

# The Burger Court Opinion Writing Database

## *Lewis v. United States*

445 U.S. 55 (1980)

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

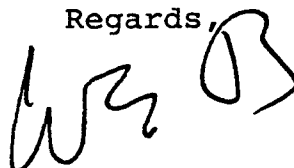
February 22, 1980

Re: 78-1595 - Lewis v. United States

Dear Harry:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written over the typed word 'Regards,'.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 22, 1980

MEMORANDUM TO: Mr. Justice Marshall  
Mr. Justice Powell

RE: No. 78-1595 - Lewis v. U.S.

We three are in dissent in this case. I will  
undertake the opinion.

Sincerely,

*Bill*

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 5, 1980

RE: No. 78-1595 Lewis v. United States

Dear Harry:

In due course I shall prepare a dissent in  
the above.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

1st DRAFT

Circulated: FEB 11 1980

SUPREME COURT OF THE UNITED STATES

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

No. 78-1595

George Calvin Lewis, Jr.,  
Petitioner,  
v.  
United States. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Fourth Circuit.

[February —, 1980]

MR. JUSTICE BRENNAN, dissenting.

In disagreement with every other court of appeals that has addressed the issue,<sup>1</sup> the Court of Appeals for the Fourth Circuit, held, by a divided vote, that an uncounseled and hence unconstitutional felony conviction may form the predicate for conviction under § 1202(a)(1) of the Omnibus Crime Control and Safe Streets Act of 1968. Today the Court affirms that judgment, but by an analysis that cannot be squared either with the literal language of the statute or controlling decisions of this Court. I respectfully dissent.

I

Two longstanding principles of statutory construction independently mandate reversal of petitioner's conviction. The first is the precept that "when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." *United States v. Universal C. I. T. Credit Corp.*, 344 U. S. 218, 221-222 (1952). The Court has re-

<sup>1</sup>See, e. g., *Dameron v. United States*, 488 F. 2d 724 (CA5 1974); *United States v. Lufman*, 457 F. 2d 165 (CA7 1972); *United States v. DuShane*, 435 F. 2d 187 (CA2 1970); *United States v. Thoreson*, 428 F. 2d 654 (CA9 1970). See generally Comment, 92 Harv. L. Rev. 1790 (1979).

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

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

Circulated: FEB 21 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1595

George Calvin Lewis, Jr.,  
Petitioner,  
v.  
United States. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Fourth Circuit.

[February —, 1980]

MR. JUSTICE BRENNAN, dissenting.

In disagreement with every other court of appeals that has addressed the issue,<sup>1</sup> the Court of Appeals for the Fourth Circuit, held, by a divided vote, that an uncounseled and hence unconstitutional felony conviction may form the predicate for conviction under § 1202(a)(1) of the Omnibus Crime Control and Safe Streets Act of 1968. Today the Court affirms that judgment, but by an analysis that cannot be squared either with the literal language of the statute or controlling decisions of this Court. I respectfully dissent.

I

Two longstanding principles of statutory construction independently mandate reversal of petitioner's conviction. The first is the precept that "when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." *United States v. Universal C. I. T. Credit Corp.*, 344 U. S. 218, 221-222 (1952). The Court has re-

<sup>1</sup> See, e. g., *Dameron v. United States*, 488 F. 2d 724 (CA5 1974); *United States v. Lufman*, 457 F. 2d 165 (CA7 1972); *United States v. DuShane*, 435 F. 2d 187 (CA2 1970); *United States v. Thoreson*, 428 F. 2d 654 (CA9 1970). See generally Comment, 92 Harv. L. Rev. 1790 (1979).

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

From: Mr. Justice Brennan

3rd DRAFT

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

**SUPREME COURT OF THE UNITED STATES**

Circulated: FEB 22 1980

No. 78-1595

George Calvin Lewis, Jr.,  
Petitioner,  
v.  
United States.

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

[February —, 1980]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL  
and MR. JUSTICE POWELL join, dissenting.

In disagreement with every other court of appeals that has  
addressed the issue,<sup>1</sup> the Court of Appeals for the Fourth  
Circuit, held, by a divided vote, that an uncounseled and  
hence unconstitutional felony conviction may form the predi-  
cate for conviction under § 1202 (a)(1) of the Omnibus  
Crime Control and Safe Streets Act of 1968. Today the  
Court affirms that judgment, but by an analysis that cannot  
be squared either with the literal language of the statute  
or controlling decisions of this Court. I respectfully dissent.

I

Two longstanding principles of statutory construction inde-  
pendently mandate reversal of petitioner's conviction. The  
first is the precept that "when choice has to be made between  
two readings of what conduct Congress has made a crime, it is  
appropriate, before we choose the harsher alternative, to  
require that Congress should have spoken in language that is  
clear and definite." *United States v. Universal C. I. T. Credit  
Corp.*, 344 U. S. 218, 221-222 (1952). The Court has re-

<sup>1</sup>See, e. g., *Dameron v. United States*, 488 F. 2d 724 (CA5 1974);  
*United States v. Lufman*, 457 F. 2d 165 (CA7 1972); *United States v.  
DuShane*, 435 F. 2d 187 (CA2 1970); *United States v. Thoreson*, 428 F.  
2d 654 (CA9 1970). See generally Comment, 92 Harv. L. Rev. 1790  
(1979).

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 6, 1980

Re: No. 78-1595, Lewis v. United States

Dear Harry,

Your proposed opinion of the Court strikes me as a fine one, and I expect to join it. At the moment, I have two rather minor problems with it:

(1) Footnote 8 on page 10 causes trouble for me. As you know, my view of the Equal Protection Clause is somewhat at odds with that of the Court, see, e.g., San Antonio School District v. Rodriguez, 411 U.S. at 59 (concurring opinion). Since I think a "rational basis" test is a fallacious and artificial construct, and since I do not understand what "fundamental interest" means, I could not join the first sentence of that footnote. I would be quite content, however, if the sentence were changed along the following lines: "These legislative restrictions on the use of firearms do not trench upon any constitutionally protected liberties."

(2) In the sixth line from the bottom of the first paragraph on page 11, I think the phrase "possession of" should be substituted for the phrase "right to possess." The opinion makes clear, in footnote 8 and elsewhere, that there is no right to possess a firearm.

Sincerely yours,

P.S.  
/

Mr. Justice Blackmun



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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 6, 1980

Re: No. 78-1595, Lewis v. United States

Dear Harry,

Thanks for your note in response to mine  
of today. Your proposed first sentence of footnote  
8 is entirely satisfactory to me.

Sincerely yours,

Mr. Justice Blackmun

P.S.  
/

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 7, 1980

Re: No. 78-1595, Lewis v. United States

Dear Harry,

I am glad to join your opinion for  
the Court.

Sincerely yours,

PS.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 4, 1980

Re: No. 78-1595 - Lewis v. United States

---

Dear Harry,

I join.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

cmc

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 4, 1980

Re: No. 78-1595 - Lewis v. United States

Dear Harry:

I await the dissent.

Sincerely,

*T.M.*

T.M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 21, 1980

Re: No. 78-1595 - Lewis v. United States

Dear Bill:

Please join me in your dissent.

Sincerely,

*J.M.*  
T.M.

Mr. Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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: FEB 4 1980

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-1595

George Calvin Lewis, Jr., Petitioner, v. United States.	}	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.
--	---	---

[February —, 1980]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the question whether a defendant's extant prior conviction, flawed because he was without counsel, as required by *Gideon v. Wainwright*, 372 U. S. 335 (1963), may constitute the predicate for a subsequent conviction under § 1202 (a)(1), as amended, of Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U. S. C. App. § 1202 (a)(1).<sup>1</sup>

### I

In 1961 petitioner George Calvin Lewis, Jr., upon his plea

<sup>1</sup> Section 1202 (a) reads in full:

"Any person who—

"(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

"(2) has been discharged from the Armed Forces under dishonorable conditions, or

"(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

"(4) having been a citizen of the United States has renounced his citizenship, or

"(5) being an alien is illegally or unlawfully in the United States, and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than \$10,000 or imprisoned for not more than two years, or both."

February 6, 1980

Re: No. 78-1595 - Lewis v. United States

Dear Potter:

Thank you for your helpful note of February 6. Your second suggestion of course is acceptable, and that change will be made.

In light of your concern about footnote 8, I suggest that the first sentence of that footnote be changed to read as follows:

"These legislative restrictions on the use of firearms are neither based upon constitutionally suspect criteria, nor do they trench upon any constitutionally protected liberties."

Will this meet your concerns?

Sincerely,

*Harry J. Byars*

Mr. Justice Stewart

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: \_\_\_\_\_

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

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-1595

George Calvin Lewis, Jr., Petitioner, v. United States.	}	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.
--	---	---

[February —, 1980]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the question whether a defendant's extant prior conviction, flawed because he was without counsel, as required by *Gideon v. Wainwright*, 372 U. S. 335 (1963), may constitute the predicate for a subsequent conviction under § 1202 (a) (1), as amended, of Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U. S. C. App. § 1202 (a) (1).<sup>1</sup>

### I

In 1961 petitioner George Calvin Lewis, Jr., upon his plea

<sup>1</sup> Section 1202 (a) reads in full:

"Any person who—

"(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

"(2) has been discharged from the Armed Forces under dishonorable conditions, or

"(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

"(4) having been a citizen of the United States has renounced his citizenship, or

"(5) being an alien is illegally or unlawfully in the United States, and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than \$10,000 or imprisoned for not more than two years, or both."

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS



pp. 10 & 11

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: FEB 7 1980

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-1595

George Calvin Lewis, Jr., Petitioner, ". United States.	}	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.
--	---	---

[February —, 1980]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the question whether a defendant's extant prior conviction, flawed because he was without counsel, as required by *Gideon v. Wainwright*, 372 U. S. 335 (1963), may constitute the predicate for a subsequent conviction under § 1202 (a) (1), as amended, of Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U. S. C. App. § 1202 (a) (1).<sup>1</sup>

### I

In 1961 petitioner George Calvin Lewis, Jr., upon his plea

<sup>1</sup> Section 1202 (a) reads in full:

"Any person who—

"(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

"(2) has been discharged from the Armed Forces under dishonorable conditions, or

"(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

"(4) having been a citizen of the United States has renounced his citizenship, or

"(5) being an alien is illegally or unlawfully in the United States, "and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than \$10,000 or imprisoned for not more than two years, or both."

pp. 6 + 12

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: \_\_\_\_\_

Re-circulated: FEB 19 1980

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1595

George Calvin Lewis, Jr.,  
Petitioner,  
v.  
United States.

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

[February —, 1980]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the question whether a defendant's extant prior conviction, flawed because he was without counsel, as required by *Gideon v. Wainwright*, 372 U. S. 335 (1963), may constitute the predicate for a subsequent conviction under § 1202 (a) (1), as amended, of Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U. S. C. App. § 1202 (a) (1).<sup>1</sup>

I

In 1961 petitioner George Calvin Lewis, Jr., upon his plea

<sup>1</sup> Section 1202 (a) reads in full:

"Any person who—

"(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

"(2) has been discharged from the Armed Forces under dishonorable conditions, or

"(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

"(4) having been a citizen of the United States has renounced his citizenship, or

"(5) being an alien is illegally or unlawfully in the United States, and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than \$10,000 or imprisoned for not more than two years, or both."

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 23, 1980

78-1595 Lewis v. U.S.

Dear Bill:

I note that you will draft a dissent in the above case.

Although my vote was a bit "shaky", I am still leaning your way and certainly will await your dissent.

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 5, 1980

78-1595 Lewis v. U.S.

Dear Harry:

In accord with my vote at Conference, I will await  
the dissent in this case.

Sincerely,



Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 21, 1980

78-1595 Lewis v. United States

Dear Bill:

Please join me in your dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lewis".

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 5, 1980

Re: No. 78-1595 - Lewis v. United States

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 5, 1980

Re: 78-1595 - Lewis v. United States

Dear Harry:

Please join me.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference