The Burger Court Opinion Writing Database

Mathews v. Diaz

426 U.S. 67 (1976)

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

May 17, 1976

Re: 73-1046 - Mathews v. Diaz

Dear John:

I thought I had joined your proposed opinion but now observe I had not done so.

I now join your April 16 circulation.

Regards,

WEB

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 27, 1976

RE: No. 73-1046 Mathews v. Diaz

Dear John:

I agree.

Sincerely,

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 14, 1976

No. 73-1046, Mathews v. Diaz

Dear John,

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

Sincerely yours,

P.S.
1.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 19, 1976

Re: No. 73-1046 - Mathews v. Diaz

Dear John:

I agree with your circulation of March 18 in this case.

Sincerely,

Byron

Mr. Justice Stevens

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 27, 1976

Re: No. 73-1046 -- Mathews v. Diaz

Dear John:

Please join me.

Sincerely,

T. M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 15, 1976

Re: No. 73-1046 - Mathews v. Diaz

Dear John:

My delay in getting a response to you in this case is due to the fact that it has some relationship with No. 74-1267, Examining Board v. de Otero, upon which I am presently working. I shall have this completed before too long.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 4, 1976

Re: No. 73-1046 - Mathews v. Diaz

Dear John:

Please join me.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

March 29, 1976

No. 73-1046 Mathews v. Diaz

Dear John:

Having followed with more than casual interest (in view of my authorship of Eldridge) the interesting exchange between you and Bill Rehnquist as to the correct meaning and application of Salfi, I am now persuaded by Bill's letter of March 25, that - as he says - the difference between you is essentially one of "semantics".

I agree with you as to the direction in which the "policy factors" point, but also think Bill is on sound ground in thinking it desirable (if not indeed necessary) to preserve the distinction between a "waiver" and a "decision of the Secretary". I would think we could find in this case the existence of a decision.

If I am correct in this, I am happy to join your opinion which I think is most excellent on the merits.

Sincerely,

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 1, 1976

No. 73-1046 Mathews v. Diaz

Dear John:

Please join me.

Sincerely,

Lewis

Mr. Justice Stevens

lfp/ss

cc: The Conference

J

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 22, 1976

Re: No. 73-1046 - Mathews v. Diaz

Dear John:

Though I agree with much of what you say in this case, and think you have said it well, I have sufficient reservations about two aspects of the opinion that I am presently inclined to write separately with respect to them. These are:

(a) Your treatment of Espinosa's claim as coming within the requirements of 42 U.S.C. § 405(g), as interpreted by Salfi and Eldridge, seems to me to leave the statute as well as our very recent decisions quite badly mauled. I had thought the vote at Conference was to hold there was no jurisdiction to consider Espinosa's claim, a result which seems necessarily to follow from what was said in Salfi and Eldridge. In those cases we held that in order to meet the requirements of § 405(g), anyone seeking to bring an action upon a claim arising under the Social Security Act must have first obtained a final decision of the Secretary denying the claim. Salfi and Eldridge recognized that the final decision requirement embodied at least two irreducible components: There must have been

an application for benefits presented to the Secretary, and the application must have been denied by him. As to Espinosa neither of these events had occurred when he commenced his action, and at the time the District Court actually granted relief, it is undisputed that there had not yet occurred even arguably any denial of the application he belatedly submitted. See your draft at page 8, note 10. I therefore cannot see how it can be said there was any jurisdiction to entertain Espinosa's claim.

You suggest in your draft opinion that these missing requirements can be "cured" here, but I have some doubt that a jurisdictional prerequisite which was never satisfied from the commencement of an action until the award of a final judgment therein may, should it be satisfied while that judgment is later pending on appeal, retroactively establish the lower court's jurisdiction. The normal rule seems to the contrary. In diversity cases, for example, the jurisdictional requirement of diversity must be established at the commencement of the action. It cannot be created by a later change of domicile of one of the parties or by any other subsequent event. See C. Wright, Federal Courts § 28 (2d ed. 1970). It seems to me that those principles apply a fortiori here, where Congress has expressly limited judicial interference with the Social Security Act to specific instances of reviewing decisions of the Secretary. I do not see how there can be any jurisdiction to award relief on a claim based upon a portion of that Act

where it is agreed that the Secretary has never made any decision at all, nor do I see how the occurrence, after judgment, of something which might be characterized as such a decision can be thought to validate a judgment in which jurisdiction was lacking.

(b) Some of your language on pages 16 and 17 relating to the state's authority to classify with respect to alienage, although occurring in the context of welfare legislation, strikes me as being sufficiently broad so as to perhaps extend the doctrines of Sugarman and Griffiths. Those cases, as I understood them, left open the possibility of state classification based on alienage with respect to policy making positions in the government or eligibility for elective office. Since I dissented in those cases, I am doubtless not the best spokesman as to the limits of their doctrine, and my uneasiness on that score could probably be cured by citations to the Court's opinions in those two cases or by learning that the authors of the opinions did not share it.

Sincerely,

WWM

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 25, 1976

Re: No. 73-1046 - Mathews v. Diaz

Dear John:

After reading your latest memo in this case, I began to believe we may not be as far apart as I had originally thought. I offer the following summary of my reading of the statute, as interpreted by our decisions, so that you may know the basis for my belief.

Section 405(g) provides that an individual may obtain "review of [a final] decision of the Secretary" in the district courts if the procedural requirements of venue and limitations are satisfied. These procedural requirements may be waived, as can the "finality" portion of the statutory requirement, which is sufficiently flexible that additional exhaustion may be likewise deemed unnecessary. But I think nothing in Salfi indicates there can be jurisdiction to entertain any claim brought under the Social Security Act if there has been no decision at all; indeed, such a construction of the statute seems impossible in view of the fact that § 405(g) undoubtedly provides only for judicial review of administrative decision making. If there has been no decision, there can be nothing for a district court to review. I read this understanding of the statute's express terms to be explicit in both Salfi and Eldridge.

As I understand it, the Conference vote to reverse the District Court in Norton was based upon this same recognition

of the statute's limitation. There can be no authority to issue an injunction against the Act, and therefore no necessity of convening a three-judge court, since the only available relief under the congressional scheme is "a judgment affirming, modifying, or affirming the decision of the Secretary," which the statute permits to be reviewed. (Emphasis supplied.) It seems to me that your suggestion that the need for a decision can be "waived", with its concomitant assumption that there can be judicial consideration of a claim under the Social Security Act even though no decision is sought to be reviewed, could suggest that our result in Norton is incorrect. I do not think this is so, nor do I believe that there can be any room for a "waiver" of the requirement for a decision which will leave any content in the statute.

But I agree with you that there is nothing in the statute which specifies that the Secretary engage in some particular form of formal decision making before it may be determined that he has denied a claim under the Act, and if I gave that impression in my letter I was wrong. I also think you are correct that the policy factors identified in Salfi support the proposition that the Secretary should have the power to determine exactly how and when he will decide questions of eligibility presented by applications for benefits.

If that is the import of the stipulation entered into in the District Court, then I can see that it may be said that there was at that point jurisdiction to entertain Espinosa's claim. And although he never complied with the Federal Rules to correct his pleadings, I am not adamantly opposed to our treating the stipulation as satisfying the jurisdictional prerequisite. Since the stipulation occurred before the injunction issued, we would not have the problem of conferring jurisdiction on the basis of any event which occurred after the District Court had acted.

I recognize that there is some ambiguity in the record, and that the Solicitor General seems to have taken somewhat inconsistent positions with regard to the effect of the stipulation agreed to by the local U. S. Attorney. But as I understand it, appellant may be read to have stipulated that Espinosa's claim would be denied as soon as the paperwork could be completed, and that the only basis for this action was Espinosa's failure to comply with the residency requirements claimed to be unconstitutional. If that is so, then the Secretary's attorney has reported what seems to be an exact equivalent of an unequivocal denial of Espinosa's claim for benefits. I would fully agree with you that such a denial is capable of being considered a "decision" subject to review equally with the oral denial presented to us in Weisenfeld.

Having now more fully understood your analysis, it occurs to me that our differences may be no more than a semantic problem of whether to call the Secretary's stipulatio in this case a "waiver" of the requirement that he render a decision, or to treat it as the decision to be reviewed. Although to those uninitiated to the mysteries of 405(g) this may seem a choice between Tweedledum and Tweedledee, to me (who may be overly initiated in the mysteries of that section) the difference is crucial. Treating it as a "waiver" would signify the absence of the "decision of the Secretary" which seems to me the necessary pre-requisite for any judicial consideration of a claim under that section; treating it as a decision would provide the necessary predicate.

Sincerely,

WWW

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 31, 1976

Re: No. 73-1046 Mathews v. Diaz

Dear John:

Please join me.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73–1046

F. David Mathews, Secretary of the Department of Health, Education, and Welfare, Appellant, *v.* Santiago Diaz et al.	On Appeal from the United States District Court for the Southern District of Florida.

[March —, 1976]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The question presented by the Secretary's appeal is whether Congress may condition an alien's eligibility for participation in a federal medical insurance program on continuous residence in the United States for a five-year period and admission for permanent residence. The District Court held that the first condition was unconstitutional and that it could not be severed from the second. Since we conclude that both conditions are constitutional, we reverse.

Each of the appellees is a resident alien who was lawfully admitted to the United States less than five years ago. Appellees Diaz and Clara are Cuban refugees who remain in this country at the discretion of the Attorney General; appellee Espinosa has been admitted for permanent residence. All three are over 65 years old and have been denied enrollment in the Medicare Part B supplemental medical insurance program established by § 1831 *et seq.* of the Social Security Act of 1935, 49 Stat. 620, added, 79 Stat. 301, as amended, 42 U. S. C. § 1395j

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 24, 1976

Re: No. 73-1046 - Mathews v. Diaz

Dear Bill:

Many thanks for your comments on my draft opinion. Let me treat the two problems separately.

(a) My notes on the Conference indicate that you and Potter voted that we did not have jurisdiction of Espinosa's claim, but that the consensus of the Court as a whole was to withhold a final vote until the author of the opinion had studied the question more closely. As is evident from the draft, my study persuaded me that the only nonwaivable jurisdictional condition was the filing of an application, and that the reasoning in Salfi that permitted a waiver of all other conditions in that case is equally applicable to this case. If my reading of Salfi is correct, the only procedural defect in this case was the failure to file a supplemental complaint before the District Court addressed the merits. Moreover, again assuming that my reading is correct, 28 U.S.C. § 1653 expressly provides that it is still not too late to cure such a jurisdictional defect by filing a supplemental complaint. I do not understand your letter to disagree with this analysis, but rather to take the position that there are two nonwaivable jurisdictional conditions--an application and also a formal decision by the Secretary--rather than just one. If you are correct in this regard, I would agree that the Court does not have jurisdiction of Espinosa's claim. However, I am still persuaded that the only nonwaivable jurisdictional condition is the requirement that a claim for benefits shall have been presented to the Secretary.

Let me recapitulate my understanding of the jurisdictional elements specified in § 405(g) as construed in Salfi and Mathews. Salfi states that § 405(g) specifies three such requirements:

> "(1) a final decision of the Secretary made after a hearing; (2) commencement of a civil action within 60 days after the mailing of notice of such decision (or within such further time as the Secretary may allow); and (3) filing of the action in an appropriate district court, in general that of the plaintiff's residence or principal place of business." 422 U.S. at 763-764.

The statute does not tell us which, if any, of these requirements may be waived by the Secretary, but your opinion in Salfi does. Salfi holds that the second and third requirements (limitations and venue) may be waived, and also that some portions of the first requirement may be waived. The holding in Salfi was that there was no jurisdiction over class members who had filed no applications, but there was jurisdiction over all the named plaintiffs who had filed applications. With respect to those who had filed applications, the Court concluded that the Secretary's failure to contest jurisdiction waived any objection to (a) the absence of a hearing and (b) the absence of a "final decision" as that term is often understood, i.e. final following complete exhaustion. 422 U.S. at 764-767.

Your recent letter indicates that even though the "final decision" requirement was not intended to be completely nonwaivable, it was intended that there be a nonwaivable requirement of some sort of formal decision by the Secretary. That intent is not clearly expressed in the Salfi opinion itself; even if this distinction can be discerned from the Salfi opinion, the reason why it is important is not explained. Frankly, I think the portions of Salfi found at 422 U.S. at 765-767 persuasively support the view that the Secretary should have the power to waive any procedural defect except the filing of an application.

In all events, I do not think it is an unfair reading of Salfi to construe it as so holding.

My reading of Lewis' recent opinion in Mathews v. Eldridge also left me with the definite impression that there was only one nonwaivable element in the statutory requirement of a "final decision by the Secretary after a hearing." Surely the critical sentence indicated that there was just one nonwaivable element. That sentence reads as follows:

> "The nonwaivable element is the requirement that a claim for benefits shall have been presented to the Secretary." Slip op. at 6-7 (emphasis added).

Immediately after that sentence Lewis explained that the reason why an application was essential was to enable the Secretary to make a decision. He concludes the paragraph by saying "And some decision by the Secretary is clearly required by the statute." Slip op. at 7. Of course, the only kind of decision the statute expressly requires is one that is (a) final and (b) made after a hearing, and Salfi holds both the requirement of complete finality and the requirement of a hearing may be waived.

Nevertheless, as I now re-read the full paragraph in Lewis' opinion in the light of your letter, I recognize that despite the reference to a single "nonwaivable element," the opinion might be interpreted to describe two nonwaivable elements instead of just one. That is not a necessary reading of the paragraph because the reference to the importance of a decision by the Secretary may merely be read--as I read it--to be an expression of why it is essential that an application be presented to the Secretary. He must be afforded a concrete claim on which to base a decision. However, I see no statutory or policy reason why he may not make a decision that the application raises nothing but a legal issue which is ripe for presentation to a court without any administrative processing whatsoever. Once the Secretary has reached such a decision, "further exhaustion would not merely be futile for the applicant, but would also be a commitment of administrative resources unsupported by any administrative or judicial interest." Salfi, 422 U.S. at 765-766.

In short, I am still persuaded that my original reading of Eldridge as specifying only one nonwaivable jurisdictional element was not only permissible but also more consistent with the interests at stake than the reading proposed in your letter. Indeed, in Weinberger v. Weisenfeld, 420 U.S. 636 (1975), the Court held that an oral denial of an oral application at a social security office satisfied the nonwaivable conditions of jurisdiction under § 405(g). Id. at 639-641 nn. 6, 8. Should the stipulation by the Secretary's attorney in open court be given any less weight?

In all events, our disagreement involves nothing more than two different interpretations of dicta. This case, unlike Salfi or Eldridge, requires the Court to decide whether any jurisdictional element other than the presentation of a claim to the Secretary is nonwaivable. For the reasons set forth in your Salfi opinion, I respectfully submit that the Court should hold that the Secretary has power to waive all procedural requirements subsequent to the filing of the application itself. In that case the Court was not required to make any such precise holding. In this case, however, we must. Personally, I am persuaded by everything you said in Salfi that there is neither a statutory nor a policy reason for holding that anything beyond the filing of an application is a nonwaivable jurisdictional condition.

(b) It seems to me that your criticism of the language on pages 16-17 is appropriate. Perhaps the situation can be handled by changing the bottom portion of page 16 (see attachment).

Respectfully,

John

Mr. Justice Rehnquist

Copies to the Conference
Attachment

administering
s welfare
ograms

Insofar as state welfare policy is concerned,[23] there is little, if any, basis for treating persons who are citizens of another State differently from persons who are citizens of another country. Both groups are noncitizens as far as the State's interests are concerned. ~~We need not decide whether the alien, like the citizen, has a constitutional right to travel *within* the United States, *id.*, at 375, to recognize the absence of any state interest in treating the two groups of noncitizens differently.~~ Thus, a division by a State of the category of persons who are not citizens of that State into subcategories of United States citizens and aliens has no apparent justification, whereas, a comparable classification by the Federal Government is a routine and normally legitimate part of its business. Furthermore, whereas the Constitution inhibits every State's power to restrict travel across its own borders, Congress is explicitly empowered to exercise that type of

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[23] We leave open the question whether a State may prohibit aliens from holding elective or important nonelective positions or whether a State may, in some circumstances, consider the alien status of an applicant or employee in making an individualized employment decision. See Sugarman v. Dougall, 413 U.S. 634, 646-649 (1973); In re Griffith, 413 U.S. 717, 728-729 & n. 21 (1973).

✓ — pp. 4-5, 7-9, 16-17

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

From: Mr. Justice Stevens

Circulated: 4/1/76

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73–1046

F. David Mathews, Secretary of the Department of Health, Education, and Welfare, Appellant, *v.* Santiago Diaz et al.

On Appeal from the United States District Court for the Southern District of Florida.

[April —, 1976]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The question presented by the Secretary's appeal is whether Congress may condition an alien's eligibility for participation in a federal medical insurance program on continuous residence in the United States for a five-year period and admission for permanent residence. The District Court held that the first condition was unconstitutional and that it could not be severed from the second. Since we conclude that both conditions are constitutional, we reverse.

Each of the appellees is a resident alien who was lawfully admitted to the United States less than five years ago. Appellees Diaz and Clara are Cuban refugees who remain in this country at the discretion of the Attorney General; appellee Espinosa has been admitted for permanent residence. All three are over 65 years old and have been denied enrollment in the Medicare Part B supplemental medical insurance program established by § 1831 *et seq.* of the Social Security Act of 1935, 49 Stat. 620, added, 79 Stat. 301, as amended, 42 U. S. C. § 1395j

pp. 2, 5-6, 10-18

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

From: Mr. Justice Stevens

Circulated: 4/16/76

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1046

F. David Mathews, Secretary of the Department of Health, Education, and Welfare, Appellant, *v.* Santiago Diaz et al. | On Appeal from the United States District Court for the Southern District of Florida.

[April —, 1976]

MR. JUSTICE STEVENS delivered the opinion of the Court.

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Each of the appellees is a resident alien who was lawfully admitted to the United States less than five years ago. Appellees Diaz and Clara are Cuban refugees who remain in this country at the discretion of the Attorney General; appellee Espinosa has been admitted for permanent residence. All three are over 65 years old and have been denied enrollment in the Medicare Part B supplemental medical insurance program established by § 1831 *et seq.* of the Social Security Act of 1935, 49 Stat. 620, as added, 79 Stat. 301, and as amended, 42 U. S. C.