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## 05-19-1981 Memorandum to the Conference

Lewis F. Powell  
*US Supreme Court Justice*

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 19, 1981

MEMORANDUM TO THE CONFERENCE

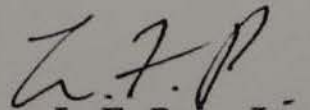
Case Held for No. 80-5303, Beltran v. Myers

No. 79-2034, Blum v. Caldwell, was held for our decision in Beltran v. Myers. It involves the validity of a similar New York rule governing transfers of assets by "medically needy" recipients of Medicaid in that State. The rule bars applicants who have made such transfers for the purposing of obtaining eligibility, and creates a presumption that transfers made in the preceding 18 months were for this purpose.

The District Court granted a preliminary injunction barring enforcement of this rule on the ground that it conflicts with governing federal law and regulations. The CA2 (Mansfield, Friendly and Kearse) affirmed. It read the federal statute and regulation as barring a criterion that is more restrictive for the "medically needy" than corresponding criteria applicable to SSI recipients--i.e., the "categorically needy." This decision conflicts directly with the CA9 decision reviewed in Beltran, where we vacated and remanded the decision below in light of an intervening statutory change allowing "transfer of assets" rules in the future.

In the present case, I will vote to deny. The case came up on the issue of the validity of a preliminary injunction, so the District Court will have ample opportunity to construe the recent statutory amendment in determining whether to award permanent relief. Indeed, on July 1, when the new statute takes effect, this preliminary injunction issue will become moot. Moreover, the case may already be moot, since New York apparently has recently switched from being an "SSI state" (governed by federal SSI eligibility standards) to being a "209(b) state" (where the

eligibility requirements may be the same as prevailed prior to the enactment of SSI in 1972). See Pet. for Cert. at 10, n. 11, in No. 80-756, Schweiker v. Gray Panthers. If so, the issue will in the future be entirely different in that State. I note also that the only four Justices to reach the merits in Beltran agreed with the decision below.

  
L.F.P., Jr.