

DECISIONS PER CURIAM, ETC., THROUGH
FEBRUARY 3, 1947.*

No. 105. UNITED STATES EX REL. GOODMAN *v.* HEARN, COMMANDING GENERAL. Certiorari, 328 U. S. 833, to the Circuit Court of Appeals for the Fifth Circuit. September 7, 1946. Dismissed pursuant to Rule 35. Harry Mesard for petitioner. *Solicitor General McGrath, Robert S. Erdahl and Irving S. Shapiro* for respondent. Reported below: 153 F. 2d 186.

No. 246. CONNECTICUT COMPANY *v.* WALLING, WAGE & HOUR ADMINISTRATOR. On petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit. October 7, 1946. Dismissed on motion of counsel for the petitioner. *H. L. Filer* for petitioner. *Solicitor General McGrath, William S. Tyson and Morton Lifstin* for respondent. Reported below: 154 F. 2d 552.

No. 440. UNITED STATES ET AL. *v.* NEW YORK ET AL. Appeal from the District Court of the United States for the Northern District of New York. October 7, 1946. Dismissed on motion of counsel for the appellants. *Attorney General Clark, Solicitor General McGrath, Assistant Attorney General Berge, Edward H. Miller, David O. Mathews, Daniel W. Knowlton and J. Stanley Payne* for appellants.

*For orders on petitions for certiorari, see *post*, pp. 694, 713; rehearing, *post*, pp. 817, 818.

No. 210. *WHITMORE v. ORMSBEE, COMMISSIONER OF THE BUREAU OF REVENUE*;

No. 211. *KGFL, INC. v. ORMSBEE, COMMISSIONER OF THE BUREAU OF REVENUE*; and

No. 212. *HOUCK ET AL. v. ORMSBEE, COMMISSIONER OF THE BUREAU OF REVENUE*. Appeals from the District Court of the United States for the District of New Mexico. October 14, 1946. *Per Curiam*: The motions to affirm are granted and the judgments are affirmed. (1) *Hillsborough v. Cromwell*, 326 U. S. 620, 623; *Matthews v. Rodgers*, 284 U. S. 521, 525; (2) *Union Brokerage Co. v. Jensen*, 322 U. S. 202. *Lake J. Frazier* for appellants. *Arthur W. Scharfeld* and *Fred E. Wilson* for appellee. Reported below: 64 F. Supp. 911.

No. 276. *GENERAL TRANSPORTATION CO. ET AL. v. UNITED STATES ET AL.* Appeal from the District Court of the United States for the District of Massachusetts. October 14, 1946. *Per Curiam*: The motion to affirm is granted and the judgment is affirmed. §§ 5 (2) (a), 203 (a) (14), 212 (a), Interstate Commerce Act, as amended, 49 U. S. C. §§ 5, 303 (a) (14), 312 (a). *Michael Carchia* for appellants. *Solicitor General McGrath* and *Daniel W. Knowlton* for the United States and the Interstate Commerce Commission, appellees. Reported below: 65 F. Supp. 981.

No. 296. *EVANS, TRADING AS OTIS EVANS TRUCK LINE, v. UNITED STATES ET AL.* Appeal from the District Court of the United States for the Western District of Virginia. October 14, 1946. *Per Curiam*: The motion to affirm is granted and the judgment is affirmed. *Alton Railroad Co. v. United States*, 315 U. S. 15, 25; *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 484, 490; *Mis-*

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sissippi Valley Barge Line Co. v. United States, 292 U. S. 282, 286-7. *Rutledge C. Clement* for appellant. *Solicitor General McGrath* and *Daniel W. Knowlton* for the United States and the Interstate Commerce Commission, appellees. Reported below: 65 F. Supp. 183.

No. 318. *MOFFETT ET AL. v. COMMERCE TRUST CO. ET AL.* Appeal from the Supreme Court of Missouri. October 14, 1946. *Per Curiam*: The motion to dismiss is granted, and the appeal is dismissed for the reason that the decision of the state court sought here to be reviewed was based upon a non-federal ground adequate to support it. *Enterprise Irrigation District v. Farmers Canal Co.*, 243 U. S. 157, 165; *Utley v. St. Petersburg*, 292 U. S. 106, 111. *Martin J. O'Donnell* for appellants. *Charles M. Blackmar, John T. Harding, R. C. Tucker, Walter A. Raymond and B. C. Howard* for appellees. Reported below: 354 Mo. 1098, 193 S. W. 2d 588.

No. 338. *KUT v. BUREAU OF UNEMPLOYMENT COMPENSATION ET AL.* Appeal from the Supreme Court of Ohio. October 14, 1946. *Per Curiam*: The motion to dismiss is granted, and the appeal is dismissed for the reason that the decision of the state court sought here to be reviewed was based upon a non-federal ground adequate to support it. *Berea College v. Kentucky*, 211 U. S. 45. *Murray Seasongood and Lester A. Jaffe* for appellant. *E. G. Schuessler* for appellees. Reported below: 146 Ohio St. 522, 66 N. E. 2d 643.

No. 374. *GALLUP v. TOWNSHIP OF LOWER MERION.* Appeal from the Superior Court of Pennsylvania. October 14, 1946. *Per Curiam*: The motion to dismiss is

granted, and the appeal is dismissed for want of a substantial federal question. *Hadacheck v. Los Angeles*, 239 U. S. 394; *New Orleans Public Service v. New Orleans*, 281 U. S. 682. *G. Harry Ditter* for appellant. *Harold Evans* for appellee. Reported below: 158 Pa. Super. 572, 46 A. 2d 35.

No. 424. *MEMPHIS NATURAL GAS CO. v. McCANLESS, COMMISSIONER OF FINANCE & TAXATION, ET AL.* Appeal from the Supreme Court of Tennessee. October 14, 1946. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction. § 237 (a), Judicial Code, as amended, 28 U. S. C. § 344 (a). Treating the papers whereon the appeal was allowed as a petition for writ of certiorari as required by § 237 (c) of the Judicial Code, as amended, 28 U. S. C. § 344 (c), certiorari is denied. *Edward P. Russell* for appellant. *W. F. Barry, Jr.* for appellees. Reported below: 183 Tenn. 635, 194 S. W. 2d 476.

No. 220. *BAILEY v. UNITED STATES*. On petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit. October 14, 1946. *Per Curiam*: The Court having given consideration to the Government's confession of error, the petition for writ of certiorari is granted and the judgment of the Circuit Court of Appeals is reversed. *Theodore Lockyear* and *Paul Wever* for petitioner. *Solicitor General McGrath, W. Marvin Smith, Robert S. Erdahl* and *Andrew F. Oehmann* for the United States. Reported below: 155 F. 2d 184.

No. 10, original. *UNITED STATES v. WYOMING ET AL.* October 14, 1946. The report of the Special Master herein is received and ordered filed.

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No. 1, Misc. *WATKINS v. INDIANA ET AL.*;

No. 3, Misc. *REAVIS v. NIERSTHEIMER, WARDEN*;

No. 5, Misc. *VIALVA v. SHAW, DIRECTOR*;

No. 6, Misc. *FIELDS v. PARKER, WARDEN*;

No. 7, Misc. *MORRIS v. DELAWARE*;

No. 8, Misc. *DRAKOS v. NIERSTHEIMER, WARDEN*;

No. 9, Misc. *DONNELL v. STEWART, ACTING WARDEN*;

No. 10, Misc. *HANSON v. SMYTH, SUPERINTENDENT*;

No. 11, Misc. *McCAULEY v. RAGEN, WARDEN*;

No. 13, Misc. *GODWIN v. SMYTH, SUPERINTENDENT*;

No. 17, Misc. *MINER v. RAGEN, WARDEN*;

No. 21, Misc. *EX PARTE TRENT*;

No. 23, Misc. *BANTZ v. SQUIER, WARDEN*; and

No. 26, Misc. *UNITED STATES EX REL. McAULIFFE v. PENNSYLVANIA*. October 14, 1946. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 12, Misc. *HOUSE v. MAYO, PRISON CUSTODIAN, ET AL.* October 14, 1946. The motions for leave to file petitions for writs of habeas corpus and certiorari are denied.

No. 4, Misc. *WRIGHT v. CLARK, ATTORNEY GENERAL, ET AL.* October 14, 1946. The application to withdraw the motion for leave to file petition for writ of habeas corpus is granted.

No. 27, Misc. *UNITED STATES EX REL. McCOLLISTER v. RAGEN, WARDEN*. October 14, 1946. The motion for leave to file petition for writ of mandamus is denied.

No. 2, Misc. *SLIVENSKY v. NEW JERSEY*;

No. 14, Misc. *McMILLAN ET AL. v. TAYLOR ET AL.*;

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No. 15, Misc. DVORAK *v.* STUBBLEFIELD;
No. 16, Misc. SMITH *v.* PESCOR, WARDEN;
No. 22, Misc. McMAHAN *v.* CLARK, ATTORNEY GENERAL;
No. 28, Misc. EX PARTE BROWN; and
No. 29, Misc. IN RE RUMBLE. October 14, 1946. The applications are denied.

No. 18, Misc. EX PARTE BETZ;
No. 19, Misc. EX PARTE DURANT;
No. 24, Misc. EX PARTE WILLS;
No. 25, Misc. EX PARTE CUTINO;
No. 30, Misc. EX PARTE WALCZAK;
No. 31, Misc. EX PARTE MCKINLEY; and
No. 32, Misc. EX PARTE MURPHY. October 14, 1946. The motions for leave to file petitions for writs of habeas corpus are denied for want of original jurisdiction. MR. JUSTICE BLACK and MR. JUSTICE RUTLEDGE are of the opinion that, as in *Ex parte Hawk*, 321 U. S. 114 (see also *White v. Ragen*, 324 U. S. 760, 765) where this Court declined to entertain an application for relief by habeas corpus, the petitions for habeas corpus should be denied without prejudice to their being filed in the appropriate District Court. See *Ex parte Endo*, 323 U. S. 283, 304-306. MR. JUSTICE MURPHY is of the view that these petitions raise questions as to jurisdiction and proper procedure which should be heard and determined by this Court. MR. JUSTICE JACKSON took no part in the consideration or decision of the application in No. 19, Miscellaneous.

No. 58. HOBBS, POST COMMANDING OFFICER, *v.* UNITED STATES EX REL. HOROWITZ; and

No. 59. HOBBS, POST COMMANDING OFFICER, *v.* UNITED STATES EX REL. SAMUELS. October 14, 1946.

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Eagles substituted for Hobbs as the party petitioner herein.

No. 511. CINCINNATI, NEWPORT & COVINGTON RAILWAY CO. v. BRUMLEVE, DIRECTOR. On petition for writ of certiorari to the Court of Appeals of Kentucky. October 14, 1946. Dismissed on motion of counsel for the petitioner. *Stephens L. Blakely* and *Jacob L. Holtzman* for petitioner. Reported below: 302 Ky. 477, 194 S. W. 2d 640.

No. 20. UNITED FEDERAL WORKERS OF AMERICA (C. I. O.) ET AL. v. MITCHELL ET AL. October 18, 1946. United Public Workers of America (C. I. O.) substituted as a party appellant herein in the place and stead of United Federal Workers of America (C. I. O.).

No.—. SEMEL ET AL. v. UNITED STATES. October 21, 1946. The motion for a stay is denied.

No. 36, Misc. EX PARTE GOINS;
No. 39, Misc. EX PARTE STEPHENSON; and
No. 40, Misc. EX PARTE McCACKIN. October 21, 1946. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 35, Misc. BURT v. CONGER, DISTRICT JUDGE; and
No. 38, Misc. EX PARTE HAYES. October 21, 1946. The motions for leave to file petitions for writs of mandamus are denied.

No. 82, Misc., October Term, 1945. *SMITH v. MAGUIRE, JUSTICE OF THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK, ET AL.*;

No. 83, Misc., October Term, 1945. *HARDING v. LA-GUARDIA, MAYOR, ET AL.*;

No. 33, Misc. *STEPHENS, ADMINISTRATOR, v. UNITED STATES*;

No. 34, Misc. *MASSEY v. TEXAS*;

No. 37, Misc. *EX PARTE WILSON*; and

No. 43, Misc. *EX PARTE PORESKY*. October 21, 1946. The applications are denied.

No. 20, Misc. *LAVENDER, ADMINISTRATOR, v. CLARK, CHIEF JUSTICE OF THE SUPREME COURT OF MISSOURI, ET AL.* October 21, 1946. The motion for leave to file petition for writ of mandamus is denied. MR. JUSTICE BLACK, MR. JUSTICE MURPHY, and MR. JUSTICE RUTLEDGE are of the opinion that leave to file should be granted and that a rule to show cause should issue. *N. Murry Edwards, James A. Waechter and Douglas H. Jones* for petitioner. *Maurice G. Roberts, Cornelius H. Skinker, Jr., William R. Gentry, Charles A. Helsell and John W. Freels* for respondents.

No. 2, October Term, 1941. *BERNARDS ET AL. v. JOHN-SON ET AL.* October 21, 1946. The motion to recall the mandate is denied. THE CHIEF JUSTICE took no part in the consideration or decision of this application.

No. 625, October Term, 1945. *HUST v. MOORE-MC-CORMACK LINES, INC.* October 21, 1946. Order entered amending opinion. The petition for rehearing is denied.

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THE CHIEF JUSTICE and MR. JUSTICE JACKSON took no part in the consideration or decision of this application.

Opinion reported as amended, 328 U. S. 707.

No. 531. *Cook v. Fortson, Secretary of State, et al.*; and

No. 532. *Turman et al. v. Duckworth, Chairman of the Georgia State Democratic Executive Committee, et al.* Appeals from the District Court of the United States for the Northern District of Georgia. October 28, 1946. *Per Curiam*: The appeals are dismissed and the District Court is directed to dismiss the bill in each case. See *United States v. Anchor Coal Co.*, 279 U. S. 812. MR. JUSTICE BLACK and MR. JUSTICE MURPHY are of the opinion that probable jurisdiction should be noted. MR. JUSTICE RUTLEDGE is of the opinion that the question of jurisdiction should be postponed to the hearing of the cases on the merits and has set forth his views in an opinion (*infra*) which he has filed. *Alex. W. Smith* and *Croom Partridge* for appellant in No. 531. *Charles S. Reid, W. D. Thomson, Marshall L. Allison* and *John L. Tye* for appellants in No. 532. *Eugene Cook*, Attorney General of Georgia, *Victor Davidson, C. E. Gregory, Jr.*, Assistant Attorneys General, *John A. Dunaway, Walter McElreath, Samuel D. Hewlett* and *B. D. Murphy* for appellees. Reported below: 68 F. Supp. 624, 744.

MR. JUSTICE RUTLEDGE.

These appeals seek to invalidate Georgia's county unit system for selecting candidates for election to public office. No. 531 relates to the office of Representative in Congress, No. 532 to that of Governor. In each instance the basic substantive claim is that the system operates to deprive the appellants and other voters of the equal protection of the laws in respect to their rights of suffrage, contrary to

the provisions of the Fourteenth Amendment. Presented also are important questions of jurisdiction and of discretion in exercising it.¹ Both declaratory relief and injunctive relief in various forms were sought.

The District Court in each case denied applications for interlocutory injunctions. At the same time it formally declined to pass finally upon motions to dismiss the causes, although stating "We consider them, however, on the general question of the grant of interlocutory relief."² The court then went on to deny the applications upon grounds which, if sustained, would conclude the entire controversy in each case in all but formal entry of an order for dismissal.³ The principal ground of decision in both cases was reliance upon *Colegrove v. Green*, 328 U. S. 549, decided June 10, 1946, rehearing denied this day, 329 U. S. 825, as precluding equitable relief. In No. 532 it was said this was required "whether it be that the subject matter is not of equitable cognizance, or merely that equity should withhold its hand."

In each case, however, the court refused to rest on this ground alone. In No. 531 it went on to rule, apparently, that the county unit system is imposed by party action, not by state action; and that the system was not being

¹ The jurisdiction of this Court is invoked under §§ 238 and 266 of the Judicial Code as amended, 28 U. S. C. §§ 345, 380. In No. 532 it is not questioned that the attack is upon the validity of a state statute. In No. 531 one ground of appellee's motion to dismiss the appeal is that the appellant's suit attacks, not a state statute, but the rules and action of a political party. Cf. *Ex parte Collins*, 277 U. S. 565, 569.

The two decisions were rendered by three-judge District Courts, constituted identically, pursuant to § 266 of the Judicial Code.

² The quoted language is from the opinion in No. 532. A similar statement appears in the opinion in No. 531.

³ In view of this fact an affirmance of the judgments here would preclude the District Court from taking any other action than to dismiss the causes, upon their being remanded to it.

applied in fact, since the state executive committee prior to the decisions had certified both candidates, subject to later action by the party's state convention. In No. 532 "in order that all questions may be ripe for consideration in the Appellate Court, if necessary," the opinion further stated that "on the ultimate merits we do not think the State of Georgia has been shown to have deprived the plaintiffs of the equal protection of the laws." The decisions come here therefore not only as somewhat dubious rulings upon strictly jurisdictional matters but as decisive and conclusive adjudications upon the merits.

It may be that the orders now in appeal have become moot in part because actions in execution of the challenged Georgia laws which appellants sought to have restrained have now taken place.⁴ But in No. 532 in one respect at least injunctive relief prayed for still could be given, if appellants should be found, on hearing, entitled to have it.⁵ And in each case declaratory relief, appropriate in many instances where aid by way of injunction cannot be afforded,⁶ is sought.

Obviously the appeals present questions related closely to the issues in *Colegrove v. Green*, but in my opinion not

⁴ Thus, in No. 532, party officials have certified the results of the primary elections to the Secretary of State and he in turn has sent out the forms for ballots to county ordinaries on the basis of those certifications. The applications sought to restrain these acts.

⁵ By amendment, to avoid the effect of the actions taken as set forth in note 4, appellant sought to restrain the Secretary of State from certifying the returns from the general election to the General Assembly.

⁶ It was to avoid the limitations resulting from the fact that injunctive or other immediately effective equitable relief could not be given that relief by way of declaratory judgment was authorized by Congress. This Court has not yet determined that declaratory relief cannot be given beyond the boundaries fixed by the preexisting jurisdiction in equity, compare *Nashville, C. & St. L. R. Co. v. Wallace*, 288 U. S. 249, 262, with *Giles v. Harris*, 189 U. S. 475, 486, although three

necessarily determined by that decision. A majority of the justices participating refused to find that there was a want of jurisdiction, but at the same time a majority, differently composed, concluded that the relief sought should be denied.⁷ I was of the opinion that, in the particular circumstances, this should be done as a matter of discretion, for the reasons stated in a concurring opinion. 328 U. S. 549, 564. Those reasons would be pertinent to a consideration of the present appeals, though not necessarily controlling in relation to the somewhat different facts and issues they involve.⁸ The issues, whether of jurisdiction, of discretion in exercising it,⁹ or of substantive right, are obviously important. In my judgment they have not been conclusively adjudicated by prior decisions of this Court. I therefore think they should not be determined without full hearing and consideration after argument here, more especially in view of the breadth and character of the rulings made in the District Court's decisions. Accordingly I think we should postpone determination of any jurisdictional issues until consideration of the merits and place the appeals upon the calendar for argument. I also think that if these appeals were to be so

members of the Court announced their view apparently to that effect in *Colegrove v. Green*, 328 U. S. 549, 551-552. The outer boundaries of jurisdiction under the declaratory procedure remain largely undetermined. Cf. Judicial Code § 274d, 28 U. S. C. § 400; Borchard, *Declaratory Judgments* (2d ed. 1941) 365-367, 766-788, 868-874.

⁷ Three of the justices so ruling thought the relief should be denied for want of jurisdiction. 328 U. S. 549, 550, opinion of MR. JUSTICE FRANKFURTER.

⁸ The discretionary exercise or nonexercise of equitable or declaratory judgment jurisdiction, see *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U. S. 293, 300; *Di Giovanni v. Camden Fire Ins. Assn.*, 296 U. S. 64, 70, in one case is not precedent in another case where the facts differ. *Hale v. Allinson*, 188 U. S. 56, 77-78, quoted in *Di Giovanni v. Camden Fire Ins. Assn.*, *supra*, at 71.

⁹ See note 3.

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treated, the petition for rehearing which has been filed in *Colegrove v. Green* should be granted and that case should be set for argument with them.

No. 45, Misc. *READ v. ZIMMERMAN*; and

No. 46, Misc. *EX PARTE LEE*. October 28, 1946. Applications denied. MR. JUSTICE MURPHY took no part in the consideration or decision of these applications.

No. 47, Misc. *EX PARTE EVANS*. October 28, 1946. The motion for leave to file petition for writ of habeas corpus is denied. MR. JUSTICE MURPHY took no part in the consideration or decision of this application.

No. 278, October Term, 1945. *RECONSTRUCTION FINANCE CORP. ET AL. v. DENVER & RIO GRANDE WESTERN RAILROAD CO. ET AL.*;

No. 279, October Term, 1945. *RECONSTRUCTION FINANCE CORP. ET AL. v. DENVER & SALT LAKE WESTERN RAILROAD CO. ET AL.*;

No. 280, October Term, 1945. *RECONSTRUCTION FINANCE CORP. ET AL. v. CITY BANK FARMERS TRUST CO., TRUSTEE, ET AL.*;

No. 281, October Term, 1945. *RECONSTRUCTION FINANCE CORP. ET AL. v. DENVER & RIO GRANDE WESTERN RAILROAD CO. ET AL.*; and

No. 282, October Term, 1945. *RECONSTRUCTION FINANCE CORP. ET AL. v. THOMPSON, TRUSTEE, ET AL.* October 28, 1946. THE CHIEF JUSTICE announced that MR. JUSTICE FRANKFURTER has filed an opinion setting forth the detailed grounds for his dissent from the opinion and

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judgment of the Court entered June 10, 1946, in these cases.

Dissenting opinion reported in 328 U. S. at 536.

No. 369. SIOUX TRIBE OF INDIANS *v.* UNITED STATES. October 28, 1946. On petition for writ of certiorari to the Court of Claims. Dismissed on motion of counsel for the petitioner. *Ralph H. Case* and *James S. Y. Ivins* for petitioner. *Solicitor General McGrath* for the United States. Reported below: 105 Ct. Cl. 725, 64 F. Supp. 312.

No. 504. MARR, DOING BUSINESS AS MARR DUPLICATOR Co., *v.* A. B. DICK Co. On petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit. November 12, 1946. *Per Curiam*: The petition for writ of certiorari is granted. The judgment of the Circuit Court of Appeals is vacated and the cause is remanded to that court for consideration of the question, raised by the Solicitor General in his memorandum, as *amicus curiae*, "whether respondent's prosecution of the instant case may not constitute a fraud upon the courts." *C. P. Goepel* and *Edward D. Bolton* for petitioner. *Robert W. Byerly* and *Ralph M. Watson* for respondent. *Solicitor General McGrath* filed a brief for the United States as *amicus curiae*. Reported below: 155 F. 2d 923.

No. 42, Misc. EX PARTE JAMES. November 12, 1946. The motion for leave to file petition for writ of certiorari is denied.

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No. 48, Misc. *Ex parte Nelson*; and

No. 56, Misc. *Ex parte McMaham*. November 12, 1946. The motions for leave to file petitions for writs of mandamus are denied.

No. 49, Misc. *Ex parte Kato*;

No. 52, Misc. *Ex parte Christian*;

No. 53, Misc. *Ex parte Allen*;

No. 54, Misc. *Ex parte Rediker*; and

No. 55, Misc. *Ex parte Gross*. November 12, 1946. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 51, Misc. *Ex parte Whitefield*. November 12, 1946. The application is denied.

No. 57, Misc. *Ex parte Fletcher*. November 12, 1946. The motion for leave to file petition for writ of mandamus is denied. THE CHIEF JUSTICE and MR. JUSTICE RUTLEDGE took no part in the consideration or decision of this application.

No. 45, Misc. *Read v. Zimmerman*. November 12, 1946. Motion denied.

No. 176. *Shotkin v. Judges, Superior Court, Atlanta Circuit*. See *post*, p. 828.

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No. 582. STATES MARINE CORPORATION *v.* MILITANO. On petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit. November 12, 1946. Dismissed on motion of counsel for the petitioner. *Corydon B. Dunham* for petitioner. Reported below: 156 F. 2d 599.

Nos. 645 and 646. NEW YORK, CHICAGO & ST. LOUIS RAILROAD Co. *v.* PENNSYLVANIA. Appeals from the Supreme Court of Pennsylvania. November 18, 1946. *Per Curiam*: The motions to dismiss are granted and the appeals are dismissed for the want of a substantial federal question. *Robert M. Fisher* and *John Y. Scott* for appellant. *George W. Keitel*, Deputy Attorney General of Pennsylvania, for appellee. Reported below: 354 Pa. 388, 47 A. 2d 272.

No. 58, Misc. SHOTKIN, TRUSTEE, *v.* PENNSYLVANIA COMPANY. November 18, 1946. The petitions for appeal and certiorari are denied.

No. 60, Misc. EX PARTE JOHNSON. November 18, 1946. The motion for leave to file petition for writ of mandamus is denied.

No. 59, Misc. EX PARTE PRATHER;

No. 61, Misc. EX PARTE BLEDSOE; and

No. 62, Misc. EX PARTE WILLIAMS. November 18, 1946. The motions for leave to file petitions for writs of habeas corpus are denied.

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No. 9, original. *ILLINOIS v. INDIANA ET AL.* November 18, 1946. The Interim Report of the Special Master and his Special Report as to Shell Oil Company and The Texas Company are received and ordered filed.

No. 670. *MOTORISTS MUTUAL INSURANCE CO. v. HENDERSHOT, ADMINISTRATOR.* Appeal from the Supreme Court of Ohio. November 25, 1946. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *Wilbur E. Benoy* for appellant. *James M. Hinton* for appellee. Reported below: 147 Ohio St. 111, 68 N. E. 2d 67.

No. 64, Misc. *EX PARTE JEFFRIES.* November 25, 1946. The motion for leave to file petition for writ of habeas corpus is denied.

No. 65, Misc. *EX PARTE WILSON.* November 25, 1946. The motion for leave to file petition for writ of habeas corpus and petition for ancillary writ of certiorari are denied.

No. 66, Misc. *EX PARTE MITCHELL.* November 25, 1946. The application is denied.

No. 681. *W. H. TOMPKINS CO., NOW TOMPKINS MOTOR LINES, INC., v. UNITED STATES ET AL.* Appeal from the District Court of the United States for the Middle District

of Tennessee. December 9, 1946. *Per Curiam*: The motion to affirm is granted and the judgment is affirmed. *United States v. Carolina Freight Carriers Corp.*, 315 U.S. 475. MR. JUSTICE BLACK, MR. JUSTICE REED, and MR. JUSTICE DOUGLAS are of the opinion that probable jurisdiction should be noted. *James W. Wrape* and *Harold G. Hernly* for appellant. *Solicitor General McGrath* and *Daniel W. Knowlton* for the United States and the Interstate Commerce Commission, appellees.

No. 368. *SIOUX TRIBE OF INDIANS v. UNITED STATES*. On petition for writ of certiorari to the Court of Claims. December 9, 1946. *Per Curiam*: The petition for rehearing is granted. The order entered October 21, 1946, denying certiorari, *post*, p. 758, is vacated and the petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Court of Claims in order to enable that court to determine whether the Act of August 13, 1946, 60 Stat. 1049, gives rise to any claims which petitioners may assert to affect the judgment heretofore entered in this cause, as to which this Court means to intimate no opinion. *Ralph H. Case* and *James S. Y. Ivins* for petitioner. Reported below: 105 Ct. Cl. 658, 64 F. Supp. 303.

No. 67, Misc. *EX PARTE SMITH*;
No. 69, Misc. *EX PARTE GRECO*; and
No. 72, Misc. *EX PARTE MYERS*. December 9, 1946. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 68, Misc. *EX PARTE DECLOUX*;
No. 70, Misc. *EX PARTE GLASS*; and

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No. 73, Misc. *Ex parte Lee*. December 9, 1946. The applications are denied.

No. 71, Misc. *Ex parte Haines*. December 9, 1946. The motion for an injunction is denied.

No. 334. *Fowler v. Gill, General Superintendent*. See *post*, p. 791.

No. 369. *Sioux Tribe of Indians v. United States*. On petition for writ of certiorari to the Court of Claims. December 16, 1946. *Per Curiam*: The order entered October 28, 1946, dismissing the petition for certiorari, *ante*, p. 680, is vacated on motion of counsel for the petitioner. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Court of Claims in order to enable that court to determine whether the Act of August 13, 1946, 60 Stat. 1049, gives rise to any claims which petitioner may assert to affect the judgment heretofore entered in this cause, as to which this Court means to intimate no opinion. *Ralph H. Case* and *James S. Y. Ivins* for petitioner. *Solicitor General McGrath* for the United States. Reported below: 105 Ct. Cl. 725, 64 F. Supp. 312.

No. 389. *McLaren v. Nierstheimer, Warden*. On petition for writ of certiorari to the Criminal Court of Cook County, Illinois. December 16, 1946. *Per Curiam*: On suggestion of the Attorney General of Illinois, the petition for writ of certiorari is granted; the judgment is vacated and the case is remanded for further proceedings.

Petitioner *pro se.* *George F. Barrett*, Attorney General of Illinois, and *William C. Wines*, Assistant Attorney General, for respondent.

No. 454. *FLEMING ET AL., TRUSTEES, ET AL. v. TRAPHAGEN ET AL.* On petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit. December 16, 1946. *Per Curiam:* The petition for writ of certiorari is granted and the judgment is reversed on the authority of *Vanston Committee v. Green*, 329 U. S. 156. *W. F. Peter* for petitioners. *Daniel James* for respondents. Reported below: 155 F. 2d 889.

No. 571. *SCHINE CHAIN THEATRES, INC. ET AL. v. UNITED STATES.* Appeal from the District Court of the United States for the Western District of New York. December 16, 1946. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a final judgment. *Edward F. McClenen*, *Willard S. McKay* and *Arthur Garfield Hays* for appellants. *Solicitor General McGrath* for the United States. Reported below: 63 F. Supp. 229.

No. 572. *SCHINE CHAIN THEATRES, INC. ET AL. v. UNITED STATES.* Appeal from the District Court of the United States for the Western District of New York. December 16, 1946. *Per Curiam:* The appeal is dismissed for failure to comply with Rule 12 of the Rules of this Court. *Willard S. McKay* and *Arthur Garfield Hays* for appellants. Reported below: 63 F. Supp. 229.

No. 264. *CANTOS v. STYER, COMMANDING GENERAL.* Certiorari, *post*, p. 700, to the Supreme Court of the Philip-

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pines. December 16, 1946. *Per Curiam*: The writ of certiorari in this case is dismissed for the reason that the case is moot. *John E. McCullough* for petitioner. *Solicitor General McGrath, Assistant Solicitor General Washington* and *Frederick Bernays Wiener* for respondent.

No. 145. *UYEKI v. STYER, COMMANDING GENERAL*. December 16, 1946. The stay order entered herein on June 10, 1946, 328 U. S. 825, is vacated except insofar as it stays execution of the sentence of death.

No. 41, Misc. *EX PARTE WHITE*; and
No. 77, Misc. *EX PARTE HOUSE*. December 16, 1946. The motions for leave to file petitions for writs of certiorari are denied.

No. 74, Misc. *PHILLIPS v. RAGEN, WARDEN*; and
No. 75, Misc. *EX PARTE MILLER*. December 16, 1946. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 76, Misc. *EX PARTE GOBIN*. December 16, 1946. The motion for leave to file petition for writ of mandamus is denied.

No. 80. *PARKER ET AL. v. PORTER, PRICE ADMINISTRATOR*;

No. 483. *MURRAY v. PORTER, PRICE ADMINISTRATOR*;

No. 512. *RALEY ET AL., TRADING AS RALEY'S FOOD STORE, v. PORTER, PRICE ADMINISTRATOR*;

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No. 526. 315 WEST 97TH STREET REALTY CO., INC. ET AL. *v.* PORTER, PRICE ADMINISTRATOR;

No. 583. PORTER, PRICE ADMINISTRATOR, *v.* MOHAWK WRECKING & LUMBER CO. ET AL.;

No. 682. PORTER, PRICE ADMINISTRATOR, *v.* RHODES, SHERIFF, ET AL.; and

No. 694. VICTOR ET AL., TRUSTEES, *v.* PORTER, PRICE ADMINISTRATOR. December 16, 1946. Fleming, Temporary Controls Administrator, substituted for Porter, Price Administrator.

No. 63, Misc. EX PARTE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY COMMITTEES AND TRUSTEES. December 16, 1946. The motion for leave to file petition for writs of mandamus and prohibition is denied. *Walter J. Cummings, Jr.* for petitioners. *Acting Solicitor General Washington, John D. Goodloe and W. Meade Fletcher* filed a memorandum for the Reconstruction Finance Corporation.

Nos. 677 and 678. SENDEROWITZ ET AL., TRADING AS ROYAL MANUFACTURING CO., *v.* PORTER, PRICE ADMINISTRATOR. December 18, 1946. Fleming, Temporary Controls Administrator, substituted for Porter, Price Administrator, as respondent.

No. —. MEDLEY *v.* REID, SUPERINTENDENT; and

No. —. COPELAND *v.* REID, SUPERINTENDENT. See *post*, p. 794.

No. —. EX PARTE FISHER. December 19, 1946. The application for a stay of execution is denied. *Charles H. Houston* for petitioner.

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No. —. MEDLEY *v.* UNITED STATES. December 20, 1946. Motion for stay of execution denied. *James J. Laughlin* for petitioner.

No. —. ST. LOUIS-SAN FRANCISCO RAILWAY Co. *v.* STEDMAN ET AL. December 23, 1946. The application for a stay is denied. *William V. Hodges* for petitioner. *George D. Gibson, Leonard D. Adkins* and *Edwin S. S. Sunderland* for respondents.

No. 12, original. UNITED STATES *v.* CALIFORNIA. December 23, 1946. The motion of Robert E. Lee Jordan for leave to intervene is denied. MR. JUSTICE JACKSON took no part in the consideration or decision of this application.

No. 80, Misc. EX PARTE MILLER. December 23, 1946. The motion for leave to file petition for writ of habeas corpus is denied.

No. 78, Misc. EX PARTE HICKS; and

No. 81, Misc. EX PARTE PRESSLEY. December 23, 1946. The motions for leave to file petitions for writs of certiorari are denied.

No. 145. UYEKI *v.* STYER, COMMANDING GENERAL. On petition for writ of certiorari to the Supreme Court of the Philippines. January 6, 1947. *Per Curiam*: The writ of certiorari in this case is dismissed for the reason that the case is moot. *John E. McCullough* for petitioner. *Solicitor General McGrath* and *Frederick Bernays Wiener* for respondent.

No. 780. **CHRONICLE & GAZETTE PUBLISHING CO., INC.** v. **ATTORNEY GENERAL OF NEW HAMPSHIRE ET AL.** Appeal from the Supreme Court of New Hampshire. January 6, 1947. *Per Curiam*: The motion to dismiss is granted, and the appeal is dismissed for the want of a substantial federal question. (1) *Nebbia v. New York*, 291 U. S. 502; *Olsen v. Nebraska*, 313 U. S. 236. (2) *Associated Press v. Labor Board*, 301 U. S. 103; *Associated Press v. United States*, 326 U. S. 1. MR. JUSTICE DOUGLAS, MR. JUSTICE MURPHY, and MR. JUSTICE RUTLEDGE are of the opinion that probable jurisdiction should be noted. *Stanley M. Burns* and *Elisha Hanson* for appellant. *Robert W. Upton* for appellees. Reported below: 94 N. H. 148, 48 A. 2d 478.

No. 82, Misc. **EX PARTE BLANTON**;

No. 84, Misc. **EX PARTE McMILLAN**; and

No. 86, Misc. **EX PARTE BANTZ**. January 6, 1947. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 85, Misc. **EX PARTE DAYTON**. January 6, 1947. The motion for leave to file petition for writ of mandamus is denied.

No. 83, Misc. **EX PARTE McMAHAN**. January 6, 1947. The motion for an injunction is denied.

No. 87, Misc. **EX PARTE BUFORD**; and

No. 89, Misc. **EX PARTE SCHAFER**. January 6, 1947. The applications are denied.

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No. 88, Misc. *EX PARTE WATKINS*. January 6, 1947. The motion for leave to file petition for certiorari is denied.

No. 626. *MARKHAM, ALIEN PROPERTY CUSTODIAN, v. ALLEN ET AL.* January 6, 1947. Clark, Attorney General, as successor to the Alien Property Custodian, substituted as the party petitioner herein.

No. 44, Misc. *WRIGHT v. JOHNSTON, WARDEN*. See *post*, p. 803.

No. 397. *CLARKE v. SANFORD, WARDEN*. January 6, 1947. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit dismissed on motion of the petitioner. Petitioner *pro se*. *Solicitor General McGrath, Robert S. Erdahl and Sheldon E. Bernstein* for respondent. Reported below: 156 F. 2d 115.

No. 50, Misc. *CLARKE v. SANFORD, WARDEN*. January 6, 1947. Leave granted to withdraw the motion for leave to file petition for writ of habeas corpus on motion of the petitioner.

No. 334. *FOWLER v. GILL, GENERAL SUPERINTENDENT*. See *post*, 832.

No. 90, Misc. *EX PARTE BAILEY*. January 13, 1947. The motion for leave to file petition for writ of habeas corpus is denied.

No. 800. *UNITED STATES v. BALOGH.* On petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit. January 20, 1947. *Per Curiam:* The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Circuit Court of Appeals. *Falbo v. United States*, 320 U. S. 549. MR. JUSTICE MURPHY is of the opinion that the petition for certiorari should be denied. *Acting Solicitor General Washington* for the United States. *Hayden C. Covington* for respondent. Reported below: 157 F. 2d 939.

No. 91, Misc. *EX PARTE WATKINS*;

No. 92, Misc. *EX PARTE HAINES*; and

No. 94, Misc. *EX PARTE OWENS.* January 20, 1947. The motions for leave to file petitions for writs of certiorari are denied.

No. 79, Misc. *EX PARTE CANNADY*;

No. 93, Misc. *EX PARTE THOMAS*; and

No. 95, Misc. *EX PARTE KNEISLEY.* January 20, 1947. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 813. *MARTINI ET AL., DOING BUSINESS AS LAKESIDE CUT-RATE LIQUOR STORE, v. PORTER, PRICE ADMINISTRATOR.* January 20, 1947. Fleming, Temporary Controls Administrator, substituted as the party respondent herein.

No. 840. *KENNEDY, WARDEN, v. UNITED STATES EX REL. KULICK.* See *post*, p. 712.

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No. 839. *HORSMAN DOLLS, INC. v. NEW JERSEY UNEMPLOYMENT COMPENSATION COMMISSION.* Appeal from the Court of Errors and Appeals of New Jersey. February 3, 1947. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for the want of a substantial federal question. *Nathan Bilder* for appellant. *Herman D. Ringle* for appellee. Reported below: 134 N. J. L. 77, 45 A. 2d 681.

No. 97, Misc. *EX PARTE MEYERS.* February 3, 1947. The motion for leave to file petition for writ of prohibition is denied.

No. 98, Misc. *EX PARTE EATON.* February 3, 1947. The motion for leave to file petition for writs of habeas corpus and certiorari is denied.

No. 99, Misc. *EX PARTE EVANS.* February 3, 1947. The motion for leave to file petitions for writs of habeas corpus and certiorari is denied.

No. 100, Misc. *EX PARTE DELISLE.* February 3, 1947. The motion for leave to file petition for writ of habeas corpus is denied.

No. 73. *ESTATE OF DOMINICK ET AL. v. COMMISSIONER OF INTERNAL REVENUE.* February 3, 1947. The petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit is dismissed per stipulation of counsel.

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Asa B. Kellogg for petitioners. *Acting Solicitor General Washington* for respondent. Reported below: 152 F. 2d 843.

No. 442. *UNITED STATES v. ELCHIBEGOFF*. Certiorari, *post*, p. 704, to the Court of Claims. February 3, 1947. The motion by respondent to enlarge the issues is denied. The writ of certiorari is dismissed on motion of counsel for the petitioner. *Solicitor General McGrath* and *Assistant Solicitor General Washington* for the United States. *Joseph Forer* for respondent. Reported below: 106 Ct. Cl. 541.

No. 101, Misc. *EX PARTE FINLEY*. See *post*, p. 817.

ORDERS GRANTING CERTIORARI, FROM OCTOBER 7, 1946, THROUGH FEBRUARY 3, 1947.

No. 220. *BAILEY v. UNITED STATES*. See *ante*, p. 670.

No. 141. *CONFEDERATED BANDS OF UTE INDIANS v. UNITED STATES*. October 14, 1946. Petition for writ of certiorari to the Court of Claims granted. *Ernest L. Wilkinson, John W. Cragun* and *Francis M. Goodwin* for petitioners. *Solicitor General McGrath, Roger P. Marquis* and *Fred W. Smith* for the United States. Reported below: 106 Ct. Cl. 33, 64 F. Supp. 569.

No. 148. *ALBRECHT ET AL. v. UNITED STATES*;

No. 149. *LINNENBRINGER v. UNITED STATES*;

No. 150. *PITMAN ET AL. v. UNITED STATES*;