

DECISIONS PER CURIAM, ETC., FROM APRIL 8,
1947, THROUGH JUNE 23, 1947.*

No. 1229. PEETE *v.* CALIFORNIA. April 10, 1947. Petition for writ of certiorari to the Supreme Court of California denied. The motion for a stay is also denied. *Morris Levine* for petitioner.

No. 129, Misc. EX PARTE ROCKOWER. April 14, 1947. The request of the petitioner for leave to withdraw the application filed herein is granted.

No. 133, Misc. EX PARTE FAHEY ET AL. April 14, 1947. A rule is ordered to issue, returnable Monday, April 28, next, requiring the respondents to show cause why leave to file the petition for writ of mandamus and/or prohibition and/or injunction should not be granted. The cause is assigned for argument on the return to the rule immediately following the hearing in *Fahey v. Mal-lonee*, No. 687. All proceedings tending to effectuate the order of the District Judge granting a motion with respect to costs and expenses of certain appellees in case No. 687 and counsel fees are hereby stayed pending the further order of this Court. *Acting Solicitor General Washington* for petitioners.

*Mr. JUSTICE DOUGLAS took no part in the consideration or decision of cases in which judgments or orders hereinafter reported were announced on May 12 and 19, 1947, with the exception of cases No. 11, original, and No. 715, *post*, p. 788.

For orders on applications for certiorari, see *post*, pp. 797, 805; rehearing, *post*, p. 863.

No. 1143. UNITED STATES *v.* MT. CLEMENS POTTERY CO. ET AL. April 14, 1947. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit dismissed on motion of counsel for the petitioner. *Attorney General Clark* for the United States. Reported below: 149 F. 2d 461.

No. 512. RALEY ET AL., TRADING AS RALEY'S FOOD STORE, *v.* FLEMING, TEMPORARY CONTROLS ADMINISTRATOR. Certiorari, 329 U. S. 705, to the United States Court of Appeals for the District of Columbia. April 28, 1947. Motion to vacate order of this Court substituting Fleming for Porter denied.

No. 1223. CHELTENHAM & ABINGTON SEWERAGE Co. *v.* PENNSYLVANIA PUBLIC UTILITY COMMISSION. Appeal from the Supreme Court of Pennsylvania; and

No. 1230. NEWTON OIL Co. *v.* BOCKHOLD ET AL. Appeal from the Supreme Court of Colorado. April 28, 1947. *Per Curiam*: The motions to dismiss are granted and the appeals are dismissed. Treating the papers whereon the appeals were allowed as petitions for writs of certiorari as required by § 237 (c) of the Judicial Code, as amended, 28 U. S. C. § 344 (c), certiorari is denied. *George Henry Huft* for appellant in No. 1223. *Max P. Zall* for appellant in No. 1230. *Charles E. Thomas, Samuel Graff Miller* and *William McKelvy Rutter* for appellee in No. 1223. *Henry E. Lutz* for appellees in No. 1230. Reported below: No. 1223, 355 Pa. 377, 49 A. 2d 707; No. 1230, 115 Colo. 510, 176 P. 2d 904.

No. 1224. MOTOR HAULAGE Co., INC. *v.* UNITED STATES ET AL. Appeal from the District Court of the United

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States for the Eastern District of New York. April 28, 1947. *Per Curiam*: The motions to affirm are granted and the judgment is affirmed. *Parker McCollester* for appellant. *Acting Solicitor General Washington, Daniel W. Knowlton* and *J. Stanley Payne* for the United States et al., appellees. *H. Lauren Lewis* for the Regular Common Carrier Conference, American Trucking Associations, appellee. Reported below: 70 F. Supp. 17.

No. 132, Misc. *EX PARTE MCMAHAN*. April 28, 1947. Application denied.

No. 134, Misc. *EX PARTE GRAMLICH*. April 28, 1947. The motion for leave to file petition for writ of habeas corpus is denied.

No. 135, Misc. *MITCHELL v. NEBLETT, JUDGE*. April 28, 1947. The motion for leave to file petition for writ of mandamus is denied. Petitioner *pro se*. *Acting Solicitor General Washington* for respondent.

No. 85. *TRAILMOBILE COMPANY ET AL. v. WHIRLS*. April 28, 1947. Order entered amending opinion. Opinion reported as amended, 331 U. S. 40.

No. 1104. *TRUDELL v. MISSISSIPPI*; and
No. 1105. *LEWIS v. MISSISSIPPI*. Appeals from and petitions for writs of certiorari to the Supreme Court of Mississippi. May 5, 1947. *Per Curiam*: The appeals are dismissed and the petitions for writs of certiorari are

denied. MR. JUSTICE MURPHY and MR. JUSTICE RUTLEDGE are of the opinion that the petitions for certiorari should be granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of these cases. *Thurgood Marshall* for appellants-petitioners. Reported below: No. 1104, 28 So. 2d 124; No. 1105, 28 So. 2d 122.

No. 136, Misc. *PORESKY v. FORD*, U. S. DISTRICT JUDGE. May 5, 1947. The motion for leave to file a petition for writ of mandamus is denied.

No. 1095. *FLEMING, TEMPORARY CONTROLS ADMINISTRATOR, ET AL. v. MOBERLY MILK PRODUCTS CO.* May 5, 1947. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia dismissed on motion of counsel for the petitioner. *Acting Solicitor General Washington* and *Carl A. Auerbach* for petitioner. Reported below: 82 U. S. App. D. C. —, 160 F. 2d 259.

No. 1051. *HEALTH-MOR, INC. v. PORTER, PRICE ADMINISTRATOR.* See *post*, p. 821.

No. 1346. *FRANCIS v. RESWEBER, SHERIFF.* On petition for writ of certiorari to the Supreme Court of Louisiana; and

No. 140, Misc. *FRANCIS v. RESWEBER, SHERIFF, ET AL.* On motion for leave to file petition for writ of habeas corpus. May 8, 1947. The petition for leave to file an original petition for writ of habeas corpus is denied for reasons set forth in *Ex parte Hawk*, 321 U. S. 114. In view of the grave nature of the new allegation set forth

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in this petition, the denial is expressly without prejudice to application to proper tribunals. MR. JUSTICE MURPHY is of opinion that the petition should be granted. The petition for writ of certiorari and the application for stay are denied. MR. JUSTICE RUTLEDGE is of the opinion that the application in No. 140, Misc. should be treated as a petition for rehearing in No. 142 of October Term, 1946, 329 U. S. 459; so regarded, the petition should be granted; the judgment in No. 142 should be vacated; and that cause remanded to the Supreme Court of Louisiana for further proceedings to determine the issues of fact presented by the petition. MR. JUSTICE DOUGLAS took no part in the consideration or decision of these applications.

No. 940. HILL PACKING CO. *v.* CITY OF NEW YORK ET AL. Appeal from the Court of Appeals of New York. May 12, 1947. *Per Curiam*: The judgment is affirmed. *Rice v. Board of Trade of Chicago*, 331 U. S. 247. MR. JUSTICE REED and MR. JUSTICE RUTLEDGE agree only that probable jurisdiction should be noted. *Arnold J. Brock* for appellant. Reported below: 296 N. Y. 668, 69 N. E. 2d 821.

No. 1294. DOBBS *v.* MISSISSIPPI. Appeal from the Supreme Court of Mississippi. May 12, 1947. *Per Curiam*: The appeal is dismissed. 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. *Ex parte Hawk*, 321 U. S. 114; *Mooney v. Holohan*, 294 U. S. 103. MR. JUSTICE MURPHY is of the opinion that certiorari should be granted. *Forrest B. Jackson and S. D. Redmond* for appellant. Reported below: 29 So. 2d 84.

No. 11, original. *GEORGIA v. PENNSYLVANIA RAILROAD CO. ET AL.* May 12, 1947. Upon consideration of the motion of the State of Alabama for leave to file petition of intervention, the opposition thereto, and the Special Report of the Special Master thereon, the motion is denied. *A. A. Carmichael*, Attorney General, and *Claud D. Scruggs*, Assistant Attorney General, for the State of Alabama. *John Dickinson*, *Robert V. Fletcher* and *Hugh B. Cox* for the Pennsylvania Railroad Co. et al., and *William L. Grubbs*, *J. N. Flowers*, *Elmer A. Smith*, *W. R. C. Coker*, *William H. Swiggart* and *S. R. Prince* for the Atlantic Coast Line Railroad Co. et al., defendants.

No. 137, Misc. *EX PARTE McMAHAN.* May 12, 1947. The motion for leave to file a petition for writ of mandamus is denied.

No. 138, Misc. *MACBLAIN v. BURKE, WARDEN.* May 12, 1947. The motion for leave to file a petition for writ of habeas corpus is denied.

No. 139, Misc. *EX PARTE REASOR.* May 12, 1947. The motion for leave to file a petition for writ of certiorari is denied.

No. 1241. *FISHER v. NEW YORK.* May 12, 1947. Petition for writ of certiorari to the County Court of Kings County, New York, dismissed on motion of the petitioner.

No. 715. *OKLAHOMA ET AL. v. UNITED STATES.* Certiorari, 329 U. S. 711, to the Circuit Court of Appeals for

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the Tenth Circuit. Argued April 28, 29, 1947. Decided May 19, 1947. *Per Curiam*: The judgment is affirmed. *Oklahoma v. Texas*, 258 U. S. 574; *Brewer Oil Co. v. United States*, 260 U. S. 77. *Mac Q. Williamson*, Attorney General, argued the cause for the State of Oklahoma, and *Nathan Scarritt* argued the cause for the Champlin Refining Company, petitioners. With them on the brief were *Harry O. Glasser* and *E. S. Champlin*. *Stanley M. Silverberg* argued the cause for the United States. With him on the brief were *Acting Solicitor General Washington*, *Assistant Attorney General Bazelon*, *Roger P. Marquis* and *Fred W. Smith*. *Edward F. Arn*, Attorney General of Kansas, filed a brief for that State, as *amicus curiae*, urging reversal. Reported below: 156 F. 2d 769.

No. 1161. *TIMES-MIRROR CO. ET AL. v. NATIONAL LABOR RELATIONS BOARD*. On petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit. May 19, 1947. *Per Curiam*: The petition for writ of certiorari is granted. The judgment is vacated and the cause is remanded with directions to make findings of fact. Cf. *Virginian R. Co. v. United States*, 272 U. S. 658, 675; Rule 52 of the Federal Rules of Civil Procedure. *Elisha Hanson*, *T. B. Cosgrove* and *John N. Cramer* for petitioners. *Acting Solicitor General Washington*, *Gerhard P. Van Arkel*, *Morris P. Glushien* and *Ruth Weyand* for respondent.

No. 141, Misc. *ROBINSON v. SHELBOURNE, JUDGE*. May 19, 1947. Application denied.

No. 793. *UNITED STATES v. MICHENER*. Certiorari, 329 U. S. 711, to the Circuit Court of Appeals for the

Eighth Circuit. Argued April 30, 1947. Decided June 2, 1947. *Per Curiam*: Reversed. *Blockburger v. United States*, 284 U. S. 299; *Albrecht v. United States*, 273 U. S. 1; *Gavieres v. United States*, 220 U. S. 338. MR. JUSTICE DOUGLAS, MR. JUSTICE MURPHY, and MR. JUSTICE RUTLEDGE share the view of the Circuit Court of Appeals, 157 F. 2d 616, that this case is controlled by the principles announced in *Morgan v. United States*, 294 F. 82, 84; *Tritico v. United States*, 4 F. 2d 664, and *Goetz v. United States*, 39 F. 2d 903, and accordingly would affirm the judgment below. *W. Marvin Smith* argued the cause for the United States. With him on the brief were *Acting Solicitor General Washington*, *Robert S. Erdahl* and *Irving S. Shapiro*. *Roger Kent* argued the cause and filed a brief for respondent. Reported below: 157 F. 2d 616.

Nos. 1286 and 1370. *SPEARS v. SPEARS*. Appeals from the Supreme Court of Michigan. June 2, 1947. *Per Curiam*: The appeals are dismissed for want of jurisdiction. § 237 (a), Judicial Code, as amended, 28 U. S. C. § 344 (a). Treating the papers whereon the appeals were allowed as petitions for writs of certiorari as required by § 237 (c) of the Judicial Code, as amended, 28 U. S. C. § 344 (c), certiorari is denied. Appellant *pro se*. *George A. Sutton* for appellee.

No. 1309. *CORN PRODUCTS REFINING CO. v. UNITED STATES ET AL.* Appeal from the District Court of the United States for the Northern District of Illinois. June 2, 1947. *Per Curiam*: The motion to affirm is granted and the judgment is affirmed. *United States v. American Sheet & Tin Plate Co.*, 301 U. S. 402; *United States v. Wabash R. Co.*, 321 U. S. 403. *Ernest S. Ballard* and

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Parker McCollester for appellant. *Acting Solicitor General Washington* and *Daniel W. Knowlton* for the United States and the Interstate Commerce Commission, appellees. Reported below: 69 F. Supp. 869.

No. 1334. UNITED STATES *v.* WHEELBARGER;

No. 1335. UNITED STATES *v.* RAMBEAU;

No. 1336. UNITED STATES *v.* LEWIN; and

No. 1341. UNITED STATES *v.* SAGNER. Appeals from the District Court of the United States for the District of Oregon. June 2, 1947. *Per Curiam*: The judgments are reversed. *United States v. Palletz*, 330 U. S. 812, and authorities cited. *Acting Solicitor General Washington* for the United States. Reported below: No. 1341, 71 F. Supp. 52.

No. 1344. HUMBLE OIL & REFINING CO. *v.* RAILROAD COMMISSION OF TEXAS ET AL.; and

No. 1345. WILLIAMS ET AL. *v.* RAILROAD COMMISSION OF TEXAS ET AL. Appeals from the Court of Civil Appeals, 3d Supreme Judicial District, of Texas. June 2, 1947. *Per Curiam*: The motion to affirm is granted and the judgments are affirmed. *J. A. Rauhut*, *Nelson Jones*, *Norman L. Meyers*, *Rex G. Baker* and *R. E. Seagler* for appellant in No. 1344. *Dan Moody* for Williams et al., appellants in No. 1345. *Price Daniel*, Attorney General of Texas, and *Fagan Dickson*, First Assistant Attorney General, for the Railroad Commission of Texas et al., and *James P. Hart* for Ashcroft et al., appellees. Reported below: 193 S. W. 2d 824.

No. —. BAUER *v.* CLARK, ATTORNEY GENERAL OF THE UNITED STATES. June 2, 1947. The application for the appointment of counsel is denied.

No. 142, Misc. EDMONDSON *v.* BRADY, WARDEN. June 2, 1947. The motion for leave to file petition for writ of certiorari is denied.

No. 143, Misc. MALOYAN *v.* UNITED STATES CONGRESS. June 2, 1947. The application is denied.

No. 144, Misc. EX PARTE SWITZER. June 2, 1947. The application is denied for the reason that it is not made within the time provided by law.

No. 1317. FURMAN *v.* RAGEN, WARDEN. June 2, 1947. Petition for writ of certiorari to the Criminal Court of Cook County, Illinois, dismissed on motion of the petitioner.

No. 1234. HELFEND *v.* FLEMING, TEMPORARY CONTROLS ADMINISTRATOR. See *post*, p. 838.

No. 107, Misc. EX PARTE BEST. June 9, 1947. The application is dismissed on motion of counsel for the petitioner.

No. 146, Misc. FORD *v.* RAGEN, WARDEN; and
No. 148, Misc. HOOPER *v.* RAGEN, WARDEN. June 9, 1947. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 147, Misc. JOHNSON *v.* UTAH. June 9, 1947. The application is denied.

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No. 151, Misc. *McMONIGLE v. CALIFORNIA*. June 9, 1947. The application for a stay is denied.

No. 1040. *McCANN v. CLARK, ATTORNEY GENERAL OF THE UNITED STATES*. See *post*, p. 846.

No. 724. *WADE ET AL., DOING BUSINESS AS CADILLAC TOOL & DIE CO., ET AL. v. STIMSON ET AL.* Appeal from the District Court of the United States for the District of Columbia. June 16, 1947. *Per Curiam*: The motion to affirm is granted and the judgment is affirmed. *Aircraft & Diesel Equipment Corp. v. Hirsch*, 331 U. S. 752, decided this day. *John W. Piester* and *Paul B. Elcan* for appellants. *Acting Solicitor General Washington* for appellees. Reported below: 65 F. Supp. 277.

No. 836. *ALASKA JUNEAU GOLD MINING CO. v. ROBERTSON ET AL.* On petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit. June 16, 1947. *Per Curiam*: The petition for rehearing is granted. The order entered May 12, 1947, denying certiorari, 331 U. S. 823, is vacated and the petition for writ of certiorari is granted limited to the question presented by the petition for rehearing as to the effect of the Portal-to-Portal Act of 1947, approved May 14, 1947, 61 Stat. 84. The judgment of reversal of the Circuit Court of Appeals is modified so as to provide that on remand to the District Court that Court shall have authority to consider any matters presented to it under the Portal-to-Portal Act of 1947. *Wm. E. Colby* for petitioner. Reported below: 157 F. 2d 876.

No. 149, Misc. *CARR v. NEW YORK*;
No. 152, Misc. *FINKLE v. RAGEN, WARDEN*; and
No. 153, Misc. *VAN PELT v. RAGEN, WARDEN*. June
16, 1947. The motions for leave to file petitions for writs
of habeas corpus are denied.

No. 96, Misc. *FITZPATRICK v. RAGEN, WARDEN*; and
No. 150, Misc. *TOMANEK v. RAGEN, WARDEN*. June
16, 1947. The motions for leave to file petitions for writs
of certiorari are denied.

No. 154, Misc. *TEGMEYER v. TEGMEYER*. June 16,
1947. The application is denied.

No. 754, October Term, 1945. *SEWELL ET AL. v. COM-
MISSIONER OF INTERNAL REVENUE*. June 16, 1947. The
motion for an extension of time within which to file a
second petition for rehearing is denied. *THE CHIEF JUS-
TICE* and *MR. JUSTICE JACKSON* took no part in the con-
sideration or decision of this application.

No. 184. *CONE v. WEST VIRGINIA PULP & PAPER Co.*
June 16, 1947. The motion to recall and amend the man-
date is denied.

No. 425. *MORRIS v. WALLING, WAGE & HOUR ADMIN-
ISTRATOR*; and

No. 562. *RUTHERFORD FOOD CORP. ET AL. v. WALLING,
WAGE & HOUR ADMINISTRATOR*. June 16, 1947. McComb
substituted as the party respondent in these cases.

