

The Burger Court Opinion Writing Database

United States v. Campos-Serrano
404 U.S. 293 (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

November 1, 1971

Re: No. 70-46 - United States v. Dimas Campos-Serrano

Dear Potter:

I cannot agree with the proposed opinion in the above case.

If the opinion attracts four additional votes, I will probably write a dissent. If it does not, the case should be "held for nine."

Regards,

W.B.

Mr. Justice Stewart

cc: The Conference

To: ~~Mr. Justice Black~~
Mr. Justice Douglas
~~Mr. Justice Harlan~~
Mr. Justice Brennan
Mr. Justice Stewart
Washington, D. C. 20543 Mr. Justice White
December 2, 1971 Mr. Justice Marshall
Mr. Justice Blackmun

CHAMBERS OF
THE CHIEF JUSTICE

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

December 2, 1971

From: The Chief Justice

Circulated: 12/2/71

Recirculated: _____

MEMORANDUM TO THE CONFERENCE:

No. 70-46 -- United States v. Campos-Serrano

I have pursued the brief reference to possible mootness that arose in oral argument.

My examination of the record shows that Campos-Serrano departed the country under conditions of probation. This departure appears to have taken place before the case was argued in the Court of Appeals.

In Eisler, 338 U.S. 189, the petitioner fled this country while his cert petition was pending in this Court. The Court in effect "suspended" further action in a brief P.C. opinion.

"Petitioner's flight from the country after the grant of his petition for writ of certiorari and after the submission of his cause on the merits necessitates a decision as to the disposition now to be made of this case. Since the petitioner by his own volition may have rendered moot any judgment on the merits, we must, as a matter of our own practice, decide whether the submission should be set

aside and the writ of certiorari dismissed or whether we should postpone review indefinitely by ordering the case removed from the docket, pending the return of the fugitive.

Our practice, however, has been to order such cases to be removed from the docket. Smith v. United States, 94 U.S. 97; Bonahon v. Nebraska, 125 U.S. 692. We adhere to those precedents. Accordingly after this term the cause will be left off the docket until a direction to the contrary shall issue."

Campos-Serrano left the country "voluntarily" in a different sense than Eisler's fugitivity, since he left after receiving a suspended sentence conditioned on his not making an illegal entry for the term of the sentence -- 3 years.

At 338 U.S. 883, you will find that 5 months after the Per Curiam "suspension", the writ of certiorari was dismissed over the opposition of Eisler.

The Eisler case affords a basis for dismissing the instant case as having been moot when the Court of Appeals decided it. This aspect has not been considered so far as I am aware.

To be sure, Eisler was the petitioner who sought this Court's help, but I have difficulty seeing how that alters the fundamentals as applied to this case. In all events I am not persuaded that this case has been adequately ventilated as yet.

Regards,

W. B.

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

CHAMBERS OF
THE CHIEF JUSTICE

December 16, 1971

Re: No. 70-46 - U. S. v. Campos-Serrano

Dear Harry:

Please join me in your dissent.

Regards,

WES

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

October 29, 1971

Dear Potter:

Please join me in your
opinion in No. 70-46 - United States v.
Dimas Campos-Serrano.

W.W.
William O. Douglas

Mr. Justice Stewart

CC: Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 3, 1971

Dear Potter:

I agree with your recirculation
today of No. 70-46 - U. S. v. Campos-Serrano.

W. O. D.

W

Mr. Justice Stewart

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 1, 1971

RE: No. 70-46 - United States v. Dimas Campos-
Serrano

Dear Potter:

I agree.

Sincerely,

Bril

Mr. Justice Stewart

cc: The Conference

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

Stewart
11/3

From: Stewart, J.

2nd DRAFT

Circulated: OCT 28 1971

SUPREME COURT OF THE UNITED STATES

Recirculated: _____

No. 70-46

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Dimas Campos-Serrano. } Appeals for the Seventh
Circuit.

[November —, 1971]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent was convicted in a federal district court for possession of a counterfeit alien registration receipt card in violation of 18 U. S. C. § 1546.¹ The Court of Appeals reversed the conviction, 430 F. 2d 173, holding that because of the circumstances under which Government agents had acquired the card from the respondent, it had been unconstitutionally admitted against him at the trial under *Miranda v. Arizona*, 384 U. S. 436. We granted certiorari to consider the constitutional question. 401 U. S. 936. We do not reach

¹ The applicable portion of § 1546 reads as follows:

"Whoever, knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, or document, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained

"Shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

pp 283

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
 Mr. Justice Marshall
Mr. Justice Blackmun

From: Stewart, J.

