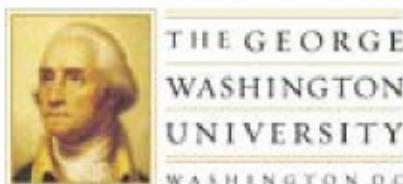


The Burger Court Opinion Writing Database

Vance v. Terrazas

444 U.S. 252 (1980)

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

December 17, 1979

Re: 78-1143 - Vance v. Terrazas

Dear Byron:

I join.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

November 13, 1979

MEMORANDUM TO: Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Stevens

RE: No. 78-1143 Vance v. Terrazas

The four of us voted to affirm in the above but
my notes indicate on different grounds. I'll therefore
write on my own view and suppose that each of you will
want to do the same.


W.J.B.Jr.

1st DRAFT
Supreme Court of the United States
No. 78-1143
From: Mr. Justice Brennan
Circulated: 12/19/79
Recirculated: _____
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

Cyrus Vance, Secretary of State of the United States, Appellant

v.

Laurence J. Terrazas

[January __, 1980]

MR. JUSTICE BRENNAN, dissenting.

The Court holds that one may lose United States citizenship if the government can prove that certain acts, specified by statute, were done with the specific intent of giving up citizenship. Accordingly, the Court remands the case for a new trial to determine whether appellee was properly stripped of his citizenship. Because I would hold that one who acquires United States citizenship by virtue of being born in the United States, U.S. Const., Amdt. 14, §1, can lose that citizenship

page

2nd DRAFT

Supreme Court of the United States

No. 78-1143

From: Mr. Justice BRENNAN

Circumferential

Cyrus Vance, Secretary of State of the United States, Appellee
Section 1411
1/14/79

v.

Laurence J. Terrazas

[January __, 1980]

MR. JUSTICE BRENNAN, dissenting.

The Court holds that one may lose United States citizenship if the government can prove by a preponderance of the evidence that certain acts, specified by statute, were done with the specific intent of giving up citizenship. Accordingly, the Court, in reversing the judgment of the Court of Appeals, holds that the District Court applied the correct evidentiary standards in determining that appellee was properly stripped of his citizenship. Because I would hold that one who acquires United States citizenship by virtue of being born in the United States, U.S. Const., Amdt. 14, §1, can lose that citizenship

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

From: Mr. Justice Brennan

Circulated:

Recirculated: ~~12/23~~

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1143

Cyrus Vance, Secretary of State
of the United States,
Appellant,
v.
Laurence J. Terrazas.

On Appeal from the United
States Court of Appeals
for the Seventh Circuit.

[January —, 1980]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEWART joins as to Part II, dissenting.

The Court holds that one may lose United States citizenship if the government can prove by a preponderance of the evidence that certain acts, specified by statute, were done with the specific intent of giving up citizenship. Accordingly, the Court, in reversing the judgment of the Court of Appeals, holds that the District Court applied the correct evidentiary standards in determining that appellee was properly stripped of his citizenship. Because I would hold that one who acquires United States citizenship by virtue of being born in the United States, U. S. Const., Amdt. 14, § 1, can lose that citizenship only by formally renouncing it, and because I would hold that the act of which appellee is accused in this case cannot be an expatriating act, I dissent.

I

This case is governed by *Afroyim v. Rusk*, 387 U. S. 253 (1967). *Afroyim*, emphasizing the crucial importance of the right of citizenship, held unequivocally that a citizen has "a constitutional right to remain a citizen . . . unless he voluntarily relinquishes that citizenship." *Id.*, at 268. "[T]he only way the citizenship . . . could be lost was by the voluntary renunciation or abandonment by the citizen himself." *Id.*, at 266. The Court held that because Congress could not

Re: 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: _____

Regulated:

JAN 11 1970

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1143

Cyrus Vance, Secretary of State
of the United States,
Appellant,
v.
Laurence J. Terrazas. } On Appeal from the United
States Court of Appeals
for the Seventh Circuit.

[January —, 1980]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEWART joins as to Part II, dissenting.

The Court holds that one may lose United States citizenship if the government can prove by a preponderance of the evidence that certain acts, specified by statute, were done with the specific intent of giving up citizenship. Accordingly, the Court, in reversing the judgment of the Court of Appeals, holds that the District Court applied the correct evidentiary standards in determining that appellee was properly stripped of his citizenship. Because I would hold that one who acquires United States citizenship by virtue of being born in the United States, U. S. Const., Amdt. 14, § 1, can lose that citizenship only by formally renouncing it, and because I would hold that the act of which appellee is accused in this case cannot be an expatriating act, I dissent.

II

This case is governed by *Afroyim v. Rusk*, 387 U. S. 253 (1967). *Afroyim*, emphasizing the crucial importance of the right of citizenship, held unequivocally that a citizen has "a constitutional right to remain a citizen . . . unless he voluntarily relinquishes that citizenship." *Id.*, at 268. "[T]he only way the citizenship . . . could be lost was by the voluntary renunciation or abandonment by the citizen himself." *Id.*, at 266. The Court held that because Congress could not

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 14, 1979

Re: No. 78-1143, Vance v. Terrazas

Dear Byron,

My basic difficulty with this case has stemmed from the irrationality of applying § 349 (a)(2) of the Immigration and Nationality Act of 1952 to a person who, like the respondent, is already a citizen of the foreign state to which he pledges allegiance. Since, however, dual citizenships are rare, and since I do not disagree generally with the views expressed in the opinion you have circulated, I shall not write in dissent. If nobody else writes a dissenting opinion, I shall acquiesce in your opinion for the Court.

Sincerely yours,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 19, 1979

Re: 78-1143 - Vance v. Terrazas

Dear Byron:

I agree with Part II of Bill Brennan's dissenting opinion. Accordingly, I would appreciate your adding the following at the bottom of your opinion for the Court:

Mr. Justice Stewart dissents for the reasons stated in Part II of Mr. Justice Brennan's dissenting opinion, which he joins.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 19, 1979

Re: 78-1143 - Vance v. Terrazas

Dear Bill:

Please add my name to Part II of your
dissenting opinion.

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

December 13, 1979

Re: No. 78-1143 - Vance v. Terrazas

MEMO TO THE CONFERENCE

This draft represents the views I expressed at Conference. There were at least four others who would reverse, but I'm not sure that each -- or any -- of them would explain it this way.

Sincerely yours,



Attachment

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

From: Mr. Justice White
 Circulated: 13 DEC 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1143

Cyrus Vance, Secretary of State
 of the United States, | On Appeal from the United
 Appellant, | States Court of Appeals
 v. | for the Seventh Circuit.
 Laurence J. Terrazas.

[January —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 349 (a)(2) of the Immigration and Nationality Act of 1952 (Act), 66 Stat. 267, 8 U. S. C. § 1481 (a)(2), provides that "a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by . . . taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof." The Act also provides that the party claiming such loss of citizenship must "establish such claim by a preponderance of the evidence" and that the voluntariness of the expatriating conduct is rebuttably presumed. § 349 (c), 75 Stat. 656, 8 U. S. C. § 1481 (c).¹ The issues in

¹ The relevant statutory provisions are §§ 349 (a)(2), (c) of the Immigration and Nationality Act, 66 Stat. 267, as amended, 75 Stat. 656, 8 U. S. C. § 1481.

"(a) From and after the effective date of this chapter a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—

"(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof;

"(c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after September 26, 1961 under, or

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

From: Mr. Justice White

Circulated: _____

Recirculated: 21 DEC 1979

STYLISTIC CHANGES THROUGHOUT.
 SEE PAGES: 18

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1143

Cyrus Vance, Secretary of State
 of the United States,
 Appellant,
 v.
 Laurence J. Terrazas. } On Appeal from the United
 States Court of Appeals
 for the Seventh Circuit.

[January —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 349 (a)(2) of the Immigration and Nationality Act of 1952 (Act), 66 Stat. 267, 8 U. S. C. § 1481 (a)(2), provides that "a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by . . . taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof." The Act also provides that the party claiming such loss of citizenship must "establish such claim by a preponderance of the evidence" and that the voluntariness of the expatriating conduct is rebuttably presumed. § 349 (c), 75 Stat. 656, 8 U. S. C. § 1481 (c).¹ The issues in

¹ The relevant statutory provisions are §§ 349 (a)(2), (c) of the Immigration and Nationality Act, 66 Stat. 267, as amended, 75 Stat. 656, 8 U. S. C. § 1481:

"(a) From and after the effective date of this chapter a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—

"(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof;

"(c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after September 26, 1961 under, or

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

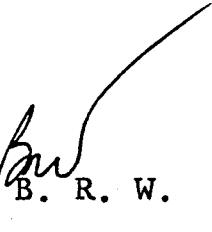
CHAMBERS OF
JUSTICE BYRON R. WHITE

January 11, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 78-1143 - Vance v. Terrazas

I plan no changes in the circulating opinion in this case in response to Thurgood's separate opinion. I take it that Thurgood and the others are ready for it to come down on Tuesday.


B. R. W.

NO. 78-1143

11 JAN 1980

Vance v. Terrazas, First Draft

MR. JUSTICE MARSHALL, concurring in part and dissenting in part:

I agree with the Court's holding that a citizen of the United States may not lose his citizenship in the absence of a finding that he specifically intended to renounce it. I also concur in the adoption of a saving construction of 8 U.S.C. § 1481 (a)(2) to require that the statutorily designated expatriating acts be done with a specific intent to relinquish citizenship.

I cannot, however, accept the majority's conclusion that a person may be found to have relinquished his American citizenship upon a preponderance of the evidence that he intended to do so. The Court's discussion of congressional power to "prescribe rules of evidence and standards of proof in the federal courts," ante, at 13, is the beginning, not the end, of the inquiry. It remains the task of this Court to determine when those rules and standards impinge on constitutional rights. As my Brother STEVENS indicates, the Court's casual dismissal of the importance of American citizenship cannot withstand scrutiny. And the mere fact that one who has been expatriated is not locked up in a prison does not dispose of the constitutional inquiry. As Mr. Chief Justice Warren stated over twenty years ago:

"[T]he expatriate has lost the right to have rights.

This punishment is offensive to cardinal principles for which the Constitution stands. It subjects the

p. 2

14 JAN 1980

9.4.2

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1143

Cyrus Vance, Secretary of State
of the United States,
Appellant,
v.
Laurence J. Terrazas.

On Appeal from the United
States Court of Appeals
for the Seventh Circuit.

[January — 1980]

MR. JUSTICE MARSHALL, concurring in part and dissenting in part.

I agree with the Court's holding that a citizen of the United States may not lose his citizenship in the absence of a finding that he specifically intended to renounce it. I also concur in the adoption of a saving construction of 8 U. S. C. § 1481 (a)(2) to require that the statutorily designated expatriating acts be done with a specific intent to relinquish citizenship.

I cannot, however, accept the majority's conclusion that a person may be found to have relinquished his American citizenship upon a preponderance of the evidence that he intended to do so. The Court's discussion of congressional power to "prescribe rules of evidence and standards of proof in the federal courts," *ante*, at 13, is the beginning, not the end, of the inquiry. It remains the task of this Court to determine when those rules and standards impinge on constitutional rights. As my Brother STEVENS indicates, the Court's casual dismissal of the importance of American citizenship cannot withstand scrutiny. And the mere fact that one who has been expatriated is not locked up in a prison does not dispose of the constitutional inquiry. As Mr. Chief Justice Warren stated over 20 years ago:

"[T]he expatriate has lost the right to have rights. This punishment is offensive to cardinal principles for which

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 17, 1979

Re: No. 78-1143 - Vance v. Terrazas

Dear Byron:

Please join me.

Sincerely,

H. A. B.)
by ws

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 17, 1979

No. 78-1143 Vance v. Terrazas

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

Copies to the Conference

LFP/lab

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 14, 1979

Re: No. 78-1143 - Vance v. Terrazas

Dear Byron:

Please join me in your draft circulated December 13th in this case.

Sincerely,

Mr. Justice White

Copies to the Conference

✓
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 3, 1980

Re: 78-1143 - Vance v. Terrazas

Dear Byron:

My dissent is at the Printer.

Respectfully,



Mr. Justice White

Copies to the Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES Mr. Justice Stevens

No. 78-1143

Circulated: JAN 4 '80

Recirculated: _____

Cyrus Vance, Secretary of State
of the United States,
Appellant,
v.
Laurence J. Terrazas.

On Appeal from the United
States Court of Appeals
for the Seventh Circuit.

[January —, 1980]

MR. JUSTICE STEVENS, concurring in part and dissenting
in part.

The Court today unanimously reiterates the principle set forth in *Afroyim v. Rusk*, 387 U. S. 253, that Congress may not deprive an American of his citizenship against his will, but may only effectuate the citizen's own intention to renounce his citizenship. I agree with the Court that Congress may establish certain standards for determining whether such a renunciation has occurred. It may, for example, provide that expatriation can be proved by evidence that a person has performed an act that is normally inconsistent with continued citizenship and that the person thereby specifically intended to relinquish his American citizenship.

I do not agree, however, with the conclusion that Congress has established a permissible standard in 8 U. S. C. § 1481 (a)(2). Since we accept dual citizenship, taking an oath of allegiance to a foreign government is not necessarily inconsistent with an intent to remain an American citizen. Moreover, as now written, the statute cannot fairly be read to require a finding of specific intent to relinquish citizenship. The statute unambiguously states that:

"a national of the United States . . . shall lose his nationality by—

"(2) taking an oath or making an affirmation or other

P. 2

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: _____

2nd DRAFT

Recirculated: JAN 8 '80

SUPREME COURT OF THE UNITED STATES

No. 78-1143

Cyrus Vance, Secretary of State
 of the United States,
 Appellant,
 v.
 Laurence J. Terrazas.

On Appeal from the United
 States Court of Appeals
 for the Seventh Circuit.

[January —, 1980]

MR. JUSTICE STEVENS, concurring in part and dissenting
 in part.

The Court today unanimously reiterates the principle set forth in *Afroyim v. Rusk*, 387 U. S. 253, that Congress may not deprive an American of his citizenship against his will, but may only effectuate the citizen's own intention to renounce his citizenship. I agree with the Court that Congress may establish certain standards for determining whether such a renunciation has occurred. It may, for example, provide that expatriation can be proved by evidence that a person has performed an act that is normally inconsistent with continued citizenship and that the person thereby specifically intended to relinquish his American citizenship.

I do not agree, however, with the conclusion that Congress has established a permissible standard in 8 U. S. C. § 1481 (a)(2). Since we accept dual citizenship, taking an oath of allegiance to a foreign government is not necessarily inconsistent with an intent to remain an American citizen. Moreover, as now written, the statute cannot fairly be read to require a finding of specific intent to relinquish citizenship. The statute unambiguously states that:

"a national of the United States . . . shall lose his nationality by—

"(2) taking an oath or making an affirmation or other