

DECISIONS PER CURIAM, ETC., FROM JANUARY
29, 1946, THROUGH APRIL 22, 1946.*

No. 723. REPUBLIC PICTURES CORP. *v.* KAPPLER. Appeal from the Circuit Court of Appeals for the Eighth Circuit. February 4, 1946. *Per Curiam*: The motion to affirm is granted and the judgment is affirmed. *McKnnett v. St. Louis & San Francisco R. Co.*, 292 U. S. 230, 233, 234; *Pufahl v. Estate of Parks*, 299 U. S. 217, 227; *Miles v. Illinois Central R. Co.*, 315 U. S. 698, 704. A. A. McLaughlin for appellant. George B. Porter for appellee. Reported below: 151 F. 2d 543.

No. 61, Misc. *IN RE YAMASHITA*; and
No. 672. *YAMASHITA v. STYER, COMMANDING GENERAL*. February 4, 1946. It is ordered that the order of this Court of December 17, 1945, 326 U. S. 693, staying all further proceedings in these causes pending the consideration and determination of the applications for writs of habeas corpus and prohibition and of the petition for writ of certiorari is vacated.

It is further ordered that certified copies of the orders denying the motions for leave to file the petitions for writs of habeas corpus and prohibition and denying the petition for writ of certiorari be issued forthwith.

For opinion of the Court in these cases, see *ante*, p. 1.

No. 85, Misc. *LAMORE v. WELCH, SUPERINTENDENT*. February 4, 1946. The motion for leave to file a petition for a writ of habeas corpus is denied.

*MR. JUSTICE JACKSON took no part in the consideration or decision of the cases in which judgments or orders were announced during this period.

For decisions on applications for certiorari, see *post*, pp. 771, 777; rehearing, *post*, pp. 812, 813.

No. 84, Misc. *RESCO v. RAGEN, WARDEN*. February 4, 1946. The motion to withdraw the motion for leave to file a petition for writ of certiorari is granted.

No. 495. *CRESPO v. UNITED STATES*. On petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit. February 4, 1946. Dismissed for failure to comply with the rules. Reported below: 151 F. 2d 44.

No. 770. *TAYLOR v. KENTUCKY STATE BAR ASSOCIATION*. Appeal from the Court of Appeals of Kentucky. February 11, 1946. *Per Curiam*: The motion to dismiss is granted and the appeal dismissed for the want of a properly presented substantial federal question. Appellant *pro se*. *Eldon S. Dummit* for appellee. Reported below: 300 Ky. 448, 189 S. W. 2d 403.

No. 402. *BRUCE'S JUICES, INC. v. AMERICAN CAN CO.* Certiorari, 326 U. S. 711, to the Supreme Court of Florida. Argued January 29, 30, 1946. Decided February 11, 1946. *Per Curiam*: Judgment affirmed by an equally divided Court. *Cody Fowler* and *Thurman Arnold* argued the cause for petitioner. With them on the brief was *R. W. Shackleford*. *John Lord O'Brian* argued the cause for respondent. With him on the brief were *Leonard B. Smith*, *John M. Allison* and *Harry B. Terrell*. Reported below: 155 Fla. 877, 22 So. 2d 461.

No. 410. *MACGREGOR v. WESTINGHOUSE ELECTRIC & MANUFACTURING CO.* Certiorari, 326 U. S. 708, to the Supreme Court of Pennsylvania. Argued January 31, 1946. Decided February 11, 1946. *Per Curiam*: Judg-

ment affirmed by an equally divided Court. *William B. Jaspert* argued the cause and filed a brief for petitioner. *Jo. Baily Brown* argued the cause and filed a brief for respondent. Reported below: 352 Pa. 443, 43 A. 2d 332.

No. 93, Misc. *HOMMA v. PATTERSON, SECRETARY OF WAR, ET AL.*; and

No. 818. *HOMMA v. STYER, COMMANDING GENERAL, ET AL.* On motion for leave to file petition for writs of habeas corpus and prohibition and on petition for a writ of certiorari to the Supreme Court of the Philippines. February 11, 1946. The motion for leave to file petition for writ of habeas corpus and writ of prohibition is denied and the petition for writ of certiorari is also denied on authority of *In re Yamashita*, 327 U. S. 1. *Captain George W. Ott* for petitioner. *Solicitor General McGrath* for respondents.

MR. JUSTICE MURPHY, dissenting.

This case, like *In re Yamashita*, 327 U. S. 1, poses a problem that cannot be lightly brushed aside or given momentary consideration. It involves something more than the guilt of a fallen enemy commander under the law of war or the jurisdiction of a military commission. This nation's very honor, as well as its hopes for the future, is at stake. Either we conduct such a trial as this in the noble spirit and atmosphere of our Constitution or we abandon all pretense to justice, let the ages slip away and descend to the level of revengeful blood purges. Apparently the die has been cast in favor of the latter course. But I, for one, shall have no part in it, not even through silent acquiescence.

Petitioner, a civilian for the past three and a half years, was the victorious commander of the 14th Army of the

Imperial Japanese Army in the Philippines from December 12, 1941, to August 5, 1942. It may well be that the evidence of his guilt under the law of war is more direct and clear than in the case of General Yamashita, though this could be determined only by an examination of the evidence such as we have had no opportunity to make. But neither clearer proof of guilt nor the acts of atrocity of the Japanese troops could excuse the undue haste with which the trial was conducted or the promulgation of a directive containing such obviously unconstitutional provisions as those approving the use of coerced confessions or evidence and findings of prior mass trials. To try the petitioner in a setting of reason and calm, to issue and use constitutional directives and to obey the dictates of a fair trial are not impossible tasks. Hasty, revengeful action is not the American way. All those who act by virtue of the authority of the United States are bound to respect the principles of justice codified in our Constitution. Those principles, which were established after so many centuries of struggle, can scarcely be dismissed as narrow artificialities or arbitrary technicalities. They are the very life blood of our civilization.

Today the lives of Yamashita and Homma, leaders of enemy forces vanquished in the field of battle, are taken without regard to due process of law. There will be few to protest. But tomorrow the precedent here established can be turned against others. A procession of judicial lynchings without due process of law may now follow. No one can foresee the end of this failure of objective thinking and of adherence to our high hopes of a new world. The time for effective vigilance and protest, however, is when the abandonment of legal procedure is first attempted. A nation must not perish because, in the natural frenzy of

the aftermath of war, it abandoned its central theme of the dignity of the human personality and due process of law.

MR. JUSTICE RUTLEDGE agrees with these views.

MR. JUSTICE RUTLEDGE, dissenting.

I dissent upon the grounds stated in the dissenting opinions in the *Yamashita* case, 327 U. S. 1, 26, 41, all of which are exemplified in these applications, and for additional reasons presented by them.

For the first time the Court, by its denial of the applications with the effect of sustaining the commission's jurisdiction, permits trial for a capital offense under a binding procedure which allows forced confessions to be received in evidence;¹ makes proof in prior trials of groups for mass offenses "*prima facie* evidence that the accused likewise is guilty of that offense";² and requires that the findings and judgment in such a mass trial "be given full faith and credit" in any subsequent trial of an individual

¹ The directive or order prescribing the regulations governing the trial was issued December 5, 1945, and provided in Paragraph 5d *Evidence* (7): "All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine *only* the truth or falsity of such confessions or statements." (Emphasis added.) In addition to the further provisions set forth in notes 2 and 3, the order provided for the reception of hearsay and documentary evidence in even broader terms, if possible, than the directive relating to similar matters which covered General Yamashita's trial.

² Paragraph 5d *Evidence* also contained the following subdivision (4): "If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial resulting in the conviction of any other member of that unit, group or organization, relative to that concerted offense, may be received as *prima facie* evidence that the accused likewise is guilty of that offense."

person charged as a member of the group.³ These provisions of the directive ordering the creation of the commission in my judgment vitiate the entire proceeding.

Moreover the time allowed for preparation of the defense was cut from the three weeks given to Yamashita to fifteen days between arraignment and the beginning of trial. Motions at arraignment for 30 days to prepare defense before the trial began and on the opening day of trial for a ten-day continuance, the latter supported by counsel's affidavit of insufficient time, were denied.⁴

³ Paragraph 5d *Evidence* (5) is as follows: "The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein."

⁴ The following is a bare chronological statement concerning the constitution of the commission and subsequent events: On December 5, 1945, the regulations governing the trial were issued; December 6, the order to General Styer to appoint the commission followed; on December 12, petitioner was transferred from Japan to Manila; December 15, counsel for the defense was appointed; December 17, the charge was served on petitioner, substantially identical with that in the *Yamashita* case, containing 47 specifications of the same general type there involved, together with a supplemental charge that on May 6, 1942, petitioner refused to grant quarter to the armed forces of the United States and its allies in Manila Bay, Philippines; December 19, the commission convened, counsel were sworn, petitioner was arraigned, pleaded not guilty and entered a motion for thirty days time to prepare defense before trial. The motion was denied.

