

The Burger Court Opinion Writing Database

Castaneda v. Partida

430 U.S. 482 (1977)

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 29, 1976

Re: 75-1552 Claudio Castaneda, Sheriff v. Rodrigo Partida

Dear Lewis:

Will you undertake a dissent in this case?

Regards,

W. B.

Mr. Justice Powell

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

CHAMBERS OF
THE CHIEF JUSTICE

February 22, 1977

Re: 75-1552 - Castaneda v. Partida

MEMORANDUM TO THE CONFERENCE:

I agree generally with Lewis Powell's dissent. In addition to the views he expresses, I see one other flaw in respondent's case. As I see it, respondent's process of establishing what the proposed opinion characterizes as a *prima facie* case of discrimination will not "wash". Our decisions suggest, and common sense demands, that only eligible population figures, not gross population statistics, must provide the relevant starting point. In Alexander v. Louisiana, 405 U.S. 625 (1972), for example, Byron's opinion looked to the "population of blacks in the eligible population...." *Id.*, at 630 (Emphasis supplied). A total population figure in the Southwest would include vast numbers of illegal aliens and many others not eligible and hence not to be counted.

Respondent offered no evidence whatever in this respect and therefore could not have established any meaningful case of discrimination, *prima facie* or otherwise. In contrast to respondent's "shotgun" approach, which it is proposed we accept without any analysis whatever, Census Bureau statistics demonstrate that of the adults in Hidalgo County, 72%, not 79.1% as respondent implies, are Mexican-American. (More than 7% of respondent's would-be disparity happen to be children.) At the outset, therefore, respondent's population figures are manifestly over-inclusive.

But that is only the beginning. Respondent offered no statistical evidence with respect to

1/

other basic qualifications for grand jury service. The Court's own statistics suggest that 22.9% of Spanish-surnamed persons over age 25 in Hidalgo County have had no schooling at all. Ante, at 6 n.8. Since one requirement for grand jury service is literacy in the English language, some 20% of adult-age Mexican-Americans are likely to be ineligible on that single ground. This probability is further suggested by nationwide literacy rates among adult Mexican-Americans, which as of November 1964, was only 71.5%. If Hidalgo County Mexican-Americans had in 1972 the same literacy rates as those prevailing nationwide in 1964, then literate Mexican-Americans constitute approximately 52% of the total adult population of the county. Yet, as the Court observes, no less than 50% of the persons on respondent's grand jury list were Mexican-American.

But respondent's use of overbroad statistics is not the only defect in his approach. As noted, one-half of the members of respondent's grand jury list were Mexican-American. Other grand jury lists at about the same time as respondent's indictment in March 1972 were predominantly Mexican-American. Thus, in the September 1971 grand jury list, 70% of the prospective grand jurors were Mexican-American. In the January 1972 term, 55% were Mexican-American. Since respondent was indicted in 1972, by what appears to have been an ethnically balanced grand jury, the mechanical use of Hidalgo County's practices some ten years earlier (beginning in 1962) is wholly indefensible. We do not know, and on this record cannot know, whether respondent's 1970 gross population figures, which served as the basis for establishing the "disparity" complained of in this case, had any applicability at all to the period prior to 1970. For all we know, the 1970 figures may be totally inaccurate as to

1/ The burden of establishing a *prima facie* case obviously rested on respondent. It will not do to produce patently overinclusive figures and thereby seek to shift the burden to the State. Rather, a *prima facie* case is established only when the challenger shows a disparity between the percentage of minority persons in the eligible population and the percentage of minority individuals on the grand jury.

- 3 -

2/

prior years; if so, the apparent disparity would improperly be increased.

Accordingly, for the reasons stated above and for the reasons set forth in Lewis' dissenting opinion, I will join him and add some observations along these lines.

Ryan
WRB

2/ Indeed, Judge Garza in this case referred to Hidalgo County as "rapidly changing" and as experiencing "rapid growth." This alone should give us pause in a case of this kind.

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: MAR 11 1977

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-1552

Claudio Castaneda, Sheriff, Petitioner, *v.* Rodrigo Partida. } On Writ of Certiorari to the
 United States Court of Appeals for the Fifth Circuit.

[March —, 1977]

MR. CHIEF JUSTICE BURGER, dissenting.

In addition to the views expressed in MR. JUSTICE POWELL's dissent, I identify one other flaw in the Court's opinion. What the majority characterizes as a *prima facie* case of discrimination simply will not wash. The decisions of this Court suggest, and common sense demands, that *eligible* population statistics, not gross population figures, provide the relevant starting point. In *Alexander v. Louisiana*, 405 U. S. 625, 630 (1972), for example, the Court in an opinion by MR. JUSTICE WHITE looked to the "population of blacks in the *eligible* population. . . ." (Emphasis supplied.)

The failure to produce evidence relating to the eligible population in Hidalgo County undermines respondent's claim that any statistical "disparity" existed in the first instance. Particularly where, as here, substantial numbers of members of the identifiable class actually served on grand jury panels, the burden rightly rests upon the challenger to show a meaningful statistical disparity. After all, the presumption of constitutionality attaching to all state procedures has even greater force under the circumstances presented here, where exactly one-half the members of the grand jury list now challenged by respondent were members of the allegedly excluded class of Mexican-Americans.

The Court has not previously been called upon to deal at length with the sort of statistics required of persons challeng-

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 8, 1977

RE: No. 75-1552 Castaneda v. Partida

Dear Harry:

I agree.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1552

From: Mr. Justice Stewart

Circulated: MAR 1 1977

Claudio Castaneda, Sheriff,
Petitioner,
v.
Rodrigo Partida.

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

Recirculated:

[March —, 1977]

MR. JUSTICE STEWART, dissenting.

In my view, the findings of the District Court in this case cannot be said to be "clearly erroneous." Fed. Rule Civ. Proc. 52 (a); *United States v. United States Gypsum Co.*, 323 U. S. 364, 394-395.* Given those findings, there was no constitutional violation in the selection of the grand jury that indicted the respondent. Upon that basis I would reverse the judgment of the Court of Appeals.

*The "clearly erroneous" standard applies to the review of facts found by a district court in a habeas corpus proceeding. *Wade v. Mayo*, 334 U. S. 672, 683-684.

TO: THE CHIEF

Mr. Justice Brennan
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

2nd DRAFT

From: Mr. Justice Stewart

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 75-1552

Recirculated: _____

MAR 16 1977

Claudio Castaneda, Sheriff,
 Petitioner,
 v.
 Rodrigo Partida. } On Writ of Certiorari to the
 } United States Court of Ap-
 } peals for the Fifth Circuit.

[March —, 1977]

MR. JUSTICE STEWART, dissenting.

In my view, the findings of the District Court in this case cannot be said to be "clearly erroneous." Fed. Rule Civ. Proc. 52 (a); *United States v. United States Gypsum Co.*, 333 U. S. 364, 394-395.* Given those findings, there was no constitutional violation in the selection of the grand jury that indicted the respondent. Upon that basis I would reverse the judgment of the Court of Appeals. I add only that I am in substantial agreement with the dissenting opinions of THE CHIEF JUSTICE and MR. JUSTICE POWELL.

*The "clearly erroneous" standard applies to the review of facts found by a district court in a habeas corpus proceeding. *Wade v. Mayo*, 334 U. S. 672, 683-684.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 15, 1977

Re: No. 75-1552 - Castaneda v. Partida

Dear Harry:

I shall await the dissent in this case. I am doubtful about the constitutional basis for the fair cross section requirement as applied to grand juries. Taylor v. Louisiana rested on the Sixth and Fourteenth Amendments, but the grand jury clause has not been held binding on the States. Nor have prior cases rested on the fair cross section ground. In any event, I want to consider the case at greater length.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 3, 1977

Re: No. 75-1552 - Castaneda v. Partida

Dear Harry:

I join your February 24, 1977, circulation
in this case.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 7, 1977

Re: No. 75-1552 - Castaneda v. Partida

Dear Harry:

Please join me.

Sincerely,

JM

T. M.

Mr. Justice Blackman

cc: The Conference

MAR 8 1977

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1552

Claudio Castaneda, Sheriff,
Petitioner,
v.
Rodrigo Partida. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[March —, 1977]

MR. JUSTICE MARSHALL, concurring.

I join fully MR. JUSTICE BLACKMUN's sensitive opinion for the Court. I feel compelled to write separately, however, to express my profound disagreement with the views expressed by MR. JUSTICE POWELL in his dissent.

As my Brother POWELL observes, *post*, at 1-2, there are three categories of evidence in this case that bear on the ultimate question whether respondent "demonstrated by a preponderance of the evidence that the State had 'deliberately and systematically den[ied] to members of [respondent's class] the right to participate as jurors in the administration of justice,' *Alexander v. Louisiana*, 405 U. S. 625, 628 (1972). First, there is the statistical evidence. That evidence reveals that for at least 10 years, Mexican-Americans have been grossly under-represented on grand juries in Hidalgo County. As MR. JUSTICE BLACKMUN demonstrates, *ante*, at — n. 17, it is all but impossible that this sizeable disparity was produced by chance. The statistical evidence, then, at the very least supports an inference that Mexican-Americans were discriminated against in the choice of grand jurors.

Second, there is testimony concerning the grand jury selection system employed in this case. That testimony indicates that the commissioners who construct grand jury panels had ample opportunity to discriminate against Mexican-Americans, since the selection system is entirely discretionary and

1 P3

STYLISTIC CHANGES THROUGHOUT.

MAR 17 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1552

Claudio Castaneda, Sheriff,
Petitioner,
v.
Rodrigo Partida. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit,

[March —, 1977]

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P. 3

MAR 18 1977

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1552

Claudio Castaneda, Sheriff,
Petitioner,
v.
Rodrigo Partida. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[March —, 1977]

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75-1552

Supreme Court of the United States

Memorandum

3-23

, 1977

Castaneda

Harry:

Lewis should have
testified in this case

JW

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

From: Mr. Justice Blackmun

Circulated: 2/7/77

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1552

Claudio Castaneda, Sheriff, Petitioner, v. Rodrigo Partida. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[February —, 1977]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The sole issue presented in this case is whether the State of Texas, in the person of petitioner, the Sheriff of Hidalgo County, successfully rebutted respondent-prisoner's *prima facie* showing of discrimination against Mexican-Americans in the state grand jury selection process. In his brief, petitioner, in claiming effective rebuttal, asserts:

"This list [of the grand jurors that indicted respondent] indicates that 50 percent of the names appearing thereon were Spanish. The record indicates that 3 of the 5 jury commissioners, 5 of the grand jurors who returned the indictment, 7 of the petit jurors, the judge presiding at the trial, and the Sheriff who served notice on the grand jurors to appear had Spanish surnames." Brief for Petitioner 6.

I

This Court on prior occasions has considered the workings of the Texas system of grand jury selection. See *Hernandez v. Texas*, 347 U.S. 475 (1954); *Cassell v. Texas*, 339 U. S. 282 (1950); *Akins v. Texas*, 325 U. S. 398 (1945); *Hill v. Texas*, 316 U. S. 400 (1942); *Smith v. Texas*, 311 U. S. 128 (1940). Texas employs the "key man" system, which relies on jury

11.12.
3.7.8.10.11.17
13.14.16.17
pp.

STYLISTIC CHANGES

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

From: Mr. Justice Blackmun

Circulated: _____

3rd DRAFT

Recirculated: 2/24/77

SUPREME COURT OF THE UNITED STATES

No. 75-1552

Claudio Castaneda, Sheriff, Petitioner, v. Rodrigo Partida. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[February —, 1977]

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March 17, 1977

Re: No. 75-1552 - Castaneda v. Partida

Dear Lewis:

With several dissents now written, I find it necessary to make a slight change on page 16 of the Court's opinion. In the full paragraph on that page, 11th line, I am inserting after the word "dissent" the words "of Mr. Justice Powell." I feel that the reference to "dissenters" in the first line of my footnote 14 on page 12 may remain as it is.

