

The Burger Court Opinion Writing Database

American Export Lines, Inc. v. Alvez
446 U.S. 274 (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

March 4, 1980

RE: No. 79-1 - American Export Lines, Inc. v. Alvez

Dear Bill:

I do not "read" the record of votes quite as you do.

I voted on the "first round" to affirm on the merits and said I wanted to hear other views on the jurisdictional issue. When that discussion terminated, I added my vote to find jurisdiction, making five, as you correctly note. Sometimes continued "informal conversation" impairs our communication.

Thurgood voted to "DIG." Potter passed but thought there was no final judgment. He would reverse if he reached the merits.

Harry would dismiss on jurisdiction but otherwise affirm on the merits. If Thurgood votes that we have jurisdiction you can proceed "full steam."

Regards,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 7, 1980

RE: 79-1 - American Export Lines, Inc.
v. Alvez

Dear Bill:

Please show me as concurring in the judgment.

Regards,

WB

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

March 4, 1980

RE: No. 79-1 American Export Lines, Inc. v. Alvez

Dear Chief:

You assigned the opinion for the Court to me in the above. My conference notes show that Potter, Thurgood, Harry and Bill voted to dismiss for non-finality of the New York Court of Appeals' decision. Byron, Lewis, John and I voted that the case was properly here. My notes show that you passed. May I assume since you assigned the case to me that you have concluded that the case is properly here?

My notes further show that even on the premise the case is properly here, you, Byron, John and I vote to affirm on the merits. Harry voted that if he reached the merits he also would affirm. Potter and Bill voted that if they reached the merits they'd reverse. Lewis voted to reach the merits and also said he would reverse. I have no record that Thurgood expressed a view on the merits.

I suppose I must hear how Harry and Thurgood intend to vote in light of the apparent Court to say the case is properly here. Is either now prepared to vote to affirm on the merits. I do not see how I can start writing an opinion for the Court until either does so.

I'll mark time awaiting further advice.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 4, 1980

RE: No. 79-1 American Export Lines, Inc. v. Alvez

Dear Chief:

Thanks for your response in the above.

It seems to me that there's a majority "for jurisdiction" without Thurgood. It would be made up of you, Byron, Lewis, John and me. The majority to affirm on the merits, however, seems to be made up of you, Byron, Harry, John and me. This is because Lewis voted that there was jurisdiction but reversed on the merits. Harry's note to me however was that while he voted that the case was not here, a majority having voted otherwise, he would reach the merits and affirm.

Under the circumstances I think I can proceed "full steam".

Sincerely,

bul

The Chief Justice

cc: The Conference

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: APR 6 1980

Recirculated: *[initials]*

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1

American Export Lines, Inc.,
Petitioner, } On Writ of Certiorari to the
v. } Court of Appeals of New
York.
Gilberto Alvez et al.

[April —, 1980]

MR. JUSTICE BRENNAN delivered the opinion of the Court. *Sea-Land Services v. Gaudet*, 414 U. S. 573 (1974), held that under the nonstatutory maritime wrongful-death action fashioned by *Moragne v. States Marine Lines*, 398 U. S. 375 (1970), the widow of a longshoreman *mortally* injured aboard a vessel in state territorial waters could recover damages for the loss of her deceased husband's "society."¹ The question in this case is whether general maritime law authorizes the wife of a harbor worker injured *nonfatally* aboard a vessel in state territorial waters to maintain an action for damages for the loss of her husband's society. We conclude that general maritime law does afford the wife such a cause of action.

I

Respondent Gilberto Alvez lost an eye while working as a lasher aboard petitioner's vessel *SS Export Builder* in New York waters. He commenced an action for damages against petitioner in New York Supreme Court on grounds of negligence and unseaworthiness.² Leave to amend respondent's

¹ "The term 'society' embraces a broad range of mutual benefits each family member receives from the others' continued existence, including love, affection, care, attention, companionship, comfort, and protection." *Sea-Land Services v. Gaudet*, 414 U. S. 573, 585 (1974).

² Alvez's injury was sustained before the effective date of the 1972

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

April 23, 1980

American Export Lines v. Alvez, No. 79-1

MEMORANDUM TO THE CONFERENCE

In response to Thurgood's dissent, I plan to add the following paragraph as footnote 6 to my opinion, at the second line from the top of page 4. The other footnotes will be renumbered accordingly.

Sincerely,



the dissent argues, post, at ___ n. 1, that petitioner's counsel's assertion that the New York courts would not reverse Mrs. Alvez's trial victory, Tr. 10, is contradicted by statements of respondents' counsel indicating or implying that the shipping company "might find some grounds for error in the record," Tr. 21; see Tr. 20. But respondents' counsel could have said nothing else: since he is not representing petitioner shipping company, respondent's attorney could hardly have conceded any element of petitioner's case in the state courts. What is relevant, then, is petitioner's counsel's answer to this Court that "the appellate division . . . would not reverse on the question of Juanita Alvez's claim for consortium. . . . [The New York courts] would leave it intact." Tr. 10. Since the shipping company's counsel was aware of this Court's concerns, it is fair to read this response as a concession by counsel -- who was in a position to know his client's strategy in the state courts -- that Mrs. Alvez's claim was no longer in jeopardy.

note 6 added
footnotes renumbered

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 Brennan

Circulated: _____

Circulated: APR 26 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1

American Export Lines, Inc.,
Petitioner, } On Writ of Certiorari to the
v. } Court of Appeals of New
Gilberto Alvez et al. } York.

[April —, 1980]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Sea-Land Services v. Gaudet, 414 U. S. 573 (1974), held that under the nonstatutory maritime wrongful-death action fashioned by *Moragne v. States Marine Lines*, 398 U. S. 375 (1970), the widow of a longshoreman *mortally* injured aboard a vessel in state territorial waters could recover damages for the loss of her deceased husband's "society."¹ The question in this case is whether general maritime law authorizes the wife of a harbor worker injured *nonfatally* aboard a vessel in state territorial waters to maintain an action for damages for the loss of her husband's society. We conclude that general maritime law does afford the wife such a cause of action.

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² Alvez's injury was sustained before the effective date of the 1972

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: MAY 3 1980

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1

American Export Lines, Inc.,
 Petitioner,
 v.
 Gilberto Alvez et al.

On Writ of Certiorari to the
 Court of Appeals of New
 York.

[May —, 1980]

MR. JUSTICE BRENNAN announced the judgment of the Court and an opinion in which MR. JUSTICE WHITE, MR. JUSTICE BLACKMUN, and MR. JUSTICE STEVENS join.

Sea-Land Services v. Gaudet, 414 U. S. 573 (1974), held that under the nonstatutory maritime wrongful-death action fashioned by *Moragne v. States Marine Lines*, 398 U. S. 375 (1970), the widow of a longshoreman *mortally* injured aboard a vessel in state territorial waters could recover damages for the loss of her deceased husband's "society."¹ The question in this case is whether general maritime law authorizes the wife of a harbor worker injured *nonfatally* aboard a vessel in state territorial waters to maintain an action for damages for the loss of her husband's society. We conclude that general maritime law does afford the wife such a cause of action.

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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

May 12, 1980

From: Mr. Justice Brennan

Circulated: MAY 13 1980

Recirculated: _____

MEMORANDUM TO THE CONFERENCE

Re: Nos. 79-1228 & 79-1482 -- Held for Alvez, No. 79-1.

These two petitions have been held for our decision in American Export Lines, Inc., v. Alvez, No. 79-1. The following are my recommended dispositions.

No. 79-1228, Ivy v. Security Barge Lines, Inc. (cert. to 5th Cir.).

The principal question presented by this case is whether recoveries under the Jones Act are limited to pecuniary loss, or whether they include, as well, damages for loss of society.

Petitioners in Ivy are parents of a deckhand killed aboard a vessel in Louisiana territorial waters. They commenced this action for damages under the Jones Act and under general maritime law for unseaworthiness. The jury determined that the shipowner was negligent (but that the decedent seaman was 50% contributorily negligent) and that the vessel was seaworthy.

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 5, 1980

Re: No. 79-1, American Export Lines v. Alvez

Dear Thurgood,

It appears that you, Bill Rehnquist, and I are the three who believe that the Court does not have jurisdiction of this case. Would you be willing to undertake a dissenting opinion on that basis?

Sincerely yours,

P. S.
P. J.

Mr. Justice Marshall

Copy to Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 30, 1980

Re: No. 79-1, American Export Lines
v. Alvez

Dear Thurgood,

Please add my name to your dissenting
opinion.

Sincerely yours,

P.S.
1/

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 10, 1980

Re: No. 79-1 - American Export Lines, Inc.
v. Gilberto Alvez, et al.

Dear Bill,

Please join me.

Sincerely yours,

By

Mr. Justice Brennan

Copies to the Conference

March 4, 1980

Re: No. 79-1 - American Export Lines, Inc. v.
Alvez

Dear Bill:

My vote is still - - "dismiss on jurisdiction".

Sincerely,

T.M.

Mr. Justice Brennan

CC: The Conference

March 6, 1980

No. 79-1 - American Export Lines v. Alvez

Dear Potter:

I will be happy to try a dissent in this one.

Sincerely,

T.M.

Mr. Justice Stewart

cc: Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 15, 1980

Re: No. 79-1 - American Export Lines v. Alvez

Dear Bill:

In due course I will circulate a dissent
in this case.

Sincerely,

JM
T.M.

Mr. Justice Brennan

cc: The Conference

23 APR 1980

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1

American Export Lines, Inc.,
Petitioner,
v.
Gilberto Alvez et al. } On Writ of Certiorari to the
Court of Appeals of New
York.

[April —, 1980]

MR. JUSTICE MARSHALL, dissenting.

After a case has been granted, briefed, and argued, there is an inevitable pressure to decide it, especially when the argument for a dismissal is based on the seemingly technical requirements of finality. In this case, however, it is plain to me that the decision below is not final, and that the Court is therefore without jurisdiction to review it under 28 U. S. C. § 1257.

Respondent Gilberto Alvez brought suit against petitioner in the New York Supreme Court for injuries incurred during the course of his employment on petitioner's vessel. He moved to amend the complaint to add his spouse, Juanita Alvez, as a plaintiff. His motion was denied. The Appellate Division of the New York Supreme Court reversed, and the New York Court of Appeals affirmed the decision of the Appellate Division. This Court granted certiorari to review the decision of the New York Court of Appeals.

After certiorari had been granted, and while the case was being briefed in this Court, the litigants proceeded to try the case in the New York Supreme Court. Two weeks before the case was argued here, Gilberto Alvez received a jury verdict against petitioner in the sum of \$500,000, and Juanita Alvez received \$50,000. In oral argument before this Court, counsel for petitioner indicated that petitioner is appealing

1
P. 1

30 APR 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

—
No. 79-1
—

American Export Lines, Inc.,
Petitioner,
v.
Gilberto Alvez et al. } On Writ of Certiorari to the
Court of Appeals of New
York.

[April —, 1980]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE STEWART
and MR. JUSTICE REHNQUIST join, dissenting.

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Stylistic changes throughout;
 "Court" changed to "plaintiffs"
 where appropriate

9 MAY 1980

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

—
 No. 79-1
 —

American Export Lines, Inc.,
 Petitioner,
 v.
 Gilberto Alvez et al. } On Writ of Certiorari to the
 Court of Appeals of New
 York.

[April —, 1980]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE STEWART
 and MR. JUSTICE REHNQUIST join, dissenting.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 4, 1980

Re: No. 79-1 - American Export Lines, Inc. v. Alvez

Dear Bill:

This is in response to the inquiry contained in the third paragraph of your letter of today to the Chief Justice. As I indicated at conference, and as the second sentence of the second paragraph of your letter states, if I reach the merits, I would affirm. Inasmuch as the Court apparently feels the case is properly here, I shall reach the merits and vote to affirm. I have done this on at least one other occasion, as did John Harlan. I think others have done it, too.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 11, 1980

Re: No. 79-1 - American Export Lines v. Alvez

Dear Bill:

Any reservation I may continue to have about finality -- and hence jurisdiction here -- ought to be assuaged by the very narrow facts of this case. Surely the decision will cause us no precedential embarrassment. Please join me.

Sincerely,

HAB.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 4, 1980

79-1 American Export Lines v. Alvez

Dear Bill:

I write merely to confirm that I think the case is here, and my vote - though quite tentative - was to reverse.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

April 14, 1980

79-1 American Export v. Alvez

Dear Potter:

Although I voted as you did in this case because I continue to "gag" a bit when I think about the Court's decision in Gaudet.

Yet, Gaudet remains on the books, and we do not have five votes to reverse it. Accordingly, I have concluded reluctantly that I should follow at least to the extent of joining the judgment in this case.

I enclose a draft of what I plan to say.

Sincerely,

Mr. Justice Stewart

lfp/ss

cc: Mr. Justice Rehnquist

lfp/ss 4/14/80

No. 79-1: American Export Lines v. Alvez

MR. JUSTICE POWELL, concurring in the judgment.

I continue to believe that Sea-Land Services, Inc. v. Gaudet was decided wrongly, 414 U.S., at 595 (POWELL, J., dissenting), but I recognize the utility of stare decisis in cases of this kind, id., at 596. Since I see no rational basis for drawing a distinction between fatal and nonfatal injuries, I join in the judgment of the Court.

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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

cc: Mr. Justice Powell

APR 16 1980

Recirculated:

4-16-80

1st DRAFT

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SUPREME COURT OF THE UNITED STATES

No. 79-1

American Export Lines, Inc.,
Petitioner,
v.
Gilberto Alvez et al. } On Writ of Certiorari to the
Court of Appeals of New
York.

[April —, 1980]

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

4-23-80

From: Mr. Justice Powell

2nd
1st DRAFT

Circulated: _____

APR 23 1980

SUPREME COURT OF THE UNITED STATES

No. 79-1

American Export Lines, Inc.,
Petitioner,
v.
Gilberto Alvez et al. } On Writ of Certiorari to the
Petitioner, } Court of Appeals of New
v. } York.

[April —, 1980]

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 23, 1980

Re: No. 79-1 - American Export Lines v. Alvez

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 10, 1980

Re: 79-1 - American Export Lines v. Alvez

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference