

The Burger Court Opinion Writing Database

Toll v. Moreno

441 U.S. 458 (1979)

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, 1979

Re: 77-154 - Elkins v. Moreno

Dear Bill:

Your memo of March 12 makes good sense to me. Unless someone comes up with a better idea, I'll join.

Regards,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 27, 1979

RE: 77-154 - Toll v. Moreno

Dear Bill:

My March 14 "join" still holds.

Regards,

W. B.

Mr. Justice Brennan

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

CHAMBERS OF
THE CHIEF JUSTICE

April 27, 1979

Re: 77-154 - Toll v. Moreno - WEB
(per curiam)

MEMORANDUM TO THE CONFERENCE:

This case will also be announced on Monday along with
the other opinions, since it is an argued case.

Regards,

WRB

cc: Mr. Cornio, Printer

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 12, 1979

MEMORANDUM TO THE CONFERENCE

RE: No. 77-154 Elkins v. Moreno

Last Term we avoided decision of the constitutional challenges to the University of Maryland's denial of "in-state" status for reduced tuition to certain alien students living in Maryland. These students are dependents of parents who hold a G-4 visa, that is a non-immigrant visa granted to officers or employees of international organizations, and members of their immediate families. The international organizations in this instance are the Inter-American Development Bank and International Bank for Reconstruction and Development. The ground of denial given by the University was its opinion that the Maryland common law of domicile prevented G-4 aliens from acquiring a Maryland domicile, and thus from having "in-state" status. There was no dispositive Maryland law on that question, and we therefore certified to the Maryland Court of Appeals the question whether student non-immigrants dependent upon alien holders of G-4 visas were "incapable as a matter of state law of becoming domiciliaries of Maryland." Elkins v. Moreno, 435 U. S. 647, 668-669 (1978). We were influenced to take that course because it was represented to us that "the University apparently has no interest in continuing to deny in-state status to G-4 aliens as a class if they can become Maryland domiciliaries, since it has indicated both here and in the District Court that it would redraft its policy 'to accommodate' G-4 aliens were the Maryland courts to hold that G-4 aliens can have the requisite interest." Id., at 661

The Maryland Court of Appeals has now decided the certified question by an opinion holding that "since nothing in the general Maryland law of domicile renders G-4 visa holders, or their dependents, incapable of becoming domiciled in this state, the answer to the certified question is 'No'." I would suppose that ordinarily

this would have sufficed to have us either (1) affirm the Fourth Circuit's affirmance of the District Court's order limited to a declaration and enforcing injunction restraining the University President from denying the students the "opportunity to establish 'in-state' status" solely because of an "irrebuttable presumption of non-domicile", or (2) vacating and remanding in light of the University's assurance that the policy would be redrafted to accommodate G-4 aliens since the Court of Appeals had held that they could acquire a Maryland domicile.

But there has been a development that detracts from adoption of either course. Within a month after our decision, the Board of Regents retracted its representation in a resolution reciting that regardless of the general Maryland law of domicile the University asserted the authority to adopt other and more restrictive standards for in-state status at the University. It then sought to have the Maryland Court of Appeals consider the certified question in the context of the new resolution. The Court of Appeals declined to do so on the ground that the new matter was beyond the scope of the certified question. The Court of Appeals stated

" . . . prior to the present proceedings in this Court, the University President maintained that the Maryland common law of domicile prevented G-4 aliens from having in-state status. Here, in a marked departure from his earlier position, the President insists that regardless of the general Maryland law of domicile, the University has the authority to adopt more restrictive standards for in-state status at the University.

" But since the certified question concerns Maryland common law of domicile . . . the arguments relating to the University's power to adopt different criteria for in-state status are beyond the scope of the question."

The Attorney-General of Maryland, by letter dated February 23, requests that Elkins v. Moreno "be restored to the Supreme Court's active docket for further briefing and argument at the earliest time deemed convenient and appropriate by the Court." Our Legal Officer recommends that we defer consideration of that request until after we are officially informed some 30 days hence of the Court of Appeals answer.

I see no reason to delay our consideration of the Attorney-General's request. I'm presently of the view that we should deny the Attorney-General's request. The context in which the constitutional questions are presented has been substantially altered by the University's change of position evidenced in the clarifying resolution of June 23, 1978. We ought not decide those questions in their new context until the District Court and the Court of Appeals have first addressed them. I recommend that we vacate the judgment of the Court of Appeals and remand to the District Court for further consideration in light of the opinion and judgment of the Maryland Court of Appeals and the Board of Regents' clarifying resolution of June 23, 1978.

W.J.B. Jr.

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 Brandeis

Circulated: 126 APP 10

Be circulated

1st DRAFT

SUPREME COURT OF THE UNITED STATES

JOHN S. TOLL, PRESIDENT, UNIVERSITY OF MARYLAND *v.* JUAN CARLOS MORENO ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 77-154. Decided April —, 1979

PER CURIAM.

This decision supplements *Elkins v. Moreno*, No. 77-154, 435 U. S. 647 (1978), decided last Term. Respondents in *Elkins* represented a class of nonimmigrant alien residents of Maryland who either held or were financially dependent upon a person who held a "G-4 visa," that is, a nonimmigrant visa granted to "officers, or employees of . . . international organizations, and the members of their immediate families" pursuant to 8 U. S. C. § 1101 (a)(15)(G)(iv). Respondents were not granted "in-state" status for tuition purposes at the University of Maryland because they were conclusively presumed by the University to be nondomiciliaries of the State. Respondents brought suit against the University and its President, alleging that the University's failure to grant respondents in-state status violated various federal laws, the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and the Supremacy Clause. The District Court held for respondents on the ground that the University's procedures for determining in-state status violated principles established in *Vlandis v. Kline*, 412 U. S. 441 (1973), and the Court of Appeals affirmed. *Moreno v. University of Maryland*, 420 F. Supp. 541 (Md. 1976), affirmance order, 556 F. 2d 573 (CA4 1977).

In *Elkins v. Moreno, supra*, we held that "[b]ecause petitioner makes domicile the 'paramount' policy consideration and because respondents' contention is that they can be domiciled in Maryland but are conclusively presumed to be unable to do so, this case is squarely within *Vlandis* as

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 26, 1979

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

Dear Bill,

I agree with your proposed per
curiam.

Sincerely yours,

C. S.
J.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 26, 1979

Re: 77-154 - Toll v. Moreno, et al

Dear Bill,

I agree.

Sincerely yours,



Mr. Justice Brennan
Copies to the Conference
cmc

H.A.B

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 WILLIAM H. REHNQUIST

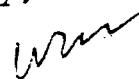
April 26, 1979

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

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 26, 1979

Re: 77-154 - Toll v. Moreno

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference