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SUPREME COURT, U.S.  
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# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 84-1686

TITLE MARIE D. SORENSON, ETC., Petitioner V. SECRETARY OF  
THE TREASURY OF THE UNITED STATES AND UNITED STATES

PLACE Washington, D. C.

DATE January 15, 1986

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IN THE SUPREME COURT OF THE UNITED STATES

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MARIE D. SORENSON, ETC., :

Petitioner, :

V. : No. 84-1686

SECRETARY OF THE TREASURY OF :

THE UNITED STATES AND UNITED :

STATES :

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Washington, D.C.

Wednesday, January 15, 1986

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States at  
11:04 o'clock a.m.

APPEARANCES:

PETER GREENFIELD, ESQ., Seattle, Washington; on behalf of  
the petitioner.

RICHARD FARBER, ESQ., Tax Division, Department of Justice,  
Washington, D.C.; on behalf of the respondents.

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1 PROCEEDINGS

2 CHIEF JUSTICE BURGER: We will hear arguments  
3 next in Sorenson against the Secretary of the Treasury of  
4 the United States and the United States.

5 Mr. Greenfield, I think you may proceed  
6 whenever you are ready.

7 ORAL ARGUMENT OF PETER GREENFIELD, ESQ.,

8 ON BEHALF OF THE PETITIONER

9 MR. GREENFIELD: Thank you, Mr. Chief Justice,  
10 and may it please the Court, in this case the Court is  
11 asked to construe Section 2331 of the Omnibus Budget  
12 Reconciliation Act of 1981, or OBRA.

13 In OBRA, Congress established the tax intercept  
14 program for collecting child support owed to state  
15 welfare agencies, and it directed the Secretary of the  
16 Treasury to intercept "refunds of federal taxes paid"  
17 payable to certain individuals.

18 What this Court is asked to decide is whether  
19 Congress authorized the interception of earned income  
20 credit benefits when it directed the interception of  
21 refunds of federal taxes paid.

22 It is petitioner's contention that it did not  
23 authorize interception of earned income credit benefits,  
24 and that was also the holding of the Second Circuit in  
25 Nelson versus Regan and the Tenth Circuit in Eucker



1 versus the Secretary of the Treasury. We are here  
2 because the Ninth Circuit ruled the other way.

3 There are three points that I would like to  
4 emphasize this morning. The first is that the statutory  
5 phrase "refunds of federal taxes paid" is a distinctive  
6 and unambiguous phrase which literally does not encompass  
7 earned income credit benefits.

8 The second is that the structure of Section  
9 2331 of OBRA is inconsistent with the broad reading the  
10 Secretary has given to Section 6402(c) of the Internal  
11 Revenue Code.

12 And the third and perhaps most important point  
13 is that when Congress enacted Section 2331, it was  
14 concerned with support for children and with reducing the  
15 cost of the AFDC program, and it would have made no sense  
16 in that context to fund support for one group of needy  
17 children aided under the AFDC program by taking benefits  
18 from another group of children, perhaps as needy or more  
19 needy who because their parents were working were  
20 assisted under the earned income credit benefit program.

21 To start with the phrase "refunds of federal  
22 taxes paid" --

23 QUESTION: What group of children do you say  
24 was in that latter category?

25 MR. GREENFIELD: Children, Justice White -- in

1 order to qualify for an earned income credit benefit, an  
2 applicant must reside with a dependent child, and the  
3 benefit only goes to low income families, so the children  
4 I am speaking about are children in families eligible for  
5 earned income credit benefits.

6 QUESTION: And the problem is that the  
7 Secretary wants to take that credit and withhold it?

8 MR. GREENFIELD: That's correct.

9 QUESTION: For the benefit of some other group  
10 of children?

11 MR. GREENFIELD: To help --

12 QUESTION: To make the applicant pay his  
13 debts.

14 MR. GREENFIELD: To reduce the cost of the AFDC  
15 program. As adopted in 1981, this would reflect an  
16 attempt to recoup the costs of support for needy children  
17 already paid.

18 QUESTION: I see.

19 MR. GREENFIELD: The expression "refund" --

20 QUESTION: Let me just be clear. The money,  
21 though, if it is withheld and recouped, it doesn't go to  
22 the parents of -- the first family; rather, it goes to  
23 the state, doesn't it?

24 MR. GREENFIELD: That was the only place that  
25 it could go in 1981, and there have been some

1 developments subsequently in 1984. Perhaps the most  
2 important of these, referred to in the government's  
3 brief, is in the Deficit Reduction Act of 1984 which  
4 adopts a parallel intercept program using virtually the  
5 same language to collect any debt owed to the federal  
6 government with a limited exception. I think it is  
7 Social Security overpayments.

8 QUESTION: Where do these withholdings go  
9 today? Suppose we agree with the government, and they  
10 withhold. They recapture. They intercept. Where does  
11 that money go that they intercept?

12 MR. GREENFIELD: There are several different  
13 places it could go today. One is to a state that is paid  
14 welfare benefits. Another is to the federal government  
15 to recoup a student loan or debts of the Small Business  
16 Administration. There is a limited circumstance in which  
17 a child support debt owed to an individual but assigned  
18 to a state could also be collected based on the Child  
19 Support Enforcement Amendments of 1984. That was not the  
20 case in 1981.

21 QUESTION: And would it redound to the benefit  
22 of the former parent or the --

23 MR. GREENFIELD: In the limited situation in  
24 which a state was collecting for a non-welfare family,  
25 that could be the case, Justice White.

1 QUESTION: I see.

2 MR. GREENFIELD: But that would be a situation  
3 in which presumably, since that child would not be on  
4 welfare, it would be taking funds from a needy child in  
5 an earned income credit benefit family to support a child  
6 that was less needy.

7 Now, the phrase "refunds of federal taxes paid"  
8 appears nowhere in the Internal Revenue Code. So far as  
9 we are aware, it was used for the first time in a federal  
10 statute in Section 2331. The term "refund," of course,  
11 is used frequently, and it is a term that is used to  
12 refer to any payment made through the tax refund  
13 process.

14 All such refunds, payments made through that  
15 process, correspond to federal taxes actually paid with  
16 one exception, and that exception is the earned income  
17 credit benefit.

18 One need not have owed any tax or paid any tax  
19 in order to be eligible for this cash payment, and as the  
20 government concedes, earned income credit benefits do not  
21 correspond to taxes actually paid.

22 QUESTION: Well, it looks to me like the  
23 biggest problem for your position, Mr. Greenfield, is  
24 that Section 6401(b) specifically defines an earned  
25 income credit as an overpayment of taxes.



1 MR. GREENFIELD: Yes, it does.

2 QUESTION: And it is subject to interception  
3 then under Section 6402(c).

4 MR. GREENFIELD: Let me address the  
5 relationship between Section 6402(c) of the Internal  
6 Revenue Code and Section 464 of the Social Security Act,  
7 which is our response to this argument made by the  
8 Secretary. And to help do that, I have asked the clerk  
9 to distribute to you on the eight-and-a-half-by-fourteen  
10 page the full text of Section 2331 in which both of these  
11 provisions originated.

12 Now, you will notice that in Subsection (a) of  
13 2331 Congress established the tax intercept program. We  
14 contend that this is really the basic text of the  
15 program, and it is an unambiguously limited  
16 authorization. That is, it only applies to refunds of  
17 federal taxes paid.

18 In Subsection (b) of 2331, Congress imposed an  
19 obligation on states to participate in the tax intercept  
20 program. Now, having done that much, the program was in  
21 place, and I have been asked before in this case why was  
22 it necessary to go and add Subsection (c). The reason it  
23 was necessary is that at that point there would have been  
24 conflicting obligations imposed on the Secretary of the  
25 Treasury.

1           That is, the Secretary was told in the Social  
2 Security Act as amended to intercept certain refunds  
3 whereas under Section 6402, prior to its amendment, these  
4 same refunds were to be paid through a taxpayer, and so  
5 it was necessary in order to reconcile the Internal  
6 Revenue Code to amend the part of the quote that dealt  
7 with overpayments, namely, 6402.

8           However, there is no reason to read Section  
9 6402 as granting authority that is any broader than that  
10 which is included in 464 of the Social Security Act,  
11 Subsection (a), and the express language of 6402(c) as  
12 emphasized by the Courts of Appeal, with the exception of  
13 the Ninth Circuit, says that overpayments are to be  
14 reduced, but in accordance with Section 464 of the Social  
15 Security Act.

16           QUESTION: Mr. Greenfield, I have a little  
17 trouble with all of the sections. Section 2331 refers to  
18 a section of the OBRA, right?

19           MR. GREENFIELD: That's correct.

20           QUESTION: And Section 6401 and 6402 refer to  
21 sections of the Internal Revenue Code?

22           MR. GREENFIELD: That's correct.

23           QUESTION: And there are some other -- 454 is a  
24 section of the Social Security Act.

25           MR. GREENFIELD: That's correct, Your Honor.

1 Section 2331 of OBRA created in Subsection (a) 464 of the  
2 Social Security Act. It amended in Subsection (b)  
3 Section 454 of the Social Security Act, and it amended in  
4 Subsection (c) Section 6402 of the Internal Revenue  
5 Code.

6 Let me turn to the issue of Congressional  
7 purpose. As I said earlier, when Congress adopted 2331  
8 of OBRA, it was concerned about support of children. It  
9 was also concerned with reducing the cost of the AFDC  
10 program, but this was not clearly its exclusive concern  
11 because the easiest way to do that would have been to  
12 simply cut back the AFDC program.

13 It would have made no sense in considering how  
14 to fund a program designed to help needy children to  
15 simply dip into benefits that Congress only a few years  
16 earlier had established for another group of needy  
17 children whose parents worked, and rob those children to  
18 fund a program for another set of children.

19 It would have frustrated all of the purposes of  
20 the earned income credit benefit program. The work  
21 incentive purpose elaborated in the Senate report  
22 referred to in our briefs obviously would be eliminated  
23 if earned income credit benefits were interceptable,  
24 because, of course, AFDC benefits are exempt, and the  
25 less emphasized purpose of stimulating the economy would

1 also have been lessened if the money wasn't paid to these  
2 needy families, and presumably promptly used.

3           We are talking about not a large benefit. The  
4 maximum in 1982 was \$500. But for many families this was  
5 approximately 10 percent of their annual income, and it  
6 came in the winter at a time when fuel bills were at  
7 their highest.

8           The legislative history reflects Congressional  
9 concern about rising fuel costs and rising food costs and  
10 the particularly severe impact of these phenomena on  
11 working poor families, and allowing the interception of  
12 these benefits would simply frustrate the purposes of  
13 that program.

14           Now, the language which Congress chose in  
15 adopting the tax intercept program is very limited and  
16 very clear. It applies to refunds of federal taxes  
17 paid. Earned income credit benefits are not refunds of  
18 federal taxes paid, so in reading the authorization as  
19 broadly as he has done, the Secretary has simply ignored  
20 the plain language used by Congress.

21           QUESTION: Would you just let me ask this one  
22 further question about the language? Of course, it is  
23 troubling because it says payable as refunds of federal  
24 taxes paid, and I guess your opponent's argument is that  
25 the manner of payment of the earned income credit is as a



1 refund of a federal tax paid, and therefore that it fits  
2 right into the language.

3 Now, how do you deal with the problem of the  
4 literal language?

5 MR. GREENFIELD: Justice Stevens --

6 QUESTION: I understand your point about  
7 purpose and so forth.

8 MR. GREENFIELD: Justice Stevens, if you look  
9 at the language as it appears in the statute, and it is  
10 underscored in Subsection (a) --

11 QUESTION: Right.

12 MR. GREENFIELD: -- it doesn't say payable as  
13 refunds for federal taxes paid. What it says is, "any  
14 amount, as" --

15 QUESTION: So you take the --

16 MR. GREENFIELD: -- "refunds of federal taxes  
17 paid, payable to such individual." So the word "payable"  
18 and the phrase "payable to such individual" was  
19 Congress's way of explaining whose refund of federal  
20 taxes paid was at issue.

21 Now, the Ninth Circuit took the word "payable"  
22 and stuck it before "as" and came up with a very  
23 different argument, but that isn't the language used by  
24 Congress.

25 QUESTION: Are you saying in effect, then, that

1 the common clause, or whether it is a phrase, "as refunds  
2 of federal taxes paid" should be read to modify  
3 "amounts," which precedes it --

4 MR. GREENFIELD: That's correct.

5 QUESTION: -- rather than the word "payable,"  
6 which follows it.

7 MR. GREENFIELD: That's correct.

8 QUESTION: If it did modify payable, then you  
9 would have a much more difficult case.

10 MR. GREENFIELD: Then there would be at least  
11 an ambiguity. That is correct.

12 QUESTION: Yes.

13 MR. GREENFIELD: And there is a reason.

14 QUESTION: Because you are saying it is really  
15 a qualification of the substantive amount rather than a  
16 description of the procedure of payment.

17 MR. GREENFIELD: That's correct, Justice  
18 Stevens, and there is a reason for using that "seemingly  
19 rather awkward phrasing, and that is that while the money  
20 is held by the Treasury it isn't yet a refund, so it is  
21 an amount that would be a refund if it were paid, but  
22 while held by the Treasury it is technically simply an  
23 accounting item. So, it was appropriate to refer to  
24 amounts as refunds of federal taxes paid payable to such  
25 individual.

1 Now, earlier in this case, the government  
2 characterized the phrase "refunds of federal taxes paid"  
3 as ambiguous. Our position is, it is not ambiguous. The  
4 phrase is clear. It is simply inconsistent with the  
5 government's position, and especially in light of the  
6 purpose of the earned income credit benefit program, it  
7 would be extremely inappropriate to stretch this  
8 statutory language to reach out and intercept earned  
9 income credit benefits.

10 If there are no further questions at this  
11 point, I will reserve the rest of my time.

12 Thank you.

13 CHIEF JUSTICE BURGER: Very well.

14 Mr. Farber.

15 ORAL ARGUMENT OF RICHARD FARBER, ESQ.,

16 ON BEHALF OF THE RESPONDENTS

17 MR. FARBER: Thank you, Mr. Chief Justice, and  
18 may it please the Court, there are three points I would  
19 like to make this morning. The first one is that the  
20 decision below is in accord with both the language of the  
21 Social Security Act and the concurrent provisions in the  
22 Internal Revenue Code.

23 Moreover, the decision below is the only one  
24 that makes sense in light of the overall statutory scheme  
25 enacted by Congress for dealing with this increasing

1 problem of non-payment of child support obligations, and  
2 finally, there are no considerations of social policy  
3 that provide any basis for ignoring the clear mandate of  
4 the statutory provisions involved.

5         The petitioner in this case has tried hard to  
6 read the intercept provisions as applying only to actual  
7 refunds of taxes paid. Now, if that were the language  
8 and the intent of Congress, there wouldn't be much to  
9 argue about this morning, because it is quite clear that  
10 earned income credits are not actual refunds of taxes  
11 paid.

12         However, the language employed by Congress does  
13 not say refunds of taxes paid. The petitioner tries very  
14 hard to ignore the provisions of the Internal Revenue  
15 Code which form part of the intercept provision. They  
16 were enacted concurrently with the Social Security Act.

17         The provisions of the Internal Revenue Code  
18 speak in terms of overpayment. Any overpayment may be  
19 intercepted. That is what Section 6402(c) says. Section  
20 6401(b) expressly defines an excess earned income credit,  
21 meaning the extent to which the credit exceeds the tax  
22 liability, as an overpayment.

23         When you put these two sections together, the  
24 obvious conclusion is that earned income credits may be  
25 intercepted because they are overpayments, and Section



1 6402(c) by its express terms refers to any overpayment.

2 The position taken by the petitioner also  
3 results in an inconsistency within Section 6402 itself.  
4 6402(a) is the provision which authorizes the  
5 Commissioner to make refunds of overpayments. In fact,  
6 it directs the Secretary to refund any overpayment.

7 Now, if an earned income credit were not an  
8 overpayment, it couldn't be refunded at all, and this  
9 issue could never have arisen, so it must be conceded,  
10 and both the Second and Tenth Circuits have conceded that  
11 earned income credits are overpayments for purposes of  
12 Subsection (a) of Section 6402 and therefore may be  
13 refunded.

14 However, when Congress enacted the intercept  
15 program in 1981, it specifically amended Section 6402(a)  
16 to provide that the Secretary's obligation to refund an  
17 overpayment under that subsection is subject to the  
18 provisions of Subsection (c). Now, that is the express  
19 cross reference.

20 And Subsection (c), of course, specifically  
21 says that in the case of any overpayment due to a person  
22 who is indebted for past due child support, the amount of  
23 the overpayment is to be reduced by the amount of the  
24 past due support.

25 In light of this integrated statutory scheme,

1 there is simply no way to maneuver out of the conclusion  
2 that earned income credits, since they are overpayments  
3 under the code, are subject to interception.

4 QUESTION: What section of the code again is it  
5 that makes earned income credit overpayment?

6 MR. FARBER: Section 6401(b). All the relevant  
7 statutes are set out in the appendix to the government's  
8 brief.

9 QUESTION: And that was not included in the  
10 sheet that was handed out?

11 MR. FARBER: I believe, that the petitioner  
12 passed out.

13 QUESTION: Yes.

14 MR. FARBER: The Second and Tenth Circuits --

15 QUESTION: Would you help me a little, because  
16 I want to coordinate. Section 6401(b) was enacted when?

17 MR. FARBER: It was part of the '54 Code.

18 QUESTION: Well, this is long -- how could the  
19 reference to earned income credits be in the '54 Code?

20 MR. FARBER: It was amended when -- the earned  
21 income credit was enacted in 1975 as part of the Tax  
22 Reduction Act. At that time Congress amended 6401(b) to  
23 make earned income credits one of the few credits that  
24 are treated as overpayments. Most credits are not  
25 overpayments, and if they exceed your tax liability, they

1 are gone. Certain credits are considered to be -- are  
2 treated as refundable credits, and are treated as if you  
3 overpaid your tax.

4 QUESTION: I really am asking a very elementary  
5 question. Section 6401(b) in the form in which it  
6 appears in the appendix to your brief was enacted when?

7 MR. FARBER: Well, it was last amended as  
8 relevant here in 1975. That was the time when Congress  
9 passed the earned income credit, and in order to make  
10 that a refundable credit, it was necessary to define an  
11 earned income credit as an overpayment, and to do that,  
12 they amended Section 6401(b).

13 QUESTION: So that was done in '75, before  
14 there was any intercept program.

15 MR. FARBER: Yes, that's correct. They have  
16 been overpayments since --

17 QUESTION: So this set up the procedure by  
18 which the earned income credit would be paid to the  
19 person who needed it.

20 MR. FARBER: That is exactly correct, because  
21 in 1975 when Congress amended 6401(b) to define earned  
22 income credit as an overpayment, 6402(a) already provided  
23 that in the case of any overpayment, the Secretary was  
24 required to refund it.

25 QUESTION: What happened in the case for a

1 person who was entitled to an earned income credit but  
2 didn't earn enough money to file a tax return? How did  
3 he get it, if at all?

4 MR. FARBER: I don't believe they would get the  
5 credit unless they filed a return and claimed it.

6 QUESTION: What were the requirements for being  
7 eligible for earned income credit? I am still a little  
8 unclear about this?

9 MR. FARBER: Well, to be an eligible  
10 individual, you either have to be a head of household, a  
11 surviving spouse, or a married individual supporting a  
12 dependent child who lives with you. Those are the  
13 categories. Then there are income limitations. You must  
14 have -- it only applies to earned income, 10 percent of  
15 earned income up to a maximum of 5,000, so that would be  
16 a maximum credit of \$500.

17 It decreases -- the credit decreases  
18 proportionately to the extent your earned income is more  
19 than \$6,000, and at \$10,000 there is no more credit. But  
20 basically up to \$5,000 it is the first 10 percent of  
21 earned income, and if you have no tax liability  
22 whatsoever, you filed a return and claimed a credit and  
23 you receive a check.

24 It is treated as if you have overpaid your  
25 taxes, even though in fact you may have paid no taxes



1 whatsoever.

2 QUESTION: If you file a joint tax return, as  
3 true in this case, is the \$500 limit applicable, or does  
4 it go up to \$1,000?

5 MR. FARBER: I believe only one person would be  
6 eligible because in order to be eligible you have to be  
7 the one entitled to claim a dependency exemption, meaning  
8 you have to provide more than half the support, so only  
9 one of the spouses would be eligible to claim the  
10 credit.

11 QUESTION: The \$10,000 income limit applies  
12 only to the person entitled to claim the credit?

13 MR. FARBER: That is --

14 QUESTION: Even if the spouse earned a lot more  
15 than that?

16 MR. FARBER: Well, presumably if the spouse  
17 earned a lot more, the person claiming the credit might  
18 find it difficult to prove that they provided half the  
19 support of the dependent, and then they wouldn't be  
20 eligible for the credit in the first place.

21 QUESTION: May I ask just one other question to  
22 get the sequence in order, if I may. The next statutory  
23 enactment of significance is the 1981 enactment, and that  
24 is fully before us in this typewritten thing. Is that  
25 right?

1 MR. FARBER: That's correct.

2 QUESTION: Now, that text itself doesn't refer  
3 to the earned income credit. I mean, I understand you  
4 think it does by picking up through the word "payment."  
5 Is there anything in the legislative history in 1981 that  
6 indicates one way or another whether Congress even  
7 mentioned earned income credit --

8 MR. FARBER: As far as I am aware, Justice  
9 Stevens, Congress did not mention earned income credit  
10 one way or the other when it passed the intercept  
11 program. Our position, of course, is that its language  
12 was so all-encompassing that it necessarily includes  
13 earned income credits because of the way that the code is  
14 set up.

15 The position of the petitioner and of the  
16 Second and Tenth Circuits in the Nelson and Rucker cases  
17 is based exclusively on the language of a parallel  
18 provision, Section 464 of the Social Security Act, which  
19 was enacted concurrently with Section 6402(c) of the  
20 Code.

21 They read this provision as authorizing only  
22 interceptions of actual tax refunds, and they say that is  
23 -- and earned income credit is not an actual tax refund,  
24 and that is the end of the case.

25 Of course, their position requires ignoring the

1 parallel provisions of the Internal Revenue Code, which  
2 speaks clearly in terms of overpayment, so their position  
3 requires creating an inconsistency between two concurrent  
4 provisions which were part of the same program.

5 In our view, the interpretation of the court  
6 below is correct and avoids any inconsistencies. The  
7 court below read Section 464 as applied not to just tax  
8 refunds. The section says, in the case of any amounts as  
9 refunds of taxes paid which are payable, and in our view  
10 the only logical interpretation, judging in light of the  
11 concurrent provisions of Section 6402(c) is, is that  
12 Congress meant that any amounts payable as refunds of  
13 taxes paid are subject to interception, and there is no  
14 question that earned income credits are payable as  
15 refunds of taxes paid.

16 That is the only way they can be refunded.  
17 There is no other authority under which the Secretary  
18 could make a refund of an earned income credit other than  
19 the fact that it is treated under the code as an  
20 overpayment of tax. In our view, there is no  
21 inconsistency between these two provisions. They both  
22 apply to amounts payable as refunds. Earned income  
23 credits are payable as refunds.

24 We think this conclusion becomes even more  
25 apparent when one looks at an antecedent provision

1 enacted in 1975, and that is Section 6305 of the Code.  
2 That was enacted as part of the Social Services Amendment  
3 of 1974. Under that provision, Congress authorized and  
4 directed the Secretary of the Treasury upon receiving  
5 certification from HHS through the states to collect  
6 child support that had been assigned to a state as if it  
7 were a delinquent federal employment tax.

8 Delinquent taxes may be collected out of any  
9 property or rights to property belonging to the taxpayer  
10 and may be collected from any means, including levy and  
11 -- liens, tax sales, and other means available to the  
12 IRS. Although there are few exemptions of property  
13 interests that may not be collected for federal taxes,  
14 there is no exemption for earned income credits.

15 Thus, it is perfectly clear that when Congress  
16 enacted 6305, it authorized the collection, the seizure,  
17 if the Court will, of earned income credits. Once they  
18 have been actually paid out by the Treasury and are in  
19 the hands of the recipient, the IRS could turn around  
20 once the matter was certified and seize those credits  
21 back.

22 QUESTION: Mr. Farber, you have in your brief  
23 some indication of the amounts of money involved. To  
24 what extent has the IRS done this? Did they exercise the  
25 power you now describe by collecting from earned income

1 credit?

2 MR. FARBER: Section 6305 has not been widely  
3 used.

4 QUESTION: Has it been used at all?

5 MR. FARBER: My understanding is, it has been  
6 used several thousand times, but it is not very cost  
7 efficient, and requires locating the person who is  
8 indebted, locating its assets, and then using somewhat  
9 cumbersome means to actually reduce those assets to  
10 possession.

11 In fact, the reason Congress passed the  
12 intercept program was that it felt that existing  
13 authority was just too cumbersome, wasn't cost  
14 effective.

15 QUESTION: A moment ago you said they hadn't  
16 even mentioned the earned income credit at the time of  
17 the 1981 --

18 MR. FARBER: They didn't focus in on earned  
19 income.

20 QUESTION: I am asking you about use of this  
21 power as a means of collecting from earned income  
22 credits. You say that has been done thousands of times.

23 MR. FARBER: Excuse me, Your Honor. I  
24 misunderstood. They have used Section 6305 to collect  
25 past due supports several thousands of times. There is



1 nothing in the record and I am not aware of any --

2 QUESTION: I know it is not in the record, but  
3 you do go outside the record from time to time. I am  
4 asking you if that power was ever used to levy unearned --

5 MR. FARBER: I have no specific indication as  
6 to whether it has ever been used.

7 QUESTION: Yet you rely heavily on the fact  
8 that that power was there for several years.

9 MR. FARBER: What I am saying is that the power  
10 is there, that it could be used, and that if the Court  
11 were to hold that these earned income credits couldn't be  
12 intercepted, it would not be immunizing these credits  
13 from collections for past due support, as petitioners  
14 suggest, because they still could be subject to  
15 collection. It just would require that a more costly  
16 method be used.

17 For whatever reason these other methods have  
18 not been used, and I would suggest the principal reason  
19 is the cost. The fact remains that they could be  
20 collected that way, and so it makes little sense to say  
21 that when Congress passed the intercept provisions, which  
22 it intended to enhance existing collection authority, it  
23 intended to immunize earned income credits from this new  
24 streamlined cost effective procedure and to require if --

25 QUESTION: Unless it thought there was a

1 federal interest in having the earned income credit go to  
2 the people who had these dependent children who needed  
3 money.

4 MR. FARBER: Well, Your Honor, except that it  
5 didn't -- when it authorized collection of child support  
6 as delinquent taxes, it didn't pass any exemption for  
7 earned income credit, and so there is no limitation to  
8 stop the states from seeking to use this power, and so  
9 Congress has not protected earned income credits in this  
10 earlier broad power, and so there is no reason to believe  
11 that it intended to do so when it enhanced this  
12 collection authority. It also --

13 QUESTION: What I am suggesting is, it didn't  
14 really need to, because the practice was so clear that  
15 they never even tried to invoke it.

16 MR. FARBER: Well, I don't believe there is any  
17 indication of that.

18 QUESTION: Well, you have acknowledged that to  
19 the best of your knowledge they never tried to invoke it.

20 MR. FARBER: I am not aware of any instances in  
21 which they collected that way. I would point out that  
22 when Congress passed the predecessor provision, Section  
23 6305, not only didn't it exempt earned income credits  
24 from its scope, but it eliminated certain of the  
25 exemptions that already are available for tax collection,

1 most notably unemployment benefits. Unemployment  
2 benefits by statute may not be collected for past due  
3 taxes. However, when Congress enacted Section 6305, it  
4 specifically eliminated that exemption, so that  
5 unemployment benefits may be collected for past due  
6 support.

7 Now, there was no need to get rid of any  
8 exemption for earned income credits, because there wasn't  
9 one in the first place, but that shows the depth of  
10 Congress's interest in seeing that these child support  
11 debts are collected.

12 QUESTION: Mr. Farber, perhaps I have been  
13 around too long, but years and years ago, wasn't there  
14 another federal earned income credit in the Code, perhaps  
15 the '39 Code, by which one obtained a deduction for  
16 earned income as contrasted with unearned income such as  
17 dividends, interest, capital gains?

18 MR. FARBER: I am not familiar with that  
19 specific provision, Justice Blackmun, but there have been  
20 many provisions in the code dealing with earned income.  
21 At one point in time there was a maximum tax on earned  
22 income of 50 percent as opposed to dividends and other  
23 types of passive income which were subject to rates in  
24 excess of 70 percent.

25 So, the term "earned income" is one of art that

1 has been used throughout the years in the Internal  
2 Revenue Code.

3 QUESTION: I think I have been around too long,  
4 but I am sure there was one back in the thirties and  
5 forties.

6 MR. FARBER: I don't doubt it, Justice  
7 Blackmun.

8 QUESTION: That I have been around too long?  
9 (General laughter.)

10 MR. FARBER: No, I didn't mean that.  
11 (General laughter.)

12 MR. FARBER: In our view, the provisions are  
13 clear on their face, and there is nothing in the  
14 legislative history which shows that Congress didn't mean  
15 what it said --

16 QUESTION: Don't you have to concede that there  
17 is somewhat of an ambiguity in that provision of the  
18 Social Security Act as to what that phrase modifies as  
19 payable, what payable applies to?

20 MR. FARBER: Yes, Your Honor, I would concede  
21 that, because if there wasn't an ambiguity there, I don't  
22 think we would have lost this case in the Second and  
23 Tenth --

24 QUESTION: Exactly. Exactly. Well, now, let's  
25 assume we don't agree with you as to how 464 should be

1 read. Then there is a conflict between the two  
2 sections. And how do we resolve that?

3 MR. FARBER: Well, that is the problem, Your  
4 Honor, is that these two sections, 6402(c) and Section  
5 464 were both passed concurrently in 1981 as part of  
6 OBRA. So it doesn't make any sense that Congress  
7 intended these two concurrent and parallel provisions to  
8 have different meanings.

9 Now, if there is an ambiguity in Section 464,  
10 our view is that, well, let's look at the Internal  
11 Revenue Code, and there is no ambiguity over there. I  
12 don't think petitioner has even tried to suggest one.  
13 Certainly the Second and Tenth Circuits haven't. They  
14 just ignored it. But if you look at the language over  
15 there, the technical language about overpayments are  
16 subject to interception, and earned income credits are  
17 expressly defined as overpayments, there is no  
18 ambiguity --

19 QUESTION: Yes, but that expressly defines as  
20 overpayments -- that provision was passed in '75.

21 MR. FARBER: Yes.

22 QUESTION: And wasn't changed at all in '80.

23 MR. FARBER: That is true, Your Honor.

24 QUESTION: So it may be you should ignore it.  
25 Congress just didn't even think of it.



1 MR. FARBER: Well, but the language it used is  
2 all encompassing, because when it chose to add this  
3 intercept provision, it amended Section A, which directs  
4 the refunds of overpayment to say the Secretary shall,  
5 subject to Subsection (c), refund the amount of any  
6 overpayment, and then in Subsection (c) it says, in the  
7 case of any overpayment the amount of past due support is  
8 to be applied against that overpayment.

9 So, its language is all-encompassing. There is  
10 absolutely not a word in the legislative history which  
11 indicates that Congress went too far, didn't mean what it  
12 said when it used that broad language, that had it  
13 thought about it, it would have excluded --

14 QUESTION: Don't the courts ordinarily give  
15 some deference to the construction of the Secretary in  
16 the event there is an ambiguity?

17 MR. FARBER: Well, certainly when regulations  
18 have been promulgated there is great deference, but I  
19 suppose it might be viewed as somewhat bootstrapping if  
20 we came here and said we are right because we said we are  
21 right.

22 QUESTION: Well, you have been doing it for  
23 years.

24 (General laughter.)

25 QUESTION: That is the constant refrain from

1 agencies.

2 MR. FARBER: Maybe I haven't been here enough  
3 to get the party line.

4 QUESTION: You will.

5 (General laughter.)

6 MR. FARBER: In our view, if the decision below  
7 were to be reversed, you would be creating this conflict  
8 among concurrent sections, and I again would emphasize --

9 QUESTION: Well, we would just be saying that  
10 we will construe the Internal Revenue Code in the light  
11 of the Social Security --

12 MR. FARBER: Well, except that the Internal  
13 Revenue Code provision purports to be an independent  
14 authority. It mandates the interception of any  
15 overpayment. It doesn't say, you know, as provided in  
16 Section 464. It doesn't purport to be limited by Section  
17 464.

18 And once again, I would emphasize that Congress  
19 has already authorized the collection of earned income  
20 credits through various means once they have been paid  
21 out, and in light of that authorization, it doesn't make  
22 any sense to say that Congress intended when it enacted  
23 the intercept provision to carve out an exception for  
24 earned income credits and say you can't --

25 QUESTION: Mr. Farber, you keep relying on an

1 authorization that they never used for six years. I don't  
2 find that at all persuasive, in all candor, but let me  
3 just ask you this. Does it really make any sense for the  
4 federal government to appropriate to subsidize a certain  
5 category of our society and say, you need some money, and  
6 then say, yes, but we want to intercept that and give it  
7 to the states? That is what is happening.

8 MR. FARBER: Well, Congress may work at cross  
9 purposes sometimes, but I don't think it is quite --

10 QUESTION: Clearly here if you are right.

11 MR. FARBER: Well, I don't think it is that  
12 clear, Justice Stevens.

13 QUESTION: Isn't it true that this is a subsidy  
14 for a group of needy people that the federal government  
15 is financing, and if it is diverted, it goes to the  
16 states to pay off some debts by the same group of  
17 people. And does it seem likely the federal government  
18 intended to subsidize the state's collection of  
19 obligations of this kind?

20 MR. FARBER: Well, I think -- yes, Your Honor,  
21 I think so because over the past 35 years it has  
22 expressed increasing concern about the rapid growth of  
23 people, families on AFDC. The principal cause of  
24 families on AFDC has been identified as the problem of  
25 deserting parents, most notably fathers, and Congress has

1 taken stringent efforts to collect these past due  
2 supports. Now, in this case --

3 QUESTION: In the past it has collected them  
4 out of the assets of the people who owe the money, their  
5 own tax money.

6 MR. FARBER: Well, Justice Stevens, what  
7 happens here is that because someone like petitioner's  
8 husband did not pay his child support, and it is  
9 undisputed he is in debt for child support, his former  
10 wife had to go on welfare. As a condition to going on  
11 welfare, she was required to assign her support rights to  
12 the state, and now the state is seeking to try and  
13 reimburse its costs to a certain extent, but the point  
14 remains that Mr. Sorenson failed to honor his support  
15 obligations.

16 QUESTION: And to the extent that you are  
17 successful here the honoring of the support will be  
18 financed by the federal government.

19 MR. FARBER: Well, that might well --

20 QUESTION: Isn't that true? The earned income  
21 credit money all comes out of the federal treasury? And  
22 you are saying that money should be devoted to pay off  
23 this man's past due debts.

24 MR. FARBER: That same argument could be made  
25 with respect to unemployment benefits, and as I have

1 pointed out, when Congress enacted Section 6305, it  
2 specifically repealed the exemption for unemployment  
3 benefits. Now, those are paid by the federal government,  
4 but Congress said we want those benefits available for  
5 seizure for payment of past due supports that have  
6 assigned to a state.

7 Now, in view of that specific action, I see no  
8 inconsistency with Congress drawing the same conclusion  
9 with earned income credits, another benefit provided by  
10 the federal government.

11 QUESTION: Except that here the benefit title  
12 really was intended for the children rather than for the  
13 man, as in the case of the unemployment compensation.

14 MR. FARBER: Well, I am not sure that that is  
15 entirely true. The earned --

16 QUESTION: He can't get it if he doesn't have  
17 children.

18 MR. FARBER: That is true, Your Honor, but it  
19 really was an incentive for low income people to work  
20 rather than to receive welfare. It was intended to  
21 negate the impact of social security taxes that they  
22 would incur by working, and so it was intended really as  
23 a refund of social security taxes more than anything  
24 else.

25 QUESTION: That incentive is somewhat removed



1 by this intercept.

2 MR. FARBER: Well, not entirely, Justice  
3 White. In the first place, the earned income credit  
4 isn't simply covered into the state treasury. It reduces  
5 their existing lawful debt dollar for dollar, so they do  
6 get a direct economic benefit from this -- well, let's  
7 say a \$500 credit. It reduces their debt that they owe  
8 to a state, so they do get a benefit from it. It is not  
9 like it just is collected as a tax and it is lost to them  
10 and they have received no benefits.

11 QUESTION: Well, if one of the purposes is to  
12 get people to pay their obligations in the future, it  
13 certainly isn't very -- this intercept program certainly  
14 isn't very effective.

15 MR. FARBER: I don't think I follow that.

16 QUESTION: Is one of the purposes to urge these  
17 debtors to pay their debts in the future as they accrue?

18 MR. FARBER: I believe it is, but maybe more  
19 principally to try and collect against those people who  
20 have no intention of voluntarily paying, and there is a  
21 huge amount out there. I would give the Court some  
22 figures. During the first three and a half years of the  
23 intercept program, the total amount of tax refunds that  
24 have been intercepted are approaching or may be slightly  
25 in excess of \$900 million. Of this amount, the earned

1 income credit component is estimated to be somewhere  
2 between 15 to 20 percent.

3 So, the intercept program has been quite  
4 successful. We are only talking about one small part of  
5 it here, the earned income credit component, but the  
6 overall program has collected some \$900 million that  
7 otherwise may not have been collected, and the figures  
8 indicate that the amount of the interceptions are  
9 increasing at an increasing rate each year, so in future  
10 years the collections may be even greater.

11 One other point I would like to make, that this  
12 case has been painted sort of as a battle against a poor  
13 individual versus the state, but in 1984, Congress has  
14 expanded the intercept program to allow collection,  
15 interception of refunds on behalf of children who aren't  
16 on AFDC.

17 Now, these children may be quite needy and it  
18 may well be that if these collections are made they won't  
19 have to go on AFDC, and these amounts that will be  
20 collected beginning in January of '85 will not go to the  
21 state.

22 The state will receive them from the IRS, but  
23 they will pay them out to individual families, and the  
24 court's decision here will directly impact on this later  
25 amendment. If the court should hold that earned income

1 credits are immune under the intercept program, then they  
2 couldn't be paid for these individuals as well as paid to  
3 the states.

4 So the decision here is quite far-reaching, but  
5 the expansion to individual cases once again shows  
6 Congress's concern in this area to stop the -- or put a  
7 halt to the increasing problem of non-payment of child  
8 support and to stop the growth of AFDC. It is felt that  
9 by enforcing child support payments from people who have  
10 not yet gone on AFDC, that it may stop them from having  
11 to apply for welfare.

12 I don't believe I have anything else.

13 CHIEF JUSTICE BURGER: Very well.

14 Do you have anything further, counsel?

15 ORAL ARGUMENT OF PETER GREENFIELD, ESQ.,

16 ON BEHALF OF THE PETITIONER - REBUTTAL

17 MR. GREENFIELD: Please.

18 To first briefly address the question raised by  
19 Justice Powell, a married person who applies for an  
20 earned income credit benefit must file a joint return,  
21 and in 1981 if there was adjusted gross income in excess  
22 of \$10,000, then there was no eligibility for the  
23 benefit, so this is a program that only will benefit poor  
24 families with children.

25 I would like to talk a little bit more about

1 Section 6402(c) of the Internal Revenue Code, because I  
2 think the problem of reconciling that with what we take  
3 to be the clear provision of 464 of the Social Security  
4 Act seems to have been the focus of some discussion, and  
5 there is a phrase in 6402(c) that has simply been ignored  
6 by the Secretary, and that is the phrase, "in accordance  
7 with Section 464 of the Social Security Act."

8           So, it says, that is, 6402(c) says,  
9 "overpayments shall be reduced," and we acknowledge that  
10 it is probably appropriate to treat in this context  
11 earned income credit benefits as overpayments. It is  
12 possible to distinguish two classes of overpayments, but  
13 it is not necessary, because it goes on to say, they  
14 shall be reduced in accordance with Section 464 of the  
15 Social Security Act, so if --

16           QUESTION: You say -- I see in the copy of the  
17 section I've got where -- the requirement, the Secretary  
18 has been notified by a state in accordance with Section  
19 -- does it use, in accordance with the Social Security  
20 somewhere else in that --

21           MR. GREENFIELD: That is the only place it  
22 appears, Justice Rehnquist, and as we explain in more  
23 detail in the briefs, at first reading one would think  
24 that the phrase "in accordance with Section 464 of the  
25 Social Security Act" refers to the notice language that

1 comes immediately before it.

2 QUESTION: One certainly would, yes.

3 MR. GREENFIELD: However, there is a good  
4 reason for it not staying with that conclusion, and that  
5 is that Section 464 does not impose any notice obligation  
6 on states. The obligation that is imposed on states  
7 appears in Section 454 of the Social Security Act.  
8 Section 464 only imposes obligations on the Secretary of  
9 the Treasury. So it is entirely appropriate for this  
10 Court to read the phrase "in accordance with Section 464  
11 of the Social Security Act" as modifying the main verb in  
12 that sentence, "reduced."

13 And read that way, there is no difficulty in  
14 reconciling these two sections.

15 QUESTION: Would the Secretary ever be notified  
16 by a state so that your construction would make sense  
17 there?

18 MR. GREENFIELD: Yes. There is a requirement  
19 in Section 454 that states participate in the intercept  
20 program. So there is elsewhere a requirement imposed on  
21 states to take actions, and there are also regulations  
22 requiring the states to give notice. But Section 464  
23 itself does not require states to give notice.

24 QUESTION: And that is the section that  
25 requires the reduction?



1 MR. GREENFIELD: Section 464 of the Social  
2 Security Act requires interception of refunds of federal  
3 taxes paid. That is correct. It requires the Secretary  
4 to intercept such refunds of federal taxes paid.

5 Let me speak a little bit about Section 6305.  
6 As Justice Stevens correctly observed, there is no  
7 indication that it has ever been used to take an earned  
8 income credit benefit.

9 There is another important difference between  
10 Section 6305, which we have called the alternative  
11 collection method, and the intercept method, and that is  
12 that states are required to use the intercept method.  
13 That is, if a debt is owed to a state, it is required to  
14 certify the name of a debtor to the Secretary of the  
15 Treasury, regardless of whether the state would want to  
16 collect against the individual.

17 For example, in petitioner's case, while it is  
18 true there is no dispute that petitioner's husband owed  
19 child support to the state, it is also undisputed that he  
20 was disabled, and that he and his wife and a dependent  
21 child living on very low income, it would have been  
22 entirely appropriate for the state to determine that that  
23 isn't an appropriate case to pursue collection in.

24 However, they were required to use the  
25 intercept program. They were not required to use the

1 alternative method.

2 QUESTION: Mr. Greenfield, I understood your  
3 response about Section 6402(c) as to which phrase was  
4 modified by the notice requirement in there to be in part  
5 that Section 464 didn't deal with notification by the  
6 state.

7 MR. GREENFIELD: It does not impose an  
8 obligation on the state.

9 QUESTION: But it does say -- 464 says at the  
10 beginning, upon receiving notice from a state agency  
11 administering -- so it certainly refers to it.

12 MR. GREENFIELD: It refers to notice several  
13 times; also at the end of 464(a) it refers to notice, but  
14 464(a) is imposing an obligation on the Secretary, and  
15 when the Secretary complies with that obligation, he is  
16 acting in accordance with Section 464(a). When a state  
17 gives notice to the Secretary, the state is acting in  
18 accordance with Section 454, and in accordance with  
19 whatever regulations require notice, but it is not acting  
20 in accordance with 454 because no obligation is imposed  
21 by 464.

22 Now, if there were no other way of making sense  
23 out of this statute, it might be tempting to strain to  
24 say that is -- that these oblique references to notice  
25 are what was referred to in 5402(c), but there is no need

1 to strain in that way, because there is a perfectly  
2 acceptable interpretation which gives meaning to the  
3 primary text in Section 2331 of OBRA, that is, Subsection  
4 (a), which creates and establishes the tax intercept  
5 program.

6           There has been reference also in respect to  
7 6305 to its being more cumbersome, and that is the reason  
8 that it isn't used, and as this Court very well knows,  
9 the collection methods available to the IRS are perhaps  
10 among the least cumbersome collection methods known in  
11 this country. They are extraordinary powers. And the  
12 reason, we submit, that it is not so frequently used is  
13 that in many respects it is simply duplicative of state  
14 procedures.

15           States have programs to collect child support,  
16 and if the debtor is in the state, it is rarely necessary  
17 to invoke the assistance of the Secretary of the Treasury  
18 in order to garnish wages or seize property or use any of  
19 those kinds of remedies.

20           So, 6305 would simply be used, for example, if  
21 the debtor were out of state. But it also, since it is  
22 discretionary, since a state need not use it, it allows  
23 the state to do its collection business in what we would  
24 submit is a more appropriate way.

25           And to give one example, one of the class

1 members in this case filed a declaration explaining that  
2 her husband had an agreement with the state to make  
3 payments toward a child support obligation, and he was  
4 current in his obligation. Now, nonetheless, he had an  
5 outstanding debt, so the state was required to certify  
6 his name, and his refund was intercepted.

7           However, the state would not be required -- in  
8 that case I should emphasize it was only a refund of  
9 federal taxes paid. It was not under an income credit  
10 benefit. However, the state would not have been required  
11 and surely would not have asked the Secretary to use the  
12 6305 procedure because in exercise of its discretion and  
13 also its responsibility under the agreement it would have  
14 made its arrangement with the debtor and it would follow  
15 it.

16           So, there are many good reasons for the  
17 relative little use of Section 6305.

18           In conclusion, let me simply say that there is  
19 a clear statutory provision before the Court. It is in  
20 the first section of 2331. It authorizes the  
21 interception of refunds of federal taxes paid. As the  
22 Secretary concedes, earned income credit benefits are not  
23 refunds of federal taxes paid. There is no need to  
24 strain the statutory language when the only result is to  
25 take benefits from a particularly needy group of

1 children.

2 Thank you very much.

3 CHIEF JUSTICE BURGER: Thank you, gentlemen.

4 The case is submitted.

5 (Whereupon, at 11:56 o'clock p.m., the case in  
6 the above-entitled matter was submitted.)

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# CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#84-1686 - MARIE D. SORENSON, ETC., Petitioner V. SECRETARY OF THE TREASURY

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OF THE UNITED STATES AND UNITED STATES

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

BY Paul A. Richardson

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