The Burger Court Opinion Writing Database

United States v. Gouveia

467 U.S. 180 (1984)

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 MAY -4 P2:36

CHAMBERS OF
THE CHIEF JUSTICE

May 4, 1984

Re: 83-128 - United States v. William Gouveia, Et al.

Dear Bill:

I join.

Regards,

WEB

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 7, 1984

No. 83-128

United States v. Gouveia, et al.

Dear John,

Please join me.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 30, 1984

Re: 83-128 - United States v. Gouveia

Dear Bill,

Please join me.

Sincerely yours,

Byron

Justice Rehnquist

Copies to the Conference

cpm

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. 83-128

UNITED STATES, PETITIONER *v.*
WILLIAM GOUVEIA ET AL.

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

[May ——, 1984]

JUSTICE MARSHALL, dissenting.

The majority misreads the development of the Sixth Amendment when it states that "our cases have long recognized that the right to counsel attaches only at or after the initiation of adversary judicial proceedings against the defendant." *Ante*, at 6. As JUSTICE STEVENS persuasively demonstrates, *ante*, at 1–5, we have recognized that in certain situations an individual's right to counsel is triggered *before* the formal initiation of adversary judicial proceedings. See, *e. g.*, *Escobedo* v. *Illinois*, 378 U. S. 478, 485–492 (1964). This recognition has stemmed from a realistic appreciation that the government can transform an individual into an "accused" without officially designating him as such through the ritual of arraignment. Moreover, I agree with JUSTICE STEVENS that the government treats an individual as an accused when that individual "is deprived of liberty in order to aid the prosecution in its attempt to convict him, and when the deprivation is likely to have the intended effect. . . ." Ante, at 5.

Unlike JUSTICE STEVENS, however, I reject both the reasoning and the judgment of the majority. JUSTICE STEVENS concurs in the judgment of the Court because, in his view, the transfer of respondents from the general prisoner population to the far harsher constraints of administrative deten-

P. 2

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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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–128

UNITED STATES, PETITIONER *v.*
WILLIAM GOUVEIA ET AL.

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

[May ——, 1984]

JUSTICE MARSHALL, dissenting.

The majority misreads the development of Sixth Amendment doctrine when it states that "our cases have long recognized that the right to counsel attaches only at or after the initiation of adversary judicial proceedings against the defendant." *Ante*, at 6. As JUSTICE STEVENS demonstrates, *ante*, at 1–5, we have recognized that in certain situations an individual's right to counsel is triggered *before* the formal initiation of adversary judicial proceedings. See, *e. g.*, *Escobedo* v. *Illinois*, 378 U. S. 478, 485–492 (1964). This recognition has stemmed from an appreciation that the government can transform an individual into an "accused" without officially designating him as such through the ritual of arraignment. Moreover, I agree with JUSTICE STEVENS that the government treats an individual as an accused when that individual "is deprived of liberty in order to aid the prosecution in its attempt to convict him, and when the deprivation is likely to have the intended effect . . . ." *Ante*, at 5.

Unlike JUSTICE STEVENS, however, I reject the judgment as well as the reasoning of the Court. JUSTICE STEVENS concurs in the judgment of the Court because, in his view, the transfer of respondents from the general prison population to the far harsher constraints of administrative deten-

OHR P.2

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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SUPREME COURT OF THE UNITED STATES

No. 83–128

UNITED STATES, PETITIONER *v.*
WILLIAM GOUVEIA ET AL.

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

[May 29, 1984]

JUSTICE MARSHALL, dissenting.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 30, 1984

Re: No. 83-128 - United States v. Gouveia

Dear Bill:

Please join me.

Sincerely,

Harry

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 30, 1984

83-128 United States v. Gouveia

Dear Bill:

Please join me.

Sincerely,

L. Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

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

From: **Justice Rehnquis**

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Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–128

UNITED STATES, PETITIONER *v.*
WILLIAM GOUVEIA ET AL.

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

[April ——, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondents William Gouveia, Robert Ramirez, Adolpho Reynoso, and Philip Segura were convicted of murdering a fellow inmate at a federal prison in Lompoc, California. Respondents Robert Mills and Richard Pierce were convicted of a later murder of another inmate at the same institution. Prison officials placed each respondent in administrative detention shortly after the murders, and they remained there for an extended period of time before they were eventually indicted on criminal charges. On appeal of respondents' convictions, the en banc Court of Appeals for the Ninth Circuit held by divided vote that they had a Sixth Amendment right to an attorney during the period in which they were held in administrative detention before the return of indictments against them, and that because they had been denied that right, their convictions had to be overturned and their indictments dismissed. 704 F. 2d 1116 (1983). We granted certiorari to review the Court of Appeals' novel application of our Sixth Amendment precedents, —— U. S. —— (1983), and we now reverse.

On November 11, 1978, Thomas Trejo, an inmate at the Federal Correctional Institution in Lompoc, California, was found dead from 45 stab wounds in the chest. Prison officials and agents from the Federal Bureau of Investigation began independent investigations of the murder. Prison offi-

pp 4, 5, 7

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

From: **Justice Rehnqui**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–128

UNITED STATES, PETITIONER *v.*
WILLIAM GOUVEIA ET AL.

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

[May ——, 1984]

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1984

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 83-128 United States v. Gouveia

The one case held for United States v. Gouveia, No. 83-128, is Mills v. United States, No. 83-5286. The facts in that case are quite similar to the facts in Gouveia. Petr, an indigent inmate, was placed in segregation for nineteen months by prison officials in Atlanta because of his suspected involvement in the murder of a fellow inmate. Counsel was appointed for him at the time of his arraignment, although he had made numerous requests for the appointment of counsel while he was in segregation.

On appeal of his conviction for murder and conspiracy to commit murder, petr argued that detention for nineteen months without counsel deprived him of his Sixth Amendment right to a speedy trial. CA11 followed the great weight of authority and held that administrative detention does not constitute an "accusation" and thus does not start the ticking of the Sixth Amendment speedy trial clock.

Petr also argued that he was denied a fair trial because of the admission of evidence concerning the workings within the prison of the Aryan Brotherhood, a reputed white supremacist gang which controlled the prison drug traffic. The government's theory was that petr had committed the murder to avenge a wrong done to another Aryan "brother." CA11 held that there was no abuse of discretion in admitting the evidence because it was necessary to establish the context, motive, and set-up of the crime, that it was not prejudicially cumulative, and that its prejudicial value did not outweigh its probative value. Petr also argued that the government knowingly offered perjured testimony to prove its case, as evidenced by the prosecutor's statement in his closing argument implying that the government did not totally believe the testimony of its main witness. CA11 held that the prosecutor's statement did not evidence a

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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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–128

UNITED STATES, PETITIONER *v.*
WILLIAM GOUVEIA ET AL.

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

[May ——, 1984]

JUSTICE STEVENS, concurring in the judgment.

"Whatever else it may mean, the right to counsel granted by the Sixth and Fourteenth Amendments means *at least* that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him—'whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.'" *Brewer* v. *Williams*, 430 U. S. 387, 398 (1977) (emphasis supplied) (quoting *Kirby* v. *Illinois*, 406 U. S. 682, 689 (1972) (plurality opinion)). That statement, which does not foreclose the possibility that the right to counsel might under some circumstances attach prior to the formal initiation of judicial proceedings, has been the rule this Court has consistently followed. Today the Court seems to adopt a broader rule, stating that "the right to counsel attaches *only* at or after the initiation of adversary judicial proceedings against the defendant." *Ante*, at 6 (emphasis supplied). Because I believe this statement is unjustified by our prior cases and unnecessary to decide this case, I cannot join the opinion of the Court.

In *Escobedo* v. *Illinois*, 378 U. S. 478 (1964), this Court squarely held that the Sixth Amendment's right to counsel can attach before formal charges have been filed. Escobedo had been denied access to his lawyer while he was in custody but before any formal charges had been filed. The Court explained:

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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7 6

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-128

UNITED STATES, PETITIONER *v.*
WILLIAM GOUVEIA ET AL.

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

[May ——, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins, concurring in the judgment.

"Whatever else it may mean, the right to counsel granted by the Sixth and Fourteenth Amendments means *at least* that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him—'whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.'" *Brewer* v. *Williams*, 430 U. S. 387, 398 (1977) (emphasis supplied) (quoting *Kirby* v. *Illinois*, 406 U. S. 682, 689 (1972) (plurality opinion)). That statement, which does not foreclose the possibility that the right to counsel might under some circumstances attach prior to the formal initiation of judicial proceedings, has been the rule this Court has consistently followed. Today the Court seems to adopt a broader rule, stating that "the right to counsel attaches *only* at or after the initiation of adversary judicial proceedings against the defendant." *Ante*, at 6 (emphasis supplied). Because I believe this statement is unjustified by our prior cases and unnecessary to decide this case, I cannot join the opinion of the Court.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 30, 1984

Re: No. 83-128 U.S. v. Gouveia

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference