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INS v. Chadha

462 U.S. 919 (1983)

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

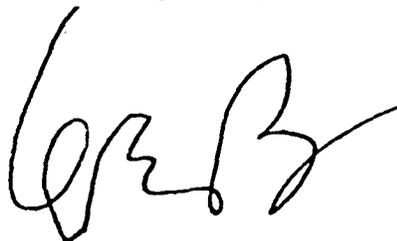
October 11, 1982

RE: No 80-1832 - Immigration and Naturalization Service
v. Chadha
and
No. 81-920 - Verlinden B. v. Central Bank of Nigeria

MEMORANDUM TO THE CONFERENCE:

Attached are two memos I have received from the Clerk. One inquires about the amount of time that should be allotted for argument in No. 80-1832 - Immigration and Naturalization Service v. Chadha, and the other concerns the appointment of an amicus to represent the respondent in No. 81-920 - Verlinden B. v. Central Bank of Nigeria. I favor limiting the argument in Chadha to one hour and I assume that we will want to appoint an amicus to argue for respondent in Verlinden. Both of these items will be on the agenda for Friday and we can discuss them then.

Regards,



10: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-2170, 80-2171 AND 80-1832

UNITED STATES HOUSE OF REPRESENTATIVES,
PETITIONER

80-2170

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

UNITED STATES SENATE, PETITIONER

80-2171

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

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

IMMIGRATION AND NATURALIZATION SERVICE,
APPELLANT

80-1832

v.

JAGDISH RAI CHADHA ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[March —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari in Nos. 80-2170 and 80-2171, and
postponed consideration of the question of jurisdiction in No.
80-1832. Each presents a challenge to the constitutionality

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-2170, 80-2171 AND 80-1832

UNITED STATES HOUSE OF REPRESENTATIVES,
PETITIONER

80-2170 *v.*
IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

UNITED STATES SENATE, PETITIONER

80-2171 *v.*
IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

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

IMMIGRATION AND NATURALIZATION SERVICE,
APPELLANT

80-1832 *v.*
JAGDISH RAI CHADHA ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

PERSONAL

April 7, 1983

Re: No. 80-1832, INS v. Chadha
No. 80-2170, U.S. House of Rep. v. INS
No. 80-2171, U.S. Senate v. INS

Dear Bill:

Thank you for your note of today on this case. My quick reading is that I see no problem about generally accommodating your thoughts.

Don't worry about "adding to my burden." This opinion will get microscopic -- and not always sympathetic (!) scrutiny across the park. I have already tightened up several parts and no doubt will keep up that process. I have indeed spent a lot of time and expect to spend more on this first draft.

Regards,



Justice Brennan

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

CHAMBERS OF
THE CHIEF JUSTICE

April 22, 1983

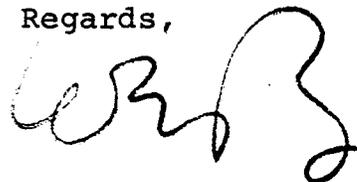
Re: No. 80-1832, 80-2170 and 80-2171, INS v. Chadha

Dear Bill:

I have no problem at all with your suggested footnote. It will be note 6, page 10. To underscore it I will insert "clearly" between "controversy" and "exists" on line three of your April 22 draft.

Many thanks.

Regards,



Justice Brennan

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- 10. Justice Brennan
- Justice White
- Justice Marshall ✓
- Justice Blackmun
- Justice Powell
- Justice Rehnquist
- Justice Stevens
- Justice O'Connor

13-22, 24-25, 30-34, 36
 Stylistic changes throughout

From: **The Chief Justice**

Circulated: _____

Recirculated: May 4, 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1832, 80-2170 AND 80-2171

IMMIGRATION AND NATURALIZATION SERVICE,
 APPELLANT

80-1832

v.

JAGDISH RAI CHADHA ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE NINTH CIRCUIT

UNITED STATES HOUSE OF REPRESENTATIVES,
 PETITIONER

80-2170

v.

IMMIGRATION AND NATURALIZATION SERVICE
 ET AL.

UNITED STATES SENATE, PETITIONER

80-2171

v.

IMMIGRATION AND NATURALIZATION SERVICE
 ET AL.

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

[May —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the
 Court.

We granted certiorari in Nos. 80-2170 and 80-2171, and
 postponed consideration of the question of jurisdiction in No.
 80-1832. Each presents a challenge to the constitutionality
 of the provision in § 244(c)(2) of the Immigration and Nation-

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

CHAMBERS OF
THE CHIEF JUSTICE

May 27, 1983

Re: Nos. 80-1832, 80-2170, 80-2171, INS v. Chadha

Dear Bill, Thurgood, Harry, Lewis, John and Sandra:

Byron has a forceful dissent in this case. However I believe his valid points were all anticipated. I see no need to respond except to add:

1. At page 24, following the indented quote from Senator Abourezk:

See also Appendix 1 to JUSTICE WHITE's dissent, post at ____.

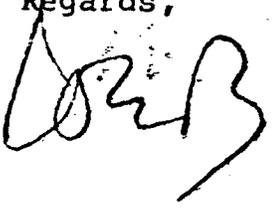
JUSTICE WHITE undertakes to make a case for the proposition that the one-House veto is a useful "political invention," post at ____, and we need not challenge that assertion. We can even concede this utilitarian argument although the long range political wisdom of this "invention" is arguable. It has been vigorously debated and it is instructive to compare the views of the protagonists. See e.g., Javits & Klein, Congressional Oversight and the Legislative Veto: A Constitutional Analysis, 52 N.Y.U. L. Rev. 455 (1977), and Martin, The Legislative Veto and the Responsible Exercise of Congressional Power, 68 Va. L. Rev. 253 (1982). But policy arguments supporting even useful "political inventions" are subject to the demands of the Constitution which defines powers and, with respect to this subject, sets out just how those powers are to be exercised.

2. At footnote 16, page 31, add the following just before the final sentence of the footnote:

Executive action under legislatively delegated authority that might resemble "legislative" action in some respects is not subject to the approval of both Houses of Congress and the President for the reason that the Constitution does not so require. That kind of Executive action is always subject to check by the terms of the legislation that authorized it, and if that authority is exceeded it is open to judicial review independent of the power of Congress to revoke the authority entirely. Congressional action such as the one-House veto which is clearly legislative in both character and effect is not so checked. The need for the check supplied by Art. I, §1, 7 is therefore clear.

3. At footnote 21, ~~insert~~ ^{add} the following paragraph:

JUSTICE WHITE suggests that the Attorney General's action under §244(c)(1) suspending deportation is equivalent to a proposal for legislative veto. Because Congressional approval is indicated "by failure of the one-House veto satisfies the requirement of approval." Post, at _____. However, the approach "would analogize the effect of the one house approval to the failure of one house to vote affirmatively on a private bill." 634 F. 2d, at 435. Even if it were clear that Congress entertained such an arcane theory when it enacted §244(c)(2), which JUSTICE WHITE does not suggest, this would not impinge on the principle of Art. I are not empty formalities; they were designed to assure that both Houses of Congress and the President participate in the exercise of lawmaking authority. Does it mean that legislation must always be preceded by a legislative body to "articulate its reasons for enacting it." United States Railroad Retirement Board v. United States, 449 U.S. 166, 179 (1980). But the steps required by Art. I, §1, 7 make certain that there is an opportunity for deliberation and debate. A scheme under which Congress could evade the strictures of the Constitution and in effect enact Executive proposals into law by mere silence cannot be squared with Art. I.

Regards,


- Justice Brennan
- Justice Marshall
- Justice Blackmun
- Justice Powell
- Justice Stevens
- Justice O'Connor

P.S. I do not contemplate changing Sub-para "H" as Harry suggests. That is purely a matter of style and for better or worse - probably the latter! - I will use my own style. 

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

CHAMBERS OF
THE CHIEF JUSTICE

June 1, 1983

Re: No. 80-1832, INS v. Chadha
80-2170, U.S. House of Rep. v. INS
80-2171, U.S. Senate v. INS

Dear Harry:

You have my memo in BankAmerica, separated to accommodate filing necessities.

On this case, I am still puzzled as to what creates a problem and so far as I am concerned the reference to "twice argued" is a simple historic fact that will make clear to a reader in, let us say, 1993, that there was no "rush to judgment" on an important case.

Back to II, (H), I am willing to modify the first sentence as follows:

II
H

The contentions on standing and justiciability have been fully examined and we are satisfied the parties are properly before us, the important issues have been fully briefed and twice argued, _____ U.S. _____. The Court's duty....

Let me know if this helps.

Regards,

Justice Blackmun

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

RECEIVED
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CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

1983 JUN 2 PM 3 37
June 2, 1983

Re: No. 80-1832 - INS v. Chadha
No. 80-2170 - U.S. House of Representatives v. INS
No. 80-2171 - U.S. Senate v. INS

Dear Chief:

Your proposed modification of the first sentence of Part II-H of your opinion does indeed help. It removes the portions of the present draft I was unable to join.

If this change is made, I shall join your opinion in full and shall withdraw my separate concurrence.

Sincerely,

H.A.B.

The Chief Justice

*Harry a third draft is
around today. The next
draft will reflect on
exchange of memos
Ray WS*

pp.

52-5716-57

Stylistic changes

Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: The Chief Justice

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1832, 80-2170 AND 80-2171

IMMIGRATION AND NATURALIZATION SERVICE,
APPELLANT

80-1832

v.

JAGDISH RAI CHADHA ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES HOUSE OF REPRESENTATIVES,
PETITIONER

80-2170

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

UNITED STATES SENATE, PETITIONER

80-2171

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

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

[June —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari in Nos. 80-2170 and 80-2171, and
postponed consideration of the question of jurisdiction in No.
80-1832. Each presents a challenge to the constitutionality
of the provision in § 244(c)(2) of the Immigration and Nation-

1. 257-50-51, 56-57

Stylistic Changes

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Just**

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1832, 80-2170 AND 80-2171

IMMIGRATION AND NATURALIZATION SERVICE,
APPELLANT

80-1832

v.

JAGDISH RAI CHADHA ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES HOUSE OF REPRESENTATIVES,
PETITIONER

80-2170

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

UNITED STATES SENATE, PETITIONER

80-2171

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

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

[June —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari in Nos. 80-2170 and 80-2171, and
postponed consideration of the question of jurisdiction in No.
80-1832. Each presents a challenge to the constitutionality
of the provision in § 244(c)(2) of the Immigration and Nation-

PP. 13, 33
 § Stylistic

Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **The Chief Justice**

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5th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1832, 80-2170 AND 80-2171

IMMIGRATION AND NATURALIZATION SERVICE,
 APPELLANT

80-1832

v.

JAGDISH RAI CHADHA ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE NINTH CIRCUIT

UNITED STATES HOUSE OF REPRESENTATIVES,
 PETITIONER

80-2170

v.

IMMIGRATION AND NATURALIZATION SERVICE
 ET AL.

UNITED STATES SENATE, PETITIONER

80-2171

v.

IMMIGRATION AND NATURALIZATION SERVICE
 ET AL.

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

[June —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the
 Court.

We granted certiorari in Nos. 80-2170 and 80-2171, and
 postponed consideration of the question of jurisdiction in No.
 80-1832. Each presents a challenge to the constitutionality
 of the provision in § 244(c)(2) of the Immigration and Nation-

Stylistic changes
on 35, 36, 38, 39

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

From: **The Chief Justice**

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6th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1832, 80-2170 AND 80-2171

IMMIGRATION AND NATURALIZATION SERVICE,
APPELLANT

80-1832

v.

JAGDISH RAI CHADHA ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES HOUSE OF REPRESENTATIVES,
PETITIONER

80-2170

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

UNITED STATES SENATE, PETITIONER

80-2171

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

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

[June —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 23, 1983

Re: Cases Held for Nos. 80-1832, 80-2170, 80-2171, INS v. Chadha

MEMORANDUM TO THE CONFERENCE:

1. Nos. 81-2008 (appeal), 81-2020 (appeal), 81-2151 (appeal), 81-2171 (appeal), 82-177 (cert.), 82-209 (cert.); Process Gas Consumers Group v. Consumer Energy Council of America.

Under Title II of the Natural Gas Policy Act of 1978, a system of incremental pricing is to be established to ease the transition to deregulation of natural gas prices. The Federal Energy Regulatory Commission is directed to prescribe rules providing for incremental pricing. Section 202(c) of the NGPA provides that such rules must be submitted to each House of Congress and that the rule will not take effect if either House adopts a resolution of disapproval within a prescribed period. Absent such a resolution, the rule will take effect. On May 6, 1980, the Commission issued its final rule extending incremental pricing to all industrial end-users of natural gas not exempt from the NGPA. On May 20, 1980, the House of Representatives adopted a resolution of disapproval; i.e., a one-House veto.

Respondent Consumer Energy petitioned FERC for a rehearing, arguing that the one-House veto is unconstitutional. FERC denied the petition and revoked the rule. Consumer Energy petitioned for rehearing of the revocation order, and FERC denied that petition as well. Consumer Energy then filed a petition for review of the FERC orders in CADC. The United States agreed with Consumer Energy that the one-House veto provision in the NGPA is unconstitutional. FERC took no position on the constitutional question. The Senate and the House participated as amici. Also, several industrial groups who would be affected by the vetoed rule participated as intervenors.

Concluding that the one-House veto provision was severable, that the case was not moot, and that the case did not present a nonjusticiable political question, the CADC turned to the constitutional issue. The CADC held that the one-House veto provision was unconstitutional because "Congress attempted to do by one house what the Constitution requires be done only by both houses and the President." The CADC also held the one-House veto unconstitutional as violative of the separation of powers doctrine because it intrudes on the functions of the Executive and the Judiciary.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 30, 1983

MEMORANDUM TO THE CONFERENCE

RE: Case No. 80-1832 - Immigration & Naturalization Service
v. Chadha, et al.

I have a small and purely stylistic change in this case on p.25, penultimate line. I wish to strike "find" and substitute "see" so that line will read:

"separation of powers in Buckley, we see that the purposes..."

Absent dissent, I will proceed.

Regards,

Copies to the Conference

cc: Henry Lind, Esq.

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

OF
RENNAN, JR.

April 7, 1983

Re: House of Representatives v. INS,
Nos. 80-2170, 80-2171, and 80-1832

Dear Chief:

I agree with most of your opinion, and take the liberty of mentioning a few minor reservations I have about some of the preliminary issues.

1. I wonder if your discussion of case or controversy, Part II-E, might be made clearer. It seems to suggest that the mere presence of an amicus is sufficient to create a justiciable controversy, and I doubt that you mean to do that. One can easily imagine situations in which two friendly parties are lucky enough to attract the attention of some busybody pressure group that urges a contrary result; yet we would not want to have the courts adjudicate every such "controversy". As we have often seen, such amici argue their points with widely varying degrees of vigor, effectiveness, and rationality.

May I suggest, instead, an approach along the following lines? First, it might be worth separating the inquiry into two parts: the existence of a justiciable controversy before the formal intervention of Congress at the time of rehearing, and the

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uation since then (and in this Court). (The latter period is easy. As you point out on p. 16 and in footnote 4, Congress is both a proper party to defend the constitutionality of the statute, and a proper petitioner under §1254(1).)

As for the pre-intervention period, the situation may be less simple but the result is the same. As I see it, there was formal concrete adverseness even though the only parties were the INS and Chadha, for essentially the same reason why the Bob Jones case is not moot. See Goldsboro v. United States, No. 81-1, second draft at 9 n. 9. In that case, even though the Government agreed with petitioners that the Revenue Rulings at issue were legally invalid, it was obligated to continue to enforce them because the D.C. Circuit had entered an injunction against granting tax exemptions to discriminating schools. Hence, in the absence of a reversal by this Court the Government would be obliged to take action contrary to the interests of petitioners. Here, the situation in the Court of Appeals was analogous, if not directly parallel. As you point out on p. 15, the Attorney General is under no obligation to disregard the House action as a nullity; he was within his rights in assuming that, unless a federal court invalidated the legislative veto, his duty would be to deport Chadha.

Of course, we might have prudential concerns about allowing the Court of Appeals to adjudicate the issue in the absence of any party or participant supporting the validity of the statute. But any such prudential concerns are cleared up by the active and qualified participation of the Congress as amici. Similarly, in

Jones we assured ourselves of concrete adverseness by asking Mr. Coleman to argue.

