

The Burger Court Opinion Writing Database

United States v. Caceres

440 U.S. 741 (1979)

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

March 22, 1979

Re: 76-1309 - U.S. v. Caceres

Dear John:

I join.

Regards,

WSB

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 23, 1979

76-1309

Dear Thurgood:

H
You and I are in dissent in No. 76-1309 United States v. Caceres and you, Lewis and I are in dissent in No. 78-201 Greenholtz v. Inmates. Would you care to undertake the dissents in both of them?

Sincerely,

Brennan

Mr. Justice Marshall

WB

*I would be happy to prepare
dissents in both of these*

TW

cc LFP

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

March 26, 1979

RE: No. 76-1309 United States v. Caceres

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 26, 1979

Re: No. 76-1309, United States v. Caceres

Dear John,

I expect to join your opinion for the Court, agreeing with the result reached and thinking that for the most part the opinion is fine. What concerns me is the discussion of Due Process and Equal Protection appearing on pages 9 to 11. It seems to me that the Equal Protection discussion is unnecessary and that the Due Process discussion is of dubious validity in light of "Petite policy" cases such as Rinaldi v. United States, 434 U.S. 22, and other decisions such as the Horowitz case of last Term. In short, I would be greatly relieved if you could see your way clear to deleting from the text the passages beginning with the last full sentence on page 9 and continuing through the first full paragraph on page 11.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 2, 1979

Re: 76-1309 - United States v. Caceres

Dear John:

I am glad to join your opinion for the Court
as recirculated today.

Sincerely yours,

PS

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 1, 1979

Re: No. 76-1309 - United States v. Caceres

Dear John,

Please join me. I am not particularly concerned about the passages Potter wrote about in his letter of February 26.

Sincerely yours,



Mr. Justice Stevens
Copies to the Conference
cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 23, 1979

Re: No. 76-1309 U.S. v. Caceres and
No. 78-201-Greenholtz v. Inmates

Dear Bill:

I will be happy to prepare dissents in both
of these.

Sincerely,

T.M.
T.M.

Mr. Justice Brennan

cc: Mr. Justice Powell

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 5, 1979

Re: 76-1309 - United States v. Caceres

Dear John:

I hope to circulate a dissent in the near future.

Sincerely,

T.M.

T.M.

Mr. Justice Stevens

cc: The Conference

21 MAR 1979

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1309

United States, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
Alfredo L. Caceres. | Ninth Circuit.

[March —, 1979]

MR. JUSTICE MARSHALL, dissenting.

The Court today holds that evidence obtained in patent violation of agency procedures is admissible in a criminal prosecution. In so ruling, the majority determines both that the Internal Revenue Service's failure to comply with its own mandatory regulations implicates no due process interest, and that the exclusionary rule is an inappropriate sanction for such noncompliance. Because I can subscribe to neither proposition, and because the Court's decision must inevitably erode respect for law among those charged with its administration, I respectfully dissent.

I

In a long line of cases beginning with *Bridges v. Wixon*, 326 U. S. 135, 152-153 (1945), this Court has held that "one under investigation is legally entitled to insist upon the observance of rules" promulgated by an executive or legislative body for his protection. See *United States v. Nixon*, 418 U. S. 683, 695-696 (1974); *Morton v. Ruiz*, 415 U. S. 199, 235 (1974); *Yellin v. United States*, 374 U. S. 109 (1963); *Vitarelli v. Seaton*, 359 U. S. 535 (1959); *Service v. Dulles*, 354 U. S. 363 (1957); *United States ex rel. Accardi v. Shaughnessy*, 347 U. S. 260 (1954). Underlying these decisions is a judgment, central to our concept of due process, that government officials no less than private citizens are bound by

1, 6, 11-12

28 MAR 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1309

United States, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
Alfredo L. Caceres. | Ninth Circuit.

[March —, 1979]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

The Court today holds that evidence obtained in patent violation of agency procedures is admissible in a criminal prosecution. In so ruling, the majority determines both that the Internal Revenue Service's failure to comply with its own mandatory regulations implicates no due process interest, and that the exclusionary rule is an inappropriate sanction for such noncompliance. Because I can subscribe to neither proposition, and because the Court's decision must inevitably erode respect for law among those charged with its administration, I respectfully dissent.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 1, 1979

Re: No. 76-1309 - United States v. Caceres

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 2, 1979

76-1309 United States v. Caceres

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 2, 1979

Re: No. 76-1309 - United States v. Caceres

Dear John:

Please join me in the second draft of your opinion,
circulated today.

Sincerely,

WR

Mr. Justice Stevens

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

From: Mr. Justice Stevens

circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1309

United States, Petitioner, | On Writ of Certiorari to the United
 v. | States Court of Appeals for the
 Alfredo L. Caceres. | Ninth Circuit.

[March —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The question we granted certiorari to decide is whether evidence obtained in violation of Internal Revenue Service (IRS) regulations may be admitted at the criminal trial of a taxpayer accused of bribing an IRS agent.

Unbeknownst to respondent, three of his face-to-face conversations with IRS Agent Yee were monitored by means of a radio transmitter concealed on Yee's person. Respondent moved to suppress tape recordings of the three conversations on the ground that the authorizations required by IRS regulations had not been secured. The District Court granted the motion. The Court of Appeals for the Ninth Circuit reversed as to the third tape; it concluded that adequate authorization had been obtained.¹ As to the first two tapes, however, the Court of Appeals agreed with the District Court both that the IRS regulations had not been followed and that exclusion of the recordings was therefore required. It is the latter conclusion that is at issue here.

¹ *United States v. Caceres*, 545 F. 2d 1182 (1976). The District Court suppressed evidence relating to the third conversation as well on the ground that the approval of a *Deputy* Assistant Attorney General was not sufficient to comply with the regulations. The Court of Appeals disagreed, concluding that the Attorney General's authority to approve such monitoring could be delegated not only to Assistant Attorneys General, as provided specifically in the regulation, but also to their deputies. That conclusion is not at issue here.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 2, 1979

Re: 76-1309 - United States v. Caceres

Dear Potter:

Although I did not delete all of the text referred to in your letter of February 26, I have made substantial revisions in the pages that trouble you. If you have any further suggestions with respect to the draft I am circulating today, please let me know.

Respectfully,



Mr. Justice Stewart

Copies to the Conference

*Pp. 9-12, 14
footnotes renumbered*

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: ~~MR 2 79~~

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1309

United States, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
Alfredo L. Caceres. | Ninth Circuit.

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