

# The Burger Court Opinion Writing Database

## *Sumner v. Mata*

455 U.S. 591 (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

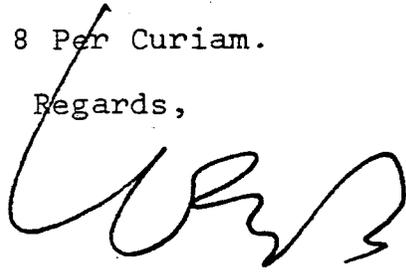
February 16, 1982

Re: No. 81-844 - Sumner, Warden v. Mata

Dear Lewis:

I join your February 8 Per Curiam.

Regards,

A handwritten signature in black ink, appearing to be 'L. Powell', written over the typed word 'Regards,'.

Justice Powell

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

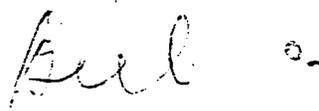
February 10, 1982

Re: Sumner v. Mata (No. 81-844)

Dear Lewis,

I will circulate a dissent in due course.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", followed by a small circle and a dash.

Justice Powell

Copies to the Conference

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

cc: Justice Brennan

Filed: FEB 16 1982

1st PRINTED DRAFT

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## SUPREME COURT OF THE UNITED STATES

GEORGE SUMNER, WARDEN *v.* ROBERT MATA

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

No. 81-844. Decided February —, 1982

JUSTICE BRENNAN, dissenting.

In my view, the opinion of the Court of Appeals for the Ninth Circuit not only accords with the views I expressed last term, which, as the Court points out, *ante* at 5, n. 6, did not prevail, but also with the principles expressed in the Court opinion last term and restated by the Court today. It is on this basis that I dissent from the Court's second, and in this instance summary,\* reversal.

When this case was before us last Term, I expressed the view that it was unnecessary for the Court of Appeals to explain its failure to consider the restrictions of § 2254 (d), because "the difference between the Court of Appeals for the Ninth Circuit and the California Court of Appeal was over the applicable *legal standard* and not over the particular *facts* of the case," rendering § 2254 obviously inapplicable. 449 U. S., at 558-559. The Court disagreed, holding that in all cases federal courts must apply § 2254 (d) or explain why it was inapplicable: "No court reviewing the grant of an application for habeas corpus should be left to guess as to the habeas court's reasons for granting relief notwithstanding the provisions of § 2254 (d)." 449 U. S., at 552. But I thought then, and the Court today agrees, that § 2254 (d) is inapplicable to the ultimate question whether pretrial identification proce-

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\*Although a case in which a lower court misunderstands the terms of our remand might in some instances be an appropriate candidate for summary reversal, in this case, where there is no unanimous agreement that the remand was not complied with, I would not reverse without plenary consideration.

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

From: Justice Brennan

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## SUPREME COURT OF THE UNITED STATES

GEORGE SUMNER, WARDEN *v.* ROBERT MATA

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

No. 81-844. Decided February —, 1982

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,  
dissenting.

In my view, the opinion of the Court of Appeals for the Ninth Circuit not only accords with the views I expressed last term, which, as the Court points out, *ante* at 5, n. 6, did not prevail, but also with the principles expressed in the Court opinion last term and restated by the Court today. It is on this basis that I dissent from the Court's second, and in this instance summary,\* reversal.

When this case was before us last Term, I expressed the view that it was unnecessary for the Court of Appeals to explain its failure to consider the restrictions of § 2254 (d), because "the difference between the Court of Appeals for the Ninth Circuit and the California Court of Appeal was over the applicable *legal standard* and not over the particular *facts* of the case," rendering § 2254 obviously inapplicable. 449 U. S., at 558-559. The Court disagreed, holding that in all cases federal courts must apply § 2254 (d) or explain why it was inapplicable: "No court reviewing the grant of an application for habeas corpus should be left to guess as to the habeas court's reasons for granting relief notwithstanding the provisions of § 2254 (d)." 449 U. S., at 552. But I thought then, and the Court today agrees, that § 2254 (d) is inapplicable to

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\* Although a case in which a lower court misunderstands the terms of our remand might in some instances be an appropriate candidate for summary reversal, in this case, where there is no unanimous agreement that the remand was not complied with, I would not reverse without plenary consideration.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 10, 1982

Re: No. 81-844 - Sumner v. Mata

Dear Lewis:

I await the dissent.

Sincerely,

*JM.*  
T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 16, 1982

Re: No. 81-844 - Sumner v. Mata

Dear Bill:

Please join me in your dissent.

Sincerely,

*T.M.*

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 4, 1982

Re: No. 81-844 - Sumter v. Mata

Dear Lewis:

Please join me in your per curiam.

Sincerely,



Justice Powell

cc: The Conference

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

From: Justice Powell

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## SUPREME COURT OF THE UNITED STATES

GEORGE SUMNER, WARDEN v. ROBERT MATA

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

No. 81-844. Decided February —, 1982

### PER CURIAM

This is the second time that this matter has come before us. In *Sumner v. Mata*, 449 U. S. 539 (1981), decided last term, we held that 28 U. S. C. § 2254(d) requires federal courts in habeas proceedings to accord a presumption of correctness to state court findings of fact. This requirement could not be plainer. The statute explicitly provides that “a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction . . . shall be presumed to be correct.” Only when seven specified factors are present or the federal court determines that the state court finding of fact “is not fairly supported by the record” may the presumption properly be viewed as inapplicable or rebutted.<sup>1</sup>

<sup>1</sup> Section 2254(d) provides:

“(d) In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit—

“(1) that the merits of the factual dispute were not resolved in the State court hearing;

“(2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing;

“(3) that the material facts were not adequately developed at the State court hearing;

“(4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court proceeding;

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 3, 1982

Re: No. 81-844 Sumner v. Mata

Dear Lewis:

Please join me in your Per Curiam.

Sincerely,



Justice Powell

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

From: Justice Stevens

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## SUPREME COURT OF THE UNITED STATES

GEORGE SUMNER, WARDEN *v.* ROBERT MATA

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

No. 81-844. Decided March —, 1982

JUSTICE STEVENS, dissenting.

Once again the Court's preoccupation with procedural niceties has needlessly complicated the disposition of a federal habeas corpus petition. Cf. *Rose v. Lundy*, — U. S. —. Lurking in the background of this case is the question whether the failure to conduct a lineup has any bearing on the validity of a photographic identification. The Court may one day confront that question. For the present, however, it is more concerned with the Court of Appeals' misunderstanding of the ill-defined mandate of *Sumner v. Mata*, 449 U. S. 539, and 28 U. S. C. § 2254(d).

We now seem to agree that § 2254(d) applies to a "basic, primary, or historical fact" and that it does not apply to a "mixed question of law and fact." The articulation of this proposition certainly is an improvement on the Court's opinion of last Term, which understandably confounded the Court of Appeals on remand. Judge Sneed in dissent read—incorrectly, it turns out—the Court's opinion to apply § 2254(d) to mixed questions of law and fact. The panel majority read—correctly, it turns out—the Court's opinion to apply § 2254(d) only to historical facts. The panel majority held that § 2254(d) simply was not implicated in this case because there was no conflict between its findings of historical facts and those of the California Court of Appeal. The disagreement today is whether that holding is correct. In my opinion, this question is more difficult than either the *Per Curiam* or JUSTICE BRENNAN's dissent indicates.\* Indeed, the diffi-

\*The California Court of Appeal and the Ninth Circuit Court of Ap-

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

February 8, 1982

No. 81-844 Sumner v. Mata

Dear Lewis,

I agree with your proposed Per Curiam in  
the referenced case.

Sincerely,



Justice Powell

Copies to the Conference