

# The Burger Court Opinion Writing Database

## *Rogers v. United States*

422 U.S. 35 (1975)

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



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  
JUN 2 1975

Circulated: \_\_\_\_\_

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-6336

George Herman Rogers,	} On Writ of Certiorari to the	
Petitioner,		United States Court of Ap-
v.		peals for the Fifth Circuit.
United States.		

[June —, 1975]

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

Petitioner was convicted by a jury on five counts of an indictment charging him with knowingly and willfully making oral threats "to take the life of or to inflict bodily harm upon the President of the United States," in violation of 18 U. S. C. § 871 (a). The Court of Appeals affirmed, 488 F. 2d 512 (CA5 1974), and we granted certiorari to resolve an apparent conflict among the courts of appeals concerning the elements of the offense proscribed by § 871 (a). After full briefing and argument, however, we find it unnecessary to reach that question, since certain circumstances of petitioner's trial satisfy us that the conviction must be reversed.

The record reveals that the jury retired for deliberation at 3 p. m. on the second day of petitioner's trial. Approximately two hours later, at 4:55 p. m., the jury sent a note, signed by the foreman, to the trial judge, inquiring whether the court would "accept the Verdict—'Guilty as charged with extreme mercy of the Court?'" Without notifying petitioner or his counsel, the court instructed the marshal who delivered the note "to advise the jury that the Court's answer was in the affirmative."

✓

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 4, 1975

Re: 73-6336 - Rogers v. U. S.

MEMORANDUM TO THE CONFERENCE:

I propose to revise the final paragraph of the above opinion to read as follows:

"The Government has advised the Court that it does not intend to retry petitioner if his conviction is reversed. Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded with directions to consider any motion the Government may make concerning further proceedings.

Reversed and Remanded"

Regards,

WRB

✓

REPRODUCED FROM THE COLLECTION

MANUSCRIPT DIVISION

U.S. SUPREME COURT

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 6, 1975

Re: No. 73-6336 - Rogers v. United States

MEMORANDUM TO THE CONFERENCE:

I do not believe a plain "reverse" is a correct procedural disposition. A remand cannot be avoided, because only the District Court can dismiss the indictment and it would rarely do so without a motion. Of course, we can direct that it be done in appropriate circumstances. Moreover, even where our opinion simply recites that the judgment of the Court of Appeals is "reversed," it is customary for our judgment to direct a remand. See, e.g., No. 73-1123, United States v. Feola. I hope the following will satisfy everyone.

"The judgment of the Court of Appeals is accordingly reversed, and the case is remanded for further proceedings consistent with this opinion.

Reversed and Remanded"

Regards,

W.S. B

2  
REPRODUCED FROM THE COLLECTION

THE MANUSCRIPT DIVISION

U.S. SUPREME COURT LIBRARY

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 16, 1975

Re: Cases held for No. 73-6336 - Rogers v. United States

MEMORANDUM TO THE CONFERENCE:

Two cases, both on cert from CA 5, were held for Rogers: No. 73-6973, Bozeman v. United States, and No. 73-7097, Hall v. United States. Since we did not decide the question which was the predicate for the grant of certiorari in Rogers, I think it best that we treat the holds for that case as we would any other petitions. Accordingly, I make no recommendations.

My vote will be to deny.

Regards,

WRB

Wm. O. Douglas  
June 17

✓

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

✓

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

June 11, 1975

Re: No. 73-6336 - Rogers v. United States

Dear Thurgood:

Please join me.

Sincerely,

W.O.D.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 3, 1975

RE: No. 73-6336 Rogers v. United States

Dear Chief:

I agree but I suggest the deletion of the proviso that the trial begin within 60 days. I would prefer to rely, without mention of it in the opinion, upon the assurance of the Government that it will not retry petitioner.

Sincerely,

*Bul*

The Chief Justice

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION  
U.S. SUPREME COURT LIBRARY

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 6, 1975

No. 73-6336, Rogers v. United States

Dear Chief,

The language set out in your memorandum of today is satisfactory to me.

Sincerely yours,

PS  
✓

The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTION

OF THE MANUSCRIPT DIVISION

OF THE SUPREME COURT OF THE UNITED STATES



✓

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

154-8 ✓

CHAMBERS OF  
JUSTICE POTTER STEWART

June 6, 1975

No. 73-6336, Rogers v. United States

Dear Chief,

Upon the understanding that the final dispositional word in this opinion will be simply "reversed," I am glad to join your opinion for the Court. I would have no objection to a footnote indicating that the Solicitor General has advised the Court that the United States does not intend to re prosecute the petitioner if his conviction is reversed.

Sincerely yours,

P.S.  
/

The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

↓

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 3, 1975

Re: No. 73-6336 - Rogers v. United States

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

✓

REPRODUCED FROM THE COLLECTION

MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

JUN 5 1975

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-6336

George Herman Rogers,	} On Writ of Certiorari to the	
Petitioner,		United States Court of Ap-
v.		peals for the Fifth Circuit.
United States.		

[May —, 1975]

MR. JUSTICE MARSHALL, concurring.

George Rogers, a 34-year-old unemployed carpenter with a 10-year history of alcoholism, wandered into the coffee shop of a Holiday Inn in Shreveport, Louisiana, early one morning, behaving in a loud and obstreperous manner. He accosted several customers and waitresses, telling them, among other things, that he was Jesus Christ and that he was opposed to President Nixon's visiting China because the Chinese had a bomb that only he knew about, which might be used against the people of this country. In the course of his various outbursts, Rogers announced that he was going to go to Washington to "whip Nixon's ass," or to "kill him in order to save the United States."

The local police were soon called to remove Rogers from the Holiday Inn. When the arresting officer arrived, he asked Rogers whether he had threatened the President. Rogers replied that he didn't like the idea of the President's going to China and making friends with the Chinese, our enemies. He told the officer, "I'm going to Washington and I'm going to beat his ass off. Better yet, I will go kill him." Rogers added that he intended to "walk" to Washington because he didn't like cars. Rogers was not charged with any state law

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

3,6,7

Mr. Justice Douglas  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

From: Marshall, J.

Circulated: \_\_\_\_\_

Recirculated: JUN 10 1975

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-6336

George Herman Rogers,	} On Writ of Certiorari to the
Petitioner,	
v.	
United States.	
	United States Court of Ap- peals for the Fifth Circuit.

[May —, 1975]

MR. JUSTICE MARSHALL, concurring.

George Rogers, a 34-year-old unemployed carpenter with a 10-year history of alcoholism, wandered into the coffee shop of a Holiday Inn in Shreveport, Louisiana, early one morning, behaving in a loud and obstreperous manner. He accosted several customers and waitresses, telling them, among other things, that he was Jesus Christ and that he was opposed to President Nixon's visiting China because the Chinese had a bomb that only he knew about, which might be used against the people of this country. In the course of his various outbursts, Rogers announced that he was going to go to Washington to "whip Nixon's ass," or to "kill him in order to save the United States."

The local police were soon called to remove Rogers from the Holiday Inn. When the arresting officer arrived, he asked Rogers whether he had threatened the President. Rogers replied that he didn't like the idea of the President's going to China and making friends with the Chinese, our enemies. He told the officer, "I'm going to Washington and I'm going to beat his ass off. Better yet, I will go kill him." Rogers added that he intended to "walk" to Washington because he didn't like cars. Rogers was not charged with any state law

Wm. O. Doyle  
 20071

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 4, 1975

Re: No. 73-6336 - Rogers v. United States

Dear Chief:

If you are able to see your way clear to conclude the final paragraph of your opinion with the word "reversed," now on the second line, I shall be pleased to join it.

Sincerely,  
*H. A. Blackmun*

The Chief Justice

cc: The Conference

REPRODUCED FROM THE COLLECTION

THE MANUSCRIPT DIVISION

SECTION OF ADVISORY

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 6, 1975

Re: No. 73-6336 - Rogers v. United States

Dear Chief:

This is in response to your memorandum of June 4. If the conclusion of your opinion is revised as the memorandum indicates, will you please add the following at the opinion's end:

"Mr. Justice Blackmun concurs in the opinion and judgment of the Court except that he would reverse the judgment of the Court of Appeals without any remand with directions."

Sincerely,

*H.A. B.*

The Chief Justice

cc: The Conference

REPRODUCED FROM THE COLLECTED

MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 4, 1975

No. 73-6336 Rogers v. U.S.

Dear Chief:

Please join me.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION  
U.S. SUPREME COURT ARCHIVES  
IN THE ADVANCE OF CONGRESS

Mr. Justice Douglas ✓  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell

Mr. Rehnquist, Jr.

2-27-75

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

GEORGE HERMAN ROGERS *v.* UNITED STATES

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

No. 73-6336. Decided February —, 1975

MR. JUSTICE REHNQUIST, dissenting.

Petitioner Rogers was convicted by a jury in the United States District Court for the Western District of Louisiana of violation of 18 U. S. C. § 871 (a) prohibiting threats to take the life of or to inflict bodily harm on the President of the United States. After his conviction was affirmed by the United States Court of Appeals for the Fifth Circuit, petitioner sought review by writ of certiorari in this Court arguing that 18 U. S. C. § 871 (a) properly construed didn't reach his case and, alternately, that the statute was unconstitutional under the First Amendment if it did. After receipt of a response in opposition from the Solicitor General, we granted certiorari. — U. S. — (1974). The decision to do so reflects the considered judgment of at least four members of this Court that there are special and important reasons warranting review of the case here. Supreme Court Rule 19.

In a brief filed in advance of oral argument, the Solicitor General has confessed error in this case. Prior to its verdict in the instant case, the jury sent a note to the trial judge inquiring "[w]ill the Court accept the Verdict—'Guilty as charged with extreme mercy of the Court?'" When the trial judge replied affirmatively, the jury returned its verdict in the form indicated. Polling of the jury resulted in it unanimously affirming the finding of "guilt with a recommendation of mercy." It is the position of the Solicitor General that on these facts the

Wm O Rogers  
 75



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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 6, 1975

Re: No. 73-6336 - Rogers v. United States

Dear Chief:

Please join me.

Sincerely,  
*WHR*

The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT