

# The Burger Court Opinion Writing Database

*Michigan v. Doran*  
439 U.S. 282 (1978)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

From: The Chief Justice  
OCT 31 1978  
Circulated: \_\_\_\_\_

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

No. 77-1202

State of Michigan, Petitioner,  
v.  
Harold William Doran. | On Writ of Certiorari to the  
Supreme Court of Michigan.

[October —, 1978]

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

We granted certiorari to determine whether the courts of an asylum State may nullify the executive grant of extradition on the ground that the demanding State failed to show a factual basis for its charge supported by probable cause. 435 U. S. 967 (1978).

(1)

On December 18, 1975, Doran was arrested in Michigan and charged with receiving and concealing stolen property. Mich. Comp. Laws § 750.535 (1970); Mich. Stat. Ann. § 28.803 (Supp. 1978). The charge rested on Doran's possession of a stolen truck bearing California license plates, which he had driven from Arizona. Michigan notified Arizona authorities of Doran's arrest and sent them a photograph of Doran taken on the day of his arrest. On January 7, 1976, an Arizona Justice of the Peace issued a warrant for Doran's arrest, charging him with the theft of the described motor vehicle, Ariz. Rev. Stat. Ann. §§ 13-661 to 13-663, 13-672 (A) (Supp. 1957-1977), and alternatively, with theft by embezzlement, Ariz. Rev. Stat. Ann. § 13-682 (Supp. 1957-1977). The arrest warrant was based upon a complaint presented to the Justice of the Peace.

While the Michigan charges were pending, Doran was

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 1, 1978

Re: 77-1202 - Michigan v. Doran

Dear Potter:

I have no problem with meeting the point raised in your November 1 memo.

A fresh draft with these and other minor changes will be around soon.

Regards,

WRB

Mr. Justice Stewart

Copies to the Conference

There really is no "inconsistency" in Note 7, p.7 but the observation is unnecessary & can be omitted.

WRB

REVISIONS THROUGHOUT

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

From: The Chief Justice

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

Recirculated: NOV 2 1978

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-1202

State of Michigan, Petitioner,  
v.  
Harold William Doran. | On Writ of Certiorari to the  
Supreme Court of Michigan.

[October —, 1978]

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 6, 1978

Re: 77-1202 - Michigan v. Doran

MEMORANDUM TO THE CONFERENCE:

It will have been obvious that my preferred disposition of this case is to rest on the presumption of regularity that a criminal charge in the demanding state complies with all applicable law -- including the Fourth Amendment to the extent it has application. No warrant of arrest in the demanding state is required under Article IV.

For me, the Fourth Amendment does not bear on a criminal "charge" under Article IV. If the presumption of regularity which each state owes to the processes of the others does not carry the day for Arizona's charge without reliance on its arrest warrant, the Full Faith and Credit Clause, as well as Section 2 of Article IV, is not very meaningful.

An Arizona indictment (as in most states I know of) need not recite a probable cause finding but it must be honored under Article IV; yet it cannot be doubted that, for the purposes of extradition, the indictment alone is sufficient. Here Arizona's charge does not rest on its warrant, but rather the reverse; the arrest warrant followed and in that sense "rests" on the criminal charge.

If four do not agree with the analysis of Draft II, I will, of course, revise to reflect the Court's view and rely on the arrest warrant's recital of probable cause.

Regards,

WRB

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 8, 1978

Re: No. 77-1202 - Michigan v. Doran

MEMORANDUM TO THE CONFERENCE:

With the "returns" substantially in it appears a majority prefers not to reach the question whether, absent the Arizona warrant and its recital of probable cause, the Arizona charge alone would mandate extradition. In my view, the charge is sufficient and clothed with all the protections of Section 1 as well as Section 2 of Article IV but I am content to narrow the holding.

John had advised me before I had heard from anyone that he preferred this disposition, so his view accords with those who expressed themselves later.

Accordingly, the enclosed draft is revised to accomplish that result.

Regards,

WRB

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

**CHANGES AS MARKED:**

From: The Chief Justice

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

NOV 8 1978

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

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
No. 77-1202  
\_\_\_\_\_

State of Michigan, Petitioner,  
v.  
Harold William Doran. } On Writ of Certiorari to the  
Supreme Court of Michigan.

