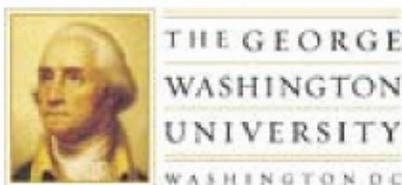


The Burger Court Opinion Writing Database

United States v. Montoya de Hernandez
473 U.S. 531 (1985)

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



(b)

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

CHAMBERS OF
THE CHIEF JUSTICE

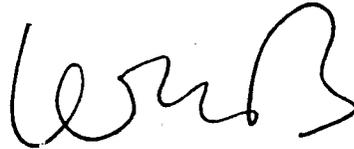
May 17, 1985

Re: No. 84-755 - United States v. De Hernandez

Dear Bill:

I join.

Regards,



Justice Rehnquist

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84 MAY 13 11:02

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 29, 1985

No. 84-755

United States v. De Hernandez

Dear Thurgood,

We are in dissent in this case.
I'll be glad to try my hand at it.

Sincerely,

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

Justice Marshall

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 15, 1985

No. 84-755

United States v. De Hernandez

Dear Bill,

I'll be circulating a dissent in
the above "in due course."

Sincerely,



Justice Rehnquist

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ST WALKER

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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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~~WLB~~
~~Please find me in your~~
~~diaries~~
JH

United States v. De Hernandez

No. 84-755

JUSTICE BRENNAN, dissenting.

We confront a "disgusting and saddening episode" at our nation's border.¹ Shortly after midnight on March 5, 1983, the respondent Rosa Elvira Montoya de Hernandez was detained by customs officers because she fit the profile of an "alimentary canal smuggler."² This profile did not of course give the officers probable cause to believe that de Hernandez was smuggling drugs into the country, but at most a "reasonable suspicion" that she might be engaged in such an attempt. After a thorough strip-search failed to uncover any contraband, de Hernandez agreed to go to a local hospital for an abdominal x-ray

¹United States v. Holtz, 479 F.2d 89, 94 (CA9 1973) (Ely, J., dissenting) (re "the disrobing and search of a woman by United States border police").

²Specifically, de Hernandez "had paid cash for her ticket, came from a source port of embarcation, carried \$5,000 in U.S. currency, had made many trips of short duration into the United States, had no family or friends in the United States, had only one small piece of luggage, had no confirmed hotel reservations, did not speak English, and said she was planning to go shopping using taxis for transportation." 731 F.2d 1369, 1371, n. 3 (CA9 1984).

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Justice White
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From: Justice Brennan

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SUPREME COURT OF THE UNITED STATES

No. 84-755

UNITED STATES, PETITIONER *v.* ROSA ELVIRA
MONTROYA DE HERNANDEZ

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

[July 2, 1985]

JUSTICE BRENNAN, [^]dissenting.

We confront a "disgusting and saddening episode" at our nation's border.¹ Shortly after midnight on March 5, 1983, the respondent Rosa Elvira Montoya de Hernandez was detained by customs officers because she fit the profile of an "alimentary canal smuggler."² This profile did not of course give the officers probable cause to believe that de Hernandez was smuggling drugs into the country, but at most a "reasonable suspicion" that she might be engaged in such an attempt. After a thorough strip-search failed to uncover any contraband, de Hernandez agreed to go to a local hospital for an abnominal x-ray to resolve the matter. When the officers approached with handcuffs at the ready to lead her away, however, "she crossed her arms by her chest and began stepping backwards shaking her head negatively," protesting:

with whom
JUSTICE
MARSHALL
JOINS,

¹ *United States v. Holtz*, 479 F. 2d 89, 94 (CA9 1973) (Ely, J., dissenting) (*re* "the disrobing and search of a woman by United States border police").

² Specifically, de Hernandez "had paid cash for her ticket, came from a source port of embarcation, carried \$5,000 in U. S. currency, had made many trips of short duration into the United States, had no family or friends in the United States, had only one small piece of luggage, had no confirmed hotel reservations, did not speak English, and said she was planning to go shopping using taxis for transportation." 731 F. 2d 1369, 1371, n. 3 (CA9 1984).

K

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 15, 1985

84-755 - United States v. de Hernandez

Dear Bill,

Join me, please.

Sincerely,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 15, 1985

Re: No. 84-755-U.S. v. DeHernandez

Dear Bill:

I await the dissent.

Sincerely,

J.M.

T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 26, 1985

Re: No. 84-755-U.S. v. De Hernandez

Dear Bill:

Please join me in your dissent.

Sincerely,

J.M.

T.M.

Justice Brennan

cc: The Conference

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

W
CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 15, 1985

Re: No. 84-755, United States v. DeHernandez

Dear Bill:

Please join me.

Sincerely,

H.A.B.

Justice Rehnquist

cc: The Conference

84 MAY 12 10 42

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13
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 15, 1985

84-755 United States v. De Hernandez

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

APR 12 5 30 PM '85

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~~WHR
Lawrence dissent pp 7-11
SM~~

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-755

**UNITED STATES, PETITIONER v. ROSA ELVIRA
MONTOYA DE HERNANDEZ**

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

[May —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Rosa Elvira Montoya de Hernandez was detained by Customs officials upon her arrival at the Los Angeles airport on a flight from Bogota, Colombia. She was found to be smuggling 88 cocaine-filled balloons in her alimentary canal, and was convicted after a bench trial of various federal narcotics offenses. A divided panel of the United States Court of Appeals for the Ninth Circuit reversed her convictions, holding that her detention violated the Fourth Amendment to the United States Constitution because the Customs inspectors did not have a "clear indication" of alimentary canal smuggling at the time she was detained. 731 F. 2d 1369 (1984). Because of a conflict in the decisions of the Courts of Appeals on this question and the importance of its resolution to the enforcement of Customs laws, we granted certiorari. — U. S. —. We now reverse.

Respondent arrived at Los Angeles International Airport shortly after midnight, March 5, 1983, on Avianca Flight 080, a direct 10-hour flight from Bogota, Colombia. Her visa was in order so she was passed through Immigration and proceeded to the Customs desk. At the Customs desk she encountered Customs Inspector Talamantes, who reviewed her documents and noticed from her passport that she had made at least 8 recent trips to either Miami or Los Angeles. Talamantes referred respondent to a secondary Customs'

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Pp 10412

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Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-755

UNITED STATES, PETITIONER *v.* ROSA ELVIRA
MONTROYA DE HERNANDEZ

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

[May —, 1985]

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74A

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 20, 1985

MEMORANDUM TO THE CONFERENCE

Re: Henao-Castano v. United States, No. 84-5554 (held
for United States v. Montoya de Hernandez)

84-755

Petitioner arrived in Miami on a flight from Colombia. During questioning by customs he revealed that he did not know how much his airline ticket cost or where it had been purchased. His answers contradicted each other and were evasive. He claimed that he was on a buying trip for his Colombian electronics store, but evinced no knowledge of electronics whatsoever. For example, he stated that Sony televisions were made in America.

The Customs agents suspected that petitioner was an "internal" carrier. They read him his Miranda rights and he agreed to receive an x-ray. He later revoked this consent at the hospital and the officers shackled him to a wheelchair to await the call of nature. Four hours later, a total of eight hours after his arrival, petitioner sat upright and confessed to being an internal carrier. He agreed to an x-ray, was x-rayed, and immediately began passing 85 cocaine-filled condoms.

The CALL upheld petitioner's convictions against his Fourth Amendment challenge. The CA held that a person reasonably suspected of alimentary canal smuggling may be detained until nature takes its course. According to the CA the suspect could also be x-rayed on reasonable suspicion.

My vote will be to deny this petition. This petition does not squarely present the issue of an unconsented x-ray, and the CALL correctly anticipated our holding in de Hernandez that an entrant, at the border, who is reasonably suspect of alimentary canal smuggling may be detained pending a bowel movement.

Sincerely,



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 14, 1985

No. 84-755 United States v. de Hernandez

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference