

The Burger Court Opinion Writing Database

Cruz v. Beto

405 U.S. 319 (1972)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: Mr. Justice Brandeis
Mr. Justice Cardozo
Mr. Justice Clark
Mr. Justice Goldmann
Mr. Justice Harlan
Mr. Justice Hughes
Mr. Justice Sutherland
Mr. Justice Taney
Mr. Justice Traynor
Mr. Justice Warren

From: The Chief Justice

Circulated: **MAR 16 1957**

Recirculated: _____

No. 71-5552 -- Fred A. Cruz v. George J. Beto, Director,
Texas Department of Corrections

MR. CHIEF JUSTICE BURGER, joining in the result.

I join in the result reached even though the allegations of the complaint are on the borderline necessary to compel an evidentiary hearing. Some of the claims alleged are frivolous; others do not present justiciable issues. There cannot possibly be any constitutional or legal requirement that the government provide materials for every religion and sect practiced in this diverse country. At most, Buddhist materials cannot be denied to prisoners if someone offers to supply them. This is not a Buddhist or Moslem society and only a tiny minority professes adherence to those faiths. No barriers can be placed in the way of followers of such faiths but the government cannot be required to supply prisoners with any religious materials.

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LAW (TITLE 17, U.S. CODE)

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

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

FRED A. CRUZ v. GEORGE J. BETO, DIRECTOR,
TEXAS DEPARTMENT OF CORRECTIONS

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

No. 71-5552. Decided March —, 1972

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

FRED A. CRUZ *v.* GEORGE J. BETO, DIRECTOR,
TEXAS DEPARTMENT OF CORRECTIONS

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

No. 71-5552. Decided February —, 1972

MR. JUSTICE DOUGLAS, dissenting.

I would grant certiorari in this case and summarily reverse for findings of fact.

According to the allegations of the complaint stating a cause of action under 42 U. S. C. § 1983, Cruz is a Buddhist who is in a Texas prison. While prisoners who are members of other religious sects are allowed to use the prison chapel, Cruz is not. He shared his Buddhist religious material with other prisoners and according to the allegations was in retaliation placed in solitary confinement on a diet of bread and water for two weeks, without access to newspapers, magazines, and all other sources of news. He also alleged that he was prohibited from corresponding with his religious advisor in the Buddhist sect. Those in the isolation unit spend 22 hours a day in total idleness.

Again, according to the allegations, Texas encourages inmates to participate in other religious programs; providing at state expense chaplains of the Catholic, Jewish, and Protestant faiths, providing also at state expense copies of the Jewish and Christian Bibles, conducting weekly Sunday school classes and religious services. According to the allegations, points of good merit are given prisoners as a reward for attending orthodox religious services, those points enhancing a prisoner's eligibility for desirable job assignments and early parole

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

FRED A. CRUZ v. GEORGE J. BETO, DIRECTOR,
TEXAS DEPARTMENT OF CORRECTIONS

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

No. 71-5552. Decided February —, 1972

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: [illegible]

FRED A. CRUZ v. GEORGE J. BETO, DIRECTOR,
TEXAS DEPARTMENT OF CORRECTIONS

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

No. 71-5552. Decided February —, 1972

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

I would grant certiorari in this case and summarily reverse for findings of fact.

According to the allegations of the complaint stating a cause of action under 42 U. S. C. § 1983, Cruz is a Buddhist, who is in a Texas prison. While prisoners who are members of other religious sects are allowed to use the prison chapel, Cruz is not. He shared his Buddhist religious material with other prisoners and, according to the allegations, in retaliation was placed in solitary confinement on a diet of bread and water for two weeks, without access to newspapers, magazines, and all other sources of news. He also alleged that he was prohibited from corresponding with his religious advisor in the Buddhist sect. Those in the isolation unit spend 22 hours a day in total idleness.

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5th DRAFT

SUPREME COURT OF THE UNITED STATES

FRED A. CRUZ v. GEORGE J. BETO, DIRECTOR,
TEXAS DEPARTMENT OF CORRECTIONS

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

No. 71-5552. Decided February —, 1972

PER CURIAM.

The complaint, alleging a cause of action under 42 U. S. C. § 1983, states that Cruz is a Buddhist, who is in a Texas prison. While prisoners who are members of other religious sects are allowed to use the prison chapel, Cruz is not. He shared his Buddhist religious material with other prisoners and, according to the allegations, in retaliation was placed in solitary confinement on a diet of bread and water for two weeks, without access to newspapers, magazines, and all other sources of news. He also alleged that he was prohibited from corresponding with his religious advisor in the Buddhist sect. Those in the isolation unit spend 22 hours a day in total idleness.

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*The amended complaint alleges, *inter alia*:

"Plaintiff is an inmate of the Texas Department of Corrections and is a member of the Buddhist Churches of America. At the time

Justice
Brennan
Stewart
White
Marshall
Blackmun
Rehnquist

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 28, 1972

MEMORANDUM TO THE CONFERENCE:

Re: No. 71-5552 - Cruz v. Beto

I gathered that while four voted to grant, none desires that the case be heard. Hence I inferred that I would prepare a Per Curiam which is attached.

William O. Douglas

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

SUPREME COURT OF THE UNITED STATES

FRED A. CRUZ v. GEORGE J. BETO, DIRECTOR, J.
TEXAS DEPARTMENT OF CORRECTIONS

Circulated:
ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT: 3/3/72

No. 71-5552. Decided March 6, 1972

PER CURIAM.

The complaint, alleging a cause of action under 42 U. S. C. § 1983, states that Cruz is a Buddhist, who is in a Texas prison. While prisoners who are members of other religious sects are allowed to use the prison chapel, Cruz is not. He shared his Buddhist religious material with other prisoners and, according to the allegations, in retaliation was placed in solitary confinement on a diet of bread and water for two weeks, without access to newspapers, magazines, and all other sources of news. He also alleged that he was prohibited from corresponding with his religious advisor in the Buddhist sect. Those in the isolation unit spend 22 hours a day in total idleness.

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¹ The amended complaint alleges, *inter alia*:

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To: The Chief Justice
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Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

P 3

SUPREME COURT OF THE UNITED STATES

From: Berg, J. J.

FRED A. CRUZ v. GEORGE J. BETO, DIRECTOR,
TEXAS DEPARTMENT OF CORRECTIONS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 71-5552. Decided March 6, 1972

PER CURIAM.

The complaint, alleging a cause of action under 42 U. S. C. § 1983, states that Cruz is a Buddhist, who is in a Texas prison. While prisoners who are members of other religious sects are allowed to use the prison chapel, Cruz is not. He shared his Buddhist religious material with other prisoners and, according to the allegations, in retaliation was placed in solitary confinement on a diet of bread and water for two weeks, without access to newspapers, magazines, and all other sources of news. He also alleged that he was prohibited from corresponding with his religious advisor in the Buddhist sect. Those in the isolation unit spend 22 hours a day in total idleness.

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noted
noted*

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 24, 1972

Re: No. 71-5552 - Cruz v. Beto

Dear Bill:

Please join me.

Sincerely,

Byron

Mr. Justice Douglas

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

*noted
return*

February 28, 1972

Re: No. 71-5552 - Cruz v. Beto

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Mr. Justice Douglas

cc: The Conference

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zation of the Hoover Institution Archives.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 8, 1972

Re: No. 71-5552 - Cruz v. Beto

Dear Bill:

Please note me as concurring in the
result.

Sincerely,

H. A. B.

Mr. Justice Douglas

cc: The Conference

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zation of the Hoover Institution Archives.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 1, 1972

Re: 71-5552 Cruz v. Beto

Dear Bill:

Please join me in your Per Curiam opinion.

Sincerely,

L. F. P.

Mr. Justice Douglas

cc: The Conference

Bill Rehnquist -

I had some trouble
coming down to a position on
this one, as I thought your
fine opinion had merit. I have
joined the Per Curiam after
Bill Douglas made some changes
I suggested. L. F. P.

File

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

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Revised: 2/25/72

FRED A. CRUZ v. GEORGE J. BETO, DIRECTOR,
TEXAS DEPARTMENT OF CORRECTIONS

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

No. 71-5552. Decided February —, 1972

Memorandum of MR. JUSTICE REHNQUIST.

Unlike MR. JUSTICE DOUGLAS, I am not persuaded that petitioner's complaint states a claim under the First Amendment, nor that if the opinion of the Court of Appeals is vacated the trial court must necessarily conduct a trial upon the complaint.¹

Under the First Amendment, of course, Texas may neither "establish a religion" nor may it "impair the free exercise" thereof. Petitioner alleges that voluntary services are made available at prison facilities so that Protestants, Catholics, and Jews may attend church services of their choice. None of our prior holdings indicate that such a program on the part of prison officials amounts to the establishment of a religion.

Petitioner is a prisoner, serving 15 years for robbery in a Texas penitentiary. He is understandably not as free to practice his religion as if he were outside the prison walls. But there is no intimation in his pleadings that he is being punished for his religious views, as was the case in *Cooper v. Pate*, 378 U. S. 546 (1964), where a prisoner was denied the receipt of mail about his religion. *Cooper* presented no question of interference

¹ MR. JUSTICE DOUGLAS would "reverse for findings of fact" *post*, at —. But of course the only procedural vehicle for making such findings in this civil litigation would be the trial to which any civil litigant is entitled, inasmuch as this Court has never dealt with the special procedural problems presented by prisoners' civil suits. See Fed. Rules Civ. Proc. (28 U. S. C.).



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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

FRED A. CRUZ v. GEORGE J. BETO, DIRECTOR,
TEXAS DEPARTMENT OF CORRECTIONS

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

No. 71-5552. Decided February —, 1972

MR. JUSTICE REHNQUIST, dissenting.

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To: Mr. Tolson
Mr. Boardman
Mr. Nichols
Mr. Belmont
Mr. Ladd
Mr. Clegg
Mr. Glavin
Mr. Rosen
Mr. Tracy
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Hendon
Mr. Pennington
Mr. Quinn
Mr. Nease
Miss Gandy

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

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Recommenated: 3/6/7~

FRED A. CRUZ v. GEORGE J. BETO, DIRECTOR
TEXAS DEPARTMENT OF CORRECTIONS

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

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