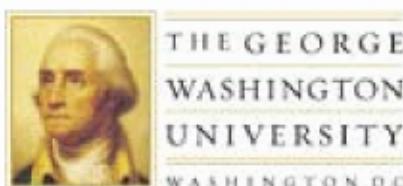


The Burger Court Opinion Writing Database

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,

W.B.

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,



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 Sutherland
Mr. Justice Brandeis
Mr. Justice Holmes
Mr. Justice McReynolds
Mr. Justice Blackstone
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brenn.

1st DRAFT

Circulated: Feb 15, 1969

SUPREME COURT OF THE UNITED STATES regulated.

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 1, 1980]

MR. JUSTICE BRENNAN, dissenting.

In disagreement with every other court of appeals that has addressed the issue,¹ 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-

¹ 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,¹ 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.

¶

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-

¹ See, e. g., *Danneron 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).

115
11
To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

3rd DRAFT

Circulated: FF3 22

SUPREME COURT OF THE UNITED STATES

Circulated: FF3 22

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,¹ 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.

¶

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-

¹ 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.
J

Mr. Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20542

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.,
P.

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

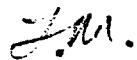
February 4, 1980

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

Dear Harry:

I await the dissent.

Sincerely,



T.M.

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,

T.M.
T.M.

Mr. Justice Brennan

cc: The Conference

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

1st DRAFT

Recirculated: _____

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).¹

I

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

¹ 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) by ws

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).¹

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

¹ Section 1202 (a) reads in full:

"Any person who—

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"(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. 10211

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,
 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).¹

I

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

¹ Section 1202 (a) reads in full:

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"(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."

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

From: Mr. Justice Black

Circulated.

FEB 19 1981

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).¹

I

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

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"(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,



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,



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