

Elias Vs. Catena

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Court : US Supreme Court

Decided On : 1971

Appeal No. : 404 U.S. 807

Appellant : Elias

Respondent : Catena

Judgement :

ELIAS v. CATENA - 404 U.S. 807 (1971)

U.S. Supreme Court ELIAS v. CATENA , 404 U.S. 807 (1971)

404 U.S. 807

Albert ELIAS, Superintendent, Yardville Youth Reception and Correction Center
v.

Gerardo CATENA.

Application No. A-285 (In re Case No. 71-377).

UNITED STATES ex rel. Angelo Bruno ANNALORO

v.

Albert ELIAS, Superintendent, Yardville Youth Reception and Detention Center.

Application No. A-342.

Supreme Court of the United States

October 12, 1971

The motion for a stay in Application No. A-285 is granted and the counter application for bail is denied.

The application for bail in Application No. A-342 presented to Mr. Justice White, and by him referred to the Court, is denied.

Mr. Justice DOUGLAS, dissenting.

These are applications for bail in cases from the Court of Appeals for the Third Circuit, in Catena pending certiorari to this Court and in Annaloro pending appeal to the Court of Appeals. Each applicant was convicted by a state court for refusing to testify before a grand jury. Each sought habeas corpus in the federal court; and in the Catena case, [449 F.2d 40](#) , the Court of Appeals held that the applicant was unconstitutionally detained.

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Concededly the Annaloro case is on all fours with Catena, although the Court of Appeals has not yet heard the merits.

Mr. Justice BRENNAN took no part in the consideration or decision of the motion or applications.

The underlying question in these cases is whether the immunity to which a witness is entitled who refuses to testify because of the Self Incrimination Clause of the Fifth Amendment is 'transactional' immunity or 'use' immunity. The question is one that was stirred last Term in Piccirillo v. New York, [400 U.S. 548](#) . As Justice Brennan, Justice Marshall, and I concluded in that case, the constitutional requirement calls for 'transactional' immunity. Id., at 550- 551, 562 et seq.. That plainly is the law as it now stands, *ibid*; and the Court of Appeals so held. Since applicants were granted only 'use' immunity and refused to testify on that ground, they have wrongfully been imprisoned. They are therefore being held

unconstitutionally and should be discharged pending the appeals.

We have noted jurisdiction in No. 69-4, *Zicarelli v. New Jersey*, 404 U.S. 812, which raises the same question. But since *Malloy v. Hogan*, [378 U.S. 1](#), held, that the Fourteenth Amendment applied the Self Incrimination Clause to the States as fully as to the Federal Government, it will require a reversal in direction by this Court and a dilution of *Malloy* to say that these applicants are lawfully detained.

I would follow settled law until it is changed and meanwhile discharge these prisoners on suitable bail.*

* 'A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State or any matter involved in the habeas corpus proceeding.' 28 U.S.Code Ann. 2251.

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