"The Fourteenth Amendment is not directed solely against discrimination due to a 'two-class theory'—that is, based upon differences between 'white' and Negro."

Hernandez v. Texas

347 U.S. 475, 74 S.Ct. 667, 98 L.Ed. 866 (1954).

Pete Hernandez, an American citizen of Mexican descent, was indicted for murder by a grand jury in Jackson County, Texas, convicted by a petit jury, and sentenced to life imprisonment. Prior to and at the trial, his counsel objected to both juries because Mexican–Americans had been systematically excluded from service on them. The judge denied these motions, the state supreme court affirmed, and the U.S. Supreme Court granted certiorari.

Mr. Chief Justice **WARREN** delivered the opinion of the Court. ...

In numerous decisions, this Court has held that it is a denial of the equal protection of the laws to try a defendant of a particular race or color under an indictment issued by a grand jury, or before a petit jury, from which all persons of his race or color have, solely because of that race or color, been excluded by the State, whether acting through its legislature, its courts, or its executive or administrative officers. Although the Court has had little occasion to rule on the question directly, it has been recognized since Strauder v. West Virginia [1880] that the exclusion of a class of persons from jury service on grounds other than race or color may also deprive a defendant who is a member of that class of the constitutional guarantee of equal protection of the laws. The State of Texas would have us hold that there are only two classes—white and Negro—within the contemplation of the Fourteenth Amendment. The decisions of this Court do not support that view. ...

Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. The Fourteenth Amendment is not directed solely against discrimination due to a "two-class theory"—that is, based upon differences between "white" and Negro.

... The exclusion of otherwise eligible persons from jury service solely because of their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment. The Texas statute makes no such discrimination, but the petitioner alleges that those administering the law do.

The petitioner's initial burden in substantiating his charge of group discrimination was to

prove that persons of Mexican descent constitute a separate class in Jackson County, distinct from "whites." One method by which this may be demonstrated is by showing the attitude of the community. Here the testimony of responsible officials and citizens contained the admission that residents of the community distinguished between "white" and "Mexican." The participation of persons of Mexican descent in business and community groups was shown to be slight. Until very recent times, children of Mexican descent were required to attend a segregated school for the first four grades. At least one restaurant in town prominently displayed a sign announcing "No Mexicans Served." On the courthouse grounds at the time of the hearing, there were two men's toilets, one unmarked, and the other marked "Colored Men" and "Hombres Aqui" ("Men Here"). No substantial evidence was offered to rebut the logical inference to be drawn from these facts, and it must be concluded that petitioner succeeded in his proof.

Having established the existence of a class, petitioner was then charged with the burden of proving discrimination. To do so, he relied on the pattern of proof established by Norris v. Alabama [1935]. In that case, proof that Negroes constituted a substantial segment of the population of the jurisdiction, that some Negroes were qualified to serve as jurors, and that none had been called for jury service over an extended period of time, was held to constitute prima facie proof of the systematic exclusion of Negroes from jury service. This holding, sometimes called the "rule of exclusion," has been applied in other cases, and it is available in supplying proof of discrimination against any delineated class.

The petitioner established that 14% of the population of Jackson County were persons with Mexican or Latin American surnames, and that 11% of the males over 21 bore such names. The County Tax Assessor testified that 6 or 7 percent of the freeholders on the tax rolls of the County were persons of Mexican descent. The State of Texas stipulated that "for the last twenty-five years there is no record of any person with a Mexican or Latin American name having served on a jury commission, grand jury or petit jury in Jackson County." The parties also stipulated that "there are some male persons of Mexican or Latin American descent in Jackson County who, by virtue of being citizens, householders, or freeholders, and having all other legal prerequisites to jury service, are eligible to serve as members of a jury commission, grand jury and/or petit jury."

The petitioner met the burden of proof imposed in Norris v. Alabama [1935]. To rebut [this] strong prima facie case ... the State offered the testimony of five jury commissioners that they had not discriminated against persons of Mexican or Latin American descent in selecting jurors. They stated that their only objective had been to select those whom they thought were best qualified. This testimony is not enough to overcome the petitioner's case. ...

Circumstances or chance may well dictate that no persons in a certain class will serve on a particular jury or during some particular period. But it taxes our credulity to say that mere chance resulted in there being no members of this class among the over six thousand jurors called in the past 25 years. The result bespeaks discrimination, whether or not it was a conscious decision on the part of any individual jury commissioner. The judgment of conviction must be reversed.

To say that this decision revives the rejected contention that the Fourteenth Amendment

requires proportional representation of all the component ethnic groups of the community on every jury ignores the facts. The petitioner did not seek proportional representation, nor did he claim a right to have persons of Mexican descent sit on the particular juries which he faced. His only claim is the right to be indicted and tried by juries from which all members of his class are not systematically excluded—juries selected from among all qualified persons regardless of national origin or descent. To this much, he is entitled by the Constitution.

Reversed.

Editors' Notes

(1) **Query:** This case was decided the same day as *Brown*, I and *Bolling*. Did Warren follow the same approach to constitutional interpretation in all three opinions?

(2) **Query:** What test for constitutionality did Warren use in *Hernandez*? He said that the state violates constitutional guarantees when it singles out a class for "different treatment not based on some reasonable classification." Was he using the same test as the Court used in *Plessy*? See above, p. 918, Editors' Note (1) to *Bolling*. Or was he in fact using a stricter standard?

(3) Castaneda v. Partida (1977) added an interesting twist to *Hernandez*. Partida, a convicted rapist, sought habeas corpus from a federal district court, claiming Mexican–Americans had been excluded from his grand jury. He offered statistics to show that, although 79 per cent of the county's population was Mexican–American, during the past eleven years only 39 per cent of the grand jurors had had Spanish surnames. The district court denied habeas corpus, in part because the judge thought it unlikely that a governing majority would discriminate against itself. Partida appealed and won in the court of appeals, and Texas obtained review on cert. The Supreme Court held for Partida. For the majority, Justice Blackmun said: "Because of the many facets of human motivation, it would be unwise to presume as a matter of law that human beings of one definable group will not discriminate against members of their group." Contrast the debate between Justice O'Connor for the majority and Justice Marshall for the dissenters in Richmond v. J.A. Croson Co. (1989; reprinted below, p. 954).

(4) The Supreme Court has consistently treated classifications based on ethnicity, or national origin, as suspect. Its handling of classifications based on alienage, however, has meandered. (See discussion below, Chapter 15, pp. 975–76).