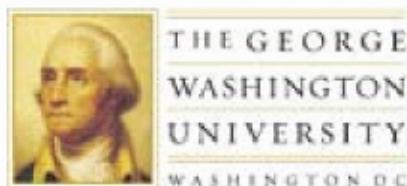


The Burger Court Opinion Writing Database

Fiallo v. Bell

430 U.S. 787 (1977)

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

March 14, 1977

Re: 75-6297 Fiallo v. Bell

Dear Lewis:

I join.

Regards,

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 14, 1977

RE: No. 75-6297 Fiallo v. Bell

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 18, 1977 |

Re: No. 75-6297, Fiallo v. Bell

Dear Lewis,

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

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 5, 1977

Re: No. 75-6297 — Ramon Martin Fiallo, et al.
v. Griffin B. Bell

Dear Thurgood:

Please add at the foot of your dissenting opinion in this case the following:

"MR. JUSTICE WHITE also dissents, substantially for the reasons stated by MR. JUSTICE MARSHALL in his dissenting opinion."

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 13, 1976

Dear Chief:

You have assigned me the opinion in No. 75-6297,
Fiallo v. Levi. I am sorry but it will be impossible for me
to take this one. You will remember my vote was that "the
most I can do is join in the judgment." Obviously I cannot write
the opinion itself. I just cannot get around my dissent in
Kleindienst v. Mandel, 408 U.S. 753. Indeed I would not want
to.

Sincerely,



T. M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 22, 1977

Re: No. 75-6297, Fiallo v. Bell

Dear Lewis:

I shall try my hand at a dissent "with all deliberate speed."

Sincerely,


T. M.

Mr. Justice Powell

cc: The Conference

CHAMBERS DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6297

Ramon Martin Fiallo, etc., et al.,
Appellants,
v.
Griffin B. Bell, Individually and
as Attorney General of the
United States, et al.

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

[April —, 1977]

MR. JUSTICE MARSHALL, dissenting.

Until today I had thought it clear that when Congress granted benefits to some citizens but not to others, it was our solemn duty to insure that the decision comported with Fifth Amendment principles of due process and equal protection. Today, however, in upholding legislation that provides relief from the hardships of immigration requirements, the Court appears to hold that such discrimination, however irrational, must be tolerated. Since I cannot agree that Congress has license to deny fundamental rights to citizens along the most disfavored lines simply because the Immigration and Nationality Act is involved, I dissent.

I

The Immigration and Nationality Act of 1952, 8 U. S. C. § 1101 *et seq.*, establishes the terms and conditions for entry into the United States. Among its various conditions, the Act requires that an alien seeking to enter the United States as a legal permanent resident must come within a restrictive numerical quota and must satisfy certain labor certification requirements. INA §§ 201, 202, 212 (a)(14), 8 U. S. C. §§ 1151, 1152, 1182 (a)(14) as amended by the Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571,

✓
MAR 31 1977

1st DRAFT

SUPREME COURT OF THE UNITED STATES

—
No. 75-6297
—

Ramon Martin Fiallo, etc., et al.,
Appellants,
v.
Griffin B. Bell, Individually and
as Attorney General of the
United States, et al. } On Appeal from the United
States District Court for
the Eastern District of
New York.

[April —, 1977]

MR. JUSTICE MARSHALL, dissenting.

Until today I thought it clear that when Congress grants benefits to some citizens but not to others, it is our duty to insure that the decision comports with Fifth Amendment principles of due process and equal protection. Today, however, in upholding legislation that provides relief from the hardships of immigration requirements, the Court appears to hold that such discrimination among citizens, however invidious and irrational, must be tolerated. Since I cannot agree that Congress has license to deny fundamental rights to citizens according to the most disfavored criteria simply because the Immigration and Nationality Act is involved, I dissent.

I

The Immigration and Nationality Act of 1952, 8 U. S. C. § 1101 *et seq.*, establishes the terms and conditions for entry into the United States. Among its various conditions, the Act requires that an alien seeking to enter the United States as a legal permanent resident must come within a restrictive numerical quota and must satisfy certain labor certification requirements. INA §§ 201, 202, 212 (a)(14), 8 U. S. C. §§ 1151, 1152, 1182 (a)(14) as amended by the Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571,

1,7,9,11,17

✓

APR 15 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6297

Ramon Martin Fiallo, etc., et al., Appellants, v. Griffin B. Bell, Individually and as Attorney General of the United States, et al.	On Appeal from the United States District Court for the Eastern District of New York.
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[April —, 1977]

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

Until today I thought it clear that when Congress grants benefits to some citizens but not to others, it is our duty to insure that the decision comports with Fifth Amendment principles of due process and equal protection. Today, however, the Court appears to hold that discrimination among citizens, however invidious and irrational, must be tolerated if it occurs on the context of the immigration laws. Since I cannot agree that Congress has license to deny fundamental rights to citizens according to the most disfavored criteria simply because the Immigration and Nationality Act is involved, I dissent.

I

The Immigration and Nationality Act of 1952, 8 U. S. C. § 1101 *et seq.*, establishes the terms and conditions for entry into the United States. Among its various conditions, the Act requires that an alien seeking to enter the United States as a legal permanent resident must come within a restrictive numerical quota and must satisfy certain labor certification requirements. INA §§ 201, 202, 212 (a)(14), 8 U. S. C. §§ 1151, 1152, 1182 (a)(14) as amended by the Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571,

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 22, 1977

Re: No. 75-6297 - Fiallo v. Bell

Dear Lewis:

Please join me.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

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

From: Mr. Justice Powell

Circulated: FEB 17 1977

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-6297

Ramon Martin Fiallo, etc., et al.,
 Appellants,
 v.
 Griffin B. Bell, Individually and
 as Attorney General of the
 United States, et al. } On Appeal from the United
 States District Court for
 the Eastern District of
 New York.

[February —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case brings before us a constitutional challenge to §§ 101 (b)(1)(D) and 101 (b)(2) of the Immigration and Nationality Act of 1952 (the Act), 8 U. S. C. §§ 1101 (b)(1) (D) and 1101 (b)(2).

I

The Act grants special preference immigration status to aliens who qualify as the "children" or "parents" of United States citizens or lawful permanent residents. Under § 101 (b)(1), a "child" is defined as an unmarried person under 21 years of age who is a legitimate or legitimated child, a stepchild, an adopted child, or an illegitimate child seeking preference by virtue of his relationship with his natural mother.¹

¹ Section 101 (b)(1) provides:

"(1) The term 'child' means an unmarried person under twenty-one years of age who is—

"(A) a legitimate child; or

"(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; or

"(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether

✓
7, 8, 9, 12
footnotes renumbered

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

From: Mr. Justice Powell

Circulated: _____

2nd DRAFT

Recirculated: APR 13 1977

SUPREME COURT OF THE UNITED STATES

No. 75-6297

Ramon Martin Fiallo, etc., et al., Appellants, <i>v.</i> Griffin B. Bell, Individually and as Attorney General of the United States, et al.	On Appeal from the United States District Court for the Eastern District of New York.
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[February —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case brings before us a constitutional challenge to §§ 101 (b)(1)(D) and 101 (b)(2) of the Immigration and Nationality Act of 1952 (the Act), 8 U. S. C. §§ 1101 (b)(1) (D) and 1101 (b)(2).

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¹ Section 101 (b)(1) provides:

"(1) The term 'child' means an unmarried person under twenty-one years of age who is—

"(A) a legitimate child; or

"(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; or

"(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 24, 1977

Re: No. 75-6297 - Fiallo v. Bell

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 7, 1977

Re: 75-6297 - Fiallo v. Bell

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

Copies to the Conference