The Burger Court Opinion Writing Database

United States v. Rojas-Contreras

474 U.S. 231 (1985)

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: NOV 12 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–1023

UNITED STATES, PETITIONER *v.* FERNANDO ROJAS-CONTRERAS

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

[November ——, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to resolve a conflict in the Circuits[1] as to whether (a) the Speedy Trial Act of 1974, 18 U. S. C. § 3161 *et seq.*, as amended, prohibits commencement of a trial less than 30 days after arraignment on a superseding indictment; and (b) assuming a violation of the Speedy Trial Act in this case, was that error harmless?

I

On December 7, 1981, respondent, who is not a citizen of the United States, was convicted of illegal entry into this country and was sentenced to one year's imprisonment. After serving his sentence, respondent returned to Mexico.

Again, on February 13, 1983, he entered the United States illegally and was apprehended by United States Border Patrol Agents. On February 18, 1983, a federal grand jury

[1] *Compare United States* v. *Guzman*, 754 F. 2d 482 (CA2 1985), cert. pending, No. 84–1604; *United States* v. *Rush*, 738 F. 2d 497 (CA1 1984), cert. denied —— U. S. —— (1985); *United States* v. *Williford*, No. 83–1376 (CA5 Feb. 27, 1984), slip op., cert. denied, —— U. S. —— (1984); *United States* v. *Horton*, 676 F. 2d 1165 (CA7 1982), cert. denied, —— U. S.—— (1983); and *United States* v. *Todisco*, 667 F. 2d 255 (CA2 1981), cert. denied, —— U. S. —— (1982) *with United States* v. *Feldman*, 761 F. 2d 380 (CA7 1985).

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

From: **The Chief Justice**

Circulated: _____

Recirculated: _____

STYLISTIC CHANGES THROUGHOUT

Changes pp 1, 2, 5

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–1023

UNITED STATES, PETITIONER *v.* FERNANDO ROJAS-CONTRERAS

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

[November ——, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to resolve a conflict in the Circuits[1] as to whether (a) the Speedy Trial Act of 1974, 18 U. S. C. § 3161 *et seq.*, as amended, prohibits commencement of a trial less than 30 days after arraignment on a superseding indictment; and (b) assuming a violation of the Speedy Trial Act in this case, was that error harmless?

I

On December 7, 1981, respondent, who is not a citizen of the United States, was convicted of illegal entry into this country and was sentenced to one year's imprisonment. After serving his sentence, respondent returned to Mexico.

Again, on February 13, 1983, he entered the United States illegally and was apprehended by United States Border

[1] *Compare United States* v. *Guzman*, 754 F. 2d 482 (CA2 1985), cert. pending, No. 84–1604; *United States* v. *Rush*, 738 F. 2d 497 (CA1 1984), cert. denied —— U. S. —— (1985); *United States* v. *Williford*, No. 83–1376 (CA5 Feb. 27, 1984), slip op., cert. denied, —— U. S. —— (1984); *United States* v. *Horton*, 676 F. 2d 1165 (CA7 1982), cert. denied, —— U. S.—— (1983); and *United States* v. *Todisco*, 667 F. 2d 255 (CA2 1981), cert. denied, —— U. S. —— (1982) *with United States* v. *Rojas-Contreras*, No. 83–5089 (CA9 1984). *See also United States* v. *Feldman*, 761 F. 2d 380 (CA7 1985).

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

CHAMBERS OF
THE CHIEF JUSTICE

December 10, 1985

RE: No. 84-1023 - United States v. Rojas Contreras

MEMORANDUM TO THE CONFERENCE:

In response to the new language on pages 4-5 of the second draft of Harry's concurrence in this case, I will add a new footnote at the end of the last full paragraph on page 5 of my opinion as follows:

> The concurrence, post, at 4, suggests that the District Court should grant a continuance if "there is a meaningful possibility that a superseding indictment will require an alteration or adjustment in the planned defense." (emphasis added). That standard is plainly at odds with the language of the Act. Section 3161(h)(8)(B) provides that in deciding whether to grant a discretionary continuance under section 3161(h)(8)(A), the District Court should consider inter alia whether "failure to grant such a continuance ... would be likely to ... result in a miscarriage of justice" or "would deny counsel for the defendant or the Government the reasonable time necessary for effective preparation, taking into account the excercise of due diligence." (emphasis added).

Regards,

WRB

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

CHAMBERS OF
THE CHIEF JUSTICE

December 11, 1985

RE: No. 84-1023 - United States v. Rojas-Contreras

Dear John:

The footnote is not all that important, and I will let things stand as before.

Regards,

WEB

Justice Stevens

copies to the Conference

STYLISTIC CHANGES

p. 5

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: DEC 13 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–1023

UNITED STATES, PETITIONER *v.* FERNANDO ROJAS-CONTRERAS

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

[December ——, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to resolve a conflict in the Circuits[1] as to whether (a) the Speedy Trial Act of 1974, 18 U. S. C. § 3161 *et seq.*, as amended, prohibits commencement of a trial less than 30 days after arraignment on a superseding indictment; and (b) assuming a violation of the Speedy Trial Act in this case, was that error harmless?

I

On December 7, 1981, respondent, who is not a citizen of the United States, was convicted of illegal entry into this country and was sentenced to one year's imprisonment. After serving his sentence, respondent returned to Mexico. Again, on February 13, 1983, he entered the United States illegally and was apprehended by United States Border

[1] Compare *United States* v. *Guzman*, 754 F. 2d 482 (CA2 1985), cert. pending, No. 84–1604; *United States* v. *Rush*, 738 F. 2d 497 (CA1 1984), cert. denied, 470 U. S. —— (1985); *United States* v. *Williford*, No. 83–1376 (CA5 Feb. 27, 1984), slip op., cert. denied, 469 U. S. —— (1984); *United States* v. *Horton*, 676 F. 2d 1165 (CA7 1982), cert. denied, 459 U. S. 1201 (1983); and *United States* v. *Todisco*, 667 F. 2d 255 (CA2 1981), cert. denied, 455 U. S. 906 (1982), with *United States* v. *Rojas-Contreras*, No. 83–5089 (CA9, Mar. 2, 1984). See also *United States* v. *Feldman*, 761 F. 2d 380 (CA7 1985).

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

CHAMBERS OF
THE CHIEF JUSTICE

January 8, 1986

RE: No. 84-1604 - Guzman v. United States

MEMORANDUM TO THE CONFERENCE:

This case was held for United States v. Rojas-Contreras, No. 84-1023.

On March 28, 1984, a grand jury returned a two count indictment against petitioner and two others. Count I charged the three with conspiring to distribute cocaine, and Count II charged them with possession of one and one-half kilograms of cocaine with intent to distribute. Trial commenced on June 4, 1984, but a mistrial was declared the next day. On June 6, the Government obtained a superseding indictment that expanded the duration of the conspiracy alleged in Count I from two days to almost two years. The same superseding indictment changed Count II to charge only petitioner, and not his two co-defendants, with possession. The district court rejected petitioner's request for a continuance and ordered the retrial to commence on June 7. Petitioner was convicted on both the conspiracy and possession counts.

Petitioner appealed to the CA2. That court reversed the conspiracy conviction but affirmed the possession conviction, rejecting petitioner's argument that the Speedy Trial Act, 18 U.S.C. § 3161(c)(2) provides an absolute right to a thirty-day trial preparation period following the return of a superseding indictment. In reversing the conspiracy conviction, the court concluded that the district court had abused its discretion in not granting petitioner a continuance to make adjustments in his defense required by the significant expansion of the period of the conspiracy. As to the possession count, however, the court concluded that the deletion of petitioner's co-defendants was insubstantial. The court reasoned that petitioner could not have suffered any prejudice as a result of being compelled to go to trial on Count II, because, with one exception, all of the evidence offered at trial with respect to Count I would also have been admissible at a trial on Count II alone. That one exception was the statements of petitioner's co-conspirators which were admitted into evidence. The court concluded, however, that "[i]n light of the overwhelming evidence supporting [petitioner's] conviction for possession, which included the cocaine and drug paraphernalia seized from his apartment, [petitioner's] own statements after arrest, and the drug ledger, we find that any

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 6, 1985

No. 84-1023

United States v. Rojas-Contreras

Dear Harry:

As you know, I voted at conference to affirm in the above. However, upon reading your excellent concurrence, I am inclined to agree, and certainly appreciate your candor that neither the language nor legislative history of the Speedy Trial Act resolves whether the return of a superseding indictment triggers a new 30-day defense preparation period.

As I say, I do find most of what you say persuasive. I remained concerned, however, that trial courts understand that they are to grant continuances when a new indictment requires the defense to rethink or reevaluate its prior preparation based on the old indictment. I think you make this point in the last sentence on page 4; my preference would be to flesh out a bit what we mean by "liberally granted." What do you think of something along these lines:

> Accordingly, where there is a real possibility that a superseding indictment may require an alteration or adjustment of a defense, a trial judge should grant a request for a continuance; moreover, in assessing whether or not the superseding indictment works such a change, the court should bear in mind that counsel may

require time fully to analyze the impact of the new indictment, and to explore any options it presents or precludes.

Sincerely,

Bill

Justice Blackmun

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 10, 1985

No. 84-1023

United States v. Rojas-Contreras

Dear Harry,

Thanks so much for making the change. I agree wholeheartedly with your revisions and am delighted to join in your concurrence.

Sincerely,

Bill

Justice Blackmun

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 10, 1985

No. 84-1023

United States v. Rojas-Contreras

Dear Harry,

Please join me.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 13, 1985

Re: 84-1023 -

United States v. Rojas-Contreras

Dear Chief,

Please join me.

Sincerely yours,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 15, 1985

Re: No. 84-1023 - United States v. Rojas-Contreras

Dear Chief:

Please join me.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

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

From: **Justice Blackmun**

Circulated: DEC 05 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1023

UNITED STATES, PETITIONER *v.* FERNANDO ROJAS-CONTRERAS

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

[December ——, 1985]

JUSTICE BLACKMUN, concurring in the judgment.

I concur in the result the Court reaches and therefore in its judgment. The Court today holds that the Speedy Trial Act does not mandate a new 30-day defense-preparation period following return of a superseding indictment. I agree with the Court that that holding is strongly guided by the express purpose of the Speedy Trial Act. But because I find neither the language of the Act particularly clear nor its legislative history at all helpful, I refrain from joining the opinion's statutory analysis.

The term "superseding indictment" refers to a second indictment issued in the absence of a dismissal of the first. The Act nowhere refers to a superseding indictment, and seems to assume that dismissal of the first indictment will precede issuance of the second. See 18 U. S. C. §§ 3161(d)(1) and 3161(h)(6). Section 3161(c)(2), which establishes the 30-day defense-preparation period "from the date on which the defendant first appears through counsel" therefore can provide only the starting point of the inquiry. The question before the Court is whether that language may be interpreted to refer to the defendant's appearance on the indictment upon which he ultimately goes to trial, or whether one must read that language to refer to the defendant's appearance on the first indictment. Despite the fact that the

/

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 9, 1985

Re: No. 84-1023, United States v. Rojas-Contreras

Dear Bill:

Many thanks for your letter of December 6. Your point is a good one. I propose to replace the last three lines of page 4 of my concurrence with the following:

> "To avoid prejudicing a defendant, a continuance should be granted where there is a meaningful possibility that a superseding indictment will require an alteration or adjustment in the planned defense. Trial courts should bear in mind that counsel may require time fully to analyze the impact of the superseding indictment, and to explore any options it presents or precludes."

I hope you will find this acceptable.

Sincerely,

Harry

Justice Brennan

STYLISTIC CHANGES
pp. 4-5

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: DEC 10 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–1023

UNITED STATES, PETITIONER *v.* FERNANDO ROJAS-CONTRERAS

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

[December ——, 1985]

JUSTICE BLACKMUN, concurring in the judgment.

I concur in the result the Court reaches and therefore in its judgment. The Court today holds that the Speedy Trial Act does not mandate a new 30-day defense-preparation period following return of a superseding indictment. I agree with the Court that that holding is strongly guided by the express purpose of the Speedy Trial Act. But because I find neither the language of the Act particularly clear nor its legislative history at all helpful, I refrain from joining the opinion's statutory analysis.

The term "superseding indictment" refers to a second indictment issued in the absence of a dismissal of the first. The Act nowhere refers to a superseding indictment, and seems to assume that dismissal of the first indictment will precede issuance of the second. See 18 U. S. C. §§ 3161(d)(1) and 3161(h)(6). Section 3161(c)(2), which establishes the 30-day defense-preparation period "from the date on which the defendant first appears through counsel" therefore can provide only the starting point of the inquiry. The question before the Court is whether that language may be interpreted to refer to the defendant's appearance on the indictment upon which he ultimately goes to trial, or whether one must read that language to refer to the defendant's appearance on the first indictment. Despite the fact that the

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 14, 1985

Re: No. 84-1023 United States v. Rojas-Contreras

Dear Chief,

Please join me.

Sincerely,

WHR

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 15, 1985

Re: 84-1023 - United States v. Fernando Rojas-Contreras

Dear Chief:

Please join me.

Respectfully,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 11, 1985

Re: 84-1023 - United States v. Fernando Rojas-Contreras

Dear Chief:

It seems to me that a superseding indictment should almost always give the defendant a valid ground for a continuance if there is any meaningful possibility that there must be an alteration or adjustment in defense tactics. I therefore am more in agreement with Harry's statement of the standard than with your suggestion that something approaching a miscarriage of justice is necessary before a continuance can be granted. Accordingly, would you indicate in some appropriate way that I do not join the footnote that you propose to add at the end of the last full paragraph on page 5 of your opinion.

Of course, I would much prefer that you simply omit the footnote.

Respectfully,

John

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 15, 1985

No. 84-1023 U. S. v. Rojas-Contreras

Dear Chief,

Please join me.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference