

The Burger Court Opinion Writing Database

Serfass v. United States
420 U.S. 377 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
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To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: The Chief Justice
Circulated: FEB 11 1975

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1424

David Emery Serfass,
Petitioner, } On Writ of Certiorari to the
v. } United States Court of Appeals
United States. } for the Third Circuit.

[February —, 1975]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether a court of appeals has jurisdiction of an appeal by the United States from a pretrial order dismissing an indictment based on a legal ruling made by the District Court after an examination of records and an affidavit setting forth evidence to be adduced at trial.

I

The material facts are not in dispute. Petitioner, whose military service had been deferred for two years while he was in the Peace Corps, was ordered to report for induction on January 18, 1971. On December 29, 1970, he requested the form for conscientious objectors, Selective Service Form 150, and after submitting the completed form to his Local Board, he requested an interview. Petitioner met with the Local Board on January 13, 1971, and thereafter he was informed by letter that it had considered his entire Selective Service file, had "unanimously agreed that there was no change over which [petitioner] had no control," and had therefore "decided not to reopen [petitioner's] file." He was also informed that he was "still under Orders to report for

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

CHAMBERS OF
THE CHIEF JUSTICE

April 22, 1975

Re: Cases held for No. 73-1424 - Serfass v. United States

MEMORANDUM TO THE CONFERENCE:

Two cases, one on cert from CA 2 and the other on cert from CA 5, were held for Serfass. My recommended dispositions are as follows:

No. 73-6493 - Velazquez v. United States

Petitioner, who was indicted in two counts for failing to submit to an Armed Forces physical examination and failing to report for and submit to induction, moved to dismiss the indictment on the ground that he had not received adequate notice of his duty to report for a physical examination. Relying on the motion papers, including copies of petitioner's Selective Service records, and upon the written response to the motion filed by the United States Attorney, the District Court dismissed the indictment "before either the selection or waiver of a jury trial and without an opportunity for counsel on either side to be heard." United States v. Velazquez, 490 F.2d 29, 33 (CA 2 1973). On appeal, CA 2 held that it had jurisdiction under 18 U.S.C. § 3731, and it reversed on the merits and remanded for further proceedings. Petitioner's only contention is that CA 2 lacked jurisdiction because further prosecution would be barred by the Double Jeopardy Clause.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 18, 1975

Dear Chief:

Please add the following statement to the end of your
opinion No. 73-1424 Serfass v. United States:

Mr. Justice Douglas dissents, being of the view that the
ruling of the District Court was based on evidence which could
constitute a defense on the merits and therefore caused jeopardy
to attach.

William O. Douglas

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

February 11, 1975

RE: No. 73-1424 Serfass v. United States

Dear Chief:

I agree.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 12, 1975

Re: No. 73-1424, Serfass v. United States

Dear Chief,

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

Sincerely yours,

P.S.
P.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 12, 1975

Re: No. 73-1424 - Serfass v. United States

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 27, 1975

Re: No. 73-1424 -- David Emery Serfass v. United States

Dear Chief:

Please join me.

Sincerely,

T. M.
T. M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 12, 1975

Re: No. 73-1424 - Serfass v. United States

Dear Chief:

Please join me.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 11, 1975

No. 73-1424 Serfass v. United States

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 11, 1975

Re: No. 73-1424 - Serfass v. United States

Dear Chief:

Please join me.

Sincerely,

✓
W.

The Chief Justice

Copies to the Conference