

# The Burger Court Opinion Writing Database

*Preiser v. Rodriguez*

411 U.S. 475 (1973)

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

May 3, 1973

Re: No. 71-1369 - Oswald v. Rodriguez

Dear Potter:

Please join me.

Regards,

Mr. Justice Stewart

Copies to the Conference

6

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

April 13, 1973

Dear Bill:

Please join me in your dissent  
in 71-1369 Oswald v. Rodriguez.

*WD*  
William O. Douglas

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 23, 1973

Dear Bill:

Looking at today's assignment sheet, I note that you are the lead dissenter in No. 71-1369 - Oswald v. Rodriguez and No. 71-1255 United States v. Ash. I think you said you wanted me to take on Ash, and I am happy to. Since I wrote Wilwording, do you want me also to take on Oswald? I'd be glad to.

Sincerely,



Mr. Justice Douglas

Dear Bill

Please take on

both dissents

1/23/73

u-11

1.18

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. February 26, 1973

RE: No. 71-1369 - Oswald v. Rodriguez

Dear Potter:

I shall circulate a dissent in the above  
in due course.

Sincerely,



Mr. Justice Stewart

cc: The Conference

WJ

To: The Chief Justice  
Mr. Justice Douglas  
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

From: Brennan, J.

Circulated: 4/11/73

No. 71-1369

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

Russell G. Oswald, Commissioner of Correctional Services, et al., Petitioners.  
v.  
Eugene Rodriguez et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April —, 1973]

MR. JUSTICE BRENNAN, dissenting.

The question presented by this case is one that I, like the Court of Appeals, had thought already resolved by our decision last Term in *Wilwording v. Swenson*, 404 U. S. 249 (1971). We held there that the Ku Klux Act of 1871,<sup>1</sup> 42 U. S. C. § 1983; 28 U. S. C. § 1334 (3), confers jurisdiction on the United States District Courts to entertain a state prisoner's application for injunctive relief against allegedly unconstitutional conditions of confinement. See also *Humphrey v. Cady*, 405 U. S. 504, 516-517 n. 18 (1972); *Houghton v. Shafer*, 392 U. S. 639 (1968). At the same time, we held that "[t]he remedy provided by these Acts 'is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.' *Monroe v. Pape*, 365 U. S. 167, 183 (1961); *McNeese v. Board of Education*, 373 U. S. 668 (1963); *Damico v. California*, 389 U. S. 416 (1967). State prisoners are not held to any stricter standard of exhaustion than other civil rights plaintiffs." *Wilwording v. Swenson*, *supra*, at 251.

Regrettably, the Court today eviscerates that proposition by drawing a distinction that is both analytically

<sup>1</sup>Act of April 20, 1871, c. 22, § 1, 17 Stat. 13, Rev. Stat. § 1979.

1, 9-13, 25-26

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

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

Brennan, J.

No. 71-1369

Circulated:

Recirculated: 4/18/73

Russell G. Oswald, Commissioner of Correctional Services, et al., Petitioners,  
*v.*  
 Eugene Rodriguez et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April —, 1973]

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

The question presented by this case is one that I, like the Court of Appeals, had thought already resolved by our decision last Term in *Wilwording v. Swenson*, 404 U. S. 249 (1971). We held there that the Ku Klux Act of 1871,<sup>1</sup> 42 U. S. C. § 1983; 28 U. S. C. § 1343 (3), confers jurisdiction on the United States District Courts to entertain a state prisoner's application for injunctive relief against allegedly unconstitutional conditions of confinement. See also *Humphrey v. Cady*, 405 U. S. 504, 516-517 n. 18 (1972); *Houghton v. Shafer*, 392 U. S. 639 (1968). At the same time, we held that "[t]he remedy provided by these Acts 'is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.' *Monroe v. Pape*, 365 U. S. 167, 183 (1961); *McNeese v. Board of Education*, 373 U. S. 668 (1963); *Damico v. California*, 389 U. S. 416 (1967). State prisoners are not held to any stricter standard of exhaustion than other civil rights plaintiffs." *Wilwording v. Swenson, supra*, at 251.

Regrettably, the Court today eviscerates that proposition by drawing a distinction that is both analytically

<sup>1</sup>Act of April 20, 1871, c. 22, § 1, 17 Stat. 13, Rev. Stat. § 1979.

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

*Handwritten signatures*  
2nd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: FEB 23 1973

Recirculated: \_\_\_\_\_  
No. 71-1369

Russell G. Oswald, Commissioner of Correctional Services, et al., Petitioners,  
*v.*

Eugene Rodriguez et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents in this case were state prisoners who were deprived of good conduct time credits by the New York State Department of Correctional Services as a result of disciplinary proceedings. They then brought actions in a federal district court, pursuant to the Civil Rights Act, 42 U. S. C. § 1983. Alleging that the Department had acted unconstitutionally in depriving them of the credits, they sought injunctive relief to compel restoration of the credits, which in each case would result in their immediate release from confinement in prison. The question before us is whether state prisoners seeking such redress may obtain equitable relief under the Civil Rights Act, even though the federal habeas corpus statute, 28 U. S. C. § 2254, clearly provides a specific federal remedy.

The question is of considerable practical importance. For if a remedy under the Civil Rights Act is available, a plaintiff need not first seek redress in a state forum. *Monroe v. Pape*, 365 U. S. 167, 183 (1961); *McNeese v. Board of Education*, 373 U. S. 668, 671 (1963); *Damico*

20, 21, 23

Hold for  
WFB

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justiceberman  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackman  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

From: Stewart, J.

## SUPREME COURT OF THE UNITED STATES

No. 71-1369

Recirculated: MAR 2 1973

Russell G. Oswald, Commissioner of Correctional Services, et al., Petitioners,  
v.  
Eugene Rodriguez et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents in this case were state prisoners who were deprived of good conduct time credits by the New York State Department of Correctional Services as a result of disciplinary proceedings. They then brought actions in a federal district court, pursuant to the Civil Rights Act, 42 U. S. C. § 1983. Alleging that the Department had acted unconstitutionally in depriving them of the credits, they sought injunctive relief to compel restoration of the credits, which in each case would result in their immediate release from confinement in prison. The question before us is whether state prisoners seeking such redress may obtain equitable relief under the Civil Rights Act, even though the federal habeas corpus statute, 28 U. S. C. § 2254, clearly provides a specific federal remedy.

The question is of considerable practical importance. For if a remedy under the Civil Rights Act is available, a plaintiff need not first seek redress in a state forum. *Monroe v. Pape*, 365 U. S. 167, 183 (1961); *McNeese v. Board of Education*, 373 U. S. 668, 671 (1963); *Damico*

11, 12, 13, 17, 21, 23

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

Circulated:

No. 71-1369

Recirculated: APR 13 1973

Russell G. Oswald, Commissioner of Correctional Services, et al., Petitioners,  
v.  
Eugene Rodriguez et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents in this case were state prisoners who were deprived of good conduct time credits by the New York State Department of Correctional Services as a result of disciplinary proceedings. They then brought actions in a federal district court, pursuant to the Civil Rights Act, 42 U. S. C. § 1983. Alleging that the Department had acted unconstitutionally in depriving them of the credits, they sought injunctive relief to compel restoration of the credits, which in each case would result in their immediate release from confinement in prison. The question before us is whether state prisoners seeking such redress may obtain equitable relief under the Civil Rights Act, even though the federal habeas corpus statute, 28 U. S. C. § 2254, clearly provides a specific federal remedy.

The question is of considerable practical importance. For if a remedy under the Civil Rights Act is available, a plaintiff need not first seek redress in a state forum. *Monroe v. Pape*, 365 U. S. 167, 183 (1961); *McNeese v. Board of Education*, 373 U. S. 668, 671 (1963); *Damico*

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 27, 1973

Re: No. 71-1369 - Oswald v. Rodriguez

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 16, 1973

Re: No. 71-1369 - Oswald v. Rodriguez

Dear Potter:

I am still with you.

Sincerely,

*Payne*

Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 26, 1973

Re: No. 71-1369 - Oswald v. Rodriguez

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Mr. Justice Brennan

cc: Conference

B

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 1, 1973

Re: No. 71-1369 - Oswald v. Rodriguez

Dear Potter:

Please join me.

Sincerely,

*H. A. B.*

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 27, 1973

Re: No. 71-1369 Oswald v. Rodriguez

Dear Potter:

I am happy to join your opinion for the Court.

Sincerely,

L. F. P.

Mr. Justice Stewart

cc: The Conference

February 27, 1973

Re: No. 71-1369 Oswald v. Rodriguez

Dear Potter:

I am happy to join your opinion for the Court.

Sincerely,

Mr. Justice Stewart

cc: The Conference

Potter: As a note to you (not circulated to the Conference), I inquire whether you think it necessary to include all of the language near the end of your opinion (pp. 22-24) with respect to the types of suits available to prisoners. Specifically, I would be inclined to omit the quotation from the Harvard Law Review note, as including this in the opinion seems to go somewhat beyond leaving open for future decision what state of facts will constitute the basis for habeas jurisdiction.

While I would prefer a little more caution (on the theory that prisoners already are burdening the courts with far too many suits, and I do not wish to encourage more), I am joining your opinion and will leave any possible change here entirely up to you.

L. F. P., Jr.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 17, 1973

Re: No. 71-1369 Oswald v. Rodriguez

Dear Potter:

I am still with you.

Sincerely,

*L. Lewis*

Mr. Justice Stewart

cc: The Conference

B NY

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION  
OF THE LIBRARY OF CONGRESS

February 28, 1973

Re: No. 71-1369 - Oswald v. Rodriguez

Dear Potter:

Please join me in your opinion for the Court in this case.

Sincerely,

WW

Mr. Justice Stewart

Copies to the Conference