

The Burger Court Opinion Writing Database

Elkins v. Moreno

435 U.S. 647 (1978)

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

February 15, 1978

Dear Bill:

Re: 77-154 Elkins v. Moreno

I fear I cannot agree that we should strike this case now. Everyone is ready, and we can (and may well) certify the case after oral argument.

Regards,

Wm B

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 7, 1978

Re: 77-154 - Elkins v. Moreno

Dear Bill:

I join your March 29 dissenting opinion.

Regards,


WFB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

February 15, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 77-154, Elkins v. Moreno

In preparing for argument, I have become increasingly troubled over what might be the proper disposition of this case. It is unassailable that Vlandis v. Kline, 412 U.S. 441 (1973), can be applied today only in light of Weinberger v. Salfi, 422 U.S. 749 (1975), and its progeny. As petitioners admit, br. at 15 n.6, Salfi was not called to the attention of the District Court below, whose opinion was adopted by the Fourth Circuit. This situation might argue for us simply to summarily vacate and remand for reconsideration in light of Salfi, although this would be somewhat unusual in that the Salfi point was argued to the Fourth Circuit.

If we do not summarily remand, then it seems to me that this case largely presents issues of Maryland law. I reach this conclusion because the petitioner tells us

"Like most other public institutions of higher education, the University of Maryland bases its award of in-state status on domicile.

"Because it views nonimmigrant aliens as being under a legal disability which precludes the intent to be domiciled in Maryland, the University awards in-state status only to [aliens admitted for permanent residence]." Br., at 11 (emphasis added).

From this, I conclude that if Maryland law was clearly otherwise -- i.e., that G-4 aliens, who have an intent to stay in Maryland for the indeterminate duration of their jobs, were not legally disabled from achieving the intent necessary for domicile under Maryland law -- the University would change its position and subject

respondents to the eight-part domicile test set out in petitioner's brief, at 9. In addition, were we to conclude that the University is simply in error in its reading of Maryland law -- which is essentially what the District Court concluded -- I do not see how we could sustain the University's refusal to apply its eight-part test to respondents even if rational basis were the constitutional standard to be applied.

Moreover, even if Maryland law conforms to the University's view of it, a question is still presented whether Maryland may have such a view consistent with the Supremacy Clause and Federal power over the residency status of agents of foreign governments or international treaty organizations. As I understand the District Court's opinion, questions relating to the Supremacy Clause were briefed on the cross-motions for summary judgment below but were not decided given the Vlandis ground for decision. Thus, if we reverse, we will have to send the case back for consideration of these further issues.

Given all the above, I wonder whether we could not greatly expedite the ultimate conclusion of this litigation by following the course we adopted last Term in Massachusetts v. Feeney, 429 U.S. 66 (1976), and certifying to the Maryland Court of Appeals (under Md.

Code, Courts & Judicial Proceedings, § 12-601)^{1/} a question along the lines: "Are persons resident in Maryland, who are G-4 aliens under United States Statutes, under a legal disability which precludes the intent necessary to be a Maryland domiciliary?" The

^{1/} The Court of Appeals may answer questions of law certified to it by the Supreme Court of the United States . . . when requested by the certifying court if there is involved in any proceeding before the certifying court a question of law of this state which may be determinative of the cause then pending in the certifying court as to which it appears to the certifying court there is no controlling precedent in the Court of Appeals." § 12-601.

I note that the parties, in discussing Maryland law, cite no case directly on point and the key cases date to 1940 and 1924.

only difficulty I see with taking this course is that the answer to the question may turn on questions of federal law surrounding the G-4 status. Since we could review the decision of federal issues after certification, and could do so presumably in light of a definitive statement of what Maryland law requires, I think such difficulty is really de minimis.

If others agree that certification is the appropriate course, I wonder whether we should postpone oral argument or, at the least, ask the parties to argue whether this case should be certified?^{2/}

W.J.B., Jr.

^{2/} In Feeney, supra, we certified a question to the Massachusetts Supreme Judicial Court before oral argument here. In Aldrich v. Aldrich, 375 U.S. 75 (1963), however, we certified after oral argument. Thus, it appears we have no standard practice on the timing of certification vis-a-vis oral argument.

✓

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

CHAMBERS OF
JUSTICE W.H. BRENNAN, JR.

February 16, 1978

MEMORANDUM TO THE CONFERENCE
Re: No. 77-154, Elkins v. Moreno

In looking over petitioner's brief, I note that petitioner states at 35 n.20:

"Petitioner urged both the district court and the court of appeals to defer to Maryland courts the question of whether the state law precluded G-4's from establishing Maryland domicile, but the lower courts refused to abstain or certify the question to the Court of Appeals of Maryland. See, e.g., Answer to Complaint (R. 116 et seq.)"

I am not sure that this statement is wholly correct, since the Answer asks only for abstention. See App. 15A ("Tenth Defense"). But, in any case, petitioner's apparent willingness to let the Maryland Court of Appeals have a first crack at the domicile issue seems to me to bolster the case for certification.

W.J.B., Jr.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 23, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 77-154, Elkins v. Moreno

Now that we have had oral argument, I want to renew my suggestion that we certify this case to the Maryland Court of Appeals. The purpose of this memorandum is to suggest the form of an appropriate question to be certified.

At argument, I sensed that the parties disagree on precisely what the policy of the University of Maryland is. More particularly, is it a policy that attempts to implement the Maryland common law of domicile, or is it a policy of domicile plus participation in the "full spectrum" (the term used by Maryland counsel in argument) of Maryland taxes. My impression was that this case was tried on the understanding that common law domicile alone was the controlling issue. If this is so, then it makes sense to me to certify to the Maryland Court a question focusing solely on what is the Maryland common law. If,

however, the University was defining "domicile" for its own purposes, then perhaps a broader question would be in order. However, as I will show below, the only issue in this suit is the content of Maryland's common law.

I

This is a class action, certified under Fed. R. Civ. P. 23(b)(2), the class consisting of:

"All persons now residing in Maryland who are current students at the University of Maryland, or who chose not to apply to the University of Maryland because of the challenged policies but would now be interested in attending if given an opportunity to establish in-state status, or who are currently students in senior high schools in Maryland, and who

"(a) hold or are named within a visa under 8 U.S.C. § 1101(a)(15)(G)(iv) or are financially dependent upon a person holding or named within such a visa." Pet. App. 50a-51a.

By definition in such a suit, "the party opposing the class [here the University] has acted or refused to act on grounds generally applicable to the class." Fed. R. Civ. P. 23(b)(2). In addition, "the claims or defenses of the representative parties [must be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Given these procedural prerequisites, it follows that the

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

From: Mr. Justice BRENAN
Circulated: 3/14/78

Recirculated

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-154

Wilson H. Elkins, President, University of Maryland,
Petitioner,
v.
Juan Carlos Moreno et al. } On Writ of Certiorari to
the United States Court
of Appeals for the
Fourth Circuit.

[March —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Respondents, representing a class of nonimmigrant alien residents of Maryland,¹ brought this action against the University of Maryland² and its President, petitioner Elkins, alleging that the University's failure to grant respondents "in-state" status for tuition purposes violated various federal laws,³ the Due Process and Equal Protection Clauses of the

¹ The class certified by the District Court differs from that alleged in the complaint. As certified, the class is defined as:

"All persons now residing in Maryland who are current students at the University of Maryland, or who chose not to apply to the University of Maryland because of the challenged policies but would now be interested in attending if given an opportunity to establish in-state status, or who are currently students in senior high schools in Maryland, and who

"(a) hold or are named within a visa under 8 U. S. C. § 1101 (a)(15)(G) (iv) or are financially dependent upon a person holding or named within such a visa." Pet. App., at 50a-51a.

² The University was dismissed from the suit on the authority of *Monroe v. Pape*, 365 U. S. 167 (1961). See 420 F. Supp., at 548-550.

³ The complaint alleged that petitioner's conduct violated 42 U. S. C. §§ 1981, 1983, 2000a, 2000a-1, 2000a-3, 2000d (1970 ed., and Supp. V). App. 3A. Jurisdiction was predicated on 28 U. S. C. §§ 1333 (3), 1334 (4). *Ibid.* The District Court proceeded on the premise that 42 U. S. C. § 1983 and the cited sections of Title 28 gave jurisdiction and a cause of action. See 420 F. Supp., at 548. Neither of these rulings is now in dispute.

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3. *Antennulae* (Fig. 14) — The first pair of antennae are long, slender, and slightly curved, with a few long setae on the distal half.

Received: 5/15/11

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-154

Wilson H. Elkins, President, University of Maryland, Petitioner,
v.
Juan Carlos Moreno et al.

On Writ of Certiorari to
the United States Court
of Appeals for the
Fourth Circuit.

[March —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

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"All persons now residing in Maryland who are current students at the University of Maryland, or who chose not to apply to the University of Maryland because of the challenged policies but would now be interested in attending if given an opportunity to establish in-state status, or who are currently students in senior high schools in Maryland, and who

“(a) hold or are named within a visa under 8 U. S. C. § 1101(a)(15)(G) (iv) or are financially dependent upon a person holding or named within such a visa.” Pet. App., at 50a–51a.

² The University was dismissed from the suit on the authority of *Monroe v. Pape*, 365 U. S. 167 (1961). See 420 F. Supp., at 548-550.

³ The complaint alleged that petitioner's conduct violated 42 U. S. C. §§ 1981, 1983, 2000a, 2000a-1, 2000a-3, 2000d (1970 ed., and Supp. V). App. 3A. Jurisdiction was predicated on 28 U. S. C. §§ 1333 (3), 1333 (4). *Ibid.* The District Court proceeded on the premise that 42 U. S. C. § 1983 and the cited sections of Title 28 gave jurisdiction and a cause of action. See 420 F. Supp., at 548. Neither of these rulings is now in dispute.

✓

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 15, 1978

RE: No. 77-154 Elkins v. Moreno

Dear Potter:

Thank you very much for the suggestion as to the revision of the certified question. I am happy to adopt it.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

March 16, 1978

RE: No. 77-154 Elkins v. Moreno

Dear Harry:

Of course I'll delete the words "who may probate a will" in the 9th line of footnote 9 on page 11. Thanks very much for the suggestion.

Sincerely,

Mr. Justice Blackmun

Bren 77

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 16, 1978

RE: No. 77-154 Elkins v. Moreno

Dear Harry:

Thanks for your note joining the opinion for certification. I agree that as the record now stands we need not be concerned with what the case might be if the University refused to be bound by the Maryland law of domicile. From what was said by the Attorney General at oral argument it appears most likely that the University will follow whatever the Maryland court holds to be the law of Maryland.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

14117

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Burger
Mr. Justice Rehnquist

From: Mr. Justice [redacted]

Circulated [redacted]

3/22/78

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-154

Wilson H. Elkins, President, Uni-
versity of Maryland,
Petitioner,
v.
Juan Carlos Moreno et al.

On Writ of Certiorari to
the United States Court
of Appeals for the
Fourth Circuit.

[March —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Respondents, representing a class of nonimmigrant alien residents of Maryland,¹ brought this action against the University of Maryland² and its President, petitioner Elkins, alleging that the University's failure to grant respondents "in-state" status for tuition purposes violated various federal laws,³ the Due Process and Equal Protection Clauses of the

¹ The class certified by the District Court differs from that alleged in the complaint. As certified, the class is defined as:

"All persons now residing in Maryland who are current students at the University of Maryland, or who chose not to apply to the University of Maryland because of the challenged policies but would now be interested in attending if given an opportunity to establish in-state status, or who are currently students in senior high schools in Maryland, and who

"(a) hold or are named within a visa under 8 U. S. C. § 1101 (a)(15)(G) (iv) or are financially dependent upon a person holding or named within such a visa." Pet. App. 50a-51a.

² The University was dismissed from the suit on the authority of *Monroe v. Pape*, 365 U. S. 167 (1961). See 420 F. Supp., at 548-550.

³ The complaint alleged that petitioner's conduct violated 42 U. S. C. §§ 1981, 1983, 2000a, 2000a-1, 2000a-3, 2000d (1970 ed., and Supp. V). App. 3A. Jurisdiction was predicated on 28 U. S. C. §§ 1333 (3), 1333 (4). *Ibid.* The District Court proceeded on the premise that 42 U. S. C. § 1983 and the cited sections of Title 28 gave jurisdiction and a cause of action. See 420 F. Supp., at 548. Neither of these rulings is now in dispute.

PP 10-13, 19

4th DRAFT

~~3/27/78~~

SUPREME COURT OF THE UNITED STATES

No. 77-154

Wilson H. Elkins, President, University of Maryland, Petitioner,
v.
Juan Carlos Moreno et al.

On Writ of Certiorari to
the United States Court
of Appeals for the
Fourth Circuit.

[March —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

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² The University was dismissed from the suit on the authority of *Monroe v. Pape*, 365 U. S. 167 (1961). See 420 F. Supp., at 548-550.

³ The complaint alleged that petitioner's conduct violated 42 U. S. C. §§ 1981, 1983, 2000a, 2000a-1, 2000a-3, 2000d (1970 ed., and Supp. V). App. 3A. Jurisdiction was predicated on 28 U. S. C. §§ 1343 (3), 1343 (4). *Ibid.* The District Court proceeded on the premise that 42 U. S. C. § 1983 and the cited sections of Title 28 gave jurisdiction and a cause of action. See 420 F. Supp., at 548. Neither of these rulings is now in dispute.

9, 12, 14-15, 17, 19

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

From: Mr. Justice ~~Brennan~~

Circulated: _____

Recirculated: 3-1

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-154

Wilson H. Elkins, President, University of Maryland, Petitioner,
v.
Juan Carlos Moreno et al.

On Writ of Certiorari to
the United States Court
of Appeals for the
Fourth Circuit.

Juan Carlos Moreno et al.

[March —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Respondents, representing a class of nonimmigrant alien residents of Maryland,¹ brought this action against the University of Maryland² and its President, petitioner Elkins, alleging that the University's failure to grant respondents "in-state" status for tuition purposes violated various federal laws,³ the Due Process and Equal Protection Clauses of the

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“(a) hold or are named within a visa under 8 U. S. C. § 1101 (a)(15)(G) (iv) or are financially dependent upon a person holding or named within such a visa.” Pet. App. 50a-51a.

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³ The complaint alleged that petitioner's conduct violated 42 U. S. C. §§ 1981, 1983, 2000a, 2000a-1, 2000a-3, 2000d (1970 ed., and Supp. V). App. 3A. Jurisdiction was predicated on 28 U. S. C. §§ 1333 (3), 1334 (4). *Ibid.* The District Court proceeded on the premise that 42 U. S. C. § 1983 and the cited sections of Title 28 gave jurisdiction and a cause of action. See 420 F. Supp., at 548. Neither of these rulings is now in dispute.

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Black

Circulated: _____

Recirculated: *4/11/78*

PP. 121715

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-154

Wilson H. Elkins, President, University of Maryland,
Petitioner,
v.
Juan Carlos Moreno et al.

On Writ of Certiorari to
the United States Court
of Appeals for the
Fourth Circuit.

[March —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Respondents, representing a class of nonimmigrant alien residents of Maryland,¹ brought this action against the University of Maryland² and its President, petitioner Elkins, alleging that the University's failure to grant respondents "in-state" status for tuition purposes violated various federal laws,³ the Due Process and Equal Protection Clauses of the

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"All persons now residing in Maryland who are current students at the University of Maryland, or who chose not to apply to the University of Maryland because of the challenged policies but would now be interested in attending if given an opportunity to establish in-state status, or who are currently students in senior high schools in Maryland, and who

"(a) hold or are named within a visa under 8 U. S. C. § 1101 (a)(15)(G) (iv) or are financially dependent upon a person holding or named within such a visa." 420 F. Supp. at 564.

² The University was dismissed from the suit on the authority of *Monroe v. Pape*, 365 U. S. 167 (1961). See 420 F. Supp. at 548-550.

³ The complaint alleged that petitioner's conduct violated 42 U. S. C. §§ 1981, 1983, 2000a, 2000a-1, 2000a-3, 2000d (1970 ed., and Supp. V). App. 3A. Jurisdiction was predicated on 28 U. S. C. §§ 1333 (3), 1334 (4). *Ibid.* The District Court proceeded on the premise that 42 U. S. C. § 1983 and the cited sections of Title 28 gave jurisdiction and a cause of action. See 420 F. Supp. at 548. Neither of these rulings is now in dispute.

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 15, 1978

Re: No. 77-154, Elkins v. Moreno

Dear Bill,

I would not postpone oral argument in this case. Depending upon what develops at the argument, I would, of course, thereafter be glad to consider certifying the question of domicile to the Maryland Court of Appeals. If we do decide to pursue that course, I would suggest some modification in the wording of the question tentatively proposed in your memorandum.

Sincerely yours,

P.S.
J

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 23, 1978

Re: No. 77-154 - Elkins v. Moreno

Dear Bill,

I agree with you that we should certify this case to the Maryland Court of Appeals, in a Per Curiam as outlined in Part III of your memorandum of today.

Sincerely yours,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 15, 1978

Re: No. 77-154, Elkins v. Moreno

Dear Bill,

I would prefer that the certified question appearing at page 17 of your opinion, be slightly revised so as to read as follows:

"Are persons residing in Maryland who hold or are named in a visa under 8 U. S. C. § 1101(a)(15)(G)(iv) (1976 ed.), or who are financially dependent upon a person holding or named in such a visa, incapable as a matter of state law of becoming domiciliaries of Maryland?"

If this minor language modification is satisfactory to you, I shall be glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.
P.J.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 27, 1978

Re: #77-154 Elkins v. Moreno

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 15, 1978

Re: No. 77-154 - Elkins v. Moreno

Dear Bill:

I agree to the certification and to postpone argument.

Sincerely,

T.M.

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 17, 1978

Re: No. 77-154, Elkins v. Moreno

Dear Bill:

Please join me.

Sincerely,



T. M.

Mr. Justice Brennan

cc: The Conference

✓
CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

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

February 16, 1978

Re: No. 77-154 - Elkins v. Moreno

Dear Bill:

I, too, am not inclined to postpone oral argument. If we are to certify, I think it would be better to do so after the argument. Furthermore, I think we should be careful not to ask the Maryland Court to resolve the meaning of G-4 alien status, for that is an issue of federal law.

Sincerely,

Harry
/

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 16, 1978

Re: No. 77-154 - Elkins v. Moreno

Dear Bill:

I am willing to join your opinion for certification for I suspect there is not much to lose. It seems to me, however, that the University could well take the position that, whatever the Maryland law is as to domicile, they are not bound by it. In view of the comments made at oral argument, this is probably unlikely.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 16, 1978

Re: No. 77-154 - Elkins v. Moreno

Dear Bill:

Would you be willing to strike the words "who may probate a will" in the 9th line of footnote 9 on page 11? I suppose the reference is really intended to be made to whose will may be probated, rather than to the lawyer who does the probate or the beneficiary who seeks probate. As an old probate hand of many years, however, I in many instances probated in Minnesota, as an original probate, wills of non-Minnesota domiciliaries.

I would feel more comfortable if those five words were omitted.

Sincerely,



Mr. Justice Brennan



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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 26, 1979

Re: No. 77-154 - Toll v. Moreno

Dear Bill:

Please join me in your proposed per curiam.

Sincerely,

H. A. B.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 29, 1978

No. 77-154 Elkins v. Moreno

Dear Bill:

As I am hesitant at this time to agree with the views you express as to federal immigration law, I now plan to circulate a brief opinion. You may be entirely right, but thinking it unnecessary to make or imply these judgments in this case, I have not made as thorough a study as I would like.

I will join in your judgment and other portions of your opinion.

I should add that I also would not wish to express an opinion as to overruling Vlandis.

I will try to circulate something before the end of the week. It will be brief and should not hold you up.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 30, 1978

No. 77-154 Elkins v. Moreno

Dear Bill:

In view of the changes in your opinion we have discussed, I am happy to join you.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 23, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 77-154 - Elkins v. Moreno

I have just read Bill Brennan's memorandum of today, in which he states that he still believes we should certify this case to the Maryland Court of Appeals. While I do not think there is anything affirmatively wrong with certification I do not believe that any conceivable question that could be posed to the Maryland Court of Appeals would materially aid us in deciding the issue before us in this case.

The Board of Regents of the University of Maryland have adopted what the District Court referred to as the "In-State-Policy", which is set forth in the opinion of the District Court, pet. 9a-10a. The relevant parts of that policy seem to me to be the following:

"General Policy

"1. It is the policy of the University of Maryland to grant in-state status for admission, tuition and charge-differential purposes to United States citizens, and to immigrant aliens lawfully admitted for permanent residence in accordance with the laws of the United States, in the following cases:

"a. Where a student is financially dependent upon a parent, parents, or spouse domiciled in Maryland for at least six consecutive months prior to the last day available for registration for the forthcoming semester . . .

"Definitions . . .

"4. A domicile is a person's permanent place of abode; namely, there must be demonstrated an intention to live permanently or indefinitely in Maryland. For purposes of this policy only one domicile may be maintained at a given time . . ."

It is this policy that respondents claim violate the United States Constitution; it is a policy adopted by the Maryland Board of Regents, which may or may not conform to the general Maryland law of domicile. The above quoted definition of "domicile" is one adopted by the Board of Regents, and so far as we know under the law of the State of Maryland the Board of Regents are not obligated to follow the general

Maryland law of "domicile" which might be applicable in cases of divorce, estate tax, and the like, in making their own determination of "domicile" for purposes of according in-state tuition rates. Furthermore it would seem that Section 1 is a requirement independent of domicile.

I think this view of the case is further confirmed by petitioner Elkins' letter to respondent's counsel of May 14, 1975, Appendix 13A, where he states:

"It is the policy of the University of Maryland to grant in-state status for admission, tuition and charge-differential purposes only to United States citizens and to immigrant aliens lawfully admitted for permanent residence. Furthermore, such individuals (or their parents) must display Maryland domicile. (Emphasis supplied.)

This letter surely indicates that the University's standard for in-state tuition may require more than the mere showing of Maryland domicile in the common law or general sense. The case thus presented to us is, to me, whether the Regents' regulations set forth at pet. 9a-10a violate either the irrebuttable presumption doctrine of Vlandis, which the Court of Appeals decided they did, or whether they violate the Equal Protection Clause under the Mauclet line of reasoning a question which the Court of Appeals did not reach.

Sincerely,

WZ

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

From: Mr. Justice Rehnquist
 Circulated: MAR 24 1978

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 2nd DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 77-154

Wilson H. Elkins, President, Uni-
 versity of Maryland,
 Petitioner,

v.

Juan Carlos Moreno et al.

On Writ of Certiorari to
 the United States Court
 of Appeals for the
 Fourth Circuit.

[March —, 1978]

MR. JUSTICE REHNQUIST.

The University of Maryland, like all state universities, differentiates in tuition between "in-state" and "out-of-state" students. The two categories of students are delineated in the University's general policy statement on "In-State Status for Admission, Tuition, and Charge-Differential Purposes." Part 1 of the policy statement provides:

"It is the policy of the University of Maryland to grant in-state status for admission, tuition and charge-differential purposes to United States citizens, and to immigrant aliens lawfully admitted for permanent residence in accordance with the laws of the United States, in the following cases:

"a. Where a student is financially dependent upon a parent, parents, or spouse domiciled in Maryland for at least six consecutive months prior to the last day available for registration for the forthcoming semester, [or]

"b. Where a student is financially independent for at least the preceding twelve months, and provided the student has maintained his domicile in Maryland for at least six consecutive months immediately prior to the last day available for registration for the forthcoming semester." Brief of Petitioner, at 7 (emphasis added).

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Stevens

PP 3,5-6

From: Mr. Justice Rehnquist

2nd DRAFT

Circulated: MAR 2 1978

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SUPREME COURT OF THE UNITED STATES

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" 'b. Where a student is financially independent for at least the preceding twelve months, and provided the student has maintained his domicile in Maryland for at least six consecutive months immediately prior to the last day available for registration for the forthcoming semester.' " Brief of Petitioner, at 7 (emphasis added).

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

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: APR 1

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-154

Wilson H. Elkins, President, University of Maryland.

Petitioner,

v.

Juan Carlos Moreno et al.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[March 1, 1978]

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, dissenting.

The University of Maryland, like all state universities, differentiates in tuition between "in-state" and "out-of-state" students. The two categories of students are delineated in the University's general policy statement on "In-State Status for Admission, Tuition, and Charge-Differential Purposes." Part 1 of the policy statement provides:

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"'b. Where a student is financially independent for at least the preceding twelve months, and provided the student has maintained his domicile in Maryland for at least six consecutive months immediately prior to the last day available for registration for the forthcoming semester." Brief of Petitioner, at 7 (emphasis added).

✓

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 14, 1978

Re: 77-154 - Elkins v. Moreno

Dear Bill:

Please join me.

Respectfully,

J.P.S.

Mr. Justice Brennan

Copies to the Conference