2. The above discussion also suggests that we need not dismiss the appeal in No. 80-1832. The terms of §1252 authorize the INS to bring an appeal ("any party"). Assuming that the INS would lack Article III standing to attack the judgment below, sufficient adverseness is provided by the presence of the House and Senate as formal appellees under Rule 10.4. This case is similar to the Perini case; we held there that sufficient adverseness was provided by the presence of Churchill as a respondent under Rule 19.6.

3. Your discussion of the political question issue, Part II-F, may seem to some unnecessarily disconnected from established political-question law. Would not this be avoided by addressing the case on the basis of the standard framework of analysis described in Baker v. Carr, 369 U.S. 186 (1962)? Under that and other cases, the test of political questions is not whether their subject matter is of "political" interest, but whether the policies of the doctrine of separation of powers are implicated. I'm concerned that your present discussion may be seen as not really doing justice to the separation of powers issues that are the real substance of political question law; moreover, it might be read by some as a retreat from the analysis of Baker. In Baker we set forth a catalog of the situations implicating political questions, id., at 217; see also, e.g., Powell v. McCormack, 395 U.S. 486, 516-549 (1969). Should not

ur discussion apply the Baker test point-by-point? I don't think this should require a very lengthy discussion, since the application of the Baker test to this case is really quite straightforward.

I know you have put considerable work into this case already, and I don't want to add to the burden. I suggest these alterations in the hope they would strengthen the opinion.

Sincerely,

WJB, Jr.

The Chief Justice

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 22, 1983

Re: INS v. Chadha, Nos. 80-1832, 80-2170 and 80-2171

Dear Chief:

Thank you so much for giving me the opportunity to "preview" your second draft. I agree with your changes, and will be glad to join when you circulate to the Conference.

I do, however, have one fairly minor suggestion for a clarification. Your discussion of appellate jurisdiction, Part II-A, could be taken to suggest that meeting the technical requisites of §1252 is enough to permit us to decide the case, without worrying about Article III problems. This of course would be a misreading of your opinion, but as we well know such misreadings happen from time to time. Moreover, although the adverseness between the INS and Chadha was sufficient to create a case or controversy in the lower court, and is also sufficient to make the INS an "aggrieved party" for statutory purposes, it is not clear to me that it is sufficient to create a case or controversy in this Court. As you point out in Part II-F, there was a case or controversy in the lower court because absent action by the court the INS would have had to deport Chadha; but that is no longer true, thanks to the lower court's ruling. Hence, I rather incline to the view that in the case's present posture, there is a case or controversy only because of the presence of the House and Senate as adverse formal parties.

I'll rely on your judgment whether it is necessary to spell any of this out in the opinion, and if so, at what length. May I suggest one possibility? You might simply add a footnote to Part II-A along the following lines:

"In addition to meeting the statutory requisites of §1252, of course, an appeal must present a justiciable case or controversy under Article III. Such a controversy exists in No. 80-1832, as in the other two cases, because of the presence of the two Houses of Congress as adverse parties. See infra, at 18; see also Director, OWCP v. Perini North River Associates, ___ U.S. ___, ___ (1982)."

Sincerely,


WJB, Jr..

The Chief Justice

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

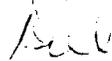
May 6, 1983

Re: INS v. Chadha, Nos. 80-1832, 80-2170, 80-2171

Dear Chief:

I agree.

Sincerely,



WJB, Jr.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 1, 1983

Re: 80-2170, 80-2172 & 80-1832 -

United States House of Representatives v.
Immigration and Naturalization Service

United States Senate v. Immigration and
Naturalization Service

Immigration and Naturalization Service
v. Chadha

Dear Chief,

I shall write in these cases. It will
take some time but the ferry can leave on
time if there is one this year.

Sincerely yours,

Byron

The Chief Justice

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 13, 1983

Re: 80-1832, 80-2170 and 80-2171 -
INS v. Chadha, etc.

Dear Bill,

Please join me in your dissent.

Sincerely yours,



Justice Rehnquist

cc: The Conference

cpm

pp. 2-7, 9-10, 12, 15, 19-20,
23-24, 31-33, 36; stylistic
changes throughout and
footnotes renumbered

Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: _____

Recirculated: 6/14/83

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1832, 80-2170 AND 80-2171

IMMIGRATION AND NATURALIZATION SERVICE,
APPELLANT

80-1832

v.

JAGDISH RAI CHADHA ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES HOUSE OF REPRESENTATIVES,
PETITIONER

80-2170

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

UNITED STATES SENATE, PETITIONER

80-2171

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

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

[June —, 1983]

JUSTICE WHITE, dissenting.

Today the Court not only invalidates § 244(c)(2) of the Im-
migration and Nationality Act, but also sounds the death
knell for nearly two hundred other statutory provisions in
which Congress has reserved a "legislative veto." For this
reason, the Court's decision is of surpassing importance.

WJ

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 28, 1983

MEMORANDUM TO THE CONFERENCE

Re: 80-1832 - Immigration and Naturalization
Service v. Chadha

In preparing the Preliminary Print, the Reporter will change the second sentence of Part III-C-1 of my dissent to read as follows:

"Until 1917, Congress had not broadly provided for the deportation of aliens. Act of February 5, 1917, ch. 29, §19, 39 Stat. 874."

SHW

cc: Henry Lind
Reporter of Decisions

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 9, 1983

Re: No. 80-1832 - INS v. Chadha
No. 80-2170 - U.S. House of Representatives v. INS
No. 80-2171 - U.S. Senate v. INS

Dear Chief:

Please join me.

Sincerely,

JM.

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 16, 1983

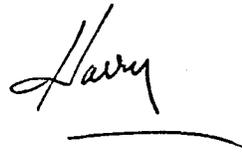
Re: No. 80-1832) INS v. Chadha
No. 80-2170) U.S. House of Representatives v. INS
No. 80-2171) U.S. Senate v. INS

Dear Chief:

Could you see your way at all clear to omit Paragraph H of Part II (p. 23) of your opinion? If so, I shall be glad to join. If not, please record me as joining your opinion except Part II-H thereof.

I am relieved that this case, which has languished in the federal court system for many years, is finally reaching its end. Justice for Chadha has been long delayed.

Sincerely,



The Chief Justice

cc: The Conference

H

Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: MAY 31 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1832, 80-2170 AND 80-2171

IMMIGRATION AND NATURALIZATION SERVICE,
APPELLANT

80-1832

v.

JADGISH RAI CHADHA ET AL.

UNITED STATES HOUSE OF REPRESENTATIVES,
PETITIONER

80-2170

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

UNITED STATES SENATE, PETITIONER

80-2171

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

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

JUSTICE BLACKMUN, concurring in part.

I continue to believe that the Court's decision last Term to restore these cases to the calendar for reargument, — U. S. — (1982), unnecessarily delayed resolution of questions of vital importance. The issues decided today were ably briefed and argued before this Court in February 1982. Ordering reargument needlessly prolonged uncertainty in the Halls of Congress about the constitutionality of many federal statutes that, had Congress deemed it desirable, could

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

RECEIVED
CLERK OF THE
SUPREME COURT

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

1983 JUN 2 PM 3 37
June 2, 1983

Re: No. 80-1832 - INS v. Chadha
No. 80-2170 - U.S. House of Representatives v. INS
No. 80-2171 - U.S. Senate v. INS

Dear Chief:

Your proposed modification of the first sentence of Part II-H of your opinion does indeed help. It removes the portions of the present draft I was unable to join.

If this change is made, I shall join your opinion in full and shall withdraw my separate concurrence.

Sincerely,

H.A.B.

The Chief Justice

*Harry a final draft is
around today. The next
draft will reflect on
exchange of memos
Ray WS*

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 13, 1983

Re: No. 80-1832) - INS v. Chadha
No. 80-2170) - U.S. House of Representatives v. INS
No. 80-2171) - U.S. Senate v. INS

Dear Chief:

I join your fourth draft circulated June 10. I now
withdraw my separate concurrence circulated May 31.

Sincerely,

H.A.K.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 4, 1983

80-2170 et seq. - Chadha Cases

Dear Chief:

I will await other writing in this important case.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

June 1, 1983

80-1832 INS v. Chadha

Dear Chief:

I am circulating an opinion concurring in your judgment.

It has taken me a long time to make a decision. You may recall my doubt that prompted me to join you in carrying this case over from last Term. At Conference, my vote to affirm was tentative. I have been concerned about the consequences of the judicial branch invalidating an arrangement that - despite recurring criticism - has existed since the 1903s.

You have written a strong and persuasive opinion, and you have a Court of six Justices. After a good deal of reflection, I have decided against joining either of the dissenting opinions. I prefer to decide the case on separation of powers grounds rather than the broader Presentment Clauses.

In any event, the issue is now settled.

Sincerely,

The Chief Justice

lfp/ss

Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: JUN 3 1983

Recirculated: _____

JUN 2 1983

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1832, 80-2170 AND 80-2171

IMMIGRATION AND NATURALIZATION SERVICE,
APPELLANT

80-1832

v.

JAGDISH RAI CHADHA ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES HOUSE OF REPRESENTATIVES,
PETITIONER

80-2170

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

UNITED STATES SENATE, PETITIONER

80-2171

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

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

[June —, 1983]

JUSTICE POWELL, concurring in the judgment.

The Court's decision, based on the Presentment Clauses, Art. I, § 7, cl. 2 and 3, apparently will invalidate every use of the legislative veto. The breadth of this holding gives one pause. Congress has included the veto in literally hundreds of statutes, dating back to the 1930s. Congress clearly

CHANGES THROUGHOUT

Stylistic Changes Throughout

Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: JUN 14 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1832, 80-2170 AND 80-2171

IMMIGRATION AND NATURALIZATION SERVICE,
APPELLANT

80-1832

v.

JAGDISH RAI CHADHA ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES HOUSE OF REPRESENTATIVES,
PETITIONER

80-2170

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

UNITED STATES SENATE, PETITIONER

80-2171

v.

IMMIGRATION AND NATURALIZATION SERVICE
ET AL.

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

[June —, 1983]

JUSTICE POWELL, concurring in the judgment.

The Court's decision, based on the Presentment Clauses, Art. I, § 7, cl. 2 and 3, apparently will invalidate every use of the legislative veto. The breadth of this holding gives one pause. Congress has included the veto in literally hundreds of statutes, dating back to the 1930s. Congress clearly

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

From: **Justice Rehnquist**

Circulated: APR 23 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1832

IMMIGRATION AND NATURALIZATION SERVICE,
 APPELLANT *v.* JAGDISH RAI CHADHA ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE NINTH CIRCUIT

[April —, 1983]

JUSTICE REHNQUIST, dissenting.

A severability clause creates a presumption that Congress intended the valid portion of the statute to remain in force when one part is found to be invalid. *Carter v. Carter Coal Co.*, 298 U. S. 238, 312 (1936); *Champlin Refining Co. v. Corporation Comm'n*, 286 U. S. 210, 235 (1932). A severability clause does not, however, conclusively resolve the issue. “[T]he determination, in the end, is reached by” asking “[w]hat was the intent of the lawmakers,” *Carter, supra*, at 312, and “will rarely turn on the presence or absence of such a clause.” *United States v. Jackson*, 390 U. S. 570, 585, n. 27 (1968). Because I believe that Congress did not intend the one-House veto provision of § 244(c)(2) to be severable, I dissent.

Section 244(c)(2) is an exception to the general rule that an alien’s deportation shall be suspended when the Attorney General finds that statutory criteria are met. It is severable only if Congress would have intended to permit the Attorney General to suspend deportations without it. This Court has held several times over the years that exceptions such as this are not severable because

“by rejecting the exceptions intended by the legislature . . . the statute is made to enact what confessedly the

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 4, 1983

Re: 80-2170; 80-2171 and 80-1832 -
U.S. House of Reps. v. INS et al.

Dear Chief:

Please join me.

Respectfully,



The Chief Justice
Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 4, 1983

Re: No. 80-1832 INS v. Chadha
No. 80-2170 U.S. House of Representatives v. INS
No. 80-2171 U.S. Senate v. INS

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference