

# The Burger Court Opinion Writing Database

## *Francisco v. Gathright*

419 U.S. 59 (1974)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

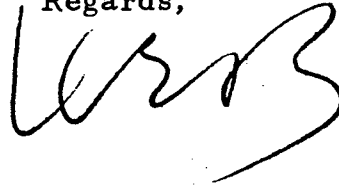
November 1, 1974

Re: 73-5768 - Francisco v. Gathright

Dear Bill:

Please join me.

Regards,



Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

November 1, 1974

Dear Bill:

I join your opinion in 73-5768,  
FRANCISCO v. GATHRIGHT, SUPT.

*W*

WILLIAM O. Douglas

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

November 4, 1974

Dear Bill:

I agreed once with your opinion  
in 73-5768, FRANCISCO v. GATHRIGHT. I  
regret only that you made it a per curiam.  
I hope you change your mind on that.

*W O D*  
WILLIAM O. DOUGLAS

Mr. Justice Rehnquist

cc: The Conference

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CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

November 1, 1974

RE: No. 73-5768 Francisco v. Gathright

Dear Bill:

I agree, but think it should be a signed  
opinion.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 1, 1974

No. 73-5768, Francisco v. Gathright

Dear Bill,

I agree with the Per Curiam you  
have circulated in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 1, 1974

Re: No. 73-5768 - Francisco v. Gathright

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

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

154-2

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 14, 1974

Re: No. 73-5768 -- Frank Xavier Francisco v. J.S. Gathright

Dear Bill:

Please join me in your opinion in this case.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 4, 1974

Re: No. 73-5768 - Francisco v. Gathright

Dear Bill:

I am glad to join the per curiam you have prepared  
for this case.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
STICE LEWIS F. POWELL, JR.

November 5, 1974

No. 73-5768 Francisco v. Gathright

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 31, 1974

Re: No. 73-5768 - Francisco v. Gathright

Dear Chief:

Although your assignment of this case to me indicated that you had tentatively determined it should be a signed opinion, the attached draft has at least the virtue of brevity, and makes little new law. I therefore suggest that if the draft becomes an opinion of the Court, it should be a per curiam rather than a signed opinion.

Sincerely,

WWR

The Chief Justice

Copies to the Conference

Att.

✓

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

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 11/13/74

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

No. 73-5768

Frank Xavier Francisco, Petitioner, v. J. S. Gathright, Superintendent, Bland Correctional Farm.	} On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.
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[November —, 1974]

PER CURIAM.

Petitioner was convicted in a Virginia state court of possession of heroin with intent to distribute,<sup>1</sup> and was sentenced to eight years in prison. The Supreme Court of Virginia denied review and affirmed the conviction by order, and petitioner then sought federal habeas in the United States District Court for the Eastern District of Virginia.

In that court he contended that the judgment of conviction under which he was held was subject to two constitutional infirmities. His first claim was that the state statute under which he had been convicted violated his Fourteenth Amendment rights insofar as it permitted the jury to base the conviction "solely upon evidence as to

<sup>1</sup> Petitioner was convicted of violating Va. Code § 54-524.101 (a). At the time he was charged, that statute provided in relevant part: "Except as authorized by this chapter, it shall be unlawful for any person knowingly or intentionally: (1) To distribute, or to possess with intent to distribute, a controlled drug; . . . A conviction for a violation of this § 54-524.101 (a) may be based solely upon evidence as to the quantity of any controlled drug or drugs unlawfully possessed."

The statute has since been repealed. Va. Acts 1972, c. 798.

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To: The  
Mr.  
Mr.  
Mr.  
Mr. Justice  
Mr. Justice  
Mr. Justice Powell

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-5768

From: J.  
Circulated:  
Recirculated: NOV 1974

Frank Xavier Francisco,  
Petitioner,  
v.  
J. S. Gathright, Superintendent,  
Bland Correctional  
Farm.

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

[November —, 1974]

PER CURIAM.

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