

# The Burger Court Opinion Writing Database

## *Kosak v. United States*

465 U.S. 848 (1984)

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

January 31, 1984

Re: 82-618 - Kosak v. United States

Dear Thurgood:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'W. Marshall', written in a cursive style.

Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

February 28, 1984

RE: 82-618 - Kosak v. United States

Justice Marshall has requested that the above-mentioned case not be announced tomorrow.

Regards,



Copies to the Conference

xc: Henry Lind  
Roland Goldstraw  
Al Stevas

5  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 25, 1984

No. 82-618

Kosak v. United States

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Dear Thurgood,

I agree.

Sincerely,

*Bul*

Justice Marshall

Copies to the Conference

(M)

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 25, 1984

Re: 82-716 - Kosak v. United States

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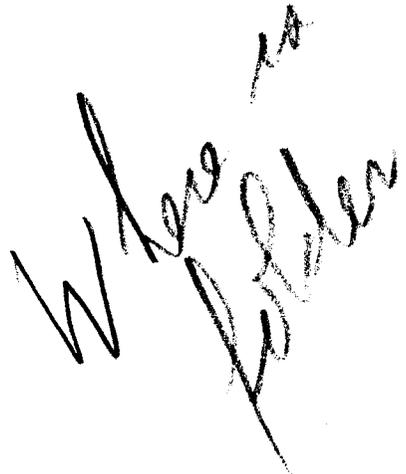
Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall  
Copies to the Conference  
cpm



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

From: **Justice Marshall**

Circulated: **JAN 24 1984**

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-618

JOSEPH A. KOSAK, PETITIONER *v.* UNITED STATES

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

[January —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether 28 U. S. C. § 2680(c), which exempts from the coverage of the Federal Tort Claims Act “[a]ny claim arising in respect of . . . the detention of any goods or merchandise by any officer of customs,” precludes recovery against the United States for injury to private property sustained during a temporary detention of the property by the Customs Service.

### I

While a serviceman stationed in Guam, petitioner assembled a large collection of oriental art. When he was transferred from Guam to Philadelphia, petitioner brought his art collection with him. In his customs declaration,<sup>1</sup> petitioner stated that he intended to keep the contents of the collection for himself. Subsequently, acting upon information that, contrary to his representations, petitioner planned to resell portions of his collection, agents of the United States Customs Service obtained a valid warrant to search petitioner’s house. In executing that warrant, the agents seized various antiques and other objects of art.

Petr was charged with smuggling his art collection into the country, in violation of 18 U. S. C. § 545. After a jury trial,

<sup>1</sup> Because Guam is outside the customs territory of the United States, all goods imported therefrom are subject to duties. 19 U. S. C. § 1202.

STYLISTIC CHANGES THROUGHOUT.

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

From: **Justice Marshall**

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

Recirculated: **FEB 3 - 1984**

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-618

JOSEPH A. KOSAK, PETITIONER *v.* UNITED STATES

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

[January —, 1984]

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Petr was charged with smuggling his art collection into the country, in violation of 18 U. S. C. § 545. After a jury trial,

<sup>1</sup> Because Guam is outside the customs territory of the United States, all goods imported therefrom are subject to duties. 19 U. S. C. § 1202.

PP. 9, 10, 13, 14

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

From: **Justice Marshall**

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

Recirculated: **FEB 28 1984**

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-618

JOSEPH A. KOSAK, PETITIONER *v.* UNITED STATES  
 ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE THIRD CIRCUIT

[January —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether 28 U. S. C. § 2680(c), which exempts from the coverage of the Federal Tort Claims Act “[a]ny claim arising in respect of . . . the detention of any goods or merchandise by any officer of customs,” precludes recovery against the United States for injury to private property sustained during a temporary detention of the property by the Customs Service.

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Petitioner was charged with smuggling his art collection into the country, in violation of 18 U. S. C. § 545. After a

<sup>1</sup> Because Guam is outside the customs territory of the United States, all goods imported therefrom are subject to duties. 19 U. S. C. § 1202.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 28, 1984

Re: No. 82-618-Kosak v. United States

Dear Chief:

The above case is not ready and I request that  
it not come down tomorrow.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 30, 1984

Re: No. 82-618 - Kosak v. United States

Dear Thurgood:

Please join me.

Sincerely,

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

Justice Marshall

cc: The Conference



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 25, 1984

82-618 Kosak v. United States

Dear Thurgood:

Please join me.

Sincerely,

*Lewis*

Justice Marshall

lfp/ss

cc: The Conference

(X)

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 25, 1984

Re: No. 82-618 Kosak v. United States

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 24, 1984

Re: 82-618 - Kosak v. United States

Dear Thurgood:

As soon as I can get to it, I will circulate a  
brief dissent.

Respectfully,



Justice Marshall

Copies to the Conference

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

From: **Justice Stevens**

Circulated: FEB 23 1984

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-618

JOSEPH A. KOSAK, PETITIONER *v.* UNITED STATES

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

[February —, 1984]

JUSTICE STEVENS, dissenting.

The Government's construction of 28 U. S. C. § 2680(c) is not the one that "first springs" to my mind. *Ante*, at 6. Rather, I read the exception for claims arising "in respect of . . . the detention of goods" as expressing Congress's intent to preclude liability attributable to the temporary interference with the owner's possession of his goods, as opposed to liability for physical damage to his goods. That seems to me to be the normal reading of the statutory language that Congress employed, and the one that most Members of Congress voting on the proposal would have given it. Moreover, my reading, unlike the Court's,<sup>1</sup> is supported by an examination of the language used in other exceptions. Congress did not use the words "arising out of" in § 2680(c) but did use those words in three other subsections of the same section of the Act. See § 2680(b), (e) and (h). Absent persuasive evidence to the contrary, we should assume that when Congress uses different language in a series of similar provisions, it intends to express a different intention.

The language of the statute itself is thus clear enough to persuade me that Congress did not intend to exempt this

<sup>1</sup>The majority maintains that "any claim 'arising in respect of' the detention of goods means any claim 'arising out of' the detention of goods, and includes a claim resulting from negligent handling or storage of detained property." *Ante*, at 6.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 24, 1984

No. 82-618 Kosak v. United States

Dear Thurgood,

Please join me in your opinion.

Sincerely,

*Sandra*

Justice Marshall

Copies to the Conference

P.S. Although I do not disagree with the content of footnotes 20 and 21, I would prefer not to include them if you decide they are unnecessary.