

# The Burger Court Opinion Writing Database

## *United States v. Rodgers*

461 U.S. 677 (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

December 15, 1982

Re: 81-1476 - United States v. Rodgers

Dear Harry:

My record and notes show my vote was to reverse and remand. The basis remains for the writing. My records also show you as a "tentative" affirm. Accordingly, the dissent will be up to the "affirms," of which group you are "senior."

Regards,

A handwritten signature in black ink, appearing to be 'JRB', written over a diagonal line that extends from the top left towards the center.

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 18, 1983

RE: No. 81-1476 - United States v. Rogers

Dear Bill:

I join.

Regards,

Handwritten signature of William Brennan in cursive script.

Justice Brennan

Copies to the Conference

To: The Chief Justice  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

Circulated: FEB 4 1983

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1476

**UNITED STATES, PETITIONER *v.* LUCILLE MITZI  
BOSCO RODGERS ET AL.**

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

[February —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

These consolidated cases involve the relationship between the imperatives of federal tax collection and rights accorded by state property laws. Section 7403 of the Internal Revenue Code of 1954, 26 U. S. C. § 7403, authorizes the judicial sale of certain properties to satisfy the tax indebtedness of delinquent taxpayers. The issue in both cases is whether § 7403 empowers a federal district court to order the sale of a family home in which a delinquent taxpayer had an interest at the time he incurred his indebtedness, but in which the taxpayer's spouse, who does not owe any of that indebtedness, also has a separate "homestead" right as defined by Texas law. We hold that the statute does grant power to order the sale, but that its exercise is limited to some degree by equitable discretion. We also hold that, if the home is sold, the non-delinquent spouse is entitled, as part of the distribution of proceeds required under § 7403, to so much of the proceeds as represents just compensation for the loss of the homestead estate.

I

A

Section 7403 provides in full as follows:

"(a) Filing.—In any case where there has been a re-

LIBRARY OF CONGRESS

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 1, 13, 16-18, 21

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Brennan

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

Recirculated: FEB 16 1983

*WSB*  
*Please join me*

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1476

UNITED STATES, PETITIONER *v.* LUCILLE MITZI  
BOSCO RODGERS ET AL.

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

[February —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

These consolidated cases involve the relationship between the imperatives of federal tax collection and rights accorded by state property laws. Section 7403 of the Internal Revenue Code of 1954, 26 U. S. C. §7403, authorizes the judicial sale of certain properties to satisfy the tax indebtedness of delinquent taxpayers. The issue in both cases is whether § 7403 empowers a federal district court to order the sale of a family home in which a delinquent taxpayer had an interest at the time he incurred his indebtedness, but in which the taxpayer's spouse, who does not owe any of that indebtedness, also has a separate "homestead" right as defined by Texas law. We hold that the statute does grant power to order the sale, but that its exercise is limited to some degree by equitable discretion. We also hold that, if the home is sold, the non-delinquent spouse is entitled, as part of the distribution of proceeds required under § 7403, to so much of the proceeds as represents complete compensation for the loss of the homestead estate.

I

A

Section 7403 provides in full as follows:

"(a) Filing.—In any case where there has been a re-

*Joan?*

LIBRARY OF CONGRESS

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

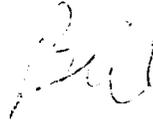
CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 19, 1983

Dear Chief,

I tentatively listed United States  
v. Rodgers, No. 81-1476, for  
announcement next week. I find that  
I'll have to postpone the announcement  
for a week. Will you please, therefore,  
take it off the list?

Sincerely,



The Chief Justice

Copies to the Conference

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

Footnotes renumbered,  
STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 8, 11, 13, 15-18, 21-25, 30, 32

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Brennan

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

MAY 23 1983

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1476

UNITED STATES, PETITIONER *v.* LUCILLE MITZI  
BOSCO RODGERS ET AL.

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

[May —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

These consolidated cases involve the relationship between the imperatives of federal tax collection and rights accorded by state property laws. Section 7403 of the Internal Revenue Code of 1954, 26 U. S. C. § 7403, authorizes the judicial sale of certain properties to satisfy the tax indebtedness of delinquent taxpayers. The issue in both cases is whether § 7403 empowers a federal district court to order the sale of a family home in which a delinquent taxpayer had an interest at the time he incurred his indebtedness, but in which the taxpayer's spouse, who does not owe any of that indebtedness, also has a separate "homestead" right as defined by Texas law. We hold that the statute does grant power to order the sale, but that its exercise is limited to some degree by equitable discretion. We also hold that, if the home is sold, the non-delinquent spouse is entitled, as part of the distribution of proceeds required under § 7403, to so much of the proceeds as represents complete compensation for the loss of the homestead estate.

I

A

Section 7403 provides in full as follows:

"(a) Filing.—In any case where there has been a re-

CROSS-REFERENCES ADDED  
OR CORRECTED,

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 9, 11, 13, 14, 16, 19, 25, 26, 33

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

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

Recirculated: 5/26/83

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1476

UNITED STATES, PETITIONER *v.* LUCILLE MITZI  
BOSCO RODGERS ET AL.

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

[May —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

These consolidated cases involve the relationship between the imperatives of federal tax collection and rights accorded by state property laws. Section 7403 of the Internal Revenue Code of 1954, 26 U. S. C. § 7403, authorizes the judicial sale of certain properties to satisfy the tax indebtedness of delinquent taxpayers. The issue in both cases is whether § 7403 empowers a federal district court to order the sale of a family home in which a delinquent taxpayer had an interest at the time he incurred his indebtedness, but in which the taxpayer's spouse, who does not owe any of that indebtedness, also has a separate "homestead" right as defined by Texas law. We hold that the statute does grant power to order the sale, but that its exercise is limited to some degree by equitable discretion. We also hold that, if the home is sold, the non-delinquent spouse is entitled, as part of the distribution of proceeds required under § 7403, to so much of the proceeds as represents complete compensation for the loss of the homestead estate.

I

A

Section 7403 provides in full as follows:

"(a) Filing.—In any case where there has been a re-

LIBRARY OF CONGRESS  
DIVISION OF THE MANUSCRIPTS

STYLISTIC CHANGES  
THROUGHOUT.  
SEE P. 32.

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

5th DRAFT

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

From: Justice Brennan

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

Revised: MAY 27 1983

## SUPREME COURT OF THE UNITED STATES

No. 81-1476

UNITED STATES, PETITIONER *v.* LUCILLE MITZI  
BOSCO RODGERS ET AL.

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

[May 31, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

These consolidated cases involve the relationship between the imperatives of federal tax collection and rights accorded by state property laws. Section 7403 of the Internal Revenue Code of 1954, 26 U. S. C. § 7403, authorizes the judicial sale of certain properties to satisfy the tax indebtedness of delinquent taxpayers. The issue in both cases is whether § 7403 empowers a federal district court to order the sale of a family home in which a delinquent taxpayer had an interest at the time he incurred his indebtedness, but in which the taxpayer's spouse, who does not owe any of that indebtedness, also has a separate "homestead" right as defined by Texas law. We hold that the statute does grant power to order the sale, but that its exercise is limited to some degree by equitable discretion. We also hold that, if the home is sold, the non-delinquent spouse is entitled, as part of the distribution of proceeds required under § 7403, to so much of the proceeds as represents complete compensation for the loss of the homestead estate.

I

A

Section 7403 provides in full as follows:

"(a) Filing.—In any case where there has been a re-

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 24, 1983

Re: 81-1476 - United States v. Rodgers

Dear Bill,

I agree.

Sincerely yours,

*Byron*

Justice Brennan

Copies to the Conference

cpm

LIBRARY OF THE SENATE AND HOUSE OF REPRESENTATIVES  
U.S. GOVERNMENT PRINTING OFFICE: 1975 O - 300-000

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 3, 1983

Re: No. 81-1476 - U.S. v. Rodgers

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

RECEIVED THE SECRETARY OF THE SUPREME COURT OF THE UNITED STATES  
LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 14, 1982

Re: No. 81-1476 - United States v. Rodgers

Dear Chief:

My conference notes indicate that initially you were inclined to affirm in this case but that you stated later that you "might" change your vote.

Inasmuch as the opinion has been assigned to Bill Brennan, may I assume that you have changed your vote? I ask this because the assignment of the dissent then falls to me, and I wish to make that assignment as soon as possible.

Sincerely,



The Chief Justice

HAB

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 14, 1982

Re: No. 81-1476 - United States v. Rodgers

Dear Bill, John, and Sandra:

Inasmuch as the Chief Justice has assigned the opinion in this case to Bill Brennan, I must assume that he has changed his vote from a tentative affirm to a reverse. My conference notes indicate that he said that he might well change his vote.

This leaves the four of us in the minority. If it is all right with the rest of you, I shall undertake a dissent in due course.

Sincerely,



Justice Rehnquist  
Justice Stevens  
Justice O'Connor

Reproduced 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

February 8, 1983

Re: No. 81-1476 - United States v. Rodgers

Dear Bill:

In due course, I shall try my hand at a dissent in  
this case.

Sincerely,

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

Justice Brennan

cc: The Conference

LIBRARY OF CONGRESS  
DIVISION OF THE MANUSCRIPTS

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Blackmun**

MAY 12 1983

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

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1476

UNITED STATES, PETITIONER *v.* LUCILLE MITZI  
BOSCO RODGERS ET AL.

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

[May —, 1983]

JUSTICE BLACKMUN, concurring in part and dissenting in part.

The Court today properly rejects the broad legal principle concerning 26 U. S. C. § 7403 that was announced by the Court of Appeals. See *ante*, at 9 and 11-12. I agree that, in some situations, § 7403 gives the Government the power to sell property *not* belonging to the taxpayer. Our task, however, is to ascertain how far Congress intended that power to extend. In my view, § 7403 confers on the Government the power to sell or force the sale of jointly-owned property only insofar as the *tax debtor's* interest in that property would permit *him* to do so; it does not confer on the Government the power to sell jointly-owned property if an unindebted co-owner enjoys an *indestructible* right to bar a sale and to continue in possession. Because Mrs. Rodgers had such a right, and because she is not herself indebted to the Government, I dissent from the Court's disposition of her case.

I

It is basic in the common law that a lienholder enjoys rights in property no greater than those of the debtor himself; that is, the lienholder does no more than step into the debtor's shoes. 1 L. Jones, *Liens*, § 9, at 9-10 (1914). Thus, as a general rule, "[t]he lien of a judgment . . . cannot be made

Footnotes Renumbered  
Page references renumbered  
Pages: 1-2, 8-12, 15-17

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Blackmun

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

Recirculated: MAY 25 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1476

UNITED STATES, PETITIONER *v.* LUCILLE MITZI  
BOSCO RODGERS ET AL.

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

[May —, 1983]

JUSTICE BLACKMUN, with whom JUSTICE REHNQUIST,  
JUSTICE STEVENS, and JUSTICE O'CONNOR join, concurring  
in part and dissenting in part.

The Court today properly rejects the broad legal principle concerning 26 U. S. C. §7403 that was announced by the Court of Appeals. See *ante*, at 9 and 11-12. I agree that, in some situations, §7403 gives the Government the power to sell property *not* belonging to the taxpayer. Our task, however, is to ascertain how far Congress intended that power to extend. In my view, §7403 confers on the Government the power to sell or force the sale of jointly-owned property only insofar as the *tax debtor's* interest in that property would permit *him* to do so; it does not confer on the Government the power to sell jointly-owned property if an unindebted co-owner enjoys an *indestructible* right to bar a sale and to continue in possession. Because Mrs. Rodgers had such a right, and because she is not herself indebted to the Government, I dissent from the Court's disposition of her case.

I

It is basic in the common law that a lienholder enjoys rights in property no greater than those of the debtor himself; that is, the lienholder does no more than step into the debtor's shoes. 1 L. Jones, *Liens*, §9, at 9-10 (1914). Thus, as a

LIBRARY OF CONGRESS  
LIEBMAN DIVISION  
OF THE  
CONGRESSIONAL  
SERIALS  
ACQUISITION  
DIVISION

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 17, 1983

81-1476 United States v. Rodgers

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in cursive script that reads "Lewis".

Justice Brennan

lfp/ss

cc: The Conference

MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 14, 1982

Re: No. 81-1476 United States v. Rodgers

Dear Harry:

Like Sandra, I will await your dissent.

Sincerely,



Justice Blackmun

cc: Justice Stevens  
Justice O'Connor

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 13, 1983

Re: No. 81-1476 United States v. Rodgers

Dear Harry:

Please join me in your opinion concurring in part  
and dissenting in part.

Sincerely,



Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 17, 1983

Re: 81-1476 - United States v. Rodgers

Dear Bill:

As I am sure you have surmised, I shall await  
the dissent in this case.

Respectfully,



Justice Brennan

Copies to the Conference

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

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 16, 1983

Re: 81-1476 - United States v. Rodgers

Dear Harry:

Please join me. I am afraid this is a case in which the Court "knows not what it doeth." I wonder if the case would have been decided the same way if the taxpayers' brief had been even half as persuasive as your opinion.

Respectfully,



Justice Blackmun

Copies to the Conference

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

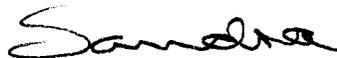
December 14, 1982

No. 81-1476 United States v. Rodgers

Dear Harry,

I will be happy to await your dissent  
when the time comes.

Sincerely,



Justice Blackmun

cc: Justice Rehnquist  
Justice Stevens

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

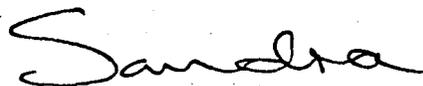
February 8, 1983

No. 81-1476 United States v. Rodgers

Dear Bill,

I will await the dissent.

Sincerely,



Justice Brennan

Copies to the Conference

MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 13, 1983

No. 81-1476 United States v. Rodgers

Dear Harry,

Please join me.

Sincerely,

*Sandra*

Justice Blackmun

Copies to the Conference

MANUSCRIPT DIVISION, LIBRARY OF CONGRESS