

# The Burger Court Opinion Writing Database

## *Jones v. United States*

463 U.S. 354 (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

November 15, 1982

RE: 81-5195 - Jones v. U.S.

Dear Lewis:

Would you feel comfortable taking a dissent in this case

Regards,

Justice Powell  
Justice Rehnquist  
Justice O'Connor

A handwritten signature in black ink, appearing to be 'JPW', enclosed in a simple rectangular box.

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

CHAMBERS OF  
THE CHIEF JUSTICE

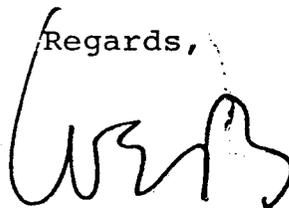
April 8, 1983

Re: No. 81-5195, Michael Jones v. United States

Dear Lewis:

This is to confirm that I am in general accord with your dissent in this case and I now reassign the opinion to you. I may have an additional thought or two.

Regards,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

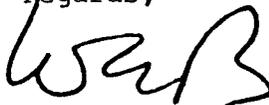
May 23, 1983

Re: 81-5195 - Jones v. United States

Dear Lewis:

I join.

Regards,

A handwritten signature in cursive script, appearing to read 'W. Powell', written in dark ink.

Justice Powell

Copies to the Conference

Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Brennan

Circulated: FEB 4 1983

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

W  
112

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-5195

MICHAEL JONES, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA  
COURT OF APPEALS

[February —, 1983]

112

JUSTICE BRENNAN delivered the opinion of the Court.

Section 24-301(d) of the District of Columbia Code<sup>1</sup> provides that a person tried for a crime and acquitted solely by reason of insanity may, after a 50-day evaluation period, be committed to a mental institution indefinitely unless he proves by a preponderance of the evidence that he is no longer mentally ill and dangerous. We granted certiorari to determine whether the Due Process clause of the Fifth Amendment permits indefinite commitments under such cir-

<sup>1</sup>“(1) If any person tried upon an indictment or information for an offense raises the defense of insanity and is acquitted solely on the ground that he was insane at the time of its commission, he shall be committed to a hospital for the mentally ill until such time as he is eligible for release pursuant to this subsection or subsection (e) of this section.

“(2)(A) A person confined pursuant to paragraph (1) of this subsection shall have a hearing, unless waived, within 50 days of his confinement to determine whether he is entitled to release from custody. At the conclusion of the criminal action referred to in paragraph (1) of this subsection, the court shall provide such person with representation by counsel . . .

“(B) . . . Within 10 days from the date the hearing was begun, the court shall determine the issues and make findings of fact and conclusions of law with respect thereto. The person confined shall have the burden of proof. If the court finds by a preponderance of the evidence that the person confined is entitled to his release from custody, either conditional or unconditional, the court shall enter such order as may appear appropriate.” D.C. Code § 24-301(d) (1981).

Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice Brennan**

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

Recirculated: **FEB 27 1983**

*Revised throughout  
 p 19*

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-5195

MICHAEL JONES, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA  
 COURT OF APPEALS

[February —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

Section 24-301 of the District of Columbia Code provides that a person tried for a crime and acquitted solely by reason of insanity may, after a 50-day evaluation period, be committed to a mental institution indefinitely unless he proves by a preponderance of the evidence that he is not mentally ill or dangerous. We granted certiorari to determine whether the Due Process Clause of the Fifth Amendment, and the equal protection guarantee it embodies, permit indefinite commitments under such circumstances. 454 U. S. 1141 (1982).

### I

Of central importance to this case is the system Congress established in 1970 when it amended § 24-301 ("§ 301") as part of the District of Columbia Court Reform and Criminal Procedure Act of 1970, § 207, 84 Stat. 473, 601-603. Section 301 addresses the general topics of the insanity defense and mental competency to be tried. In its 1970 amendments, Congress left in place a requirement that defendants plead insanity affirmatively, and it added a provision stating, "No person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by a preponderance of the evidence."<sup>1</sup> It also

<sup>1</sup>See § 301(j); H. R. Rep. No. 91-907, 91st Cong., 2d Sess. 73 (1970).

changes: 1, 8, 9, 12, 14-20, 22-23

Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Brennan

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

Recirculated: **MAR 15 1983** \_\_\_\_\_

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-5195

MICHAEL JONES, PETITIONER *v.* UNITED STATES  
ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA  
COURT OF APPEALS

[March —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

Section 24-301 of the District of Columbia Code provides that a person tried for a crime and acquitted solely by reason of insanity may, after a 50-day evaluation period, be committed to a mental institution indefinitely unless he proves by a preponderance of the evidence that he is not mentally ill or dangerous. We granted certiorari to determine whether the Due Process Clause of the Fifth Amendment permits indefinite commitments under such circumstances. 454 U. S. 1141 (1982).

I

Of central importance to this case is the system Congress established in 1970 when it amended § 24-301 ("§ 301") as part of the District of Columbia Court Reform and Criminal Procedure Act of 1970, § 207, 84 Stat. 473, 601-603. Section 301 addresses the general topics of the insanity defense and mental competency to be tried. In its 1970 amendments, Congress left in place a requirement that defendants plead insanity affirmatively, and it added a provision stating, "No person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by a preponderance of the evidence."<sup>1</sup> It also

<sup>1</sup> See § 301(j); H. R. Rep. No. 91-907, 91st Cong., 2d Sess. 73 (1970).

material moved to n. 3

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 10, 1983

No. 81-5195 Jones v. United States

Dear Lewis:

Sad to say, I am not convinced. I shall be circulating a dissent along the lines of my earlier efforts within a few weeks.

Sincerely,

  
WJB, Jr.

Justice Powell

Copies to the Conference

Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice Brennan**

Circulated: JUN 22 1983

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-5195

MICHAEL JONES, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA  
 COURT OF APPEALS

[June —, 1983]

JUSTICE BRENNAN, dissenting.

The Court begins by posing the wrong question. The issue in this case is not whether petitioner must be released because he has been hospitalized for longer than the prison sentence he might have served had he been convicted, any more than the question in a motion to suppress an allegedly coerced confession at a murder trial is whether the murderer should go free.<sup>1</sup> The question before us is whether the fact that an individual has been found "not guilty by reason of insanity," by itself, provides a constitutionally adequate basis for involuntary, indefinite commitment to psychiatric hospitalization.

None of our precedents directly addresses the meaning of due process in the context of involuntary commitments of persons who have been acquitted by reason of insanity. Petitioner's argument rests primarily on two cases dealing with

<sup>1</sup> If we were to determine that the standards under which petitioner was committed did not satisfy the Due Process Clause, he would be "released" only in the most formalistic sense of the word. Realistically, he would probably be recommitted, assuming that the Government could carry its burden of proof at a regular civil commitment hearing. The facts that the Court discusses *ante*, at 10-11, n. 14, would certainly be relevant at such a hearing. But they are irrelevant to the question before us because they have never been assessed under the "clear and convincing" evidence standard.

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 23, 1983

No. 81-5195 Jones v. United States

Dear Thurgood and Harry:

John has sent me the enclosed letter requesting a change in my dissenting opinion. I am willing to go along with his language, but I also hope that both of you will eventually be able to join the dissent. Do you have any objections to John's proposal?

Sincerely,

*Bill jhs*

WJB, Jr.

WJB/jhs

Justice Marshall

Justice Blackmun

*6/24*  
*Telephone to WJB*  
*Will not join with JPs*  
*Suggestion*

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 23, 1983

No. 81-5195 Jones v. United States

Dear John:

The change you suggest is fine with me. I am not certain I agree with you, but I am willing not to take a firm position at this time. I hope, however, that Thurgood and Harry will also be able to join my dissent, so I am writing them separately to ask if they are willing to go along.

Sincerely,

*Bill J. Jr.*

WJB, Jr.

Justice Stevens

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 24, 1983

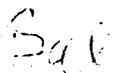
No. 81-5195 Jones v. United States

Dear Harry:

What would you think if I substituted the following paragraph for the runover paragraph on pages 15-16 of my dissenting opinion?

In many respects, confinement in a mental institution is even more intrusive than incarceration in a prison. Inmates of mental institutions, like prisoners, are deprived of unrestricted association with friends, family, and community; they must contend with locks, guards, and detailed regulation of their daily activities. In addition, a person who has been hospitalized involuntarily may to a significant extent lose the right enjoyed by others to withhold consent to medical treatment. See Youngberg v. Romeo (involuntary committee's due process right to freedom from unreasonable restraint limited to a guarantee that professional medical judgment be exercised). The treatments to which he may be subjected include physical restraints such as straightjacketing, as well as electroshock therapy, aversive conditioning, and even in some cases psychosurgery. Administration of psychotropic medication to control behavior is common. See American Psychiatric Assn., Statement on the Insanity Defense 15 (1982) ("Greater emphasis is now placed upon psychopharmacological management of the hospitalized person.") Although this Court has never approved the practice, it is possible that an inmate will be given medication for reasons that have more to do with the needs of the institution than with individualized therapy.[19] See Mills v. Rogers; Rennie v. Klein. We should not presume that he lacks a compelling interest in having the decisions to commit him and to keep him institutionalized made arefully, and in a manner that preserves the maximum degree of personal autonomy.

Sincerely,

  
WJB, Jr.

Justice Blackmun

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

STYLISTIC CHANGES THROUGHOUT.  
 SEE PAGES: 13, 15

From: **Justice Brennan**

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

Recirculated: JUN 25 1983

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-5195

**MICHAEL JONES, PETITIONER v. UNITED STATES**

ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA  
 COURT OF APPEALS

[June —, 1983]

JUSTICE BRENNAN, dissenting.

The Court begins by posing the wrong question. The issue in this case is not whether petitioner must be released because he has been hospitalized for longer than the prison sentence he might have served had he been convicted, any more than the question in a motion to suppress an allegedly coerced confession at a murder trial is whether the murderer should go free.<sup>1</sup> The question before us is whether the fact that an individual has been found "not guilty by reason of insanity," by itself, provides a constitutionally adequate basis for involuntary, indefinite commitment to psychiatric hospitalization.

None of our precedents directly addresses the meaning of due process in the context of involuntary commitments of persons who have been acquitted by reason of insanity. Petitioner's argument rests primarily on two cases dealing with

<sup>1</sup> If we were to determine that the standards under which petitioner was committed did not satisfy the Due Process Clause, he would be "released" only in the most formalistic sense of the word. Realistically, he would probably be recommitted, assuming that the Government could carry its burden of proof at a regular civil commitment hearing. The facts that the Court discusses *ante*, at 10-11, n. 14, would certainly be relevant at such a hearing. But they are irrelevant to the question before us because they have never been assessed under the "clear and convincing" evidence standard.

The Chief Justice  
 Justice White  
 Justice Marshall  
 Justice Brennan  
 Justice Blackmun  
 Justice Stevens  
 Justice O'Connor  
 Justice Souter  
 Justice Ginsburg  
 Justice Breyer

# SUPREME COURT OF THE UNITED STATES

No. 81-5195

MICHAEL JONES, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA  
 COURT OF APPEALS

[June 29, 1983]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting.

The Court begins by posing the wrong question. The issue in this case is not whether petitioner must be released because he has been hospitalized for longer than the prison sentence he might have served had he been convicted, any more than the question in a motion to suppress an allegedly coerced confession at a murder trial is whether the murderer should go free.<sup>1</sup> The question before us is whether the fact that an individual has been found "not guilty by reason of insanity," by itself, provides a constitutionally adequate basis for involuntary, indefinite commitment to psychiatric hospitalization.

None of our precedents directly addresses the meaning of due process in the context of involuntary commitments of persons who have been acquitted by reason of insanity. Pe-

<sup>1</sup> If we were to determine that the standards under which petitioner was committed did not satisfy the Due Process Clause, he would be "released" only in the most formalistic sense of the word. Realistically, he would probably be recommitted, assuming that the Government could carry its burden of proof at a regular civil commitment hearing. The facts that the Court discusses *ante*, at 10-11, n. 14, would certainly be relevant at such a hearing. But they are irrelevant to the question before us because they have never been assessed under the "clear and convincing" evidence standard.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 9, 1983

Re: 81-5195 - Jones v. United States

Dear Bill,

I agree that the statutory scheme at issue here is invalid for failure to comply with Addington standards once the period has expired for which the acquittee could have been incarcerated had he been convicted. I have less doubt than you seem to have, however, about the validity of the statute prior to that time. I shall probably write separately.

Sincerely yours,



Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 7, 1983

Re: 81-5195 - Jones v. United States

Dear Bill,

Some time ago I indicated to you that I while I agreed that the statutory scheme involved here was invalid for failure to require compliance with Addington standards once the period for which Jones might have been sentenced expired, I had less doubt than you seemed to about the validity of the statute prior to that time. It seemed to me at the time that for all practical purposes you were suggesting that the government should almost immediately after acquittal shoulder the burden of satisfying the civil commitment standard if it wished to confine Jones. At the very least you seriously questioned whether the expiration of the maximum period for which Jones might have been sentenced had he not been acquitted is defensible as a time at which an enhanced burden on the government is imposed by the Constitution. I had thought otherwise and hoped that there was really no need at this time to address on the merits each and every justification offered by the government in defense of the statute.

It now seems to me that both you and Lewis are right and that I was in error: either the duty of the government to satisfy civil commitment standards arises almost immediately or it does not arise at all. The choice is between these two alternatives. If this is the case, as I now think it is, I must change my vote to affirm and join Lewis, for I do not agree with your assessment of the justifications offered by the government to defend the continued commitment of Jones without complying with the procedures for a civil commitment. Whether my present view is right or wrong, I regret not having come to rest long before now.

Sincerely,



Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 7, 1983

Re: 81-5195 - Jones v. United States

Dear Lewis,

As indicated in my letter to Bill  
Brennan, I now join your opinion.

Sincerely,



Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 12, 1983

Re: 81-5195 - Jones v. United States

---

Dear Lewis,

I agree.

Sincerely,



Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 10, 1983

Re: 81-5195-Michael Jones v. United States

Dear Bill:

Please join me.

Sincerely,

*J.M.*  
T.M.

Justice Brennan

cc: The Conference Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 27, 1983

Re: No. 81-5195-Jones v. United States

Dear Bill:

Please join me in your dissent.

Sincerely,

  
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 14, 1983

Re: No. 81-5195 - Jones v. United States

Dear Bill:

For now, I shall await further writings in this case.

Sincerely,



Justice Brennan

cc: The Conference

HAB

June 24, 1983

Re: No. 81-5195 - Jones v. United States

Dear Bill:

What you propose in your letter of June 24 is quite acceptable to me.

Sincerely,

HAB

Justice Brennan

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 24, 1983

Re: No. 81-5195 - Jones v. United States

Dear Bill:

I have no objection to John's proposal, if it is acceptable to you.

I do want to join you in dissent. I am bothered mildly, however, by the quotation from your writing in Parham v. J. R., set forth on page 15 of your opinion. I was not with you in that case, and I am not sure that I go along entirely with the fairly colorful description of life in a mental institution some years ago. Could you perhaps eliminate that direct quotation and make the point with a softened description? I am fully aware of institutional abuses, for I have witnessed many of them, but not all mental institutions are chambers of horror, and some procedures are necessary for patient control. If you could see your way to do this, I shall gladly join you in dissent.

Sincerely,



Justice Brennan

cc: Justice Marshall

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 27, 1983

Re: No. 81-5195 - Jones v. United States

Dear Bill:

Please join me in your dissent.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 9, 1983

81-5195 Jones v. United States

Dear Bill:

In due time, I will circulate a dissent in this case.

Sincerely,

A handwritten signature in cursive script that reads "Lewis". The letter "L" is large and loops around the start of the name.

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 28, 1983

81-5195 Jones v. United States

Dear Bill:

Though your changes present a substantially different analysis, I still plan to dissent.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

MAR 15 1983

Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: Justice Powell

Circulated: MAR 15 1983

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-5195

MICHAEL JONES, PETITIONER *v.* UNITED STATESON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA  
COURT OF APPEALS

[March —, 1983]

JUSTICE POWELL, dissenting.

The Court holds that petitioner, who was committed to a mental hospital upon being acquitted of a criminal offense by reason of insanity, must be released because he has been hospitalized for a period longer than he might have served in prison had he been convicted. If the Government seeks to recommit petitioner, it must comply with the civil-commitment standards set forth in *Addington v. Texas*, 441 U. S. 418 (1979). I do not think that the Constitution forbids indefinite commitment as a means of dealing with the special problems raised by the insanity defense. I therefore dissent.

## I

In the District of Columbia, an individual may be committed civilly upon clear and convincing proof by the Government that he is mentally ill and likely to injure himself or others. D.C. Code § 21-545 (1981); see *In re Nelson*, 408 A. 2d 1233 (DC 1979). He may be released upon certification of recovery by the hospital chief of service. §§ 21-546, 21-548. Alternatively, the patient is entitled after the first 90 days, and subsequently at six-month intervals, to request a judicial hearing at which he may gain his release by proving by a preponderance of the evidence that he is no longer mentally ill or dangerous. §§ 21-546, 21-547; see *Dixon v. Jacobs*, 427 F.

10. The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall ✓  
 Justice Blackmun  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

MAR 17 1983

From: Justice Powell

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

Recirculated: MAR 17 1983

pp 1, 8

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-5195

MICHAEL JONES, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA  
 COURT OF APPEALS

[March —, 1983]

JUSTICE POWELL, with whom JUSTICE REHNQUIST and  
 JUSTICE O'CONNOR join, dissenting.

The Court holds that petitioner, who was committed to a mental hospital upon being acquitted of a criminal offense by reason of insanity, must be released because he has been hospitalized for a period longer than he might have served in prison had he been convicted. If the Government seeks to recommit petitioner, it must comply with the civil-commitment standards set forth in *Addington v. Texas*, 441 U. S. 418 (1979). I do not think that the Constitution forbids indefinite commitment as a means of dealing with the special problems raised by the insanity defense. I therefore dissent.

### I

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10. The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall ✓  
 Justice Blackmun  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice Powell**

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

Recirculated: MAR 21 1983

MAR 20 1983

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-5195

MICHAEL JONES, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA  
 COURT OF APPEALS

[March —, 1983]

JUSTICE POWELL, with whom JUSTICE REHNQUIST and  
 JUSTICE O'CONNOR join, dissenting.

The Court holds that petitioner, who was committed to a mental hospital upon being acquitted of a criminal offense by reason of insanity, must be released because he has been hospitalized for a period longer than he might have served in prison had he been convicted. If the Government seeks to recommit petitioner, it must comply with the civil-commitment standards set forth in *Addington v. Texas*, 441 U. S. 418 (1979). I do not think that the Constitution forbids indefinite commitment as a means of dealing with the special problems raised by the insanity defense. I therefore dissent.

I

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April 7, 1983

PERSONAL

81-5195 Jones v. United States

Dear Chief:

Byron has "made my day" (to coin a phrase!) by his joining my dissent in this case.

This gives us a Court, as Bill Rehnquist and Sandra already have joined. You and I were together in this case, and so I am assuming that you will join.

I need your vote, however, before I can revise and circulate the dissent as a Court opinion. Cheers!

Sincerely,

The Chief Justice

lfp/ss

P.S

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

From: **Justice Powell**

MAY 10 1983

Circulated: MAY 10 1983

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-5195

MICHAEL JONES, PETITIONER v. UNITED STATES

ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA  
 COURT OF APPEALS

[May —, 1983]

*W. J. ...*  
*to*

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether petitioner, who was committed to a mental hospital upon being acquitted of a criminal offense by reason of insanity, must be released because he has been hospitalized for a period longer than he might have served in prison had he been convicted.

I

In the District of Columbia a criminal defendant may not be acquitted by reason of insanity unless his insanity is "affirmatively established by a preponderance of the evidence." D. C. Code §24-301(j) (1981).<sup>1</sup> If he successfully invokes the insanity defense, he is committed to a mental hospital.

<sup>1</sup> Section 24-301(j) provides:

"Insanity shall not be a defense in any criminal proceeding in the United States District Court for the District of Columbia or in the Superior Court of the District of Columbia, unless the accused or his attorney in such proceeding, at the time the accused enters his plea of not guilty or within fifteen days thereafter or at such later time as the court may for good cause permit, files with the court and serves upon the prosecuting attorney written notice of his intention to rely on such defense. No person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by a preponderance of the evidence."

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

JUN 23 1983

pp. 1-5, 7-10

From: Justice Powell

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

Recirculated: JUN 24 1983

2nd DRAFT /

SUPREME COURT OF THE UNITED STATES

No. 81-5195

MICHAEL JONES, PETITIONER v. UNITED STATES

ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA  
 COURT OF APPEALS

[June —, 1983]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether petitioner, who was committed to a mental hospital upon being acquitted of a criminal offense by reason of insanity, must be released because he has been hospitalized for a period longer than he might have served in prison had he been convicted.

I

In the District of Columbia a criminal defendant may ~~not~~ be acquitted by reason of insanity if his insanity is "affirmatively established by a preponderance of the evidence." D. C. Code §24-301(j) (1981).<sup>1</sup> If he successfully invokes the insanity defense, he is committed to a mental hospital. §24-301(d)(1).<sup>2</sup> The statute provides several ways of ob-

<sup>1</sup> Section 24-301(j) provides:

"Insanity shall not be a defense in any criminal proceeding in the United States District Court for the District of Columbia or in the Superior Court of the District of Columbia, unless the accused or his attorney in such proceeding, at the time the accused enters his plea of not guilty or within 15 days thereafter or at such later time as the court may for good cause permit, files with the court and serves upon the prosecuting attorney written notice of his intention to rely on such defense. No person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by a preponderance of the evidence."

<sup>2</sup> Section 24-301(d)(1) provides:

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 27, 1983

81-5195 Jones v. United States

Dear Chief:

I believe the writing in this case is complete and  
it is ready to come down.

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.

June 28, 1983

MEMORANDUM FOR THE CONFERENCE

Case Held for Jones v. United States, No. 81-5195

No. 81-1332, Roberts v. California

In 1973 petr raped a 15-year old girl and then killed her. He pleaded guilty to second-degree murder. (He apparently did not plead insanity.) At a subsequent hearing, pursuant to California law, he was adjudged to be a mentally disordered sex offender (MDSO). This means that he suffers from "a mental disease, defect or disorder, and as a result ... is predisposed to the commission of sexual offenses to such a degree that he presents a substantial danger of bodily harm to others." This also requires a finding that he "could benefit by treatment," i.e., that he is amenable to treatment. He was committed to the State Department of Health for treatment.

Under California law applicable to felonies committed before July 1, 1977, the term of his commitment was calculated on the basis of the longest term of imprisonment that could have been imposed. The statute also provides that the MDSO may be recommitted for additional two-year terms if a court again finds that he suffers from a mental disease and is predisposed to commit a dangerous sexual offense. The recommitment statute does not, however, require a new finding that the MDSO is amenable to treatment.

Petr was recommitted under this statute. He appealed, contending that his recommitment in the absence of a finding of amenability to treatment violated due process and equal protection. The California Court of Appeal rejected both arguments. The California Supreme Court denied review.

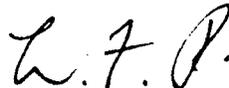
As this is a case where the defendant was convicted and then treated for psychiatric problems, it is not directly controlled by Jones. Petr does not raise any issues relating to the burden of proof or to the criteria of dangerous-

ness or mental illness. Indeed, petr does not cite any of this Court's cases in the general area of commitment of the mentally ill.

Petr's argument is limited solely to the question whether it violates due process or equal protection to recommit him without demonstrating his "amenability" to treatment. In my view, there is no merit in either argument.

The findings that he suffers from a mental disease and that he is predisposed to commit dangerous sexual offenses clearly satisfy the due process standards for commitment set forth in O'Connor v. Donaldson, 422 U.S. 563 (1975), and Addington v. Texas, 441 U.S. 428 (1979). We never have suggested that the Due Process Clause requires independent proof of "amenability to treatment." Petr's equal protection argument is essentially the same as the due process argument. Both are meritless.

My vote is to deny.

  
L.F.P., JR.

LFP/vde

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 28, 1983

MEMORANDUM TO THE CONFERENCE

Case held for Jones v. United States, No. 81-5195

No. 81-6021, Walls v. United States

This case is essentially the same as Jones. In 1974 petitioner was tried in the District of Columbia for simple assault, was found not guilty by reason of insanity, and was committed to St. Elizabeths. In 1980 he sought release on the same theory raised in Jones. The District of Columbia Court of Appeals summarily affirmed the lower court's denial of petr's application for release.

All parties agree that the issues in this case are identical to those in Jones. I therefore will vote to deny.

  
L.F.P., JR.

LFP/vde

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 28, 1983

MEMORANDUM TO THE CONFERENCE

Case Held for Jones v. United States, No. 81-5195

No. 82-722, Ledbetter v. Benham

This is a class action by respondents challenging Georgia's procedures for commitment and release of insanity acquittees. After a defendant is found not guilty by reason of insanity, the trial court inquires into his present mental state and, "upon a showing of good cause by the prosecutor," may commit him indefinitely. The committed acquittee thereafter may obtain periodic judicial hearings at which he must prove his fitness for release. The State has different procedures for civil commitment, including a requirement that the State continually "recommit" those who are civilly committed, i.e., every 12 months the State again must prove by clear and convincing evidence that the person should be committed.

In a sweeping holding, CALL invalidated most of the Georgia procedures on insanity acquittees. The following are the major holdings: (i) the continuing burden of proof on the committed insanity acquittee -- i.e., the "presumption" of continuing illness and dangerousness -- violates equal protection; (ii) an insanity acquittal is insufficient to support indefinite commitment; rather, due process and equal protection require that, after the 30-day evaluation period provided by the statute, the State must hold a commitment hearing at which it must prove by clear and convincing evidence that the acquittee is mentally ill and dangerous; (iii) equal protection requires that acquittees be entitled to petition for release as often as those who are civilly committed; (iv) the State may not give the committed insanity acquittee the burden of proving his fitness for release; rather, due process and equal protection require that at every release hearing, i.e., every 12 months, the State must prove by clear and convincing evidence that the acquittee should remain committed. In so holding, CALL expressly rejected the analysis of the District of Columbia Court of Appeals in Jones. See Pet. App. at 15a, n. 15.1; 23a, n. 22.1.

Clearly, much of CALL's decision is inconsistent with our holding in Jones that "when a criminal defendant establishes by a preponderance of the evidence that he is not guilty of a crime by reason of insanity, the Constitution permits the Government, on the basis of the insanity judgment, to confine him in a mental institution until such time as he has regained his sanity or is no longer a danger to himself or society." (p. 15.)

My vote is to GVR in light of Jones.

*L.F.P.*  
L.F.P., JR.

LFP/vde

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 16, 1983

Re: No. 81-5195 Jones v. United States

Dear Lewis:

Please join me in your dissent in this case.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

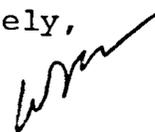
May 11, 1983

Re: No. 81-5195 Jones v. United States

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 7, 1983

Re: 81-5195 - Jones v. United States

Dear Bill:

With one minor exception, I am prepared to join all of your opinion except Part IV. It seems to me that your due process analysis is sufficient to dispose of the issue that requires decision at this time. Moreover, I am not entirely convinced that the Equal Protection Clause would require the Government to give an insanity acquitee a jury trial if the procedures necessary to prolong his commitment were otherwise in compliance with Addington.

My only other problem with your opinion is the first sentence of footnote 22 on page 12. Although it is just a flyspeck, instead of referring to the notion "that society has no interest in punishing insanity acquitees," I wonder if it might be adequate to describe the notion in words such as "that punishment of insanity acquitees is inappropriate because ...."

In all events, if you would consider omitting Part IV, I will join your opinion.

Respectfully,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 21, 1983

Re: 81-5195 - Jones v. United States

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 23, 1983

Re: 81-5195 - Jones v. United States

Dear Bill:

You have written a persuasive dissent and I would like to join it but I have one minor difference that I hope you would be willing to take into account. Toward the bottom of page 12 of your dissent you indicate that an insanity acquittal "might conceivably justify commitment for a reasonably limited period . . . ." I am persuaded that such an acquittal does in fact justify a temporary commitment; indeed I believe I would probably go along with Lewis for commitment in a case of this kind that did not exceed the maximum term of imprisonment. I wonder, therefore, if you would be willing to recast the sentence in a way that leaves the point a little more open. Perhaps you might change the sentence to read this way:

"We may assume that an insanity acquittal would justify commitment for a reasonably limited period without requiring the Government to meet its Addington burden. Indeed, for the purposes of this case, we may assume that it would justify commitment for a period equal to the maximum sentence that could have been imposed after a finding of guilt. [cites] But surely at some point the Government must be required to justify further commitment under the standards of Addington."

- 2 -

If you would rather leave your opinion in its present form, I would understand perfectly, and could write a very short paragraph making the foregoing point. If you can see your way clear to a change, however, I will join you without reservation.

Respectfully,



Justice Brennan

June 24, 1983

[1P5195i]

81-5195 - Jones v. United States

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

From: Justice Stevens

Circulated: JUN 24 '83

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

JUSTICE STEVENS, dissenting.

The character of the conduct that causes a person to be incarcerated in an institution is relevant to the length of his permissible detention. In my opinion, a plea of not guilty by reason of insanity, like a plea of guilty, may provide a sufficient basis for confinement for the period fixed by the legislature as punishment for the acknowledged conduct, provided of course that the acquittee is given a fair opportunity to prove that he has recovered from his illness. But surely if he is to be confined for a longer period, the State must shoulder the burden of proving by clear and convincing evidence that such additional confinement is appropriate. As JUSTICE BRENNAN demonstrates, that result is dictated by our prior cases. What JUSTICE POWELL has written lends support to the view that the initial confinement of the acquittee is permissible, but provides no support for the conclusion that he has the burden of proving his entitlement to freedom after he has served the maximum sentence authorized by law. I respectfully dissent because I believe this shoplifter was presumptively entitled to his freedom after he had been incarcerated for a period of one year.

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Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice O'Connor

From: Justice Stevens

Circulated: JUN 27 '83

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-5195

MICHAEL JONES, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA  
 COURT OF APPEALS

[June —, 1983]

JUSTICE STEVENS, dissenting.

The character of the conduct that causes a person to be incarcerated in an institution is relevant to the length of his permissible detention. In my opinion, a plea of not guilty by reason of insanity, like a plea of guilty, may provide a sufficient basis for confinement for the period fixed by the legislature as punishment for the acknowledged conduct, provided of course that the acquittee is given a fair opportunity to prove that he has recovered from his illness. But surely if he is to be confined for a longer period, the State must shoulder the burden of proving by clear and convincing evidence that such additional confinement is appropriate. As JUSTICE BRENNAN demonstrates, that result is dictated by our prior cases. What JUSTICE POWELL has written lends support to the view that the *initial* confinement of the acquittee is permissible, but provides no support for the conclusion that he has the burden of proving his entitlement to freedom after he has served the maximum sentence authorized by law. I respectfully dissent because I believe this shoplifter was presumptively entitled to his freedom after he had been incarcerated for a period of one year.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

February 8, 1983

No. 81-5195 Jones v. United States

Dear Bill,

I will await further writing on this.

Sincerely,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 16, 1983

No. 81-5195 Jones v. United States

Dear Lewis,

Please join me in your dissent.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 10, 1983

No. 81-5195 Jones v. United States

Dear Lewis,

Please join me.

Sincerely,

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

Justice Powell

Copies to the Conference