[October —, 1978]

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

We granted certiorari to determine whether the courts of an asylum state may nullify the executive grant of extradition on the ground that the demanding state failed to show a factual basis for its charge supported by probable cause. 435 U. S. 967 (1978).

(1)

On December 18, 1975, Doran was arrested in Michigan and charged with receiving and concealing stolen property. Mich. Comp. Laws § 750.535 (1970); Mich. Stat. Ann. § 28.803 (Supp. 1978). The charge rested on Doran's possession of a stolen truck bearing California license plates, which he had driven from Arizona. Michigan notified Arizona authorities of Doran's arrest and sent them a photograph of Doran taken on the day of his arrest. On January 7, 1976, a sworn complaint was filed with an Arizona Justice of the Peace, charging Doran with the theft of the described motor vehicle, Ariz. Rev. Stat. Ann. §§ 13-661 to 13-663, 13-672 (A) (Supp. 1957-1977), or alternatively, with theft by embezzlement, Ariz. Rev. Stat. Ann. § 13-682 (Supp. 1957-1977). The Justice of the Peace issued an arrest warrant which stated that she had found "reasonable cause to believe that such offense(s) were committed and that [Doran] committed them . . . ."

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

CHAMBERS OF  
THE CHIEF JUSTICE

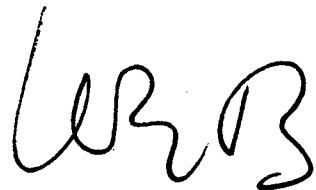
November 13, 1978

Re: 77-1202 - Michigan v. Doran

Dear Thurgood:

Re your memo of November 9, it seems to me the opinion reflects literally what Article IV, Section 2 and the relevant statutes provide. The states could, of course, consent to holding hearings, but as of now nothing in the Constitution or any statute calls for a hearing. No one challenges the absence of a hearing by the Governor in this case.

Regards,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 14, 1978

Re: 77-1202 - Michigan v. Doran

MEMORANDUM TO THE CONFERENCE:

Enclosed is the final draft of the above.  
Only stylistic changes differ from the preceding draft,  
and they are minor. No response is requested.

This draft meets all the points raised by the  
concurring opinion.

Regards,

WSB

## STYLISTIC CHANGES AS MARKED:

pp. 4, 6, 8

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

From: The Chief Justice

Circulated:

Recirculated: NOV 14 1978

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-1202

[October —, 1978]

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

We granted certiorari to determine whether the courts of an asylum state may nullify the executive grant of extradition on the ground that the demanding state failed to show a factual basis for its charge supported by probable cause. 435 U. S. 967 (1978).

(1)

On December 18, 1975, Doran was arrested in Michigan and charged with receiving and concealing stolen property. Mich. Comp. Laws § 750.535 (1970); Mich. Stat. Ann. § 28.803 (Supp. 1978). The charge rested on Doran's possession of a stolen truck bearing California license plates, which he had driven from Arizona. Michigan notified Arizona authorities of Doran's arrest and sent them a photograph of Doran taken on the day of his arrest. On January 7, 1976, a sworn complaint was filed with an Arizona Justice of the Peace, charging Doran with the theft of the described motor vehicle, Ariz. Rev. Stat. Ann. §§ 13-661 to 13-663, 13-672 (A) (Supp. 1957-1977), or alternatively, with theft by embezzlement, Ariz. Rev. Stat. Ann. § 13-682 (Supp. 1957-1977). The Justice of the Peace issued an arrest warrant which stated that she had found "reasonable cause to believe that such offense(s) were committed and that [Doran] committed them . . . ."

77-1202

Supreme Court of the United States

Memorandum

7 Mar 78

, 19

Harry,

Is about ready to  
abandon my conference  
new of Michigan & Moran  
& join you. Would it  
be better if I am waiting  
a few more or next.  
Sack brains Lewis  
attached suggestion is

Supreme Court of the United States

Memorandum

, 19.....

unacceptable to me -  
I want to "divide", as  
you do, & not "assume"  
as he's willing to do

Bill (Brennan)

Supreme Court of the United States  
Memorandum

, 19.....

Harry.

Did you  
+ the "you" + said  
it back for immediate  
circulation. Have you  
seen Berman's note?

Paul

Supreme Court of the United States  
Memorandum

, 19

Bill -

Many thanks. I have  
not seen your vote.  
& am curious.

H

It was an excellent  
written Bill and I have  
only one suggestion  
which is that it be  
more specific in  
the language used.

5

unrecd by [unclear]

6

Supreme Court of the United States  
Memorandum

, 19

Henry Delaplaine  
you may be aware of  
Bell

Bromley

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

November 7, 1978

RE: No. 77-1202 Michigan v. Doran

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

November 1, 1978

Re: No. 77-1202, Michigan v. Doran

Dear Chief,

Would you be willing to consider the deletion of the textual portion of footnote 5 on page 3, and all of footnote 7 on page 7? The problem I have with the text of footnote 5 is that, as far as appears, no Michigan court held that there was probable cause for the petitioners arrest on the Michigan offense; it might merely have been the decision of an executive officer. Moreover, as indicated on page 4, the Michigan Supreme Court tells us that Michigan arrests are often made without a preliminary showing of probable cause. My problem with footnote 7 is that it seems to be inconsistent with the text at the top of that page, which does seem to set out the full extent of the power of the courts in the asylum State to review the executive action granting extradition.

If these two relatively minor deletions are acceptable to you, I shall be glad to join your opinion for the Court.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 3, 1978

Re: No. 77-1202 - Michigan v. Doran

Dear Chief,

I am glad to join your opinion for the  
Court.

Sincerely yours,

?S1  
11

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 9, 1978

Re: No. 77-1202 - Michigan v. Doran

Dear Chief,

Your opinion for the Court, as recirculated yesterday, remains entirely acceptable to me.

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 7, 1978

Re: No. 77-1202 - Michigan v.  
Doran

Dear Chief,

I had hoped that the word "charged" in Article IV, Section 2 would be construed to contemplate a charge based on a finding of probable cause by a magistrate in the demanding state or at least that the Court would not decide otherwise where, as here, there was such a probable cause judgment. I thus share several of Harry's views.

Sincerely yours,



The Chief Justice  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 9, 1978

Re: No. 77-1202 - Michigan v. Doran

Dear Chief,

Please join me in your November 8  
circulation.

Sincerely yours,



The Chief Justice

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 7, 1978

Re: No. 77-1202 - Michigan v. Doran

Dear Harry:

Please join me.

Sincerely,

*JM*

T.M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 9, 1978

Re: No. 77-1202 - State of Michigan v. Doran

Dear Chief:

I have your latest circulation (November 8). I am deeply troubled by your paragraph on page 8:

"We hold that once the governor of the asylum state has acted on a requisition for extradition based on the demanding state's judicial determination that probable cause existed, no further judicial inquiry may be had on that issue in the asylum state."

Where the governor acts in a perfunctory manner without hearing or consideration, who can protect the rights of the prisoner?

No hearing was held by the governor.

Even if one were held and a determination made, is a governor capable of passing upon the legality or constitutionality of another state's "judicial determination"?

Habeas Corpus is not yet dead.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 14, 1978

Re: No. 77-1202 - State of Michigan v. Harold  
William Doran

Dear Harry:

I am still with you.

Sincerely,

*J.M.*

T.M.

Mr. Justice Blackmun

cc: The Conference

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

CHIEF JUSTICE  
JUSTICE THURGOOD MARSHALL

December 15, 1978

Re: No. 77-1202 - Michigan v. Doran  
(No. 77-1265 - Marquette National Bank of  
(No. 77-1258 - Minnesota v. First of Omaha  
Service Corp.

Dear Chief:

I agree with your memorandum concerning the  
two cases to come down on Monday.

Sincerely,

*JM*

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, 1978

Re: No. 77-1202 - Michigan v. Doran

Dear Chief:

I have some difficulty with your recirculation of November 2 and fear that I cannot join it.

My difficulty centers in the fact that nowhere in the discussion portion of the opinion, that is in part (3) thereof, is there a mention of the Fourth Amendment and probable cause. The clear implication of this is that there is no Fourth Amendment right to a determination of probable cause in either the demanding State or the asylum State prior to extradition. Your thesis, I suspect, is that any issue of probable cause may be determined in the demanding State after extradition has been effected.

At conference, I took the position that the Fourth Amendment required a judicial determination of probable cause before extradition. I took the further position, however, that there was a judicial determination of probable cause in this case, and that once the courts of the asylum State find that there has been a judicial determination of probable cause, they may not review the factual basis for that determination. Any such review then is to be undertaken in the courts of the demanding State.

This position, of course, is more reserved than the one your opinion takes. I realized at the conference that my position was less extreme than the one you expressed and which was joined by Potter and Bill Rehnquist, both of whom now have joined your opinion.

I therefore shall concur only in the result. I shall write a few paragraphs setting forth my views and get them to you without delay.

Sincerely,

*H. A. B.*

The Chief Justice  
cc: The Conference

~~1~~  
~~HB~~  
~~Please join me~~  
~~SC~~

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: NOV 6 1978

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

No. 77-1202 - Michigan v. Doran

MR. JUSTICE BLACKMUN, concurring in the result.

I am not willing, as the Court appears to be, to ignore the presence of the Fourth Amendment in the extradition context. The Fourth Amendment is not mentioned in the discussion portion (part (3)) of the Court's opinion, and I therefore must assume that the Court concludes that the Fourth Amendment is of no weight or consequence at the point of interstate extradition.

If we were concerned only with Art. IV, § 2, cl. 2, of the Constitution, the so-called Extradition Clause, I perhaps could join the Court's opinion and be content to let the result in this case turn

Supreme Court of the United States  
Memorandum

19

Bill -

You send me comfort,  
which is welcome. I, too,  
think we should "divide".  
In view of the Chiefs' rather  
petulant (at least that is  
the way it struck me) / my  
tentative suggestion is to  
make your position known  
sooner rather than later.

Harry

3

mmmmgsl my my my

Supreme Court of the United States  
Memorandum

, 19 -  
Bill -

Many thanks. I have  
not seen your note.  
& am anxious.

H.

It may be recalled  
that the <sup>Supreme</sup> Court of the  
State of Ohio  
recently held  
that the  
Bill is unconstitutional.

5

unpublished

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: \_\_\_\_\_

1st DRAFT

Recirculated: NOV 7 1978

## SUPREME COURT OF THE UNITED STATES

No. 77-1202

State of Michigan, Petitioner,  
v.  
Harold William Doran. } On Writ of Certiorari to the  
Supreme Court of Michigan.

[November —, 1978]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE BRENNAN joins, concurring in the result.

I am not willing, as the Court appears to be, to ignore the presence of the Fourth Amendment in the extradition context. The Fourth Amendment is not mentioned in the discussion portion (part (3)) of the Court's opinion, and I therefore must assume that the Court concludes that the Fourth Amendment is of no weight or consequence at the point of interstate extradition.

If we were concerned only with Art. IV, § 2, cl. 2, of the Constitution, the so-called Extradition Clause, I perhaps could join the Court's opinion and be content to let the result in this case turn upon what the Court describes as the "clear and explicit" language of that Clause alone. *Ante*, p. 4. But the Fourth Amendment is a part of our Constitution, too.\* Its language is equally "clear and explicit":

"... 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."

The Court in *Gerstein v. Pugh*, 420 U. S. 103, 114 (1975), said:

"Accordingly, we hold that the Fourth Amendment re-

\*The Fourth Amendment is applicable to the States through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U. S. 643 (1961).

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 20, 1978

Re: No. 77-1202 - Michigan v. Doran

Dear Chief:

I am revising my concurrence somewhat, but it is now evident that I shall not have it ready before Wednesday's conference. I shall get it to you as soon as possible.

Sincerely,

*HAB*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 12, 1978

Re: No. 77-1202 - Michigan v. Doran

Dear Bill and Thurgood:

I am sending to the Printer a revision of my separate concurrence in this case. The revisions are largely necessitated by the changes the Chief Justice made in his majority opinion. I am retaining your respective joinders on my new draft, but please feel free to unhook if you cannot go along.

Sincerely,



Mr. Justice Brennan  
Mr. Justice Marshall ✓

December 13, 1978

Re: No. 77-1202 - Michigan v. Doran

Dear Thurgood:

Herewith for your information is a xerox copy of what I have sent to the Printer. It will not be generally circulated, of course, until the print copy is received.

Sincerely,

H. A. B.

Mr. Justice Marshall

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 13, 1978

Re: No. 77-1202 - Michigan v. Doran

Dear Bill:

Herewith for your information is a xerox copy of what I have sent to the Printer. It will not be generally circulated, of course, until the print copy is received.

Sincerely,

H. A. B.

Mr. Justice Brennan

No. 77-1202 - Michigan v. Doran

MR. JUSTICE BLACKMUN, with whom Mr. Justice Brennan and Mr. Justice Marshall join, concurring in the result.

I am not willing, as the Court appears to me to be, to bypass so readily, and almost to ignore, the presence and significance of the Fourth Amendment in the extradition context. That Amendment is not mentioned at all in the discussion portion (part (3)) of the Court's opinion. I therefore must assume that in the Court's view the Amendment is of little or no consequence in determining what type of habeas corpus review may be had in the asylum State. In contrast to the Court's apparent position, I feel that it is necessary to face the Fourth Amendment issue squarely in order to arrive at a principled result in this case.

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: \_\_\_\_\_

Recirculated: DEC 14 1978

*changes throughout*  
*14/13*  
*and update 1/14*  
*Jan*  
**2nd DRAFT**

## SUPREME COURT OF THE UNITED STATES

No. 77-1202

State of Michigan, Petitioner,  
*v.*  
Harold William Doran. | On Writ of Certiorari to the  
Supreme Court of Michigan.

[January —, 1979]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE BRENNAN  
and MR. JUSTICE MARSHALL join, concurring in the result.

I am not willing, as the Court appears to me to be, to bypass so readily, and almost to ignore, the presence and significance of the Fourth Amendment in the extradition context. That Amendment is not mentioned at all in the discussion portion (part (3)) of the Court's opinion. I therefore must assume that in the Court's view the Amendment is of little or no consequence in determining what type of habeas corpus review may be had in the asylum State. In contrast to the Court's apparent position, I feel that it is necessary to face the Fourth Amendment issue squarely in order to arrive at a principled result in this case.

### I

The petition for certiorari in this case presented one, and only one, issue:

"Did the Michigan Supreme Court misconstrue the Fourth Amendment and the Extradition clause of the United States Constitution when it held that a fugitive may challenge a demanding state's extradition documents on the basis of lack of probable cause under the Fourth Amendment, in a collateral proceeding in the asylum state's courts?" Pet. for Cert. 2.<sup>1</sup>

<sup>1</sup> The question was rephrased, without change in substance, in petitioner's brief on the merits. Brief for Petitioner 2.

The respondent submitted a counterstatement of the question:

"The Michigan Supreme Court did not misconstrue the Fourth Amend-

Supreme Court of the United States  
Memorandum

77-1202

19

Bill - You lend me comfort  
and it is welcome. I, too,  
think we should "decide" and  
not ~~assume~~<sup>rather</sup>. In view of the  
rather ~~petulant~~ response (at  
least, that is the way it struck  
me), my tentative reaction  
is that your position should  
be made known sooner rather  
than later.

Harry

He will hold the ~~opinion~~ to himself  
~~in any event~~

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 6, 1978

No. 77-1202 Michigan v. Doran

Dear Chief:

Your memorandum of this date reached me just as I was dictating a letter to you.

I have thought that the Fourth Amendment requires a determination of probable cause by a judicial officer. If this is made in the demanding state, the asylum state may not reexamine or challenge it. Absent such a determination by the demanding state, I would suppose that the asylum state could - and perhaps should - determine whether there was probable cause for the "charge".

My Conference notes coincide with Harry's recollection as to what he said. I expressed substantially the same views.

I would think, however, this case could be disposed of without reaching the questions as to which we may differ. Because a judicial officer in Arizona made a finding of probable cause, we need not decide in this case whether the Fourth Amendment requires such a finding by the demanding state, or in the absence of such a finding whether the asylum state may or must make a determination of probable cause. It is only necessary that we consider the limits placed by the Extradition Clause on review of the demanding state's probable cause determination by the courts of the asylum state.

Sincerely,



The Chief Justice

lfp/ss  
cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 13, 1978

No. 77-1202 Michigan v. Doran

Dear Chief:

Please join me in your November 8 circulation.

Sincerely,



The Chief Justice

Copies to the Conference

LFP/lab

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 1, 1978

Re: No. 77-1202 Michigan v. Doran

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

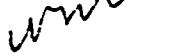
November 9, 1978

Re: No. 77-1202 State of Michigan v. Doran

Dear Chief:

I preferred the second draft of your opinion in this case to the most recent one, but think it is important to get a Court opinion so I can go along with the most recent one. I could not join an opinion which further altered the present draft as suggested by Thurgood in his letter to you of November 9th.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 9, 1978

Re: 77-1202 - Michigan v. Doran

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference