

# The Burger Court Opinion Writing Database

*United States v. \$8,850*

461 U.S. 555 (1983)

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

May 13, 1983

Re: No. 81-1062 - United States v. Eight Thousand  
Eight Hundred and Fifty Dollars in  
United States Currency

Dear Sandra:

I join.

Regards,



Justice O'Connor

Copies to the Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 6, 1983

Re: United States v. \$8850, No. 81-1062

Dear Sandra:

I agree.

Sincerely,



WJB, Jr.

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 6, 1983

Re: 81-1062 U.S. v. Eight Thousand Eight Hundred and Fifty Dollars (\$8,850)

Dear Sandra:

I join your opinion in this case.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 9, 1983

Re: No. 81-1062 - U.S. v. \$8,850 in U.S. Currency.

Dear Sandra:

Please join me.

Sincerely,

*J.M.*

T.M.

Justice O'Connor

cc: The Conference

NOT RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 6, 1983

Re: No. 81-1062, United States v. \$8,850 in U.S. Currency

Dear Sandra:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 9, 1983

81-1062 United States v. \$8,850

Dear Sandra:

Please join me.

Sincerely,

*Reavis/E*

Justice O'Connor

Copies to the Conference

LFP/vde

May 11, 1983

81-1062 United States v. \$8,850

Dear Sandra:

As indicated by my "join", I entirely agree that Barker is the most relevant authority and think you correctly applied its four step analysis.

I do think that the deprivation in Barker - loss of liberty - may be more grievous than the deprivation of one's use of property. Perhaps it would be helpful to add a note recognizing this difference, and saying that in weighing the fourth Barker factor (prejudice to the defendant), this difference may be considered. This would be in accord with Matthews v. Eldridge, 424 U.S. 319.

My join is not at all conditional on the addition of such a note.

Sincerely,

Justice O'Connor

LFP/vde

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

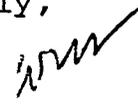
May 12, 1983

Re: No. 81-1062 United States v. \$8,850

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS





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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 11, 1983

No. 81-1062 United States v. \$8,850 in  
U. S. Currency

Dear Lewis,

Thank you for your suggestion about this case. It is a good one and I will add something in the next circulation to make the point.

Sincerely,

*Sandra*

Justice Powell

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

pp 9-10

Stylistic Changes Throughout

From: Justice O'Connor

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1062

UNITED STATES, PETITIONER *v.* EIGHT THOUSAND  
EIGHT HUNDRED AND FIFTY DOLLARS (\$8,850)  
IN UNITED STATES CURRENCY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[May —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

United States Customs officials seized \$8,850 in currency from the claimant as she passed through customs at Los Angeles International Airport. The question in this case is whether the Government's 18-month delay in filing a civil proceeding for forfeiture of the currency violates the claimant's right to due process of law. We conclude that the four-factor balancing test of *Barker v. Wingo*, 407 U. S. 514 (1972), provides the relevant framework for determining whether the delay in filing a forfeiture action was reasonable. Applying the *Barker* test to the circumstances of this case, we find no unreasonable delay.

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Section 231 of the Bank Secrecy Act of 1970, 31 U. S. C. § 1101, requires persons knowingly transporting monetary instruments exceeding \$5,000 into the United States to file a report with the Customs Service declaring the amount being transported. Congress has authorized the Government to seize and forfeit any monetary instruments for which a required report was not filed. 31 U. S. C. § 1102(a). Since the Bank Secrecy Act does not specify the procedures to be

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 31, 1983

MEMORANDUM TO THE CONFERENCE

Case held for No. 81-1062, United States v. \$8,850 in U.S. Currency

No. 81-1249, Eide v. Sequin

On February 5, 1975, David Benson drove to the Seattle International Airport and, using a false name, presented an air waybill to a Customs inspector. Benson was accompanied by the respondent. The Customs agent became suspicious and refused to release the packages without an appraisal. Benson then left and gave the inspector respondent's telephone number where he could be reached. Customs agents later discovered 44 South African Krugerrands concealed in plaques inside the packages. After conferring with the United States Attorney, the agents arranged a controlled delivery of the packages.

On February 7, 1975, the agents called Benson at respondent's number to notify him that the packages could be cleared. Respondent drove Benson to the airport in her 1974 Dodge Dart. Benson picked up the package and respondent drove him back to his house. Agents then executed a search warrant and arrested Benson and his wife. The Bensons were later indicted for smuggling. On February 13, 1975, Customs officials seized respondent's Dodge Dart because of its use in smuggling.

On February 25, respondent wrote a letter to the district director of Customs, the petitioner here. She explained that she was a 73-year-old partially crippled widow who needed her car to move musical instruments. She stated that she took Benson to the airport because he was a member of her church and she often did errands of this kind. She asserted she knew nothing of the contents of the

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 31, 1983

MEMORANDUM TO THE CONFERENCE

Case held for No. 81-1062, United States v. \$8,850 in  
U.S. Currency

No. 81-1637, Ernesto Zaragoza Y. v. United States

In April 1977, Customs officials seized a DC-6 aircraft loaded with 5,420 pounds of marijuana. In July 1977, the pilot, Brian Corp, was indicted for various narcotics offenses. The Customs officials notified Corp's business, Executive Leasing, of the seizure and of procedures for asserting rights in the property. On August 8, 1977, Executive Leasing petitioned for remission of the forfeiture. The Secretary of the Treasury denied the petition on January 26, 1978, and reaffirmed the denial after protest on May 30, 1978. Corp had meanwhile died in an unrelated plane crash, and the criminal charges against him were dismissed on May 5, 1978.

On June 2, 1978, petitioner made his first appearance in this case, filing a mortgage with the FAA claiming a security interest in the airplane. On July 6, 1978, petitioner filed his own petition for remission, citing his security interest and claiming he was unaware that the aircraft had been used for illegal purposes. On August 17, 1978, before the Treasury Department had acted on the petition (which ultimately was denied), the U.S. Attorney filed a forfeiture action in WD Tenn.

The DC first concluded that it had jurisdiction, despite the fact that the Government was storing the plane in Arizona. The DC also rejected petitioner's claim that the delay in filing the civil forfeiture action denied his due process rights. The court found no unwarranted delay by the Government, noting that the forfeiture action was filed

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 31, 1983

MEMORANDUM TO THE CONFERENCE

Case held for No. 81-1062, United States v. \$8,850 in  
U.S. Currency

No. 82-452 United States v. Von Neumann

Respondent (a car dealer) bought a new Jaguar Panther in Switzerland and shipped it to Canada with the intent of bringing it into the United States. On January 20, 1975, he flew to Vancouver and drove the car through Canada to the U.S. border. At the United States checkpoint, respondent was asked whether he had purchased or acquired anything outside the United States. He said no. The inspector then sent respondent to the Customs supervisor, who asked respondent why he had failed to declare the Jaguar. Respondent answered that he did not think he was required to declare it. The supervisor then seized the Jaguar, and informed respondent that he could file a petition for remission. Respondent filled out a handwritten petition, asserting that "he had no intention of avoiding U.S. Customs duties," and then flew home to L.A.

Two weeks later, on February 3, 1975, respondent put up a cash bond for \$24,500 (the value of the car) and the Customs Service released it. On February 12, respondent filed a supplemental petition, explaining in detail the circumstances.

On February 25, 1975 (five weeks after the initial seizure), the District Director informed respondent that the penalty of forfeiture was being remitted to \$3,600, and returned the \$20,900 balance.

Respondent then sued for the return of the \$3,600, claiming a due process violation. After an evidentiary