

# The Burger Court Opinion Writing Database

*Strait v. Laird*

406 U.S. 341 (1972)

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

May 17, 1972

Re: No. 71-83 - Strait v. Laird

Dear Bill:

Please show me as joining you in Part I of  
your dissent.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

Aug 1

348

Rock City  
Conn  
11-10

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

JOHN A. STRAIT *v.* MELVIN R. LAIRD,  
SECRETARY OF DEFENSE, ET AL.

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

No. 71-83. Decided November —, 1971

Memorandum of MR. JUSTICE DOUGLAS.

We held last Term in *Schlanger v. Seamans*, 401 U. S. 487, that an active-duty serviceman assigned to Moody Air Force Base in Georgia, who was temporarily on 70 days permissive duty to attend summer school in Arizona, could not bring a federal habeas corpus action for discharge from the armed forces in the United States District Court for the District of Arizona, for neither his custodian—the Commanding Officer of Moody Air Force Base—nor any officer in his chain of command were within the territorial jurisdiction of that district court.

In No. 71-83, *Strait v. Laird*, petitioner is a reservist who has never been assigned to any military unit but has always resided in California. His papers are with the Commanding Officer of the Reserve Components Personnel Center, Ft. Benjamin Harrison, Indiana. No officer in that chain of command is in California. Whenever the Commanding Officer in Indiana communicates with petitioner it is either through the mail or through military personnel assigned to commands in the Northern District of California.

The Ninth Circuit has taken the position that *Schlanger* controls this case:

"Even if we concede that appellant is in custody within the jurisdiction of the District Court (which appellees dispute), his custodian—the commander of the Reserve Components Personnel Center at Fort

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Rec'd  
11/11/71

4th DRAFT

## SUPREME COURT OF THE UNITED STATES

JOHN A. STRAIT *v.* MELVIN R. LAIRD,  
SECRETARY OF DEFENSE, ET AL.

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

No. 71-83. Decided November --, 1971

Memorandum of MR. JUSTICE DOUGLAS, with whom  
MR. JUSTICE STEWART and MR. JUSTICE MARSHALL  
concur.

We held last Term in *Schlanger v. Seamans*, 401 U. S. 487, that an active-duty serviceman assigned to Moody Air Force Base in Georgia, who was temporarily on 70 days permissive duty to attend summer school in Arizona, could not bring a federal habeas corpus action for discharge from the armed forces in the United States District Court for the District of Arizona, for neither his custodian—the Commanding Officer of Moody Air Force Base—nor any officer in his chain of command were within the territorial jurisdiction of that district court.

In No. 71-83, *Strait v. Laird*, petitioner is a reservist who has never been assigned to any military unit but has always resided in California. His papers are with the Commanding Officer of the Reserve Components Personnel Center, Ft. Benjamin Harrison, Indiana. No officer in that chain of command is in California. Whenever the Commanding Officer in Indiana communicates with petitioner it is either through the mail or through military personnel assigned to commands in the Northern District of California.

The Ninth Circuit has taken the position that *Schlanger* controls this case:

"Even if we concede that appellant is in custody within the jurisdiction of the District Court (which appellees dispute),<sup>1</sup> his custodian—the commander of

<sup>1</sup> "This question the Supreme Court in *Schlanger* did not reach, although it noted the problem and cited *Donigan v. Laird*, 308 F. Supp. 449 (D. Md. 1969), on which appellant relies." *Strait v. Laird*, 445 F. 2d 843, 844 (CA9 1971).

Uns. [unclear]

11/11/71

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Please give me  
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To: The Supreme Court  
Re: John A. Strait  
v. Melvin R. Laird  
Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Ninth Circuit  
Case No. 71-83

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 71-83

4/3/72 ✓

John A. Strait, Petitioner, } On Writ of Certiorari to the  
v. { United States Court of  
Melvin R. Laird, Secretary } Appeals for the Ninth  
of Defense, et al. Circuit.

[April --, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner is an Army Reserve officer not on active duty. His active duty obligations were deferred while he went to law school after graduating from college. During the period of deferment and at the time this action was commenced, his military records were kept at Ft. Benjamin Harrison, Indiana. His nominal commanding officer was the Commanding Officer of the Reserve Officer Components Personnel Center, Ft. Benjamin Harrison, Indiana. Petitioner was, however, at all times domiciled in California and was never in Indiana or assigned there. On finishing law school he took the California Bars and on April 13, 1970, he was assigned to active duty at Ft. Gordon, Georgia. Before that time, however, he filed an application for discharge as a conscientious objector. That application was processed at Ft. Ord, where hearings were held. Ft. Ord recommended his discharge and review of that recommendation was had in Indiana. The result was disapproval of the application.

Petitioner thereupon filed a petition for writ of habeas corpus in California. The District Court denied a motion to dismiss, holding that it had jurisdiction (3

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To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

From: PC-4-10

## SUPREME COURT OF THE UNITED STATES

Recirculated:

No. 71-83

Recirculated: 4-10

John A. Strait, Petitioner, v. On Writ of Certiorari to the  
United States Court of Appeals for the Ninth  
Melvin R. Laird, Secretary of Defense, et al. Circuit.

[April —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

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Petitioner thereupon filed a petition for writ of habeas corpus in California. The District Court denied a mo-

2/4 *MS*

Chief Justice  
Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Powell  
Mr. Bingham

3rd DRAFT

From : Douglas, J.

Circulate:

Recirculated: 4/25

**SUPREME COURT OF THE UNITED STATES**

No. 71-83

John A. Strait, Petitioner, v. Melvin R. Laird, Secretary of Defense, et al. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner is an Army Reserve officer not on active duty. His active duty obligations were deferred while he went to law school after graduating from college. During the period of deferment and at the time this action was commenced, his military records were kept at Fort Benjamin Harrison, Indiana. His nominal commanding officer was the Commanding Officer of the Reserve Officer Components Personnel Center, Fort Benjamin Harrison, Indiana. Petitioner was, however, at all times domiciled in California and was never in Indiana nor assigned there. On finishing law school he took the California Bars and on April 13, 1970, he was assigned to active duty at Fort Gordon, Georgia. Before that time, however, he had filed an application for discharge as a conscientious objector. That application was processed at Fort Ord, California, where hearings were held. Fort Ord recommended his discharge and review of that recommendation was had in Indiana. The result was disapproval of the application.

Petitioner thereupon filed a petition for writ of habeas corpus in California. The District Court denied a mo-

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

4th DRAFT

From: Douglas, J.

## SUPREME COURT OF THE UNITED STATES

No. 71-83

Recirculated: 5-2

John A. Strait, Petitioner, v. Melvin R. Laird, Secretary of Defense, et al. On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner is an Army Reserve officer not on active duty. His active duty obligations were deferred while he went to law school after graduating from college. During the period of deferment and at the time this action was commenced, his military records were kept at Fort Benjamin Harrison, Indiana. His nominal commanding officer was the Commanding Officer of the Reserve Officer Components Personnel Center, Fort Benjamin Harrison, Indiana. Petitioner was, however, at all times domiciled in California and was never in Indiana nor assigned there. On finishing law school he took the California Bars and on March 5, 1970, he was ordered to report for active duty at Fort Gordon, Georgia, beginning April 13, 1970. Before that time, however, he had filed an application for discharge as a conscientious objector. That application was processed at Fort Ord, California, where hearings were held. Fort Ord recommended his discharge and review of that recommendation was had in Indiana. The result was disapproval of the application.

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JW  
To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

## 5th DRAFT

## SUPREME COURT OF THE UNITED STATES

From: [unclear]

Circulated:

No. 71-83

Recirculated:

5-4

John A. Strait, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
Melvin R. Laird, Secretary } Appeals for the Ninth  
of Defense, et al. } Circuit.

[April —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner is an Army Reserve officer not on active duty. His active duty obligations were deferred while he went to law school after graduating from college. During the period of deferment and at the time this action was commenced, his military records were kept at Fort Benjamin Harrison, Indiana. His nominal commanding officer was the Commanding Officer of the Reserve Officer Components Personnel Center, Fort Benjamin Harrison, Indiana. Petitioner was, however, at all times domiciled in California and was never in Indiana nor assigned there. On finishing law school he took the California Bar examination and on March 5, 1970, he was ordered to report for active duty at Fort Gordon, Georgia, beginning April 13, 1970. Before that time, however, he had filed an application for discharge as a conscientious objector. That application was processed at Fort Ord, California, where hearings were held. Fort Ord recommended his discharge and review of that recommendation was had in Indiana. The result was disapproval of the application.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 1, 1972

RE: No. 71-83 -- Strait v. Laird

Dear Bill:

Would you please add at the foot of your dissent the following:

"Mr. Justice Brennan joins Part I of this dissent and on that ground would affirm the judgment of the Court of Appeals."

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 10, 1971

No. 71-83, Strait v. Laird

Dear Bill,

I agree with your Memorandum.

Sincerely yours,

OS/

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 5, 1972

No. 71-83 - Strait v. Laird

Dear Bill,

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

Sincerely yours,

PS

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 5, 1972

Re: No. 71-83 - Strait v. Laird

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

3

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 10, 1971

Re: No. 71-83 - Strait v. Laird

Dear Bill:

I agree with your Memorandum.

Sincerely,

  
T.M.

Mr. Justice Douglas

cc: The Conference



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 4, 1972

Re: No. 71-83 - Strait v. Laird

Dear Bill:

Please join me.

Sincerely,

*Thur*  
T.M.

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 11, 1971

Re: No. 71-83 - Strait v. Laird

Dear Bill:

At our conference on November 5, I indicated that I favored a grant in this case. My disposition has not changed in the meantime.

Sincerely,

H. A. B.

Mr. Justice Douglas

cc: The Conference

W. Blackmun  
OCT 11  
1971

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 3, 1972

Re: No. 71-83 - Strait v. Laird

Dear Bill:

Please join me.

Sincerely,

*Har. D.*  
—

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 29, 1972

No. 71-83 Strait v. Laird

Dear Bill:

As I concur in Part I of your dissenting opinion, and think it dispositive of the case as I view it, I do not reach a consideration of the issues in Parts II and III of your opinion.

Accordingly, I would appreciate your adding appropriate language that I join in Part I but express no opinion with respect to Parts II and III.

Sincerely,

*L. Lewis*

Mr. Justice Rehnquist

cc: The Conference

B /  
Mr  
You joined work

1st DRAFT

To the Honorable Justice  
of the Supreme Court  
Mr. Justice Holmes  
Mr. Justice Brandeis  
Mr. Justice Harlan  
Mr. Justice T. R. C. M. C.  
Mr. Justice Holmes  
Mr. Justice Harlan  
Mr. Justice Holmes  
Mr. Justice Holmes

**SUPREME COURT OF THE UNITED STATES** Justice Powell

No. 71-83

From: Rehnquist, J.

John A. Strait, Petitioner, v. Melvin R. Laird, Secretary of Defense, et al. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit. Rec'd 10/10/68

[May —, 1972]

MR. JUSTICE REHNQUIST, dissenting.

The Court today emasculates *Schlanger v. Seamans*, 401 U. S. 487 (1971), by permitting habeas corpus when the custodian against whom the writ must run is not within the forum judicial district. It stretches the concept of custody beyond anything contained in any of our previous decisions, and permits the federal courts through habeas corpus to exercise broader review of military administration than has ever been permitted. I therefore dissent.

I

The facts of this case are indistinguishable in any material respect from *Schlanger v. Seamans*, *supra*. Petitioner was assigned to the Reserve Officer Components Personnel Center at Fort Benjamin Harrison, Indiana. His dealings with the Army consisted of several requests for delay in commencing active duty, all of which were addressed to and granted by his commanding officer at Fort Benjamin Harrison, and an application for discharge as a conscientious objector, which was also submitted to the Indiana command. Although petitioner was interviewed by a chaplain, psychiatrist, and another Army officer at Fort Ord, California, each of whom made recommendations about petitioner's application, petitioner was neither subject to military orders from any command in California nor

2,3,10

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 71-83 From: Rehnquist, J.

John A. Strait, Petitioner, } On Writ of Certiorari to the *circulated*  
v. *United States Court of Appeals for the Ninth Circuit.*  
Melvin R. Laird, Secretary } *Recirculated 5/4/72*  
of Defense, et al.

[May —, 1972]

MR. JUSTICE REHNQUIST, dissenting.

The Court today emasculates *Schlanger v. Seamans*, 401 U. S. 487 (1971), by permitting habeas corpus when the custodian against whom the writ must run is not within the forum judicial district. It stretches the concept of custody beyond anything contained in any of our previous decisions, and permits the federal courts through habeas corpus to exercise broader review of military administration than has ever been permitted. I therefore dissent.

## I

The facts of this case are indistinguishable in any material respect from *Schlanger v. Seamans, supra*. Petitioner was assigned to the Reserve Officer Components Personnel Center at Fort Benjamin Harrison, Indiana. His dealings with the Army consisted of several requests for delay in commencing active duty, all of which were addressed to and granted by his commanding officer at Fort Benjamin Harrison, and an application for discharge as a conscientious objector, which was also submitted to the Indiana command. Although petitioner was interviewed by a chaplain, psychiatrist, and another Army officer at Fort Ord, California, each of whom made recommendations about petitioner's application, petitioner was neither subject to military orders from any command in California nor