

NEEDELMAN *v.* UNITED STATES.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT.

No. 278. Argued April 25-26, 1960.—Decided May 16, 1960.

Since the record does not adequately present the questions tendered in the petition, the writ of certiorari is dismissed as improvidently granted.

Reported below: 261 F. 2d 802.

Herbert A. Warren, Jr. argued the cause for petitioner. With him on the brief were *Hilton R. Carr, Jr.* and *A. C. Dressler*.

Oscar H. Davis argued the cause for the United States. On the brief were *Solicitor General Rankin*, *Assistant Attorney General Wilkey*, *Beatrice Rosenberg* and *Jerome M. Feit*.

PER CURIAM.

After hearing oral argument, and further study of the record, we conclude that the record does not adequately present the questions tendered in the petition. Accordingly the writ is dismissed as improvidently granted.

MR. JUSTICE FRANKFURTER, whom MR. JUSTICE CLARK and MR. JUSTICE HARLAN join.

Considering the volume of cases which invoke the Court's discretionary jurisdiction—as of today 1,091 such cases have been passed on during this Term—it would be indeed surprising if in each Term there were not two or three instances of petitions which, after passing through the preliminary sifting process, did not survive the scrutiny of oral argument. See the cases collected in *Rice v. Sioux City Cemetery*, 349 U. S. 70, 77-78, and,

more recently, *Triplett v. Iowa*, 357 U. S. 217, *Joseph v. Indiana*, 359 U. S. 117, and *Phillips v. New York*, *ante*, p. 456. But this is not one of them. The specific questions which were presented by the petition for certiorari are not now found to be frivolous nor do they raise disputed questions of fact, nor does the record otherwise appropriately preclude answers to them. In my view they call for answers against the claims of the petitioner and I would therefore affirm the judgment. In view of the disposition of the case elaboration is not called for.