (27) (B) may be permitted entry without the usual documentation requirements. § 1101 (b). The Regulations¹ implement § 1181 (a) (2) allowing such an immigrant to use a re-entry permit, usually called a "green card," in

¹ 28 CFR § 214.1.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 4, 1974

RE: Nos. 73-300 & 73-480 Saxbe v. Bustos &
Cardona v. Saxbe

Dear Thurgood:

Byron, you and I were in dissent in the
above in which Bill Douglas has just circulated
an opinion for the Court. Would you be free to
take on the writing of the dissent?

Sincerely,

Bill

Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 6, 1974

RE: Nos. 73-300 & 73-480 - Saxbe v. Bustos
& Cardona v. Saxbe

Dear Thurgood:

In light of Byron's circulation that he will write a dissent in the above, my suggestion on my note of November 4 that you do so becomes non-operative.

Sincerely,

Bill

Mr. Justice Marshall

✓

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 18, 1974

RE: Nos. 73-300 and 73-480 Saxbe v. Bustos
Cardona v. Saxbe

Dear Byron:

Please join me in your dissenting opinion
in the above.

Sincerely,

Wil

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 18, 1974

Re: No. 73-300 and 73-480, Saxbe v. Bustos

Dear Bill,

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

Sincerely yours,



Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 6, 1974

Re: Nos. 73-300 & 73-480 - Saxbe v. Bustos

Dear Bill:

In due course I shall circulate a dissent
in this case.

Sincerely,

By. —

Mr. Justice Douglas

Copies to Conference

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

To: The Chief Justice ✓
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 ✓ Mr. Justice Harlan
 Mr. Justice Black
 Mr. Justice T.
 Mr. Justice Re

146 DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: 11-1

Nos. 73-300 AND 73-480

Recirculated: _____

William B. Saxbe, Attorney
 General, et al. Petitioners

73-300

Robert Bustes et al.

Cristobal Cardona et al.
 Petitioners

73-480

William B. Saxbe, Attorney
 General, et al.

On Writs of Certiorari to
 the United States Court
 of Appeals for the Dis-
 trict of Columbia Circuit.

[November —, 1974]

MR. JUSTICE WHITE (dissenting).

The Court, in reaching an interpretation of the immi-
 gration statutes which permits a finding that daily and
 seasonal commuters from Mexico and Canada are "special
 immigrants" not subject to documentation and numerical
 restrictions upon entry to this country, contravenes one
 of the cardinal principles of statutory construction: "ad-
 ministrative practice does not avail to overcome a statute
 so plain in its commands as to leave nothing for construc-
 tion." *Norwegian Nitrogen Products Co. v. United*
States, 288 U. S. 204, 315 (1933) (Cardozo, J.). Admini-
 strative construction over a long period of time is an
 available tool for judicial interpretation of a statute *only*
 when the statutory seems in doubt or ambiguous.
United States v. Sanguen Cte Tribe or Band of Indians,
 402 U. S. 159, 178, n. 8 (1971); *Estate of Sanford v. Com-*
missioner of Internal Revenue, 308 U. S. 39, 52 (1939);
Norwegian Nitrogen Products Co. v. United States, *supra*.
 In light of the characteristics of the aliens whose status is
 in question and the ordinary meaning of the very specific

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

additions to Sept on p. 3
nonsubstantive changes on
pp 1-6, 8, 9

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Marshall
☒ Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehn

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: _____

Nos. 73-300 AND 73-480

Recirculated: 11-2

William B. Saxbe, Attorney
General, et al., Petitioners,
73-300 v.

Robert Bustos et al.

Cristobal Cardona et al.,
Petitioners.

73-480 v.

William B. Saxbe, Attorney
General, et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[November —, 1974]

MR. JUSTICE WHITE, joined by MR. JUSTICE BRENNAN,
MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN,
dissenting.

The Court, in reaching an interpretation of the immi-
gration statutes which permits a finding that daily and
seasonal commuters from Mexico and Canada are "special
immigrants" not subject to documentation and numerical
restrictions upon entry to this country, contravenes one
of the cardinal principles of statutory construction: "ad-
ministrative practice does not avail to overcome a statute
so plain in its commands as to leave nothing for construc-
tion." *Norwegian Nitrogen Products Co. v. United
States*, 288 U. S. 294, 315 (1933) (Cardozo, J.). Admin-
istrative construction over a long period of time is an
available tool for judicial interpretation of a statute *only*
when the statutory terms are doubtful or ambiguous.
United States v. Southern Ute Tribe or Band of Indians,
402 U. S. 159, 173, n. 3 (1971); *Estate of Sanford v. Com-
missioner of Internal Revenue*, 308 U. S. 39, 52 (1939);
Norwegian Nitrogen Products Co. v. United States, *supra*.

pp 8, 9

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

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Nos. 73-300 AND 73-480

Recirculated: 11-2-74

William B. Saxbe, Attorney
General, et al., Petitioners,
73-300 v.

Robert Bustos et al.

Cristobal Cardona et al.,
Petitioners,
73-480 v.

William B. Saxbe, Attorney
General, et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[November —, 1974]

MR. JUSTICE WHITE, joined by MR. JUSTICE BRENNAN,
MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN,
dissenting.

The Court, in reaching an interpretation of the immi-
gration statutes which permits a finding that daily and
seasonal commuters from Mexico and Canada are "special
immigrants" not subject to documentation and numerical
restrictions upon entry to this country, contravenes one
of the cardinal principles of statutory construction: "ad-
ministrative practice does not avail to overcome a statute
so plain in its commands as to leave nothing for construc-
tion." *Norwegian Nitrogen Products Co. v. United
States*, 288 U. S. 294, 315 (1933) (Cardozo, J.). Admin-
istrative construction over a long period of time is an
available tool for official interpretation of a statute *only*
when the statutory terms are doubtful or ambiguous.
United States v. Southern Ute Tribe or Band of Indians,
402 U. S. 459, 173 S. 8 (1971); *Estate of Sanford v. Com-
missioner of Internal Revenue*, 308 U. S. 39, 52 (1939);
Norwegian Nitrogen Products Co. v. United States, *supra*.

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

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 18, 1974

Re: No. 73-300 -- William B. Saxbe v. Robert Bustos
No. 73-480 -- Cristobal Cardona et al., v. William B. Saxbe

Dear Byron:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 18, 1974

Re: No. 73-300 - Saxbe v. Bustos
No. 73-840 - Cardona v. Saxbe

Dear Byron:

Please join me in the dissent you have prepared for
these cases.

Sincerely,



Mr. Justice White

cc: The Conference

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

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

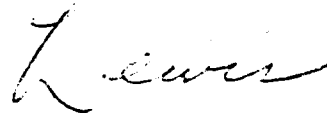
November 6, 1974

No. 73-300 Saxbe v. Bustos
No. 73-480 Cardona v. Saxbe

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

SC
A

November 19, 1974

Re: No. 73-300 - Saxbe v. Bustos; and No. 73-480 -
Cardona v. Saxbe

Dear Bill:

I intend to join your opinion. Would you consider these additions:

(1) Insert as a new paragraph or an addition to the paragraph ending at the top of page 9 of the fourth draft something along the following lines:

Such long standing administrative construction is entitled to great weight, particularly when as here Congress has revisited the Act and left the practice untouched. Such a history of administrative construction and congressional acquiescence may add a gloss or qualification to what is on its face unqualified statutory language. United States v. Midwest Oil Corp., 236 U.S. 459. Here both parties are in accord, and we agree, that the meaning of the phrase "lawfully admitted for permanent residence" in § 1101(a)(20) may not be identical to the meaning of the same language in other sections of the Act where the same history of administrative construction is not present.

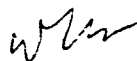
Wm. Douglas
Oct 74

→ This one is
the only one
of same kind
in the
in statute

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

(2) Add after the word "nonimmigrant"
at the end of the first full paragraph on
page 7 of the fourth draft the phrase "pursuant
to 8 U.S.C. § 1257."

Sincerely,

A handwritten signature in dark ink, appearing to be 'W. L. R.', is written below the word 'Sincerely,'.

Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 19, 1974

Re: Nos. 73-300 and 73-480 - Saxbe v. Bustos and
Cardona v. Saxbe

Dear Bill:

Please join me in your Court opinion in these cases.

Sincerely,



Mr. Justice Douglas

Copies to the Conference

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