




10-1978

Califano v. Yamasaki (Elliott)

Lewis F. Powell Jr.

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Grant, (G)
Richman

Summer List 15, Sheet 6

No. 77-1511

CALIFANO, Sec'y of HEW

Motion for Resps for Leave
to proceed IFP

v.

ELLIOTT

The cert petn appears at page 14 (Summer List 5, Sheet 1). Resps seek to proceed ifp in this case involving the legality of the pre-hearing reduction or suspension of social security benefits to recoup allegedly erroneous overpayments.

Resps are represented by two legal aid societies; they were granted ifp status in CA 9 and when they were before the Court in 1975 (425 US 987). Attached to the motion are the affidavits of three of the named representatives of the class, who state that they cannot afford to pay costs of this litigation.

It would appear that this motion should be granted.

8/21/78

Richman

BE

I recommend granting the motion. Brown

PRELIMINARY MEMO

Summer List 5, Sheet 1

No. 77-1511

Cert to CA9

(Browning, Trask, Williams [DJ])

CALIFANO

v.

ELLIOTT

Fed/Civil

Timely w/ext.

1. SUMMARY: The S.G. challenges the determination of the CA7 that the due process clause requires that a Social Security beneficiary be given an oral hearing before payments are reduced in order to recoup an erroneous overpayment.

2. FACTS: Section 204(a)(1) of the Social Security Act provides that in the event of an erroneous overpayment, "proper adjustment or recovery shall be made, under regulations promulgated by the Secretary." Section 204(b) provides that no adjustment shall

CFR. The CA seems to have placed a great deal of faith - perhaps unjustified - in trial-type procedures here. Got RESPONSE - comments on back

be made with regard to any beneficiary who is without fault for the overpayment or if recovery would defeat the purposes of the Act or would be against equity or good conscience. Under the procedures established by the Sec, if an overpayment is found, the recipient is notified and given an opportunity to contest the determination in writing and also to request that recovery be waived under §204(b). The recipient can discuss his case with the local Social Security Office and adjustment or recovery is deferred pending review of the initial determination with one minor exception not relevant here. After this preliminary review, if the Sec. remains convinced that an overpayment did take place, then the beneficiary's monthly payments are adjusted to allow for recovery. The recipient still has open the option of requesting further administrative review including a full evidentiary hearing. A favorable determination at this stage will result in a return of the recovered payments -- but recovery proceeds apace during administrative review.

Several suits challenging this procedure were filed in DCs in Washington and Hawaii and were consolidated by the CA9. That court held in its first consideration of the issue, that the procedures followed by the Sec. violated the due process clause and that beneficiaries were entitled to an oral hearing prior to reduction of benefits at least in those cases where the Sec's determination might turn on questions of credibility. (The DC's had concluded that they had subject matter jurisdiction under 28 U.S.C. §1361 (mandamus) and that certification of the class as a nationwide class was appropriate. The CA also agreed with this analysis.) After the CA's decision, this Court decided Mathews v. Eldridge, 424 U.S. 319 -- holding that the due process clause does not require

a hearing prior to the termination of disability benefits. The S.G. then filed a petn for cert in the instant cases, No. 75-1234, and this Court granted the petn, and vacated the judgment for further consideration in light of Eldridge. (Mathews v. Mattern, No. 75-649, was also GUR'ed in light of Eldridge. CA3 then remanded the case to the DC which granted summary judgment for the secretary. The case is now pending on appeal in CA 3).

On remand, the CA essentially adhered to its original position, with slight modifications. After first concluding that jurisdiction under the mandamus statute was appropriate and that class action certification was proper even in the absence of notice to all members of the nationwide class, the CA turned to the question of how Eldridge affected its earlier decision. The CA had no trouble with the preliminary question that recipients' interest in their monthly benefits amounted to a property interest protectible under the Due Process Clause. The next question was what process was due in the event of a recoupment. The CA applied Eldridge's three prong test -- consideration of the private interest affected, the risk of an erroneous determination, and the governments interest in avoiding unnecessary procedural burdens. Looking first at the private interest involved, the CA concluded that standing alone it was not sufficient to require an oral pre-recoupment hearing. Unlike the situation in Goldberg v. Kelly, the receipt of Social Security benefits is not a last resort for the beneficiaries and is only partially need-based. Further, recoupment does not result in elimination of benefits, but only a partial, temporary reduction.

Turning next to the risk of an erroneous determination, the CA held that in reconsideration cases -- where the question is simply whether an overpayment occurred -- written submissions are most likely sufficient to reach an accurate determination. Thus, unless a question of credibility is involved, oral hearings in such circumstances probably are not necessary. In the waiver situation, that is, where the Sec is being asked to forego recoupment for

BUT... reasons of no fault or equity, the CA concluded that questions of credibility are invariably involved and thus written submissions would not be sufficient. With regard to the government's interest, the CA felt that the requirement of a pre-recoupment hearing in certain circumstances would not materially increase the number of frivolous claims -- and further, unlike the situation in Eldridge, here the recipients are entitled to some benefits and the burden of continuing them pending final administrative determination did not seem to the CA to impose a great risk of loss or forfeiture on the government.

This seems wrong.

Finally, the CA addressed the question of the proper ingredients of the pre-recoupment hearing. It determined that the hearing need not take the form of a quasi-judicial trial -- instead the beneficiary should be entitled to present his case orally with evidence and witnesses, to cross examine, to be represented by counsel, to have an impartial hearing officer, to receive a written decision and finally to receive adequate notice. Such notice should include a statement of the alleged overpayment and the reason therefor, recipient's right to request reconsideration or waiver or both, a statement of the time limits on the exercise of the rights, notice of the right to a recoupment hearing, indication that recoupment will

take place unless reconsideration or waiver is requested, indication that the Administrator will send the appropriate forms upon request, and finally a statement of any other relief available.

3. CONTENTIONS: The S.G.'s primary argument is that the existing procedures are more than adequate to comply with the requirements of due process and that the procedures imposed by the CA are thus unnecessary and burdensome. First, he argues that the private interest in the uninterrupted receipt of benefits pending final administrative review is less substantial than in Eldridge which involved the termination of all disability benefits. Further under existing regulations, recipients can request extensions of the recoupment period to diminish the amount by which monthly payments are reduced. Rarely, if ever, are monthly payments totally terminated to affect recoupment -- and even in such limited cases, recipients are likely eligible for Supplemental Security Income. With regard to the risk of error under the present procedures, the S.G. argues that the recoupment hearing prior to reduction of benefits would lead to a different result (favoring the recipient) in less than 1% of the cases -- thus indicating that the problem of erroneous determinations is not a substantial one, and compares favorably with that in Eldridge. Finally, true to form, the S.G. argues that the new procedures would impose a significant burden on the government, both in terms of the cost and in terms of delay.

The S.G. also appears to disagree with the CA that jurisdiction was available under the Mandamus statute -- but agrees that under §205(g) of the Social Security Act jurisdiction would exist since the named respondents all filed claims with the Sec and further exhaustion is not required when a colorable constitutional claim

is raised. However, the S.G. claims that the CA was not entitled to award relief to other than the named respondents for three reasons: (a) it is improper to grant relief to persons not before the Court (this question is apparently presented in Califano v. Aznavorian, No. 77-991, prob. juris noted), each member of the class has not satisfied the jurisdictional requirements of §205(g), and (c) that certification of a nationwide class is improper -- primarily because it precludes any other court from addressing the issue (this question was apparently raised but not decided in Califano v. Mandley, No. 76-1416). Thus, the S.G. urges the Court to take this case to resolve the multiple issues presented.

4. DISCUSSION: I think the S.G.'s arguments are substantial and that this case is a possible grant. A response should be requested before a final determination is made. *yes*

There is no response.

6/27/78
BE

Rosenfeld

Ops in petn

Dismiss
CFR from SG

Manuel

January 19, 1979 Conference
List 3, Sheet 2

No. 77-1511

Motion of Respondents
to Dismiss or Remand

CALIFANO (Sec. HEW)

v.

ELLIOTT

SUMMARY: Resps request the Court to dismiss this case or remand it to the DC because new information presented by the Sec. in his opening brief has so drastically changed the nature of this case that the Sec. is abandoning review by this Court of the current procedures which were scrutinized by all the lower courts.

FACTS: CA 7 (Browning, Trask, Williams) held that due process requires a Social Security beneficiary be given an oral hearing before payments are reduced in order to recoup an erroneous overpayment.

CONTENTIONS: All the courts below considered the Sec.'s ^{then-}current procedures for dealing with recoupment of overpayments. However, resps claim that the new procedures relied on in the Sec.'s opening brief have never been reviewed by any court below and may significantly

Please see p. 7

affect the case. In addition, new facts and statistics appear in the SG's brief that were never presented below. Resps need to probe these facts and that has to be done in the courts below.

DISCUSSION: This case will probably appear on the March calendar. Resps' claims are probably overstated, and this Court could presumably hear the case and decide it, dealing with resps' contentions at oral argument. However, out of an abundance of caution, the Court might wish to ask the SG for a response.

1/17/79

Marsel

PJC

Better safe than sorry, I suppose. Why not ask the SG to respond?

E.a.

CALIFANO

vs.

ELLIOTT

Motion of resps to dismiss or remand.

of resps to dismiss or remand.

We have
granted cert.
~~that~~ on mandate list

[illegible]

Defer to Justice Blackmun
(probable grant)
Marsel

May 17, 1979 Conference
List 3, Sheet 3

No. 77-1511

CALIFANO

v.

ELLIOTT

Motion of Resps for Leave to
Substitute Nancy Yamasaki in
Place of Evelyn Elliott, Deceased,
as a Party Respondent

Resps' counsel move under Rule 48 for an order substituting resp Yamasaki as the named respondent, because resp Elliott died in 1973.

Resp Yamasaki is a proper substitute because she is one of the original named plaintiffs in this class action (App. 40).

DISCUSSION: I am advised that the usual practice is to defer to the author of the opinion. Resp Elliott died about six years ago. Rule 48 (which does not appear to have contemplated this sort of case) requires substitution within six months of the death of the party. However, the motion could presumably be granted either under Rule 48 (in spite of the violation) or under Rule 35 (which deals with motions).

I would grant if Justice Blackmun
agrees.
Paul

Alternatively, because a change in name at this time would cause confusion, the Court might wish to have its opinion retain the name under which the case was briefed and argued. This alternative would be possible if resp Elliott's death does not alter the disposition of the case.

5/15/79

Marsel

PJC

CALIFANO

vs.

ELLIOTT

Motion for leave to substitute Nancy Yamaski in place of Evelyn Elliott, deceased, as a party respondent.

[illegible]

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1979



Re: No. 77-1511 - Califano v. Yamasaki

Dear Harry,

I agree.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 6, 1979

Re: 77-1511 - Califano v. Yamasaki

Dear Harry:

Please join me.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 8, 1979

✓

RE: No. 77-1511 Califano v. Yamasaki

Dear Harry:

I agree.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

✓

June 12, 1979

Dear Harry:

Re: 77-1511 Califano v. Yamasaki

I join.

Regards,
WRB

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 12, 1979

Re: No. 77-1511, Califano v. Yamasaki

Dear Harry,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.
✓

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL



June 12, 1979

Re: No. 77-1511 - Califano v. Yamasaki

Dear Harry:

Please join me.

Sincerely,

T.M.
T.M.


Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 12, 1979

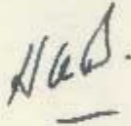


Re: No. 77-1511 - Califano v. Yamasaki

Dear Lewis:

I have slipped a stitch in failing to note at the end of my opinion that you took no part in the consideration or decision of this case. Such a note will be appended in the final draft.

Sincerely,



Mr. Justice Powell

cc: The Conference

