

# The Burger Court Opinion Writing Database

*Perez v. United States*

402 U.S. 146 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

April 22, 1971

Re: No. 600 - Perez v. U. S.

Dear Bill:

Please join me.

Regards,

WB

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

April 13, 1971

Dear Bill,

Re: No. 600 - Perez v. United States

I agree.

Sincerely,

  
H. L. B.

Mr. Justice Douglas

cc: Members of the Conference

BP  
*Please join me*

1st DRAFT

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Freeman  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

Stone, Douglas, J.

4/7/71

## SUPREME COURT OF THE UNITED STATES

No. 600.—OCTOBER TERM, 1970

Alcides Perez, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The question in the case is whether Title II of the Consumer Credit Protection Act, 82 Stat. 159, 18 U. S. C. (Supp. V) § 891, as construed and applied to petitioner, is a permissible exercise by Congress of its powers under the Commerce Clause of the Constitution. Petitioner's conviction after trial by jury and his sentence were affirmed by the Court of Appeals, one judge dissenting. 426 F. 2d 1073. We granted the petition for a writ of certiorari because of the importance of the question presented. 399 U. S. —. We affirm that judgment.

Petitioner is one of the species commonly known as "loan sharks" which Congress found are in large part under the control of "organized crime."<sup>1</sup> "Extortionate

<sup>1</sup> Section 201 of Title II contains the following findings by Congress:

"(1) Organized crime is interstate and international in character. Its activities involve many billions of dollars each year. It is directly responsible for murders, willful injuries to person and property, corruption of officials, and terrorization of countless citizens. A substantial part of the income of organized crime is generated by extortionate credit transactions.

"(2) Extortionate credit transactions are characterized by the use, or the express or implicit threat of the use, of violence or other criminal means to cause harm to person, reputation, or property as a means of enforcing repayment. Among the factors which have

File  
Recd  
4/8/71

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 600.—OCTOBER TERM, 1970

Alcides Perez, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
United States. } Appeals for the Second  
Circuit.

[April —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The question in the case is whether Title II of the Consumer Credit Protection Act, 82 Stat. 159, 18 U. S. C. (Supp. V) § 891 *et seq.*, as construed and applied to petitioner, is a permissible exercise by Congress of its powers under the Commerce Clause of the Constitution. Petitioner's conviction after trial by jury and his sentence were affirmed by the Court of Appeals, one judge dissenting. 426 F. 2d 1073. We granted the petition for a writ of certiorari because of the importance of the question presented. 400 U. S. 915. We affirm that judgment.

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WD

file  
Rec'd  
4/14/71

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 600.—OCTOBER TERM, 1970

Alcides Perez, Petitioner,	{	On Writ of Certiorari to the
v.		United States Court of
United States.		Appeals for the Second
		Circuit.

[April —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The question in the case is whether Title II of the Consumer Credit Protection Act, 82 Stat. 159, 18 U. S. C. (Supp. V) § 891 *et seq.*, as construed and applied to petitioner, is a permissible exercise by Congress of its powers under the Commerce Clause of the Constitution. Petitioner's conviction after trial by jury and his sentence were affirmed by the Court of Appeals, one judge dissenting. 426 F. 2d 1073. We granted the petition for a writ of certiorari because of the importance of the question presented. 400 U. S. 915. We affirm that judgment.

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

CHAMBERS OF  
JUSTICE JOHN M. HARLAN

April 8, 1971

Re: No. 600 -- Perez v. United States

Dear Bill:

I agree with and am glad to join your  
opinion.

Sincerely,



Mr. Justice Douglas

cc: Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 8, 1971

RE: No. 600 - Perez v. United States

Dear Bill:

I agree.

Sincerely,

*WJB*  
W. J. B. Jr.

Mr. Justice Douglas

cc: The Conference

B

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 600.—OCTOBER TERM, 1970

Circulated: APR 22 1971

Alcides Perez, Petitioner, } On Writ of Certiorari Reheard & Resubmitted:  
v. } United States Court of Appeals for the Second Circuit.  
United States.

[April —, 1971]

MR. JUSTICE STEWART, dissenting.

Congress surely has power under the Commerce Clause to enact criminal laws to protect the instrumentalities of interstate commerce, to prohibit the misuse of the channels or facilities of interstate commerce, and to prohibit or regulate those intrastate activities which have a demonstrably substantial effect on interstate commerce. But under the statute before us a man can be convicted without any proof of interstate movement, of the use of the facilities of interstate commerce, or of facts showing that his conduct affected interstate commerce. I think the Framers of the Constitution never intended that the national Government might define as a crime and prosecute such wholly local activity through the enactment of federal criminal laws.

In order to sustain this law we would, in my view, have to be able at the least to say that Congress could rationally have concluded that loan sharking is an activity with interstate attributes which distinguish it in some substantial respect from other local crime. But it is not enough to say that loan sharking is a national problem, for all crime is a national problem. It is not enough to say that some loan sharking has interstate characteristics, for any crime may have an interstate setting. And the circumstance that loan sharking has an adverse impact on interstate business is not a dis-

WD

JKL  
P. 2

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 600.—OCTOBER TERM, 1970

Circulated:

APR 22 1971

Alcides Perez, Petitioner, } On Writ of Certiorari Recreated:  
v. } United States Court of  
United States. } Appeals for the Second  
Circuit.

[April 26, 1971]

MR. JUSTICE STEWART, dissenting.

Congress surely has power under the Commerce Clause to enact criminal laws to protect the instrumentalities of interstate commerce, to prohibit the misuse of the channels or facilities of interstate commerce, and to prohibit or regulate those intrastate activities which have a demonstrably substantial effect on interstate commerce. But under the statute before us a man can be convicted without any proof of interstate movement, of the use of the facilities of interstate commerce, or of facts showing that his conduct affected interstate commerce. I think the Framers of the Constitution never intended that the national Government might define as a crime and prosecute such wholly local activity through the enactment of federal criminal laws.

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April 8, 1971

Re: No. 600 - Perez v. United States

Dear Bill:

Please join us.

Sincerely,

B.R.M.

Mr. Justice Douglas

cc: Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 8, 1971

Re: No. 600 - Perez v. United States

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Douglas

cc: The Conference

April 9, 1971

Re: No. 680 - Perez v. United States

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Douglas

cc: The Conference

JLW