

# The Burger Court Opinion Writing Database

*United States v. Chavez*

416 U.S. 562 (1974)

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

April 9, 1974

Re: No. 72-1319 - United States v. Chavez, et al

Dear Byron:

Please join me.

Regards,

*WB*

Mr. Justice White

Copies to the Conference

## 1st DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 72-1057 AND 72-1319

Circulated

Received

3-15

United States, Petitioner, 72-1057 *v.* Dominic Nicholas Giordano et al. } On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

United States, Petitioner, 72-1319 *v.* Umberto Jose Chavez et al. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[March ---, 1974]

MR. JUSTICE DOUGLAS, concurring in 72-1057, *United States v. Giordano*, and concurring in part and dissenting in part in 72-1319, *United States v. Chavez*.

The Court deals with two different Justice Department violations of Title III of the Omnibus Crime Control Act of 1968, which imposes express limitations on the use of electronic surveillance. It finds that suppression is mandated for violation which occurred in *United States v. Giordano*, 72-1057, in which decision I concur, but that suppression of evidence seized through the use of electronic surveillance is not warranted by the violation which occurred in *United States v. Chavez*, 72-1319. I dissent from the latter holding.

## I

Title III permits electronic surveillance to be employed only pursuant to a court order. It requires, *inter alia*, that a federal trial attorney desiring to apply to the District Court for such a wiretap order must first

15 The Chief Justice  
Mr. Justice Brennan  
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

Nos. 72-1057 AND 72-1319

United States, Petitioner, } On Writ of Certiorari to the United States Court  
72-1057 v. } the United States Court  
Dominic Nicholas Giordano } of Appeals for the Fourth  
et al. } Circuit.

United States, Petitioner, } On Writ of Certiorari to the United States Court  
72-1319 v. } the United States Court  
Umberto Jose Chavez et al. } of Appeals for the Ninth  
Circuit.

[March -- 1974]

MR. JUSTICE DOUGLAS, joining in 72-1057, *United States v. Giordano*, and concurring in part and dissenting in part in 72-1319, *United States v. Chavez*.

The Court deals with two different Justice Department violations of Title III of the Omnibus Crime Control Act of 1968, which imposes express limitations on the use of electronic surveillance. In *United States v. Giordano*, 72-1057, the Court correctly finds that the violation of 18 U. S. C. 2516(1) is a violation of a statutory requirement which "directly and substantially implement[s] the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device." The Court also properly finds that a violation of such a statutory requirement mandates suppression of the evidence seized by the unlawful interception. I join the opinion of the Court in *Giordano*. The same violation of § 2516 (1) is also involved in the Fernandez wiretap in *United States v. Chavez*, 72-1319, and I therefore concur in the Court's suppression of the evidence seized in that wiretap. In *Chavez*, however, the Court finds that suppression is not warranted for

To : The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice White  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Thurgood Marshall  
Mr. Justice Powell  
Mr. Justice P. J. O'Donnell  
Mr. Justice F. M. Marshall

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 72-1057 AND 72-1319 *United States v. Giordano* *United States v. Chavez*

United States. Petitioner, } On Writ of Certiorari to  
72-1057 *v.* } the United States Court  
Dominic Nicholas Giordano } of Appeals for the Fourth  
et al. } Circuit.

3-28

United States. Petitioner, } On Writ of Certiorari to  
72-1319 *v.* } the United States Court  
Umberto Jose Chavez et al. } of Appeals for the Ninth  
Circuit.

[March — 1974]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL concur, joining in 72-1057, *United States v. Giordano*, and concurring in part and dissenting in part in 72-1319, *United States v. Chavez*.

The Court deals with two different Justice Department violations of Title III of the Omnibus Crime Control Act of 1968, which imposes express limitations on the use of electronic surveillance. In *United States v. Giordano*, 72-1057, the Court correctly finds that the violation of 18 U. S. C. 2516 (1) is a violation of a statutory requirement which "directly and substantially implement[s] the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device." The Court also properly finds that a violation of such a statutory requirement mandates suppression of the evidence seized by the unlawful interception. I join the opinion of the Court in *Giordano*. The same violation of § 2516 (1) is also involved in the Fernandez wiretap in *United States v. Chavez*, 72-1319, and I therefore concur in the Court's suppression of the

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. March 27, 1974

RE: No. 72-1057 - United States v. Giordano  
No. 72-1319 - United States v. Chavez

Dear Bill:

Please join me.

Sincerely,

(S)

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 26, 1974

No. 72-1057, U. S. v. Giordano  
No. 72-1319, U. S. v. Chavez

Dear Bill,

Please add my name to your separate opinion in these cases.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the 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 Rehnquist

From: White, J.

1st DRAFT

Circulated: 3-13-7

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## SUPREME COURT OF THE UNITED STATES

No. 72-1319

United States, Petitioner, } On Writ of Certiorari to  
v. } the United States Court  
Umberto Jose Chavez et al. } of Appeals for the Ninth  
Circuit.

[March — 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case, like *United States v. Giordano*, ante, p. ——, concerns the validity of procedures followed by the Justice Department in obtaining judicial approval to intercept wire communications under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 197, 211-225, 18 U. S. C. §§ 2510-2520, and the propriety of suppressing evidence gathered from court-authorized wiretaps where the statutory application procedures have not been fully satisfied. As is more fully described in *Giordano*, Title III limits who, among federal officials, may approve submission of a wiretap application to the appropriate District Court, to the Attorney General or an Assistant Attorney General he specially designates, 18 U. S. C. § 2516 (1), and delineates the information each application must contain, upon what findings an interception order may be granted, and what the order shall specify, 18 U. S. C. § 2518 (1), (3), (4).<sup>1</sup> Within this general framework, two statutory requirements are of particular relevance to this case. Section 2518 (1)(a)

<sup>1</sup> The relevant statutory provisions are set forth in the Appendix to *United States v. Giordano*, *supra*.

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES:

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

From: White, J.

2nd DRAFT

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**SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
No. 72-1319  
\_\_\_\_\_

United States, Petitioner, } On Writ of Certiorari to  
v. } the United States Court  
Umberto Jose Chavez et al. } of Appeals for the Ninth  
Circuit.

[March —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case, like *United States v. Giordano*, *ante*, p. —, concerns the validity of procedures followed by the Justice Department in obtaining judicial approval to intercept wire communications under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 197, 211-225, 18 U. S. C. §§ 2510-2520, and the propriety of suppressing evidence gathered from court-authorized wiretaps where the statutory application procedures have not been fully satisfied. As is more fully described in *Giordano*, Title III limits who, among federal officials, may approve submission of a wiretap application to the appropriate District Court, to the Attorney General or an Assistant Attorney General he specially designates, 18 U. S. C. § 2516 (1), and delineates the information each application must contain, upon what findings an interception order may be granted, and what the order shall specify, 18 U. S. C. § 2518 (1), (3), (4).<sup>1</sup> Within this general framework, two statutory requirements are of particular relevance to this case. Section 2518 (1)(a)

<sup>1</sup> The relevant statutory provisions are set forth in the Appendix to *United States v. Giordano*, *supra*.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

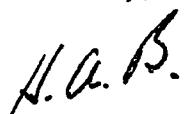
April 1, 1974

Re: No. 72-1319 - U. S. v. Chavez

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

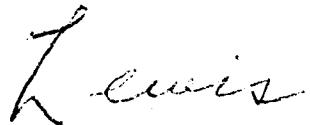
April 9, 1974

No. 72-1319 U.S. v. Chavez

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 15, 1974

Re: No. 72-1319 - United States v. Chavez

Dear Byron:

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

Sincerely,

*W.H.W.*

Mr. Justice White

Copies to the Conference