The Burger Court Opinion Writing Database

United States v. Villamonte-Marquez

462 U.S. 579 (1983)

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 4, 1983

Re: No. 81-1350, United States v. Villamonte-Marquez

MEMORANDUM TO THE CONFERENCE:

We all have the memos exchanged between Sandra and Bill Rehnquist. Absent a motion and action the case will remain on the argument calendars for February 22.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

June 15, 1983

MEMORANDUM TO THE CONFERENCE:

RE: No. 81-1350 - United States v. Villamonte-Marquez
81-2318 - Florida v. Casal (Per Curiam)

It appears that the above-mentioned cases are now ready, and absent dissent, will be announced at Friday's sitting.

Regards,

WEB

cc: Mr. Goldstraw
Mr. Lind
Mr. Stevas

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

CHAMBERS OF
THE CHIEF JUSTICE

April 13, 1983

Re: No. 81-1350, U.S. v. Villamonte-Marquez

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.

February 15, 1983

MEMORANDUM TO THE CONFERENCE

Re: United States v. Villamonte-Marquez, No. 81-1350

After reading the exchange of memoranda between Sandra and Bill Rehnquist and looking at the papers, I've come around to thinking that this case should be dismissed as moot or, better yet, DIGGED.

Mootness

While I'm not fully at rest on mootness at present, I think that Sandra is probably right in suggesting that the case is moot as a jurisdictional matter. The problem is not so much whether the parties have anything at stake in general, but rather whether there is any form of relief that this Court could properly grant to the Government, given the current procedural posture of the case.

The SG suggests that we could reinstate the convictions, enabling the Government to seek extradition or arrest the respondents. I agree with Sandra that we cannot reinstate the convictions in the absence of an outstanding indictment. See U.S. Const. Amdt. 5. Nor do I see how we could reinstate the old indictment, since it was dismissed at the Government's own motion (after the Government allowed one stay pending certiorari to

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 7, 1983

RE: No. 81-1350 United States v. Villamonte-Marquez

Dear Thurgood and John:

We three are in substantial agreement upon the basis of dissent in the above. I'll try my hand at writing a dissent.

Sincerely,

Bill

Justice Marshall

Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 29, 1983

Re: United States v. Villamonte-Marquez, No. 81-1350

Dear Bill:

In due course I will circulate a dissent covering both the mootness and the Fourth Amendment issues.

Sincerely,

WJB, Jr.

Justice Rehnquist

Copies to the Conference

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

From: **Justice Brennan**

Circulated: JUN 8 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1350

UNITED STATES, PETITIONER *v.* JOSE REYNALDO VILLAMONTE-MARQUEZ ET AL.

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

[June ——, 1983]

JUSTICE BRENNAN, dissenting.

The Court today holds that this case is not moot despite the voluntary dismissal of the prosecution by the Government. It also holds that police on a roving, random patrol may stop and board any vessel, at any time, on any navigable waters, with no probable cause or reasonable suspicion to believe that there has been a crime or a border crossing, and without any limits whatever on their discretion to impose this invasion of privacy. Because I cannot agree with either holding, I dissent.

I

It is long settled that a party may not seek appellate review when it has itself sought and obtained entry of a judgment against it, unless it does so solely as a device by which to obtain immediate appellate review of an interlocutory order. *E. g.*, *United States* v. *Procter & Gamble*, 356 U. S. 677, 680–681 (1958); *United States* v. *Babbitt*, 104 U. S. 767 (1881); *Evans* v. *Phillips*, 17 U. S. (4 Wheat.) 73 (1819).

Yet that is precisely what the Court permits the Government to do in this case.[1] Respondents were convicted of

[1] Consider this hypothetical: Peter brings a diversity suit against David, seeking damages for trespass and an injunction against further trespass. The jury awards damages to Peter. On post-trial motions, however, the district judge refuses to enter an injunction and orders a new trial because he concludes that the verdict rested on improper hearsay evidence. Peter's lawyer advises him that his chances on retrial are slim; without the

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1-2, 5, 7-8, 12-14

From: **Justice Brennan**

Circulated: _____

Recirculated: JUN 14 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1350

UNITED STATES, PETITIONER *v.* JOSE REYNALDO VILLAMONTE-MARQUEZ ET AL.

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

[June ——, 1983]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, and with whom JUSTICE STEVENS joins as to Part I, dissenting.

The Court today holds that this case is not moot despite the voluntary dismissal of the prosecution by the Government. It also holds that police on a roving, random patrol may stop and board any vessel, at any time, on any navigable waters accessible to the open sea, with no probable cause or reasonable suspicion to believe that there has been a crime or a border crossing, and without any limits whatever on their discretion to impose this invasion of privacy. Because I cannot agree with either holding, I dissent.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 16, 1983

MEMORANDUM TO THE CONFERENCE

In my prior draft dissent in United States v. Villamonte-Marquez, No. 81-1350, I have cited to my own dissent (not yet circulated) in Marsh v. Chambers as to the relevance of acts of the First Congress. In the interest of allowing this case to come down on Friday, I am omitting that reference. I will ask Mr. Lind to reinsert it in the advance sheets.

The Conference

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES 5-6, 8, 13

3rd Draft

SUPREME COURT OF THE UNITED STATES

No. 81-1350

UNITED STATES, PETITIONER *v.* JOSE REYNALDO VILLAMONTE-MARQUEZ ET AL.

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

[June 17, 1983]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, and with whom JUSTICE STEVENS joins as to Part I, dissenting.

The Court today holds that this case is not moot despite the voluntary dismissal of the prosecution by the Government. It also holds that police on a roving, random patrol may stop and board any vessel, at any time, on any navigable waters accessible to the open sea, with no probable cause or reasonable suspicion to believe that there has been a crime or a border crossing, and without any limits whatever on their discretion to impose this invasion of privacy. Because I cannot agree with either holding, I dissent.

I

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 30, 1983

Re: 81-1350 -

United States v. Villamonte-Marquez

Dear Bill,

Please join me.

Sincerely yours,

Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 30, 1983

Re: No. 81-1350-United States v. Jose Reynaldo Villamonte-Marquez

Dear Bill:

I await the dissent. — WJB

Sincerely,

T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 8, 1983

Re: No. 81-1350-United States v. Jose Reynaldo Villamonte-Marquez

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 11, 1983

Re: No. 81-1350, United States v. Villamonte-Marquez

Dear Bill:

Please join me.

Sincerely,

HAB.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 8, 1983

81-1350 United States v. Villamonte-Marquez

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 20, 1983

Re: No. 81-1350 United States v. Villamonte-Marquez

Dear Sandra:

I agree with your memorandum of January 19th that if we were to follow the Fifth Circuit case of United States v. Sarmiento-Rozo, 592 F.2d 1318 (1979), we would in all probability find this case moot. But I don't think that the Court of Appeals for the Fifth Circuit in that case properly interpreted our precedents respecting mootness.

As you note, the dismissal of the indictment against respondents would not alone render the case moot under the reasoning of Mancusi v. Stubbs, 408 U.S. 204, 205-07 (1972). The Fifth Circuit thought that when you added deportation on top of dismissal of the indictment, the balance then tipped over to mootness. But to me it seems like putting an apple and an orange together and saying that you have two apples.

Probably the Fifth Circuit was right as a "practical matter" that a deported alien who had committed an offense in this country was not apt to be indicted and re-tried. But I don't think our mootness cases turn so much on practicality as upon logic. Analytically, so long as the respondents could be extradited if they were reindicted, the possibility of their again standing trial in this country for the offense cannot be conclusively ruled out. I think we have extradition treaties with most foreign countries, but since I don't know to what country the respondents were deported, I have no idea whether their particular offense would be covered. Nor do I know whether they will stay put in the country to which they were deported.

If we were now deciding whether to grant or deny certiorari in this case, I might in view of your memo be more reluctant than I in fact was to vote to grant. But having expended the time we already have at the certiorari

stage of the case, I think the merits can be decided in a principled way without having to reach the conclusion that the case is moot.

Sincerely,

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 22, 1983

Re: No. 81-1350 United States v. Villamonte-Marquez

MEMORANDUM TO THE CONFERENCE

I have given some further thought to the letters written by Bill Brennan and Sandra regarding the possibility that this case is moot. Before mentioning my thoughts, it may be helpful for me to set out my understanding of the procedural history of the case. Respondent Villamonte-Marquez and his codefendant were indicted on various drug charges and pleaded not guilty. Their suppression motion was denied by the trial court and following a jury trial they were convicted and sentenced to prison terms. The respondents then appealed and obtained a reversal of the district court's judgment of conviction and their sentences were vacated. The Government undertook to file a cert petition, and obtained an extension of time in which to file. After the extension of time was granted, the Government voluntarily dismissed the indictment against respondents, and shortly thereafter, filed its cert petition.

As I understand it, both Bill Brennan and Sandra believe that if we could reinstate the convictions against respondents, then the collateral (and direct) consequences of those convictions would create the type of controversy required by Art. III. I agree completely. Pennsylvania v. Mimms, 434 U.S. 106, 108 n. 3 (1977).

I do not agree, however, that we lack the power to reinstate respondents' convictions. The Government has sought review of the Court of Appeals' decision reversing those convictions. Ordinarily, of course, our reversal of that decision would reinstate the judgment of conviction and the sentence entered by the District Court. See United States v. Morrison, 429 U.S. 1, 3 (1976). The fact that the Government did not obtain a stay, thus permitting issuance of the mandate of the Court of Appeals reversing the

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

From: **Justice Rehnquist**

Circulated: MAR 28 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1350

UNITED STATES, PETITIONER *v.* JOSE REYNALDO VILLAMONTE-MARQUEZ ET AL.

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

[March ——, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Congress has provided that "[a]ny officer of the customs may at any time go on board of any vessel . . . at any place in the United States . . . and examine the manifest and other documents and papers . . . and to this end may hail and stop such vessel . . . and use all necessary force to compel compliance." 19 U. S. C. § 1581(a) (1976).[1] We are asked to decide whether the Fourth Amendment is offended when Customs officials, acting pursuant to this statute and without any suspicion of wrongdoing, board for inspection of documents a vessel that is located in waters providing ready access to the open sea.[2]

---

[1] See also 46 U. S. C. § 277 (1976) (provides similar authority for "[a]ny officer concerned in the collection of the revenue"). Cf. 14 U. S. C. § 89(a) (1976); 19 U. S. C. § 1581(b) (1976).

[2] Section 1581(a) provides Customs officials with authority beyond boarding for document inspections. In this case, however, we are concerned only with the more narrow issue.

Respondents briefly argue that we should not reach even this question. Relying on *United States* v. *Sarmiento-Rozo*, 592 F. 2d 1318 (CA5 1979), respondents contend that this case is moot because they have been deported and, subsequent to the issuance of the mandate by the Court of Appeals vacating their convictions, the indictments against them were dismissed. *Sarmiento-Rozo* provides some authority for respondents' argument; nevertheless, we reject the contention.

Stylistic Changes
& pp. 2 & 7

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: APR 7 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1350

UNITED STATES, PETITIONER *v.* JOSE REYNALDO VILLAMONTE-MARQUEZ ET AL.

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

[April ——, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

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pp. 10 & 11

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: APR 11 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1350

UNITED STATES, PETITIONER *v.* JOSE REYNALDO VILLAMONTE-MARQUEZ ET AL.

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

[April ——, 1983]

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: JUN 13 1983

pp. 2-3, 6-7, 12-13

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1350

UNITED STATES, PETITIONER *v.* JOSE REYNALDO VILLAMONTE-MARQUEZ ET AL.

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

[June —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Congress has provided that "[a]ny officer of the customs may at any time go on board of any vessel . . . at any place in the United States . . . and examine the manifest and other documents and papers . . . and to this end may hail and stop such vessel . . . and use all necessary force to compel compliance." 19 U. S. C. § 1581(a) (1976).[1] We are asked to decide whether the Fourth Amendment is offended when Customs officials, acting pursuant to this statute and without any suspicion of wrongdoing, board for inspection of documents a vessel that is located in waters providing ready access to the open sea.[2]

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 14, 1983

Re: No. 81-1350 United States v. Villamonte-Marquez

Dear Chief:

I intend to respond to Bill Brennan's latest revisions and doubt that this case will be ready to come down on Friday.

Sincerely,

WHR

The Chief Justice

cc: The Conference

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

From: **Justice Rehnquist**

Circulated: _____

JUN 15 1983

Recirculated: _____

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1350

UNITED STATES, PETITIONER *v.* JOSE REYNALDO VILLAMONTE-MARQUEZ ET AL.

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

[June ——, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

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HAB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 17, 1983

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 81-1350, United States v. Villamonte-Marquez, et al.

1. No. 82-1549, United States v. Garcia: Texas game wardens, acting pursuant to probable cause according to the DC, stopped and arrested resps for possession of a tanker truck full of marijuana. The arrests did not take place in a state park. After resps were convicted in federal court, the CA5 reversed. The CA reasoned that the legality of a warrantless arrest is determined by state law and under Texas law game wardens may not make arrests for non-game offenses outside the boundaries of state parks. Subsequently, the Government moved to dismiss the indictments; its motion was granted on January 12, 1983. The petn for cert was filed on March 19, 1983. Under our decision in Villamonte-Marquez, the dismissal of the indictments does not render this case moot.

On the merits, Villamonte-Marquez is not relevant. The SG argues that federal law, not state law, controls in determining whether an arrest is consistent with the Fourth Amendment. There is tension, if not a direct conflict, between decisions from this Court on the issue. Compare United States v. Di Re, 332 U.S. 581, 589 (1947), with Elkins v. United States, 364 U.S. 206, 223-224 (1960). There is also a conflict between the CA5 decision below and the CA10's decision in United States v. Miller, 452 F. 2d 731, 733 (1971), cert. denied, 407 U.S. 926 (1972).

The SG also argues that even assuming a Fourth Amendment violation, this would be a good case for the Court to fashion a good faith exception because there is substantial evidence in the record indicating that at the time of the arrests Texas game wardens believed they

81-1350 HAB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 17, 1983

MEMORANDUM TO THE CONFERENCE

Please replace the hold memo circulated this morning with the attached memo. United States v. Garcia, No. 82-1549, should not have been included in the memo. The Conference has already voted on Garcia, and was simply holding the order to GVR in light of Ross until Villamonte-Marquez came down. Instead, the memo should include Lovell v. United States, No. 82-1229.

Sincerely,

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 17, 1983

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 81-1350, United States v. Villamonte-Marquez, et al.

1. No. 82-1229, Lovell v. United States. Coast Guard officers stopped the Enterprise in the Windward Passage between Haiti and Cuba. Acting pursuant to 14 U.S.C. §89(a) the officers boarded the vessel to inspect its documents. While aboard, bales of marijuana were observed in plain view. Petrs were arrested and convicted. The CA11 affirmed, holding that §89(a) allows the Coast Guard to make suspicionless stops on the high seas. While this case involves a different statute (one limited to stops on the high seas), the reasoning of the CA11 is consistent with our decision in Villamonte-Marquez. I will vote to deny.

2. No. 82-643, O'Leary v. Alabama: Customs Officials, accompanied by local officials, boarded the Cher in the Gulf of Mexico near the Florida/Alabama boundary. The Alabama Supreme Court found that the officials had a reasonable suspicion to board the vessel and that the boarding was authorized by 19 U.S.C. §1581(a). Petr argues that in this case there was not a reasonable suspicion and also that this Court needs to determine what limits the "reasonableness" requirement of the Fourth Amendment places on §1581(a). We have now done the latter and the boarding in this case would be constitutional even in the absence of a reasonable suspicion.

Petr also argues that the Alabama Supreme Court erred in not remanding his case after finding that the trial court had erroneously determined that petr did not have standing to make the Fourth Amendment argument. Petr also makes a generalized attack on the jury selection process in Alabama, arguing that it results in "blue ribbon prosecution juries" that exclude a broad spectrum of the population. Since

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

From: Justice Stevens

Circulated: MAR 29 '83

Recirculated: _____

81-1350 - United States v. Villamonte-Marquez

JUSTICE STEVENS, dissenting.

After the issuance of the mandate of the Court of Appeals ordering that respondents' convictions be reversed, the Government voluntarily moved to dismiss the indictments. On December 21, 1981, the District Court granted that motion. No one has ever challenged the effectiveness of the District Court's order of dismissal, or sought to set it aside, either by a request for rehearing in that court or by direct review on appeal. It is therefore perfectly clear that this litigation terminated a long time ago. I therefore do not join what I regard as nothing but a purely advisory opinion.

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

From: **Justice Stevens**

Circulated: _____

Recirculated: MAR 30 '83

Printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1350

UNITED STATES, PETITIONER *v.* JOSE REYNALDO VILLAMONTE-MARQUEZ ET AL.

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

[March ——, 1983]

JUSTICE STEVENS, dissenting.

After the issuance of the mandate of the Court of Appeals ordering that respondents' convictions be reversed, the Government voluntarily moved to dismiss the indictments. On December 21, 1981, the District Court granted that motion. No one has ever challenged the effectiveness of the District Court's order of dismissal, or sought to set it aside, either by a request for rehearing in that court or by direct review on appeal. It is therefore perfectly clear that this litigation terminated a long time ago. I therefore do not join what I regard as nothing but a purely advisory opinion.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 8, 1983

Re: 81-1350 - United States v. Villamonte-Marquez

Dear Bill:

Unless you think it looks awkward, I would like to join part I of your dissenting opinion and withdraw my separate writing. Alternatively, I will withdraw what I have written and simply state something like this:

> "For the reasons stated in part I of JUSTICE BRENNAN's dissenting opinion, I also dissent."

Respectfully,

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 19, 1983

MEMORANDUM TO THE CONFERENCE

No. 81-1350 United States v. Villamonte-Marquez

This case has been set for argument on Wednesday, February 23. An initial review of the briefs suggests that there is a mootness problem that may prevent us from reaching the merits.

The respondents were convicted after their motion to suppress evidence was denied. They appealed the denial of the suppression motion as well as other asserted errors to the Fifth Circuit. The Court of Appeals reversed on Fourth Amendment grounds and declined to reach the remaining points raised on appeal. It stayed its mandate pending a petition for certiorari until December 7, 1981. The Government did not file its petition until January 18, 1982, and the mandate issued on December 8, 1981. The district court then dismissed the indictment, and the respondents were deported.

The parties discuss mootness very briefly. The dismissal of the indictment alone would not render the case moot, as the SG properly notes, for the government could reindict in the ordinary case. Mancusi v. Stubbs, 408 U.S. 204, 205-07 (1972). Nor would the deportation alone render the case moot, for then we could reinstate the conviction, and the respondents could possibly be extradicted, or, if they returned to the country, they could be compelled to serve their sentences. The collateral consequences would probably keep the controversy alive, although the undecided issues on appeal to the Fifth Circuit are a complicating factor. But when the deportation and the dismissal of the indictment are considered together, the mootness problem becomes more serious. The Fifth Circuit has held under similar circumstances that deportation pending disposition of the government's appeal of a pretrial order dismissing

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 11, 1983

No. 81-1350 U. S. v. Villamonte-Marquez

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference