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Laing v. United States

423 U.S. 161 (1976)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

June 5, 1975

Re: 74-75 - United States v. Hall
73-1808 - Laing v. United States

Dear Harry:

I join you.

Regards,

W. REED

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 16, 1975

Re: (74-75 - U. S. v. Hall
(73-1808 - Laing v. U. S.

Dear Harry:

Your June 16 memo is okay with me.

Regards,

WBB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 23, 1975

RE: Nos. 74-75 & 73-1808 United States v. Hall and
James Laing v. United States, et al.

Dear Harry:

I am happy to join your exhaustive and most persuasive
proposed opinion in the above case.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 16, 1975

Re: No. 74-75, United States v. Hall
No. 73-1808, Laing v. United States

Dear Thurgood,

Please add my name to your dissenting opinion
in these cases.

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

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

From: White, J.

Circulated: 6-10-75

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 74-75 and 73-1808

74-75	United States et al., Petitioners v. Elizabeth Jane Hall) On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit
73-1808	James Burnett McKay Laing, Petitioner v. United States et al.) On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Mr. Justice White, concurring in part and dissenting
in part.

I concur in the Court's opinion with respect to the construction of § 6851(a). However, I respectfully dissent from its conclusion that the Government may constitutionally seize a taxpayer's assets without any administrative hearing on the factual issues upon which the seizure is based, where the taxpayer has no access to a judicial remedy until up to six months after filing a refund claim with the I.R.S. 26 U.S.C. §§ 6532(a), 7422(a). The risk of error which may

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 29, 1975

Re: No. 73-1808, Laing v. United States; No. 74-75,
United States v. Hall

Dear Chief:

As you will recall, I did not vote at the Conference on these cases because I had not heard oral argument and the transcript was not available at that time. I now vote to Reverse in No. 73-1808 and to Affirm in No. 74-75.

Sincerely,

T. M.
T. M.

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1975

Re: No. 74-75, United States v. Elizabeth Jane Hall
No. 73-1808, James Burnett McKay Laing v.
United States

Dear Harry:

In due course I shall circulate a dissent
in this case.

Sincerely,

T.M.
T. M.

Mr. Justice Blackmun

cc: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackman
Mr. Justice Powell
Mr. Justice Rehnquist

No. 74-75

United States et al, Petitioners

v.

Elizabeth Jane Hall

No. 73-1808

James Burnett McKay Laing, Petitioner

v.

United States et al.

On Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit.

Recirculated:

Circulated: JUN 13 197

On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit.

MR. JUSTICE MARSHALL, dissenting.

The heart of the statutory question presented in this case is whether the tax due at the time of a termination under § 6851(a) of the Internal Revenue Code is a "deficiency" within the meaning of § 6211(a). If it is, then the procedure the Government sought to employ in the cases on review today was plainly improper. The Court holds that the tax liability that arises after a § 6851 termination and assessment is not technically a "deficiency," and that the procedures applicable to jeopardy assessments under § 6861 of the Code need not be followed in § 6851 cases. I agree with the taxpayers' argument in these cases that the taxes assessed after § 6851 terminations are "deficiencies," and I therefore dissent.

W.M. BREW
Oct 7/77

To: The Chief Justice
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 19 1975

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-75 AND 73-1808

United States et al., Petitioners, 74-75 v. Elizabeth Jane Hall.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
James Burnett McKay Laing, Petitioner, 73-1808 v. United States et al.	On Writ of Certiorari to the United States Court of Appeals for the Sec- ond Circuit.

[June —, 1975]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE STEWART and MR. JUSTICE POWELL join, dissenting.

The heart of the statutory question presented in this case is whether the tax due at the time of a termination under § 6851 (a) of the Internal Revenue Code is a "deficiency" within the meaning of § 6211 (a). If it is, then the procedure the Government sought to employ in the cases on review today was plainly improper. The Court holds that the tax liability that arises after a § 6851 termination and assessment is not technically a "deficiency," and that the procedures applicable to jeopardy assessments under § 6861 of the Code need not be followed in § 6851 cases. I agree with the taxpayers' argument in these cases that the taxes assessed after § 6851 terminations are "deficiencies," and I therefore dissent.

I

When the district director¹ determines that the con-

¹ The Code provides that the § 6851 termination will be ordered by "the Secretary or his delegate," § 6851 (a), but the Regulations provide that the district director is in all cases authorized to make the required findings and order the termination. Treas. Reg. § 6851-1 (a)(1).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 30, 1975

Re: No. 73-1808 - Laing v. United States
No. 74-75 - United States v. Hall

Dear Chief:

These cases were assigned to me on January 27. Thurgood's letter of the 29th, however, now indicates that the vote is 4 to 4 in Laing. I therefore suggest that this case be discussed further at the next conference.

I could, of course, prepare a memorandum in connection with the opinion in Hall. This may be a substantial task, however, and I am somewhat reluctant to undertake it, in view of the pressure of the Term, if the votes are firm.

Sincerely,

Harry

The Chief Justice

cc: The Conference

*Wm. Brewster
OC/PS*

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 22, 1975

MEMORANDUM TO THE CONFERENCE:

Re: No. 74-75 - United States v. Hall
No. 73-1808 - Laing v. United States

I am circulating a full-treatment memorandum for these cases. I write this note because I am somewhat confused as to the consensus, if any, the Conference reached.

My notes indicate that a number felt that the constitutional issue was not presented in the Hall case and was not to be reached here. I have come to the conclusion, however, that the issue definitely was raised below and that we cannot indulge in the convenience of deciding Hall only on the statutory issue. Thus, I have attempted to cover both issues in the memorandum.

Specifically, the constitutional issue is raised in paragraph 11 of the Hall complaint. App. 5. This is in addition to the statutory issue and is pleaded alternatively. Judge Gordon, as trial judge, in his memorandum supporting his preliminary injunction, quoted from Schreck v. United States, to the effect that if the statute permitted the seizure and sale (which he ruled it would not), "it would raise serious constitutional questions of equal protection and due process." Petition of the United States 4(a). Finally, respondent Hall argues the constitutional point here, Brief for Respondent 26-32, and the Government, in its joint brief for both cases, makes no suggestion that the issue is not present in Hall.

After investing an inordinate amount of time in these cases, I submit for your consideration what I think is the answer. If this is not acceptable to a majority, the opinion should be reassigned.

Sincerely,



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

From: Blackmun, J.

Circulated: 5/23/75

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-75 AND 73-1808

United States et al., Petitioners, 74-75 <i>v.</i> Elizabeth Jane Hall.	} On Writ of Certiorari to } the United States Court } of Appeals for the Sixth } Circuit.
James Burnett McKay Laing, Petitioner, 73-1808 <i>v.</i> United States et al.	} On Writ of Certiorari to } the United States Court } of Appeals for the Sec- } ond Circuit.

[May —, 1975]

MR. JUSTICE BLACKMUN.

Each of these cases concerns an income taxpayer whose taxable year was terminated, prior to its normal expiration date, by the Internal Revenue Service acting pursuant to § 6851(a)(1) of the Internal Revenue Code of 1954, 26 U. S. C. § 6851(a)(1).¹ That statute permits

¹ § 6851. Termination of taxable year.

"(a) Income tax in jeopardy.

"(1) In general.

"If the Secretary or his delegate finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceeding be brought without delay, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the

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

From: Blackmun, J.

Circulated:

Recirculated:

6/9/75

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-75 AND 73-1808

74-75 v. United States et al., Petitioners, Elizabeth Jane Hall.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
73-1808 v. James Burnett McKay Laing, Petitioner, United States et al.	On Writ of Certiorari to the United States Court of Appeals for the Sec- ond Circuit.

[May —, 1975]

MR. JUSTICE BLACKMUN

Each of these cases concerns an income taxpayer whose taxable period was terminated, prior to its normal expiration date, by the Internal Revenue Service acting pursuant to § 6851 (a)(1) of the Internal Revenue Code of 1954, 26 U. S. C. § 6851 (a)(1).¹ That statute permits

§ 6851. Termination of taxable year.

⁴⁷(a) Income tax in jeopardy.

(1) In general,

If the Secretary or his delegate finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 16, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 74-75 - United States v. Hall
No. 73-1808 - Laing v. United States

In view of Thurgood's dissent -- and if we are able to get these cases decided at all -- I propose to insert the following after the first full paragraph on page 27 of my circulation of June 9:

"In Phillips the Court noted the availability of two alternate mechanisms for judicial review in that particular situation: a refund action, or immediate redetermination of liability by the Board of Tax Appeals. In response, however, to a complaint by the taxpayer there that if the Board remedy were sought, collection would not be stayed unless a bond were filed, Mr. Justice Brandeis dismissed the contention with the observation:

[I]t has already been shown that the right of the United States to exact immediate payment and to relegate the taxpayer to a suit for recovery, is paramount. The privilege of delaying payment pending immediate judicial review, by filing a bond, was granted by the sovereign as a matter of grace solely for the convenience of the taxpayer.

283 U.S., at 599-600. Thus, the Court made clear that a prepayment forum was not a requirement of due process. We see no reason to depart from that rule in these cases, where the taxpayer may file an action for refund after at most six months from the seizure of his assets or other action taken by the IRS under § 6851."

J. G. B.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 20, 1975

MEMORANDUM TO THE CONFERENCE:

Re: Holds for No. 74-75, United States v. Hall
No. 73-1808, Laing v. United States

There are two cases held for either or both of Hall and Laing. These are No. 73-2005, United States v. Rambo and No. 74-722, United States v. Clark. They, with others, created the conflict that led to our grants. I have cited both on page 4 of my memorandum. They apparently are among a number of other cases backed up in the pipeline and which, the S. G. says, involve substantial amounts of tax.

The CA 6 in Rambo made no mention of the constitutional issue, for it decided the statutory issue in the taxpayer's favor. The District Court, however, did refer to it. 353 F.Supp. 1021, 1024 (W. D. Ky. 1972). The respondent's brief in opposition speaks of due process as a secondary defense. The CA 5 in Clark similarly made no mention of the constitutional issue; the District Court there, however, made a passing reference to "serious constitutional problems." 341 F.Supp. 171, 196 (N. D. Tex. 1972).

If Hall and Laing are restored to the calendar, we probably shall have to continue holding them for ultimate resolution of Hall and Laing. If Thurgood's opinion is the ultimate disposition of the cases, Rambo and Clark should both be denied. If my approach should ultimately prevail, which is unlikely, then I would grant, vacate and remand both Rambo and Clark for reconsideration in the light of Hall and Laing.

H. A. B.

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

June 2, 1975

No. 74-75 U.S. v. Hall
No. 73-1808 Laing v. Hall

Dear Harry:

As I voted "the other way" in these cases, I will await the dissenting opinion.

Sincerely,

L. Blackmun

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 2, 1975

No. 74-75 U.S. v. Hall
No. 73-1808 Laing v. Hall

Dear Thurgood:

My understanding from Potter is that you are drafting a dissent in the above cases.

I voted with you on the statutory issue and therefore did not reach the constitutional issue.

I was persuaded in major part by Chief Judge Brown's opinion in Clark v. Campbell, 501 F.2d 108. Although CA5 disagreed with the government's position as to the applicable statutes and their construction, it did make clear that the IRS may seize and hold assets (absent a bond) pending the Tax Court litigation, 501 F.2d, at 126. I would consider this authority essential, especially in a case such as Laing where the potential taxpayer is about to leave the country.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: Mr. Justice Stewart

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

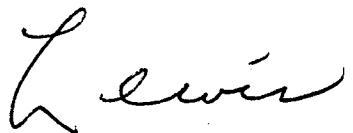
June 16, 1975

No. 74-75 United States v. Hall
No. 73-1808 Laing v. United States

Dear Thurgood:

Please join me in your dissent.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 27, 1975

Re: Nos. 74-75 and 73-1808 - United States v. Hall and
Laing v. United States

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference