

# The Burger Court Opinion Writing Database

## *Gonzales v. Beto*

405 U.S. 1052 (1972)

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





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

CHAMBERS OF  
THE CHIEF JUSTICE

March 27, 1972

MEMORANDUM TO THE CONFERENCE:

Re: No. 71-5580 -- Gonzales v. Beto

My hope in the above case is that Potter and Bill Rehnquist will express their separate views and the "one liner" remanding on Turner be the Court action.

I would like to avoid a full argument on this and the above program is the way to do it.

Regards,

WCB

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

April 5, 1972

CHAMBERS OF  
THE CHIEF JUSTICE

*noted  
WHR has not  
seen  
file*

MEMORANDUM TO THE CONFERENCE:

Re: No. 71-5580 -- Gonzales v. Beto

Potter Stewart's statesmanlike proposal for disposition of this case by having his opinion and Bill Rehnquist's follow a Per Curiam remand under Turner was a happy solution. That solution became watered down somewhat when Bill Douglas joined Potter, and Byron joined the Rehnquist opinion.

If we can maintain this sound judicial equipoise, we can dispose of this case without more ado!

I hope Potter's statesmanship has a pervasive influence on others as it has on me. I pledge to say nothing, but support the remand.

On this basis we can let it come down Monday.

Regards,

*WHR*

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*Noted  
BB return*

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

March 20, 1972

Dear Potter:

Please join me in your

Per Curiam in No. 71-5580 - Gonzales  
v. Beto, dated March 18, 1972.

*WV*  
William O. Douglas

Mr. Justice Stewart

CC: The Conference

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*7/27/72*  
*Noted*  
*Return*

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

March 27, 1972

Dear Potter:

Please join me in your  
concurring statement in No. 71-5580 -  
Gonzales v. Beto, as recirculated  
March 25.

*W.D.*  
William O. Douglas

Mr. Justice Stewart

CC: The Conference

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*Mr. Stewart  
suggested  
ad. of return*

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 7, 1972

RE: No. 71-5580 - Gonzales v. Beto

Dear Potter:

I agree with your Memorandum in the  
above.

Sincerely,

*Bill*

Mr. Justice Stewart

cc: The Conference

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Sanford, California 94309-0010



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*Noted  
Bj  
return*

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 20, 1972

RE: No. 71-5580 - Gonzales v. Beto

Dear Potter:

I agree with the Per Curiam you  
have prepared in the above.

Sincerely,

*Bren*

Mr. Justice Stewart

cc:The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. April 5, 1972

RE: No. 71-5580 - Gonzales v. Beto

Dear Chief:

I also "pledge to say nothing, but  
support the remand," in the above.

Sincerely,

*Bill*

The Chief Justice

cc: The Conference

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Mr. Chief Justice Warren  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated: MAR 6 1972

RUDY GONZALES v. GEORGE J. BETO, DIRECTOR, TEXAS DEPT. OF CORRECTIONS

Recirculated: \_\_\_\_\_

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

No. 71-5580. Decided March —, 1972

Memorandum of Mr. JUSTICE STEWART.

A gas station attendant was shot to death during the course of a holdup in Dawson County, Texas, on a February night in 1956. Five years later the petitioner was arrested, tried, and convicted of the crime. The prosecution's case against the petitioner rested almost totally upon the testimony of the county sheriff. The sheriff testified to the authenticity of a written confession that he said had been dictated and signed with an "X" by the petitioner. The witness insisted on cross-examination that, although the petitioner could not read or write, and had some difficulty speaking and understanding English, he had indeed dictated the rather complex confession and had understood what he was signing. Only one other witness, who corroborated a part of the sheriff's testimony, connected the petitioner with the crime.

The county sheriff, however, played a dual role at the trial. For he was not only the key prosecution witness against the petitioner, but the bailiff of the jury as well. In the latter capacity, he was responsible for the care and protection of the jurors. He had, therefore, substantial and continuing contact with and authority over them during the entire course of the trial. On several occasions, he conducted them in and out of the courtroom on the instructions of the judge. Once, the judge even asked him to step down from the witness stand, where

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pp 1,3,5

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

2nd DRAFT

From: Stewart, J.

**SUPREME COURT OF THE UNITED STATES.**

Circulated:

Recirculated: MAR 18 1972

**RUDY GONZALES v. GEORGE J. BETO, DIRECTOR, TEXAS DEPT. OF CORRECTIONS**

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

No. 71-5580. Decided March —, 1972

PER CURIAM.

A gas station attendant was shot to death during the course of a holdup in Dawson County, Texas, on a February night in 1956. Five years later the petitioner was arrested, tried, and convicted of the crime. The prosecution's case against the petitioner rested almost totally upon the testimony of the county sheriff. The sheriff testified to the authenticity of a written confession that he said had been dictated and signed with an "X" by the petitioner. The witness insisted on cross-examination that, although the petitioner could not read or write, and had some difficulty speaking and understanding English, he had indeed dictated the rather complex confession and had understood what he was signing. Only one other witness, who corroborated a part of the sheriff's testimony, connected the petitioner with the crime.

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1, 3, 4, 5

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

3rd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

MAR 25 1972

RUDY GONZALES v. GEORGE J. BETO, DIRECTOR,  
TEXAS DEPT. OF CORRECTIONS

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

No. 71-5580. Decided March —, 1972

PER CURIAM.

The petition for a writ of certiorari is granted and the judgment is reversed. *Turner v. Louisiana*, 379 U. S. 466.

MR. JUSTICE STEWART, concurring in the judgment.

A gas station attendant was shot to death during the course of a holdup in Dawson County, Texas, on a February night in 1956. Five years later the petitioner was arrested, tried, and convicted of the crime. The prosecution's case against the petitioner rested almost totally upon the testimony of the county sheriff. The sheriff testified to the authenticity of a written confession that he said had been dictated and signed with an "X" by the petitioner. The witness insisted on cross-examination that, although the petitioner could not read or write, and had some difficulty speaking and understanding English, he had indeed dictated the rather complex confession and had understood what he was signing. Only one other witness, who corroborated a part of the sheriff's testimony, connected the petitioner with the crime.

The county sheriff, however, played a dual role at the trial. For he was not only the key prosecution witness against the petitioner, but the bailiff of the jury as well. In the latter capacity, he was responsible for the care and protection of the jurors. He had, therefore, substantial and continuing contact with and authority over

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P. 1

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~~

4th DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Revised:

Recirculated: APR 14 1972

RUDY GONZALES v. GEORGE J. BETO, DIRECTOR,  
TEXAS DEPT. OF CORRECTIONS

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

No. 71-5580. Decided *April 17* —, 1972

PER CURIAM.

The petition for a writ of certiorari is granted and the judgment is reversed. *Turner v. Louisiana*, 379 U. S. 466.

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, concurring in the judgment.

A gas station attendant was shot to death during the course of a holdup in Dawson County, Texas, on a February night in 1956. Five years later the petitioner was arrested, tried, and convicted of the crime. The prosecution's case against the petitioner rested almost totally upon the testimony of the county sheriff. The sheriff testified to the authenticity of a written confession that he said had been dictated and signed with an "X" by the petitioner. The witness insisted on cross-examination that, although the petitioner could not read or write, and had some difficulty speaking and understanding English, he had indeed dictated the rather complex confession and had understood what he was signing. Only one other witness, who corroborated a part of the sheriff's testimony, connected the petitioner with the crime.

The county sheriff, however, played a dual role at the trial. For he was not only the key prosecution witness against the petitioner, but the bailiff of the jury as well. In the latter capacity, he was responsible for the care

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*noted  
CR return*

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 30, 1972

Re: No. 71-5580 - Gonzales v. Beto

Dear Bill:

I am still with you in your  
dissent.

Sincerely,

*Byron*

Mr. Justice Rehnquist

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*mm* *file*

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

*noted*  
*off ret.*

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 7, 1972

Re: No. 71-5580 - Gonzales v. Beto

Dear Potter:

I agree with your memorandum  
of March 6.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Stewart

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*MM*  
*2*  
*3/23/72*  
*Return*

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 23, 1972

Re: No. 71-5580 - Gonzales v. Beto

Dear Potter:

Please join me in your per curiam.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Stewart

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zation of the Hoover Institution Archives.

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*QWL*

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 27, 1972

*noted  
(again) re: return*

Re: No. 71-5580 - Gonzales v. Beto

Dear Potter:

Please join me in your concurring  
opinion.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Stewart

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 27, 1972

Re: No. 71-5580 - Gonzales v. Beto

Dear Potter:

My reaction to this case is as follows. I would go along with a grant and reverse on Turner, without writing pro and con. If there is to be writing, as obviously there is, my vote is to grant and hear the case.

Sincerely,

*H.A.B.*

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 6, 1972

Re: No. 71-5580 Gonzales v. Beto

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,

L. F. P.

Mr. Justice Rehnquist

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*7/2*

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 30, 1972

*noted  
return*

MEMORANDUM TO THE CONFERENCE

Re: 71-5580 Gonzales v. Beto

I agree with the suggestion in the Chief's memorandum of March 27.

I joined in Bill Rehnquist's opinion, but believe now that the best disposition is a one-sentence Per Curiam (citing Turner). This will leave Potter and Bill free to express their separate views.

Sincerely,

*L. F. P.*

lfp/ss





*Law*

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 5, 1972

*Noted  
WHR-  
File*

MEMORANDUM TO THE CONFERENCE:

Re: No. 71-5580 Gonzales v. Beto

As previously indicated I am in accord with the Chief's  
suggestion.

*L F P.*  
L. F. P., Jr.

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Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell

1st DRAFT

SUPREME COURT OF THE UNITED STATES

from: Rehnquist, J.

RUDY GONZALES v. GEORGE J. BETO, DIRECTOR,  
TEXAS DEPT. OF CORRECTIONS

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

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

No. 71-5580. Decided March —, 1972

MR. JUSTICE REHNQUIST, dissenting.

In order to reverse summarily the state court conviction of a confessed murderer, the majority in this case chooses to convert a salutary principle into a rigid rule unjustified by considerations of constitutional policy or fairness. I must respectfully dissent.

Petitioner Rudy Gonzales was convicted of murder after a trial by jury in the District Court of Dawson County, Texas. The case was not a complicated one. The State's evidence consisted primarily of petitioner's signed and witnessed confession, admitting his complicity in an armed robbery and murder of the proprietor of a local service station. The evidence showed that the police had warned petitioner of his rights before he made this confession, and there is no suggestion that the statement was in any way coerced.

In cross-examining the sheriff who obtained the confession, petitioner's counsel questioned whether petitioner's command of the English language had been sufficient for him to understand what transpired at the time of the confession. The sheriff responded that while petitioner had not spoken perfect English, he had been able to comprehend and answer sensibly all the sheriff's questions. The defense presented no evidence to the jury, which found petitioner guilty within 10 minutes after the close of the case.

Petitioner's sole claim to habeas relief is that he was deprived of due process of law because the sheriff of

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The Honorable Justices  
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Mr. Justice Warren  
Mr. Justice Brandeis  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Marshall  
Mr. Justice Stewart  
Mr. Justice Sutherland  
Mr. Justice Tamm  
Mr. Justice Tompkins  
Mr. Justice Traynor  
Mr. Justice White  
Mr. Justice Brandeis  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Marshall  
Mr. Justice Stewart  
Mr. Justice Sutherland  
Mr. Justice Tamm  
Mr. Justice Tompkins  
Mr. Justice Traynor  
Mr. Justice White

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

From: Rehnquist, J.

RUDY GONZALES v. GEORGE J. BETO, DIRECTOR,  
TEXAS DEPT. OF CORRECTIONS

Circulated:

Recirculated: 2/30/72

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

No. 71-5580. Decided March —, 1972

MR. JUSTICE REHNQUIST, whom MR. JUSTICE WHITE  
joins, dissenting.

In order to reverse summarily the state court conviction of a confessed murderer, the majority in this case chooses to convert a salutary principle into a rigid rule unjustified by considerations of constitutional policy or fairness. I must respectfully dissent.

Petitioner Rudy Gonzales was convicted of murder after a trial by jury in the District Court of Dawson County, Texas. The case was not a complicated one. The State's evidence consisted primarily of petitioner's signed and witnessed confession, admitting his complicity in an armed robbery and murder of the proprietor of a local service station. The evidence showed that the police had warned petitioner of his rights before he made this confession, and there is no suggestion that the statement was in any way coerced.

In cross-examining the sheriff who obtained the confession, petitioner's counsel questioned whether petitioner's command of the English language had been sufficient for him to understand what transpired at the time of the confession. The sheriff responded that while petitioner had not spoken perfect English, he had been able to comprehend and answer sensibly all the sheriff's questions. The defense presented no evidence to the jury, which found petitioner guilty within 10 minutes after the close of the case.

Petitioner's sole claim to habeas relief is that he was deprived of due process of law because the sheriff of