Sincerely,

HAB

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 18, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 75-1552 - Castaneda v. Partida

The following new paragraph should be inserted before the final paragraph in footnote 8, on page 6.

"The suggestion is made in the dissenting opinion of the Chief Justice, post, that reliance on eligible population figures and allowance for literacy would defeat respondent's *prima facie* showing of discrimination. But the 65% to 39% disparity between Mexican-Americans over the age of 25 who have some schooling and Mexican-Americans represented on the grand jury venires takes both of the Chief Justice's concerns into account. Statistical analysis, which is described in more detail in n. 17, infra, indicates that the discrepancy is significant. If one assumes that Mexican-Americans constitute only 65% of the jury pool, then a detailed calculation reveals that the likelihood that so substantial a discrepancy would occur by chance is less than 1 in 10^{50} ."

H. A. B.

STYLISTIC CHANGES

pp. 6, 7, 17

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 3/18/77

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1552

Claudio Castaneda, Sheriff, Petitioner,
 v.
 Rodrigo Partida. } On Writ of Certiorari to the
 } United States Court of Appeals for the Fifth Circuit,

[February —, 1977]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The sole issue presented in this case is whether the State of Texas, in the person of petitioner, the Sheriff of Hidalgo County, successfully rebutted respondent-prisoner's *prima facie* showing of discrimination against Mexican-Americans in the state grand jury selection process. In his brief, petitioner, in claiming effective rebuttal, asserts:

"This list [of the grand jurors that indicted respondent] indicates that 50 percent of the names appearing thereon were Spanish. The record indicates that 3 of the 5 jury commissioners, 5 of the grand jurors who returned the indictment, 7 of the petit jurors, the judge presiding at the trial, and the Sheriff who served notice on the grand jurors to appear had Spanish surnames." Brief for Petitioner 6.

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November 30, 1976

No. 75-1552 Castaneda v. Partida

Dear Chief:

I will be glad to undertake a dissent in this case.

Sincerely,

The Chief Justice

lfp/ss

cc: Mr. Justice Rehnquist

bc: Charlie

The Chief has requested that we do the dissent. We can defer work on this until the Court opinion is circulated unless, meanwhile, you complete a first draft of Ingraham.

L.F.P., Jr.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 8, 1977

No. 75-1552 Castaneda v. Partida

Dear Harry:

In due time I will circulate a dissent.

Sincerely,



Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

From: Mr. Justice Powell

1st DRAFT

Circulated: FEB 18 1977

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-1552

Claudio Castaneda, Sheriff, Petitioner, v. Rodrigo Partida. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit,

[February —, 1977]

MR. JUSTICE POWELL, dissenting,

The Court today requires the release of a state prisoner on federal habeas corpus although it finds no fault with the finding of guilt on which his conviction and confinement rest. The Court reaches this result by holding that the prisoner, a Mexican-American, has adequately shown that the Mexican-Americans who controlled the jury selection process in Hidalgo County, Texas, discriminated against Mexican-Americans in selecting the grand jury that returned the prisoner's indictment. In my view, the Court misconceives both the proper scope of federal habeas corpus relief and established principles applicable to grand jury discrimination.

I

Respondent Partida was indicted for the crime of burglary of a private residence at night with intent to rape. Although Texas law afforded respondent an opportunity to challenge the indictment before trial—and, indeed, required him to do so—respondent offered no timely objection to indictment or the selection of the grand jury that returned it. Accordingly, he was brought to trial before a petit jury. This jury, whose composition is conceded to have been proper, found respondent guilty of the crime charged beyond any reasonable doubt. After respondent was convicted and sentenced he raised for the first time the claim that is now before us: that the grand

SUBSTANTIAL
CHANGES
THROUGHOUT

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

From: Mr. Justice Powell

2nd DRAFT

Circulated: _____

Recirculated: FEB 26 1977

SUPREME COURT OF THE UNITED STATES

No. 75-1552

Claudio Castaneda, Sheriff,
Petitioner,
v.
Rodrigo Partida. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit,

[February —, 1977]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE joins,
dissenting.

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I

Respondent Partida was indicted for the crime of burglary of a private residence at night with intent to rape. Although Texas law afforded respondent an opportunity to challenge the indictment before trial—and, indeed, required him to do so—respondent offered no timely objection to the indictment or the selection of the grand jury that returned it. Accordingly, he was brought to trial before a petit jury. This jury, whose composition is conceded to have been proper, found respondent guilty of the crime charged beyond any reasonable doubt. After respondent was convicted and sentenced he raised for the first time the claim that is now before us: that the grand

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 1, 1977

No. 75-1552 Castaneda v. Partida

MEMORANDUM TO THE CONFERENCE:

I have deleted Part I from the recirculation of my dissent that accompanies this memorandum.

Although I adhere strongly to the view that federal habeas corpus review is not warranted, we can address this issue another day when it has been presented properly.

L.F.P.
L.F.P., Jr.

ss

Changes pp. 1, 2, 7, 11

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

From: Mr. Justice Powell

3rd DRAFT

Circulated:

SUPREME COURT OF THE UNITED STATES

MAR 2 1977

Circulated:

No. 75-1552

Claudio Castaneda, Sheriff, Petitioner, *v.* Rodrigo Partida. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit,

[February —, 1977]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE joins, dissenting.

As I read the Court's opinion, it writes new law on the subject of grand jury discrimination, expanding the reach of—and in some instances misapplying—our prior authorities. Given the unique factual situation before us, the Court's sweeping resolution of this issue seems wholly unnecessary.¹

The evidence relevant to the issue of discrimination in this case falls into three categories: first, the statistical evidence

¹ A strong case might be made that claims of grand jury discrimination are not cognizable on federal habeas corpus under the rationale of *Stone v. Powell*, — U. S. — (1976). In *Stone* we held that "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted ~~a~~ federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Id.*, at —. Unlike the prisoner in *Stone*, who could complain that his conviction rested on evidence tainted by Fourth Amendment violations and could ask for a new trial with that evidence excluded, the prisoner in this case challenges only the now moot determination by the grand jury that there was sufficient cause to proceed to trial. He points to no~~a~~ flaw in the trial itself. As in *Stone*, the incremental benefit of extending habeas corpus as a means of correcting unconstitutional grand jury selection procedures might be viewed as "outweighed by the acknowledged costs to other values vital to a rational system of criminal justice." *Id.*, at —.

But as this issue was not addressed below and was not briefed or argued in this Court, it would be inappropriate to resolve it in this case.

Changes 1-4, 6-10

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 ✓ Mr. Justice Marshall
 ✓ Mr. Justice Blackmun
 ✓ Mr. Justice Rehnquist
 ✓ Mr. Justice Stevens

4th DRAFT

From: Mr. Justice Powell

SUPREME COURT OF THE UNITED STATES

No. 75-1552

Circulated:

Recirculated! MAR 7 1977

Claudio Castaneda, Sheriff,
 Petitioner,
 v.
 Rodrigo Partida. } On Writ of Certiorari to the
 } United States Court of Ap-
 } peals for the Fifth Circuit.

[February —, 1977]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE and
 MR. JUSTICE REHNQUIST join, dissenting.

The evidence relevant to the issue of discrimination in this case falls into three categories: first, the statistical evidence introduced by respondent in both the state and federal proceedings which shows that the 80% Mexican-American majority in Hidalgo County was not proportionately represented on the grand jury lists; second, the testimony of the state trial judge outlining the Texas grand jury selection system as it operated in this case; and third, the facts judicially noticed by the District Court with respect to the political dominance and control by the Mexican-American majority in Hidalgo County. I agree with the District Court that in light of all the evidence respondent failed to establish unconstitutional grand jury discrimination.¹

¹ A strong case might be made that claims of grand jury discrimination are not cognizable on federal habeas corpus after *Stone v. Powell*, — U. S. / — (1976). In *Stone* we held that "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Id.*, at —. Unlike the prisoner in *Stone*, who could complain that his conviction rested on evidence tainted by Fourth Amendment violations and could ask for a new trial with that evidence excluded, the prisoner in this case challenges only the now moot determination by the grand jury that there was sufficient cause to proceed

! omission

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 11, 1977

No. 75-1552 Castaneda v. Partida

Dear Chief:

Please join me in your dissenting opinion, with which I entirely agree.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

pp. 1, 2, 6, 7, 9-12

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

From: Mr. Justice Powell

Circulated: _____

Recirculated: MAR 15 1977

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1552

Claudio Castaneda, Sheriff,
 Petitioner, } On Writ of Certiorari to the
 v. } United States Court of Ap-
 Rodrigo Partida. } peals for the Fifth Circuit.

[February —, 1977]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE and
 MR. JUSTICE REHNQUIST join, dissenting.

The evidence relevant to the issue of discrimination in this case falls into three categories: first, the statistical evidence introduced by respondent in both the state and federal proceedings which shows that the 80% Mexican-American majority in Hidalgo County was not proportionately represented on the grand jury lists; second, the testimony of the state trial judge outlining the Texas grand jury selection system as it operated in this case; and third, the facts judicially noticed by the District Court with respect to the political dominance and control by the Mexican-American majority in Hidalgo County.

The Court today considers it dispositive that the lack of proportional representation of Mexican-Americans on the grand jury lists in this county would not have occurred if jurors were selected from the population wholly at random. But one may agree that the disproportion did not occur by chance without agreeing that it resulted from purposeful invidious discrimination. In my view, the circumstances of this unique case fully support the District Court's finding that the statistical disparity—the basis of today's decision—is more likely to have stemmed from neutral causes than from any intent to discriminate against Mexican-Americans.¹

¹ A strong case may be made that claims of grand jury discrimination

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
✓Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated:

Recirculated: MAR 18 1977
S. STATES

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SUPREME COURT OF THE UNITED STATES~~

No. 75-1552

Claudio Castaneda, Sheriff,
Petitioner,
v.
Rodrigo Partida. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[February —, 1977]

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 18, 1977

No. 75-1552 Castaneda v. Partida

MEMORANDUM TO THE CONFERENCE

In light of the change made today in Thurgood's concurring opinion, it has been necessary for me to make a change in footnote 7, page 10, of my dissent.

My new footnote 7, which I have today sent to the printer, reads as follows:

7/

I agree with Mr. Justice Marshall, ante, at 4, that stereotypes concerning identifiable classes in our society have no place in the decisions of this Court. For that reason, I consider it inappropriate to characterize the Mexican-American majority in Hidalgo County as a "minority group" and on that basis to suggest that these Mexican-Americans may have "adopt[ed] the majority's negative attitudes towards the minority." Ante, at 3. This type of speculation illustrates the lengths to which one must go to buttress a holding of purposeful discrimination that otherwise is based solely on a lack of proportional representation.

L. F. P.
L.F.P., Jr.

lab

MAR 19 1977

7th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1552

Claudio Castaneda, Sheriff,
Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
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[February —, 1977]

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 1, 1977

Re: No. 75-1552 - Castaneda v. Partida

Dear Lewis:

Please join me in your dissent in this case.

Sincerely,

WR

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20542

✓

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 14, 1977

Re: No. 75-1552 - Castaneda v. Partida

Dear Chief:

Please join me in your dissent.

Sincerely,

W^W

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 7, 1977

Re: 75-1552 - Castaneda v. Partida

Dear Harry:

Please join me.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference

75-1552

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Personal

February 24, 1977

Dear Harry:

Further comment is probably unnecessary since I have already joined, but I would like you to know that your excellent opinion in Castenada satisfied completely a few lingering doubts I had had about that case. Also, I think your changes in response to the dissent are most effective.

With respect to the Oliver Twist quotation, I am sorry that the matter developed as it did but, given the choice posed by your letter, I have decided to retain my footnote in slightly modified form.

Sincerely,



Mr. Justice Blackmun