

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 81-1476
TITLE UNITED STATES,
Petitioner
v.
LUCILLE MITZI BOSCO RODGERS ET AL.
PLACE Washington, D. C.
DATE December 6, 1982
PAGES 1 thru 51



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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 UNITED STATES, :

4 Petitioner :

5 v. : No. 81-1476

6 LUCILLE MITZI BOSCO RODGERS ET AL. :

7 - - - - -x

8 Washington, D.C.

9 Monday, December 6, 1982

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States
12 at 11:05 o'clock a.m.

13 APPEARANCES:

14 GEORGE W. JONES, ESQ., Office of the Solicitor General,
15 Department of Justice, Washington, D.C.; on behalf of
16 the Petitioner.

17 WILLIAM D. ELLIOTT, ESQ., Dallas, Texas; on behalf of
18 Respondents Rodgers, et al.

19 L. LYNN ELLIOTT, ESQ., Dallas, Texas; on behalf of
20 Respondents Ingram and Bates.

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C O N T E N T S

ORAL ARGUMENT OF

PAGE

GEORGE W. JONES, ESQ.,

on behalf of Petitioner

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WILLIAM D. ELLIOTT, ESQ.,

on behalf of Respondents Rodgers et al

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L. LYNN ELLIOTT, ESQ.,

on behalf of Respondents Ingram

and Bates

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in United States against Rodgers.

Mr. Jones -- Do we have someone missing here?

MR. JONES: No.

CHIEF JUSTICE BURGER: Mr. Jones, I think you may proceed whenever you are ready.

ORAL ARGUMENT OF GEORGE W. JONES, ESQ.,

ON BEHALF OF PETITIONERS

MR. JONES: Mr. Chief Justice, and may it please the Court, broadly stated, the controlling issue in these cases is whether the homestead rights of a delinquent taxpayer's spouse preclude enforcement of a federal tax lien against the delinquent taxpayer's interest in the homestead property.

The Internal Revenue Service made substantial tax adjustments -- tax assessments against Respondent Rodgers' husband as well as the husband of Respondent Ingram. This litigation arises from the government's efforts to collect those taxes.

The pertinent facts are undisputed. Respondent Rodgers and her former husband, Philip Bosco, were married in 1937. In 1955, they purchased the real property involved in this case. The property was community property, and Respondent and her husband

1 claimed the property as a homestead under Texas law.

2 In 1971 and 1972, the Internal Revenue Service
3 made assessments against Philip Bosco in excess of
4 \$900,000 for federal wagering taxes. Bosco died in
5 1974. The assessed taxes remain unpaid.

6 Respondent Rodgers remarried, and she now
7 occupies the property with her new husband. The
8 government filed this action in the United States
9 District Court for the Northern District of Texas,
10 seeking to reduce its assessments against Bosco to
11 judgment to enforce the liens, the tax liens against any
12 property belonging to Bosco, and to secure a deficiency
13 judgment for any unpaid tax liability or unsatisfied tax
14 liability.

15 In the other case, Respondent Ingram and her
16 husband, Donald Ingram, acquired real property during
17 their marriage that they claimed as a homestead. As in
18 the Rodgers case, the property was community property.
19 In 1972 and 1973, the Internal Revenue Service made
20 assessments against Donald Ingram for unpaid taxes
21 withheld from the wages of the employees of a company of
22 which Donald Ingram was the president. The unpaid
23 balance of the assessments is about \$9,000.

24 In connection with their subsequent divorce,
25 Donald Ingram conveyed his interest in the homestead

1 properties to Respondent Ingram. After unsuccessfully
2 attempting to dispose of the properties, Respondent
3 Ingram and the trustee for the properties filed this
4 action against the United States and several other
5 Ingram creditors in state court to quiet title to the
6 property and to remove any liens encumbering the
7 property. The United States removed the action to the
8 United States District Court for the Northern District
9 of Texas, and filed a counterclaim seeking enforcement
10 of its tax liens. Donald Ingram was added as a
11 defendant on the government's counterclaim.

12 Without explanation, the district court
13 refused to enforce the tax liens in the Rodgers case,
14 but the same court enforced the tax liens in the Ingram
15 case. On appeal, the two cases were consolidated for
16 oral argument. The court of appeals held that because
17 the homestead interest of a spouse is characterized as a
18 property interest under Texas law, the government cannot
19 enforce its tax lien against the homestead property
20 while the delinquent taxpayer's spouse chooses to
21 maintain her homestead interest in the property.

22 Accordingly, the court affirmed the judgment
23 for Respondent Rodgers in pertinent part and reversed
24 the judgment for the government against Respondent
25 Ingram in pertinent part.

1 The questions in these cases are matters of
2 statutory interpretation. The relevant provisions of
3 the Internal Revenue Code are Section 6334, which
4 exempts certain classes of property from the reach --
5 from levy for federal taxes, Section 6321, which creates
6 a lien against all property belonging to a delinquent
7 taxpayer and in favor of the government, Section 7403,
8 which provides for a civil action to enforce a tax lien
9 against any property in which a delinquent taxpayer has
10 any right, title, or interest.

11 Except for the very narrow exemptions set out
12 in Section 6334, all of the delinquent taxpayer's
13 property and rights in property are subject to levy to
14 satisfy federal tax liens, federal tax claims.
15 Homestead property is not mentioned in Section 6334, nor
16 does any other federal statute purport to exempt such
17 property from federal tax claims.

18 State laws exempting property from the claims
19 of private creditors are wholly ineffective against the
20 federal government. The Internal Revenue Service's
21 regulations are quite explicit on this point. No
22 provision of a state law may exempt property or rights
23 to property from levy for the collection of any federal
24 tax. Thus, property exempt from execution under state
25 personal or homestead exemptions -- exemption laws is

1 nevertheless subject to levy by the United States for
2 collection of its taxes.

3 Under Section 6321, the United States has a
4 lien on all property and rights to property belonging to
5 any person who fails to pay his taxes after appropriate
6 demand. Whether the taxpayer --

7 QUESTION: Let me get the government's
8 position straight. I don't think any of us question the
9 susceptibility of a homestead to the enforcement of a
10 federal tax lien, but is it the government's position
11 that if the delinquent taxpayer owns any interest in a
12 homestead, any partial interest, that it may proceed to
13 sell the entire homestead?

14 MR. JONES: Our position is that Congress has
15 authorized the Attorney General to file suit against any
16 property in which the delinquent taxpayer has an
17 interest, and our position is that there may be
18 circumstances, not present here, in which it would be
19 appropriate to sell only the delinquent taxpayer's
20 interest, but where that can't be done, the government
21 is entitled to sell the entire property with division of
22 the proceeds as the means of accommodating the interest
23 of any other parties who have interest.

24 QUESTION: So that here you would, in effect,
25 sell the homestead under Mrs. Rodgers, who continued to

1 occupy it, and who under state law had the right to
2 occupy it for the balance of her lifetime. You would in
3 effect evict her and give her her share of the proceeds?

4 MR. JONES: That's essentially correct.

5 QUESTION: Well, essentially? Isn't it
6 correct?

7 MR. JONES: That is absolutely correct.

8 QUESTION: Now, then, let me ask you this.
9 Suppose your delinquent taxpayer is a person who holds a
10 mortgage on my property, and the government moves in to
11 enforce the lien, the tax lien on the mortgage. Does
12 that mean that it can sell my property?

13 MR. JONES: Well, I am not clear that the
14 mortgagee's interest in your property would be
15 sufficient for the government's tax lien to attach.

16 QUESTION: Well, it is an interest in
17 property. It is an interest in my homestead property,
18 isn't it?

19 MR. JONES: Well, if it is, Congress has said
20 that under Section 7403, the government may proceed
21 against any property in which the taxpayer has an
22 interest or in which the government has a lien. Now,
23 the district director or the Secretary certainly may
24 take into account your interest in the property or any
25 other interest in the property in determining whether to

1 proceed against the property by means of foreclosure
2 under Section 7403 or by administrative levy, but once
3 the district director or the Secretary of the Treasury
4 has made that determination, Congress has provided for
5 enforcement of the tax lien.

6 QUESTION: Well, I am just suggesting that I
7 think the ultimate -- your argument taken to the
8 ultimate conclusion means that they can sell my property
9 in order to foreclose the lien on the mortgagee's
10 property.

11 Let me put it another way. Suppose that my
12 next door neighbor has an easement over my homestead
13 property, and he is delinquent in taxes. May the
14 government foreclose on his easement and hence sell my
15 property?

16 MR. JONES: Well, the easement might be
17 marketable independent of the property, and it might be
18 permissible to attempt to sell the easement without
19 selling your property as well.

20 QUESTION: Well, isn't that in fact what the
21 government does, is sell the interest of their holding
22 of the easement?

23 MR. JONES: Where that is possible, where
24 there is a separate market for the property, the
25 government may indeed decide to proceed in that manner.

1 QUESTION: Why can't the government in this
2 case sell Mr. Rodgers' interest, Mr. Rodgers' estate's
3 interest in the homestead, which is basically an
4 interest that will become possessory after Mrs. Rodgers
5 either dies or gives up the homestead?

6 MR. JONES: The reason is that there is no
7 separate market for Mr. Rodgers' fractional interest --

8 QUESTION: Well, how do you know that? If
9 Mrs. Rodgers is elderly, and isn't going to live long,
10 and the property has substantial value, how can you say
11 there is no interest?

12 MR. JONES: Well, I said there is no separate
13 market for a fractional interest of the sort involved in
14 this case. The sale --

15 QUESTION: You just told me that that is not
16 the government's position, that you want the whole
17 bundle of wax. You want to sell the whole homestead,
18 and give her her share of the proceeds.

19 MR. JONES: Well, this case is quite different
20 from the hypotheticals you posed, because under Texas
21 law community property under the joint control of both
22 spouses is subject to the claims of creditors of either
23 spouse for debts incurred during the marriage, and
24 therefore our position is that Mrs. Rodgers isn't
25 entitled to any part of the proceeds in this case.

1 QUESTION: Well, under Texas law, Mr. Rodgers,
2 while he lived, could not sell that homestead. Correct?

3 MR. JONES: That's correct, without Mrs.
4 Rodgers' consent.

5 QUESTION: Consent. Why should the government
6 in asserting its lien against him for delinquent taxes
7 have any greater right than he had?

8 MR. JONES: Because in enforcing its lien, the
9 government doesn't simply step into the shoes of the
10 delinquent taxpayer.

11 QUESTION: Well, then again I say, the
12 government wants the whole hog. It wants to sell the
13 property out from under Mrs. Rodgers' life occupancy.

14 MR. JONES: Justice Blackmun, the government's
15 position is only that Congress decides what property is
16 exempt from levy. Congress has not provided an
17 exemption for homestead property. Under the facts of
18 this case, Mrs. Rodgers is being denied nothing that she
19 is entitled to.

20 QUESTION: You say that the government,
21 though, doesn't simply stand in the shoes of Mr.
22 Rodgers. Whose shoes does it stand in?

23 MR. JONES: The government is entitled to the
24 rights Congress has provided. Under Section 7403 --

25 QUESTION: What rights has Congress provided

1 other than the rights that belonged to Mr. Rodgers,
2 against whom the lien --

3 MR. JONES: Well, Congress created a lien on
4 the property for the payment of the taxes, and under
5 Section 7403, the government is entitled to enforce that
6 lien by forcing sale of the property and division of the
7 proceeds in accordance with the respective interests of
8 any other parties who have claims against the property.

9 QUESTION: What is your definition of the word
10 "property?" The husband's interest or the entire fee?

11 MR. JONES: Well, state law defines --

12 QUESTION: Apart from state law, what is your
13 definition of the word "property" in the federal
14 statute? It is the husband's interest, isn't it? It
15 has to be.

16 MR. JONES: I am not sure I understand the
17 question. State law says that the husband had a
18 property interest, and the court of appeals held that
19 each of the delinquent taxpayers in these cases had an
20 undivided one-half interest in the property. In
21 addition, however, under Texas law, community property
22 is subject to the claims of creditors for debts incurred
23 during the marriage. It appears therefore that in Texas
24 both spouses have a sufficient property interest in all
25 community property to subject it, the property to the

1 claims of any creditors of either one of them.

2 To further answer Justice O'Connor's question,
3 where there is no interest, or no separate market for a
4 fractional interest, both the taxpayer and the
5 government would be harmed or suffer detriment by
6 attempting to sell just the fractional interest.

7 QUESTION: What if you have A and B, tenants
8 in common under state law, not related by marriage or
9 otherwise, and the law of the state is that one tenant
10 in common cannot force another tenant in common to sell
11 the property. All you can do is sell your interest.
12 And the government has a tax claim against A. Do you
13 think under the statute that you are claiming under that
14 the government can force both tenants in common to sell
15 the property, to sell the physical property rather than
16 just the tenancy in common interest of the one against
17 whom it has a tax lien?

18 MR. JONES: If there were a separate market
19 for A's half of the property, then there wouldn't be any
20 need to sell both interests, but if there wasn't, the
21 government would be entitled to have the entire property
22 sold and division of the proceeds in accordance with the
23 interests of A and B.

24 QUESTION: So it is almost a separate inquiry
25 in each one of these cases whether there is a separate

1 market, as you put it? Do you find that in the statute
2 somewhere?

3 MR. JONES: No, the focus of the 1936
4 amendments was on providing -- amendments to Section
5 7403 was on providing an effective remedy for
6 foreclosure against personal property, and Congress --

7 QUESTION: Can I interrupt you? To put this
8 on a little broader proposition -- I guess some of the
9 other questions the same way -- in the Rodgers brief at
10 Page 18, they rely on a rather broad principle that the
11 collector has rights no greater than those of the
12 taxpayer whose rights to property he seeks to foreclose
13 on, that you can't go beyond the shoes of the taxpayer
14 in fact, and you didn't respond to that in your reply
15 brief. I just wonder if other than this case, has the
16 government ever asserted a greater right than the
17 taxpayer himself could have asserted?

18 MR. JONES: Well, I don't know how many
19 cases. There is at least one. In Herndon, the
20 government levied on homestead property even though
21 under the law of the state the taxpayer would have no
22 right to sell his interest in the property without the
23 consent of his spouse. The government in enforcing a
24 lien exercises the rights Congress has provided. It is
25 not an assignee of the taxpayer. And contrary to the

1 suggestion of the Fifth Circuit in the case of Folsom,
2 the government is not obliged to first acquire the
3 taxpayer's interest and then attempt --

4 QUESTION: Let me change my question just a
5 bit. Herndon was another homestead case.

6 MR. JONES: Right.

7 QUESTION: Which we didn't review. And the
8 question here is, what are the government's rights in a
9 homestead context. And I am asking outside of the
10 homestead context, is there any precedent for the
11 government asserting a greater right, greater property
12 right than that of the taxpayer against whom the
13 government seeks to foreclose. Or of -- and take that
14 -- go beyond the government in a tax situation. Any
15 lienholder having a greater right than the property
16 right of the lienee. In any context.

17 MR. JONES: It is somewhat difficult to answer
18 that question, because the rights of a lienholder would
19 be, except for the federal government, would be
20 determined by state law, and that would depend of the
21 law of the particular state in which the lien is
22 asserted.

23 QUESTION: I just wanted to give you a broader
24 range. Let's leave it then with the government. Any
25 time the government has done this.

1 MR. JONES: I am not aware of any
2 circumstances where the question has come up, but it is
3 fairly well established that state exemptions don't
4 provide any obstacle to the government's attempts to
5 enforce its tax liens. Here, there is assertedly a
6 joint owner of the property. The government is
7 attempting to enforce its lien against the property
8 interest of the delinquent taxpayer.

9 In order to do that, the entire property must
10 be sold, because, as I mentioned before, there is no
11 separate interest or separate market for the homestead
12 property which a tax sale purchaser couldn't do anything
13 with under state law.

14 QUESTION: That brings me back to my easement
15 hypothetical.

16 MR. JONES: Well, for an easement, there -- an
17 easement, as I remember from law school, may well be of
18 value to individuals other than the person holding it,
19 and they are transferrable, unless there is a limitation
20 in the document granting the easement, and it may well
21 be that an easement can be sold without interfering with
22 your interest in the property at all.

23 QUESTION: And if it can't?

24 MR. JONES: And if it can't --

25 QUESTION: You are driven right back to

1 Justice Rehnquist's inquiry. But you can never keep any
2 more than the value of the easement.

3 MR. JONES: That's right.

4 QUESTION: Which may not be very much. If you
5 can't sell it, it is not worth anything.

6 MR. JONES: That is absolutely right.

7 QUESTION: But you probably wouldn't be
8 selling the property anyway.

9 MR. JONES: True, and all of those factors
10 are --

11 QUESTION: Well, if you can't keep any more
12 than the value of the easement in the Rodgers case, you
13 couldn't keep any more than the value of Mr.
14 Rodgers' estate's interest.

15 MR. JONES: That is --

16 QUESTION: Which you have asserted is very
17 small.

18 MR. JONES: No, there is a difference, I
19 think, between saying that a property -- that a
20 particular fractional interest is unmarketable because
21 no one would be willing to buy it and saying that the
22 taxpayer's interest is without value. Here, it is clear
23 beyond any question that both of the delinquent
24 taxpayers had an undivided one-half interest, 50 percent
25 interest in the homestead property.

1 In addition, and just as to that, the -- well,
2 and in addition, the Rodgers homestead is estimated to
3 be worth about \$150,000, so the government is entitled
4 to at least 50 percent of the proceeds of any sale.

5 Our point is that attempting to sell Mr.
6 Rodgers' one-half interest that a tax sale purchaser
7 couldn't do anything with until Mrs. Rodgers decided to
8 abandon the homestead or for some other reason
9 terminated, because nobody would be interested in buying
10 this one-half interest, or at least there is no
11 established market for it, because of the limitations on
12 its use, we say that the only way the government and the
13 interests of the taxpayer can be served is by selling
14 the entire property and dividing the proceeds among the
15 respective claimants to the property.

16 And it is our position that that is the
17 accommodation Congress intended under the circumstances
18 of this case, or these cases.

19 The Fifth Circuit has taken the position that
20 under 7403, the only thing that can be sold is the
21 taxpayer's interest in the property. Every other court
22 of appeals that has considered that question has
23 rejected the Fifth Circuit's position. The Fifth
24 Circuit's reading of 7403 is based, we submit, on a
25 misapprehension of the rights of the government under

1 7403.

2 The Fifth Circuit --

3 QUESTION: Are you speaking of the Folsom
4 case?

5 MR. JONES: Excuse me?

6 QUESTION: Are you speaking of the Folsom
7 case?

8 MR. JONES: Yes.

9 QUESTION: Of course, the Folsom case isn't
10 before us.

11 MR. JONES: That's right, but in this case the
12 court of appeals --

13 QUESTION: It may well be wrong if it had come
14 here.

15 MR. JONES: And in this case, the court of
16 appeals adopted the exact -- exactly the same reasoning,
17 and applied it in this case.

18 QUESTION: Except you have different facts.
19 You have homestead interest as distinguished from a
20 tenancy in common, as I understand the Folsom case was.

21 MR. JONES: That's right. But it is well
22 settled that state laws exempting property from the
23 claims of private creditors are simply ineffective
24 against the federal government. So this case in
25 pertinent part, the facts in this case, the relevant

1 facts in this case are no different from Folsom.

2 What you have are joint owners of property,
3 one of the joint owners being a delinquent taxpayer, and
4 the other not a taxpayer, and the question is to what
5 extent the government is entitled to sell the interests
6 of the non-delinquent taxpayer in order to maximize the
7 return of the sale or the proceeds of its sale to the
8 benefit of both the government's tax collection efforts
9 and the interest of the taxpayer in satisfying his tax
10 liability.

11 The court of appeals in this case focused on
12 the non-delinquent taxpayer's interest in the property.
13 According to the court of appeals, if the delinquent
14 taxpayer's homestead rights are characterized as
15 property rights under state law, the government cannot
16 enforce a concededly valid lien against the property
17 until the delinquent taxpayer's spouse decides to
18 abandon his homestead. Whatever the amount of the
19 taxpayer's liability, and however valuable the property,
20 the government is, according to the Fifth Circuit,
21 powerless to enforce its lien against the property.

22 We submit that this Court's decisions
23 establish the proposition that if the delinquent
24 taxpayer has an interest that constitutes property under
25 state law, the federal lien attaches, and the lien is

1 enforceable under 7403. The --

2 QUESTION: The question here isn't whether the
3 lien is good. The question is, when can it be enforced.

4 MR. JONES: Whether it is enforceable. Here,
5 the --

6 QUESTION: No, no, not whether. It ultimately
7 and inevitably will be enforced. The lady has, under
8 state law, has a life estate in the property. She has
9 got the right to occupy it during her lifetime. When
10 she dies, the lien will still be good, won't it?

11 MR. JONES: Well --

12 QUESTION: And if she wants to sell it, the
13 lien will have to be satisfied.

14 MR. JONES: It is not clear that that is true,
15 but --

16 QUESTION: Why isn't that true?

17 MR. JONES: Well, there's --

18 QUESTION: Is anybody suggesting that the lien
19 is invalid here? The lien will have to be satisfied up
20 to his share of the value of the property.

21 MR. JONES: Well, whatever that is, but --

22 QUESTION: Well, that is all you can get
23 anyway.

24 MR. JONES: That's right. There are some --
25 The court of appeals recognized that the delinquent

1 taxpayers here owned at least 50 percent of the
2 property. The other question is, how much more than
3 that the government is entitled to. But although the
4 court of appeals purported to -- how much -- under state
5 law, whether his rights in the community property are
6 sufficient to constitute property, and whether the
7 government's tax lien would attach to the entire
8 property because of the rights accorded --

9 QUESTION: It would attach to the entire
10 property, but you -- if you were allowed to foreclose
11 this lien, all you would get to satisfy your lien is the
12 value of his interest in the property.

13 MR. JONES: That's right, and although the
14 court of appeals purported to leave open the possibility
15 that at some point the government might be allowed to
16 enforce its lien, there is no guarantee that the value
17 of the liens won't be substantially eroded in the
18 meantime, and furthermore, the liens might be lost
19 altogether, either because the government fails to keep
20 track of this woman, the taxpayers' spouses, or fails to
21 keep track of the proceeds of any disposition of the
22 properties.

23 QUESTION: Well, if you filed -- if you
24 actually recorded your lien, anybody who is going to buy
25 that property is not going to -- they are either going

1 to pay a lesser price if the property is going to be
2 subject to the lien, or they are going to insist on its
3 being satisfied so they can get clear title.

4 MR. JONES: That is true, but it is not quite
5 clear how -- which of those alternatives would be
6 pursued, and whether the government would ever be paid
7 without reasserting its rights. The court of appeals
8 suggested that the lien attached to the homestead, and
9 that the homestead rights of the spouse would continue
10 to protect the homestead from enforcement of the lien
11 for as long as Mrs. Rodgers maintained the homestead,
12 even if she maintained her homestead by substituting
13 another property, okay, or selling this property and
14 then investing the proceeds in something else.

15 QUESTION: Does the homestead interest attach
16 in Texas law to the property acquired in substitution
17 for the original homestead property? Does the homestead
18 roll over into the new property?

19 MR. JONES: That is what the court of appeals
20 said, and --

21 QUESTION: What is your view of Texas law on
22 that point?

23 MR. JONES: I have no basis for disagreeing
24 with that assertion by the court of appeals, and that is
25 not a question -- that is no anything to question --

1 QUESTION: Well, the court of appeals didn't
2 rule that if there was a substitution, that your lien
3 would have to attach to the substituted property. They
4 didn't say you couldn't collect on your lien right then,
5 did they? Because there was no occasion to rule on
6 that.

7 MR. JONES: That's right, and that's why I was
8 not quite as sanguine about the possibilities of the
9 government collecting upon the sale.

10 Federal tax liens are enforceable against all
11 of the delinquent taxpayer's property. Congress has
12 provided for the sale of any property in which the
13 delinquent taxpayer has an interest and for division of
14 the proceeds as the means of accommodating the interest
15 of any co-owners of the property.

16 QUESTION: Mr. Jones, suppose the taxpayer had
17 the fee interest in a piece of property, and he gave his
18 wife or someone else a life estate in the property, and
19 thereafter the lien attached. Could you evict the life
20 tenant?

21 MR. JONES: For purposes of selling the
22 property?

23 QUESTION: Correct.

24 MR. JONES: I think so.

25 QUESTION: You think you could evict the life

1 tenant?

2 MR. JONES: Subject to division of the
3 proceeds for whatever value the life estate would have
4 had.

5 QUESTION: Even though the fee owner could not
6 have evicted the life tenant.

7 MR. JONES: That's right.

8 QUESTION: I imagine you had a little
9 difficulty finding any cases that hold that.

10 MR. JONES: Well, Congress has provided for
11 the means --

12 QUESTION: I understand.

13 MR. JONES: -- of accommodating the interests
14 of any people who have interest in the property other
15 than the taxpayer.

16 QUESTION: This is a life estate case, isn't
17 it? Among other things, a homestead interest entitles a
18 person, the lady in this case, to occupy the property
19 for her lifetime.

20 MR. JONES: It is not precisely a life estate
21 case, because --

22 QUESTION: Well, I know it isn't precisely,
23 but she has an interest during her lifetime that her
24 heirs will not have.

25 MR. JONES: Right, for so long as she chooses

1 to use it, and she could move and abandon it.

2 QUESTION: She has both a life estate and a 50
3 percent interest in the remainder, whereas in my case
4 she didn't even have the 50 percent interest in the
5 remainder, is the only difference.

6 MR. JONES: Well, in order to maintain her
7 life estate in this property, she has to continue to
8 occupy the property.

9 QUESTION: She has to stay there.

10 MR. JONES: So it is different in that
11 respect.

12 CHIEF JUSTICE BURGER: Mr. Elliott?

13 ORAL ARGUMENT OF WILLIAM D. ELLIOTT, ESQ.,
14 ON BEHALF OF RESPONDENTS RODGERS, ET AL.

15 MR. ELLIOTT: Mr. Chief Justice, and may it
16 please the Court, in this case, the government takes the
17 awesome position that the property of one may be used to
18 satisfy the tax liability of another. To this claim, we
19 make two arguments.

20 First, there can be no foreclosure of the
21 separate homestead property because in Texas it is
22 indivisible, it is individual to her, and it is
23 indefeasible during her lifetime or until her earlier
24 voluntary relinquishment.

25 Secondly, that the district court's judgment

1 not ordering foreclosure in the Rodgers case should not
2 be disturbed here, because the government has made no
3 claim of abuse of discretion, and hasn't even attempted
4 to overturn that finding on that ground.

5 Since the Congress defined the source from
6 which tax liability may be enforced, that is, property
7 and rights to property of the taxpayer, it is clear here
8 that the government is simply attempting to attack and
9 utterly destroy the property of someone else. It is
10 imperative that we examine not only the property and
11 rights to property of the taxpayer here, the deceased
12 husband, but similarly we must examine those property
13 interests of others who would be affected or who own
14 individually property that doesn't belong to the
15 taxpayer.

16 In Texas, it has been a venerable policy for
17 over 100 years, Texas constitutional law since 1876, and
18 statutory law for many years before that, that each
19 spouse is entitled to use and possess the homestead for
20 as long as they want to or until their death.

21 QUESTION: That is an interest over and above
22 a half-interest in the property, as Justice Stevens
23 indicated.

24 MR. ELLIOTT: Yes, it is, Justice White. It
25 is important to understand the peculiar nature of the

1 Texas homestead law. In fact, homesteads originated in
2 Texas. Each spouse can own a community one-half
3 interest in the home, or one spouse may own it all as
4 separate property. But each spouse is given a separate
5 property right, a homestead right, to use and possess,
6 as that term is defined in the Texas Constitution, for
7 their entire life.

8 QUESTION: Now, under Texas law, I suppose the
9 survivor needn't even live on the homestead in order to
10 preserve it, but could rent it out to others.

11 MR. ELLIOTT: That is correct. Abandonment of
12 the homestead --

13 QUESTION: And still maintain the homestead.

14 MR. ELLIOTT: That is correct. Abandonment of
15 the homestead does not occur even in those situations
16 where there is a rental.

17 QUESTION: What if it is sold?

18 MR. ELLIOTT: It is abandoned.

19 QUESTION: That is an abandonment, if it is
20 sold?

21 MR. ELLIOTT: Yes. It is a voluntary
22 relinquishment. Whether she leaves the home with no
23 intention to return or sells it, it is a --

24 QUESTION: And if there is a divorce, it is
25 terminated. Is that right?

1 MR. ELLIOTT: Yes, but the terms of the
2 property settlement agreement have a bearing on it, and
3 each spouse -- for example, in the Woods case, the Texas
4 Supreme Court, the Texas Supreme Court there held that
5 each spouse has an indivisible, individual, both,
6 property right in this homestead, and in that case the
7 husband was claiming that even though he had had a
8 divorce, and even though his children had left the home,
9 he was still entitled as a spouse of the marriage to
10 continue in that homestead for as long as he lived, and
11 the Texas Supreme Court in 1929 said, yes, clearly, this
12 property right, this homestead right is his.

13 In this case, we are claiming it is hers. And
14 the fact that her husband died, or if he had gotten a
15 divorce from her, it makes no difference. It is her
16 property right. And it is that which the government
17 seeks to foreclose.

18 QUESTION: How do you distinguish the joint
19 tenancy?

20 MR. ELLIOTT: Right of possession, Justice
21 White. In all those cases that the government claims
22 are inconsistent, Folsom, Trilling, Washington, Kosher,
23 they all involve joint tenancy cases where the taxpayer
24 has a right of possession. Here, the taxpayer is
25 deceased. His heirs cannot compel the non-taxpayer

1 spouse to leave the property, nor do they have any right
2 to possess it with her. What they have is simply a
3 remainder in one-half. That will become possessory upon
4 her death or voluntary relinquishment.

5 Therefore, it is unnecessary for this Court to
6 consider the alleged conflict in Folsom and the other
7 circuits.

8 QUESTION: Is that the same with undivided
9 interests, other undivided interests in property?

10 MR. ELLIOTT: Yes, sir.

11 QUESTION: Tenants in common?

12 MR. ELLIOTT: Yes, sir.

13 QUESTION: And you say it is the peculiarities
14 of Texas homestead law. I suppose if they had the same
15 provisions with respect to some other estates on joint
16 tenants, that each party -- they gave the same rights to
17 each of the -- What if a joint tenant has died?

18 MR. ELLIOTT: Who would be the taxpayer, Your
19 Honor?

20 QUESTION: Well, the taxpayer -- the joint
21 tenant dies when he is a taxpayer. He owes some taxes
22 when he dies.

23 MR. ELLIOTT: Then Section 7403(c) would
24 entitle the district court to have the equitable
25 discretion to compel foreclosure or not, as it chooses

1 to do so.

2 QUESTION: Well, the taxpayer no longer has a
3 right to possess.

4 MR. ELLIOTT: His heirs would.

5 QUESTION: Under a joint tenancy, with right
6 of survivorship?

7 QUESTION: No, no.

8 MR. ELLIOTT: I didn't understand you to say
9 right of survivorship, Your Honor. I understood you to
10 say joint tenancy.

11 QUESTION: Well, I say a joint tenancy with a
12 right of survivorship then.

13 MR. ELLIOTT: In that situation, that interest
14 expires and the survivor takes the property.

15 QUESTION: Yes, but it was subject to a lien.

16 MR. ELLIOTT: That's true.

17 QUESTION: You wouldn't say that the lien is
18 destroyed, would you?

19 MR. ELLIOTT: No, but the underlying property
20 that supports --

21 QUESTION: So you say your rationale is going
22 to support -- you get the same result in joint tenancy
23 with a right of survivorship as you will in this case.

24 MR. ELLIOTT: That's right, Your Honor, and we
25 would also have the same result in a tenancy by the

1 entirety.

2 QUESTION: Well, then there is a conflict
3 among the circuits.

4 MR. ELLIOTT: Yes, there is, Your Honor. It
5 is clear that the Fifth Circuit is taking a position
6 different from the other circuits, but we are not
7 relying on the Folsom decision. We don't believe that
8 the Folsom decision was central to the Fifth Circuit's
9 opinion.

10 QUESTION: Well, most joint tenancies are with
11 right of survivorship, and so you are really talking
12 about that category of cases, too, as well as
13 homesteads.

14 MR. ELLIOTT: Yes, Your Honor, it would be
15 included within that category.

16 QUESTION: And tenants of entirety?

17 MR. ELLIOTT: Yes, Your Honor.

18 QUESTION: Mr. Elliott --

19 QUESTION: Is that really correct? Because
20 during the lifetime of the joint tenants, is it not true
21 that the taxpayer would have had the right to sell and
22 hav a partition of the proceedings in the event of a
23 dispute with the joint owner?

24 MR. ELLIOTT: As I understand property law in
25 other states other than Texas, a tenant in common would

1 have the right to compel partition because he has the
2 right to possess.

3 QUESTION: Well, that is true of joint
4 tenancy, too, isn't it?

5 MR. ELLIOTT: But with the right of
6 survivorship, I am not sure that is the law, Your
7 Honor. I understand it to be that the right of
8 survivorship does not compel one of the tenants --

9 QUESTION: How about before the death of the
10 taxpayer? They are joint tenants and own property. You
11 are suggesting that neither one of them could compel the
12 sale in the event of a dispute between them?

13 MR. ELLIOTT: We don't have Texas law that is
14 as active in the survivorship area as other states, so I
15 am speaking without a great familiarity with the total
16 command of the survivorship rule, but I understand it to
17 be that neither spouse can sell the property because of
18 the survivorship feature without the consent of the
19 other.

20 QUESTION: Or without a partition proceeding?

21 MR. ELLIOTT: If it is jointly agreed to, Your
22 Honor, yes.

23 QUESTION: It has to be jointly agreed to in a
24 joint tenancy situation?

25 MR. ELLIOTT: With right of survivorship, I

1 understand that to be the case. It is certainly the
2 case in Texas homestead law applicable here. Texas law
3 is absolutely clear that neither spouse can partition,
4 sell, or affect the other spouse's interest in the
5 homestead without that spouse's consent, and here --

6 QUESTION: I understand the homestead, but --

7 MR. ELLIOTT: This Court has said, Aquilino,
8 and Durham Lumber Company, and Busse, authored by
9 Justice Brennan, that this Court must examine the rights
10 defined by the states that the taxpayer has in the
11 property, and only then will we attach consequences
12 federally defined to those state interests.

13 Here, we think this case is very analogous to
14 the Durham Lumber Company decisions and the Aquilino
15 decisions. There, the taxpayer was a general contractor
16 who was owed money allegedly from the owner of the
17 building. He owed, in turn, subcontractors who claimed
18 the property as well. This Court held in both
19 instances, in Durham Lumber Company and Aquilino, that
20 under state law, having examined it, that the relative
21 states, New York and North Carolina, did not give the
22 owner, the taxpayer -- I mean, the general contractor,
23 the taxpayer, any property or rights to property in that
24 chosen action owed from the owner.

25 In fact, under state law, the subcontractors

1 had a superior, either direct right of action against
2 the owner for that money or in the other case, the
3 general contractor held it in trust. In both cases,
4 this Court held that because the general contractor
5 taxpayer did not have any interest in those chose as an
6 action, the IRS could not enforce its tax lien against
7 it. Only after the subcontractors' claims were
8 fulfilled could the IRS collect its money from the, in
9 essence, excess chosen action.

10 That is analogous to the situation here. We
11 have another related party, the spouse. Her interest is
12 individual to her. Only after her interest expires
13 through death or voluntary relinquishment may the
14 government enforce its lien.

15 QUESTION: Why couldn't, under your theory,
16 the government at least try to market the non-possessory
17 interest of the taxpayer, sell it and use the proceeds
18 of that sale to satisfy its lien?

19 MR. ELLIOTT: They could, Your Honor. They
20 have not sought to do so.

21 QUESTION: Well, in that case they would just
22 be selling the lien.

23 MR. ELLIOTT: They would be selling the future
24 possessory interest in one-half of the community, Your
25 Honor.

1 QUESTION: Well, you don't suggest at all that
2 -- nothing in your position would indicate that the lien
3 is invalid?

4 MR. ELLIOTT: Oh, not at all, Your Honor.

5 QUESTION: Or that it would ever become
6 invalid?

7 MR. ELLIOTT: The lien attaches to his
8 interest in the underlying homestead, which is --

9 QUESTION: And it is going to be collectable
10 no later than the end of her life.

11 MR. ELLIOTT: She is 70 years old, and it will
12 be, you know, her life expectancy is soon.

13 QUESTION: Or when she sells it. You say
14 that --

15 MR. ELLIOTT: Or abandons it, Your Honor.

16 QUESTION: Or abandons it.

17 MR. ELLIOTT: She could swap homestead, to
18 answer your question, Justice O'Connor, and would lose
19 the protection we are seeking here.

20 QUESTION: If she swapped.

21 MR. ELLIOTT: Yes, Your Honor. Under Texas
22 law --

23 QUESTION: But she would have a homestead in
24 the substitute property?

25 MR. ELLIOTT: That's exactly right.

1 QUESTION: But it wouldn't be protected
2 against this lien.

3 MR. ELLIOTT: That's right, because her second
4 homestead would not have arisen prior to the attachment
5 and assessment of the tax. In this case, she acquired
6 the homestead in 1955, certainly long before the tax
7 lien arose.

8 QUESTION: And you are saying that there is
9 nothing here that will defeat the federal government's
10 right to collect the tax. It merely is deferring the
11 date, deferring the time.

12 MR. ELLIOTT: That is precisely what we are
13 saying, Your Honor, Mr. Chief Justice.

14 QUESTION: What is the interest these days on
15 federal delinquent taxes?

16 MR. ELLIOTT: I think they just lowered it to
17 16 percent, Your Honor. It was 21 percent last year.

18 QUESTION: Mr. Elliott, what about Mr.
19 Rodgers, the second husband here? Does he have a
20 homestead interest in the property?

21 MR. ELLIOTT: He does, but it is subject to
22 this federal tax lien, Your Honor.

23 QUESTION: Subject to the lien.

24 MR. ELLIOTT: Yes, sir.

25 In this case, there have been various courts

1 of appeals that have considered these cases involving
2 one taxpayer liable but a homestead affecting two states
3 -- affecting both spouses. There is a consistent
4 pattern, we think, in all of these decisions. These are
5 not the Folsom line of cases. These are those other
6 cases, such as Herndon, Hershberger, Heffron, Weitzner.
7 In all those cases the courts of appeals have exhibited
8 a consistent theme: does the state give the
9 non-taxpayer spouse a property right, as we have in
10 Texas, as Hershberger sought in Kansas, or is it simply
11 an exemption from creditors, as the Fifth Circuit
12 witnessed in Weitzner?

13 We suggest that that is the proper rule. As
14 this Court said repeatedly, as we pointed out earlier,
15 Busse, Durham Lumber Company, and others, it is a proper
16 balance, a logical and sound position to rely on the
17 state law and what is that state law insofar as the
18 taxpayer is concerned, and then attach consequences
19 federally defined.

20 All of those decisions, even the Herndon
21 decision, allowed the wife to live on the property for
22 the remainder of her life if the wife was given a
23 property right.

24 QUESTION: Well, let's go back to the joint
25 tenancy with right of survivorship. You say the law of

1 Texas is that the one joint tenant can't force the sale
2 of the property and the partition.

3 MR. ELLIOTT: Yes, Your Honor. That is my
4 understanding.

5 QUESTION: Suppose both joint tenants are
6 alive. The government has a tax lien on the property by
7 virtue of the unpaid taxes of one of the joint tenants,
8 and it wants to foreclose. May it?

9 MR. ELLIOTT: No.

10 QUESTION: So you are talking about not only
11 where a joint tenant is deceased, but at any time there
12 is a joint tenancy with right of survivorship, the
13 government may not foreclose on the property.

14 MR. ELLIOTT: That's correct, because the
15 underlying property interest, Justice White, expires.
16 It does no longer exist after the death of the first
17 spouse to die.

18 QUESTION: Well, certainly there are a lot of
19 -- there are plenty of cases, aren't there, or maybe not
20 so many, that do permit the government to foreclose
21 during the lifetime of one of the joint tenants.

22 MR. ELLIOTT: Section 7403(c) gives the
23 district court the power to compel foreclosure in those
24 cases where the taxpayer and the non-taxpayer share an
25 interest in the property. We contend here that Section

1 7403 does not apply because there is no joint interest
2 here. The wife, or the interest of the --

3 QUESTION: Well, talk about the joint
4 tenancy. I don't understand now. May the government
5 foreclose to collect its taxes where there is a joint
6 tenancy and a right of survivorship?

7 MR. ELLIOTT: It would be our view that if
8 under state law the first spouse to die's interest in
9 the property expired and extinguished and became
10 defeasible on his death, then no, because his property --

11 QUESTION: All right, but how about during his
12 lifetime? That is what I want to know.

13 MR. ELLIOTT: Yes, they would be empowered to
14 foreclose, Your Honor.

15 QUESTION: Even though the joint tenant who
16 owes the taxes could not force a sale of the property?

17 MR. ELLIOTT: Yes, but the interest of the
18 government would also expire on the death of the
19 taxpayer. The underlying property interest to which the
20 lien attached is all that the government gets, and it
21 gets no more than that. And for the government to be
22 able to take a possessory interest in this survivorship
23 property, and have it continue beyond the life of the
24 joint tenant, means that the government's property
25 interest is stronger than that of the underlying fee

1 owner, and we claim that that is not what the government
2 is entitled to do.

3 QUESTION: What if a fee owner conveys
4 property to the Ford Foundation or through his local
5 church, reserving a life estate in himself, and then
6 incurs the tax liability. Is the tax -- well, what is
7 the consequence in terms of the tax lien? Can it be
8 asserted only against his life estate that he has
9 reserved? Or is the burden on the whole fee?

10 MR. ELLIOTT: The scope of Section 7403(c),
11 Your Honor, does not make clear to me that the
12 government would take any more than what the life estate
13 owner had, and what the life estate owner had was merely
14 possession and the normal rights and duties attributable
15 to the life estate tenant during his lifetime, and since
16 the Ford Foundation in your case was the transferee of
17 the property before the time the tax lien arose, I would
18 say that all that the government gets in that case is
19 what the life estate owner had, and expires at his
20 death.

21 QUESTION: Now let me change the
22 hypothetical. He conveyed it to one of his children,
23 reserving a life estate, which is fairly common among --
24 a very common transaction among people with small
25 estates.

1 MR. ELLIOTT: I don't believe, Your Honor,
2 that the identity of the transferee makes any
3 difference, except in those instances where under state
4 law the transferor father might have some possibility of
5 reversion after the children expired, which of course is
6 theoretically possible. In the Ford Foundation
7 hypothetical, I assume that under state law, he has
8 nothing more than what the normal rights and duties of
9 the life estate tenant, and they expire at his death.

10 QUESTION: May I go back to Justice White's
11 question, because I didn't understand your answer.
12 Assume a joint tenancy, an ordinary joint tenancy, no
13 homestead overlay, and one of the joint tenants is tax
14 delinquent. May the government under Texas law, is
15 there any provision of Texas law that prevents the
16 government from moving in and selling the delinquent
17 taxpayer's interest in the joint tenancy?

18 MR. ELLIOTT: No, Your Honor, but right of
19 survivorship in Texas is not common. It is not
20 something that we experience regularly. It is more --

21 QUESTION: If the government did move in,
22 isn't the joint tenancy thereupon destroyed?

23 MR. ELLIOTT: Yes, in the absence of a right
24 of survivorship, I think it is important to distinguish
25 the two. Justice White, I understood, was asking me

1 about right of survivorship. In the absence of the
2 right of survivorship, clearly, the government can cash
3 out the other joint interest owners, but in the instance
4 of a survivorship, we submit no, because --

5 QUESTION: Well, again I am confused by your
6 terms. Do you have such a thing as joint tenancy in
7 Texas without right of survivorship?

8 MR. ELLIOTT: I call it a tenancy in common.

9 QUESTION: Of course. Of course. That is a
10 tenancy in common. But if you have a joint tenancy, you
11 have a right of survivorship.

12 MR. ELLIOTT: Then in that instance I would
13 say that the government does not get any more than the
14 taxpayer had, and his interest expires on his death, and
15 absent a possibility of reversion.

16 QUESTION: Well, we are not talking about his
17 death. We are talking about moving in before he died.

18 MR. ELLIOTT: Then the government can take his
19 interest. They can cash out the non-taxpayer, and all
20 that they get is the value attributable to his term.

21 QUESTION: Well, you are now suggesting that
22 if one joint tenant who owes the taxes dies, the
23 government lien ends. A while ago you said the
24 government never loses its lien. And that it would just
25 attach to the property. It was only a question of

1 time. Now you are suggesting that in joint tenancy
2 cases, the government's interest expires.

3 MR. ELLIOTT: I am suggesting, to clarify,
4 Justice White, that his underlying property interest
5 expires. The lien does not expire, but the lien
6 attaches only to those property interests that the
7 taxpayer has.

8 QUESTION: Well, when he is dead, he doesn't
9 have any property interest, you say.

10 MR. ELLIOTT: In that particular property,
11 that is correct.

12 QUESTION: Well, then, the lien expires.

13 MR. ELLIOTT: Insofar as that property is
14 concerned, yes, Your Honor.

15 QUESTION: Well, that is the only property
16 that it attached to. So now you are saying that your
17 rule means the government loses its lien upon the death
18 of a joint tenant.

19 MR. ELLIOTT: Yes, Your Honor. Under your
20 hypothetical, that is correct.

21 QUESTION: Unless it has foreclosed during his
22 lifetime.

23 MR. ELLIOTT: That is correct.

24 QUESTION: You've got a hard row to hoe
25 there.

1 CHIEF JUSTICE BURGER: Mr. Elliott.
2 ORAL ARGUMENT OF L. LYNN ELLIOTT, ESQ.,
3 ON BEHALF OF RESPONDENTS INGRAM AND BATES

4 MR. ELLIOTT: Mr. Chief Justice, and it may it
5 please the members of the Court, I had announced I had a
6 voice problem. I didn't know that it was this serious.
7 Can I be heard? Can you hear me?

8 QUESTION: Yes.

9 MR. ELLIOTT: All right.

10 QUESTION: Barely. Barely.

11 MR. ELLIOTT: I will try very hard, sir.

12 I represent, of course, Mrs. Ingram, the
13 companion case to the Rodgers case, and Mr. Elliott has
14 stated for me and on our behalf our position with regard
15 to the homestead rights as they are interpreted under
16 Texas law, and as they have been interpreted by this
17 Court, and by the Supreme Court of Texas in making
18 determinations that the homestead right is a separate
19 estate in property under the Texas Constitution, which
20 differs considerably from a joint tenancy or a tenancy
21 in common, which are not estates or property rights that
22 are popular or known in Texas, unless it be as a part of
23 a partnership, part of a written agreement. We do not
24 have those characteristics of real property in Texas.
25 The homestead right --

1 QUESTION: Mr. Elliott --

2 MR. ELLIOTT: Yes, Your Honor.

3 QUESTION: -- your predecessor, Mr. William
4 Elliott, indicated that under Texas law the homestead
5 terminates on the divorce. Why then in the case of the
6 Ingram situation would the government be precluded from
7 reaching the taxpayer's interest?

8 MR. ELLIOTT: Your Honor, specifically, by
9 constitutional amendment, a single person in Texas was
10 given the same homestead right as a married person, and
11 to say that Mrs. Ingram's homestead rights ceased on her
12 divorce is an inaccurate statement with regard to the
13 law in Texas. That is not the law in Texas.

14 QUESTION: So you disagree with Mr. William
15 Elliott on that point?

16 MR. ELLIOTT: If that's what he said, I would
17 disagree, Your Honor, yes.

18 The homestead right of the divorced spouse in
19 this particular case happened to be the subject matter
20 of a property settlement agreement which granted that
21 property to the wife in that case -- in this particular
22 case. The taxpayer, Don Ingram, we are not -- there has
23 never been any contention that his interest is not -- in
24 the property is not subject to the government's lien.
25 Likewise, there was a matter of some \$288 worth of joint

1 tax liability which we have no problem with, and their
2 money is on deposit in a bank in Dallas to pay the joint
3 tax liability to the extent of \$288.

4 The -- I wanted to point out in relation to
5 questions asked by perhaps Judge Blackmun that we do not
6 feel that the marketability of the property is a problem
7 for the taxpayer. The marketability of the interest
8 should be the government's exclusive problem. In this
9 case, at the district court level and at the Fifth
10 Circuit level, the government has taken the position not
11 that they want one-half of the proceeds of the sale.
12 They want to be able to sell these properties and take
13 whatever they are in -- the lien amounts due, and it
14 might be more than 100 percent even of the proceeds of
15 the sale of the property.

16 The question is not before the Court as to
17 whether or not the property is to be sold and the
18 proceeds divided equally. We tried to make that kind of
19 a deal, and --

20 CHIEF JUSTICE BURGER: We will resume there at
21 1:00 o'clock.

22 (Whereupon, at 12:00 o'clock p.m., the Court
23 was recessed, to reconvene at 1:00 o'clock p.m. of the
24 same day.)

25

1 AFTERNOON SESSION

2 CHIEF JUSTICE BURGER: You may continue, Mr.
3 Elliott.

4 ORAL ARGUMENT OF L. LYNN ELLIOTT, ESQ.,
5 ON BEHALF OF RESPONDENTS INGRAM AND BATES - RESUMED

6 MR. ELLIOTT: Thank you, Your Honor, Mr. Chief
7 Justice.

8 I would like to say to the Court that Mr. Bill
9 Elliott and I have conferred with regard to Justice
10 O'Connor's question regarding the effect of a divorce on
11 community property, and Mr. Bill Elliott agrees with me
12 that a divorce will -- could affect a -- the homestead
13 right of a party if in effect, as in this case, Donald
14 Ingram gave up his homestead right by conveying it to
15 his spouse, but a divorce as such does not per se affect
16 the homestead rights of either parties. It is something
17 that must be agreed to or disposed of at the time of the
18 divorce.

19 Obviously, if one party moves to another
20 place, it would probably be said that that party has
21 abandoned the homestead, in light of the rule that one
22 person may have only one homestead, not two. The party
23 remaining in the home would have -- the homestead rights
24 would continue with the residency and the possession of
25 that property, unless by some affirmative act they, the

1 party disavows the homestead right.

2 Again, in this particular case, the author of
3 the opinion in the Fifth Circuit, Judge Jerry Williams,
4 was a University of Texas professor before he was
5 appointed to the bench, and taught real property, among
6 other courses there, and when he -- in his opinion he
7 describes the homestead right as being one that was
8 actually remanded to the district court for
9 determination of whether there was abandonment or not.
10 That was the decision in the Fifth Circuit.

11 It may be a question that, why did the
12 district court, the same judge, the Honorable William
13 Mac Taylor, heard both of these cases within a two
14 weeks' period of time, and had a different result. He
15 granted the government's motion for summary judgment in
16 the one case, and the taxpayers or the non-taxpayer
17 spouse motion in the other case.

18 It had already been predetermined that the
19 case, both cases would be appealed. His attitude was,
20 I've got to be right in one of the cases, so that is why
21 it was done that way. He announced that at the time.

22 (General laughter.)

23 QUESTION: A 500 ball player.

24 MR. ELLIOTT: Yes. And Judge Taylor didn't
25 want to try any more jury cases because he is going to

1 be leaving the bench, and he didn't want to get strung
2 out in a long jury trial.

3 In this case, the government's position has
4 been, he announced that that was not my opinion. That
5 is what he announced at the time. The government's
6 position here, the tax collector's position is, we are
7 going to sell this property, and we are going to take
8 your interest, Mrs. Ingram, and although you owe no
9 taxes, we are going to take your interest, and we are
10 going to pay your husband's tax bill. That is really
11 what this case bottoms out on. And we don't believe
12 that to be the law in this country, and we do not
13 believe that that is consistent with the Constitution in
14 Texas.

15 We think the effect of a decision supporting
16 the government's position as it is very narrowly stated
17 would have the effect of abrogating the Texas
18 constitution in its pure language, and the Texas Supreme
19 Court decisions in the Semonet cases. Judge Taylor's
20 father sat on the Texas Supreme Court. That is the case
21 that held the Texas homestead right to be a separate
22 vested right in property, and not subject to being
23 divested except in those manners prescribed.

24 And with that, I conclude.

25 Thank you, Your Honors.

1 CHIEF JUSTICE BURGER: Thank you, gentlemen.
2 The case is submitted.

3 (Whereupon, at 1:05 o'clock p.m., the case in
4 the above-entitled matter was submitted.)

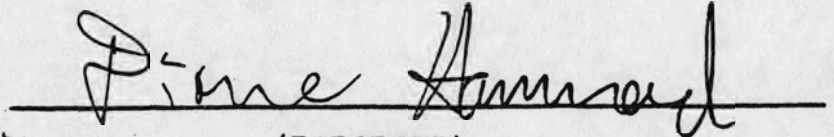
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the Matter of: UNITED STATES, Petitioner v. LUCILLE MITZI BOSCO RODGERS ET AL. # 81-1476

and that these attached pages constitute the original transcript of the proceedings for the records of the court.

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