

# The Burger Court Opinion Writing Database

*United States v. Valenzuela-Bernal*

458 U.S. 858 (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

June 8, 1982

Re: No. 81-450 - U.S. v. Valenzuela-Bernal

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 4, 1982

RE: No. 81-450 United States v. Valenzuela-Bernal

Dear Thurgood:

You and I are in dissent in the above. I'll be glad  
to undertake the dissent.

Sincerely,



Justice Marshall

85 Wm. J. Brennan

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

From: **Justice Brennan**

Circulated: JUN 15 1982

Recirculated: \_\_\_\_\_

*Handwritten notes:*  
1. ...  
2. ...  
3. ...

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-450

UNITED STATES, PETITIONER *v.*  
RICARDO VALENZUELA-BERNAL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June —, 1982]

JUSTICE BRENNAN, dissenting.

Today's holding flaunts a transparent contradiction. On the one hand, the Court recognizes the respondent's constitutional right, under the Compulsory Process Clause of the Sixth Amendment, to the production of all witnesses whose testimony would be relevant and material to his defense. *Ante*, at 8-11. But on the other hand, the Court holds that the Government may deport illegal-alien eyewitnesses to respondent's alleged crime immediately upon their apprehension, before respondent or his attorney have had any opportunity to interview them—thus depriving respondent of the surest and most obvious means by which he could establish the materiality and relevance of such witnesses' testimony. *Ante*, at 14. Truly, the Court giveth, and the Court taketh away. But surely a criminal defendant has a constitutional right to interview eyewitnesses to his alleged crime before they are whisked out of the country by his prosecutor. The Court's decision today makes a mockery of that right. Accordingly, I dissent.

The premise of the Court's holding is that "the responsibility of the Executive Branch faithfully to execute the immigration policy adopted by Congress justifies the prompt deportation of illegal-alien witnesses," *ante*, at 14; this governmental power is conditioned only upon the Executive's

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

From: Justice Brennan

Circulated: \_\_\_\_\_

Recirculated: 16 June 1982

*Stylistic and  
Technical Changes  
Only: pages 1, 3, 5.*

2d DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-450

UNITED STATES, PETITIONER *v.*  
RICARDO VALENZUELA-BERNAL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June —, 1982]

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 2, 1982

Re: 81-450 - U.S. v. Valenzuela-Bernal

Dear Bill,

I agree.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

cpm

85 81-5 10 21

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 15, 1982

Re: No. 81-450 - United States v. Ricardo Valenzuela-Bernal

Dear Bill:

Please join me in your dissent.

Sincerely,

*J.M.*

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 25, 1982

Re: No. 81-450 - United States v. Valenzuela-Bernal

Dear Bill:

This is just to verify the fact that I am awaiting  
Sandra's separate writing in this case.

Sincerely,



Justice Rehnquist

cc: The Conference

85 JUN 30 1982

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

From: Justice Blackmun

Circulated: JUN 28 1982

Recirculated: \_\_\_\_\_

No. 81-450 - United States v. Valenzuela-Bernal

JUSTICE BLACKMUN, concurring in the judgment.

I concur in the judgment of the Court essentially for the reasons set forth by Judge Roney, in writing for a panel of the former Fifth Circuit, in United States v. Avila-Dominguez, 610 F.2d 1266, 1269-1270, cert. denied sub nom. Perez v. United States, 449 U.S. 887 (1980). At least a "plausible theory" of how the testimony of the deported witnesses would be helpful to the defense must be offered. None was advanced here; therefore, the motion to dismiss the indictment was properly denied by the District Court.

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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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**SUPREME COURT OF THE UNITED STATES** Circulated: JUN 29 1982

No. 81-450

**UNITED STATES, PETITIONER v. RICARDO  
VALENZUELA-BERNAL**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT**

[July 2, 1982]

JUSTICE BLACKMUN, concurring in the judgment.

I concur in the judgment of the Court essentially for the reasons set forth by Judge Roney, in writing for a panel of the former Fifth Circuit, in *United States v. Avila-Dominguez*, 610 F. 2d 1266, 1269-1270, cert. denied *sub nom. Perez v. United States*, 449 U. S. 887 (1980). At least a "plausible theory" of how the testimony of the deported witnesses would be helpful to the defense must be offered. None was advanced here; therefore, the motion to dismiss the indictment was properly denied by the District Court.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 28, 1982

81-450 United States v. Valenzuela-Bernal

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

85

P. 6

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

From: Justice Rehnquist

Circulated: MAY 27 1982

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-450

UNITED STATES, PETITIONER *v.* RICARDO VALENZUELA-BERNAL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[May —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent, a citizen of Mexico, was indicted in United States District Court for the Southern District of California for transporting one Romero-Morales in violation of 8 U. S. C. § 1324(a)(2). That section generally prohibits the knowing transportation of an alien illegally in the United States and who last entered the country within three years prior to the date of the transportation.<sup>1</sup> Respondent was found guilty after a bench trial, but his conviction was overturned by the United States Court of Appeals for the Ninth Circuit. That court held that the action of the Government in deporting two aliens other than Romero-Morales violated respondent's right under the Sixth Amendment to the United States Constitution to compulsory process, and his right under the Fifth Amendment to due process of law. We granted certiorari in order to review the Court of Appeals' application of these constitutional provisions to this case, 454 U. S. 963 (1981),<sup>2</sup> and we now reverse.

<sup>1</sup> Section 1324(a)(2) applies to "[a]ny person" who "transports, or moves, or attempts to transport or move," "any alien," "knowing that [the alien] is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior" to the transportation or attempted transportation with which the person is charged. 8 U. S. C. § 1324(a)(2).

<sup>2</sup> Other Courts of Appeals have adopted slight variations of the position held by the Court of Appeals for the Ninth Circuit. See, e. g., *United States v. Armijo-Martinez*, — F. 2d — (CA6 1982); *United States v.*

*Rehnquist*  
W.S.

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HAB

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 29, 1982

MEMORANDUM TO THE CONFERENCE

Case held for No. 81-450, United States v. Valenzuela-Bernal

No. 81-471, United States v. Marquez-Amaya. Respondent in this case was arrested after he sold a pound of heroin to a DEA agent. A woman and her daughter who were found in respondent's trailer after his arrest, and who stated that they knew nothing of the drug transaction, were deported before respondent's attorney had an opportunity to interview them. Following its rule established in United States v. Mendez-Rodriguez, 450 F.2d 1 (1971), CA 9 held that the deportation violated respondent's rights to due process and compulsory process, and ordered that the indictment against respondent be dismissed.

In Valenzuela-Bernal we rejected the Mendez-Rodriguez doctrine and held that sanctions could be imposed against the government only if the criminal defendant made some plausible explanation of how the testimony of the deported alien witnesses could have aided his defense. I will vote ✓ to GVR this case for further consideration in light of Valenzuela-Bernal.

Sincerely,

WHR

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

UNCLAS 1-17-88

June 1, 1982

Re: 81-450 - United States v.  
Valenzuela-Bernal

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 7, 1982

No. 81-450 U. S. v. Valenzuela-Bernal

Dear Bill,

After further reflection, I believe we would be well advised to adopt a practical rule of Court to govern these cases requiring that a reasonable, although brief, opportunity be provided to the defense to interview witnesses before their deportation. This would probably reduce litigation which otherwise may proliferate under any other approach. In any event, I believe dismissal of the indictment is not required absent a showing of prejudice.

I plan to circulate something concurring in the judgment and setting forth my views.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

From: Justice O'Connor

Circulated: JUN 26 1982

Recirculated: \_\_\_\_\_

ATEX DRAFT

No. 81-450 U.S. v. Valenzuela-Bernal

JUSTICE O'CONNOR, concurring in the judgment.

"The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." Washington v. Texas, 388 U.S. 14, 19 (1967).

In short, the right to compulsory process is essential to a fair trial. Today's decision, I fear, may not protect adequately the interests of the prosecution and the defense in a fair trial, and may encourage litigation over whether the defendant has made a "plausible showing that the testimony of the deported witnesses would have been material and favorable to his defense." Ante, at 14. A preferable approach would be to accommodate both the Government's interest in prompt deportation of illegal aliens and the defendant's need to interview alien witnesses in order to decide which of them can provide material evidence for the defense. Through a suitable standard, imposed on the federal courts under our supervisory powers, a practical accommodation can be reached without any increase in litigation.

I

One cannot discount the importance of the Federal Gov-

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

From: Justice O'Connor

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Recirculated: JUN 29 1982

1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-450

UNITED STATES, PETITIONER *v.* RICARDO  
VALENZUELA-BERNAL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June —, 1982]

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