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No. 497. 149 MADISON AVENUE CORP. ET AL. *v.* ASSELTA ET AL. June 16, 1947. On consideration of the motion of counsel for the petitioners to modify the judgment of this Court in this case, it is ordered that the judgment of affirmance entered herein on May 5, 1947, 331 U. S. 199, be modified so as to provide that the judgment of the Circuit Court of Appeals is affirmed and the cause is remanded to the District Court with authority in that Court to consider any matters presented to it under the Portal-to-Portal Act of 1947, approved May 14, 1947, 61 Stat. 84. *Walter Gordon Merritt* and *Robert R. Bruce* for petitioners.

No. 1285. VON MOLTKE *v.* GILLIES, SUPERINTENDENT. Certiorari, 331 U. S. 800, to the Circuit Court of Appeals for the Sixth Circuit. June 16, 1947. The motion of petitioner for enlargement on recognizance is granted and the matter is referred to the District Court for determination as to whether surety ought to be required or the personal recognizance of the petitioner shall suffice and for the entry of an appropriate order. *G. Leslie Field* for petitioner. *Acting Solicitor General Washington*, *Robert S. Erdahl* and *Philip R. Monahan* for respondent.

No. 1486. RABIN *v.* MICHIGAN. June 16, 1947. The application for a stay is denied. *Walter M. Nelson* and *George Stone* for petitioner.

No. 1377. LEE *v.* MISSISSIPPI. Appeal from the Supreme Court of Mississippi. June 16, 1947. 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 granted. *Forrest B. Jackson* for appellant. Reported below: 201 Miss. —, 30 So. 2d 74.

No. 1422. *MORGAN ET AL. v. GILMAN*. June 16, 1947. The petition for writ of certiorari to the Supreme Court of Florida is dismissed on motion of counsel for the petitioners. *Tim J. Campbell* for petitioners. Reported below: 158 Fla. 605, 29 So. 2d 372.

No. 987. *TWYEFFORT, INC. v. WALLING, WAGE & HOUR ADMINISTRATOR*. See *post*, p. 851.

No. 145, Misc. *EX PARTE McCORMICK*. June 16, 1947. The motion for leave to file petition for writ of habeas corpus is denied.

No. 700. *BORG-WARNER CORP. ET AL. v. GOODWIN ET AL.* June 16, 1947. The motion for leave to file a second petition for rehearing is granted.

No. 466. *GREENBERG v. CALIFORNIA*. Appeal from the District Court of Appeal, 2d Appellate District, of California. June 23, 1947. *Per Curiam*: The judgment is affirmed. *Adamson v. California*, 332 U. S. 46, decided this day. *Morris Lavine* for appellant. *Robert W. Kenny*, Attorney General of California, and *Frank W. Richards*, Deputy Attorney General, for appellee. Reported below: 73 Cal. App. 2d 675, 167 P. 2d 214.

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No. 300. *EVERETT v. DOWNING*. June 23, 1947. The application of the petitioner for reconsideration of the order denying leave to file a second petition for rehearing is denied.

Nos. 1286 and 1370. *SPEARS v. SPEARS*. June 23, 1947. The motion of the appellant for an extension of time within which to file a petition for rehearing is denied.

No. 1404. *COUNSELMAN v. FLEMING, TEMPORARY CONTROLS ADMINISTRATOR*. See *post*, p. 861.

No. 69. *AMERICAN STEVEDORES, INC. v. PORELLO ET AL.* June 23, 1947. Order entered amending opinion.
Opinion reported as amended, 330 U. S. 446.

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8, 1947, THROUGH JUNE 23, 1947.

No. 1083. *WILLIAMS ET AL. v. FANNING, POSTMASTER OF THE CITY OF LOS ANGELES*. April 14, 1947. The petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit is granted limited to the first question presented by the petition for the writ. *Irving M. Walker* for petitioners. *Acting Solicitor General Washington, Assistant Attorney General Sonnett, Paul A. Sweeney and Melvin Richter* for respondent. Reported below: 158 F. 2d 95.

No. 1092. *MOGALL v. UNITED STATES*. April 14, 1947. The petition for writ of certiorari to the Circuit Court of