

# The Burger Court Opinion Writing Database

## *Martinez v. Bynum*

461 U.S. 321 (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

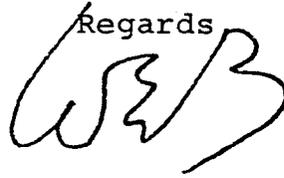
April 13, 1983

Re: No. 81-857, Martinez v. Bynum

Dear Lewis:

I join.

Regards

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

Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 22, 1983

Re: No. 81-857, Martinez v. Bynum

Dear Lewis:

As you may recall, I voted at conference to DIG this case. I am impressed with your opinion, however, and would like to suggest a few changes that might tip me toward joining you.

In note 10, you point out that the plaintiffs mounted only a facial challenge to the statute and that we need not decide whether the statute has been applied uniformly. I agree, but I have two suggestions. First, couldn't you eliminate the last sentence of the first paragraph? I don't think we should be seen as passing in any way on this sort of challenge. I also question whether findings at a preliminary injunction stage are sufficiently reliable to support your conclusion. Second, I would very much hope that we not be seen as passing on the constitutionality of the statute as applied to United States citizen children of alien, nonresident parents. Doesn't the procedural posture of the case preclude us from reaching that issue? And shouldn't we point that out? A sentence or two at the end of the first paragraph of note 10 might do this. For me, at least, a challenge to the statute as applied to United States citizen children of alien, nonresident parents raises far different and more difficult questions than a facial challenge

and it might result in a different conclusion regarding the constitutionality of the statute.

In the second full sentence on page 11, you state that "at the very least, a school district generally would be justified in requiring school-age children or their parents to satisfy the traditional, basic residence criteria -- i.e., to live in the district with the intention of remaining there indefinitely -- before it treated them as residents." Couldn't this sentence be dropped? First, it is clear from the rest of your opinion that we need not decide this issue. As you point out, the Texas statute is more generous than the traditional standard. Second, I have grave doubts whether a school district could constitutionally impose the traditional standard. Under the traditional standard, would not the children of a family that is transferred to a certain state to work, with the knowledge that there will be another transfer within six months or a year, be unable to attend the public schools without paying tuition? To present an example closer to home, the children of one of my law clerks would not be able to attend the public schools without paying tuition while the clerk was working for a year for a judge in another circuit. In short, it seems to me that use of the traditional "residency" test raises some serious problems that we need not address or anticipate. Therefore, I would suggest eliminating the sentence altogether and simply adding "In any event," to the beginning of the first sentence of the first full paragraph on page 11. This change also would have to be reflected in the last sentence of the first paragraph on page 12

by eliminating the phrase "when a more restrictive statute would be permissible."

Sincerely,

A handwritten signature in cursive script that reads "Bill".

WJB, Jr.

Justice Powell

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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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-857

ORALIA MARTINEZ, AS NEXT FRIEND OF ROBERTO  
MORALES, PETITIONER *v.* RAYMON L. BYNUM,  
ETC., ET AL.

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

[April —, 1983]

JUSTICE BRENNAN, concurring.

I join the Court's opinion. I write separately, however, to stress that this case involves only a facial challenge to the constitutionality of the Texas statute. *Ante*, at 3 and 9, n. 10. In upholding the statute, the Court does not pass on its validity as applied to children in a range of specific factual contexts. In particular, the Court does not decide whether the statute is constitutional as applied to Roberto Morales, a United States citizen whose parents are non-resident aliens. If this question were before the Court, I believe that a different set of considerations would be implicated which might affect significantly an analysis of the statute's constitutionality.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 22, 1983

Re: 81-857 - Martinez v. Bynum

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Dear Lewis,

Please join me.

Sincerely yours,



Justice Powell

Copies to the Conference

cpm

PP. 16-18

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. 81-857

ORALIA MARTINEZ, AS NEXT FRIEND OF ROBERTO  
MORALES, PETITIONER *v.* RAYMON L. BYNUM,  
ETC., ET AL.

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

[April —, 1983]

JUSTICE MARSHALL, dissenting.

Shortly after petitioner Roberto Morales reached his eighth birthday, he left his parents' home in Reynosa, Mexico and returned to his birthplace, McAllen, Texas. He planned to make his home there with his married sister in order to attend school and learn English. Morales has resided with his sister in McAllen for the past five years and intends to remain with her until he has completed his schooling. The Texas statute grants free public education to every school-age child who resides in Texas except for one who lives apart from his parents or guardian for educational purposes. Accordingly, Morales has been refused free admission to the schools in the McAllen district.

The majority upholds the classification embodied in the Texas statute on the ground that it applies only to the class of children who are considered *non-residents*. The majority's approach reflects a misinterpretation of the Texas statute, a misunderstanding of the concept of residence, and a misapplication of this Court's past decisions concerning the constitutionality of residence requirements. In my view, the statutory classification, which deprives some children of an education because of their motive for residing in Texas, is not adequately justified by the asserted state interests. Be-

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STYLISTIC CHANGES THROUGHOUT.

P. 11

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. 81-857

ORALIA MARTINEZ, AS NEXT FRIEND OF ROBERTO  
MORALES, PETITIONER *v.* RAYMON L. BYNUM,  
ETC., ET AL.

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

[May —, 1983]

JUSTICE MARSHALL, dissenting.

Shortly after petitioner Roberto Morales reached his eighth birthday, he left his parents' home in Reynosa, Mexico and returned to his birthplace, McAllen, Texas. He planned to make his home there with his married sister in order to attend school and learn English. Morales has resided with his sister in McAllen for the past five years and intends to remain with her until he has completed his schooling. The Texas statute grants free public education to every school-age child who resides in Texas except for one who lives apart from his parents or guardian for educational purposes. Accordingly, Morales has been refused free admission to the schools in the McAllen district.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 11, 1983

Re: No. 81-857 - Martinez v. Bynum

Dear Lewis:

Please join me in your third draft circulated March 28.

Sincerely,



Justice Powell

cc: The Conference

MAR 21 1983  
522 - 1001

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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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-857

ORALIA MARTINEZ, AS NEXT FRIEND OF ROBERTO  
MORALES, PETITIONER *v.* RAYMON L. BYNUM,  
ETC., ET AL.

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

[March —, 1983]

JUSTICE POWELL delivered the opinion of the Court.

This case involves a facial challenge to the constitutionality of the Texas residency requirement governing minors who wish to attend public free schools while living apart from their parents or guardians.

I

Roberto Morales was born in 1969 in McAllen, Texas, and is thus a United States citizen by birth. His parents are Mexican citizens who reside in Reynosa, Mexico. He left Reynosa in 1977 and returned to McAllen to live with his sister, petitioner Oralia Martinez, for the primary purpose of attending school in the McAllen Independent School District. Although Martinez is now Morales's custodian, she is not—and does not desire to become—his guardian.<sup>1</sup> As a result, Morales is not entitled to tuition-free admission to the McAllen schools. Section 21.031(b) and (c) of the Texas Education Code would require the local school authorities to admit him

<sup>1</sup>Section 51.02(4) of the Texas Family Code defines "custodian" as "the adult with whom the child resides." Tex. Fam. Code Ann. § 51.02(4) (1975). "Guardian" is defined as "the person who, under court order, is the guardian of the person of the child or the public or private agency with whom the child has been placed by a court." § 51.02(3).

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see p. 9

MAR 25 1983

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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Recirculated: MAR 25 1983

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-857

ORALIA MARTINEZ, AS NEXT FRIEND OF ROBERTO  
MORALES, PETITIONER *v.* RAYMON L. BYNUM,  
ETC., ET AL.

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

[March —, 1983]

JUSTICE POWELL delivered the opinion of the Court.

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### I

Roberto Morales was born in 1969 in McAllen, Texas, and is thus a United States citizen by birth. His parents are Mexican citizens who reside in Reynosa, Mexico. He left Reynosa in 1977 and returned to McAllen to live with his sister, petitioner Oralia Martinez, for the primary purpose of attending school in the McAllen Independent School District. Although Martinez is now Morales's custodian, she is not—and does not desire to become—his guardian.<sup>1</sup> As a result, Morales is not entitled to tuition-free admission to the McAllen schools. Section 21.031(b) and (c) of the Texas Education Code would require the local school authorities to admit him

<sup>1</sup>Section 51.02(4) of the Texas Family Code defines "custodian" as "the adult with whom the child resides." Tex. Fam. Code Ann. §51.02(4) (1975). "Guardian" is defined as "the person who, under court order, is the guardian of the person of the child or the public or private agency with whom the child has been placed by a court." §51.02(3).

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March 28, 1982

81-857 Martinez v. Bynum

Dear Bill:

Thank you for your personal letter, I am making some changes that I hope will allay your concerns. On page 9 of my second draft, I am rewriting the first paragraph in footnote 10 to read as follows:

"We need not decide whether §21.031(d) is unconstitutional as applied, for the plaintiffs limited their complaint to a facial challenge of this statute. See supra, at 3."

This should leave open an as applied challenge which, I take it, is your primary concern. Indeed, it is clear from other statements in the opinion that the residency test must be "uniformly applied". See p. 7 of text.

I also am adding a footnote (n. 13) to make clear - as you point out - that a family can move to a district knowing that they will later move to another district, and still be bona fide residents.

You suggest that where the child is a United States citizen of alien, nonresident parents, the traditional residency requirement may not be valid. I would find it difficult to draw this type of distinction. I assume that your concern is that the alien, nonresident parents could not lawfully move into the district. But, as in this case, the child may do so.

I do not think alien, nonresident parents would be any more disadvantaged by their inability to move into the district than a parent who, because of some disability, was institutionalized and could not move. Moreover, a parent may have legitimate reasons (e.g., employment) for not wishing to leave the state in which he or she resides, and yet - also for valid reasons - may wish to have the child move to a school district in another state.

If we indicated a different standard where the child's parents or guardian are not able themselves to move into the district, an unnecessary degree of uncertainty - and probably litigation - would result.

As a personal note, I acknowledge that my concern about the practicalities of administering a residency requirement for a school district are based to some extent on my 11 years of experience on the Richmond School Board. Apart from scrambling for more money for public education and better pay for teachers, one of our major problems resulted from the fact that at that time the Richmond schools were the best in that part of Virginia. Parents in neighboring counties resorted to a wide range of strategies - and at times outright deceit - to establish what appeared to be residence for their children within the city. One simply cannot run a school district without having a large measure of control over the legitimate school population.

Having said all of this, Bill, I am grateful to you for giving me the opportunity to address your concerns.

Sincerely,

Justice Brennan

lfp/ss

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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see pp. 2, 9, 11, 12

MAR 27 1983

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-857

ORALIA MARTINEZ, AS NEXT FRIEND OF ROBERTO  
MORALES, PETITIONER *v.* RAYMON L. BYNUM,  
ETC., ET AL.

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

[March —, 1983]

JUSTICE POWELL delivered the opinion of the Court.

This case involves a facial challenge to the constitutionality of the Texas residency requirement governing minors who wish to attend public free schools while living apart from their parents or guardians.

I

Roberto Morales was born in 1969 in McAllen, Texas, and is thus a United States citizen by birth. His parents are Mexican citizens who reside in Reynosa, Mexico. He left Reynosa in 1977 and returned to McAllen to live with his sister, petitioner Oralia Martinez, for the primary purpose of attending school in the McAllen Independent School District. Although Martinez is now Morales's custodian, she is not—and does not desire to become—his guardian.<sup>1</sup> As a result, Morales is not entitled to tuition-free admission to the McAllen schools. Section 21.031(b) and (c) of the Texas Education Code would require the local school authorities to admit him

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APR 26 1983

.....

see pp. 9-12

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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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-857

ORALIA MARTINEZ, AS NEXT FRIEND OF ROBERTO  
MORALES, PETITIONER *v.* RAYMON L. BYNUM,  
ETC., ET AL.

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

[May —, 1983]

JUSTICE POWELL delivered the opinion of the Court.

This case involves a facial challenge to the constitutionality of the Texas residency requirement governing minors who wish to attend public free schools while living apart from their parents or guardians.

I

Roberto Morales was born in 1969 in McAllen, Texas, and is thus a United States citizen by birth. His parents are Mexican citizens who reside in Reynosa, Mexico. He left Reynosa in 1977 and returned to McAllen to live with his sister, petitioner Oralia Martinez, for the primary purpose of attending school in the McAllen Independent School District. Although Martinez is now Morales's custodian, she is not—and does not desire to become—his guardian.<sup>1</sup> As a result, Morales is not entitled to tuition-free admission to the McAllen schools. Section 21.031(b) and (c) of the Texas Education Code would require the local school authorities to admit him

<sup>1</sup>Section 51.02(4) of the Texas Family Code defines "custodian" as "the adult with whom the child resides." Tex. Fam. Code Ann. § 51.02(4) (1975). "Guardian" is defined as "the person who, under court order, is the guardian of the person of the child or the public or private agency with whom the child has been placed by a court." § 51.02(3).

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 22, 1983

Re: No. 81-857 Martinez v. Bynum

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 23, 1983

Re: 81-857 - Martinez v. Bynum

Dear Lewis:

In footnote 10 on page 9 you state that parents or guardians could not satisfy the Texas residence requirement "if the sole purpose of their presence in the district was to enable their child to attend the public free schools." I wonder if this is correct. I was under the impression that the motivational test applied only to minors who were living apart from their parents or guardians. Even if parents with children have moved to a particular community solely because it has an excellent school system, the state apparently assumes that they are "residents" as long as they are present in the district. See Reply of Respondents to Petition for Writ of Certiorari 16 (if mother moved to state to take advantage of better educational facilities and "presented her child to the School Districts in this case or any school district in Texas for education, it would be admitted into school tuition-free"); Brief for Respondents 22 ("Children are much more susceptible to district hopping than entire families and their presence in a district without their parent or guardian gives rise to good faith doubts of the bona fides of their residence"); id., at 30 ("It is clearly rational to distinguish between children who reside with their parents or guardians and children who do not.") Moreover, I see no reason why a family that has moved to take advantage of a district's schools cannot satisfy the traditional criteria for residence--physical presence and intent to remain indefinitely. Maybe I am missing something. Even if there is a difference in the treatment of children living apart from their parents, however, I am not persuaded that this poses any constitutional problem.

-2-

Apart from this detail, I am prepared to join your opinion.

Respectfully,

A handwritten signature in cursive script, appearing to read "J.P.", is written in dark ink.

Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 25, 1983

Re: 81-857 - Martinez v. Bynum

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 22, 1983

No. 81-857 Martinez v. Bynum

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference