The Burger Court Opinion Writing Database

Segura v. United States

468 U.S. 796 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

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

From: **The Chief Justice**

Circulated: DEC 30 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5298

ANDRES SEGURA AND LUZ MARINA COLON, PETITIONERS *v.* UNITED STATES

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

[January ——, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether the Fourth Amendment requires suppression of evidence seized in a private home pursuant to a valid search warrant because the law enforcement officers had illegally entered the home prior to issuance of the warrant when they had not seized or observed the contraband now sought to be suppressed.

I

In January 1981, the New York Drug Enforcement Task Force received information indicating that petitioners Andres Segura and Luz Marina Colon probably were trafficking in cocaine from their New York apartment. Acting on this information, Task Force agents maintained constant surveillance over petitioners until their arrest on February 12, 1981. On February 9, agents observed a meeting between Segura and Enrique Rivudalla-Vidal, during which—as it later developed—the two discussed the possible sale of cocaine by Segura to Rivudalla. Three days later, Segura telephoned Rivudalla and agreed to provide him with one-half kilogram of cocaine. The two agreed that the delivery would be made at 5:00 p. m. that day at a fast-food restaurant in Queens, New York. Rivudalla and his fiancée, Esther Parra, arrived at the restaurant at 5:00 p. m., as agreed.

xc: JH
ML

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

RECEIVED
CHAMBERS OF THE
CHIEF JUSTICE
'84 FEB 21 A10:12

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 21, 1984

Re: No. 82-5298 - Segura v. United States

Dear Chief:

This case gives me great difficulty, for I cannot easily set aside the 19-hour occupation of the apartment. Yet, it leaves me with a feeling of discomfort, for, as is so often the case, these petitioners are obviously guilty of substantial offenses under the drug laws.

I now think, however, that John's analysis is the correct one and that we should vacate and remand the case for further proceedings in the District Court. I therefore am joining John's opinion.

Sincerely,

Harry

Harry Possibly you will have a different reaction when you see how I meet John's points. There was abundant information — days before the 19-hour occupation — to support the warrant

LFB, Jr.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 22, 1984

Re: 82-5298 - Andres Segura and Luz Marina Colon v. U.S.

MEMORANDUM TO THE CONFERENCE

In due course, I will respond to John's dissent - but not this week.

Regards,

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

CHAMBERS OF
THE CHIEF JUSTICE

May 16, 1984

PERSONAL

MEMORANDUM TO: Justice White
Justice Powell
Justice Rehnquist
Justice O'Connor

RE: 82-5298 - Segura v. United States

I have wrestled with this case for several weeks now. I take the unusual step of attaching two drafts, one of which (A) is close to the first draft originally circulated.

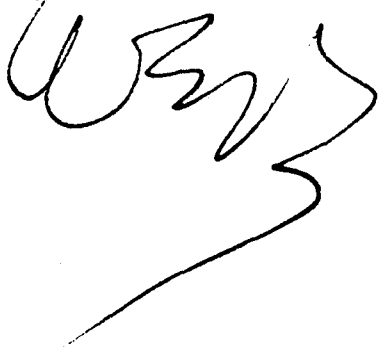
Draft A would hold that we need not decide whether there was a seizure of the evidence when agents entered and later secured the apartment, since there was a wholly independent source for its discovery. In other words, "A" holds that whether there was a seizure of the evidence when the agents entered and secured the apartment is simply irrelevant because they had an independent source for the evidence based on information known before the entry.

Draft B is essentially the theory advanced by the Solicitor General and perhaps preferred by Sandra, with whom I have conferred. Draft "B" assumes that there was a seizure of the evidence when the agents entered the apartment, and goes on to hold that the seizure was not unreasonable, primarily because the occupants of the apartment were in the custody of the officers throughout the duration of the seizure. Draft "B" would also reject petitioners' alternative argument that the evidence should have been suppressed as derivative evidence, on the basis that the warrant was issued on information known to the agents before they entered and that this constitutes an independent source for the evidence now challenged.

I tend to prefer Draft "A" because first, I think that the inquiry into the independent source is all that

is necessary and second, it diffuses the dissenting discussion focussing on the "19-hour occupation." But there is also merit to Draft "B" which is limited in six or seven different ways and has the benefit of giving us maximum flexibility in this sensitive area in future cases. I am willing to abide by the wishes of "four."

Regards,



Justice White
Justice Powell
Justice Rehnquist
Justice O'Connor

Rob
what do
you think?

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

CHAMBERS OF
THE CHIEF JUSTICE

May 29, 1984

Re: 83-5298 - Segura v. United States

MEMORANDUM TO: Justice White
Justice Powell
Justice Rehnquist
Justice O'Connor

All five members of the present majority agreed that they could go along with Draft B. I have deleted Footnote 7 to accommodate Bill and Sandra. Byron indicated that he might have some minor suggestions. In John's interest, as author of the dissent, I will circulate to the full Court later today, unless some of you have some major problem. We will have to make adjustments, since the dissent is bound to raise some new points, especially on Griswold and Vale.

Regards,

WEB

The only changes from what you have already seen are on pages 13 to 15 as marked.

WEB

CHANGES THROUGHOUT
(NEW DRAFT)

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

From: The Chief Justi

Circulated: _____

Recirculated: MAY 29 19

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5298

ANDRES SEGURA AND LUZ MARINA COLON,
PETITIONERS *v.* UNITED STATES

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

[May ——, 1984]

THE CHIEF JUSTICE delivered the opinion of the Court.

We granted certiorari to decide whether, because of an earlier illegal entry, the Fourth Amendment requires suppression of evidence seized later from a private residence pursuant to a valid search warrant which was issued on information obtained by the police before the entry into the residence.

I

Resolution of this issue requires us to consider two separate questions: first, whether the entry and internal securing of the premises constituted an impermissible seizure of all the contents of the apartment, seen and unseen; second, whether the evidence first discovered during the search of the apartment pursuant to a valid warrant issued the day after the entry should have been suppressed as fruit of the illegal entry. Our disposition of both questions is carefully limited.

The Court of Appeals affirmed the District Courts' holding that there were no exigent circumstances to justify the warrantless entry into petitioners' apartment. That issue is not before us, and we have no reason to question the courts' holding that that *search* was illegal. The ensuing interference with petitioners' possessory interests in their apartment, however, is another matter. On this first question, we conclude that, assuming that there was a *seizure* of all the contents of the petitioners' apartment when agents secured the

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

CHAMBERS OF
THE CHIEF JUSTICE

May 29, 1984

Re: 83-5298 - Segura v. United States

MEMORANDUM TO THE CONFERENCE

I may add a footnote at an appropriate place, something along the following lines:

_/ A study of the warrant process by the Los Angeles Police Department reported that an average of six hours was consumed in preparing applications and securing search warrants. Obviously a situation arising late in the day could well mean that 12 to 15 hours might be involved in the process. In Dorman v. United States, 435 F.2d 385, 393-5 (1970), the Court noted that

> "We have no basis for saying a system of consideration of applications for warrants is 'unreasonable' unless it provides a scheduled term of court at night. What is involved is a question of allocation of resources, and possible diversion of resources from needs that stand higher in the interest of justice."

When I check the authenticity of the Los Angeles and other possible studies, I will resolve whether to use it.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

May 30, 1984

Re: 82-5298 - Segura v. U.S.

MEMORANDUM TO THE CONFERENCE

Dear John:

I will not now undertake to deal with the accuracy of your comments in today's memo on this case. Plainly, if there are not four or more to join my view, that will be the end of the matter. And if there are, that will also be the end of the matter!

Regards,

WEB

You are still welcome to join!

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1984

RE: 82-5298 - Segura v. United States

MEMORANDUM TO: Justice White
Justice Powell
Justice Rehnquist
Justice O'Connor

I enclose what, so far as I am concerned, is my final effort - for this Term - to get a resolution of this case that will not produce more confusion than clarity to those who must live with it.

If it does not achieve a Court on the independent source issue - which is what we took the case for - I will move to set the case for reargument.

Regards,

WEB

Justice White
Justice Powell
Justice Rehnquist
Justice O'Connor

Rights remain in Apt. after occupants were taken to Hq - 4

Recirculated to: White, Powell, Rehnquist, O'Connor

June 11, 1984

Part IV - p 9 is not joined by B R W + W + R. "Seizure not unreasonable" - 9

Not previously considered whether "temporary securing" of dwellings in OK - 12 (C)'s examples are questionable

Holds police may "secure" a residence by occupants - not to prevent - even after suspects have left - 14

Not apparent from a "stake-out" - 15

May become unreasonable - 16

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

From: **The Chief Justice**

Circulated: _____

Recirculated: 6/11/84

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5298

ANDRES SEGURA AND LUZ MARINA COLON, PETITIONERS *v.* UNITED STATES

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

[May ——, 1984]

THE CHIEF JUSTICE delivered the opinion of the Court.

We granted certiorari to decide whether, because of an earlier illegal entry, the Fourth Amendment requires suppression of evidence seized later from a private residence pursuant to a valid search warrant which was issued on information obtained by the police before the entry into the residence.

I

Resolution of this issue requires us to consider two separate questions: first, whether the entry and internal securing of the premises constituted an impermissible seizure of all the contents of the apartment, seen and unseen; second, whether the evidence first discovered during the search of the apartment pursuant to a valid warrant issued the day after the entry should have been suppressed as fruit of the illegal entry. Our disposition of both questions is carefully limited.

The Court of Appeals affirmed the District Courts' holding that there were no exigent circumstances to justify the warrantless entry into petitioners' apartment. That issue is not before us, and we have no reason to question the courts' holding that that *search* was illegal. The ensuing interference with petitioners' possessory interests in their apartment, however, is another matter. On this first question, we conclude that, assuming that there was a *seizure* of all the contents of the petitioners' apartment when agents secured the

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–5298

ANDRES SEGURA AND LUZ MARINA COLON, PETITIONERS *v.* UNITED STATES

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

[June ——, 1984]

THE CHIEF JUSTICE delivered the opinion of the Court.

We granted certiorari to decide whether, because of an earlier illegal entry, the Fourth Amendment requires suppression of evidence seized later from a private residence pursuant to a valid search warrant which was issued on information obtained by the police before the entry into the residence.

I

Resolution of this issue requires us to consider two separate questions: first, whether the entry and internal securing of the premises constituted an impermissible seizure of all the contents of the apartment, seen and unseen; second, whether the evidence first discovered during the search of the apartment pursuant to a valid warrant issued the day after the entry should have been suppressed as fruit of the illegal entry. Our disposition of both questions is carefully limited.

The Court of Appeals affirmed the District Courts' holding that there were no exigent circumstances to justify the warrantless entry into petitioners' apartment. That issue is not before us, and we have no reason to question the courts' holding that that *search* was illegal. The ensuing interference with petitioners' possessory interests in their apartment, however, is another matter. On this first question, we conclude that, assuming that there was a *seizure* of all the contents of the petitioners' apartment when agents secured the

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

CHAMBERS OF
THE CHIEF JUSTICE

June 15, 1984

PERSONAL

Re: 82-5298 Segura v. United States

Dear Lewis:

Byron and Bill would hold in this case that evidence obtained as a direct result of unconstitutional conduct need not be suppressed (See Byron's memorandum 6/11/84). I do not agree with this for it provides no discernible check on police misconduct. But, irrespective of the merits of such a holding, we need not go so far in this case.

There is also a logical flaw in Bill's and Byron's position. If petitioners are correct that the evidence was "seized" when the agents first entered and secured the premises, there could be no "independent source" for that seizure. The only true "independent source" is the valid warrant. Because the agents did not obtain the warrant until the next day, however, it could not serve as an "independent source" for the earlier seizure. In short, their concurrence either accepts that there can be multiple unconstitutional seizures--and presumably searches--so long as the last in the series is pursuant to a warrant, or it simply misunderstands the difference between the doctrines of independent source and inevitable discovery.

For essentially the same reasons, it is illogical to maintain that the Court need not reach the question whether there was an unconstitutional seizure of the premises.

It is too bad I have been "coerced" into dealing with the initial entry, but one colleague can do that!

It was unnecessary!

Regards,

WEB

Justice Powell

Probably not a necessary issue here. But desirable to leave this

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

CHAMBERS OF
THE CHIEF JUSTICE

June 19, 1984

MEMORANDUM TO THE CONFERENCE:

RE: No. 82-5298 Segura v. United States

I will add the following footnote at the end of the paragraph which concludes with the citation to Silverthorne on page 19.

> It is important to note that the dissent stresses the legal status of the agents' initial entry and occupation of the apartment; however, this case involves only evidence seized in the search made subsequently under a valid warrant. Implicit in the dissent is that the agents' presence in the apartment denied petitioners some legal "right" to arrange to have the incriminating evidence concealed or destroyed.

With this addition, I am prepared to release the opinion.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

June 21, 1984

Re: 82-5298 - Segura v. United States

Dear John:

I have your note of the 20th. This case has gone through so many "permutations" that I think it is desirable to raise these issues.

You are correct that Byron, Lewis and Bill Rehnquist do not join Part IV. However, they do join Part I, and it is up to them to be sure whether they want the record to show them as joining Part I.

I should add that the headnote will, as usual, refer only to the basic holding of the case on the "independent source." There is no occasion for the headnote to discuss the preservation of the "status quo issue," there being no Court on that point.

Regards,

WRB

Justice Stevens

Copies to the Conference

CJ handed down what this memo was all about Thurs 3 July 84

CHAMBERS OF
THE CHIEF JUSTICE

(1) - 82-819
(2) - 82-6230
(3) - 83-396
(4) - 83-5861

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

June 29, 1984

MEMORANDUM TO THE CONFERENCE

Four cases were held for **No. 82-5298 - SEGURA v. UNITED STATES**

1. No. 82-819 - United States v. Crozier. The Drug Enforcement Administration (DEA) conducted a seven-month investigation into Resps' drug manufacturing and distribution activities. At the culmination of this investigation, on April 9, 1980, agents arrested Resp Stein shortly after he departed his residence. An hour later, agents arrested Resp Crozier on a highway not far from his home. Believing that evidence would be destroyed before search warrants could be obtained and executed, DEA officials ordered agents to secure Resps' residences pending issuance of the warrants. Pursuant to the instructions, agents entered the Crozier residence about 1:00 p.m. and conducted a protective sweep to determine whether anyone was present. No one was found and no evidence was discovered. Thereafter, they stationed themselves at the doors outside the residence until the warrant arrived. Agents found three persons in the Stein residence. The occupants were permitted to leave if they wished, but the agents remained within. At about 7:00 p.m., search warrants for both residences issued. Chemicals and laboratory equipment were seized from the Stein residence. A formula for producing methamphetamine and other incriminating documents were seized from the Crozier residence.

Prior to trial, the District Court suppressed the evidence seized from the residences on the authority of United States v. Allard, 634 F.2d 1182 (CA9 1981). The court held that there were no exigent circumstances to justify the entries into the two residences and that the warrants for the searches of the residences were either overbroad or too general.

Subsequently, a grand jury indicted Resps with various offenses relating to their drug manufacturing activity. One count of the indictment charged Resp Crozier with conducting a continuing criminal enterprise in violation of 21 U.S.C. §848 and identified real and personal property of Crozier's as subject to forfeiture under 21 U.S.C. §848(a)(2). Two days later, pursuant to

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

CHAMBERS OF
THE CHIEF JUSTICE

July 2, 1984

Re: 82-5298 - Segura v. United States

MEMORANDUM TO THE CONFERENCE:

A final review of the opinion leads me to shorten it by moving all of page 13 and the 15 lines of page 14 to a footnote, deleting, in this process, the latter half of the Griswold quote and the final text paragraph on page 13, ending with two lines on page 14.

Absent dissent, this will come down as scheduled on Thursday.

Regards,

CHANGES AS MARKED: 1,13,18

STYLISTIC CHANGES

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

From: The Chief Justice

Circulated: _____

Recirculated: JUL 5 1984

4TH DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–5298

ANDRES SEGURA AND LUZ MARINA COLON, PETITIONERS *v.* UNITED STATES

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

[July 5, 1984]

THE CHIEF JUSTICE delivered the opinion of the Court.*

We granted certiorari to decide whether, because of an earlier illegal entry, the Fourth Amendment requires suppression of evidence seized later from a private residence pursuant to a valid search warrant which was issued on information obtained by the police before the entry into the residence.

I

Resolution of this issue requires us to consider two separate questions: first, whether the entry and internal securing of the premises constituted an impermissible seizure of all the contents of the apartment, seen and unseen; second, whether the evidence first discovered during the search of the apartment pursuant to a valid warrant issued the day after the entry should have been suppressed as fruit of the illegal entry. Our disposition of both questions is carefully limited.

The Court of Appeals affirmed the District Court's holding that there were no exigent circumstances to justify the warrantless entry into petitioners' apartment. That issue is not before us, and we have no reason to question the courts' holding that that *search* was illegal. The ensuing interference with petitioners' possessory interests in their apartment,

*JUSTICE WHITE, JUSTICE POWELL, and JUSTICE REHNQUIST join all but Part IV of this opinion.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 4, 1984

No. 82-5298

Segura and Colon v. United States

Dear Chief,

I'll wait on John's writing in the above.

Sincerely,

WJB

The Chief Justice

Copies to the Conference

C9/

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 13, 1984

No. 82-5298

Segura v. United States

Dear John,

Please join me in your dissent in the above.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 3, 1984

Re: 82-5298 -

Segura and Colon v. United States

Dear Chief,

Please join me.

Sincerely,

Byron

The Chief Justice

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 21, 1984

Re: 82-5298 - Segura v. United States

Dear Chief,

I would prefer version "A", but could join "B" with some changes. With respect to "A", however, it seems to me that your discussion of Chambers, Chadwick, Sanders, Place, Munsey and Rawlings on pages 10 to 12 of "B", is very relevant to your rejection in "A" of the notion that the warranted seizure was a fruit of a prior illegality because the evidence might have been destroyed or removed. That discussion suggests that the destruction argument is legally, as well as prudentially, unsound. But I could join "A" in its present form.

Sincerely,

The Chief Justice

cc: Justice Powell
Justice Rehnquist
Justice O'Connor

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1984

Re: 82-5298 - **Segura v. United States**

Dear Chief,

Upon further reflection, I am quite reluctant to join your present circulation in its entirety. It seems to me that the independent source rationale, as spelled out in version A that you circulated to our side on May 16, makes Part IV A of your present circulation unnecessary. If you nevertheless desire to retain that Part, perhaps you could incorporate in Part IV B enough of version A to permit me, without writing separately, to dispose of the case by joining all but Part IV A.

Sincerely,

Byron

The Chief Justice

cc: Justice Powell
Justice Rehnquist
Justice O'Connor

The CJ is circulating another draft 6/7

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 11, 1984

Re: 82-5298 - Segura v. United States

Dear Chief,

I shall file the following concurring opinion in this case:

> Whether or not the apartment was seized and whether not the seizure was or became unreasonable, the evidence at issue in this case came from an independent source and was admissible for the reasons stated in Part V of the Court's opinion. I would dispose of the case on that basis. Accordingly, I join Parts I, II, III and V of the Court's opinion as well as its judgment.

not IV

Sincerely yours,

Byron

The Chief Justice

cc: Justice Powell
Justice Rehnquist
Justice O'Connor

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

June 14, 1984 '84 JUN 14 A9:40

Re: 82-5298 -

Segura and Colon v. United States

Dear Chief,

Please join me in Parts I, II, III, V and VI of your third draft.

Sincerely yours,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 13, 1984

Re: No. 82-5298-Segura and Colon v. U.S.

Dear John:

Please join me in your dissent.

Sincerely,

T. M.
T.M.

Justice Stevens

cc: The Conference

HAB

February 21, 1984

Re: No. 82-5298 - Segura v. United States

Dear John:

By a separate circulated note, I am joining your dissent in this case. I merely mention the following as tokens of my unease. Feel free to accept or reject them:

1. Although you speak of remand on page 1 and again on page 19, I wish greater emphasis on this could be made at the very end of your opinion. While your writing is a dissent, it is by no means an "acquittal."

2. I mildly wish that footnote 19 could be omitted. It is pertinent, of course. On the other hand, I do not fully agree with everything that Potter has written in his Columbia Lectures of a year ago, and I would prefer not to imply full agreement with his comments. Perhaps the footnote carries no such implication. But I doubt whether you need it to support your thesis.

Sincerely,

HAB

Justice Stevens

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 21, 1984

Re: No. 82-5298 - Segura v. United States

Dear John:

Please join me in your dissent.

Sincerely,

Harry

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 21, 1984

Re: No. 82-5298 - Segura v. United States

Dear Chief:

This case gives me great difficulty, for I cannot easily set aside the 19-hour occupation of the apartment. Yet, it leaves me with a feeling of discomfort, for, as is so often the case, these petitioners are obviously guilty of substantial offenses under the drug laws.

I now think, however, that John's analysis is the correct one and that we should vacate and remand the case for further proceedings in the District Court. I therefore am joining John's opinion.

Sincerely,

Harry

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 2, 1984

82-5298 Segura v. United States

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 18, 1984

82-5298 Segura v. United States

Dear Chief:

This is in reply to your memorandum of May 16, requesting our choice between Drafts A and B as circulated.

I joined your First Draft, and it remains my first choice. Draft A, is a substantial revision of your first draft. See pp. 8-12.

If our choices now are between Drafts A and B, I incline toward Draft B. As you noted in your memorandum, it is a satisfactory approach. It is important, of course, to have a Court. I have no trouble with either your First Draft or Draft B. If four other Justices prefer Draft A, I will take a second look at it in light of the changes you have made.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: Justices White, Rehnquist and O'Connor

June 13, 1984

PERSONAL

82-5298 Segura v. United States
83-173 Wasman v. United States

Dear Chief:

This refers to our several conversations about these two cases.

As we usually agree on the criminal law, I regret that we have some differences here - not as to the ultimate outcome but only as to how broadly the opinions should be written.

Since our discussion yesterday afternoon, I have taken another look at both cases. In Wasman, I enclose a Chambers draft of a concurring opinion. I have not circulated it because I was hopeful that you might make accommodating changes in your opinion. See my private letter of June 8. While there is some ambiguity in Pearce, it seems clear - at least to me - that in both of the quotations we have discussed (see my draft opinion) the Court was talking only about "subsequent" events. I therefore doubt the justification in this case of attempting to broaden the Pearce holding.

* * *

In Segura, I also enclose a typewritten copy of a brief concurring opinion that I dictated yesterday in order to record my thoughts in view of your concern about my position. My views in this case have evolved in light of the several circulations, but I have now come to agree with Bill Rehnquist and Byron that I cannot join Part IV.

* * *

As we have discussed before, I have some institutional concern as a result of the unprecedented number of criminal cases decided this Term in favor of the federal or state governments. Many of these cases - particularly the exclusionary rule ones - do significantly limit prior precedents. I am hesitant to depart from precedent unless the

public interest clearly requires it. In my view, this is true in neither Wasman nor Segura.

In any event, you will have a solid Court opinion in Segura, and a plurality opinion plus a judgment in Wasman. This is certainly not an unfavorable result from your viewpoint in cases of this difficulty.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 15, 1984

82-5298 Segura v. United States

Dear Chief:

As have Byron and Bill Rehnquist, I also will join Parts I, II, III, V and VI of your third draft.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

June 15, 1984

82-5298 Segura v. United States

Dear Chief:

As have Byron and Bill Rehnquist, I also will join Parts I, II, III, V and VI of your third draft.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

I will not circulate my concurring opinion that I sent you privately.

L.F.P., Jr.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 3, 1984

Re: No. 82-5298 Segura v. United States

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 18, 1984

Re: No. 82-5298 Segura v. United States

Dear Chief:

Like you, I prefer Draft "A" in preference to Draft "B." I think Draft "A" is closer to the position taken by the Conference majority, and re-states and applies the "independent source" doctrine in a useful way. Draft "B" simply holds that a particular seizure is reasonable on its facts--indeed, the "holding" is so limited by the language in the second paragraph in Draft "B" that if that were to be the prevailing opinion one would have to wonder why we granted certiorari in the case.

If you decide to go with version "A" I hope you will consider incorporating footnote 6 from version "B" into it, since I think that footnote makes a useful point. If version "B" is preferred by others, I hope at the very least you will drop footnote 7 from it, because that footnote introduces unnecessary speculation into the opinion and highlights the very limited reach of the Court's decision.

Sincerely,

The Chief Justice

cc: Justice White
Justice Powell
Justice O'Connor

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 12, 1984

Re: No. 82-5298 Segura v. United States

Dear Chief,

After ruminating about this case for some time, I come down where Byron is, and by this note ask him to join me in his concurring opinion, which in turn joins parts I, II, III, and V of your opinion, and your judgment as well.

Sincerely,

WHR

The Chief Justice

cc: Justice White
Justice Powell
Justice O'Connor

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 14, 1984

Re: No. 82-5298 Segura v. United States

Dear Chief,

Like Byron, I join Parts I, II, III, V and VI of your third draft.

Sincerely,

WHR

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 3, 1984

Re: 82-5298 - Segura v. United States

Dear Chief:

Because I find the case somewhat more difficult than your opinion indicates, I will be writing separately.

Respectfully,

John

The Chief Justice

Copies to the Conference

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

From: **Justice Stevens**

Circulated: FEB 10 198

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5298

ANDRES SEGURA AND LUZ MARINA COLON, PETITIONERS *v.* UNITED STATES

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

[February ——, 1984]

JUSTICE STEVENS, dissenting.

Correct analysis of the Fourth Amendment issues raised by this case requires, first, a precise identification of the two constitutional violations that occurred, and second, an explanation of why a remedy for both is appropriate. We must consider the substantial contention, supported by the findings of the District Court and left unaddressed by the opinion of this Court, that the authorities' access to the evidence introduced against petitioners at trial was made possible only through exploitation of both constitutional violations. Because I believe that contention must be addressed before petitioners' convictions are finally affirmed, I would remand for further proceedings. The Court's disposition, I fear, will provide government agents with an affirmative incentive to engage in unconstitutional violations of the privacy of the home. The Court's disposition is, therefore, inconsistent with a primary purpose of the Fourth Amendment's exclusionary rule—to ensure that all private citizens—not just these petitioners—have some meaningful protection against further violations of their rights.

I

The events that occurred on February 12 and 13, 1981, were the culmination of an investigation of petitioners that had been underway for over two weeks. On the evening of

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

From: **Justice Stevens**

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 8, 18

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5298

ANDRES SEGURA AND LUZ MARINA COLON,
PETITIONERS *v.* UNITED STATES

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

[February ——, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

Correct analysis of the Fourth Amendment issues raised by this case requires, first, a precise identification of the two constitutional violations that occurred, and second, an explanation of why a remedy for both is appropriate. We must consider the substantial contention, supported by the findings of the District Court and left unaddressed by the opinion of this Court, that the authorities' access to the evidence introduced against petitioners at trial was made possible only through exploitation of both constitutional violations. Because I believe that contention must be addressed before petitioners' convictions are finally affirmed, I would remand for further proceedings. The Court's disposition, I fear, will provide government agents with an affirmative incentive to engage in unconstitutional violations of the privacy of the home. The Court's disposition is, therefore, inconsistent with a primary purpose of the Fourth Amendment's exclusionary rule—to ensure that all private citizens—not just these petitioners—have some meaningful protection against future violations of their rights.

I

The events that occurred on February 12 and 13, 1981, were the culmination of an investigation of petitioners that

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 21, 1984

Re: 82-5298 - Segura v. United States

Dear Harry:

Many thanks for your letter joining the dissent and for your two suggestions. I agree wholeheartedly with the first and have already sent to the printer a revised draft making the point on the very first page of the opinion as well as again later on. I am sure this will satisfy you.

Since you were kind enough to give me discretion with respect to the quote from Potter's article, I really would like to retain it. I agree with you that we should not endorse the article as a whole and I deliberately tried to quote it in a way that would be read only as supporting the proposition that the exclusionary rule rests primarily on a deterrence rationale. As you know, he does in fact go somewhat farther in the article and therefore the danger to which you refer perhaps does exist. Moreover, you are correct in pointing out that it is not strictly necessary.

To sum up, I would still like to retain the footnote but if you continue to have misgivings about it, I will delete it.

Respectfully,

Justice Blackmun

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

From: **Justice Stevens**

Circulated: _____

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5298

ANDRES SEGURA AND LUZ MARINA COLON, PETITIONERS *v.* UNITED STATES

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

[February ——, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN, JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting.

Correct analysis of the Fourth Amendment issues raised by this case requires, first, a precise identification of the two constitutional violations that occurred, and second, an explanation of why a remedy for both is appropriate. While I do not believe that the current record justifies suppression of the challenged evidence, neither does it justify affirmance of petitioners' convictions. We must consider the substantial contention, supported by the findings of the District Court and left unaddressed by the opinion of this Court, that the authorities' access to the evidence introduced against petitioners at trial was made possible only through exploitation of both constitutional violations. Because I believe that contention must be addressed before petitioners' convictions are finally affirmed, I would remand for further proceedings. The Court's disposition, I fear, will provide government agents with an affirmative incentive to engage in unconstitutional violations of the privacy of the home. The Court's disposition is, therefore, inconsistent with a primary purpose of the Fourth Amendment's exclusionary rule—to ensure that all private citizens—not just these petitioners—have some meaningful protection against future violations of their rights.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 30, 1984

Re: 82-5298 - Segura v. United States

Dear Chief:

Your new draft contains a real surprise. You propose a holding that an unexplained and unjustified 19-hour warrantless occupation of a home, which the Solicitor General did not attempt to defend, is a "reasonable" seizure. I fully agree that the authorities should be able to impound a house for a reasonable period of time pending the issuance of a warrant, but to stay inside of a home for a period of time that is not even remotely related to the time necessary to obtain a warrant is quite another thing altogether. It also seems to me quite at odds with our recent holding in Welsh v. Wisconsin.

Since I do not believe anyone took this position at Conference, I will not redraft my dissent until I find out if others will accept your rather dramatic departure from anything the Court has every done before.

Respectfully,

The Chief Justice

Copies to the Conference

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

From: **Justice Stevens**

Circulated: _____

Recirculated: JUN 5 198

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 2, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 22, 23

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5298

ANDRES SEGURA AND LUZ MARINA COLON, PETITIONERS *v.* UNITED STATES

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

[June ——, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN, JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting.

Correct analysis of the Fourth Amendment issues raised by this case requires, first, a precise identification of the two constitutional violations that occurred, and second, an explanation of why a remedy for both is appropriate. While I do not believe that the current record justifies suppression of the challenged evidence, neither does it justify affirmance of petitioners' convictions. We must consider the substantial contention, supported by the findings of the District Court and left unaddressed by the opinion of this Court, that the authorities' access to the evidence introduced against petitioners at trial was made possible only through exploitation of both constitutional violations. Because I believe that contention must be addressed before petitioners' convictions are finally affirmed, I would remand for further proceedings. The Court's disposition, I fear, will provide government agents with an affirmative incentive to engage in unconstitutional violations of the privacy of the home. The Court's disposition is, therefore, inconsistent with a primary purpose of the Fourth Amendment's exclusionary rule—to ensure that all private citizens—not just these petitioners—have some meaningful protection against future violations of their rights.

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

9, 10, 11, 15, 23

From: **Justice Stevens**

Circulated: JUN 18

Recirculated: _____

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5298

ANDRES SEGURA AND LUZ MARINA COLON, PETITIONERS *v.* UNITED STATES

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

[June ——, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN, JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting.

Correct analysis of the Fourth Amendment issues raised by this case requires, first, a precise identification of the two constitutional violations that occurred, and second, an explanation of why a remedy for both is appropriate. While I do not believe that the current record justifies suppression of the challenged evidence, neither does it justify affirmance of petitioners' convictions. We must consider the substantial contention, supported by the findings of the District Court and left unaddressed by the opinion of this Court, that the authorities' access to the evidence introduced against petitioners at trial was made possible only through exploitation of both constitutional violations. Because I believe that contention must be addressed before petitioners' convictions are finally affirmed, I would remand for further proceedings. The Court's disposition, I fear, will provide government agents with an affirmative incentive to engage in unconstitutional violations of the privacy of the home. The Court's disposition is, therefore, inconsistent with a primary purpose of the Fourth Amendment's exclusionary rule—to ensure that all private citizens—not just these petitioners—have some meaningful protection against future violations of their rights.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 20, 1984

Re: 82-5298 - Segura v. United States

Dear Chief:

For two reasons I do not believe Segura is ready to come down.

First, in my dissent I cross-cite to Leon. I do not want to omit that citation because it squarely responds to your reliance on the officers' good faith. At pages 16-17 of your opinion.

Second, since Byron, Lewis, and Bill Rehnquist have all declined to join Part IV of your opinion (pp. 9-20), it would seem to me that there must be a question as to whether they have joined the portion of Part I in which you state:

> "Specifically, we hold that where officers, having probable cause, enter premises, and with probable cause, arrest the occupants who have legitimate possessory interests in its contents and take them into custody and, for no more than the period here involved, secure the premises from within to preserve the status quo while others, in good faith, are in the process of obtaining a warrant, they do not violate the Fourth Amendment's proscription against unreasonable seizures." (p. 2).

Perhaps I do not have standing to raise this question, but I want to be sure that in my dissent I refer to "the Court" as opposed to "THE CHIEF JUSTICE" at the appropriate places and at this point I am not quite sure how the Reporter will be treating Part I of your opinion.

Respectfully,

John

The Chief Justice
Copies to the Conference

2, 6, 7, 8, 15

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

From: Justice Stevens

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SUPREME COURT OF THE UNITED STATES

No. 82-5298

ANDRES SEGURA AND LUZ MARINA COLON,
PETITIONERS *v.* UNITED STATES

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

[July 5, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN, JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting.

Correct analysis of the Fourth Amendment issues raised by this case requires, first, a precise identification of the two constitutional violations that occurred, and second, an explanation of why a remedy for both is appropriate. While I do not believe that the current record justifies suppression of the challenged evidence, neither does it justify affirmance of petitioners' convictions. We must consider the substantial contention, supported by the findings of the District Court and left unaddressed by the opinion of this Court, that the authorities' access to the evidence introduced against petitioners at trial was made possible only through exploitation of both constitutional violations. Because I believe that contention must be addressed before petitioners' convictions are finally affirmed, I would remand for further proceedings. The Court's disposition, I fear, will provide government agents with an affirmative incentive to engage in unconstitutional violations of the privacy of the home. The Court's disposition is, therefore, inconsistent with a primary purpose of the Fourth Amendment's exclusionary rule—to ensure that all private citizens—not just these petitioners—have some meaningful protection against future violations of their rights.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 21, 1984

No. 82-5298 Segura v. United States

Dear Chief,

Like Lewis, I prefer your Draft B. It is more carefully tailored to the facts of this case and leaves more room to consider more egregious facts in the future if the need arises. I tend to agree with Bill that FN 7 is not necessary.

I also will certainly take a closer look at Draft A if you cannot get 5 votes for B.

Sincerely,

Sandra

The Chief Justice

cc: Justice White
Justice Powell
Justice Rehnquist

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 30, 1984

No. 82-5298 Segura v. United States

Dear Chief,

Please join me.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 12, 1984

Re: No. 82-5298 Segura v. United States

Dear Chief,

I am still with you on the June 11 circulation.

Sincerely,

Sandra

The Chief Justice

cc: Justice White
Justice Powell
Justice Rehnquist