

The Burger Court Opinion Writing Database

Jean v. Nelson

472 U.S. 846 (1985)

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

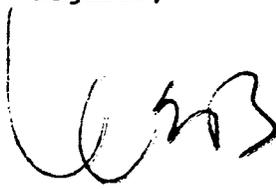
May 6, 1985

Re: 84-5240 - Jean v. Nelson

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 1, 1985

No. 84-5240

Jean v. Nelson

Dear Thurgood,

You and I are in dissent in this.
Will you take it?

Sincerely,



Justice Marshall

.87 71 33 507

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 17, 1985

No. 84-5240

Jean, et al. v. Nelson

Dear Thurgood,

Please join me.

Sincerely,

Bill

Justice Marshall

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 17, 1985

84-5240 - Jean v. Nelson

Dear Bill,

I agree.

Sincerely yours,



Justice Rehnquist

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

From: Justice Marshall

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Still
Deny
11/16

1st DRAFT

SUPREME COURT OF THE UNITED STATES

MARIE LUCIE JEAN ET AL. v. ALAN NELSON,
COMMISSIONER, IMMIGRATION AND NATURAL-
IZATION SERVICE, ET AL.

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

No. 84-5240. Decided November —, 1984

JUSTICE MARSHALL, dissenting.

Petitioners are a class of Haitian refugees seeking asylum in the United States. They are presently detained by the Immigration and Naturalization Service (INS) at various federal facilities, and seek temporary release into the community while their asylum claims are prepared and processed. This case poses the question whether, in the absence of any articulated interest, the government may discriminate on the basis of race or national origin in its decision whether to release from physical custody, pending a final determination of admissibility, individuals seeking asylum in this country. Over four dissenters, the en banc Court of Appeals for the Eleventh Circuit answered the question in the affirmative, holding that *Shaughnessy v. United States ex rel. Mezei*, 345 U. S. 206, 215-216 (1953), compels the conclusion that the Fifth Amendment's equal protection rights do not extend to petitioners. 727 F. 2d 957, 970 (1984).

I dissent, for three reasons, from the Court's refusal to review this case. First, I have serious doubts whether a fair reading of *Mezei* compels the lower court's conclusion. Second, to the extent that *Mezei* is interpreted broadly, as it was by the lower court, it justifies absurd results that are fundamentally at odds with our constitutional scheme. Third, the decision below is inconsistent with that reached by another federal court of appeals, and the questions presented by the two cases are of sufficient importance to justify—indeed, compel—our review.

I still recommend denial. Both the legislature and the executive should be able to discriminate on the basis of national origin in the

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 18, 1985

Re: No. 84-5240-Jean v. Nelson

Dear Bill:

In due course I will circulate a dissent.

Sincerely,

Jm.
T.M.

Justice Rehnquist

cc: The Conference

FROM THE COLLECTION OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: Justice Marshall

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5240

**MARIE LUCIE JEAN, ET AL., PETITIONERS v. ALAN
NELSON, COMMISSIONER, IMMIGRATION AND
NATURALIZATION SERVICE, ET AL.**

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

[June —, 1985]

JUSTICE MARSHALL, dissenting.

Petitioners are a class of unadmitted aliens who were detained at various federal facilities pending the disposition of their asylum claims. We granted certiorari to decide whether such aliens may invoke the equal protection guarantees of the Fifth Amendment's Due Process Clause to challenge the Government's failure to release them temporarily on parole. The Court today refuses to address this question, invoking the well-accepted proposition that constitutional issues should be avoided whenever there exist proper non-constitutional grounds for decision. I, of course, have no quarrel with that proposition. Its application in this case, however, is more than just problematic; by pressing a regulatory construction well beyond "the point of disingenuous evasion," *United States v. Locke*, — U. S. —, — (1985) (slip. op. 10-11), the Court thrusts itself into a domain that is properly that of the political branches. Purporting to exercise restraint, the Court creates out of whole cloth nonconstitutional constraints on the Attorney General's discretion to parole aliens into this country, flagrantly violating the maxim that "amendment may not be substituted for construction," *Yu Cong Eng v. Trinidad*, 271 U. S. 500, 518 (1926) (Taft, C. J.). In my mind, there is no principled way to avoid

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pp. 1, 9

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

From: Justice Marshall

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Recirculated: JUN 19 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5240

MARIE LUCIE JEAN, ET AL., PETITIONERS v. ALAN
NELSON, COMMISSIONER, IMMIGRATION AND
NATURALIZATION SERVICE, ET AL.

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

[June —, 1985]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins,
dissenting.

Petitioners are a class of unadmitted aliens who were detained at various federal facilities pending the disposition of their asylum claims. We granted certiorari to decide whether such aliens may invoke the equal protection guarantees of the Fifth Amendment's Due Process Clause to challenge the Government's failure to release them temporarily on parole. The Court today refuses to address this question, invoking the well-accepted proposition that constitutional issues should be avoided whenever there exist proper non-constitutional grounds for decision. I, of course, have no quarrel with that proposition. Its application in this case, however, is more than just problematic; by pressing a regulatory construction well beyond "the point of disingenuous evasion," *United States v. Locke*, 471 U. S. —, — (1985) (slip. op. 10-11), the Court thrusts itself into a domain that is properly that of the political branches. Purporting to exercise restraint, the Court creates out of whole cloth non-constitutional constraints on the Attorney General's discretion to parole aliens into this country, flagrantly violating the maxim that "amendment may not be substituted for construction," *Yu Cong Eng v. Trinidad*, 271 U. S. 500, 518 (1926) (Taft, C. J.). In my mind, there is no principled way to avoid

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 23, 1984

Memorandum to the Conference

Re: No. 84-5240, Jean v. Nelson, Commissioner

After further reflection, I shall change my vote to
a grant in this case.

HAB.
—



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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 22, 1985

Re: No. 84-5240, Jean v. Nelson

Dear Bill:

Please join me.

Sincerely,

Justice Rehnquist

cc: The Conference

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CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

April 18, 1985

84-5240 Jean v. Nelson

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

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

From: Justice Rehnquist

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5240

MARIE LUCIE JEAN, ET AL., PETITIONERS *v.* ALAN
NELSON, COMMISSIONER, IMMIGRATION AND
NATURALIZATION SERVICE ET AL.

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

[April —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioners, the named representatives of a class of undocumented and unadmitted aliens from Haiti, sued respondent Commissioner of the Immigration and Naturalization Service (INS). They alleged, *inter alia*, that they had been denied parole by INS officials on the basis of race and national origin. See *Jean v. Nelson*, 711 F. 2d 1455 (CA11 1983) (panel opinion) (*Jean I*). The *en banc* Eleventh Circuit concluded that any such discrimination concerning parole would not violate the Fifth Amendment to the United States Constitution because of the government's plenary authority to control the nation's borders. That court remanded the case to the District Court for consideration of petitioners' claim that their treatment violated INS regulations, which did not authorize consideration of race or national origin in determining whether or not an excludable alien should be paroled. *Jean v. Nelson*, 727 F. 2d 957 (CA11 1984) (*Jean II*). We granted certiorari — U. S. —. We conclude that the Court of Appeals should not have reached and decided the parole question on constitutional grounds, but we affirm its judgment remanding the case to the District Court.

Petitioners arrived in this country sometime after May 1981, and represent a part of the recent influx of undocumented excludable aliens who have attempted to migrate

WHR
In due course I will circulate
a dissent

HR

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Sty Listic 9.7

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

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5240

MARIE LUCIE JEAN, ET AL., PETITIONERS v. ALAN NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE ET AL.

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

[April —, 1985]

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Petitioners arrived in this country sometime after May 1981, and represent a part of the recent influx of undocumented excludable aliens who have attempted to migrate from the Caribbean basin to South Florida. Section 235(b)

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By [signature] 9-10

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

From: Justice Rehnquist

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5240

MARIE LUCIE JEAN, ET AL., PETITIONERS *v.* ALAN
NELSON, COMMISSIONER, IMMIGRATION AND
NATURALIZATION SERVICE ET AL.

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

[June —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioners, the named representatives of a class of undocumented and unadmitted aliens from Haiti, sued respondent Commissioner of the Immigration and Naturalization Service (INS). They alleged, *inter alia*, that they had been denied parole by INS officials on the basis of race and national origin. See 711 F. 2d 1455 (CA11 1983) (panel opinion) (*Jean I*). The en banc Eleventh Circuit concluded that any such discrimination concerning parole would not violate the Fifth Amendment to the United States Constitution because of the Government's plenary authority to control the Nation's borders. That court remanded the case to the District Court for consideration of petitioners' claim that their treatment violated INS regulations, which did not authorize consideration of race or national origin in determining whether or not an excludable alien should be paroled. 727 F. 2d 957 (1984) (*Jean II*). We granted certiorari 469 U. S. —. We conclude that the Court of Appeals should not have reached and decided the parole question on constitutional grounds, but we affirm its judgment remanding the case to the District Court.

Petitioners arrived in this country sometime after May 1981, and represent a part of the recent influx of undocumented excludable aliens who have attempted to migrate from the Caribbean basin to South Florida. Section 235(b)

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 17, 1985

Re: 84-5240 - Jean v. Nelson

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 16, 1985

No. 84-5240 Jean v. Nelson

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

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APR 16 1985

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