

# The Burger Court Opinion Writing Database

*Espinoza v. Farah Manufacturing Co.*  
414 U.S. 86 (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

October 31, 1973

Re: No. 72-671 - Espinoza v. Farah Manufacturing Co.

Dear Thurgood:

Please join me in the above.

Regards,

WSB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

November 8, 1973

MEMO TO THE CONFERENCE:

I have written a dissent in  
72-671, Espinoza v. Farah Co. and hoped  
to circulate it this week. That is not  
possible. It will be around early next  
week.

*W.O.*  
WILLIAM O. DOUGLAS

The Conference

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

3rd DRAFT

Date: Douglas, J.

No. 72-671

Decided: 11-12-73

Cecilia Espinoza and Rudolfo Espinoza, Petitioners, v. Farah Manufacturing Company, Inc. Recirculated: On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[November —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

It is odd that the Court which holds that a State may not bar an alien from the practice of law<sup>1</sup> or deny employment to aliens<sup>2</sup> can read a federal statute that prohibits discrimination in employment on account of "national origin" as to permit discrimination against aliens.

Alienage results from one condition only: being born outside the United States. Those born within the country are citizens from birth. It could not be more clear that Farah's policy of excluding aliens is *de facto* a policy of preferring those who were born in this country. Therefore the construction placed upon the "national origin" provision is inconsistent with the construction this Court has placed upon the same Act's protections for persons denied employment on account of race or sex.

In connection with racial discrimination we have said that the Act prohibits "practices, procedures or tests neutral on their face, and even neutral in terms of intent," if they create "artificial, arbitrary, and unnecessary barriers to employment when the barriers operate in-

<sup>1</sup> *In re Griffiths*, — U. S. — (decided June 25, 1973).

<sup>2</sup> *Sugarman v. Dougall*, — U. S. — (decided June 25, 1973).

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. October 29, 1973

Dear Thurgood:

Surely you can't mean "flaunted" in  
the second line from the bottom of page 4.  
Don't you mean "flouted"?

Sincerely,

Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. October 29, 1973

RE: No. 72-671 Espinoza v. Farah Mig. Co.

Dear Thurgood:

I agree.

Sincerely,

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

October 29, 1973

72-671, Espinoza v. Farah Mfg. Co.

Dear Thurgood,

I am glad to join your opinion  
for the Court in this case.

Sincerely yours,

*P.S.*

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 1, 1973

Re: No. 72-671 - Espinoza v. Farah Mfg. Co.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

1st DRAFT

From: Marshall, J.

**SUPREME COURT OF THE UNITED STATES**

Decided: OCT 29 197

No. 72-671

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

Cecilia Espinoza and Rudolfo Espinoza, Petitioners, } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.  
 v.  
 Farah Manufacturing Company, Inc.

[November —, 1973]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves interpretation of the phrase "national origin" in Title VII of the Civil Rights Act of 1964. Petitioner Cecilia Espinoza is a lawfully admitted resident alien who was born in and remains a citizen of Mexico. She resides in San Antonio, Texas, with her husband, a United States citizen. In July, 1969, Mrs. Espinoza sought employment as a seamstress at the San Antonio division of respondent Farah Manufacturing Company. Her employment application was rejected on the basis of a long-standing company policy against the employment of aliens. After exhausting her administrative remedies with the Equal Employment Opportunity Commission,<sup>1</sup> Mrs. Espinoza commenced this suit in the District Court alleging that respondent had discriminated against her because of her "national origin" in violation of § 703 of Title VII, 42 U. S. C. § 2000e-2 (a)(1). The District Court granted Mrs. Espinoza's motion for summary judgment, holding that a refusal to hire because of lack of citizenship constitutes

<sup>1</sup> Section 706 (e), 42 U. S. C. § 2000e-5 (e).

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

2nd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: OCT 3 01

No. 72-671

Cecilia Espinoza and Rudolfo Espinoza, Petitioners,  
 v.  
 Farah Manufacturing Company, Inc.

