

# The Burger Court Opinion Writing Database

*United States v. Wong*  
431 U.S. 174 (1977)

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



To: Mr. Justice  
Mr. Justice

From: The Clerk

APR 22 1977  
Circulated:

Recirculated:

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 74-635

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Appeals  
Rose Wong. } for the Ninth Circuit.

[April —, 1977]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether a witness who is called to testify before a grand jury while under investigation for possible criminal activity, and is later indicted for perjury in the testimony given before the grand jury, is entitled to have the false testimony suppressed on the ground that no effective warning of the Fifth Amendment privilege to remain silent was given.<sup>1</sup>

(1)

Rose Wong, the respondent, came to the United States from China in early childhood. She was educated in public schools in San Francisco, where she completed eight grades of elementary education. Because her husband does not speak English, respondent generally speaks in her native tongue in her household.

<sup>1</sup> In *United States v. Mandujano*, 425 U. S. 564 (1976), we held that false testimony by a grand jury witness suspected by federal prosecutors of criminal involvement was admissible in a subsequent perjury trial. Although the witness in *Mandujano* had been warned of the Fifth Amendment privilege, the Court of Appeals had mandated suppression of the perjurious testimony on the ground that the witness had not been provided with full *Miranda* warnings. In this Court, three separate opinions expressed varying reasons, but all eight participating Justices agreed that the perjured testimony was improperly suppressed.

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

CHAMBERS OF  
THE CHIEF JUSTICE

April 27, 1977

Personal

Re: No. 74-635 - United States v. Wong

Dear Harry:

I agree with your statement. Although the points you make are implicit, they are perhaps important enough to include in the opinion. I therefore propose that we add the following as footnote 3, to appear at the last line of p. 2 (immediately prior to the phrase, "on the contrary"):

The District Court found, however, that respondent understood the oath and the consequences of giving false testimony, and that she understood the questions that were asked of her. Thus, no issue regarding the due process consequences, if any, of the absence of either factor was addressed by the District Courts or the Court of Appeals.

This is not to suggest you should withdraw your "snapper"; it emphasizes the point.

Regards,



Mr. Justice Blackmun

To: Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: The Chief Justice

Circulated: *4/10/77*

Recirculated: *4/10/77*

*NEW FN 3*  
*STYLISTIC CHANGES*  
*THROUGHOUT*

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

**No. 74-635**

United States, Petitioner, | On Writ of Certiorari to the  
 v. | United States Court of Appeals  
 Rose Wong. | for the Ninth Circuit.

[April —, 1977]

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(1)

Rose Wong, the respondent, came to the United States from China in early childhood. She was educated in public schools in San Francisco, where she completed eight grades of elementary education. Because her husband does not speak English, respondent generally speaks in her native tongue in her household.

<sup>1</sup> In *United States v. Mandujano*, 425 U. S. 564 (1976), we held that false testimony by a grand jury witness suspected by federal prosecutors of criminal involvement was admissible in a subsequent perjury trial. Although the witness in *Mandujano* had been warned of the Fifth Amendment privilege, the Court of Appeals had mandated suppression of the perjurious testimony on the ground that the witness had not been provided with full *Miranda* warnings. In this Court, three separate opinions expressed varying reasons, but all eight participating Justices agreed that the perjured testimony was improperly suppressed.

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 24, 1977

MEMORANDUM TO THE CONFERENCE:

RE: 76-274 - Louie v. United States heretofore held for  
74-635 - U. S. v. Wong (I WILL VOTE TO DENY)

This is a perjury prosecution arising out of the same San Francisco grand jury investigation involved in Wong. Petitioner, who was suspected of illegal gambling operations in Chinatown and of bribing local policemen, gave admittedly false testimony before the grand jury. At trial, petitioner contended that his lack of understanding of English prevented his comprehending the Fifth Amendment warnings given by the prosecutor. (At least this showed that his lawyer had read the CA 9 opinion in Wong.)

The very sensible District judge instructed the jury, however, that petitioner's understanding of the warning was irrelevant to a perjury charge. Petitioner was convicted, and the United States Court of Appeals for the Ninth Circuit affirmed on the basis of our decision last Term in Mandujano.

The holding of the United States Court of Appeals for the Ninth Circuit is fully consistent with Wong. I will therefore vote to deny.\*/

WB  
Regards,

\*/ I might add that the petition is nonjurisdictionally late under Rule 22(2). CA 9's judgment was entered on June 23, 1976. The petition was not filed until August 24, 1976.

✓  
L  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM J. BRENNAN, JR.

May 4, 1977

RE: No. 74-635, United States v. Wong

Dear Chief:

I agree.

Sincerely,

*Bill*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 25, 1977

Re: No. 74-635, United States v. Wong

Dear Chief,

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

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 22, 1977

Re: No. 74-635 - United States v. Wong

Dear Chief:

Please join me.

Sincerely,

*Byron*

The Chief Justice

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 28, 1977

Re: No. 74-635, United States v. Wong

Dear Harry:

Please join me.

Sincerely,

*JTM*  
T. M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 4, 1977

Re: No 74-635, United States v. Wong

Dear Chief:

Please join me.

Sincerely,



T. M.

The Chief Justice

cc: The Conference

*RWB*  
*RP*

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Harlan  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Marshall  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 4/26/77

Recirculated:

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 74-635**

United States, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Appeals  
Rose Wong. | for the Ninth Circuit.

[May —, 1977]

**MR. JUSTICE BLACKMUN, concurring.**

I join the Court's opinion. I would add only that the District Court in this case found that respondent did understand the meaning of perjury and that she understood the questions that were asked of her. App. 14-15, and 12. Thus, no issue regarding the due process consequences of the absence of either factor is presently before the Court.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 29, 1977

MEMORANDUM TO THE CONFERENCE:

Re: No. 74-635 - United States v. Wong

In view of the Chief's inclusion of new footnote 3 in his recirculation of April 28, I shall withdraw my short separate concurrence. Thurgood already has joined me, but I have his permission to withdraw.

H. A. B.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 27, 1977

No. 74-635 United States v. Wong

Dear Chief:

Please join me.

Sincerely,

*L. Lewis*

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 27, 1977

Re: No. 74-635 - United States v. Wong

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 25, 1977

Re: 74-635 - United States v. Wong

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference