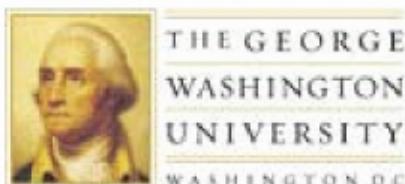


The Burger Court Opinion Writing Database

Almeida-Sanchez v. United States
413 U.S. 266 (1973)

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



19 NY
Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
THE CHIEF JUSTICE

May 9, 1973

Re: No. 71-6278 - Condrado Almeida-Sanchez v.
United States

Dear Byron:

With your leave I may add a few inconsequential comments, concurring, along the following lines:

I join fully in the Court's opinion, but it may be useful to note that the scope of the Court's holding today does not begin to approach the sweeping dimensions attributed to it by the dissent. Regulations must, of necessity, often be cast in general terms, cf. Mourning v. Family, ____ U.S. ____ (dec. 5/ ____/73). Indeed, this is so of the Constitution in many of its provisions. The Fourth Amendment itself uses general terms in adopting "reasonableness" as its test. Reasonably regarded, the regulation in question here was obviously made to reach the problems described by Mr. Justice White in relation to borders which extend thousands of miles through trackless forests or, as here, literally uninhabited desert space; the government disclaims any purpose of applying them in inhabited areas.

The framers of the Fourth Amendment were farsighted and perceptive enough to speak in common sense terms that could be applied to a wide variety of particular situations. An extended search of the kind contested here could not survive the test of "reasonableness" if it took place in Boston, New York, or Washington, although these cities are within 20 miles of a sea border. To speculate that the Court's holding will open the door to wholesale stopping of cars within a range of 100 miles from every border and port of entry is idle hyperbole. It is the extensive, sparsely settled border lands to the north and south of the United States that are particularly susceptible

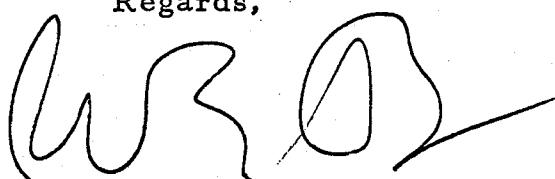
to the widespread alien smuggling alluded to in the Court's opinion and which require the extended border searches whose reasonableness is today sustained.^{1/} To posit a "parade of horribles," such as sweeping searches in a large border city -- El Paso, Texas, for example -- is to assume that federal judges will overlook what Mr. Justice Black said so often, that "reasonable" under the Fourth Amendment, means "reasonable" under all the circumstances -- time, place, setting and surroundings. In the words of Mr. Justice Black:

Our Government is founded upon a written Constitution. The draftsmen expressed themselves in careful and measured terms corresponding with the immense importance of the powers delegated to them. The Framers of the Constitution, and the people who adopted it, must be understood to have used words in their natural meaning, and to have intended what they said. . . .

[T]he Fourth Amendment does not require that every search be made pursuant to a warrant. It prohibits only "unreasonable searches and seizures." The relevant test is not the reasonableness of the opportunity to procure a warrant, but the reasonableness of the seizure under all the circumstances. The test of reasonableness cannot be fixed by per se rules; each case must be decided on its facts. Coolidge v. New Hampshire, 403 U.S. 443, 500, 509-510. (Concurring and dissenting opinion) (1971).

It may be that your contemplated revisions or Potter's, if he chooses to respond, will render my comments totally superfluous.

Regards,



Mr. Justice White

Copies to the Conference

1/

We can judicially notice, from the reported cases in the federal courts, the extraordinary ingenuity -- and cruelty -- of the devices used to smuggle aliens in empty border regions, including concealing them in the frames, tanks, and under the hoods of cars.

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

CHAMBERS OF
THE CHIEF JUSTICE

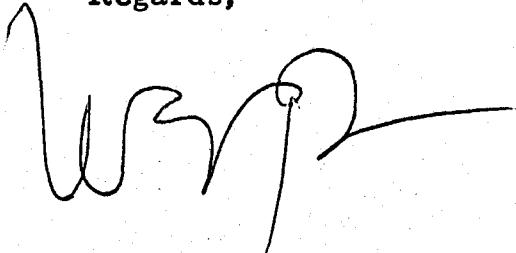
May 30, 1973

Re: No. 71-6278 - Almeida-Sanchez v. U. S.

Dear Byron:

Please join me in the above and consider
this "join" withdrawal of my previously circulated
concurrence.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 4, 1973

Dear Potter:

Please join me in your dissent in
71-6278, Almeida-Sanchez v. United States.

cel

William O. Douglas

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 11, 1973

Dear Potter:

Please join me in your dissent
in Almeida-Sanchez v. U.S., No. 71-6278.

W^W William O. Douglas

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 11, 1973

Dear Potter:

I have your memo of June 11th
concerning your plurality opinion in
71-6278, Almeida-Sanchez v. U.S. I am
still with you and have no suggestions
to make.

WJD
William O. Douglas

Mr. Justice Stewart

cc: Mr. Justice Brennan
Mr. Justice Marshall

7
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 3, 1973

No. 71-6278 Almeida-Sanchez v. United States

Dear Potter:

Please join me in your dissenting opinion
in the above.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 17, 1973

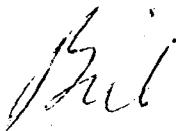
Handwritten note:
Now joined
as did WJ
in
Brennan

RE: No. 71-6278 Almeida-Sanchez v.
United States

Dear Potter:

Please join me in your dissenting
opinion in the above.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. June 11, 1973

RE: No. 71-6278 - Aln.eida-Sanchez v.
United States

Dear Potter:

I am still with you, of course, on
your opinion in the above.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 13, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 71-6278, Almeida-Sanchez v. United States

In due course I plan to circulate a dissenting
opinion in this case.

P. S.

3
Not dictated to this
PS
None for you yet

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: MAY 3 1973

No. 71-6278

Recirculated: _____

Conrado Almeida-Sanchez, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1973]

MR. JUSTICE STEWART, dissenting.

I agree with the Court that "the power of the National Government to exclude aliens from the country is undoubtedly and sweeping." I agree too that this power can be effectuated by routine inspections and searches of individuals or conveyances seeking to cross our border. I also assume that such inspections and searches, to be valid, need not take place precisely at the border itself, but may be conducted at the functional equivalent of the border. But none of these propositions, alone or together, can support the search of the petitioner's automobile in this case. That search, in my view, was in gross violation of the Fourth Amendment to the Constitution.

The basic facts in this case are neither complicated nor disputed. The petitioner was stopped by the Border Patrol on State Highway 78 in California, and his car was thoroughly searched. The road is essentially an east-west highway that runs for part of its course through an undeveloped region. At about the point where the petitioner was stopped the road meanders north as well as east—but nowhere does the road reach the Mexican border, and at all points it lies north of Interstate 80, a major east-west highway entirely within the United States that connects the Southwest with the west coast. The petitioner was some 25 air miles north of the border

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 10, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 71-6278, Almeida-Sanchez v. United States

To my dissenting opinion in this case I plan to add the following at an appropriate place in text or footnote:

The Court's opinion today devotes more than four pages to a discussion of the decisions of three Courts of Appeals that are said to support the conclusion reached by the Court. But I had always supposed that it was this Court's precedents that we were to follow in interpreting the Constitution.

P.S.

88-6, 7

3rd DRAFT

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

SUPREME COURT OF THE UNITED STATES

From Stewart, J.

No. 71-6278

Circulated:

Conrado Almeida-Sanchez, Petitioner,
 v.
 United States.

Recirculated: MAY 11 1973

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

[May —, 1973]

MR. JUSTICE STEWART, dissenting.

I agree with the Court that "the power of the National Government to exclude aliens from the country is undoubtedly and sweeping." I agree too that this power can be effectuated by routine inspections and searches of individuals or conveyances seeking to cross our border. I also assume that such inspections and searches, to be valid, need not take place precisely at the border itself, but may be conducted at the functional equivalent of the border. But none of these propositions, alone or together, can support the search of the petitioner's automobile in this case. That search, in my view, was in gross violation of the Fourth Amendment to the Constitution.

The basic facts in this case are neither complicated nor disputed. The petitioner was stopped by the Border Patrol on State Highway 78 in California, and his car was thoroughly searched. The road is essentially an east-west highway that runs for part of its course through an undeveloped region. At about the point where the petitioner was stopped the road meanders north as well as east—but nowhere does the road reach the Mexican border, and at all points it lies north of Interstate 80, a major east-west highway entirely within the United States that connects the Southwest with the west coast. The petitioner was some 25 air miles north of the border

WD

Bp. 6,9

4th DRAFT

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.

Circulated:

Recirculated: MAY 16 19

Conrado Almeida-Sanchez, Petitioner, v. United States.

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

[May —, 1973]

MR. JUSTICE STEWART, dissenting.

I agree with the Court that "the power of the National Government to exclude aliens from the country is undoubtedly and sweeping." I agree too that this power can be effectuated by routine inspections and searches of individuals or conveyances seeking to cross our border. I also assume that such inspections and searches, to be valid, need not take place precisely at the border itself, but may be conducted at the functional equivalent of the border. But none of these propositions, alone or together, can support the search of the petitioner's automobile in this case. That search, in my view, was in gross violation of the Fourth Amendment to the Constitution.

The basic facts in this case are neither complicated nor disputed. The petitioner was stopped by the Border Patrol on State Highway 78 in California, and his car was thoroughly searched. The road is essentially an east-west highway that runs for part of its course through an undeveloped region. At about the point where the petitioner was stopped the road meanders north as well as east—but nowhere does the road reach the Mexican border, and at all points it lies north of Interstate 80, a major east-west highway entirely within the United States that connects the Southwest with the west coast. The petitioner was some 25 air miles north of the border.

114-5

June 11, 1973

MEMORANDUM TO

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Marshall

Re: Almeida-Sanchez v. United States, No. 71-6278

Since this draft has been amended only as appropriate to convert it to a proposed plurality opinion, I have taken the liberty of showing all of you as joining it, in the interest of saving print shop delay. It goes without saying, however, that I would appreciate any criticisms or suggestions you may have.

P. S.

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

FACSIM: Stewart, J.

No. 71-6278

Circulated: 6/1/1973

Conrado Almeida-Sanchez, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit. Recirculated: _____

[June —, 1973]

MR. JUSTICE STEWART announced the judgment of the Court, and an opinion in which MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL join.

The petitioner in this case, a Mexican citizen holding a valid United States work permit, was convicted of having knowingly received, concealed, and facilitated the transportation of a large quantity of illegally imported marihuana in violation of 21 U. S. C. § 176 (a). His sole contention on appeal was that the search of his automobile that uncovered the marihuana was unconstitutional under the Fourth Amendment and that, under the rule of *Weeks v. United States*, 232 U. S. 383, the marihuana should not have been admitted as evidence against him.

The basic facts in the case are neither complicated nor disputed. The petitioner was stopped by the Border Patrol on State Highway 78 in California, and his car was thoroughly searched. The road is essentially an east-west highway that runs for part of its course through an undeveloped region. At about the point where the petitioner was stopped the road meanders north as well as east—but nowhere does the road reach the Mexican border, and at all points it lies north of Interstate 80, a major east-west highway entirely within the United States that connects the Southwest with the west coast. The petitioner was some 25 air miles north of the border when he was stopped. It is undenied that the Border

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:

No. 71-6278

Recirculated: JUN 14 1973

Condrado Almeida-Sanchez, } On Writ of Certiorari to
Petitioner, } the United States Court
v. } of Appeals for the Ninth
United States. } Circuit.

[June —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioner in this case, a Mexican citizen holding a valid United States work permit, was convicted of having knowingly received, concealed, and facilitated the transportation of a large quantity of illegally imported marihuana in violation of 21 U. S. C. § 176 (a). His sole contention on appeal was that the search of his automobile that uncovered the marihuana was unconstitutional under the Fourth Amendment and that, under the rule of *Weeks v. United States*, 232 U. S. 383, the marihuana should not have been admitted as evidence against him.

The basic facts in the case are neither complicated nor disputed. The petitioner was stopped by the Border Patrol on State Highway 78 in California, and his car was thoroughly searched. The road is essentially an east-west highway that runs for part of its course through an undeveloped region. At about the point where the petitioner was stopped the road meanders north as well as east—but nowhere does the road reach the Mexican border, and at all points it lies north of Interstate 80, a major east-west highway entirely within the United States that connects the Southwest with the west coast. The petitioner was some 25 air miles north of the border when he was stopped. It is undenied that the Border

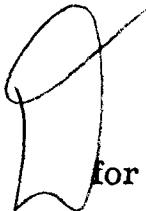
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 19, 1973

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 71-6278, Almeida-Sanchez v. United States


No. 71-1240, Bird v. United States, is a conviction for importation of marihuana. The petitioner was stopped, and the camper compartment of his truck was searched, at a fixed check point located 8 miles north of Laredo, Texas. The officials who inspected the compartment saw several coffee sacks, and smelled something peculiar. They asked the petitioner's companion if marihuana was inside, and he nodded his head. The sacks appear to have been opened later, after the arrest. This appears to be a case involving a fixed station on a north-south road, some 8 miles from the border. I do not believe it is covered by Almeida-Sanchez, and I would deny certiorari.


No. 71-1293, Foerster v. United States, is also a federal marihuana conviction. The petitioner's car was searched without a warrant or probable cause, 80 miles north of the Mexican border. The Ninth Circuit affirmed

WR

the conviction summarily, on the basis of Almeida-Sanchez.

I would grant, vacate and remand for reconsideration in light of our judgment in Almeida-Sanchez.

No. 72-84, McDaniel v. United States, is yet another marihuana conviction. The search was conducted at a permanent checkpoint approximately 8 miles from the border, also located just outside of Laredo. The road on which the station is situated closely parallels the course of the Rio Grande, which at that point and in certain seasons is easily fordable. The agents who searched petitioner's car conducted their searches only between midnight and 8 a.m., and on the night petitioner was stopped, they were routinely searching every automobile trunk. The CA treated this as the equivalent of a border search. The CA thought that suspicious behavior on the part of petitioner and his passenger, plus the suspicious manner in which the "alfalfa" was being carried, constituted a reasonable suspicion that justified the agents in looking inside the bags in petitioner's trunk. This case is not, in my view, covered by Almeida-Sanchez. Another issue in this case is a Miranda claim. The petitioner gave incriminating evidence after refusing to sign a waiver form. He had twice been read the warnings, however. I would deny certiorari.

WS

-3-

WJS
In No. 72-5329, Bowen v. United States, the petitioner was also convicted on marihuana charges. The search in this case was conducted without a warrant or probable cause. It took place at a permanent check point located some 60 miles north of the Mexican border. As the record does not indicate enough about the road in question to determine whether or not this was at a "functional border," I would grant, vacate, and remand for reconsideration in light of Almeida-Sanchez.

WJS
In No. 72-6101, Johnson v. United States, the petitioner was also convicted on marihuana charges. He was travelling on a road in California, some 90 miles from the Mexican border, when he was stopped by two Border Patrol agents who had decided to police the road. The car was stopped when the agents noticed that it appeared to be loaded down, and that a person appeared to be slouched down in the passenger's seat. When the agents asked if they could look in the trunk, the petitioner drove off. A high speed chase followed, and the petitioner eventually abandoned his car. When the agents came upon it, they smelled marihuana and then searched the trunk where 168 kilos were found. The CA affirmed the initial stop on the grounds of a "founded suspicion"

WJS

-4-

that criminal activity was taking place, citing Adams v. Williams.

Whether or not a search would have been appropriate at that time, the CA thought that the subsequent flight and chase provided abundant probable cause for the eventual search. I would deny certiorari.

P.S.

WR

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 19, 1973

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 71-6278, Almeida-Sanchez v.
United States

The Clerk's Office informs me of one additional case held for Almeida-Sánchez. In No. 72-1197, Barron v. United States, the petitioner was convicted for possession of marihuana.

The petitioner was waved over at a Border Patrol checkpoint at San Clemente, California, some 67 miles from the Mexican border, after agents noticed that his car was riding low in the rear. The petitioner slowed, then sped away. Agents apprehended the abandoned car further up the road, and found the petitioner as well. An odor of marihuana was evident in the car. Petitioner and the car were taken back to the checkpoint, where a search of the trunk was conducted.

The CA 9 reasoned that the search was permissible if the initial stop was, because the police thereafter had probable cause to search. The checkpoint at which the stop took place was on a north-south road, but it was far removed from the border.

-2-

Nevertheless, it appears to me that the time of the stop (1:40 a.m.), the known fact that the road was used for smuggling aliens, and the appearance of the car, created at least a reasonable suspicion sufficient to justify a brief detention, under Terry v. Ohio and Adams v. Williams. As there was probable cause thereafter, I would deny certiorari.

P.S.

48

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

*Wait for
dissent /*

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 4-11-73

No. 71-6278

Condrado Almeida-Sanchez, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Trial and conviction in this case were in the United States District Court for the Central District of California under an indictment charging that petitioner, contrary to 21 U. S. C. § 176 (a), had knowingly received, concealed and facilitated the transportation of approximately 161 pounds of illegally imported marihuana. He was sentenced to five years imprisonment. He appealed on the sole ground that the District Court had erroneously denied his motion to suppress marihuana allegedly seized from his automobile in violation of the Fourth Amendment.

The motion to suppress was tried on stipulated evidence in the District Court.¹ United States Border Patrol Officers Shaw and Carreso stopped petitioner's car as it was traveling north on Highway 78 near Glamis, California, 50 miles along the road from Calexico, on the California-Mexico border, to Blythe, California. The road was "about the only north-south road in California coming from the Mexican border that does not have an established checkpoint." Because of that, "it

¹ The following facts are taken from the oral stipulation in open court. See App. 11-14.

M
12, 10BPA
I have arrived
Petitioner's ^{desire}
One voter is
this set

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

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 4-17-73

No. 71-6278

Condrado Almeida-Sanchez, Petitioner,
v.
United States. } On Writ of Certiorari to
the United States Court
of Appeals for the Ninth
Circuit.

[April —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Trial and conviction in this case were in the United States District Court for the Central District of California under an indictment charging that petitioner, contrary to 21 U. S. C. § 176 (a), had knowingly received, concealed and facilitated the transportation of approximately 161 pounds of illegally imported marihuana. He was sentenced to five years imprisonment. He appealed on the sole ground that the District Court had erroneously denied his motion to suppress marihuana allegedly seized from his automobile in violation of the Fourth Amendment.

The motion to suppress was heard on stipulated evidence in the District Court.¹ United States Border Patrol Officers Shaw and Carreso stopped petitioner's car shortly after midnight as it was traveling northeast on Highway 78 near Glamis, California, 50 miles by road from Calexico, on the California-Mexico border, towards

¹ The facts, except for when petitioner was stopped, were orally stipulated in open court. See App. 11-14. The time petitioner was stopped is given by the Complaint as 12:15 a. m., App. 4, while petitioner testified at trial that he was "stopped about 1:00." Record, vol. 3, at 62.

Additions: 5, 6, 10-14

Deletions: 1, 2

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
~~Mr.~~ Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: White, J.

4th DRAFT

Circulated:

Recirculated: 5-9-73

SUPREME COURT OF THE UNITED STATES

No. 71-6278

Condrado Almeida-Sanchez, Petitioner,
v.
United States. } On Writ of Certiorari to
the United States Court
of Appeals for the Ninth
Circuit.

[April —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Trial and conviction in this case were in the United States District Court for the Central District of California under an indictment charging that petitioner, contrary to 21 U. S. C. § 176 (a), had knowingly received, concealed and facilitated the transportation of approximately 161 pounds of illegally imported marihuana. He was sentenced to five years imprisonment. He appealed on the sole ground that the District Court had erroneously denied his motion to suppress marihuana allegedly seized from his automobile in violation of the Fourth Amendment.

The motion to suppress was heard on stipulated evidence in the District Court.¹ United States Border Patrol Officers Shaw and Carreso stopped petitioner's car shortly after midnight as it was traveling from Calexico, on the California-Mexico border, towards Blythe, California. The stop was made on Highway 78 near Glamis,

deletion

¹ The facts, except for when petitioner was stopped, are taken from the oral stipulation in open court. See App. 11-14. The time petitioner was stopped is given by the Complaint as 12:15 a. m., App. 4, while petitioner testified at trial that he was "stopped about 1:00." Record, vol. 3, at 62.

B
pp
joined file 7, 8
PS dissent

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

5th DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 5-16-73

No. 71-6278

Condrado Almeida-Sanchez, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Trial and conviction in this case were in the United States District Court for the Central District of California under an indictment charging that petitioner, contrary to 21 U. S. C. § 176 (a), had knowingly received, concealed and facilitated the transportation of approximately 161 pounds of illegally imported marihuana. He was sentenced to five years imprisonment. He appealed on the sole ground that the District Court had erroneously denied his motion to suppress marihuana allegedly seized from his automobile in violation of the Fourth Amendment.

The motion to suppress was heard on stipulated evidence in the District Court.¹ United States Border Patrol Officers Shaw and Carreso stopped petitioner's car shortly after midnight as it was traveling from Calexico, on the California-Mexico border, towards Blythe, California. The stop was made on Highway 78 near Glamis,

¹ The facts, except for when petitioner was stopped, are taken from the oral stipulation in open court. See App. 11-14. The time petitioner was stopped is given by the Complaint as 12:15 a. m., App. 4, while petitioner testified at trial that he was "stopped about 1:00." Record, vol. 3, at 62.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 11, 1973

Re: No. 71-6278 - Almeida-Sanchez v. United States

Dear Lewis:

Thank you for an early look at your proposed circulation in this case. I have examined it with some care over the weekend. My own judgment now is that if the case is to be reversed -- as it now will be -- your opinion should become the opinion for the Court. If it proves necessary to achieve that result, I would recommend that those of us who preferred affirmance would state our doubts in a concurring opinion but acquiesce in yours. Doing so would ensure a Court opinion, rather than a judgment supported by differing views. It would also make plain what might otherwise be obscure: that a majority of the Court would not require probable cause in the traditional sense for the issuance of a warrant to search vehicles for aliens in areas near the border.

The remaining premise for so recommending to my colleagues is, with all due respect, that requiring an area warrant in advance is not a matter of great moment. Camara

-2-

and See were of significance in that they rejected the Frank v. Maryland limitation of the Fourth Amendment to strictly criminal contexts and recognized the inherent flexibility of the concept of probable cause. The warrant requirement itself was designed for what was deemed a narrow class of cases but one the majority thought deserved protection. Perhaps it did, but based on the feedback I have had or noted, the impact of this aspect of those cases has not been impressive. But whether or not Camara is persuasive here and independent of that case, your insistence on warrants is arguably supportable as a hedge against possible abuses of the roving search in individual cases or areas. It should not prevent any of the stops and searches that now occur. I can live with that as long as it does not make a difficult task substantially more so or impossible.

Of course, I have not conferred with any of the other Justices who have joined my circulation. If they have other views, I would very likely remain in dissent.

Sincerely,



Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 11, 1973

MEMORANDUM TO: The Chief Justice
Mr. Justice Blackmun
Mr. Justice Rehnquist

The enclosed is the kind of concurrence
I had in mind in connection with joining Lewis
Powell's approach in Almeida-Sanchez

Brw
B.R.W.

Copies to: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Powell

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE BYRON R. WHITE

June 11, 1973

Re: No. 71-6278 - Almeida-Sanchez v. United States

MR. JUSTICE WHITE, concurring.

The governing test in Fourth Amendment cases is that of reasonableness, Cady v. Dombrowski, post _____. The judgment of Congress, the lower courts, and those administering the immigration laws has uniformly been that because of the problems inherent in preventing illegal entries by aliens, neither warrant nor probable cause should be required in every case where a vehicle is searched for aliens either at the border or in areas near thereto. That judgment appears sufficiently reasonable to me to agree without reservation with Parts I and II of the Court's opinion. It also raises considerable doubt in my mind with respect to

- 2 -

the necessity for securing warrants to support stops and searches by roving border patrols. But I acquiesce in and join Part III of the Court's opinion. How much protection the warrant will afford in this context I am unsure. But it may prevent some abuses; and, as the Court points out, searches normally must be supported by warrant. At the same time, it does not appear to me that requiring the warrant contemplated by the Court's opinion will place insuperable obstacles in the way of performing what is already a difficult job or substantially reduce the authority of the roving patrol in sensitive areas near the border such as the one involved here appears to be.

Supreme Court of the United States
Washington, D. C. 20543B
joined D. O. opinion
CHAMBERS OF
JUSTICE BYRON R. WHITE

June 12, 1973

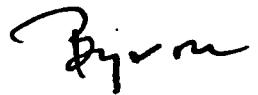
Re: No. 71-6278 - Almeida-Sanchez v. United States

Dear Lewis:

As you know, I cannot deliver the votes to join your opinion. I shall, therefore, remain in dissent.

I am reminded of the Orioles-Twins game the other night. The Orioles were at bat in the third inning, seven runs behind and with one out. Al Bumbry singled. Coggins then hit a long drive to left field. Bumbry, who is lightning-fast, thought the ball would never be caught and took off for home plate. He got almost to third before realizing that Jim Holt in left field had indeed caught the ball and was rifling it to the infield. Coggins never got back even to second. He had the distinction of being out by 95 feet. His manager said it was just bad judgment -- when you are seven runs behind and the play is in front of you, you have to make sure the ball isn't caught before taking off for home.

Sincerely,



Mr. Justice Powell

Copies to Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-6278

From: White, J.

Circulated: June 14 1973

Conrado Almeida-Sanchez, Petitioner, v. United States. On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Recirculated:

[June — 1973]

MR. JUSTICE WHITE, dissenting.

Trial and conviction in this case were in the United States District Court for the Central District of California under an indictment charging that petitioner, contrary to 21 U. S. C. § 176 (a), had knowingly received, concealed and facilitated the transportation of approximately 161 pounds of illegally imported marihuana. He was sentenced to five years imprisonment. He appealed on the sole ground that the District Court had erroneously denied his motion to suppress marihuana allegedly seized from his automobile in violation of the Fourth Amendment.

The motion to suppress was heard on stipulated evidence in the District Court.¹ United States Border Patrol Officers Shaw and Carreto stopped petitioner's car shortly after midnight as it was traveling from Calexico, on the California-Mexico border, towards Blythe, California. The stop was made on Highway 78 near Glamis, California, 50 miles by road from Calexico. The highway was "about the only north-south road in California

¹ The facts, except for when petitioner was stopped, are taken from the oral stipulation in open court. See App. 11-14. The time petitioner was stopped is given by the Complaint as 12:15 a. m., App. 4, while petitioner testified at trial that he was "stopped about 1:00," Record, vol. 3, at 62.

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 1, 4-5

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Argued: White, J.

No. 71-6278

Circulated: _____

Recirculated: 6-8-73

Condrado Almeida-Sanchez, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June 21, 1973]

MR. JUSTICE WHITE, with whom MR. JUSTICE BLACKMUN and MR. JUSTICE REHNQUIST join, dissenting.

Trial and conviction in this case were in the United States District Court for the Central District of California under an indictment charging that petitioner, contrary to 21 U. S. C. § 176 (a) (1964), had knowingly received, concealed and facilitated the transportation of approximately 161 pounds of illegally imported marihuana. He was sentenced to five years imprisonment. He appealed on the sole ground that the District Court had erroneously denied his motion to suppress marihuana allegedly seized from his automobile in violation of the Fourth Amendment.

The motion to suppress was heard on stipulated evidence in the District Court.¹ United States Border Patrol Officers Shaw and Carrasco stopped petitioner's car shortly after midnight as it was traveling from Calexico, on the California-Mexico border, towards Blythe, California. The stop was made on Highway 78 near Glamis, California, 50 miles by road from Calexico. The highway was "about the only north-south road in California

¹ The facts, except for when petitioner was stopped, are taken from the oral stipulation in open court. See App. 11-14. The time petitioner was stopped is given by the Complaint as 12:15 a. m., App. 4, while petitioner testified at trial that he was "stopped about 1:00." Tr. of Rec., vol. 3, at 62.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 19, 1973

Re: No. 71-6278 - Almeida-Sanchez v. U. S.

Dear Byron:

I shall await Potter's dissent
before voting on this one.

Sincerely,



T.M.

Mr. Justice White

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 3, 1973

Re: No. 71-6278 - Almeida-Sanchez v. U.S.

Dear Potter:

Please join me in your dissent.

Sincerely,


T.M.

Mr. Justice Stewart

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 12, 1973

Re: No. 71-6278 - Almeida-Sanchez v. United States

Dear Byron:

Please join me.

Sincerely,

H.A.B.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 15, 1973

Re: No. 71-6278 - Almeida-Sanchez v. U.S.

Dear Byron:

Please join me in your dissent.

Sincerely,

H. A. B.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 11, 1973

No. 71-6278 Almeida-Sanchez v. U. S.

Dear Byron and Potter:

I am not at rest in the above case, and would like to have some time to consider carefully what I should do.

It is possible that I may write a concurring opinion.

Sincerely,

Lewis

Mr. Justice Stewart
Mr. Justice White

cc: The Conference

June 8, 1973

No. 71-6278 Almeida-Sanchez v. U.S.

Dear Potter and Byron:

At long last, I have produced a draft which reflects my thinking and conclusion on the above case.

Although I will not be able to circulate this until Monday, and may have some further changes, I thought it was best to get it to the two of you immediately. I regret having held you up, and in the case of Byron to be in the unwelcome position of depriving him of a Court.

My draft is written, as you will see, on the assumption that the case will now be reversed. In short, I agree with the result reached by Potter but for somewhat different reasons.

Sincerely,

Mr. Justice Stewart

Mr. Justice White

Enclosure

LFP/gg

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 11, 1973

No. 71-6278 Almeida-Sanchez v. U.S.

MEMORANDUM TO THE CONFERENCE:

Here is a concurring opinion.

As I would reverse the judgment, I have assumed that Potter's opinion would become the plurality opinion of the Court.

L. F. P., Jr.

ss

Lewis

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 71-6278

Circulated: JUN 11 1973

Conrado Almeida-Sanchez, Petitioner, v. United States, On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1973]

MR. JUSTICE POWELL, concurring in the result.

As my views of this case and resolution of the problem involved differ from those expressed in the opinion of the Court, I find it necessary to state these views in some detail. We are confronted here with the all too familiar necessity of reconciling a legitimate need of government with constitutionally protected rights. There can be no question as to the seriousness and legitimacy of the law enforcement problem with respect to enforcing along thousands of miles of open border valid immigration and related laws. Nor can there be any question as to the necessity, in our free society, of safeguarding persons against searches and seizures proscribed by the Fourth Amendment. I believe that a resolution of the issue raised by this case is possible with due recognition of both of these interests, and in a manner compatible with the prior decisions of this Court.¹

The search here involved was carried out as part of a roving search of automobiles in an area generally proximate to the Mexican border. It was not a border search, nor can it fairly be said to have been a search con-

¹I am in accord with the Court's conclusion that nothing in 8 U. S. C. § 1357 (a) or in 8 CFR 287.1 serves to authorize an otherwise unconstitutional search.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 12, 1973

No. 71-6278 Almeida-Sanchez v. U.S.

Dear Byron:

Although I may ask Harry to interpret for me the precise import of your parable of Bumbry's being caught off base by 95 feet, I take it that Potter's opinion will now become that of the Court.

As Potter has substantially modified his first circulation (removing most of the language that troubled me), I will now join his opinion to give him a Court and, of course, file my concurring opinion. It seems to me that this combination, including your dissent, will afford the guidance to the Justice Department and others that I was anxious to provide.

I am a bit contrite at unwittingly causing you to classify yourself with Al Bumbry, although on the baseball diamond (at least) I would still consider this quite a compliment.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 12, 1973

No. 71-6278 Almeida-Sanchez v. U. S.

Dear Potter:

In accord with the exchange of notes between Byron and me,
I now join your opinion for the Court.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

27
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 11, 1973

Re: No. 71-6278 - Almeida-Sanchez v. United States

Dear Byron:

Please join me.

Sincerely,

WRW

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 12, 1973

Re: No. 71-6278 - Almeida-Sanchez v. United States

Dear Byron:

Having pondered overnight the suggestion contained in your memorandum of yesterday, that the four of us who joined in your proposed opinion for the Court in this case should now join Lewis' opinion, I am inclined against following it. It seems to me that a sentence or two added to your proposed opinion, which would now be a dissent, would make clear that for the four of us Lewis' administrative warrant solution would be acceptable a fortiori. While I do not mean to completely shut the door on further discussion, I agreed with your opinion when you wrote it, I still agree with it, and would prefer to stick with it.

Sincerely,

Bill

Mr. Justice White

Copy to: The Chief Justice
Mr. Justice Blackmun
Mr. Justice Powell

9
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 15, 1973

Re: No. 71-6278 - Almeida-Sanchez v. United States

Dear Byron:

Please join me in your dissent in this case.

Sincerely,

W

Mr. Justice White

Copies to the Conference