

The Burger Court Opinion Writing Database

Olim v. Wakinekona

461 U.S. 238 (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

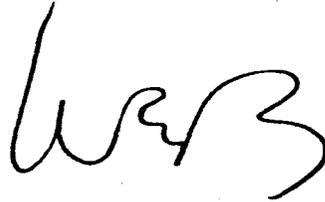
March 18, 1983

Re: No. 81-1581, Olim v. Wakinekona

Dear Harry:

I join.

Regards,

A handwritten signature in cursive script, appearing to read 'WB', is written below the typed name 'Justice Blackmun'.

Justice Blackmun

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

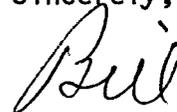
January 25, 1983

RE: No. 81-1581 Olim v. Wakinekona

Dear Thurgood and John:

We three are in dissent in the above. Thurgood, would you try your hand at a dissent?

Sincerely,



Justice Marshall

Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 11, 1983

Re: No. 81-1581

Antone Olim, et al. v.
Delbert Kaahanui Wakinekona

Dear Thurgood,

Please join me in your dissent.

Sincerely,



Justice Marshall

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 16, 1983

Re: 81-1581 - Olim v. Wakinekona

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

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cpm

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PP. 2, 4, 5, 7, 9

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

From: Justice Marshall

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1581

ANTONE OLIM, ET AL, PETITIONERS *v.* DELBERT
KAAHANUI WAKINEKONA

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

[April —, 1983]

JUSTICE MARSHALL, dissenting.

In my view, the transfer of respondent Delbert Kaahanui Wakinekona from a prison in Hawaii to a prison in California implicated an interest in liberty protected by the Due Process Clause of the Fourteenth Amendment. I respectfully dissent.

I

An inmate's liberty interest is not limited to whatever a State chooses to bestow upon him. An inmate retains a significant residuum of constitutionally protected liberty following his incarceration independent of any state law. As we stated in *Wolff v. McDonnell*, 418 U. S. 539, 555-556 (1974), "a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country. . . . [P]risoners may not be deprived of life, liberty, or property without due process of law."

In determining whether a change in the conditions of imprisonment implicates a prisoner's retained liberty interest, the relevant question is whether the change constitutes a sufficiently "grievous loss" to trigger the protection of due process. *Vitek v. Jones*, 445 U. S. 480, 488 (1980). See *Morrissey v. Brewer*, 408 U. S. 471, 481 (1972), quoting *Joint*

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STYLISTIC CHANGES THROUGHOUT.
1,6-9

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

From: Justice Marshall

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1581

ANTONE OLIM, ET AL, PETITIONERS *v.*
DELBERT KAAHANUI WAKINEKONA

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

[April —, 1983]

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

In my view, the transfer of respondent Delbert Kaahanui Wakinekona from a prison in Hawaii to a prison in California implicated an interest in liberty protected by the Due Process Clause of the Fourteenth Amendment. I respectfully dissent.

I

An inmate's liberty interest is not limited to whatever a State chooses to bestow upon him. An inmate retains a significant residuum of constitutionally protected liberty following his incarceration independent of any state law. As we stated in *Wolff v. McDonnell*, 418 U. S. 539, 555-556 (1974), "a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country. . . . [P]risoners may not be deprived of life, liberty, or property without due process of law."

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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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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1581

**ANTONE OLIM, ET AL, PETITIONERS v. DELBERT
KAAHANUI WAKINEKONA**

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

[March —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this case is whether the transfer of a prisoner from a state prison in Hawaii to one in California implicates a liberty interest within the meaning of the Due Process Clause of the Fourteenth Amendment.

I

A

Respondent Delbert Kaahanui Wakinekona is serving a sentence of life imprisonment without the possibility of parole as a result of his murder conviction in a Hawaii state court. He also is serving sentences for various other crimes, including rape, robbery, and escape. At the Hawaii State Prison in Honolulu, respondent was classified as a maximum security risk and placed in the maximum control unit.

Petitioner Antone Olim is the administrator of the Hawaii State Prison. The other petitioners constituted a prison "Program Committee." On August 2, 1976, the Committee held hearings to determine the reasons for a breakdown in discipline and the failure of certain programs within the prison's maximum control unit. Inmates of the unit appeared at these hearings. The Committee singled out respondent and another inmate as troublemakers. On August 5, respondent received notice that the committee, at a hearing to be held on

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 22, 1983

Dear Lewis:

Re: No. 81-1581 - Olim v. Wakinekona

The last sentence in footnote 13 is somewhat cryptic. I could expand it to make clear what I have in mind. On second thought, however, I have just decided to eliminate the entire footnote.

Sincerely,



Justice Powell

STYLISTIC CHANGES

4 p. 12

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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MAR 23 1983

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1581

**ANTONE OLIM, ET AL, PETITIONERS v. DELBERT
KAAHANUI WAKINEKONA**

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

[March —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this case is whether the transfer of a prisoner from a state prison in Hawaii to one in California implicates a liberty interest within the meaning of the Due Process Clause of the Fourteenth Amendment.

I

A

Respondent Delbert Kaahanui Wakinekona is serving a sentence of life imprisonment without the possibility of parole as a result of his murder conviction in a Hawaii state court. He also is serving sentences for various other crimes, including rape, robbery, and escape. At the Hawaii State Prison in Honolulu, respondent was classified as a maximum security risk and placed in the maximum control unit.

Petitioner Antone Olim is the administrator of the Hawaii State Prison. The other petitioners constituted a prison "Program Committee." On August 2, 1976, the Committee held hearings to determine the reasons for a breakdown in discipline and the failure of certain programs within the prison's maximum control unit. Inmates of the unit appeared at these hearings. The Committee singled out respondent and another inmate as troublemakers. On August 5, respondent received notice that the Committee, at a hearing to be held

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P. 1, 11
Footnotes Renumbered

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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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1581

**ANTONE OLIM, ET AL, PETITIONERS v.
DELBERT KAAHANUI WAKINEKONA**

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

[April —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this case is whether the transfer of a prisoner from a state prison in Hawaii to one in California implicates a liberty interest within the meaning of the Due Process Clause of the Fourteenth Amendment.

I

A

Respondent Delbert Kaahanui Wakinekona is serving a sentence of life imprisonment without the possibility of parole as a result of his murder conviction in a Hawaii state court. He also is serving sentences for various other crimes, including rape, robbery, and escape. At the Hawaii State Prison outside Honolulu, respondent was classified as a maximum security risk and placed in the maximum control unit.

Petitioner Antone Olim is the administrator of the Hawaii State Prison. The other petitioners constituted a prison "Program Committee." On August 2, 1976, the Committee held hearings to determine the reasons for a breakdown in discipline and the failure of certain programs within the prison's maximum control unit. Inmates of the unit appeared at these hearings. The Committee singled out respondent and another inmate as troublemakers. On August 5, respondent received notice that the Committee, at a hearing to be held

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 18, 1983

81-1581 Olim v. Wakinekona

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 16, 1983

Re: No. 81-1581 Olim v. Wakinekona

Dear Harry:

Please join me.

Sincerely,

WRM

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 11, 1983

Re: 81-1581 - Olim v. Wakinekona

Dear Thurgood:

If you can figure out a way to do it, I would like to join just Part I of your dissent. If you would prefer, I will add a separate statement reading this way:

"JUSTICE STEVENS, dissenting.

"For the reasons stated in Part I of JUSTICE MARSHALL'S opinion, I respectfully dissent."

Sincerely,



Justice Marshall

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 16, 1983

No. 81-1581 Olim v. Wakinekona

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference