The Burger Court Opinion Writing Database

Barlow v. Collins

397 U.S. 159 (1970)

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

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

CHAMBERS OF
THE CHIEF JUSTICE

February 4, 1970

Re: No. 249 - Barlow v. Collins

Dear Bill:

This will confirm for the records your acceptance of the above assignment, vice Justice Brennan, to borrow some Federalese.

W.E.B.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 28, 1970

Re: No. 249 - Barlow v. Collins

Dear Bill:

Please join me.

W. E. B.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 8, 1970

Dear Bill:

Re: No. 249 - Barlow v. Collins

The only suggestion I have to make in your draft is changing the first full sentence on page 6 to read as follows:

"This test is satisfied when the plaintiff alleges that the challenged action either touches a zone to which the law has already applied sanctions or causes harm, economic or otherwise, within the purview of the federal statute whose application is in question."

W. O. D.

Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 9, 1970

Dear Bill:

Re: No. 249 -- Barlow v. Collins

In response to your note of January 8, I would suggest the following: My reference to the necessity of a plaintiff alleging that the challenged action falls within the purview of a federal statute related to the limitations on subject matter jurisdiction in the federal courts. I would suggest that you mention in your opinion that in addition to alleging an injury in fact, a plaintiff must satisfy the requirements of federal subject matter jurisdiction, for example, by alleging the violation of a federal statute or the Constitution.

Secondly, I would suggest that you delete the word "substantial" as a modifier to "injury in fact" in your proposed test for standing. Assuming subject matter jurisdiction and satisfaction of any jurisdictional amount limitations, one with an economic injury would have standing to press a claim for $1, for example, in a standard negligence suit. It seems to me that one with a non-economic injury should not be treated differently. If you are concerned about the problem of taxpayers' suits, I would think that should be dealt with separately.

William O. Douglas

Mr. Justice Brennan

SUPREME COURT OF THE UNITED STATES

No. 249.—October Term, 1969

Clemon Barlow et al., Petitioners, *v.* B. L. Collins, etc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[February —, 1970]

Mr. Justice Douglas delivered the opinion of the Court.

The question to be decided in this case is whether tenant farmers eligible for payments under the Upland Cotton Program enacted by the Food and Agriculture Act of 1965, 7 U. S. C. § 1444 (d), 79 Stat. 1194, have standing to challenge the validity of a certain amended regulation promulgated by the respondent Secretary of Agriculture in 1966.

The Upland Cotton Program incorporates a 1938 statute, § 8 (g) of the Soil Conservation and Domestic Allotment Act, as amended, 16 U. S. C. § 590h (g), thereby permitting participants in the program to assign payments only "as security for cash or advances to finance making a crop." [1] The regulation of the respond-

[1] The Secretary of Agriculture is authorized by § 1444 (d) (5) of the 1965 Act to pay a farmer in advance of the growing season up to 50% of the estimated benefits due him. Section 1444 (d) (13) authorizes the farmer to assign such benefits subject to the limitations of § 8 (g) of the 1938 Act, 16 U. S. C. § 590 (g). Section 8 (g) as enacted in 1938 and as it read in 1965 established an exception

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

p. 6

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 249.—October Term, 1969

Recirculated: 2-19

Clemon Barlow et al., Petitioners, *v.* B. L. Collins, etc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

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February 6, 1970

Re: No. 249 - Barlow v. Collins
No. 85 - Data Processing v. Camp

Dear Bill:

I am glad to join your opinion in each of these cases.

Sincerely,

J.M.H.

Mr. Justice Douglas

CC: The Conference

January 6, 1970

Dear Bill:

Enclosed is No. 249 - Barlow v. Collins involving the "standing" question you dealt with in No. 85 - Data Processing v. Camp.

I am not going to circulate this until I have had your view of whether [illegible] this with No. 35 [illegible] to need a lot of [illegible]

SUPREME COURT OF THE UNITED STATES

No. 249.—October Term, 1969

Clemon Barlow et al., Petitioners, *v.* B. L. Collins, etc., et al. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

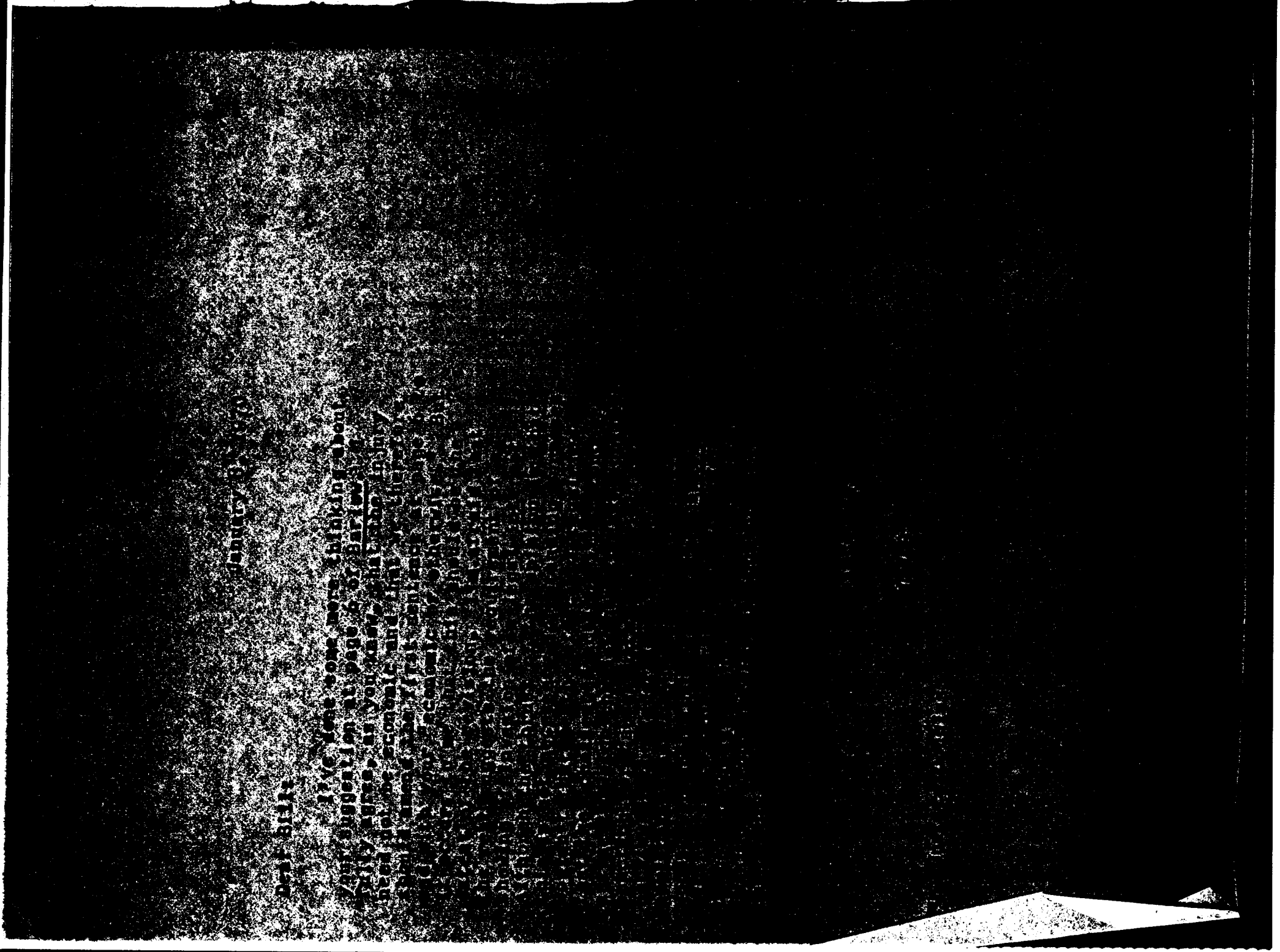
[January —, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

The questions to be decided in this case are (1) whether tenant farmers eligible for payments under the Upland Cotton Program enacted by the Food and Agriculture Act of 1965, 7 U. S. C. § 1444 (d), 79 Stat. 1194, have standing to challenge the validity of certain amended regulations promulgated by the respondent Secretary of Agriculture in 1966, and (2) whether in any event judicial review of the Secretary's action at the instance of these petitioners is precluded by the pertinent statutes.

The Upland Cotton Program incorporates a 1938 statute, § 8 (g) of the Soil Conservation and Domestic Allotment Act as amended, 16 U. S. C. § 590h (g), which limits the payments which are made assignable by § 1444 (d)(13) of the 1965 Act to a single assignment of payments during the crop year "as security for cash or advances to finance making a crop."[1] The regulations

[1] The Secretary of Agriculture is authorized by § 1444 (d)(5) of the 1965 Act in advance of the growing season to pay a farmer up to 50% of the estimated benefits due him. Section 1444 (d)(13) authorizes the farmer to assign such benefits subject to the limitations of § 8 (g) of the 1938 Act, 16 U. S. C. § 590 (g). Section 8 (g) as enacted in 1938 and as it read in 1965 established an exception



SUPREME COURT OF THE UNITED STATES

No. 249.—October Term, 1969

Clemon Barlow et al., Petitioners, *v.* B. L. Collins, etc., et al. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[January —, 1970]

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Circulated
1-14-70

SUPREME COURT OF THE UNITED STATES

No. 249.—October Term, 1969

Clemon Barlow et al., Petitioners, *v.* B. L. Collins, etc., et al. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[January —, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

The questions to be decided in this case are (1) whether tenant farmers eligible for payments under the Upland Cotton Program enacted by the Food and Agriculture Act of 1965, 7 U. S. C. § 1444 (d), 79 Stat. 1194, have standing to challenge the validity of a certain amended regulation promulgated by the respondent Secretary of Agriculture in 1966, and (2) whether, if there is standing, judicial review of the Secretary's action at the instance of these petitioners is precluded by the pertinent statutes.

The Upland Cotton Program incorporates a 1938 statute, § 8 (g) of the Soil Conservation and Domestic Allotment Act, as amended, 16 U. S. C. § 590h (g), thereby permitting participants in the Program to assign payments only "as security for cash or advances to finance making a crop." [1] The regulation of the respond-

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 26, 1970

RE: No. 249 - Barlow v. Collins

Dear Chief:

I find that I can't rework my proposed opinion in the above to bring it into line with the Conference acceptance of Bill Douglas' approach to the determination of standing in No. 85 - Data Processing v. Camp. I, therefore, suggest that this opinion be reassigned to another Justice. I'll then file a concurring opinion dissenting from his approach.

Sincerely,

W. J. B. Jr.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 9, 1970

No. 249 - Barlow v. Collins

Dear Bill,

I have decided to acquiesce in your opinion, unless somebody else writes in dissent.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies for the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 6, 1970

Re: No. 249 - Barlow v. Collins

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Douglas

cc: The Conference