

LEXSEE 442 U.S. 465

TORRES v. PUERTO RICO

No. 77-1609

SUPREME COURT OF THE UNITED STATES*442 U.S. 465; 99 S. Ct. 2425; 61 L. Ed. 2d 1; 1979 U.S. LEXIS 111*January 10, 1979, Argued
June 18, 1979, Decided**PRIOR HISTORY:** APPEAL FROM THE
SUPREME COURT OF PUERTO RICO.**DISPOSITION:** Reversed and remanded.**DECISION:**

Search at Puerto Rico airport of luggage of passenger from U. S., by police acting without warrant or probable cause as authorized by Puerto Rico law, held violative of *Fourth Amendment*.

SUMMARY:

Following a flight from Florida to Puerto Rico, a passenger on the flight who was a resident of Florida was approached by a Puerto Rico police officer and taken with his luggage to a police office at the airport. Without a warrant or any articulable reason to suspect that the passenger was carrying contraband, police officers then searched the passenger's luggage pursuant to a Puerto Rico statute authorizing police to conduct such searches of the luggage of any person arriving in Puerto Rico from the United States. The search revealed one ounce of marijuana. Subsequently, the passenger was charged, tried, and convicted of violating the controlled substances law of Puerto Rico, and was sentenced to one to three years' imprisonment. On appeal to the Supreme Court of Puerto Rico, the defendant contended that the search conducted pursuant to the Puerto Rico statute violated the federal constitutional prohibition against unreasonable searches, but the Supreme Court of Puerto Rico affirmed the conviction.

On appeal, the United States Supreme Court reversed and remanded. In an opinion by Burger, Ch. J., joined by

White, Powell, Rehnquist, and Stevens, JJ., it was held that (1) the constitutional requirements of the *Fourth Amendment* apply to Puerto Rico, both Congress' implicit determinations that the provisions may be implemented and long experience establishing that the *Fourth Amendment's* restrictions on searches and seizures can be applied without danger to national interests and without risk of unfairness, and (2) the search at issue, having been conducted by police acting without a warrant and without probable cause for a belief that incriminating evidence would be found, as authorized by the Puerto Rico statute, did not satisfy the requirements of the *Fourth Amendment*, there being no exception for the statute from the *Fourth Amendment's* requirements of a warrant and probable cause on the basis of an analogy to customs searches at a functional equivalent to the international border of the United States, or an analogy to state inspections designed to implement health and safety legislation.

Brennan, J., joined by Stewart, White, and Blackmun, JJ., concurred in the judgment, expressing the view that regardless of the validity of several prior United States Supreme Court decisions, rendered early in the 20th century, with respect to the inapplicability of constitutional provisions to territories, such cases were not authority for questioning the application of the *Fourth Amendment*, or any other provisions of the *Bill of Rights*, to Puerto Rico in the 1970's.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]

LAW §39

constitutional provisions -- applicability to territories

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reversed because of the invalidity of the search, see *infra*, at 471-474, we need not address the issue.

The Commonwealth suggests that its Supreme Court should be allowed to address this issue because if it were to invalidate the special majority-vote requirement, it would then reverse appellant's conviction in accordance with the views of the majority of the justices who participated. We see no purpose in requiring the Puerto Rico Supreme Court to address a second federal constitutional issue which could not affect our holding.

II

Decisions of this Court early in the century limited the application of the Constitution in Puerto Rico. In *Downes v. Bidwell*, 182 U.S. 244 (1901), we held that Congress could establish a special tariff on goods imported from Puerto Rico to the United States, and that the requirement that all taxes and duties imposed by Congress be uniform throughout the [*469] United States, Art. I, § 8, cl. 1, was not applicable to the island. Mr. Justice Edward White's concurring opinion announced the doctrine that the United States could acquire territory without incorporating it into the Nation, and that unincorporated territory was not subject to all the provisions of the Constitution. 182 U.S., at 287-344. In support of this doctrine, the concurring opinion emphasized that full application of the Constitution to all territory under the control of the United States would create such severe practical difficulties under certain circumstances as to prohibit the United States from exercising its constitutional power to occupy and acquire new lands. *Id.*, at 305-311.

The distinction between incorporated and unincorporated territories was first adopted by a majority of the Court in *Dorr v. United States*, 195 U.S. 138 (1904); the Court sustained the refusal of the territorial government of the Philippines to seek indictments by grand jury or afford petit juries in criminal cases. The Court emphasized that imposition of the jury system on people unaccustomed to common-law traditions "may be to work injustice and provoke disturbance rather than to aid the orderly administration of justice." *Id.*, at 145-146, 148. It also suggested that the constitutional guarantees as to juries should not be construed so as to hamper Congress [**2429] in exercising its constitutional

authority to govern the territories. *Id.*, at 148. The doctrine that the Constitution does not guarantee grand and petit juries in unincorporated [***7] territories was applied to Puerto Rico, notwithstanding that its residents theretofore had been granted United States citizenship, in *Balzac v. Porto Rico*, 258 U.S. 298 (1922).

On the other hand, this Court has held or otherwise indicated that Puerto Rico is subject to the *First Amendment* Speech Clause, *id.*, at 314; the Due Process Clause of either the Fifth or the *Fourteenth Amendment*, *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 668-669, n. 5 (1974); and the equal protection guarantee of either the Fifth or the [*470] *Fourteenth Amendment*, *Examining Board v. Flores de Otero*, 426 U.S. 572, 599-601 (1976). In *Califano v. Torres*, 435 U.S. 1, 4 n. 6 (1978) (*per curiam*), we assumed without deciding that the constitutional right to travel extends to the Commonwealth.

[***LEdHR1] [1]Congress may make constitutional provisions applicable to territories in which they would not otherwise be controlling. *Mullaney v. Anderson*, 342 U.S. 415, 419-420 (1952). Congress generally has left to this Court the question of what constitutional guarantees apply to Puerto Rico. *Examining Board v. Flores de Otero*, *supra*, at 590. However, because the limitation on the application of the Constitution in unincorporated territories is based in part on the need to preserve Congress' ability to govern such possessions, and may be overruled by Congress, a legislative determination that a constitutional provision practically and beneficially may be implemented in a territory is entitled to great weight.

[***LEdHR2] [2]Both Congress' implicit determinations in this respect and long experience establish that the *Fourth Amendment's* restrictions on searches and seizures may be applied to Puerto Rico without danger to national interests or risk of unfairness. From 1917 until 1952, Congress by statute afforded equivalent personal rights to the residents of Puerto Rico. Act of Mar. 2, 1917, § 2, cl. 13-14, 39 Stat. 952, *repealed*, Act of July 3, 1950, § 5 (1), 64 Stat. 320 (effective July 25, 1952). When Congress authorized the people of Puerto Rico to adopt a constitution, its only express substantive requirements were that the document should provide for a republican form of government and "include a *bill of rights*." Act of July 3, 1950, § 2, 64 Stat. 319, 48 U. S. C. § 731c. A constitution containing the language of the *Fourth Amendment*, as well as additional

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language reflecting this Court's exegesis thereof, *P. R. Const., Art. II, § 10*, was adopted by the people of Puerto Rico and approved by Congress. See Act of July 3, 1952, 66 Stat. 327. That constitutional provision remains in effect.

[*471] [***LEdHR3A] [3A]We conclude that the constitutional requirements of the *Fourth Amendment* apply to the Commonwealth.³ As in *Examining Board v. [***8] Flores de Otero, supra, at 601*, we have no occasion to determine whether the *Fourth Amendment* applies to Puerto Rico directly or by operation of the *Fourteenth Amendment*.

3

[***LEdHR3B] [3B]The Commonwealth has not denied that it is subject to the constitutional prohibition against unreasonable searches. However, even an explicit concession on this point would not "relieve this Court of the performance of the judicial function" of deciding the issue. *Sibron v. New York, 392 U.S. 40, 58 (1968)*, quoting *Young v. United States, 315 U.S. 257, 258 (1942)*.

III

[***LEdHR4A] [4A] [***LEdHR5] [5]The search of appellant's baggage pursuant to Public Law 22 did not satisfy the requirements of the *Fourth Amendment* as we heretofore have construed it. First, the grounds for a search must satisfy objective standards which ensure that the invasion of personal privacy is justified by [**2430] legitimate governmental interests. *Delaware v. Prouse, 440 U.S. 648, 653-655 (1979)*. The governmental interests to be served in the detection or prevention of crime are subject to traditional standards of probable cause to believe that incriminating evidence will be found. Yet Public Law 22 does not require, and the officers who made the search challenged here did not have, probable cause for such belief.

[***LEdHR6] [6]Second, a warrant is normally a prerequisite to a search unless exigent circumstances make compliance with this requirement impossible. *Mincey v. Arizona, 437 U.S. 385, 393-394 (1978)*. Yet, Public Law 22 requires no warrant, and none was obtained before appellant's bags were searched.⁴

4 Recently, we made clear that once a locked trunk was seized and impounded incident to an arrest there was no exigency justifying forcibly opening the locked trunk without a search warrant. *United States v. Chadwick, 433 U.S. 1, 15 (1977)*. There was no suggestion in *Chadwick* and there is no suggestion here that the officers had grounds to believe that appellant's bags contained an "immediately dangerous instrumentality." See *id., at 15 n. 9*.

[*472] IV

[***LEdHR4B] [4B]Apparently recognizing that the search of appellant's luggage pursuant to Public Law 22 cannot be sustained under our previous decisions, Puerto Rico urges us not to be bound in "the conceptual prison of *stare decisis*." It suggests a novel exception to the normal *Fourth Amendment* requirements of a warrant and probable cause, referring us to decisions of this and other courts which have sustained (a) searches by the Border Patrol at a "functional equivalent" of the international border of the United States, (b) state inspections of shipments of goods in furtherance of health and safety regulations, (c) the use of airport metal detectors, and (d) certain searches on military bases. The Commonwealth asserts that these decisions recognize a variety of "intermediate borders," analogous to the international border of the United States, at which searches are permitted even though normal *Fourth Amendment* requirements are not satisfied.

Puerto Rico then asks us to recognize an "intermediate border" between the Commonwealth and the rest of the United States. In support of this proposal it points to its unique political status, and to the fact that its borders as an island are in fact international borders with respect to all countries except the United States. Finally, Puerto Rico urges that because of the seriousness of the problems created by an influx of weapons and narcotics, it should have the same freedom to search persons crossing its "intermediate [***9] border" as does the United States with respect to incoming international travelers.

[***LEdHR7] [7]The decisions on which Puerto Rico seeks to erect its theory of "intermediate boundaries" do not reflect any geographical element of *Fourth Amendment* doctrine, however, but are based on a variety of considerations which have no bearing on this case. Public Law 22 cannot be justified by any analogy

to customs searches at a functional equivalent of the international border of the United States. The authority of the [*473] United States to search the baggage of arriving international travelers is based on its inherent sovereign authority to protect its territorial integrity. By reason of that authority, it is entitled to require that whoever seeks entry must establish the right to enter and to bring into the country whatever he may carry. *United States v. Ramsey*, 431 U.S. 606, 620 (1977); *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973); *Carroll v. United States*, 267 U.S. 132, 154 (1925). Puerto Rico has no sovereign authority to prohibit entry into its territory; as with all international ports of entry, border and customs control for Puerto Rico is conducted by federal officers. Congress has provided by statute that Puerto Rico must accord to all citizens of the [**2431] United States the privileges and immunities of its own residents. Act of Aug. 5, 1947, § 7, 61 Stat. 772, 48 U. S. C. § 737. See *Mullaney v. Anderson*, 342 U.S., at 419 n. 2.

[***LEdHR8] [8]Public Law 22 also may not be sustained by analogy to state inspection provisions designed to implement health and safety legislation. By a vote of four to three the Puerto Rico Supreme Court rejected appellee's attempt to characterize Public Law 22 as a health and safety measure, finding instead that it was enacted for the purpose of enforcing criminal laws. In any event, health and safety inspections are subject to the *Fourth Amendment* warrant requirement unless they fall within one of its recognized exceptions, and must be based on a "plan containing specific neutral criteria." *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312, 323 (1978).⁵

5 Use of airport metal detectors with respect to passengers boarding aircraft and searches of persons entering military bases involve considerations not relevant to this case.

Puerto Rico's position boils down to a contention that its law enforcement problems are so pressing that it should be granted an exemption from the usual requirements of the *Fourth Amendment*. Although we have recognized exceptions [*474] to the warrant requirement when specific circumstances render compliance impracticable, we have not dispensed with the fundamental *Fourth Amendment* prohibition against unreasonable searches and seizures simply because of a generalized urgency of law enforcement.

Almeida-Sanchez v. United States, *supra*, at 273-275; *United States v. Di Re*, 332 U.S. 581, 595 (1948).

[***10] In any event, Puerto Rico's law enforcement needs are indistinguishable from those of many states. Puerto Rico is not unique because it is an island; like Puerto Rico, neither Alaska nor Hawaii are contiguous to the continental body of the United States. Moreover, the majority of all the states have borders which coincide in part with the international frontier of the United States; virtually all have international airport facilities subject to federal customs controls.

We therefore hold that the search pursuant to Public Law 22 violated constitutional guarantees; accordingly, evidence obtained in the search of appellant's luggage should have been suppressed. The judgment of the Supreme Court of Puerto Rico is therefore reversed, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

Reversed and remanded.

CONCUR BY: BRENNAN

CONCUR

MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEWART, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN join, concurring in the judgment.

Appellant's conviction of violating the Puerto Rico Controlled Substances Act was based on evidence discovered when police, admittedly without probable cause, searched appellant's luggage after he arrived in Puerto Rico from Florida. The Supreme Court of Puerto Rico has construed Public Law 22 to authorize such searches without probable cause.*

* Four of the eight members of the Supreme Court of Puerto Rico were of the opinion that Public Law 22 as so construed violated the *Fourth Amendment of the Federal Constitution*. See *ante*, at 468. But *Art. V, § 4, of the Puerto Rico Constitution* provides that no law shall be held unconstitutional by the Supreme Court of Puerto Rico except by a majority of the total number of justices of which the court is composed. Appellant argues that this requirement violates the *Supremacy Clause* and the *Due Process Clause* of