

The Burger Court Opinion Writing Database

Cabell v. Chavez-Salido

454 U.S. 432 (1982)

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

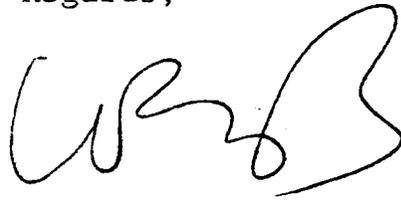
December 19, 1981

Re: No. 80-990 - Cabell v. Chavez-Salido

Dear Byron:

I join.

Regards,

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

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 16, 1981

RE: No. 80-990 Cabel v. Chavez-Salido

Dear Harry:

You, Thurgood, John and I are in dissent in the
above. Would you be willing to undertake the dissent?

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Blackmun

cc: Justice Marshall
Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 30, 1981

RE: No. 80-990 Cabell v. Chavez-Salido

Dear Byron:

I too shall await the dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 28, 1981

RE: No. 80-990 Cabell v. Chavez-Salido

Dear Harry:

Please join me in your dissent in the above.

Sincerely,

Bill

Justice Blackmun

cc: The Conference

0\$0990D 11/24/81 spw

To: The Chief Justice
Justice Brennan
~~Justice Marshall~~
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: 25 NOV 1981

Recirculated: [REDACTED]

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-990

CLARENCE E. CABELL, ETC., ET AL., APPELLANTS *v.*
JOSE CHAVEZ-SALIDO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[November —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

In this case we once again consider a citizenship requirement imposed by a state on those seeking to fill certain governmental offices. California Government Code §1031(a) requires "public officers or employees declared by law to be peace officers" to be citizens of the United States. California Penal Code §830.5 provides that probation officers and deputy probation officers are "peace officers." A three judge District Court of the Central District of California held the California requirement unconstitutional both on its face and as applied to the appellees, who sought positions as Deputy Probation Officers.

I

Appellees were, at the time the complaint was filed, lawfully admitted permanent resident aliens living in Los Angeles County, California.¹ Each applied unsuccessfully for positions as Deputy Probation Officers with the Los Angeles County Probation Department.² With respect to two of the

¹One of the appellees, Chavez-Salido, subsequently became a citizen. By that time, however, there were no longer any openings for the job he had previously been denied on the grounds of his noncitizenship.

²Under California statute, the kinds of responsibilities of deputy probation officers are the same as those of probation officers and both are consid-

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STYLISTIC CHANGES THROUGHOUT
SEE PAGES:

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

050990D 11/25/81 Dick-rev.

From: Justice White

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-990

CLARENCE E. CABELL, ET AL., APPELLANTS *v.*
JOSE CHAVEZ-SALIDO, APPELLANTS ~~ET AL.~~

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[November —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

In this case we once again consider a citizenship requirement imposed by a state on those seeking to fill certain governmental offices. California Government Code §1031(a) requires "public officers or employees declared by law to be peace officers" to be citizens of the United States. California Penal Code §830.5 provides that probation officers and deputy probation officers are "peace officers." A three judge District Court of the Central District of California held the California requirement unconstitutional both on its face and as applied to the appellees, who sought positions as Deputy Probation Officers.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

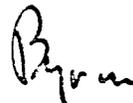
December 3, 1981

Re: 80-900 - CABELL v. CHAVEZ-SALIDO

Dear Sandra,

I appreciate your suggestions in this case. I have sent to the printer changes which I hope will accommodate your wishes.

Sincerely,



Justice O'Connor

Copies to the Conference

dag

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STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: pp. 1, 2, 5-7

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-990

CLARENCE E. CABELL, ET AL., APPELLANTS *v.*
JOSE CHAVEZ-SALIDO ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[December —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

In this case we once again consider a citizenship requirement imposed by a state on those seeking to fill certain governmental offices. California Government Code §1031(a) requires "public officers or employees declared by law to be peace officers" to be citizens of the United States. California Penal Code §830.5 provides that probation officers and deputy probation officers are "peace officers." A three judge District Court of the Central District of California held the California requirement unconstitutional both on its face and as applied to the appellees, who sought positions as Deputy Probation Officers.

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Appellees were, at the time the complaint was filed, lawfully admitted permanent resident aliens living in Los Angeles County, California.¹ Each applied unsuccessfully for po-

¹One of the appellees, Chavez-Salido, subsequently became a citizen. By that time, however, there were no longer any openings for the job he had previously been denied on the grounds of his noncitizenship. Appellees were all, at the time they applied for the positions in question, lawfully present, resident aliens. Therefore, we do not consider, and intimate no opinion about, any limits the Constitution may place upon state action directed at aliens who are here without the permission of the federal govern-

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

pp. 7, 11-13
footnotes renumbered

From: Justice White

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-990

CLARENCE E. CABELL, ET AL., APPELLANTS v.
JOSE CHAVEZ-SALIDO ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[January —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

In this case we once again consider a citizenship requirement imposed by a state on those seeking to fill certain governmental offices. California Government Code § 1031(a) requires "public officers or employees declared by law to be peace officers" to be citizens of the United States. California Penal Code § 830.5 provides that probation officers and deputy probation officers are "peace officers." A three judge District Court of the Central District of California held the California requirement unconstitutional both on its face and as applied to the appellees, who sought positions as Deputy Probation Officers.

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¹One of the appellees, Chavez-Salido, subsequently became a citizen. By that time, however, there were no longer any openings for the job he had previously been denied on the grounds of his noncitizenship. Appellees were all, at the time they applied for the positions in question, lawfully present, resident aliens. Therefore, we do not consider, and intimate no opinion about, any limits the Constitution may place upon state action directed at aliens who are here without the permission of the federal govern-

Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

p. 7

From: Justice White
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5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-990

CLARENCE E. CABELL, ET AL., APPELLANTS *v.*
JOSE CHAVEZ-SALIDO ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[January —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

In this case we once again consider a citizenship requirement imposed by a state on those seeking to fill certain governmental offices. California Government Code § 1031(a) requires "public officers or employees declared by law to be peace officers" to be citizens of the United States. California Penal Code § 830.5 provides that probation officers and deputy probation officers are "peace officers." A three judge District Court of the Central District of California held the California requirement unconstitutional both on its face and as applied to the appellees, who sought positions as Deputy Probation Officers.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 27, 1981

Re: No. 80-990-Cabell v. Chavez-Salido

Dear Byron:

I await the dissent.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 28, 1981

Re: No. 80-990 - Cabell v. Chavez-Salido

Dear Harry:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 16

Re: No. 80-990 - Cabel v. Chavez-Salido

Dear Bill:

I shall be glad to undertake the dissent in this case.

Sincerely,

Justice Brennan

cc: Justice Marshall ✓
Justice Stevens

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 25, 1981

Re: No. 80-990 - Cabell v. Chavez-Salido

Dear Byron:

I shall be writing a dissent in this case. It may take a little while.

Sincerely,

H.A.B.

Justice White

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-990

CLARENCE E. CABELL, ETC., ET AL., APPELLANTS *v.*
JOSE CHAVEZ-SALIDO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[December —, 1981]

JUSTICE BLACKMUN, dissenting.

Appellees Jose Chavez-Salido, Pedro Luis Ybarra, and Ricardo Bohorquez are American-educated Spanish-speaking lawful residents of Los Angeles County, California.¹ Seven years ago, each had a modest aspiration—to become a Los Angeles County “Deputy Probation Officer, Spanish-speaking.” Each was willing to swear loyalty to the State and Federal Governments; indeed, appellee Chavez-Salido declared his intent to become a citizen. By competitive examination, two of the appellees, and possibly the third, demonstrated their fitness for the jobs they desired.² Appellants denied them those jobs solely because they were not citizens.

¹ Chavez-Salido, born in Mexico, has been a permanent legal resident of this country for 26 years. He has received all his formal education in California, including a Bachelor of Arts degree in Mexican-American studies from California State College at Long Beach.

Ybarra, born in Spain, has been a permanent resident of this country since 1972. He possesses a Bachelor of Arts degree in theology from Camillas University in Spain, and a Master of Arts degree in African Studies from the University of California at Los Angeles. He is working for another Master’s degree, in sociology, at California State University at Northridge.

Bohorquez, born in Colombia, has been a permanent resident of this country since 1961. He has a Bachelor of Arts degree in Latin-American studies from the University of California at Los Angeles. App. 19-23.

² Chavez-Salido scored 95 out of 100 on a qualifying oral examination for the Deputy Probation Officer [DPO] II, Spanish speaking, position and 100 out of 100 on the oral examination for the DPO Trainee position, but was

STYLISTIC CHANGES
and page 1

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-990

**CLARENCE E. CABELL, ET AL., APPELLANTS v.
JOSE CHAVEZ-SALIDO, ET AL.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA**

[December —, 1981]

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

Appellees Jose Chavez-Salido, Pedro Luis Ybarra, and Ricardo Bohorquez are American-educated Spanish-speaking lawful residents of Los Angeles County, California.¹ Seven years ago, each had a modest aspiration—to become a Los Angeles County “Deputy Probation Officer, Spanish-speaking.” Each was willing to swear loyalty to the State and Federal Governments; indeed, appellee Chavez-Salido declared his intent to become a citizen. By competitive examination, two of the appellees, and possibly the third, demonstrated their fitness for the jobs they desired.² Appellants

¹Chavez-Salido, born in Mexico, has been a permanent legal resident of this country for 26 years. He has received all his formal education in California, including a Bachelor of Arts degree in Mexican-American studies from California State College at Long Beach.

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice Souter

From: Justice Blackmun

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-990

CLARENCE E. CABELL, ET AL., APPELLANTS *v.*
JOSE CHAVEZ-SALIDO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[January —, 1982]

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

Appellees Jose Chavez-Salido, Pedro Luis Ybarra, and Ricardo Bohorquez are American-educated Spanish-speaking lawful residents of Los Angeles County, California.¹ Seven years ago, each had a modest aspiration—to become a Los Angeles County “Deputy Probation Officer, Spanish-speaking.” Each was willing to swear loyalty to the State and Federal Governments; indeed, appellee Chavez-Salido declared his intent to become a citizen. By competitive examination, two of the appellees, and possibly the third, demonstrated their fitness for the jobs they desired.² Appellants

¹ Chavez-Salido, born in Mexico, has been a permanent legal resident of this country for 26 years. He has received all his formal education in California, including a Bachelor of Arts degree in Mexican-American studies from California State College at Long Beach.

Ybarra, born in Spain, has been a permanent resident of this country since 1972. He possesses a Bachelor of Arts degree in theology from Camillas University in Spain, and a Master of Arts degree in African Studies from the University of California at Los Angeles. He is working for another Master’s degree, in sociology, at California State University at Northridge.

Bohorquez, born in Colombia, has been a permanent resident of this country since 1961. He has a Bachelor of Arts degree in Latin-American studies from the University of California at Los Angeles. App. 19-23.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 30, 1981

80-990 Cabell v. Chavez-Salido

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

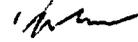
November 30, 1981

Re: No. 80-990 Cabell v. Chavez-Salido

Dear Byron:

Please join me in your opinion for the Court.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

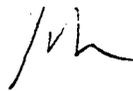
November 30, 1981

Re: 80-990 - Cabell v. Chavez-Salido

Dear Byron:

I will wait for Harry's dissent.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 30, 1981

Re: 80-990 - Cabell v. Chavez-Salido

Dear Harry:

Please join me in your dissenting opinion. After reading your opinion I am tempted to suggest that your characterization of the Court's analysis as "constitutionally absurd" is almost an understatement.

Respectfully,



Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 1, 1981

No. 80-990 Cabell v. Chavez-Salido

Dear Byron:

I am prepared to join your opinion in this case. However, in light of No. 80-1538, Plyler v. Doe, and No. 80-1934, Texas v. Certain Named & Unnamed Undocumented Alien Children, both argued this week, it might be useful to strengthen the distinction between lawfully present and unlawful aliens. I suggest the following minor changes:

p.1, second full ¶, line 2 -- Since "lawfully admitted" aliens may subsequently become unlawful, I prefer to use the phrase "lawfully present" whenever possible. Here, the complaint alleged that the plaintiffs were "lawfully admitted" as well as continuously "legal" residents. Therefore, I suggest changing the word "admitted" to "present."

p.2, second full ¶, line 1 -- Add the words "lawfully present": "Appellees alleged unconstitutional discrimination against [lawfully present] aliens"

p.5, first textual ¶, line 5 -- Add the words "lawfully present": "which held that California could not bar [lawfully present] aliens from obtaining commercial fishing licenses"

p.5, text following second indented quote, line 1 -- Add the word "legal": "As the principle governing analysis of state classifications of [legal] aliens"

p.5, text following second indented quote, lines 6-8 -- The word "resident" is used twice here. I recommend

replacing those references with the words "lawfully present" and "these": "a state could not distinguish between [lawfully present] aliens and citizens in the distribution of welfare benefits. Returning to Yick Wo's holding that [these] aliens fall within the protection of the Equal Protection Clause"

p.5, last line of text -- Add the words "but lawfully present": "citizen and noncitizen[, but lawfully present,] residents"

p.7, second full ¶, line 2 -- Add the words "lawfully present": "on [lawfully present] aliens serves political and not economic goals"

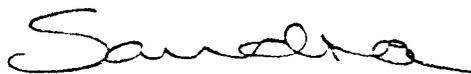
In addition to these changes, you might add a footnote explicitly noting that the opinion does not deal with illegal aliens. Either of the following suggestions could accomplish this end:

footnote 1 -- Add to end of footnote: "Since all three appellees were lawfully present in California, we do not consider that State's power to exclude undocumented aliens from public employment."

p.6, first full textual ¶, line 16 -- Add footnote after "judicial scrutiny," reading: "We do not consider, and intimate no opinion about, the appropriate level of scrutiny for state restrictions of illegal aliens."

I appreciate the thoughtful manner in which your opinion lends consistency to this somewhat troubled area.

Sincerely,



Justice White

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 3, 1981

No. 80-990 Cabell v. Chavez-Salido

Dear Byron,

As I indicated orally, the changes are entirely satisfactory as far as I am concerned.

Sincerely,



Justice White

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