

# The Burger Court Opinion Writing Database

*United States v. Moore*

423 U.S. 77 (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 Blackman  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: The Other Justice

Circulated: NOV 4 1975

Recirculated:

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 74-687

United States, Petitioner,  
v.  
Thomas W. Moore, Jr., etc., et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit.

[November —, 1975]

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

We granted certiorari to decide whether obligations of an insolvent debtor arising from default in the performance of government contracts, occurring before an assignment for the benefit of creditors, are entitled to the statutory priority for "debts due to the United States" when the amount of the obligation was not fixed at the time of the assignment. We hold that the obligations, even though unliquidated in amount when the insolvent debtor made the assignment, are entitled to the statutory priority accorded debts due the United States under 31 U. S. C. § 191, and we reverse.

(1)

The facts are not in dispute. In June 1966 respondent Emsco Screen and Pipe Company of Texas, Inc., contracted with the United States in three separate contracts to supply to the Navy, the Army, and the Defense Supply Agency certain fabricated items at an aggregate agreed price of \$310,296. Emsco subsequently advised the Navy that it could not perform the contracts without an advance of money not yet due under the terms of the contract; the Government was unwilling to make the

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 5, 1975

Re: No. 74-687 - United States v. Moore

MEMORANDUM TO THE CONFERENCE:

There is an obvious error on the "bottom line"  
in this case. It has been corrected.

Regards,  
*WRB*

## Frontiers of the study of language

Circulated:

Recirculated: NOV 16 1975

## 2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

November 17, 1975

RE: No. 74-687 United States v. Moore

Dear Chief:

I agree.

Sincerely,

*Wm. J. Brennan, Jr.*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 5, 1975

Re: No. 74-687, United States v. Moore

Dear Chief,

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

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 6, 1975

Re: No. 74-687 - United States v. Moore

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

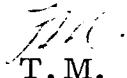
November 17, 1975

Re: No. 74-687 -- United States v. Thomas W. Moore, Jr.

Dear Chief:

Please join me in your opinion in this case.

Sincerely,

  
T. M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 6, 1975

Re: No. 74-687 - United States v. Moore

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR

November 6, 1975

No. 74-687 United States v. Moore

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

✓  
November 13, 1975

Re: No. 74-687 - United States v. Moore

Dear Chief:

Please join me.

Sincerely,

✓  
W. H. R.

The Chief Justice

Copies to the Conference