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Landon v. Plasencia

459 U.S. 21 (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

December 11, 1981

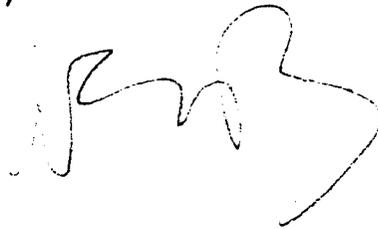
CHAMBERS OF
THE CHIEF JUSTICE

Re: No. 81-129 - Landon, Dist. Dir., Ins. v. Plasencia

Dear Sandra:

I join your 12/10/81 per curiam.

Regards,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 14, 1981

RE: No. 81-129 Landon v. Plasencia

Dear Thurgood, Harry and John:

I see that Sandra now has a Court for her proposed Per Curiam in this case. Surely this is a classic example of the impropriety of summary dispositions. It escapes me how that can be justified if it takes 14 typed pages dealing with a series of arguments only briefly touched on in the petition for certiorari. Harry already has voted to grant and I would be willing to do so. If Thurgood and John are also willing to grant, maybe we can head off what I think would be a greivous mistake.

Sincerely,



Justice Marshall

Justice Blackmun

Justice Stevens

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 11, 1981

Re: 81-129 - Landon v. Plasencia

Dear Sandra,

I agree.

Sincerely yours,

Byron

Justice O'Connor

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 17, 1981

Re: No. 81-129 - Landon v. Plasencia

Dear Harry:

Please join me in your dissent.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 14, 198

Re: No. 81-129 - Landon, Director v. Plasencia

Dear Bill:

I, of course, am willing to adhere to my vote to grant in this case. If there are four votes to do this, I shall not take the time to prepare a formal dissent.

Sincerely,



Justice Brennan

cc: Justice Marshall ✓
Justice Stevens

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 14, 1981

Re: No. 81-129 - Landon, Director v. Plasencia

Dear Sandra:

I shall be preparing a short dissent to the per curiam.

Sincerely,

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

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 15, 1987

Re: No. 81-129 - Landon v. Plasencia

Dear Bill, Thurgood, and John:

Despite my note of yesterday, I have completed a proposed dissent in this case, and I am circulating it to the conference in xerox form.

Sincerely,



Justice Brennan
Justice Marshall
Justice Stevens

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

From: Justice Blackmun

No. 81-129 - Landon v. Plasencia

Circulated: DEC 15 1981

Recirculated: _____

JUSTICE BLACKMUN, dissenting.

In my view, the Court much too quickly reverses the Court of Appeals' judgment. The resolution of this case, it seems to me, is not clearly foreshadowed by the pertinent statutory language, the legislative history, or the case law on which the Court relies. Accordingly, I dissent.

It is true, as the Court indicates, that the language and legislative history of the Immigration and Nationality Act of 1952 suggest that exclusion proceedings are the sole procedure to be used in determining an alien's "admissibility." See §236(a), 8 U.S.C. §1226(a). But the dispute here centers on whether it is respondent Plasencia's "admissibility" or "deportability" that is involved. Although the Court may be correct in pointing out that the Act does not explicitly require the INS to proceed through deportation proceedings in cases such as this, the Act is

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

From: Justice Blackmun

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SUPREME COURT OF THE UNITED STATES

MICHAEL LANDON, DISTRICT DIRECTOR OF THE
IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* MARIA ANTONIETA PLASENCIA

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

No. 81-129. Decided December —, 1981

JUSTICE BLACKMUN, dissenting.

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It is true, as the Court indicates, that the language and legislative history of the Immigration and Nationality Act of 1952 suggest that exclusion proceedings are the sole procedure to be used in determining an alien's "admissibility." See § 236(a), 8 U. S. C. § 1226(a). But the dispute here centers on whether it is respondent Plasencia's "admissibility" or "deportability" that is involved. Although the Court may be correct in pointing out that the Act does not explicitly require the INS to proceed through deportation proceedings in cases such as this, the Act is similarly silent as to whether exclusion hearings are permitted when the Government attempts to deprive a permanent resident alien of his resident status.

In fact, the deportability statute, § 241(a)(13) of the Act, 8 U. S. C. § 1251(a)(13), supports the reasoning of the Court of Appeals whose judgment is today reversed. That section provides for deportation of a resident alien if "prior to, or at the time of any entry or at any time within five years after any entry . . ." he knowingly and for gain assisted any alien in entering the country illegally (emphasis supplied). If Congress intended to permit the INS to proceed pursuant to

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 12, 1981

81-129 Landon v. Plasencia

Dear Sandra:

I agree with your Per Curiam in the above case.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 11, 1981

Re: No. 81-129 Landon v. Plasencia

Dear Sandra:

Please join me in your Per Curiam.

Sincerely,

Justice O'Connor

Copies to the Conference

✓

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 15, 1981

Re: 81-129 - Landon v. Plasencia

Dear Sandra:

My failure to respond more promptly to your proposed per curiam is attributable, in part, to my unfamiliarity with this area of the law. I am tentatively persuaded that you have correctly resolved the "entry" question, although I have some lingering doubt concerning the use of post-departure events to establish the alien's intent at the time of her departure. Of greater significance, however, is my concern about the kind of procedures that must be accorded to a permanent resident in a hearing that is the functional equivalent of a deportation hearing. In an exclusion hearing the regulations place the burden of proof on the alien, but the government advises us that its practice is to ignore its own regulations when the alien is a permanent resident. Since the Kwong Hai case rested on an interpretation of a regulation, rather than the Constitution, I do not believe the Court has yet addressed the question of what sort of minimum procedural standards are required by due process.

In sum, without further belaboring the point, I am now persuaded that the case has sufficient novelty and importance to justify a plenary hearing. I will therefore change my vote to a grant; if there are not enough votes to grant, I will wait to see what Harry writes in dissent.

Respectfully,



Justice O'Connor

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: DEC 10 1981

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TYPED DRAFT

Landon v. Plasencia, No. 81-129

PER CURIAM

Following an "exclusion hearing," the Immigration and Naturalization Service ("INS") denied respondent, a permanent resident alien, admission to the United States when she attempted to return from a brief visit abroad. Re-viewing respondent's subsequent petition for a writ of habeas corpus, the Court of Appeals remanded the case to the INS, holding that the question of whether respondent

pp. 4, 6

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

From: Justice O'Connor

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Recirculated: **DEC 14 1981**

SUPREME COURT OF THE UNITED STATES

MICHAEL LANDON, DISTRICT DIRECTOR OF THE
IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* MARIA ANTONIETA PLASENCIA

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

No. 81-129. Decided December —, 1981

PER CURIAM.

Following an "exclusion hearing," the Immigration and Naturalization Service ("INS") denied respondent, a permanent resident alien, admission to the United States when she attempted to return from a brief visit abroad. Reviewing respondent's subsequent petition for a writ of habeas corpus, the Court of Appeals remanded the case to the INS, holding that the question of whether respondent was attempting to "enter" the United States could be litigated only in a deportation hearing and not in an exclusion hearing. Because we conclude that the INS has statutory authority to proceed in an exclusion hearing and that the exclusion hearing afforded respondent due process of law, we reverse the judgment below and reinstate the decision of the immigration law judge.

I

Respondent Maria Plasencia, a citizen of El Salvador, became a permanent resident alien of the United States in 1970. On June 27, 1975, she travelled with her husband, a United States citizen, from their home in Los Angeles to Tijuana, Mexico. During her brief stay in Mexico, she met with several Mexican and Salvadoran nationals and made arrangements to assist their illegal entry into the United States. She agreed to transport the aliens to Los Angeles for pay and furnished some of the aliens with alien registration receipt cards which belonged to her children. When she and her

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pp. 4, 5, 6, 7, 9

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

From: Justice O'Connor

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~~1st~~ DRAFT

SUPREME COURT OF THE UNITED STATES

MICHAEL LANDON, DISTRICT DIRECTOR OF THE
IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER v. MARIA ANTONIETA PLASENCIA

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

No. 81-129. Decided December —, 1981

PER CURIAM.

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