

# The Burger Court Opinion Writing Database

*Lewis v. Martin*

397 U.S. 552 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
~~Mr. Justice Fortas~~  
Mr. Justice Marshall

1

**SUPREME COURT OF THE UNITED STATES** The Chief Justice

No. 829.—OCTOBER TERM, 1969

Circulated: 4/3/70

Recirculated: \_\_\_\_\_

Genever Lewis et al.,  
Appellants,

v.

Robert Martin, Director of the  
State Department of Social  
Welfare of State of California,  
et al.

On Appeal From the  
United States District  
Court for the Northern  
District of California.

[April —, 1970]

MR. CHIEF JUSTICE BURGER, dissenting.

Unlike *Dandridge v. Williams*, No. 31, 1969 Term, the administrative procedures provided by statute have not been exhausted here. For this reason HEW's primary jurisdiction remains a bar to the jurisdiction of federal courts over suits brought by welfare recipients. See *Rosado v. Wyman*, No. 540, 1969 Term (dissenting opinion of MR. JUSTICE BLACK). I therefore join the dissent filed by MR. JUSTICE BLACK.

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Clark  
Mr. Justice Marshall

1

## SUPREME COURT OF THE UNITED STATES

From: [REDACTED]

No. 829.—OCTOBER TERM, 1969

Circulated: *4-3*

Genever Lewis et al.,

Appellants,

v.

Robert Martin, Director of the  
State Department of Social  
Welfare of State of Cali-  
fornia, et al.

Recirculated:

On Appeal From the  
United States District  
Court for the Northern  
District of California.

[April —, 1970]

MR. JUSTICE BLACK, dissenting.

In my dissenting opinion in *Rosado v. Wyman*, — U. S. —, — (1970), I pointed out that in many lawsuits brought against state welfare authorities by recipients of Aid to Families with Dependent Children (AFDC) the real controversy is not between the AFDC recipients and the State but between the Federal Government and the state government. This case presents precisely that situation. The Solicitor General has informed the Court that the Department of Health, Education, and Welfare (HEW)—the federal agency vested by statute with the duty of insuring that States which receive federal AFDC matching funds abide by the federal requirements—has determined that § 11351 of the California Welfare and Institutions Code is inconsistent with federal AFDC regulations, 45 CFR § 203.1. This California statute provided when this suit was brought that the income of a stepfather or a man assuming the role of a spouse (MARS) to the mother of dependent, needy children shall be considered as available to the children in computing the AFDC assistance to which the children are entitled. The federal regulations, however, in general refuse to assume that the income of a

March fourth  
1970

MEMORANDUM TO THE CONFERENCE:

Re: No. 829 - Lewis v. Martin

Some months ago, I wrote an opinion in No. 540 - Desedo v. Syman, while the problem was framed in my mind, but I decided not to circulate it until Brother Harlan, who was then for the Court, circulated his draft.

But since some of the problems still remain, I should circulate the attached memorandum prepared last fall. I thought it was better to do this for the Court, circulate it in December.

William G. Douglas

The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Stewart  
Mr. Justice Stevens  
Mr. Justice White  
Mr. Justice Marshall

March 16, 1970

Dear Chief:

Re: No. 829 - Lewis v. Martin

I may be remiss in this case. I vaguely recall that, since you voted to dismiss and Hugo to affirm and the rest to reverse, you asked me to assign the case.

If that is the posture of the case and your desire, then I would keep the opinion and write it myself.

W. O. D.

The Chief Justice

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

2

From: Douglas, J.

**SUPREME COURT OF THE UNITED STATES**

Circulated: 3-23

No. 829.—OCTOBER TERM, 1969

Recirculated:

Genever Lewis et al.,  
Appellants,

v.

Robert Martin, Director of  
the State Department of  
Social Welfare of State of  
California, et al.

On Appeal From the  
United States District  
Court for the Northern  
District of California.

[March —, 1970]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Appellants are mothers and children who receive welfare assistance under California law.<sup>1</sup> At the time these actions were commenced, California law provided<sup>2</sup> that payments to a "needy child" who "lives with his mother

<sup>1</sup> Some of the plaintiffs sue on behalf of themselves, their children, a man assuming the role of spouse (MARS), and all others similarly situated. There are also intervenors who represent two families with a stepfather and another family with MARS.

<sup>2</sup> Calif. W. & Inst. Code § 11351.

On September 3, 1969, the Governor of California signed into law a new § 11351.5 of the California Welfare and Institutions Code, which became effective November 10, 1969. It leaves unchanged § 11351 and implementing regulations insofar as they apply to a stepfather, but repeals the old § 11351 insofar as it applied to "an adult male person assuming the role of spouse." Under the new law, a MARS "shall be required to make a financial contribution to the family which shall not be less than it would cost him to provide himself with an independent living arrangement." The new law also provides that, under regulations to be promulgated by the State Welfare Department, the MARS and the mother will be required to present the department with "all of the facts in connection with the sharing of expenses . . . ."

March 25, 1970

Dear Potter:

After receiving your note concerning my proposed addition of Rider 6 to No. 829, I talked with Byron. He indicated that my Rider 6 might not have gone as far as he would like it to go. I think perhaps he had in mind reaching a California State law question that I purposely avoided, thinking that the Conference desired only to pass upon the validity of the HEW Regulation.

Byron indicated that he might possibly write something additional. But as a result of his encouragement and encouragement from Bill Brennan, I decided to add Rider 6 and it is in the new print that you are receiving herewith.

William G. Douglas

Mr. Justice Stewart

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3

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

## SUPREME COURT OF THE UNITED STATES

No. 829.—OCTOBER TERM, 1969

From: Douglas, J.

Circulated:

Genever Lewis et al.,  
Appellants,

v.

Robert Martin, Director of  
the State Department of  
Social Welfare of State of  
California, et al.

Recirculated: 3-25

On Appeal From the  
United States District  
Court for the Northern  
District of California.

[March —, 1970]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Appellants are mothers and children who receive welfare assistance under California law.<sup>1</sup> At the time these actions were commenced, California law provided<sup>2</sup> that payments to a "needy child" who "lives with his mother

<sup>1</sup> Some of the plaintiffs sue on behalf of themselves, their children, a man assuming the role of spouse (MARS), and all others similarly situated. There are also intervenors who represent two families with a stepfather and another family with MARS.

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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

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SUPREME COURT OF THE UNITED STATES: Douglas, J.

No. 829.—OCTOBER TERM, 1969

Circulated:

3/31/70

Recirculated:

Genever Lewis et al.,  
Appellants,  
v.  
Robert Martin, Director of  
the State Department of  
Social Welfare of State of  
California, et al.

On Appeal From the  
United States District  
Court for the Northern  
District of California.

[March —, 1970]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Appellants are mothers and children who receive welfare assistance under California law.<sup>1</sup> At the time these actions were commenced, California law provided<sup>2</sup> that payments to a "needy child" who "lives with his mother

<sup>1</sup> Some of the plaintiffs sue on behalf of themselves, their children, a man assuming the role of spouse (MARS), and all others similarly situated. There are also intervenors who represent two families with a stepfather and another family with MARS.

<sup>2</sup> Calif. W. & Inst. Code § 11351.

On September 3, 1969, the Governor of California signed into law a new § 11351.5 of the California Welfare and Institutions Code, which became effective November 10, 1969. It leaves unchanged § 11351 and implementing regulations insofar as they apply to a stepfather, but repeals the old § 11351 insofar as it applied to "an adult male person assuming the role of spouse." Under the new law, a MARS "shall be required to make a financial contribution to the family which shall not be less than it would cost him to provide himself with an independent living arrangement." The new law also provides that, under regulations to be promulgated by the State Welfare Department, the MARS and the mother will be required to present the department with "all of the facts in connection with the sharing of expenses . . . ."

March 27, 1970

Re: No. 829 - Lewis v. Magoffin

Dear Byron:

Please join me in your considering  
opinion.

Sincerely,

J. M. H.

Mr. Justice White

CC: The Conference

April 1, 1960

Re: No. 629 - *Lewis v. Martin*

Dear Bill:

Byron White having withdrawn his concurring opinion in this case, I, too, join in your re-circulated opinion.

Sincerely,

J. M. H.

Mr. Justice Douglas

CC: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

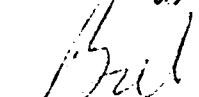
April 2, 1970

RE: No. 829 - Lewis v. Martin

Dear Bill:

I discover that I didn't formally send  
you my agreement in the above. This is it.

Sincerely,

  
W.J.B. Jr.

Mr. Justice Douglas

cc: The Conference

U  
Supreme Court of the United States  
Memorandum

19

Dear Bill -

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This seems O.K., but  
I'm going to wait a  
bit to see what others  
may have to say.

