

Per Curiam.

367 U. S.

CONNER *v.* SIMLER.

ON PETITION FOR REHEARING.

No. 685. Decided June 12, 1961.

Rehearing and certiorari granted; judgment vacated; and case remanded.

Reported below: 282 F. 2d 382.

Peyton Ford for petitioner.

John B. Ogden for respondent.

PER CURIAM.

The petition for rehearing is granted. The order entered March 20, 1961, 365 U. S. 844, denying the petition for writ of certiorari is vacated and the petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted. The judgment is vacated and the case is remanded to the Court of Appeals for reconsideration in the light of *Southard v. MacDonald*, 360 P. 2d 940.

THE CHIEF JUSTICE, MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS dissent from vacation of the Court of Appeals judgment which held that the respondent Simler was entitled to have the facts of his case in the United States District Court determined by a jury as we believe is required by Rule 38 of the Federal Rules of Civil Procedure, our prior decisions and the Seventh Amendment to the Constitution of the United States.