

# The Burger Court Opinion Writing Database

## *United States v. Cortez*

449 U.S. 411 (1981)

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



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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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-404

JAN 9 1981

United States, Petitioner, }  
v. } On Writ of Certiorari to the  
Jesus E. Cortez and Pedro } United States Court of Appeals  
Hernandez-Loera. } for the Ninth Circuit.

[January —, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether objective facts and circumstantial evidence suggesting that a particular vehicle is involved in criminal activity may provide a sufficient basis to justify an investigative stop of that vehicle.

I

Late in 1976, Border Patrol officers patrolling a sparsely populated section of southern central Arizona found human footprints in the desert. In time, other sets of similar footprints were discovered in the same area. From these sets of footprints, it was deduced that, on a number of occasions, groups of from 8 to 20 persons had walked north from the Mexican border, across 30 miles of desert and mountains, over a fairly well-defined path, to an isolated point on Highway 86, an east-west road running roughly parallel to the Mexican border.

Officers observed that one recurring shoeprint bore a distinctive repetitive V-shape, or chevron, design. Because the officers knew from recorded experience that the area through which the groups passed was heavily trafficked by aliens illegally entering the country from Mexico, they surmised that a person, whom they gave the case-name "Chevron," was guiding aliens illegally into the United States over the path

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

CHAMBERS OF  
THE CHIEF JUSTICE

January 12, 1981

RE: 79-404 - U.S. v. Cortez

Dear Lewis:

To be on the "safe" side I will add a footnote

"Of course an officer may stop and question a person if there is reasonable grounds to believe that person is wanted for past criminal conduct".

Regards  


Justice Powell  
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U.S. DEPARTMENT OF JUSTICE

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: \_\_\_\_\_

Recirculated: JAN 14 1981

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-404

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

CHAMBERS OF  
THE CHIEF JUSTICE

January 16, 1981

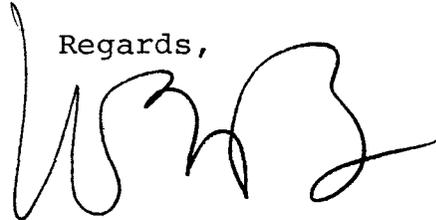
RE: 79-404 - United States v. Cortez

Dear Thurgood:

Now that Bill Brennan has joined there will be no dissent unless you do so.

All are now in. Should you join this case can come down next Wednesday.

Regards,

A handwritten signature in dark ink, appearing to be 'W. Marshall', written in a cursive style.

Justice Marshall

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

December 15, 1980

RE: No. 79-404 United States v. Cortez

Dear Thurgood:

You and I are in dissent in the above. I'll  
be happy to undertake the dissent for us.

Sincerely,

Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 13, 1981

Re: No. 79-404 - U.S. v. Cortez

Dear Chief,

I am prepared to join your opinion if you could see your way clear to the following changes:

- 1) on p.3, first paragraph: could you add that the reason the officers located themselves at Highway 86 and milepost 149 was because they also had responsibilities for other police work in the Altar Valley? see Reply Brief of Petitioner at 6-7.
- 2) on p.6, first line: could you remove the reference to "probable cause"? You are really only referring to reasonable suspicion in the following sentences and it would be inaccurate to define probable cause using the reasonable suspicion definition.
- 3) on p.9, last two lines: could you delete the sentence "In no other way can there be any meaningful control over the illegal entry of aliens?" It seems to me that there may be other ways.

Sincerely,

*Sill*

The Chief Justice

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

January 13, 1981

Re: No. 79-404 - U.S. v. Cortez

Dear Thurgood,

Since the Chief's opinion accepts the Court of Appeals' premise that the standard requires focus on the particular vehicle, I don't think I can dissent. Therefore, I have decided to join the Chief's opinion if he adopts the suggestions made in the attached.

Sincerely,



Justice Marshall

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 16, 1981

RE: No. 79-404 United States v. Cortez

Dear Chief:

I agree.

Sincerely,

*Bul*

The Chief Justice

cc: The Conference

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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

From: Mr. Justice Stewart  
Circulated: 14 JAN 1981

1st DRAFT

Recirculated:

**SUPREME COURT OF THE UNITED STATES**

No. 79-404

United States, Petitioner, }  
v. } On Writ of Certiorari to the  
Jesus E. Cortez and Pedro } United States Court of Appeals  
Hernandez-Loera. } for the Ninth Circuit.

[January —, 1981]

JUSTICE STEWART, concurring in the result.

The Border Patrol officers in this case knew, or had rationally deduced, that "Chevron" had repeatedly shepherded illegal aliens up from the border; that his treks had commonly ended early in the morning around milepost 122 on Highway 86; that he usually worked on weekends; that he probably had made no trips for two weeks; and that trips were most likely when the weather was good. Knowing of this pattern, the agents could reasonably anticipate, even if they could not guarantee, the arrival of another group of aliens, led by Chevron, at milepost 122 on the first clear weekend night in late January 1977. Route 86 leads through almost uninhabited country, so little travelled in the hours of darkness that only 15 to 20 westbound vehicles passed the police during the five hours they watched that Sunday night. Only two vehicles capacious enough to carry a sizeable group of illegal aliens went by. One of those two vehicles not only drove past them, but returned in the opposite direction after just enough time had elapsed for a journey to milepost 122 and back. This nocturnal round trip into "desolate desert terrain" would in any event have been puzzling. Coming when and as it did, surely the most likely explanation for it was that Chevron was again shepherding aliens.

In sum, the Border Patrol Officers had discovered an abundance of "specific articulable facts" which, "together with rational inferences from them," entirely warranted a "suspicion

P. 2

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

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

filed: 15 JAN 1981

No. 79-404

United States, Petitioner, }  
v. } On Writ of Certiorari to the  
Jesus E. Cortez and Pedro } United States Court of Appeals  
Hernandez-Loera. } for the Ninth Circuit,

[January —, 1981]

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 12, 1981

Re: 79-404 - United States v.  
Cortez, etc

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 13, 1981

Re: No. 79-404 - U.S. v. Cortez

Dear Chief:

I await the dissent.

Sincerely,

*T.M.*  
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 19, 1981

Re: No. 79-404 - United States v. Cortez

Dear Chief:

Please add to the bottom of your opinion  
that I concur in the judgment.

Sincerely,

*J.M.*

T.M.

The Chief Justice

cc: The Conference

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CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

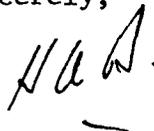
January 12, 1981

Re: No. 79-404 - United States v. Cortez

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

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SSSBNOC 50 ADV 1 IN

January 12, 1981

No. 79-404 U. S. v. Cortez

Dear Chief:

I have written you a separate join note.

In reading your description of the cause required to justify an investigative stop, you state that such a stop "must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity."

I have thought that an officer also may stop a person for questioning if he has reasonable grounds for believing the individual is wanted for alleged criminal conduct in the past. Do you think it is desirable to add a footnote to this effect?

Sincerely,

The Chief Justice

LFP/lab

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 12, 1981

No. 79-404 U. S. v. Cortez

Dear Chief:

Please join me.

Sincerely,

*Lewis*

The Chief Justice

LFP/lab

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Supreme Court of the United States  
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CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 13, 1981

Re: No. 79-404 United States v. Cortez

Dear Chief:

Please join me in your opinion for the Court.

Sincerely,

*WHR*

The Chief Justice

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 14, 1981

Re: 79-404 - United States v. Cortez

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

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