

# The Burger Court Opinion Writing Database

*Califano v. Sanders*

430 U.S. 99 (1977)

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

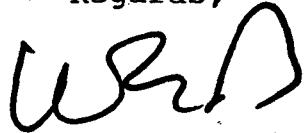
February 17, 1977

Re: 75-1443 - Califano, Sec. HEW v. Sanders

Dear Potter:

Please add me to your concurring opinion.

Regards,



Mr. Justice Stewart

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

2-2-77

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1443

Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, Petitioner, } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.  
v.  
Mister Sanders.

[February —, 1977]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The questions for decision are (1) whether § 10 of the Administrative Procedure Act, 5 U. S. §§ 701-706<sup>1</sup> is an

<sup>1</sup> The pertinent provisions of § 10 are the following:

“§ 701. Application; definitions

“(a) This chapter applies, according to the provisions thereof, except to the extent that—

“(1) statutes preclude judicial review; or

“(2) agency action is committed to agency discretion by law.

“§ 702. Right of review

“A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392.

“§ 703. Form and venue of proceeding

“The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action

Pp 6-8

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

From: Mr. Justice [unclear]

[unclear]

[unclear] 2/9/77

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1443

Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, Petitioner, v. Mister Sanders.

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

[February —, 1977]

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4, 10

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

4th DRAFT

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## SUPREME COURT OF THE UNITED STATES

No. 75-1443

Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, Petitioner,  
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To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart  
FEB 16 1977

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1443

Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, Petitioner, v. Mister Sanders. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[February —, 1977]

MR. JUSTICE STEWART, concurring in the judgment.

I agree with the Court that Sanders cannot seek judicial review of the Secretary's refusal to reopen a final decision denying social security benefits. I arrive at that conclusion, however, by a somewhat shorter route.

Section 205 (h) of the Social Security Act, 42 U. S. C. § 405 (h), states in full:

"The findings and decisions of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary, or any officer or employe thereof shall be brought under section 41 of Title 28 to recover on any claim arising under this subchapter."

It is clear that the determination not to reopen the prior decision denying benefits to Sanders was a "finding[] of fact or decision of the Secretary." The conclusion is thus inescapable, as I see it, that the administrative decision before us is not to "be reviewed by any person, tribunal, or governmental agency except as herein provided"—that is, except

J✓

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

cc: Mr. Justice Stewart

cc: Mr. Justice Stewart

FEB 17 1977

cc: Mr. Justice Stewart

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

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

[February —, 1977]

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 14, 1977

Re: No. 75-1443 - Califano v. Sanders

Dear Bill:

Please join me in your current circulation.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 3, 1977

Re: No. 75-1443 - Califano v. Sanders

Dear Bill:

Please join me.

Sincerely,



T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 10, 1977

Re: No. 75-1443 - Califano v. Sanders

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 15, 1977

No. 75-1443 Califano v. Sanders

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 15, 1977

Re: No. 75-1443 - Califano v. Sanders

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference