

The Burger Court Opinion Writing Database

Toll v. Moreno

458 U.S. 1 (1982)

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

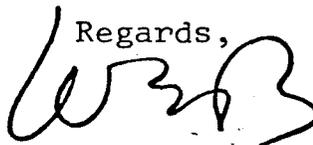
CHAMBERS OF
THE CHIEF JUSTICE

June 10, 1982

Re: 80-2178 - Toll v. Moreno

Dear Bill:

I join your dissenting opinion dated
June 10, 1982.

Regards,


Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: **APR 15 1982**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2178

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

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

[April —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

The State-operated University of Maryland grants preferential treatment for purposes of tuition and fees to students with "in-state" status. Although citizens and immigrant aliens may obtain in-state status upon a showing of domicile within the State, nonimmigrant aliens, even if domiciled, are not eligible for such status. The question in this case is whether the University's in-state policy is invalid under the Supremacy Clause of the Constitution, insofar as the policy categorically denies in-state status to domiciled nonimmigrant aliens who hold G-4 visas.

I

The factual and procedural background of this case, which has prompted two prior decisions of this Court, requires some elaboration. The focus of the controversy has been a policy adopted by the University in 1973 governing the eligibility of students for in-state status with respect to admission and fees. The policy provides in relevant part:

"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

1, 9, 14

To: The Chief Justice
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Brennan

Circulated: _____

Recirculated: APR 19 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2178

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

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pp. 8-11, 15
 for from 24 on renumbered
 Stylistic Changes

To: The Chief Justice
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: JUN 14 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2178

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

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To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: JUN 22 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2178

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

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

[June —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 24, 1982

Re: Toll v. Moreno, No. 80-2178

MEMORANDUM TO THE CONFERENCE:

I am making the following minor change in the opinion. At page 12 of the 4th draft, the sentence beginning on the sixth to last line from the bottom will now read:

"For example, the international agreements governing the international banks for which the parents of the named respondents are employed specifically exempt the parents from all taxes on their organizational salaries."

Sincerely,

Bill

85 1 188 1.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 16, 1982

Re: 80-2178 - Toll v. Moreno

Dear Bill,

I agree.

Sincerely yours,



Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 19, 1982

Re: No. 80-2178 - Toll v. Moreno

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 19, 1982

Re: No. 80-2178 - Toll v. Moreno

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

Justice Brennan

cc: The Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Blackmun

Circulated: JUN 21 1992

Recirculated: _____

No. 80-2178 - Toll v. Moreno

JUSTICE BLACKMUN, concurring.

I join the Court's opinion. Its action today provides an eloquent and sufficient answer to JUSTICE REHNQUIST's dissent: despite the vehemence with which his opinion is written, JUSTICE REHNQUIST has persuaded only one Justice to his position. But because the dissent attempts to plumb the Court's psyche, see post, at 18 n. 12,¹ I feel compelled to add comments addressed to JUSTICE REHNQUIST's ruminations on equal protection. In particular, I cannot leave unchallenged his suggestion that the Court's decisions holding resident aliens to be a "suspect class" no longer are good law.

JUSTICE REHNQUIST's analysis on this point is based on a simple syllogism. Alienage classifications have been subjected to strict scrutiny, he suggests, because "aliens [are] barred from asserting their interests in the governmental body responsible for imposing burdens upon them." Post, at 16. But "[m]ore recent decisions," he continues, have established that

¹The Justice opines that "[i]f the Court has eschewed strict scrutiny in the 'political process' [alienage-equal protection] cases, it may be because the Court is becoming uncomfortable with the categorization of aliens as a suspect class." Post, at 17-18, n. 12.

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: _____

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2178

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

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

[June —, 1982]

JUSTICE BLACKMUN, concurring.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 16, 1982

80-2178 Toll v. Moreno

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in cursive script that reads "Lewis".

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

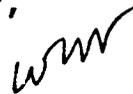
March 9, 1982

Re: No. 80-2178 Toll v. Moreno

Dear Chief:

I will be happy to undertake a dissent in this case.

Sincerely,



The Chief Justice

cc: The Conference

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

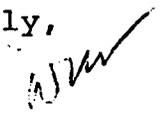
CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 16, 1982

Re: No. 80-2178 Toll v. University of Maryland

Dear Bill:

In due course I will circulate a dissent.

Sincerely,


Justice Brennan

Copies to the Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Stevens
 Justice O'Connor

From: Justice Rehnquist

Circulated: 6/10/82

Recirculated: _____

Pp 3, 5, 11+15

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2178

JOHN S. TOLL, PRESIDENT, UNIVERSITY OF MARY-
 LAND, ET AL., PETITIONERS *v.* JUAN CARLOS
 MORENO ET AL

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

[June —, 1982]

JUSTICE REHNQUIST, dissenting.

Despite rather broad dicta regarding the conditions under which federal power over immigration will preempt state statutes that adversely affect aliens, the Court's holding is narrow. Purporting to rely on a collection of treaties and statutes that concern the *tax* liability of certain nonimmigrant aliens, it concludes that no room is left for the State of Maryland to charge such aliens nonresident *tuition* for attending the State's university. The Court's dicta seems to me inconsistent with our prior cases, and its conclusion about the effect of the statutes and treaties is strained at best. In short, the Court reaches a result that I find quite out of step with our normal approach to federal preemption of state law.

Its holding has the additional vice of foreclosing governmental autonomy in an area plainly within the State's traditional responsibilities—education. And it acts, not on behalf of a disadvantaged minority, but at the behest of a group of individuals who have been accorded a status by the federal government *superior* to that of the average citizen, and in a case where the State has demonstrated, by virtue of its favorable treatment of resident aliens, that its policy is not the result of an invidious or irrational motive. I find the Court's actions unjustified and unnecessary and, accordingly, I dis-

STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: JUN 21 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2178

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

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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[June —, 1982]

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P.18

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Stevens
 Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: 6/23/82

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2178

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

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

[June —, 1982]

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 16, 1982

Re: 80-2178 - Toll v. Moreno

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 16, 1982

Re: 80-2178 Toll v. Moreno, et al.

Dear Bill,

My vote at Conference was tentative. You have written persuasively on the preemption ground and I may eventually join, but for the present time I will await the dissent.

Sincerely,



Justice Brennan

Copies to the Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: **Justice O'Connor**

Circulated: **JUN 21 1982**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2178

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

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

[June —, 1982]

JUSTICE O'CONNOR, concurring in part, and dissenting in part.

I concur in the Court's opinion insofar as it holds that the State may not charge out-of-state tuition to nonimmigrant aliens who, under federal law, are exempt from both State and federal taxes, and who are domiciled in the State. Imposition of out-of-state tuition on such aliens conflicts with federal law exempting them from state taxes, since, after all, the University admits that it seeks to charge the higher tuition in order to recover costs that state income taxes normally would cover.

I cannot join the remainder of the Court's opinion, however, for it wholly fails to address the criticisms leveled in JUSTICE REHNQUIST's dissenting opinion. As JUSTICE REHNQUIST makes clear, the class of G-4 aliens is not homogeneous: some G-4 aliens are exempt under federal law from state taxes, while other G-4 aliens are not. Moreover, the legislative history of § 4(b) of the International Organizations Immunities Act, 26 U. S. C. § 893, from which many G-4 aliens derive their federal tax immunity, demonstrates that Congress did not intend to exempt such aliens from state taxes, choosing instead to leave the matter to the state and local authorities. Thus, I disagree with the Court when it