

# The Burger Court Opinion Writing Database

*Calero-Toledo v. Pearson Yacht Leasing Co.*

416 U.S. 663 (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. 73-157 - Calero-Toledo, et al v. Pearson Yacht  
Leasing Co.

Dear Bill:

Please join me.

W.B.  
Regards,

Mr. Justice Brennan

Copies to 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

## 2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Circulate:

No. 73-157

Recirculated:

Astol Calero-Toledo, Super- }  
intendent of Police,  
et al., Appellants,  
v.  
Pearson Yacht Leasing Co. } On Appeal from the United  
States District Court for  
the District of Puerto  
Rico.

[March —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

While I agree that Puerto Rico is a State for purposes of the three-judge court jurisdiction, I dissent on the merits.

The discovery of marihuana on the yacht took place May 6, 1972. The seizure of the yacht took place on July 11, 1972—over two months later. In view of the long delay in making the seizure where is that “special need for very prompt action” which we emphasized in *Fuentes v. Shevin*, 407 U. S. 67, 91? The Court cites instances of exigent circumstances—seized poisoned food, dangerous drugs, failure of a bank and the like. But they are inapt.

*Fuentes v. Shevin*, involved a contest between debtor and creditor and a resolution of private property rights not implicated in an important governmental purpose. Here important governmental purposes are involved. As to that type of case we said in *Fuentes*: "First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for

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

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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Douglas; J.

No. 73-157

Recirculate:

3-27

Astol Calero-Toledo, Super-  
intendent of Police,  
et al., Appellants,  
v.  
Pearson Yacht Leasing Co.

Recirculated:  
On Appeal from the United  
States District Court for  
the District of Puerto  
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[March —, 1974]

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*Circulated  
3-8-74*

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-157

Astol Calero-Toledo, Super- }  
intendent of Police, }  
et al., Appellants, }  
v. } On Appeal from the United  
Pearson Yacht Leasing Co. } States District Court for  
the District of Puerto  
Rico.

[March —, 1974]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question presented is whether the Constitution is violated by application to appellee, the lessor of a yacht, of Puerto Rican statutes providing for seizure and forfeiture of vessels used for unlawful purposes when (1) the yacht was seized without prior notice or hearing after allegedly being used by a lessee for an unlawful purpose, and (2) the appellee was neither aware of nor involved in the act of the lessee which resulted in the forfeiture.

In March 1971, appellee, Pearson Yacht Leasing Company, leased a pleasure yacht to two Puerto Rican residents. Puerto Rican authorities discovered marihuana on board the yacht in early May 1972, and charged one of the lessees with violation of the Puerto Rican Controlled Substances Act, P. R. Laws Ann. Tit. 25, § 2101 *et seq.* On July 11, 1972, the Superintendent of Police seized the yacht pursuant to P. R. Laws Ann. Tit. 24, § 2512 (a)(4), (b),<sup>1</sup> and Tit. 34, § 1722,<sup>2</sup> which provide

<sup>1</sup> Title 24 § 2512 (a)(4)(b) provides:

"(a) The following shall be subject to forfeiture to the Commonwealth of Puerto Rico:

[Footnote 2 is on p. 2]

Circulated

3.13-74

### 3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 73-157

Astol Calero-Toledo, Super- }  
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et al., Appellants,  
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Pearson Yacht Leasing Co. } States District Court for  
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[March —, 1974]

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[Footnote 2 is on p. 2]

*Circulated*  
3-22-7X

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-157

Astol Calero-Toledo, Superintendent of Police,  
et al., Appellants,  
*v.*  
Pearson Yacht Leasing Co. } On Appeal from the United States District Court for the District of Puerto Rico.

[March —, 1974]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question presented is whether the Constitution is violated by application to appellee, the lessor of a yacht, of Puerto Rican statutes providing for seizure and forfeiture of vessels used for unlawful purposes when (1) the yacht was seized without prior notice or hearing after allegedly being used by a lessee for an unlawful purpose, and (2) the appellee was neither involved in nor aware of the act of the lessee which resulted in the forfeiture.

In March 1971, appellee, Pearson Yacht Leasing Company, leased a pleasure yacht to two Puerto Rican residents. Puerto Rican authorities discovered marihuana on board the yacht in early May 1972, and charged one of the lessees with violation of the Puerto Rican Controlled Substances Act, P. R. Laws Ann. Tit. 25, § 2101 *et seq.* On July 11, 1972, the Superintendent of Police seized the yacht pursuant to P. R. Laws Ann. Tit. 24, § 2512 (a)(4), (b),<sup>1</sup> and Tit. 34, § 1722,<sup>2</sup> which provide

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 17, 1974

MEMORANDUM TO THE CONFERENCE

file

RE: No. 73-960 Marshall v. Texas

This was held for No. 73-157 Calero-Toledo. Appellant's Volkswagen was forfeited when driven by his son who was arrested and found with marijuana in the car. The Texas forfeiture statute contains a proviso, "provided no . . . vehicle shall be forfeited when it is shown that the illegal act has been committed by some person other than the owner and without the owner's knowledge." The Court of Civil Appeals held that "innocence" of an owner is an affirmative defense which must be specifically pleaded and proved. Since appellant neither pleaded nor attempted to prove the defense, the forfeiture was sustained. This is consistent with our No. 73-157 Calero-Toledo and I shall therefore vote to dismiss the appeal as not presenting a substantial federal question.

W.J.B.Jr.

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

MEMBERS OF  
OTTER STEWART

March 21, 1974

No. 73-157 - Calero-Toledo v.  
Pearson Yacht Leasing Co.

Dear Bill,

Please add the following at the foot  
of your opinion for the Court in this case:

"MR. JUSTICE STEWART joins Parts I  
and II of the Court's opinion, but, for the rea-  
sons stated in the dissenting opinion of MR.  
JUSTICE DOUGLAS, he would hold that the for-  
feiture of property belonging to an innocent and  
non-negligent owner violates the Fifth and  
Fourteenth Amendments."

Sincerely yours,

Q4  
P

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 12, 1974

Re: No. 73-157, Calero-Toledo v. Pearson Yacht Leasing Co.

Dear Bill:

As presently advised, I am inclined to join your opinion in this case but will file a concurrence along the following lines:

Mr. Justice White, concurring.

I join the Court's opinion, and agree that there was no constitutional necessity under Fuentes or any other case in this Court to accord the owner-lessor of the yacht a hearing in the circumstances of this case. I add, however, that the presence of important public interests which permits dispensing with a pre-seizure hearing in the instant case, is only one of the situations in which no prior hearing is required. See Mitchell v. Grant, \_\_\_ U.S. \_\_\_

(1974); Arnett v. Kennedy, \_\_\_ U.S. \_\_\_, \_\_\_  
(1974) (White, J., concurring).

Sincerely,



Mr. Justice Brennan

Copies to Conference

Bill - Could I talk you out of the facts for  
Lamont on pp 26-27?



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

## 1st DRAFT

From: White, J.

## SUPREME COURT OF THE UNITED STATES

Circulated: 3-14-74

No. 73-157

Recirculated:

Astol Calero-Toledo, Superintendent of Police,  
 et al., Appellants,  
 v.  
 Pearson Yacht Leasing Co.

On Appeal from the United  
 States District Court for  
 the District of Puerto  
 Rico.

[March —, 1974]

MR. JUSTICE WHITE, concurring.

I join the Court's opinion, and agree that there was no constitutional necessity under *Fuentes* or any other case in this Court to accord the owner-lessor of the yacht a hearing in the circumstances of this case. I add, however, that the presence of important public interests which permits dispensing with a preseizure hearing in the instant case, is only one of the situations in which no prior hearing is required. See *Mitchell v. Grant*, — U. S. — (1974); *Arnett v. Kennedy*, — U. S. —, — (1974). (WHITE, J., concurring).

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

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 73-157

Recirculated: 5-13-7

Astol Calero-Toledo, Superintendent of Police,  
et al., Appellants,  
v.  
Pearson Yacht Leasing Co. } On Appeal from the United  
States District Court for  
the District of Puerto  
Rico.

[March —, 1974]

MR. JUSTICE WHITE, with whom MR. JUSTICE POWELL joins, concurring.

I join the Court's opinion, and agree that there was no constitutional necessity under *Fuentes* or any other case in this Court to accord the owner-lessor of the yacht a hearing in the circumstances of this case. I add, however, that the presence of important public interests which permits dispensing with a preseizure hearing in the instant case, is only one of the situations in which no prior hearing is required. See *Mitchell v. Grant*, — U. S. — (1974); *Arnett v. Kennedy*, — U. S. —, — (1974) (WHITE, J., concurring).

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 11, 1974

Re: No. 73-157 -- Calero-Toledo v. Pearson Yacht  
Leasing Co.

Dear Bill:

Please join me.

Sincerely,

*J.M.*  
T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 11, 1974

Dear Bill:

Re: No. 73-157 - Calero-Toledo v.  
Pearson Yacht Leasing Co.

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 11, 1974

No. 73-157 Calero-Toledo v. Pearson  
Yacht Leasing Co.

Dear Bill:

It may be a few days before I have an opportunity to complete my consideration of the above case and your opinion.

I will certainly let you hear from me before the March 22 Conference.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

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

May 1, 1974

No. 73-157 Calero-Toledo v. Pearson

Dear Byron:

Please join me in your concurrence in the above case.

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.

May 1, 1974

No. 73-157 Calero-Toledo v. Pearson

Dear Bill:

Now that Byron has a court in Mitchell v. Grant, and I have circulated a concurrence in that case, I am prepared to join your opinion in the above case.

I am also joining Byron's concurrence.

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 18, 1974

Re: No. 73-157 - Calero-Toledo v. Pearson Yacht  
Leasing Co.

Dear Bill:

Please join me in your opinion for the Court.

Sincerely,

*WB*

Mr. Justice Brennan

Copies to the Conference