

In The
Supreme Court of the United States

MENACHEM ZIVOTOFSKY

Petitioner,

v.

JOHN KERRY, SECRETARY OF STATE

Respondent.

**On Writ of Certiorari To The
United States Court of Appeals
For the District of Columbia Circuit**

BRIEF FOR PETITIONER

Please serve:

ETHAN
OFFICE OF THE DISTRICT ATTORNEY
1 Wildcat Lane
Hazelwood, MO 63042

ETHAN
Council of Record for Respondent
Attorney General

JOSH
Sr. Asst. Attorney General

SAM
Asst. Attorney General

OLIVIA
Deputy Asst. Attorney General

ISSUE

Whether a federal statute that directs the Secretary of State, on request, to record the birthplace of an American citizen born in Jerusalem as born in “Israel” on a Consular Report of Birth Abroad and on a United States passport is unconstitutional on the ground that the statute “impermissibly infringes on the President’s exercise of the recognition power reposing exclusively in him.”

BACKGROUND

In *Zivotofsky v. Kerry*, Menachem Zivotofsky was born in a hospital located in Jerusalem on October 17, 2002. Both of Menachem’s parents were born in the United States and are both citizens of the United States. The parents applied for a United States passport for Menachem and requested the birthplace to be Israel, however the request was ignored and the passport was made to say Jerusalem as the place of birth. The family is now bringing a lawsuit to the court to get Israel on the passport.

PRECEDENT AND LAW

National City Bank v. Republic of China and *Banco Nacional de Cuba v. Sabbitino*:

Both of these cases show the power of the president to recognize countries. In *National City Bank v. Republic of China* it states that the Republic of China is recognized as a sovereign by the Executive and should have foreign sovereign’s immunities like any other country

recognized by the United States.

In *Banco National de Cuba v. Sabbitino*, It states that the Judicial and Executive branches should work together for international decisions such as recognitions to avoid conflict or to avoid violating international law.

United States v. Curtiss- Wright Export Corp.:

In this case it is stated that “the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relation.”

This case was disputed in 1936 and is still quoted to this day and many presidents have relied on this on issues outside of this case.

Youngstown Sheet & Tube Co. v. Sawyer:

In this case the powers of the President are further described , and a quote that applies to the case in front of us is as follows:

“When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.”

Section 214(d)

States that anyone born in the city of Jerusalem can have Israel put as their birthplace if requested by the citizen or their legal parents.

State Department's Foreign Affairs Manual (FAM):

In the foreign affairs manual it is stated that anyone that is born in Jerusalem should specifically not have Israel or Jordan written as their birthplace on their passport. Just solely Jerusalem should be written as the place of birth.

ARGUMENT

In *Zivotofsky v. Kerry*, while on the surface looks like a simple foreign policy question, is a much more deep case that at the roots of the case is more about Whig theory versus Stewardship theory. However, according to Section 214(d) it says that:

“For purposes of the registration of birth, certification of nationality, or issuance of a passport of a United States citizen born in the city of Jerusalem, the Secretary shall, upon the request of the citizen or the citizen’s legal guardian, record the place of birth as Israel.”

The problem with this is that the Foreign Affairs Manual (FAM) specifically says to not write Israel or Jordan on the passport, and only list Jerusalem as the place of birth of a United States citizen born in Jerusalem.

Zivotofsky argues that Section 214(d) states that he has the write to have Israel as his birthplace due to it being signed by the executive, the main branch to deal with international affairs and recognition as stated by Article II of the Constitution.

Zivotofsky also argues that Section 214(d) does not infringe on any presidential power due to :

- 1) The Constitution only refers to the power to receive ambassadors
- 2) In *United States v. Palmer*, the supreme court already recognized the recognition power.
- 3) The president may exercise recognition power when there is no controversy.

Finally, the effects of the enforcement of Section 214(d) are negligible on American foreign policy. The enforcement would only affect 50,000 U.S. passports and even then, the place of birth is only for identifying citizens, not for foreign policy.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed, and the Secretary of State should be ordered to enforce and implement Section 214(d).

Respectfully Submitted

JOSH PONDROM
Sr. Asst. Attorney General