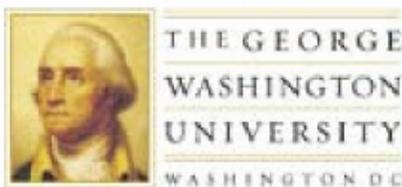


# The Burger Court Opinion Writing Database

## *Russello v. United States*

464 U.S. 16 (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

RECEIVED  
SUPREME COURT U.S.  
JUSTICE MARSHALL

October 27, 1983

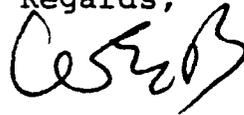
'83 OCT 28 A9:41

Re: No. 82-472 Russello, Joseph v. United States

Dear Harry:

I join.

Regards,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 27, 1983

No. 82-472

Russello v. United States

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Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 26, 1983

Re: 82-472 - Russello v. United States

---

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 24, 1983

Re: No. 82-472 - Russello v. United States

Dear Harry:

Please join me.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

From: **Justice Blackmun**

Circulated: OCT 24 1983

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*Handwritten:* A/E  
B...

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-472

**JOSEPH C. RUSSELLLO, PETITIONER v.  
UNITED STATES**

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

[October —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

This is yet another case concerning the Racketeer Influenced and Corrupt Organizations (RICO) chapter of the Organized Crime Control Act of 1970. Pub. L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U. S. C. §§ 1961-1968. At issue here is the interpretation of the chapter's forfeiture provision, § 1963(a)(1), and, specifically, the meaning of the words "any interest [the defendant] has acquired . . . in violation of section 1962."

I

On June 8, 1977, petitioner Joseph C. Russello and others were indicted for racketeering, conspiracy, and mail fraud, in violation of 18 U. S. C. §§ 1341, 1962(c) and (d), and 2. App. 5. After a jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted as charged in four counts of the indictment. The jury then returned special verdicts for the forfeiture to the United States, under 18 U. S. C. § 1963(a), of four payments, aggregating \$340,048.09, made to petitioner by a fire insurance company. App. 54-57. These verdicts related to the racketeering activities charged in the second count of the indictment under which petitioner had been convicted. The District Court, accordingly, entered a judgment of forfeiture against petitioner in that amount. *Id.*, at 58.

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STYLISTIC CHANGES

RECEIVED  
SUPREME COURT U.S.  
JUSTICE

'83 OCT 28 A9:39

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

From: Justice Blackmun

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

Recirculated: OCT 28 1983

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-472

JOSEPH C. RUSSELLO, PETITIONER *v.*  
UNITED STATES

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

[October —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

This is yet another case concerning the Racketeer Influenced and Corrupt Organizations (RICO) chapter of the Organized Crime Control Act of 1970. Pub. L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U. S. C. §§ 1961-1968. At issue here is the interpretation of the chapter's forfeiture provision, § 1963(a)(1), and, specifically, the meaning of the words "any interest [the defendant] has acquired . . . in violation of section 1962."

### I

On June 8, 1977, petitioner Joseph C. Russello and others were indicted for racketeering, conspiracy, and mail fraud, in violation of 18 U. S. C. §§ 1341, 1962(c) and (d), and 2. App. 5. After a jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted as charged in four counts of the indictment. The jury then returned special verdicts for the forfeiture to the United States, under 18 U. S. C. § 1963(a), of four payments, aggregating \$340,048.09, made to petitioner by a fire insurance company. App. 54-57. These verdicts related to the racketeering activities charged in the second count of the indictment under which petitioner had been convicted. The District Court, accordingly, entered a judgment of forfeiture against petitioner in that amount. *Id.*, at 58.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 28, 1983

MEMORANDUM TO THE CONFERENCE

There are two holds for No. 82-472, Russello v. United States. They are:

1. No. 82-538, Godoy v. United States. This case comes from the Ninth Circuit. Petitioner was indicted on RICO and drug charges. He was convicted by a jury. The jury also returned a special verdict forfeiting six parcels of real estate petitioner had acquired from income derived from racketeering. The District Court entered judgment of forfeiture with respect to four of the six parcels and did so on the ground that petitioner's family needed some source of support. Both sides appealed.

The CA9 held that the ownership of the real estate was "an interest in an enterprise" and that the parcels were subject to forfeiture. It distinguished its own Marubeni case where that court had held that uninvested gains related to racketeering were not subject to forfeiture. It ruled for the Government on its appeal, holding that the forfeitures were mandatory and not discretionary. One judge dissented on the ground that ownership of commercial real estate was not an "enterprise" and that the property therefore was not forfeitable.

Petitioner concedes here that real estate on which a pharmacy and a supermarket were located was forfeitable, but asserts that his passive ownership of the other real estate was not. It seems clear to me that, although there are some factual differences, the outcome in this case in the CA9 is consistent with Russello. I think we held it as a matter of caution.

There is a second issue concerning the validity of the indictment. Petitioner asserts that the indictment is invalid because only 10 of the grand jurors attended all the grand jury sessions. I do not regard this issue as certworthy in the absence of conflict.

I shall vote to deny certiorari.

2. No. 82-1069, Peacock v. United States. This is almost a carbon copy of Russello. The case comes here from the former

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 26, 1983

82-472 Russello v. United States

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 25, 1983

Re: No. 82-472 Russello v. United States

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 25, 1983

Re: 82-472 - Russello v. United States

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

Copies to the Conference



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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

October 25, 1983

No. 82-472 Russello v. United States

Dear Harry,

Please join me.

Sincerely,

Justice Blackmun

Copies to the Conference