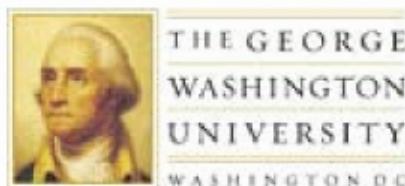


# The Burger Court Opinion Writing Database

*G.M. Leasing Corp. v. United States*  
429 U.S. 338 (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

December 9, 1976

Re: 75-235 G. M. Leasing Corporation v. United States et al.

Dear Harry:

I am in general agreement with your proposed disposition, but the language seems broad enough to preclude an instant seizure when our hero's minions were seen removing cartons (of records) in the dark of night. It is clear to me that would have allowed for instant action without a warrant. By letting it pass, any claim to exigent circumstances washed out.

You know how I abominate these fractionated, concurring opinions, so I can join if you will add at page 20, line 7, something like this:

"with respect to the first or the second warrantless entries." 227

22/ The surreptitious removal of cartons from the office at night, observed by the agents, might well have constituted an "exigent circumstance", justifying an immediate entry and seizure of the materials. See Cardwell v. Lewis 417 U.S. 583, 595. Here, however, the agents failed to act for more than a day after observing these events. \*

Regards,

-596

Mr. Justice Blackmun

WB

\* The first sentence might read: We are not called on to decide whether the... with "would have" in place of "might well have."

WB

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

CHAMBERS OF  
THE CHIEF JUSTICE

December 16, 1976

Re: 75-235 G.M. Leasing Corporation v. United States

Dear Harry:

I gather one of your boys talked about this case with Paul Ondrasik and could not see my point. I give it another try in the form of a footnote for the end of the seventh line on page 20, along these lines:

*Dear Sir*  
"Of course, our holding does not imply that the surreptitious removal of cartons from the office observed by the agents during their "stake out" surveillance of the cottage at night ~~did~~ not constitute "exigent circumstances" which would have justified an immediate entry and seizure of the materials."

As it stands the opinion gives the impression that even the removal of files under cover of night was not an exigent circumstance.

With something like this I can join without writing.

Regards,

*W. B.*

Mr. Justice Blackmun

*such as would justify*

To: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Clark  
Mr. Justice Douglas  
Mr. Justice Brandeis  
Mr. Justice Sutherland  
Mr. Justice Stone  
Mr. Justice Cardozo  
Mr. Justice Harlan Stone

Replies

Circulated DEC 28 1976

Replies

No. 75-235 - G.M. Leasing Corporation v. United States

MR. CHIEF JUSTICE BURGER, concurring:

While I concur in the opinion of the Court, it may be useful to note that the factual setting of this case provides what seems, to me, a classic illustration of the dividing line between an impermissible, warrantless entry and one permissible under the "exigent circumstance" exception to the Fourth Amendment warrant requirement.

After their initial entry into, and retreat from, the petitioner's office-cottage, the IRS agents assigned to the investigation of the fugitive Norman's tax liability placed the premises under twenty-four hour surveillance. One night during the course of this surveillance, the agents observed cartons and other materials being removed from the premises by persons unknown to them. Against the background facts, such surreptitious nighttime activity constituted an exigent circumstance that would have justified an immediate seizure of the materials being moved in order to protect the interests of the United States. This is especially so since here the premises were controlled by the alter ego of an individual who

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

*Printed*  
1st DRAFT

From: The Chief Justice

Circulated JAN 3 1977

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

No. 75-235

G. M. Leasing Corp.,  
Petitioner, } On Writ of Certiorari to the United  
v. } States Court of Appeals for the  
United States et al. } Tenth Circuit.

[January —, 1977]

MR. CHIEF JUSTICE BURGER, concurring.

While I concur in the opinion of the Court, it may be useful to note that the factual setting of this case provides what seems, to me, a classic illustration of the dividing line between an impermissible, warrantless entry and one permissible under the "exigent circumstance" exception to the Fourth Amendment warrant requirement.

After their initial entry into, and retreat from, the petitioner's office-cottage, the IRS agents assigned to the investigation of the fugitive Norman's tax liability placed the premises under 24-hour surveillance. One night during the course of this surveillance, the agents observed cartons and other materials being removed from the premises by persons unknown to them. Against the background facts, such surreptitious nighttime activity constituted an exigent circumstance that would have justified an *immediate* seizure of the materials being moved in order to protect the interests of the United States. This is especially so since here the premises were controlled by the alter ego of an individual who was not only a delinquent taxpayer, but who was, at the time, a fugitive from justice. Rather than acting immediately, however, the agents chose to wait for approximately a day and a half to two days before making their entry. I agree with the conclusion that there were no exigent circumstances on these facts; however, the Court holds no more

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

December 2, 1976

RE: No. 75-235 G.M. Leasing Corp. v. United States

Dear Harry:

I think this is a fine job and I wanted to get my  
join in as quickly as possible. I may have some minor  
suggestions to make a little later on.

Sincerely,



Mr. Justice Blackmun

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 2, 1976

RE: No. 75-235 G.M. Leasing Corp. v. United States

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 6, 1976

Re: No. 75-235, G.M. Leasing Corp. v. United States

Dear Harry,

Like John Stevens, I am troubled by the apparent breadth of the second sentence of paragraph C at the bottom of page 12 of your opinion. The addition to the sentence of a qualifying phrase such as "to satisfy a tax deficiency assessment" would satisfy my concern. This qualification would, I think, be consistent with the balance of the paragraph and with what is said later on in your opinion. If you are willing to modify the sentence in question along the line suggested, I shall be glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 7, 1976

Re: No. 75-235, G. M. Leasing Corp. v. United States

Dear Harry,

I am glad to join your opinion for the Court,  
as recirculated today.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 2, 1976

Re: No. 75-235 - G. M. Leasing Corp. v. U. S.

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 6, 1976

Re: No. 75-235, G. M. Leasing Corp. v. United States

Dear Harry:

Please join me.

Sincerely,

  
T. M.

Mr. Justice Blackmun

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 11/30/76

Recirculated:

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 75-235

G. M. Leasing Corp., Petitioner,  
v.  
United States et al. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Tenth Circuit.

[December —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

We granted certiorari in this case, 423 U. S. 1031 (1975), limited to the Fourth Amendment issue arising in the context of seizures of property in partial satisfaction of income tax assessments.<sup>1</sup>

1

Petitioner G. M. Leasing Corp. is a Utah corporation organized in April 1972; among its stated business purposes is the leasing of automobiles. George I. Norman, Jr., although apparently not an incorporator, officer, or director of petitioner, was its general manager.

In 1971 Norman was tried and convicted in the United States District Court for the District of Colorado on two counts of aiding and abetting a misapplication of funds from a federally insured bank, in violation of 18 U. S. C. §§ 2 and 656. He was sentenced to two consecutive two-year terms of imprisonment. On appeal, his conviction was

<sup>1</sup> The Fourth Amendment reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

December 7, 1976

Re : No. 75-235 - G. M. Leasing Corp. v. U. S.

Dear Potter and John:

My revised third draft was circulated this morning before I received Potter's letter of December 6. I believe that the change effected in paragraph C on page 12 should satisfy the difficulties each of you is experiencing.

Sincerely,

HAB

Mr. Justice Stewart  
Mr. Justice Stevens

pp. 12, 13, 19

To: The Chief Justice  
 Mr. Justice BRENNAN  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice MARSHALL  
 Mr. Justice POWELL  
 Mr. Justice REHNQUIST  
 Mr. Justice NELSON

From: Mr. Justice BLACKMUN

Circ. 12/13/76

3rd DRAFT

Received 12/13/76 12/7/76

## SUPREME COURT OF THE UNITED STATES

No. 75-235

G. M. Leasing Corp.,  
 Petitioner,  
 v.  
 United States et al. } On Writ of Certiorari to the United  
 States Court of Appeals for the  
 Tenth Circuit.

[December —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

We granted certiorari in this case, 423 U. S. 1031 (1975), limited to the Fourth Amendment issue arising in the context of seizures of property in partial satisfaction of income tax assessments.<sup>1</sup>

## I

Petitioner G. M. Leasing Corp. is a Utah corporation organized in April 1972; among its stated business purposes is the leasing of automobiles. George I. Norman, Jr., although apparently not an incorporator, officer, or director of petitioner, was its general manager.

In 1971 Norman was tried and convicted in the United States District Court for the District of Colorado on two counts of aiding and abetting a misapplication of funds from a federally insured bank, in violation of 18 U. S. C. §§ 2 and 656. He was sentenced to two consecutive two-year terms of imprisonment. On appeal, his conviction was

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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 17, 1976

Re: No. 75-235 - G.M. Leasing Corp. v. United States

Dear Chief:

I have your letter of December 16. Bill Block did indeed confer with your clerk, but he did so with my complete acquiescence. I sense from your letter that this may not be a desirable practice in your chambers. If so, I should be advised, for interclerk communication, as you know, is routine among all other chambers.

So far as your suggested change is concerned, I can only say that we know very well what your point is. I am, however, hesitant about complying with your request for the following reasons:

1. As I stated at the conference of December 10, we feel that what you suggest is already apparent in the opinion. Surely the paragraph beginning at the bottom of page 19 refers to exigent circumstances. You obviously do not agree that this is sufficient.

2. Eight votes are in. At least one of these has indicated that he may depart if further changes are made. I doubt that he will, but I prefer not to take that risk.

3. Nowhere in his brief or at oral argument did the SG assert that the removal of cartons from the cottage was a separate "exigent circumstance" justifying immediate entry. Indeed, in regard to the removal of the cartons, he said, "Nobody apparently focused on that issue at the trial level." Tr. of Oral Arg. 36.

We don't even know what was in the cartons. Brief for Resp. 10. Although we may be suspicious, we have no way of knowing who was engaged in the removal of cartons from the cottage that evening. The petitioner in its reply brief, p. 18, emphasizes the fact that the record is completely silent as to who was engaged in that activity. In light of the confusion and ambiguities surrounding the removal of cartons, I am reluctant to make a definitive statement.

Sincerely,

HAB

The Chief Justice

pp. 12, 13 &  
STYLISTIC CHANGES

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 Blackmun

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

4th DRAFT

Recirculated: 1/4/77

SUPREME COURT OF THE UNITED STATES

No. 75-235

G. M. Leasing Corp., Petitioner,  
v.  
United States et al. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Tenth Circuit.

[December —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court,

We granted certiorari in this case, 423 U. S. 1031 (1975), limited to the Fourth Amendment issue arising in the context of seizures of property in partial satisfaction of income tax assessments.<sup>1</sup>

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 2, 1976

No. 75-235 G. M. Leasing Corp. v. United States

Dear Harry:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Blackmun

1fp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 2, 1976

Re: No. 75-235 - G.M. Leasing Corp. v. United States

Dear Harry:

Please join me.

Sincerely,

WRW

Mr. Justice Blackmun

Copies to the Conference

✓ ✓  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

December 2, 1976

Re: 75-235 - G.M. Leasing Corp. v. United States

Dear Harry:

There is just one part of your opinion that troubles me. I think the sentence at the bottom of page 12 indicates that a warrant is never necessary to seize goods in plain view. I think that statement is inconsistent with the discussion of the "plain view" doctrine in Coolidge v. New Hampshire, 403 U.S. 443, at 465-472. If you can narrow the statement to avoid any conflict with Coolidge, I would be happy to join your opinion.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

December 7, 1976

Re: 75-235 - G.M. Leasing Corp. v. United States

Dear Harry:

Please join me.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference