

The Burger Court Opinion Writing Database

United States v. Yermian

468 U.S. 63 (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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
THE CHIEF JUSTICE

May 22, 1984

84 MAY 23 1984

Re: 83-346 - United States v. Esmail Yermian

Dear Lewis:

I join.

Regards,

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 2, 1984

No. 83-346

United States v. Yermian

Dear Bill,

John, Sandra, you and I are in
dissent in the above. Would you be
willing to undertake the dissent?

Sincerely,



Justice Rehnquist

Copies to: Justice Stevens
Justice O'Connor

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 21, 1984

No. 83-346

United States v. Yermian

Dear Lewis,

I will await the dissent.

Sincerely,



Justice Powell

Copies to the Conference

RECEIVED
MAY 21 1984

88 MAY 21 6:55 AM

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 15, 1984

No. 83-346

United States v. Yermian

Dear Bill,

Please join me.

Sincerely,

Bill

Justice Rehnquist

Copies to the Conference



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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 21, 1984

Re: 83-346 - United States v. Yermian

Dear Lewis,

Please join me.

Sincerely yours,

Justice Powell

Copies to the Conference

cpm

20:1A 15 7PM AB

20:1A 15 7PM AB



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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 21, 1984

Re: No. 83-346-U.S. v. Yermian

Dear Lewis:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to be "T.M.", with a small dot below it.

T.M.

Justice Powell

cc: The Conference

Supreme Court of the United States

Washington, D. C.

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1984

84 JUN 18 P2 51

Re: No. 83-346, United States v. Yermian

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

05/17

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

LFP
Please give me
7/4

From: **Justice Powell**

MAY 18 1984

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-346

UNITED STATES, PETITIONER *v.* ESMAIL YERMIAN

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

[May —, 1984]

JUSTICE POWELL delivered the opinion of the Court

It is a federal crime under 18 U. S. C. § 1001 to make any false or fraudulent statement in any matter within the jurisdiction of a federal agency.¹ To establish a violation of § 1001, the Government must prove beyond a reasonable doubt that the statement was made with knowledge of its falsity. This case presents the question whether the Government also must prove that the false statement was made with actual knowledge of federal agency jurisdiction.

Wait for
Justice
Join

I

Respondent Esmail Yermian was convicted in the District Court of Central California on three counts of making false statements in a matter within the jurisdiction of a federal agency, in violation of § 1001. The convictions were based on false statements respondent supplied his employer in connection with a Department of Defense security questionnaire. Respondent was hired in 1979 by Gulton Industries, a de-

¹That section provides in full:

“Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.”

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 15, 1984

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SUPREME COURT, U.S.
JUSTICE MARSHALL

74 JUN 15 10:55

MEMORANDUM TO THE CONFERENCE

83-346 United States v. Yermian

As I am truly "right-footed", not "left-footed" as Bill Rehnquist suggests in his dissent, I am compelled to make a considerable response.

It should be available by Monday if the print shop can manage it.

LFP, JR.

L. F. P.

LFP/vde

06/18

Changes at 5-6, 10, 11-12.

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

From: Justice Powell

Circulated: _____

Recirculated: JUN 18 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-346

UNITED STATES, PETITIONER *v.* ESMAIL YERMIAN
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1984]

JUSTICE POWELL delivered the opinion of the Court

It is a federal crime under 18 U. S. C. § 1001 to make any false or fraudulent statement in any matter within the jurisdiction of a federal agency.¹ To establish a violation of § 1001, the Government must prove beyond a reasonable doubt that the statement was made with knowledge of its falsity. This case presents the question whether the Government also must prove that the false statement was made with actual knowledge of federal agency jurisdiction.

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Respondent Esmail Yermian was convicted in the District Court of Central California on three counts of making false statements in a matter within the jurisdiction of a federal agency, in violation of § 1001. The convictions were based on false statements respondent supplied his employer in connection with a Department of Defense security questionnaire. Respondent was hired in 1979 by Gulton Industries, a de-

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P.S ✓
RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 25 A9 55

3rd

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

From: Justice Powell

Circulated:

Circulated: JUN 22 1984

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.

SUPREME COURT OF THE UNITED STATES

No. 83-346

UNITED STATES, PETITIONER *v.* ESMAIL YERMIAN

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

[June 26, 1984]

JUSTICE POWELL delivered the opinion of the Court, in which THE CHIEF JUSTICE, JUSTICE WHITE, JUSTICE MARSHALL, and JUSTICE BLACKMUN joined.

It is a federal crime under 18 U. S. C. § 1001 to make any false or fraudulent statement in any matter within the jurisdiction of a federal agency.¹ To establish a violation of § 1001, the Government must prove beyond a reasonable doubt that the statement was made with knowledge of its falsity. This case presents the question whether the Government also must prove that the false statement was made with actual knowledge of federal agency jurisdiction.

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June 25, 1984

83-346 U.S. v. Yermian

Dear Bill:

In view of your note just received, I write in the hope we may resolve your concern promptly.

Cammie Robinson and Kerri Martin, our respective clerks, have talked about what I understand concerns you.

If the problem centers on the reference on p. 5 to the jurisdictional phase of §1001, would it help if I substituted for the second sentence following the quotation the following language:

"Its primary purpose is to identify the factor that makes the false statement an appropriate subject for federal concern. Jurisdictional language need not contain the same culpability requirement as other elements of the offense. Indeed, . . .

After all, this case is hardly one of vast importance, but as long as you wish to write, I will be here.

Sincerely,

Justice Rehnquist

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 25, 1984

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 25 P3:21

83-346 United States v. Yerman

Dear Chief:

As Bill Rehnquist is making some changes, please carry this case over until Wednesday of this week. I expect to be able to bring it down on that day.

Sincerely,



The Chief Justice

Copies to the Conference

LFP/vde

cc - Roland Goldstraw

P.P. 5 + 12

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

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

'84 JUN 27 A9:48

4th

From: Justice Powell

Circulated: _____

Recirculated: JUN 26 1984

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.

SUPREME COURT OF THE UNITED STATES

No. 83-346

UNITED STATES, PETITIONER *v.* ESMAIL YERMIAN
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June 27, 1984]

JUSTICE POWELL delivered the opinion of the Court.

It is a federal crime under 18 U. S. C. § 1001 to make any false or fraudulent statement in any matter within the jurisdiction of a federal agency.¹ To establish a violation of § 1001, the Government must prove beyond a reasonable doubt that the statement was made with knowledge of its falsity. This case presents the question whether the Government also must prove that the false statement was made with actual knowledge of federal agency jurisdiction.

I

Respondent Esmail Yermian was convicted in the District Court of Central California on three counts of making false statements in a matter within the jurisdiction of a federal agency, in violation of § 1001. The convictions were based on false statements respondent supplied his employer in connection with a Department of Defense security questionnaire. Respondent was hired in 1979 by Gulton Industries, a de-

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"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

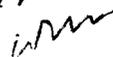
April 2, 1984

Re: No. 83-346 United States v. Yermian

Dear Bill:

I will be happy to undertake the dissent in this case.

Sincerely,



Justice Brennan

cc: Justice Stevens
Justice O'Connor

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

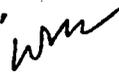
May 21, 1984

Re: No. 83-346 United States v. Yermian

Dear Lewis:

In due course I will circulate a dissent in this case.

Sincerely,



Justice Powell

cc: The Conference

RE MA 15 YRM 15

15 YRM 15

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 14 A9:41

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

From: Justice Rehnquist

Circulated: JUN 13 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-346

UNITED STATES, PETITIONER *v.* ESMAIL YERMIAN

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

[June —, 1984]

JUSTICE REHNQUIST, dissenting.

It is common ground that in a prosecution for the making of false statements the government must prove that the defendant actually knew that the statements were false at the time he made them. See *Bryson v. United States*, 396 U. S. 64, 68-70 (1969). The question presented here is whether the government must also prove that the defendant actually knew that his statements were made in a matter within "the jurisdiction of any department or agency of the United States." The Court concludes that the plain language and the legislative history of 18 U. S. C. § 1001 conclusively establish that the statute is intended to reach false statements made without actual knowledge of federal involvement in the subject matter of the false statements. I do not agree. The Court nonetheless proceeds on the assumption that *some* lesser culpability standard is required in § 1001 prosecutions, but declines to decide what that lesser standard is. Even if I agreed with the Court that actual knowledge of federal involvement is not required here, I could not agree with the Court's disposition of this case because it reverses the Court of Appeals without determining for itself or remanding for a determination as to whether the jury instructions in respondent's case were proper. I think that our certiorari jurisdiction is best exercised to resolve conflicts in statutory construction, and not simply to decide whether a jury in a particular case was correctly charged as to the elements of

P-14
STYLISTIC CHANGES THROUGHOUT

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

From: Justice Rehnquist

Circulated: _____

Recirculated: _____

JUN 16 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-346

UNITED STATES, PETITIONER *v.* ESMAIL YERMIAN

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

[June —, 1984]

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

It is common ground that in a prosecution for the making of false statements the government must prove that the defendant actually knew that the statements were false at the time he made them. See *Bryson v. United States*, 396 U. S. 64, 68-70 (1969). The question presented here is whether the government must also prove that the defendant actually knew that his statements were made in a matter within "the jurisdiction of any department or agency of the United States." The Court concludes that the plain language and the legislative history of 18 U. S. C. §1001 conclusively establish that the statute is intended to reach false statements made without actual knowledge of federal involvement in the subject matter of the false statements. I do not agree.

The Court nonetheless proceeds on the assumption that some lesser culpability standard is required in § 1001 prosecutions, but declines to decide what that lesser standard is. Even if I agreed with the Court that actual knowledge of federal involvement is not required here, I could not agree with the Court's disposition of this case because it reverses the Court of Appeals without determining for itself, or remanding for the lower court to determine, whether the jury instructions in respondent's case were proper. I think that our certiorari jurisdiction is best exercised to resolve conflicts in statutory construction, and not simply to decide

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changes
1-4, 7-8

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 22 P1:14

From: Justice Rehnquist

Circulated: _____

Recirculated: JUN 22 1984

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-346

UNITED STATES, PETITIONER *v.* ESMAIL YERMIAN
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1984]

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

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I think that in this case, "[a]fter 'seiz[ing] every thing from which aid can be derived,' *United States v. Fisher*, 2 Cranch 358, 386 (1805) (Marshall, C. J.), we are left with an ambiguous statute." *United States v. Bass*, 404 U. S. 336, 347 (1971). Notwithstanding the majority's repeated, but sparsely supported, assertions that the evidence of Congress' intent not to require actual knowledge is "convincing," and "unambiguous," *ante*, at 6 and n. 7, 10, I believe that the language and legislative history of § 1001 can provide "no more than a guess as to what Congress intended." *Ladner v. United States*, 358 U. S. 169, 178 (1958). I therefore think

omission

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 25 11:58

June 25, 1984

Re: No. 83-346 United States v. Yermian

Dear Lewis:

I feel obligated to respond to one of the changes you made in the Court's opinion last Friday; I will do so as soon as possible, but it may be that the case will not be ready to come down Tuesday.

Sincerely,



Justice Powell

cc: The Conference

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

Substantially like the
2nd draft

84 JUN 26 12:43

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

From: Justice Rehnquist

Circulated: _____

Recirculated: 0/26/84

SUPREME COURT OF THE UNITED STATES

No. 83-346

UNITED STATES, PETITIONER *v.* ESMAIL YERMIAN

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

[June 27, 1984]

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

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

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SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY 22 10:00

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 22, 1984

Re: 83-346 - United States v. Yermian

Dear Lewis:

I shall await the dissenting opinion.

Respectfully,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 14 10:22

June 14, 1984

Re: 83-346 - United States v. Yermian

Dear Bill:

Please join me in your dissent.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 21, 1984

No. 83-346 United States v. Yermian

Dear Lewis,

I will wait for the additional writing in
this case.

Sincerely,



Justice Powell

Copies to the Conference

REC'D IN
15 YIM
MS

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 14, 1984

No. 83-346 United States v. Yermian

Dear Bill,

Please join me in your dissenting opinion.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference

84 JUN 24 8 31 AM