On January 3, 1946, the commission reconvened. The prosecution then filed a bill of particulars to two of the specifications. Petitioner's plea to the jurisdiction, motion to dismiss, motions for bills of particulars relating to certain items in the specifications, and for further particulars concerning other items were denied. The commission also then denied the motion of counsel for the defense to postpone the

Other serious questions, affecting the validity and fairness of the commission's constitution are presented which were not raised in the *Yamashita* petitions.

I think the motion and petition respectively should be granted and determined on the merits.

MR. JUSTICE MURPHY joins in this opinion.

No. 86, Misc. *WHITE v. RAGEN, WARDEN*. February 11, 1946. The motion for leave to file petition for writ of certiorari is denied.

No. 87, Misc. *BAILEY v. PARKER, WARDEN*; and

No. 88, Misc. *HOUGHTON v. BENSON, ACTING WARDEN*. February 11, 1946. The motions for leave to file petitions for writs of habeas corpus are denied.

trial for ten days. This motion was supported by affidavit of chief counsel, dated January 2, 1946, which set forth that he and his associates began work on preparing the defense on December 16; that "each of the forty-eight specifications requires a detailed investigation and that eighteen days have proved insufficient time to accomplish even a small portion of this investigation"; that two members of the defense staff who had left for Tokyo on December 25 to interview witnesses and secure other evidence had not returned; that two of three investigators originally assigned to the defense were ill and in the hospital, one from December 21, the other from December 24, and that only one additional investigator had been assigned to the defense, though others had been promised; that on January 2 the defense had received from the prosecution eleven "typical cases" on which proof was to be offered under specification 4 and nine "representative instances" under specification 47, which the defense had had no opportunity to investigate. The affidavit concluded with the statement that a minimum period of ten days was required before counsel could be prepared to proceed with the trial.

The trial began in the afternoon of January 3. On January 16 petitions for writs of habeas corpus and prohibition were filed in the Supreme Court of the Philippines. They were denied January 23 without argument. The petitions and motions constituting this application were filed in this Court February 7, 1946.

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No. 89, Misc. *OWENS v. HUNTER, WARDEN*. February 11, 1946. The motion for leave to file petition for writ of mandamus is denied.

No. 12, original. *UNITED STATES v. CALIFORNIA*. February 11, 1946. The motion of the Commonwealth of Massachusetts for leave to intervene is denied.

No. 19. *LIGGETT & MYERS TOBACCO CO. ET AL. v. UNITED STATES*. February 11, 1946. Upon suggestion of the death of Edward H. Thurston, a petitioner in this case, the motion to dismiss the writ of certiorari as to Edward H. Thurston, deceased, is granted.

No. 544. *UNITED STATES EX REL. HURWITZ v. ALEXANDER*. On petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit. February 11, 1946. Dismissed on motion of the petitioner. Petitioner *pro se*. *Solicitor General McGrath* and *Robert S. Erdahl* for respondent. Reported below: 150 F. 2d 1013.

No. 751. *COMMISSIONER OF INTERNAL REVENUE v. COLLINS*. On certificate from the Circuit Court of Appeals for the Ninth Circuit. February 25, 1946. *Per Curiam*: It appearing that the Commissioner of Internal Revenue has dismissed his petition for review in the Circuit Court of Appeals for the Ninth Circuit, the certificate is dismissed as moot. *Solicitor General McGrath* for petitioner. *Joseph D. Brady* for respondent. Reported below: 153 F. 2d 1022.

No. 75, Misc. *ABRAMS v. 188 RANDOLPH BUILDING CORP. ET AL.* February 25, 1946. The motion for leave to file a petition for writ of certiorari is denied. *MR.*

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JUSTICE DOUGLAS took no part in the consideration or decision of this application. *Meyer Abrams, pro se.* *Solicitor General McGrath, Frederick Bernays Wiener and Roger S. Foster* for the Securities & Exchange Commission, respondent.

No. 90, Misc. *FIESTER v. ILLINOIS*. February 25, 1946. Application denied.

No. 91, Misc. *THOMPSON v. RAGEN, WARDEN*. February 25, 1946. The motion for leave to file a petition for writ of habeas corpus is denied.

No. 92, Misc. *IN RE ROSS*. February 25, 1946. The motion for leave to file a petition for writ of mandamus or prohibition is denied.

No. 94, Misc. *McCONNELL v. DOWD, WARDEN*. February 25, 1946. The motion for leave to file a petition for writ of certiorari is denied.

No. 845. *SKENE v. RAGEN, WARDEN*. On petition for writ of certiorari to the Supreme Court of Illinois. February 25, 1946. Dismissed on motion of petitioner.

No. 435. *LAND, CHAIRMAN OF THE UNITED STATES MARITIME COMMISSION, ET AL. v. WATERMAN STEAMSHIP CORP.* February 27, 1946. Macauley, Acting Chairman, substituted for Land. Writ of certiorari dismissed as to petitioners Kenneth F. Clark, Victor B. Gerard, and W. B. Van Houten, per stipulation of counsel. *Solicitor General McGrath, David L. Kreeger, Robert L. Stern and Joseph B. Goldman* for petitioners. *Bon Geaslin* for respondent.

No. 518. *McGOLDRICK, COMPTROLLER, ET AL. v. CARTER & WEEKES STEVEDORING CO.*; and

No. 519. *McGOLDRICK, COMPTROLLER, ET AL. v. JOHN T. CLARK & SON.* March 1, 1946. Joseph, present Comptroller, and Young, present Treasurer, substituted as parties petitioner on motion of *Isaac C. Donner*, counsel for the petitioners.

No. 95, Misc. *McMAHAN v. CLARK, ATTORNEY GENERAL.* March 4, 1946. The motion for leave to file a petition for writ of habeas corpus is denied.

No. 803. *AKIN v. UNITED STATES ET AL.* Appeal from the District Court of the United States for the Western District of Louisiana. March 11, 1946. *Per Curiam*: The motion to affirm is granted and the judgment is affirmed. *T. S. Christopher* and *A. B. Culbertson* for appellant. *Solicitor General McGrath* and *Daniel W. Knowlton* for appellees. Reported below: 62 F. Supp. 391.

No. 817. *HARTSHORN v. KUZMIER ET AL.* Appeal from the District Court of the United States for the Eastern District of New York. March 11, 1946. *Per Curiam*: The appeal is dismissed for want of a properly presented substantial federal question.

No. 74, Misc. *LOPEZ v. UNITED STATES.* March 11, 1946. The motion for leave to file a petition for writ of certiorari is denied. Petitioner *pro se*. *Solicitor General McGrath* and *Robert S. Erdahl* for the United States.

No. 97, Misc. *FACTOR v. HUMPHREY, WARDEN*; and
No. 99, Misc. *McDONALD v. HUNTER, WARDEN.* March

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11, 1946. The motions for leave to file petitions for writs of habeas corpus are denied. *A. Bradley Eben* for petitioner in No. 97 Misc.

No. 98, Misc. *FRASER v. UNITED STATES*. March 11, 1946. The application is denied.

Nos. 67 and 578. *THOMAS PAPER STOCK CO. ET AL. v. BOWLES, PRICE ADMINISTRATOR*;

No. 393. *COLLINS ET AL. v. BOWLES, PRICE ADMINISTRATOR*;

No. 400. *UTAH JUNK CO. v. BOWLES, PRICE ADMINISTRATOR*;

No. 793. *BOWLES, PRICE ADMINISTRATOR, v. WARNER HOLDING CO.*;

No. 805. *LENTIN, DOING BUSINESS AS J. LENTIN LUMBER CO., v. BOWLES, PRICE ADMINISTRATOR*;

No. 826. *LEITHOLD ET AL., CO-PARTNERS TRADING AS CUSTOM MAID BRASSIERE CO., v. BOWLES, PRICE ADMINISTRATOR*; and

No. 870. *TAYLOR ET AL. v. BOWLES, PRICE ADMINISTRATOR*. March 11, 1946. Porter, Price Administrator, substituted for Bowles.

No. 769. *QUEENSDALE HILLS REALTY CO., INC. v. WILSON, COMMISSIONER OF HOUSING & BUILDINGS*. March 11, 1946. Saxl, present Commissioner, substituted for Wilson.

No. 917. *IVERSEN ET AL. v. UNITED STATES ET AL.* Appeal from the District Court of the United States for the District of Columbia. March 25, 1946. *Per Curiam*: The motion to affirm is granted and the judgment is

affirmed. *Haskell Donoho, Dale C. Dillon and Ashley Sellers* for appellants. *Solicitor General McGrath and Daniel W. Knowlton* for appellees. Reported below: 63 F. Supp. 1001.

No. 100, Misc. *FORTUNE v. VERDEL*. March 25, 1946. The motion for leave to file a petition for writ of habeas corpus is denied.

No. 101, Misc. *MORSE v. DIVISION OF CORRECTION OF THE DEPARTMENT OF PUBLIC SAFETY OF ILLINOIS*. March 25, 1946. The motion for leave to file a petition for writ of mandamus is denied.

No. 102, Misc. *VANDERWATER v. CITY NATIONAL BANK, EXECUTOR*; and

No. 103, Misc. *IN RE BRUBAKER*. March 25, 1946. The applications are denied.

No. 577. *BROWN v. MAYO, STATE PRISON CUSTODIAN*. March 25, 1946. The petition for writ of certiorari to the Supreme Court of Florida and the motion for leave to file a petition for writ of habeas corpus are dismissed, it appearing that the petitioner is no longer in the custody of the respondent.

No. 728. *CONGRESS OF INDUSTRIAL ORGANIZATIONS ET AL. v. WATSON, ATTORNEY GENERAL, ET AL.* Appeal from the District Court of the United States for the Southern District of Florida. April 1, 1946. *Per Curiam*: The decree is reversed and the cause is remanded to the District Court for further proceedings in conformity to the opinion of this Court in *American Federation of Labor v. Watson*, 327 U. S. 582. *Lee Pressman, Frank Donner and Ernest Goodman* for appellants.

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No. 96, Misc. *ROSS v. RAGEN, WARDEN*;

No. 105, Misc. *PHILLIPS v. NEW YORK*; and

No. 108, Misc. *GAUMITZ v. MURPHY, WARDEN*. April 1, 1946. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 106, Misc. *LANE v. C. S. SMITH METROPOLITAN MARKET CO. ET AL.*; and

No. 107, Misc. *McMAHAN v. UNITED STATES*. April 1, 1946. The motions for leave to file petitions for writs of certiorari are denied.

No. 221. *GIBSON v. UNITED STATES*. Certiorari, 326 U. S. 708, to the Circuit Court of Appeals for the Eighth Circuit. April 1, 1946. Upon consideration of the application of counsel for the petitioner in the above-entitled cause for the release of petitioner from custody on bail: It is ordered that Taze Hamrick Gibson, the petitioner herein, be released from custody and admitted to bail pending the consideration and decision of this Court in this case. Provided, however, that the petitioner, Taze Hamrick Gibson, execute and file with the Clerk of this Court bond, with good and sufficient surety or sureties, in the lawful sum and amount of two thousand dollars (\$2,000), conditioned to provide for the full and prompt compliance by the said Taze Hamrick Gibson with the orders and judgment of this Court. The said bond to run to the United States of America and to be approved by the Honorable Wiley Rutledge, Associate Justice of the Supreme Court of the United States. When the bond specified herein is approved and filed with the Clerk of this Court, but not before, the petitioner, Taze Hamrick Gibson, shall be enlarged on bail to the extent and subject to the conditions provided in this order and such further order or orders as may be entered by this Court in this cause.

No. 984. CITY AND COUNTY OF DENVER *v.* McGLONE ET AL. Appeal from the Supreme Court of Colorado. April 22, 1946. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a properly presented federal question. *Malcolm Lindsey* and *Thomas H. Gibson* for appellant. *Walter W. Blood* and *Frank N. Bancroft* for appellees. Reported below: 163 P. 2d 646.

No. 592. HELWIG *v.* UNITED STATES. On petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit. April 22, 1946. *Per Curiam:* The petition for writ of certiorari is granted and the judgment of the Circuit Court of Appeals is vacated and the cause remanded to the Circuit Court of Appeals with directions to require the District Court to perfect the record. Rule 39 of the Federal Rules of Criminal Procedure. See *Miller v. United States*, 317 U. S. 192, 199-200. Petitioner *pro se.* *Solicitor General McGrath* and *Robert S. Erdahl* for the United States. Reported below: 151 F. 2d 535.

No. 109, Misc. IN RE MASSEY;
No. 110, Misc. TOMPSETT *v.* HENDERSON, WARDEN;
No. 111, Misc. IN RE KEMMERER; and
No. 112, Misc. YOUNG *v.* SANFORD, WARDEN. April 22, 1946. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 113, Misc. McMAHAN *v.* HULEN, JUDGE; and
No. 114, Misc. McMAHAN *v.* BENNETT, DIRECTOR, BUREAU OF PRISONS. April 22, 1946. The motions for leave to file petitions for writs of mandamus are denied.