P.S.,

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livered

Appellants are mothers and children. Welfare assistance under California law actions were commenced. California payments to a "needy child" who

<sup>1</sup> Some of the plaintiffs sue on behalf of a man assuming the role of spouse (MARS) similarly situated. There are also interrelated families with a stepfather and another father.

<sup>2</sup> Calif. W. & Inst. Code § 11351.

On September 3, 1969, the Governor of California signed a new § 11351.5 of the California Welfare and Institutions Code, which became effective November 10, 1969. The new law repeals § 11351 and implementing regulations implementing the new law. The new law repeals the old § 11351 in its entirety. The new law provides that, under the new law, a MARS "shall be required to make a contribution to the family which shall not be less than one-half of his gross income." The new law also provides that, under regulations to be promulgated by the State Welfare Department, the MARS shall be required to present the department with "all information necessary for the department to determine the amount of the contribution . . . ."

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 1, 1970

No. 829 - Lewis v. Martin

Dear Bill,

I am glad to join your opinion for  
the Court in this case.

Sincerely yours,

9.9  
/

Mr. Justice Douglas

Copies to the Conference

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

1

From: White, J.

Circulated: 3-27-70

SUPREME COURT OF THE UNITED STATES

No. 829.—OCTOBER TERM, 1969

Recirculated: \_\_\_\_\_

Genever Lewis et al.,

Appellants,

v.

Robert Martin, Director of  
the State Department of  
Social Welfare of State of  
California, et al.

On Appeal From the  
United States District  
Court for the Northern  
District of California.

[March —, 1970]

MR. JUSTICE WHITE, concurring.

The Social Security Act, 42 U. S. C. §§ 601–610, specifies standards which States wishing to participate in the AFDC program must follow in determining both the eligibility of recipients, and in calculating the amount of aid a recipient needs. Excluding factors not relevant here, such as the disability or unemployment of a parent, see *King v. Smith*, 392 U. S. 309, 313 n. 7, the statute specifies that a child is eligible for aid only if a “parent” is continually absent from the home. 42 U. S. C. § 606 (2); *King v. Smith, supra*, at 313. Once the child’s eligibility is established, the Act further specifies that States, in determining need, “shall . . . take into consideration any other income and resources [of the child] . . . .” 42 U. S. C. § 602 (a)(7).

Implementing this statute, HEW has issued a regulation which both defines the crucial term “parent” for purposes of determining eligibility, and explains what it means to “take into consideration” an eligible child’s resources.” That regulation, as the Court notes, *ante*, at 3–4, limits the term “parent” to the child’s natural or adoptive parent, or to a stepparent who, although

pp 1-3

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

2

From: White, J.

Circulated:

Recirculated: 3-28-70

## SUPREME COURT OF THE UNITED STATES

No. 829.—OCTOBER TERM, 1969

Genever Lewis et al.,  
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California, et al.

On Appeal From the  
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Court for the Northern  
District of California.

[March —, 1970]

MR. JUSTICE WHITE, with whom MR. JUSTICE HARLAN  
joins, concurring.

The Social Security Act, 42 U. S. C. §§ 601-610, specifies standards which States wishing to participate in the AFDC program must follow in determining both the eligibility of recipients, and in calculating the amount of aid a recipient needs. Excluding factors not relevant here, such as the disability of a parent, the statute specifies that a child is eligible for aid only if a "parent" is continually absent from the home. 42 U. S. C. § 606 (2); *King v. Smith, supra*, at 313. Once the child's eligibility is established, the Act further specifies that States, in determining need, "shall . . . take into consideration any other income and resources [of the child] . . . ." 42 U. S. C. § 602 (a)(7).

Implementing this statute, HEW has issued a regulation which both defines the crucial term "parent" for purposes of determining eligibility, and explains what it means to "take into consideration" an eligible child's "resources." That regulation, as the Court notes, *ante*, at 3-4, limits the term "parent" to the child's natural or adoptive parent, or to a stepparent who, although

omission

April 1, 1970

Re: No. 829 - Lewis v. Martin

Dear Bill:

Please join me. I shall not file my separate opinion in this case.

Sincerely,

B.R.W.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 25, 1970

Re: No. 829 - Lewis v. Martin

Dear Bill:

Please join me.

Sincerely,

*J.M.*  
T.M.

Mr. Justice Douglas

cc: The Conference