The Burger Court Opinion Writing Database

Fedorenko v. United States

449 U.S. 490 (1981)

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

November 21, 1980

Re: 79-5602 - Fedorenko v. United States

Dear Thurgood:

I am in agreement with the result you reach in this case, but I have some problems with your rationale for affirming.

Both courts analyzed the facts of this case under the second Chaunt test of materiality. Your opinion seems to leave open the questions of whether the Chaunt test even applies to misrepresentations in visa applications and whether the CA 5 interpreted the test correctly. Yet, it seems to me you essentially employ the first Chaunt test of materiality and conclude that petitioner's disclosure of the truth about his service as an armed guard at Treblinka would, as a matter of law under the Displaced Persons Act, have made him ineligible for a visa. That conclusion is contrary to the district court's finding (which the CA 5 left undisturbed) that the fact of petitioner's "involuntary" service as a concentration camp guard would not have automatically disqualified him from obtaining a visa; other individuals who had involuntarily aided the Nazis were eligible for visas (e.g., the Jewish prisoners - the "kapos").

In essence, your opinion turns on the proper interpretation of the Displaced Persons Act -- but was that issue fully briefed or argued before this Court? In accordance with the testimony of Vice Consul Jenkins, which the district court did not credit, you construe the statute absolutely to mean that anyone who assisted the Nazis in persecuting civilians, whether voluntarily or involuntarily, was ineligible for a visa. Although such an interpretation may have no deleterious practical effects at this moment, it may be at odds with the actual application of the statute and call into question visas previously thought to be valid.

I will give your approach to this case further study and reflection, but thought I would "flag" upon my problems.

Regards

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

December 18, 1980

PERSONAL

RE: 79-5602 - Fedorenko v. United States

Dear Thurgood:

I am in general agreement with you in this case but I will await the other writings.

I tend to view the case in terms of this fellow's lies to the United States authorities which deprived them of the opportunity to get at the facts while they were available. After all these years, it seems odd to me that the United States should be put to a massive job of how much he lied. I, therefore, see no basis for a remand and every reason to affirm.

Regards,

WEB

Mr. Justice Marshall

✓

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

CHAMBERS OF
THE CHIEF JUSTICE

January 8, 1981

Re: 79-5602 - Fedorenko v. United States

Dear Thurgood:

I see no difference between a visa application and a naturalization application and would prefer to rest squarely on Chaunt.

I will therefore join in the judgment.

Regards,

Justice Marshall

Copies to the Conference

(B)

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 24, 1980

RE: No. 79-5602 Fedorenko v. United States

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 21, 1980

Re: 79-5602 - Fedorenko v. United States

Dear Thurgood:

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 24, 1980

Re: 79-5602 - Fedorenko v. U. S.

Dear Thurgood,

Since my vote to affirm rested on Chaunt, perhaps with a remand to consider wilfulness, I am reluctant to join your circulating draft. Should you secure a court for your approach, I shall likely write in concurrence. If my vote is necessary for a court, I shall reconsider and make every effort to join you.

Sincerely yours,

Byron

Mr. Justice Marshall

Copies to the Conference

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

1st DRAFT

From: Mr. Justice White

SUPREME COURT OF THE UNITED STATES

Circulated: 15 DEC 1980

No. 79-5602

Recirculated: _____

Feodor Fedorenko, Petitioner, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[January —, 1981]

JUSTICE WHITE, dissenting.

The primary issue presented in the petition for certiorari was whether the Court of Appeals had properly interpreted the test articulated in *Chaunt* v. *United States*, 364 U. S. 350 (1960), for determining whether an individual procured his citizenship by concealment or misrepresentation of a "material" fact. In *Chaunt* the Government sought to revoke an individual's citizenship because he had not disclosed certain facts in his application for citizenship.[1] Although *Chaunt* did not address the standard of materiality with respect to visa applications, the parties before this Court have assumed that the *Chaunt* test should be used to determine whether petitioner concealed material facts when he applied for a visa.[2]

Recognizing that the relevance of *Chaunt* to visa applications may be problematic, the majority turns to a wholly separate ground to decide this case, resting its decision on its interpretation of § 2 (a) of the Displaced Persons Act. I

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[1] Section 340 (a) of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1451 (a), quoted in pertinent part in the majority opinion, *ante*, at 1, n. 1., directs the Government to seek revocation of citizenship that was "procured by concealment of a material factor or by willful misrepresentation."

[2] Similarly, both the District Court and the Court of Appeals assumed that the *Chaunt* materiality test should be applied to the Government's claim that petitioner concealed material information when he applied for a visa.

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

STYLISTIC CHANGES THROUGHOUT. From: Mr. Justice White
~~SEE PAGES:~~

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2nd DRAFT

16 DEC 1980

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79–5602

Feodor Fedorenko, Petitioner, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[January —, 1981]

JUSTICE WHITE, dissenting.

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[1] Section 340 (a) of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1451 (a), quoted in pertinent part in the majority opinion, *ante,* at 1, n. 1, directs the Government to seek revocation of citizenship that was "procured by concealment of a material fact or by willful misrepresentation."

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-5602

Feodor Fedorenko, Petitioner, v. United States. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[December —, 1980]

JUSTICE MARSHALL delivered the opinion of the Court.

Section 340 (a) of the Immigration and Naturalization Act of 1952, 8 U. S. C. § 145 (a), requires revocation of United States citizenship that was "illegally procured or . . . procured by concealment of a material fact or by willful misrepresentation."[1] The Government brought this denaturalization action, alleging that petitioner procured his citizenship illegally or by willfully misrepresenting a material fact. The District Court entered judgment for petitioner, but the Court of Appeals reversed and ordered entry of a judgment of denaturalization. We granted certiorari, — U. S. —, to resolve two questions: whether petitioner's failure to disclose, in his application for a visa to come to this country, that he had served during the Second World War as an armed guard at the Nazi concentration camp at Treblinka, Poland, rendered his citizenship revocable as "illegally procured" or procured by willful misrepresentation of a material fact, and if so, whether the District Court nonetheless possessed equitable

[1] Title 8 U. S. C. § 1451 (a) provides in pertinent part:

"It shall be the duty of the United States attorneys . . . to institute proceedings . . . in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation. . . ."

p. 22

13 JAN 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-5602

Feodor Fedorenko, Petitioner, v. United States. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[~~December~~ January, 1981]

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✓

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 28, 1980

Re: No. 79-5602 - Fedorenko v. United States

Dear Thurgood:

I am not fully at rest in this case. I am, of course, in agreement with the result you reach and it may well be that I shall join your opinion. I am more concerned with Chaunt than your opinion appears to be and I would like to wrestle with it a little while. I shall probably write separately and briefly.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 17, 1980

Re: No. 79-5602 - Fedorenko v. United States

Dear Thurgood:

I have sent to the printer an opinion concurring in the judgment. It should be around in a day or so.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: DEC 19 19[illegible]

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-5602

Feodor Fedorenko, Petitioner, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[January —, 1981]

JUSTICE BLACKMUN, concurring in the judgment.

I agree with much of the Court's reasoning as well as with the result it reaches. I am perplexed, however, by the Court's reluctance, *ante*, at 16–18, to apply the materiality standard of *Chaunt* v. *United States*, 364 U. S. 350 (1960), to petitioner's circumstances. I write separately to express my understanding that application of *Chaunt* would yield no different result here and to state my belief that a standard as rigorous as *Chaunt*'s is necessary to protect the rights of our naturalized citizens.

In *Chaunt*, the issue presented was whether failure to reveal certain prior arrests in response to a question on a citizenship application form constituted misrepresentation or concealment of a material fact for purposes of the denaturalization statute.[1] *Id.*, at 351–352. As construed by *Chaunt*, the statute authorizes denaturalization on the basis of an applicant's failure to disclose suppressed facts which (1) "if known, would have warranted denial of citizenship," or which (2) "might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship." *Id.*, at 355.

The Court says that *Chaunt* need not be invoked when denaturalization is premised on deliberate misstatements at the

[1] The statute is § 340 (a) of the Immigration and Naturalization Act of 1952, 66 Stat. 260, as amended, 8 U. S. C. § 1451 (a). Its relevant provisions are quoted *ante*, at 1, n. 1.

Brennan 80

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

From: Mr. Justice Blackmun

Circulated: [illegible] 1980

1st DRAFT Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-5602

Feodor Fedorenko, Petitioner, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[January —, 1981]

JUSTICE BLACKMUN, concurring in the judgment.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 21, 1980

79-5602 Fedorenko v. United States

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 21, 1980

Re: No. 79-5602 Fedorenko v. United States

Dear Thurgood:

Please join me in your opinion of the Court.

Sincerely,

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 15, 1980

MEMORANDUM TO THE CONFERENCE

Re: 79-5602 - Federenko v. United States

There is a difference between this case and Chaunt that is not discussed in the briefs. Chaunt involved a false statement in an application for citizenship. In this case, if one accepts the findings of the District Court, there was no willful omission or false statement in the application for citizenship. Rather, the concealment that raises the materiality question was in the visa application in 1949. Perhaps the same standard should be applied to visa applications as to applications for citizenship, but it seems to me that there is at least a threshold question as to whether the Chaunt standard is necessarily the one that should apply in this case.

Respectfully,

JPS

Mr. Justice

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 21, 1980

Re: 79-5602 - Fedorenko v. United States

Dear Thurgood:

As you know, I voted to reverse at Conference because the Fifth Circuit's rationale was plainly untenable. Your opinion does an excellent job of avoiding the mistakes made by that court. Nevertheless, I am somewhat concerned about the implications of your proposed affirmance on the ground that § 2(a) of the Displaced Persons Act of 1948 made petitioner ineligible for entry even if his assistance in the Nazi persecutions was not voluntary.

Inasmuch as this issue was not argued, we do not know whether your proposed holding may have the effect of requiring the denaturalization of a significant number of persons who may be morally blameless for actions taken under severe duress. This concern may explain why the Government did not advance this rationale for affirmance. Indeed, in the Court of Appeals the Government expressly agreed with the District Court's construction of the statute. Footnote 11 of the Government's brief in the Court of Appeals reads as follows:

> "The district court held that, in Section 2(a), 'persons who can be shown to have assisted the enemy' should be construed to read 'persons who can be shown to have voluntarily assisted the enemy.' 455 F. Supp. at 913. The United States has no quarrel with such a construction in this case."

Perhaps I could join an opinion vacating the judgment of the Court of Appeals and remanding for

reargument of this question, but as presently advised, I will not be able to join your proposed opinion.

Respectfully,

Mr. Justice Marshall

cc: The Conference

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: JAN 7 '81

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-5602

Feodor Fedorenko, Petitioner, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[January —, 1981]

JUSTICE STEVENS, dissenting.

The story of this litigation is depressing. The Government failed to prove its right to relief on any of several theories advanced in the District Court. The Court of Appeals reversed on an untenable ground. Today this Court affirms on a theory that no litigant argued, that the Government expressly disavowed, and that may jeopardize the citizenship of countless survivors of Nazi concentration camps.

The seven-count complaint filed by the Government in the District Court prayed for a revocation of petitioner's citizenship on four different theories: (1) that his entry visa was invalid because he had misstated his birth place and place of residence and therefore he had never been lawfully admitted to the United States; (2) that he committed war crimes or atrocities and therefore was not eligible for admission as a displaced person; (3) that he made material misstatements on his application for citizenship in 1970; and (4) that he was not a person of good moral character when he received his American citizenship. After a long trial, the District Court concluded that the Government had failed to prove its case.

The trial judge was apparently convinced that the suggestive identification procedures endorsed by the prosecution had resulted in a misidentification of petitioner; that petitioner had not performed the atrocious acts witnessed by