

238 F.2d 239  
United States Court of Appeals Ninth Circuit.

Francisco MENDOZA-MARTINEZ, Appellant,  
v.  
Argyle R. MACKEY, Commissioner of  
Immigration and Naturalization and Herbert  
Brownell, Attorney General of the United States,  
Appellees.

No. 14997.  
|  
Nov. 2, 1956.

#### Synopsis

Declaratory judgment action by person who, upon return from Mexico in 1946, had been arrested, for illegal entry upon warrant alleging expatriation, presenting question of constitutionality of expatriation statute. The United States District Court for the Southern District of California, Northern Division, Gilbert H. Jertberg, J., entered judgment against plaintiff, and he appealed. The Court of Appeals held that statute providing, in substance, for loss of United States nationality by departing from or remaining outside United States jurisdiction during national emergency for purpose of evading or avoiding military service, is constitutional.

Judgment affirmed.

#### Attorneys and Law Firms

\*240 Vincent P. DiGiorgio, DiGiorgio & Davis, Bakersfield, Cal., for appellant.

Laughlin E. Waters, U.S. Atty., Max F. Deutz, James R. Dooley, Asst. U.S. Attys., Los Angeles, Cal., for appellees.

#### Footnotes

1 Now Universal Military Training and Service Act, 50 U.S.C.A. Appendix, § 462.

2 Now Immigration and Nationality Act 1952, 8 U.S.C.A. § 1481(a).

Before BONE, ORR and HAMLEY, Circuit Judges.

#### Opinion

PER CURIAM.

Mendoza-Martinez appeals from an adverse judgment in an action for declaratory judgment in the United States District Court for the Southern District of California, Northern Division.

Appellant departed the United States in 1942 for Mexico and remained there until 1946. Upon his return to the United States, he was convicted for draft evasion under 50 U.S.C.A. Appendix, § 311.<sup>1</sup> While in custody, appellant was arrested by the Immigration and Naturalization Service for illegal entry; the warrant alleged expatriation under Sec. 401(j) of the Nationality Act of 1940, 54 Stat. 1168 (1940), as amended by 58 Stat. 746 (1944).<sup>2</sup> The statute provided, in substance, for loss of United States nationality by departing from or remaining outside United States jurisdiction during a national emergency for the purpose of evading or avoiding military service.

After exhausting administrative remedies, appellant brought this action for declaratory relief. Appellant's sole contention is that Sec. 401(j) is unconstitutional. This Court has twice held said section to be constitutional; on authority of *Gonzalez v. Landon*, 9 Cir., 1954, 215 F.2d 955, reversed on other grounds 350 U.S. 920, 76 S.Ct. 210, and *Vidales v. Brownell*, 9 Cir., 1954, 217 F.2d 136, the judgment of the District Court is affirmed.

#### All Citations

238 F.2d 239