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

[November —, 1973]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves interpretation of the phrase "national origin" in Title VII of the Civil Rights Act of 1964. Petitioner Cecilia Espinoza is a lawfully admitted resident alien who was born in and remains a citizen of Mexico. She resides in San Antonio, Texas, with her husband, Rudolfo Espinoza, a United States citizen. In July, 1969, Mrs. Espinoza sought employment as a seamstress at the San Antonio division of respondent Farah Manufacturing Company. Her employment application was rejected on the basis of a long-standing company policy against the employment of aliens. After exhausting their administrative remedies with the Equal Employment Opportunity Commission,<sup>1</sup> petitioners commenced this suit in the District Court alleging that respondent had discriminated against Mrs. Espinoza because of her "national origin" in violation of § 703 of Title VII, 42 U. S. C. § 2000e-2 (a)(1). The District Court granted petitioners' motion for summary judgment, holding that a refusal to hire because of lack of citizenship constitutes

Section 706 (e), 42 U. S. C. § 2000e-5 (e).

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

3rd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

circulated:

Recirculated: NOV 1 1973

changes at pp. 6-7

No. 72-671

Cecilia Espinoza and Rudolfo Espinoza, Petitioners, v. Farah Manufacturing Company, Inc. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[November —, 1973]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves interpretation of the phrase "national origin" in Title VII of the Civil Rights Act of 1964. Petitioner Cecilia Espinoza is a lawfully admitted resident alien who was born in and remains a citizen of Mexico. She resides in San Antonio, Texas, with her husband, Rudolfo Espinoza, a United States citizen. In July, 1969, Mrs. Espinoza sought employment as a seamstress at the San Antonio division of respondent Farah Manufacturing Company. Her employment application was rejected on the basis of a long-standing company policy against the employment of aliens. After exhausting their administrative remedies with the Equal Employment Opportunity Commission,<sup>1</sup> petitioners commenced this suit in the District Court alleging that respondent had discriminated against Mrs. Espinoza because of her "national origin" in violation of § 703 of Title VII, 42 U. S. C. § 2000e-2 (a)(1). The District Court granted petitioners' motion for summary judgment, holding that a refusal to hire because of lack of citizenship constitutes

Section 706 (e), 42 U. S. C. § 2000e-5 (e).

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

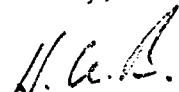
October 30, 1973

Dear Thurgood:

Re: No. 72-671 - Espinoza v. Farah Mfg. Co.

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

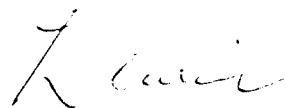
October 31, 1973

No. 72-671 Espinoza v. Farah Mfg. Co., Inc.

Dear Thurgood:

Here is the draft of a proposed concurrence which I mentioned to you.

Sincerely,



Mr. Justice Marshall

Enclosure

LFP/gg

No. 72-671 Espinoza v. Farah Mfg. Co., Inc.

MR. JUSTICE POWELL, concurring.

Although I concur in the result and most of the Court's opinion, I am not in accord with what is said, in large part unnecessarily, about the guideline issued by the Equal Employment Opportunity Commission.

See 29 CFR § 1606. 1(d) (1972).

The Commission's guideline provides, in pertinent part:

"Because discrimination on the basis of citizenship has the effect of discrimination on the basis of national origin, a lawfully immigrated alien who is domiciled or residing in this country may not be discriminated against on the basis of his citizenship . . ." 29 CFR § 1606.1(d) (1972).

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 2, 1973

No. 72-671 Espinoza v. Farah Mfg. Co., Inc.

Dear Thurgood:

Please join me.

I appreciate your making the minor changes which I suggested.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 30, 1973

Re: No. 72-671 - Espinoza v. Farah

Dear Thurgood:

Please join me in your opinion for the Court.

Sincerely,

*Wm*

Mr. Justice Marshall

Copies to the Conference