4th DRAFT

Circulated:

SUPREME COURT OF THE UNITED STATES DEC 13, 1971
Recirculated:

No. 70-46

United States, Petitioner, v. Dimas Campos-Serrano. } On Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit.

[December —, 1971]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent was convicted in a federal district court for possession of a counterfeit alien registration receipt card in violation of 18 U. S. C. § 1546,¹ and sentenced to a three year prison term.² The Court

¹ The applicable portion of § 1546 reads as follows:
"Whoever, knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, or document, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained

"Shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

² The sentence was suspended, and the respondent was placed on probation for three years "on condition that he return to Mexico and not return to the United States illegally." Pursuant to this sentence, he was remanded to the custody of the Immigration and Naturalization Service for deportation under a previous order. It appears that he is now in Mexico. Clearly, the fact that the respondent is now out of the country does not render this case

Stylistic change and
pp 487

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

5th DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES Recirculated: DEC 17 1971

No. 70-46

United States, Petitioner, | On Writ of Certiorari to the
v. | United States Court of
Dimas Campos-Serrano. | Appeals for the Seventh
Circuit.

[December —, 1971]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent was convicted in a federal district court for possession of a counterfeit alien registration receipt card in violation of 18 U. S. C. § 1546,¹ and sentenced to a three year prison term.² The Court

¹ The applicable portion of § 1546 reads as follows:

"Whoever, knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, or document, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained

"Shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

² The sentence was suspended, and the respondent was placed on probation for three years "on condition that he return to Mexico and not return to the United States illegally." Pursuant to this sentence, he was remanded to the custody of the Immigration and Naturalization Service for deportation under a previous order. It appears that he is now in Mexico. Clearly, the fact that the respondent is now out of the country does not render this case

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 13, 1971

Re: No. 70-46 - U.S. v. Campos-
Serrano

Dear Harry:

Please join me in your
dissenting opinion in this case.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 3, 1971

*Nothing from
BREWSTER
To be
re argued
as of 11/7*

Re: No. 70-46 - United States v. Dimas Campos-Serrano

Dear Potter:

Please join me.

Sincerely,


T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 3, 1971

Re: No. 70-46 - U.S. v. Campos-Serrano

Dear Potter:

I agree with your recirculation
today of your opinion.

Sincerely,


T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 12, 1971

Re: No. 70-46 - United States v. Campos-Serrano

Dear Potter:

I have read with great care your proposed opinion for this case by which you affirm on a ground rejected by the Seventh Circuit. This note is just to let you know that at present I am unable to join the opinion.

Sincerely,

Ha. B.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 6, 1971

Re: No. 70-46 - U.S. v. Campos-Serrano

Dear Potter:

I have read the Chief Justice's suggestion about Eisler v. United States, 338 U.S. 189. It may or may not persuade me. In any event, since others have not volunteered, I would like to try my hand at a dissent. I shall endeavor to get this to you before too long.

Sincerely,

H.A.B.

—
Mr. Justice Stewart

cc: The Conference

3/

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

No. 70-46

Circulated: 12/10/71

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Dimas Campos-Serrano. } Appeals for the Seventh
Circuit.

[December —, 1971]

MR. JUSTICE BLACKMUN, dissenting.

The Court today affirms the judgment of the Court of Appeals "upon a discrete statutory ground" and does not reach the questions with respect to which certiorari was granted.¹ This statutory ground was rejected by the District Court when it denied a defense motion to dismiss the indictment. It was also rejected by the Court of Appeals. 430 F. 2d. at 175-176. I would reject it here.

The statutory issue to which the Court retreats is whether an alien registration card is a "document required for entry into the United States," within the meaning of 18 U. S. C. § 1546. The Court holds, somewhat to the surprise of the litigants I am sure, that the card is not such a document, and that Campos-Serrano's indictment, therefore, charged no offense under the statute. I feel that this conclusion has no support in either the statutory language and meaning or in the legislative

¹ "1. Whether the court below unduly extended *Miranda v. Arizona*, 384 U. S. 436, by holding, on the facts of this case, that agents of the Immigration and Naturalization Service were required to give respondent warnings before asking him to produce his alien registration card.

"2. Whether an alien registration card is a 'required record' which an alien must produce upon request irrespective of whether he is 'in custody.'" Petition for certiorari 2.

Wm Douglas
12/10/71