

The Burger Court Opinion Writing Database

Marshall v. Barlow's, Inc.
436 U.S. 307 (1978)

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

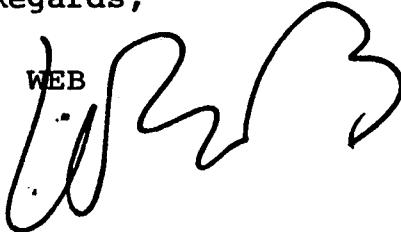
April 8, 1978

Dear Byron:

Re: 76-1143 Marshall v. Barlow's Inc.

I join.

Regards,

WEB


Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE W.H. J. BRENNAN, JR.

April 4, 1978

RE: No. 76-1143 Ray Marshall v. Barlow's Inc.

Dear Byron:

Please add at the foot of your opinion that I
took no part in the consideration or decision of
this case.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 20, 1978

Re: No. 76-1143, Marshall v. Barlow's, Inc.

Dear Byron,

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

Sincerely yours,

Mr. Justice White

Copies to the Conference

P.S.

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

From: Mr. Justice White

Circulated: 3-17-78

1st DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 76-1143

Ray Marshall, Secretary of Labor, et al., Appellants, v. Barlow's, Inc. } On Appeal from the United States District Court for the District of Idaho.

[March —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

(OSHA)

Section 8 (a) of the Occupational Safety and Health Act of 1970¹⁴ empowers agents of the Secretary of Labor (the Secretary) to search the work area of any employment facility within the Act's jurisdiction. The purpose of the search is to inspect for safety hazards and violations of OSHA regulations. No search warrant or other process is expressly required under the Act.

On the morning of September 11, 1975, an OSHA inspector entered the customer service area of Barlow's, Inc., an electrical and plumbing installation business located in Pocatello, Idaho. The president and general manager, Ferrol G. "Bill"

¹ "In order to carry out the purposes of this chapter, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

"(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

"(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee."

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 9/3, 15

From: Mr. Justice White

Circulated: _____

Recirculated: 4/3

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1143

Ray Marshall, Secretary of Labor, et al., Appellants,
v.
Barlow's, Inc. } On Appeal from the United States District Court for the District of Idaho.

[April —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

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84 Stat. 1590, —, 29 U. S. C. § 657 (a) (1970).

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

From: Mr. Justice White

Circulated:

Recirculated: 5/17

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1143

Ray Marshall, Secretary of Labor,
et al., Appellants,
v.
Barlow's, Inc. } On Appeal from the United
States District Court for
the District of Idaho.

[April —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 8 (a) of the Occupational Safety and Health Act of 1970 (OSHA)¹ empowers agents of the Secretary of Labor (the Secretary) to search the work area of any employment facility within the Act's jurisdiction. The purpose of the search is to inspect for safety hazards and violations of OSHA regulations. No search warrant or other process is expressly required under the Act.

On the morning of September 11, 1975, an OSHA inspector entered the customer service area of Barlow's, Inc., an electrical and plumbing installation business located in Pocatello, Idaho. The president and general manager, Ferrol G. "Bill"

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

1, 4, 15, 17

From: Mr. Justice White

Circulated:

4th DRAFT

Recirculated: 5/4

SUPREME COURT OF THE UNITED STATES

No. 76-1143

Ray Marshall, Secretary of Labor, et al., Appellants, v. Barlow's, Inc. } On Appeal from the United States District Court for the District of Idaho.

[April —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 8 (a) of the Occupational Safety and Health Act of 1970 (OSHA)¹ empowers agents of the Secretary of Labor (the Secretary) to search the work area of any employment facility within the Act's jurisdiction. The purpose of the search is to inspect for safety hazards and violations of OSHA regulations. No search warrant or other process is expressly required under the Act.

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HAB

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 30, 1978

MEMORANDUM TO THE CONFERENCE

Re: Cases Held For #76-1143 - Marshall v. Barlow's

1. #77-497 - New Orleans Public Service, Inc. v. U.S.
#77-605 - Mississippi Power & Light Co. v. U. S.

These cases present challenges to the applicability of Executive Order 11246 to companies obliged under state law to do business with the Federal Government. Petitioners are public utilities, and they are required to provide service to all who request it. Included among their customers are various agencies of the Federal Government. By reason of thus having contracted with the Federal Government, these companies were brought under the equal employment opportunity and affirmative action obligations of Executive Order 11246.

The utilities challenge the congressional authorization for E. O. 11246, contending that the contracting power does not give the President the authority to impose policy-oriented qualifications on firms that do business with the Federal Government. NAACP v. FPC, 425 U.S. 662 (1976), petitioners argue, restricts the scope of executive interference with personnel practices to those direct concerns for which the contracting authorization has been granted. However true this might be with respect to firms that voluntarily contract with the government, it is even more compelling with regard to petitioners who had no choice but to provide public utility service to the Federal Government as a customer.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 3, 1978

Re: No. 76-1143 - Marshall v. Barlow's, Inc.

Dear Byron:

Please join me.

Sincerely,

J.M.

T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

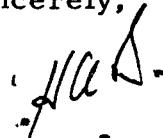
April 4, 1978

Re: No. 76-1143 - Marshall v. Barlow's

Dear Byron:

I shall await John's dissent in this case.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 11, 1978

Re: No. 76-1143 - Marshall v. Barlow's Inc.

Dear John:

I feel that you have written a careful and effectively analytical dissenting opinion, and I am glad to join it. Your opinion reinforces my long-held concerns about See and Camara.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 3, 1978

No. 76-1143 Marshall v. Barlow's, Inc.

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 15, 1978

Re: No. 76-1143 - Marshall v. Barlow's Inc.

Dear John:

Please join me in your proposed dissent in this case.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 28, 1978

Re: 76-1143 - Marshall v. Barlow's, Inc.

Dear Byron:

In due course I plan to circulate a dissent.

Respectfully,



Mr. Justice White

Copies to the Conference

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

From: Mr. Justice Stevens

Circulated: MAY 10 '78

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1143

Ray Marshall, Secretary of Labor,
et al., Appellants,
v.
Barlow's, Inc. | On Appeal from the United
States District Court for
the District of Idaho.

[May —, 1978]

MR. JUSTICE STEVENS, dissenting.

Congress enacted the Occupational Safety and Health Act to safeguard employees against hazards in the work areas of businesses subject to the Act. To ensure compliance, Congress authorized the Secretary of Labor to conduct routine, non-consensual inspections. Today the Court holds that the Fourth Amendment prohibits such inspections without a warrant. The Court also holds that the constitutionally required warrant may be issued without any showing of probable cause. I disagree with both of these holdings.

The Fourth Amendment contains two separate clauses, each flatly prohibiting a category of governmental conduct. The first clause states that the right to be free from unreasonable searches "shall not be violated";¹ the second unequivocally prohibits the issuance of warrants except "upon probable cause."² In this case the ultimate question is whether the category of warrantless searches authorized by the statute is "unreasonable" within the meaning of the first clause.

In cases involving the investigation of criminal activity, the

¹ "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"

2nd . . . 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."

pp. 1, 11, 14

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

From: Mr. Justice Stevens

Circulated:

MAY 16 1978

Recirculated:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1143

Ray Marshall, Secretary of Labor,
et al., Appellants,
v.
Barlow's, Inc. } On Appeal from the United
States District Court for
the District of Idaho.

[May —, 1978]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BLACKMUN and MR. JUSTICE REHNQUIST join, dissenting. •

Congress enacted the Occupational Safety and Health Act to safeguard employees against hazards in the work areas of businesses subject to the Act. To ensure compliance, Congress authorized the Secretary of Labor to conduct routine, non-consensual inspections. Today the Court holds that the Fourth Amendment prohibits such inspections without a warrant. The Court also holds that the constitutionally required warrant may be issued without any showing of probable cause. I disagree with both of these holdings.

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