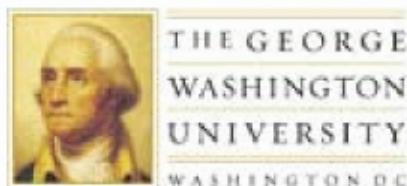


The Burger Court Opinion Writing Database

Torres v. Puerto Rico

442 U.S. 465 (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

May 3, 1979

Re: 77-1609 - Torres v. Puerto Rico

MEMORANDUM TO THE CONFERENCE:

In Conference, some of us were troubled by the Puerto Rico constitutional provision which led to the judgment in this case even though a majority of the Puerto Rico justices participating concluded P.L. 22 was unconstitutional. Because of our disposition of this appeal, however, I believe it is not necessary to decide whether the Puerto Rico "super-majority" constitutional provision is somehow violative of federal due process. (See footnote 2 of the opinion.) Whether or not this deviation from the common law rule (that majority vote of the participating quorum results in a judgment) is permissible in disposing of federal constitutional claims, a ruling by us now would not affect our ability to decide whether P.L. 22 violates the Federal Constitution.

To remand to the Supreme Court of Puerto Rico, as urged by the SG of Puerto Rico, would be cumbersome and perhaps futile. Appellant's first attempt to raise the issue was rejected by that court apparently because it was untimely. There is no suggestion this was not a legitimate and adequate "state" ground upon which to reject the challenge. Nor is there reason to believe the Puerto Rico Supreme Court would not adhere to its earlier rejection of the untimely petition for reconsideration.

Even if it were to permit a tardy assertion of the claim, it is not readily apparent that court would strike down the Puerto Rico provision. Nor is it clear that a subsequent appeal from a refusal to strike the constitutional provision would lead us to conclude otherwise. If we did not, we would be in the same posture we are now.

If the Puerto Rico Supreme Court did strike the constitutional provision, and if the eighth judge were to participate, conceivably we could be faced with a judgment on P.L. 22 resulting from an evenly divided Court. We

cannot assume that issue would not also be open to reconsideration on remand. Again we would be back in "square I".

We review only final judgments and we have one now. I conclude we should act on it without spinning our wheels over a collateral issue, the outcome of which only speculatively could affect the outcome here.

Regards,

W.B

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: MAY 3 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1609

Terry Terrol Torres, Appellant,
v.
Commonwealth of Puerto Rico. } On Appeal from the Supreme
Court of Puerto Rico.

[April —, 1979]

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

I

In 1975, the Commonwealth of Puerto Rico enacted legislation authorizing its police to search the luggage of any person arriving in Puerto Rico from the United States. Public Law 22, 25 L. P. R. A. § 1051 *et seq.*¹ The "Statement of Motives" in the preamble to the statute indicates that it was enacted in response to a serious increase in the importation of firearms, explosives, and narcotics from the mainland, and a concomitant rise in crime on the island. As construed by the Puerto Rico Supreme Court, Public Law 22 does not require the police to have probable cause to believe that they will find contraband before they search baggage. However, it does not appear that the luggage of all travellers arriving from the mainland is subject to this kind of search.

¹ Public Law 22, § 1, 25 L. P. R. A. § 1501, provides:

"The Police of Puerto Rico is hereby empowered and authorized to inspect the luggage, packages, bundles, and bags of passengers and crew who land in the airports and piers of Puerto Rico arriving from the United States; to examine cargo brought into the country, and to detain, question, and search those persons whom the Police have grounds to suspect of illegally carrying firearms, explosives, narcotics, depressants or stimulants or similar substances."

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

CHAMBERS OF
THE CHIEF JUSTICE

May 9, 1979

Re: 77-1609 - Torres v. Puerto Rico

Dear Bill:

I have your memo of May 9 and I will take a careful look at the point you raise. I will be back to you on this.

Regards,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 11, 1979

Re: 78-1609 - Torres v. Puerto Rico

Dear Potter:

This is to respond to the points you raise in your memo of May 10.

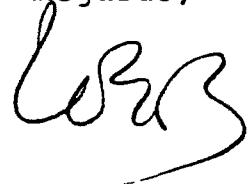
(1) With respect to your doubts concerning the continuing validity of the Insular Cases, my conference notes, limited though they are, give no indication that the Court wished to reconsider those decisions in this case. It is not necessary to reconsider the Insular Cases in order to hold that the Fourth Amendment applies to Puerto Rico. Overruling the Insular Cases would be a substantial departure from existing law, and could have significant consequences, some unforeseeable. For example, the United States' policies and programs for encouraging economic development in Puerto Rico rely heavily on special tax treatment of the island which could not be given to one of the states and which would probably be unconstitutional if the Insular Cases were overruled. Overruling the Insular Cases would call into doubt the constitutional status of other United States possessions whose circumstances are different from those of Puerto Rico. Accordingly, I see no occasion to call into question the doctrine of the Insular Cases.

(2) You suggest that Puerto Rico is not a "territory" or "possession" of the United States. True its status is unique in many respects. Spain ceded Puerto Rico to the United States by the Treaty of Paris long years ago. The United States has never indicated any intent to relinquish sovereignty there. The legislative history of the enactments leading to the most recent revision of Puerto Rico's government seems to disavow any intention to alter Puerto Rico's fundamental political relationship with the United States. See, e.g., H. Rep. No. 2275, 81st Cong., 2d Sess (1950), 1950 U.S.C.C.A. 2681, 2682-2684. Congress' jurisdiction over Puerto Rico rests on its constitutional power to make "all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Art. 4, § 3, cl. 2. For us to indicate that Puerto Rico is not a territory or possession would call into question Congress' jurisdiction over the island, possibly including appointment of federal judges there.

(3) The fact that the people of Puerto Rico adopted and have retained -- and that Congress approved -- a Constitution containing a prohibition against unreasonable searches and seizures tends to show (a) that the application of the Fourth Amendment to Puerto Rico is not impracticable, and (b) that Congress intends that the people of the Commonwealth should be protected from unreasonable searches and seizures. Examining Board, 426 U.S., at 595, and other cases give support for the conclusion that the Fourth Amendment is applicable to Puerto Rico. See pages 4-5 of draft opinion.

(4) Decisions of this Court repeatedly have held that either lack of probable cause or failure to obtain a warrant normally renders a search unconstitutional. The fact that either ground is sufficient to hold the search unconstitutional does not mean that each one is not an independent ground. It is not true that the absence of probable cause necessarily precludes issuance of a valid warrant; we have required warrants for administrative searches even when such warrants may be based on factors other than traditional probable cause.

Regards,



Mr. Justice Stewart

Copies to the Conference

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

STYLISTIC CHANGES AS MARKED:

From: The Chief Justice

Circulated: _____

Recirculated: JUN 1 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1609

Terry Terrol Torres, Appellant,
v.
Commonwealth of Puerto Rico, | On Appeal from the Supreme
Court of Puerto Rico.

[June —, 1979]

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

I

In 1975, the Commonwealth of Puerto Rico enacted legislation authorizing its police to search the luggage of any person arriving in Puerto Rico from the United States. Public Law, 22, P. R. Laws Ann., Tit. 25, § 1051 *et seq.* (Supp. 1977).¹ The "Statement of Motives" in the preamble to the statute indicates that it was enacted in response to a serious increase in the importation of firearms, explosives, and narcotics from the mainland, and a concomitant rise in crime on the island. As construed by the Puerto Rico Supreme Court, Public Law 22 does not require the police to have probable cause to believe that they will find contraband before they search baggage. However, it does not appear that the luggage of all travellers arriving from the mainland is subject to this kind of search.

¹ Public Law 22, § 1, P. R. Laws Ann., Tit. 25, § 1501 (Supp. 1977), provides:

"The Police of Puerto Rico is hereby empowered and authorized to inspect the luggage, packages, bundles, and bags of passengers and crew who land in the airports and piers of Puerto Rico arriving from the United States; to examine cargo brought into the country, and to detain, question, and search those persons whom the Police have grounds to suspect of illegally carrying firearms, explosives, narcotics, depressants or stimulants or similar substances."

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

*CHAMBERS OF
THE CHIEF JUSTICE

June 6, 1979

MEMORANDUM TO THE CONFERENCE:

77-1609

Re: Torres v. Puerto Rico

Enclosed is slightly revised page 9 of the above opinion.

Regards,

WSB

P.S. Grey South Dakota is
without an international airport!

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

May 9, 1979

Torres v. Puerto Rico, No. 77-1609

Dear Chief,

I am disturbed by your citation and discussion, in Part I of the old cases holding that the Constitution does not apply in full force to territories such as Puerto Rico. As you mention in fn. 3, Puerto Rico concedes that the Fourth Amendment applies to it, Brief for Appellee at 12, citing Reid v. Covert, 354 U.S. 1, 13 (1957), whatever the validity of the doctrine of the Insular Cases in the particular historical context in which it was created, "neither the cases nor their reasoning should be given any further expansion." Id., at 14; see Examining Board v. Flores de Otero, 426 U.S. 572, 600 n.31. I would prefer either to omit any citations to these early cases, relying instead on Puerto Rico's concession and the more modern cases, or expressly to indicate our doubts as to the continuing validity of the doctrine of those cases in light of present realities.

Sincerely,

The Chief Justice
Copies to the Conference

Bill

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

From: Mr. Justice B.

Circulated: 13-44

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1609

Terry Terrol Torres, Appellant,
v.
Commonwealth of Puerto Rico. } On Appeal from the Supreme
Court of Puerto Rico.

[May —, 1979]

MR. JUSTICE BRENNAN, concurring in the judgment.

Appellant's conviction of violating the Puerto Rico Controlled Substances Act was based on evidence discovered when police, admittedly without probable cause, searched appellant's luggage after he arrived in Puerto Rico from Florida. The Supreme Court of Puerto Rico has construed Public Law 22 to authorize such searches without probable cause.*

I concur in the Court's holding that the Fourth Amendment applies in full force to Puerto Rico, that the search of appellant's luggage without a warrant based on probable cause

*Four of the eight members of the Supreme Court of Puerto Rico were of the opinion that Public Law 22 as so construed violated the Fourth Amendment of the Federal Constitution. See *ante*, at 2. But Art. V, § 4, of the Puerto Rico Constitution provides that no law shall be held unconstitutional by the Supreme Court of Puerto Rico except by a majority of the total number of justices of which the court is composed. Petitioner argues that this requirement violates the Supremacy Clause and the Due Process Clause of the Federal Constitution. In light of our resolution of the merits of petitioner's search and seizure claim, we need not pass on this conclusion. Cf. *Ohio ex rel. Bryant v. Akron Municipal Park Dist.*, 281 U. S. 74 (1930).

Implicit in the Commonwealth's argument, however, is a claim that this "super-majority" provision constitutes an adequate and independent non-federal ground supporting the judgment reached by the Puerto Rico Supreme Court. This cannot be. The provision neither supplies an independent substantive basis for the decision, nor does it control the parties' conduct of the litigation. It affects only the internal "working rules" of the court. While such rules might affect the decision of cases, they cannot be adequate grounds in support of those decisions.

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

From: Mr. Justice B

Circulated: _____

Recirculated: 7/11

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1609

Terry Terrol Torres, Appellant,
v.
Commonwealth of Puerto Rico. | On Appeal from the Supreme
Court of Puerto Rico.

[May —, 1979]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEWART and MR. JUSTICE MARSHALL join, concurring in the judgment.

Appellant's conviction of violating the Puerto Rico Controlled Substances Act was based on evidence discovered when police, admittedly without probable cause, searched appellant's luggage after he arrived in Puerto Rico from Florida. The Supreme Court of Puerto Rico has construed Public Law 22 to authorize such searches without probable cause.*

I concur in the Court's holding that the Fourth Amendment

*Four of the eight members of the Supreme Court of Puerto Rico were of the opinion that Public Law 22 as so construed violated the Fourth Amendment of the Federal Constitution. See *ante*, at 2. But Art. V, § 4, of the Puerto Rico Constitution provides that no law shall be held unconstitutional by the Supreme Court of Puerto Rico except by a majority of the total number of justices of which the court is composed. Petitioner argues that this requirement violates the Supremacy Clause and the Due Process Clause of the Federal Constitution. In light of our resolution of the merits of petitioner's search and seizure claim, we need not pass on these contentions. Cf. *Ohio ex rel. Bryant v. Akron Municipal Park Dist.*, 281 U. S. 74 (1930).

The Commonwealth's discussion of the impact of Art. V, § 4 on this case, however, implicitly suggests a claim that this "super-majority" provision constitutes an adequate and independent nonfederal ground supporting the judgment reached by the Puerto Rico Supreme Court. This cannot be. The provision neither supplies an independent substantive basis for the decision, nor does it control the parties' conduct of the litigation. It affects only the internal "working rules" of the court. While such rules might affect the decision of cases, they cannot be adequate grounds in support of those decisions.

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 10, 1979

Re: 77-1609 - Torres v. Puerto Rico

Dear Chief:

Although I share Bill Brennan's doubt about the continuing validity of the Insular Cases, my problems in the present case go considerably further. First, I could not join an opinion that suggested, even implicitly, that the Commonwealth of Puerto Rico in 1979 is either a "territory" or "possession" of the United States. Secondly, referring to the second full paragraph on page 5 and the paragraph beginning at the bottom of that page, I do not understand why, because the Puerto Rican constitution contains a "bill of rights," it follows that the Fourth Amendment applies to the Commonwealth. Finally, referring to Section III on page 6, I have some trouble perceiving why the lack of a probable cause requirement and the lack of a warrant requirement are two independent constitutional deficiencies. If a search can be made without probable cause, no warrant for such a search could be validly issued in any event.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 24, 1979

Re: No. 77-1609, Torres v. Puerto Rico

Dear Bill,

Please add my name to your concurring opinion.

Sincerely yours,

C. S.
P.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

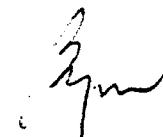
May 4, 1979

Re: No. 77-1609 - Torres v. Puerto Rico

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1979

Re: No. 77-1609 - Torres v. Puerto Rico

Dear Bill:

Please join me in your concurrence.

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

June 11, 1979

Re: No. 77-1609 - Torres v. Puerto Rico

Dear Bill:

Please join me in your concurrence.

Sincerely,

H. A. B.

Mr. Justice Brennan
cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 5, 1979

No. 77-1609 Torres v. Puerto Rico

Dear Chief:

Please join me.

Sincerely,

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

May 18, 1979

Re: No. 77-1609 Torres v. Puerto Rico

Dear Chief:

Although I was in dissent in Conference, I would imagine there is little probability of my solitary position prevailing. I therefore join your opinion.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 14, 1979

Re: 77-1609 - Torres v. Commonwealth of
Puerto Rico

Dear Chief:

Please join me.

Respectfully,



The Chief Justice
Copies to the Conference