

The Burger Court Opinion Writing Database

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

January 5, 1976

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

Dear Harry:

Please show me as joining your dissent.

Regards,

WSB

Mr. Justice Blackmun

Copies to the Conference

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

From: Mr. Justice Brennan
 Circulated: 1/3/76

Recirculated: 1/3/76

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-1808 AND 74-75

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.
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.

[January —, 1976]

MR. JUSTICE BRENNAN, concurring.

I join the Court's opinion, and the statutory construction that makes unnecessary the Court's addressing the claims of Mr. Laing and Mrs. Hall that they were denied procedural due process secured by the Fifth Amendment. Decision of that question is therefore expressly reserved *ante*, p. 22 n. 26. I write only to state my views of the considerations raised by the due process claim.

The Court's construction of the relevant statutes permits IRS to seize a taxpayer's assets upon a finding by the Commissioner in compliance with § 6851 (a). No hearing is required, judicial or administrative, prior to the seizure. But it cannot be gainsaid that the risk of erroneous determinations by the Commissioner with consequent possibility of irreparable injury to a taxpayer is very real. This suffices to bring due process requirements into play.

The "root requirement" of the Due Process Clause is "that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinary situations where some valid

✓ 5
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 15, 1975

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

Dear Thurgood,

I am glad to join your opinion for
the Court in these cases.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 12, 1975

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

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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: DEC 10 1975

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-1808 AND 74-75

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 Second Circuit.

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.

[December 10, 1975]

Mr. JUSTICE MARSHALL delivered the opinion of the Court.

These consolidated cases involve two taxpayers whose taxable years were terminated by the Internal Revenue Service (IRS) prior to their normal expiration date pursuant to the jeopardy termination provisions of § 6851 (a)(1) of the Internal Revenue Code of 1954 (Code), 26 U. S. C. § 6851 (a)(1).¹ Section 6851 (a)(1) allows

¹ Section 6851 (a)(1) provides:

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 unnecessary delay, or his delegate shall before the taxable period terminates, cause to terminate the termination, and shall cause notice of such pending proceeding and the right of the taxpayer, together with a demand for immediate payment of the tax for the taxable year in question, terminated and of the tax for the preceding taxable year, to be given to the taxpayer, as aforesaid, whether or not the

STRATEGIC CHANGES THROUGHOUT
2.5-6 IS

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

From: Mr. Justice Marshall

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-1808 AND 74-75

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.
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.

[January — 1976]

Mr. JUSTICE MARSHALL delivered the opinion of the Court.

These consolidated cases involve two taxpayers whose taxable years were terminated by the Internal Revenue Service (IRS) prior to their normal expiration date pursuant to the jeopardy termination provisions of § 6851 (a)(1) of the Internal Revenue Code of 1954 (Code), 26 U. S. C. § 6851(a)(1).¹ Section 6851(a)(1) allows

⁴ Section 6851 (a)(1) provides:

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 determine the taxable period for such taxpayer immediately ~~immediately~~ ~~immediately~~ and shall cause notice of such finding and determination to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so determined, terminated and of the tax for the preceding taxable period as provided in such law as is applied, whether or not the

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 20, 1976

MEMORANDUM TO THE CONFERENCE

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

There are two cases being held for Laing and/or Hall. They are No. 73-2005, United States v. Rambo and No. 74-722, United States v. Clark. Rambo is the Sixth Circuit case on which the Hall Court relied. In Clark, the Fifth Circuit took essentially the same position as the Sixth Circuit. Both cases are referred to in my opinion at page 5.

Since the SG seeks certiorari in these cases solely on the question decided in Laing and Hall, and since the courts in both cases reached the same result that we reached in Laing and Hall, I shall vote to deny certiorari.

T. M.



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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

September 24, 1975

MEMORANDUM TO THE CONFERENCE

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

These cases are scheduled for reargument during the week of October 13. Apparently no new briefs are to be filed.

I therefore have reviewed the old briefs and the circulations of last spring. Subject to what transpires at the reargument, my own position remains the same. I have revised my memorandum somewhat and, for what little it may be worth, send it to you herewith. Minor changes have been made throughout. Part I, however, has been recast to present the factual material in the numerical order of the cases, with Laing now first. There has been an addition in Part V by way of comment on Phillips v. Commissioner.

H.A.B.

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: 9/24/75

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-1808 AND 74-75

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.
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.

[October —, 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

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 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,

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 11, 1975

MEMORANDUM TO THE CONFERENCE:

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

I shall be writing a dissent in due course.

Harry

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: 12/7/75

1st DRAFT

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SUPREME COURT OF THE UNITED STATES

Nos. 73-1808 AND 74-75

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.
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.

[October —, 1975]

MR. JUSTICE BLACKMUN, dissenting.

Every experienced tax practitioner is aware of the problems of tax collection and tax evasion, and of the frequent need for prompt action on the part of those having responsibility for the protection of the revenues. Every experienced tax practitioner also knows that our Internal Revenue Code is a structured and complicated instrument—perhaps too complex—that deserves careful and historical analysis when, as here, longstanding provisions of that Code are challenged.

The Court in these two cases today gives every evidence of pursuing a quest for what it seems to regard as a desirable or necessary symmetry and, in my view, and most unfortunately, indulges in a faulty analysis of the Code's structure and misinterprets the historical development of the statutes. It is led astray, I fear, by the emotional appeal of the facts in Mrs. Hall's case, involving, as it does, her husband's arrest on drug-related charges¹ and the seizure by the Internal Revenue Serv-

¹ Mr. Hall evidently was convicted. Tr. of Oral Arg. 45.

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

From: Mr. Justice Black

Circulated: _____

Recirculated: 1/6/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-1808 AND 74-75

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.
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.

[October —, 1975]

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join, dissenting.

Every experienced tax practitioner is aware of the problems of tax collection and tax evasion, and of the frequent need for prompt action on the part of those having responsibility for the protection of the revenues. Every experienced tax practitioner also knows that our Internal Revenue Code is a structured and complicated instrument—perhaps too complex—that deserves careful and historical analysis when, as here, longstanding provisions of that Code are challenged.

The Court in these two cases today gives every evidence of pursuing a quest for what it seems to regard as a desirable or necessary symmetry and, in my view, and most unfortunately, indulges in a faulty analysis of the Code's structure and misinterprets the historical development of the statutes. It is led astray, I fear, by the emotional appeal of the facts in Mrs. Hall's case, involving, as it does, her husband's arrest on drug-related charges¹ and the seizure by the Internal Revenue Serv-

¹Mr. Hall evidently was convicted. Tr. of Oral Arg. 45.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 15, 1975

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

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

1fp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 17, 1975

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

Dear Harry:

Please join me in your dissenting opinion in this case.

Sincerely,

Wm

Mr. Justice Blackmun

Copies to the Conference