The Burger Court Opinion Writing Database

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

CHAMBERS OF
THE CHIEF JUSTICE

October 28, 1982

RE: 81-129 - LANDON, DIST. DIR. INS. v. PLASENCIA, MARIA

Dear Sandra:

I join.

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.

November 1, 1982

RE: No. 81-129 Landon v. Plasencia

Dear Sandra:

I apologize for my delay in responding to your circulation in this case. I would be pleased to concur, with one minor reservation: It seems to me that the second-to-last sentence on p. 13, as added in your third draft, could be read to foreclose even the possibility that something very close to deportation procedures might be constitutionally required in this case. Because I assume, on the basis of the rest of the opinion, that this was not your intention, would it be possible to replace the last two sentences on p. 13 with something like the following:

> "Because our previous discussion has shown that Congress did not intend to require the use of deportation procedures in cases such as this one, it would be improper for a court to impose such procedures if less stringent procedures would satisfy the minimum requirements of due process."

Sincerely,

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 8, 1982

RE: No. 81-129 Landon v. Plasencia

Dear Thurgood:

I joined Sandra's opinion in the above after she adopted my suggestions for changes at pp.13-14. I did so because, as I said at Conference, I agreed that one ought let the Ninth Circuit first address what process was due. I don't believe her opinion could or should be read to suggest that what Plasencia received was due process - indeed I think the implication is contrary. In the circumstances I'll stick with my join.

Sincerely,

Bill

Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 9, 1982

RE: No. 81-129 Landon v. Plasencia

Dear Sandra:

I agree.

Sincerely,

Bill

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 27, 1982

Re: 81-129 - Landon v. Plasencia

Dear Sandra,

I agree.

Sincerely yours,

Justice O'Connor

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 28, 1982

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

Dear Sandra:

I am unable to join your opinion in this case. I will promptly circulate a concurring opinion.

Sincerely,

T.M.

Justice O'Connor

cc: The Conference

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

From: **Justice Marshall**

Circulated: NOV 8 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-129

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

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

[November ——, 1982]

JUSTICE MARSHALL, concurring in part and dissenting in part.

I agree that the Immigration and Nationality Act permitted the INS to proceed against respondent in an exclusion proceeding. The question then remains whether the exclusion proceeding held in this case satisfied the minimum requirements of the Due Process Clause. While I agree that the Court need not decide the precise contours of the process that would be constitutionally sufficient, I would not hesitate to decide that the process accorded Plasencia was insufficient.[1]

[1] Because the due process question was squarely addressed in the briefs and at oral argument, there is no doubt that the Court may now decide the issue. See *Vance* v. *Terrazas*, 444 U. S. 252, 258–259 n. 5 (1980), and cases cited therein. In fact, the Court has reached the threshhold of deciding the constitutional question. It has identified the deficiencies in the exclusion hearing afforded Plasecia and it has set forth the standards that it would apply to determine whether the procedures, as described, denied Plasencia due process. I do not see any interest to be served in declining to take the final step of applying these due process standards to the record before us, as the Court of Appeals would otherwise be required to do on remand.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

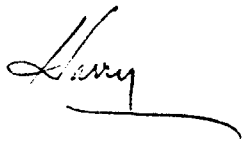
October 28, 1982

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

Dear Sandra:

I was troubled by the same concerns mentioned in John's letter to you of October 25. You have met these, and I am glad to join your proposed opinion.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 27, 1982

81-129 Landon v. Plasencia

Dear Sandra:

Please join me.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 28, 1982

Re: No. 81-129 Landon v. Plasencia

Dear Sandra:

Please join me in your opinion for the Court.

Sincerely,

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 25, 1982

Re: 81-129 - Landon v. Plasencia

Dear Sandra:

Except for three relatively minor reservations, I am prepared to join your persuasive opinion.

First, I am a little concerned about the use of the two words "for pay" in the fourth line on page 2. I recognize that the hearing officer so found, but my reading of the transcript left me with considerable doubt as to whether there was any admissible evidence that she in fact did agree to accept any pay for the trip. Would it be possible either to eliminate those two words (they appear later when you correctly summarize what the hearing officer found), or possibly qualify them in some way by inserting a word such as "allegedly" for pay?

Second, on page 13 in the sentence at the end of the full paragraph you indicate that the role of the judiciary "does not extend to imposing procedures that displace congressional choices of policy." I agree, of course, that we have no such role unless the congressional policy choices violate a constitutional command. If there is a constitutional violation, however, occasionally a judicial remedy is required. Perhaps my concern would be solved if you inserted the word "merely" to modify "displace congressional choices."

Third, in the paragraph that runs over to the top of page 14 in which you discuss the first of the three due process concerns, I think it might be helpful to make the point that the BIA regulations do not place the burden on the government when the alien is a permanent resident. I have always been troubled by the fact that they represent to us that the burden

is placed on the government without ever having spelled out the requirement in a regulation. My suggestion would be to insert in line 6 something like "the BIA has followed the practice of placing the burden on the government ...." Then, in the last sentence in the paragraph you could perhaps add a few words and make it read something like this: "there is no explicit statement of the placement of the burden of proof either in the BIA regulations or in the immigration law judge's opinion in this case and no finding on the issue below."

Respectfully,

J

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 28, 1982

Re: 81-129 - Landon v. Plasencia

Dear Sandra:

Please join me.

Respectfully,

JPS

Justice O'Connor

Copies to the Conference

pp 7, 8, 9, 11, 13

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

From: Justice O'Connor

Circulated: OCT 23 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-129

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

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

[October ——, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

Following an exclusion hearing, the Immigration and Naturalization Service ("INS") denied the respondent, a permanent resident alien, admission to the United States when she attempted to return from a brief visit abroad. Reviewing the respondent's subsequent petition for a writ of habeas corpus, the Court of Appeals vacated the decision, holding that the question whether the 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, we reverse the judgment below. We remand to allow the Court of Appeals to consider what process is due a permanent resident alien at an exclusion hearing.

I

Respondent Maria Antonieta Plasencia, a citizen of El Salvador, entered the United States as a permanent resident alien in March, 1970. She established a home in Los Angeles with her husband, a United States citizen, and their minor children. On June 27, 1975, she and her husband travelled to Tijuana, Mexico. During their brief stay in Mexico, they

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 25, 1982

Re: No. 81-129 Landon v. Plasencia

Dear John,

I would be willing to delete the words "for pay" on page 2, and to add the word "merely" on page 13. I am also willing to modify page 14 in substantially the manner you have suggested. The next draft will include these changes.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

pp. 2, 7, 8, 9, 11, 12, 13, 14

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: OCT 26 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-129

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

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

[October ——, 1982]

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Following an exclusion hearing, the Immigration and Naturalization Service ("INS") denied the respondent, a permanent resident alien, admission to the United States when she attempted to return from a brief visit abroad. Reviewing the respondent's subsequent petition for a writ of habeas corpus, the Court of Appeals vacated the decision, holding that the question whether the 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, we reverse the judgment below. We remand to allow the Court of Appeals to consider what process is due a permanent resident alien at an exclusion hearing.

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PP. 1, 13

Stylistic Changes Throughout

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: OCT 27 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–129

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

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

[October ——, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

Following an exclusion hearing, the Immigration and Naturalization Service ("INS") denied the respondent, a permanent resident alien, admission to the United States when she attempted to return from a brief visit abroad. Reviewing the respondent's subsequent petition for a writ of habeas corpus, the Court of Appeals vacated the decision, holding that the question whether the 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, we reverse the judgment below. We remand to allow the Court of Appeals to consider whether the respondent, a permanent resident alien, was accorded due process at the exclusion hearing.

I

Respondent Maria Antonieta Plasencia, a citizen of El Salvador, entered the United States as a permanent resident alien in March, 1970. She established a home in Los Angeles with her husband, a United States citizen, and their minor children. On June 27, 1975, she and her husband travelled

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 2, 1982

No. 81-129 Landon v. Plasencia

Dear Bill,

Thank you for your note concerning the last two sentences on page 13. This will confirm our discussion. I will replace the last two sentences on page 13 with the following language, which you have indicated will be acceptable:

> "Our previous discussion has shown that Congress did not intend to require the use of deportation procedures in cases such as this one. Thus, it would be improper simply to impose deportation procedures here because the reviewing court may find them preferable. Instead, the courts must evaluate the particular circumstances and determine what procedures would satisfy the minimum requirements of due process on the re-entry of a permanent resident alien."

Sincerely,

Sandra

Justice Brennan

Copies to the Conference

pp. 13, 14

Stylistic Changes Throughout

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: NOV 3 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-129

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

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

[October ——, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

Following an exclusion hearing, the Immigration and Naturalization Service ("INS") denied the respondent, a permanent resident alien, admission to the United States when she attempted to return from a brief visit abroad. Reviewing the respondent's subsequent petition for a writ of habeas corpus, the Court of Appeals vacated the decision, holding that the question whether the 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, we reverse the judgment below. We remand to allow the Court of Appeals to consider whether the respondent, a permanent resident alien, was accorded due process at the exclusion hearing.

I

Respondent Maria Antonieta Plasencia, a citizen of El Salvador, entered the United States as a permanent resident alien in March, 1970. She established a home in Los Angeles with her husband, a United States citizen, and their minor children. On June 27, 1975, she and her husband travelled

pp. 15 16

Stylistic Changes Throughout

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: NOV 9 1982

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–129

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

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

[November ——, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

Following an exclusion hearing, the Immigration and Naturalization Service ("INS") denied the respondent, a permanent resident alien, admission to the United States when she attempted to return from a brief visit abroad. Reviewing the respondent's subsequent petition for a writ of habeas corpus, the Court of Appeals vacated the decision, holding that the question whether the 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, we reverse the judgment below. We remand to allow the Court of Appeals to consider whether the respondent, a permanent resident alien, was accorded due process at the exclusion hearing.

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— pp. 15

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

From: Justice O'Connor

Circulated: _____

Recirculated: NOV 15

SUPREME COURT OF THE UNITED STATES

No. 81-129

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

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

[November 15, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

Following an exclusion hearing, the Immigration and Naturalization Service ("INS") denied the respondent, a permanent resident alien, admission to the United States when she attempted to return from a brief visit abroad. Reviewing the respondent's subsequent petition for a writ of habeas corpus, the Court of Appeals vacated the decision, holding that the question whether the 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, we reverse the judgment below. We remand to allow the Court of Appeals to consider whether the respondent, a permanent resident alien, was accorded due process at the exclusion hearing.

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Respondent Maria Antonieta Plasencia, a citizen of El Salvador, entered the United States as a permanent resident alien in March, 1970. She established a home in Los Angeles with her husband, a United States citizen, and their minor children. On June 27, 1975, she and her husband travelled

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 22, 1982

Re: 81-129 Landon v. Plasencia

MEMORANDUM TO THE CONFERENCE

It has come to my attention that footnote 4 in the slip opinion in this case should be corrected. Unless there is an objection, I intend to instruct the Reporter of Decisions to amend footnote 4 to read as follows:

> Voluntary departure for an alien who would otherwise be deported also means that he will not be subject to §212(a)(17), 8 U.S.C. §1182(a)(17) (1976 ed.), which at the time of Plasencia's hearing, required aliens who had once been deported to seek prior approval of the Attorney General before re-entering. There was no comparable requirement of prior approval for aliens who had been excluded and sought again to enter more than one year later. §212, 8 U.S.C. §1182(a)(16). The requirement of prior approval for deported aliens now applies only within five years of deportation. 95 Stat. 1612, §212(a)(17), 8 U.S.C. §1182(a)(17) (1976 ed., Supp. V).

Sincerely,

Sandra