

The Burger Court Opinion Writing Database

Rosales-Lopez v. United States

451 U.S. 182 (1981)

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

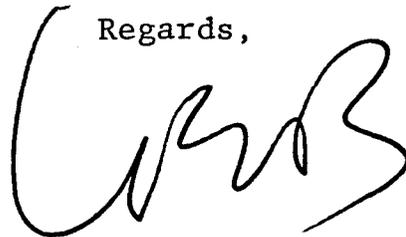
April 6, 1981

RE: 79-6624 - Rosales-Lopez v. United States

Dear Byron:

As of now I will likely join Bill Rehnquist's
concurring opinion.

Regards,

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

Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 16, 1981

Re: 79-6624 - Rosales-Lopez v. United States

Dear Bill:

Please join me in your concurring opinion.

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written over the typed word 'Regards,'.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 27, 1981

RE: No. 79-6624 Rosales-Lopez v. United States

Dear John:

Thurgood, you and I voted to reverse in the above.
Would you be willing to undertake the dissent?

Sincerely,



Mr. Justice Stevens

cc: Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 23, 1981

RE: No. 79-6624 Rosales-Lopez v. United States

Dear Byron:

I shall await the dissent.

Sincerely,

Bill

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 3, 1981

RE: No. 79-6624 Rosales-Lopez v. United States

Dear John:

Please join me in the dissenting opinion you
have prepared in the above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stevens", written in dark ink.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 23, 1981

Re: No. 79-6624, Rosales-Lopez v. U.S.

Dear Byron,

I am glad to join your opinion for
the Court.

Sincerely yours,

P.S.
/

Justice White

Copies to the Conference

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

File

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 13, 1981

Re: 79-6624 - Rosales-Lopez v. U.S.

Dear Lewis,

I am having a preliminary go at the above opinion and, as you would expect, your opinion for the Court in Ristaino v. Ross, 424 U.S. 589 (1976) is rather central to the matter. I thought I should consult you about the attached draft.

From what you say in Ristaino about Ham v. South Carolina, 409 U.S. 524 (1973), there are indeed circumstances where inquiry about possible juror racial prejudice is constitutionally required--where racial issues are inextricably bound up with the conduct of the trial and under the circumstances there is special need to inquire. The attached draft recognizes this category of cases. Also, from your note 9 at 424 U.S. 597, and from Aldridge v. United States, 282 U.S. 308 (1931), which is still good law, there are additional circumstances in which as a supervisory rather than a constitutional matter, we will require trial courts, on request on the defendant, to inquire about racial or ethnic bias. Ristaino, involving a state conviction and a violent interracial crime, would have been one of those cases. My present draft suggests that a federal court should normally honor a defendant's request to make such inquiry where the victim and the defendant are of different racial or ethnic groups.

Of course, there may be other circumstances where inquiry should be made, but whatever those circumstances might be, none of them are involved here. Whatever requirements the cases place upon the trial courts to make racial prejudice inquiries on voir dire, they have been satisfied in this case.

Your suggestions would be appreciated.

Sincerely yours,

Byron

Mr. Justice Powell

Attachment

*I review B.R.W.'s draft
& generally approved it.
See my letter to him of 2/14*

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

From: Mr. Justice White.

Circulated: 20 FEB 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6624

| | | |
|--|---|--|
| Humberto Rosales-Lopez, Petitioner, v. United States. | } | On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit. |
|--|---|--|

[March —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

The question here is whether it was reversible error for a federal trial court in a criminal case to reject the defendant's request that the court's *voir dire* of prospective jurors inquire further into the possibility of racial or ethnic prejudice against the defendant.

I

Petitioner is of Mexican descent. In February 1979, he was tried before a jury in the United States District Court for the Southern District of California for his alleged participation in a plan by which three Mexican aliens were illegally brought into the country.¹

The Government's evidence at trial described the following events. On the night of December 10, 1978, three aliens were led across the Mexican-American border and taken to a car, previously left for them on the American side. They drove to Imperial Beach, Cal., a town about eight miles inside the border. Early in the morning of December 11, they

¹ Petitioner was charged with one count of conspiracy to conceal, harbor and shield, and illegally transport aliens, in violation of 18 U. S. C. § 371 and 8 U. S. C. § 1324; three counts of aiding and abetting the illegal transportation of aliens, in violation of 8 U. S. C. § 1324 (a)(2) and 18 U. S. C. § 2; and three counts of concealing, harboring and shielding aliens, in violation of 8 U. S. C. § 1324 (a)(3).

STYLISTIC CHANGES THROUGHOUT.
SEE PAGE 1

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

From: Mr. Justice White

Circulated: _____

Recirculated: 4-14-81

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6624

| | | |
|--|---|---|
| <p>Humberto Rosales-Lopez, Petitioner, v. United States.</p> | } | <p>On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.</p> |
|--|---|---|

[March —, 1981]

JUSTICE WHITE announced the judgment of the Court, and delivered an opinion in which JUSTICE STEWART, JUSTICE BLACKMUN, and JUSTICE POWELL joined.

The question here is whether it was reversible error for a federal trial court in a criminal case to reject the defendant's request that the court's *voir dire* of prospective jurors inquire further into the possibility of racial or ethnic prejudice against the defendant.

I

Petitioner is of Mexican descent. In February 1979, he was tried before a jury in the United States District Court for the Southern District of California for his alleged participation in a plan by which three Mexican aliens were illegally brought into the country.¹

The Government's evidence at trial described the following events. On the night of December 10, 1978, three aliens were led across the Mexican-American border and taken to a car, previously left for them on the American side. They

¹ Petitioner was charged with one count of conspiracy to conceal, harbor and shield, and illegally transport aliens, in violation of 18 U. S. C. § 371 and 8 U. S. C. § 1324; three counts of aiding and abetting the illegal transportation of aliens, in violation of 8 U. S. C. § 1324 (a) (2) and 18 U. S. C. § 2; and three counts of concealing, harboring and shielding aliens, in violation of 8 U. S. C. § 1324 (a) (3).

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 8, 1981

Re: No. 79-6624 - Rosales-Lopez v. U.S.

Dear John:

Please join me in your dissent.

Sincerely,

JM.

T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 23, 1981

Re: No. 79-6624 - Rosales-Lopez v. United States

Dear Byron:

Please join me.

Sincerely,

HAB.

Mr. Justice White

cc: The Conference

February 14, 1981

79-6624 Rosales-Lopez v. U.S.

Dear Byron:

I think your draft opinion in this case is excellent.

Subject to minor editing indicated in pencil and a couple of questions as to peripheral points, I will be happy to join you.

In note 3, you refer to the fact that two jurors asked to be excused in light of the voir dire. I view this as supportive of the reasons relied upon in Part III, and perhaps it could be mentioned again there in the text.

Footnote 6 might be read, in its present form, as supporting some sort of "right" to peremptory challenges. I suggest adding a sentence making it clear that the only right derives from a statute or rule.

I would omit the reference on page 12 to the possibility of racial differences between witnesses and the defendant. See my marginal note. There also is a further reference to this on page 14.

Finally, as indicated in the enclosed memo, I would either omit present note 17 or revise it. It can be read, I think, as inviting trial judges simply to defer to requests by defendants. The two sentences in the text seem entirely adequate.

In sum, I think your opinion will clarify existing confusion, and I will be happy to join it.

Sincerely,

Mr. Justice White

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 20, 1981

79-6624 Rosales-Lopez v. United States

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

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 Brennan

Circulated: MAR 3 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6624

| | | |
|--|---|--|
| Humberto Rosales-Lopez, Petitioner, v. United States. | } | On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit. |
|--|---|--|

[March —, 1981]

JUSTICE REHNQUIST, concurring in the result.

I agree with the result reached by the Court today and with most of its reasoning. I cannot, however, embrace the language contained in the last paragraph of Part II of the opinion which may be perceived as creating a *per se* rule requiring reversal of any criminal conviction involving a "violent crime" between members of different racial or ethnic groups if the district court refused to *voir dire* on the issue of racial prejudice. I do not disagree *in toto* with that paragraph, but fear that its use of the term "violent crime" and the term "different racial or ethnic groups" is apt to spawn new litigation over the meaning of these terms and whether the trial court properly assessed the possibility of racial or ethnic prejudice infecting the selection of the jury. It is undoubtedly true that such prejudice may occur in the case of a defendant accused of a violent crime where the defendant and victim are members of different racial or ethnic groups, and it is also undoubtedly true that there are circumstances other than these which may suggest to the trial judge the need for an inquiry into the possibility of prejudice. But knowing the contentiousness of our profession, the suggestion that a precise definition of "violent crime" or "different racial or ethnic groups" will ever be arrived at leaves me unwilling to lay down the flat rule which seems to be proposed in the last paragraph of Part II. I would think that in the case of "violent crimes" where the defend-

p. 1, 2

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

From: Mr. Justice Rehnquist

2nd DRAFT

Circulated: _____

APR 17 1981

SUPREME COURT OF THE UNITED STATES

No. 79-6624

| | | |
|--|---|--|
| Humberto Rosales-Lopez, Petitioner, v. United States. | } | On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit. |
|--|---|--|

[March —, 1981]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, concurring in the result.

I agree with the result reached by the Court today and with most of its reasoning. I cannot, however, embrace the language contained in the last paragraph of Part II of the opinion which may be perceived as creating a *per se* rule requiring reversal of any criminal conviction involving a "violent crime" between members of different racial or ethnic groups if the district court refused to *voir dire* on the issue of racial prejudice. I do not disagree *in toto* with that paragraph, but fear that its use of the term "violent crime" and the term "different racial or ethnic groups" is apt to spawn new litigation over the meaning of these terms and whether the trial court properly assessed the possibility of racial or ethnic prejudice infecting the selection of the jury. It is undoubtedly true that such prejudice may occur in the case of a defendant accused of a violent crime where the defendant and victim are members of different racial or ethnic groups, and it is also undoubtedly true that there are circumstances other than these which may suggest to the trial judge the need for an inquiry into the possibility of prejudice. But knowing the contentiousness of our profession, the suggestion that a precise definition of "violent crime" or "different racial or ethnic groups" will ever be arrived at leaves me unwilling to lay down the flat rule which seems to be proposed in the last paragraph of Part II. I would

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 23, 1981

Re: 79-6624 - Rosales-Lopez v. United States

Dear Byron:

In due course I shall circulate a brief
dissent.

Respectfully,



Justice White

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

79-6624 - Rosales-Lopez v. United States

From: Mr. Justice Stevens

Circulated: ADR 2 '81

Recirculated: _____

JUSTICE STEVENS, dissenting.

The question in this case is whether, in the conduct of the voir dire examination of prospective jurors in criminal prosecutions in the federal courts, the trial judge must, upon request, ask at least one question concerning possible prejudice against the minority group to which the defendant belongs. The Court answers this question by holding that "Federal trial courts must make such an inquiry when requested by a defendant accused of a violent crime and where the defendant and the victim are members of different racial or ethnic groups." Ante, at 9. Because no such "special circumstances" are present in this case, the Court affirms the judgment of the Court of Appeals. Id., at 10-11. I believe settled law requires that a racial or ethnic prejudice inquiry be made when requested by the defendant, regardless of the presence or absence of special circumstances indicating that there is a reasonable possibility that prejudice will influence the jury,¹ and that the general questions asked by

Footnote(s) 1 appear on following page(s).

IPS
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1-3

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: APR 8 '81

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6624

Humberto Rosales-Lopez,
Petitioner,
v.
United States. } On Writ of Certiorari to the United
States Court of Appeals for the
Ninth Circuit.

[April —, 1981]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins, dissenting.

The question in this case is whether, in the conduct of the *voir dire* examination of prospective jurors in criminal prosecutions in the federal courts, the trial judge must, upon request, ask at least one question concerning possible prejudice against the minority group to which the defendant belongs. Settled law provides a simple answer to this question.¹

The Court's new answer to that question contains two parts: it holds that "Federal trial courts must make such an inquiry when requested by a defendant accused of a violent crime and where the defendant and the victim are members of different racial or ethnic groups." *Ante*, at 9. Because no such "special circumstances" are present in this case, the Court affirms the judgment of the Court of Appeals. *Id.*, at 10-11. Heretofore, federal law has required that a racial or ethnic prejudice inquiry be made when requested by the defendant, regardless of the presence or absence of special circumstances indicating that there is a reasonable possibility

¹ "For more than four decades, it has been the rule in federal courts that a trial court *must* inquire as to possible racial bias of the veniremen when the defendant is a member of a racial minority. *Aldridge v. United States*, 283 U. S. 308, 51 S. Ct. 470, 75 L. Ed. 1054 (1931)." *United States v. Powers*, 482 F. 2d 941, 944 (CA8 1973), cert. denied, 415 U. S. 923 (emphasis in original).

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

2nd DRAFT

Circulated: _____

Recirculated: APR 9 '81

SUPREME COURT OF THE UNITED STATES

No. 79-6624

| | | |
|--|---|--|
| Humberto Rosales-Lopez, Petitioner, v. United States. | } | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit. |
|--|---|--|

[April —, 1981]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

The question in this case is whether, in the conduct of the *voir dire* examination of prospective jurors in criminal prosecutions in the federal courts, the trial judge must, upon request, ask at least one question concerning possible prejudice against the minority group to which the defendant belongs. Settled law provides a simple answer to this question.¹

The Court's new answer to that question contains two parts: it holds that "Federal trial courts must make such an inquiry when requested by a defendant accused of a violent crime and where the defendant and the victim are members of different racial or ethnic groups." *Ante*, at 9. Because no such "special circumstances" are present in this case, the Court affirms the judgment of the Court of Appeals. *Id.*, at 10-11. Heretofore, federal law has required that a racial or ethnic prejudice inquiry be made when requested by the defendant, regardless of the presence or absence of special circumstances indicating that there is a reasonable possibility

¹ "For more than four decades, it has been the rule in federal courts that a trial court *must* inquire as to possible racial bias of the veniremen when the defendant is a member of a racial minority. *Aldridge v. United States*, 283 U. S. 308, 51 S. Ct. 470, 75 L. Ed. 1054 (1931)." *United States v. Powers*, 482 F. 2d 941, 944 (CA8 1973), cert. denied, 415 U. S. 923 (emphasis in original).

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

P. 177-8

From: Mr. Justice Stevens

Circulated: _____

3rd DRAFT

Recirculated: APR 16 '81

SUPREME COURT OF THE UNITED STATES

No. 79-6624

| | | |
|--|---|--|
| Humberto Rosales-Lopez, Petitioner, v. United States. | } | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit. |
|--|---|--|

[April —, 1981]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

The question in this case is whether, in the conduct of the *voir dire* examination of prospective jurors in criminal prosecutions in the federal courts, the trial judge must, upon request, ask at least one question concerning possible prejudice against the minority group to which the defendant belongs. Settled law provides a simple answer to this question.¹

The plurality's new answer to that question contains two parts: it holds that "federal trial courts must make such an inquiry when requested by a defendant accused of a violent crime and where the defendant and the victim are members of different racial or ethnic groups." *Ante*, at 9-10. Because no such "special circumstances" are present in this case, the plurality affirms the judgment of the Court of Appeals. *Id.*, at 10-11. Heretofore, federal law has required that a racial or ethnic prejudice inquiry be made when requested by the defendant, regardless of the presence or absence of special circumstances indicating that there is a reasonable possibility

¹"For more than four decades, it has been the rule in federal courts that a trial court *must* inquire as to possible racial bias of the veniremen when the defendant is a member of a racial minority. *Aldridge v. United States*, 283 U. S. 308, 51 S. Ct. 470, 75 L. Ed. 1054 (1931)." *United States v. Powers*, 482 F. 2d 941, 944 (CA8 1973), cert. denied, 415 U. S. 923 (emphasis in original).