

ORDERS FROM MAY 17 THROUGH
JUNE 19, 1973

MAY 17, 1973

Dismissal Under Rule 60

No. 72-6442. KING, AKA RAVELLI *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS. Motion for leave to file petition for writ of mandamus dismissed under Rule 60 of the Rules of this Court.

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Affirmed on Appeal

No. 72-1105. STEPHENS TRUCK LINE, INC., ET AL. *v.* UNITED STATES ET AL. Affirmed on appeal from D. C. E. D. Tenn.

No. 72-1215. DIAMOND ET AL. *v.* UNITED STATES ET AL. Appeal from D. C. D. C. Motion to dispense with printing jurisdictional statement granted. Judgment affirmed. MR. JUSTICE POWELL took no part in the consideration or decision of this case. Reported below: 354 F. Supp. 1021.

No. 72-1342. KAPLAN ET AL. *v.* MILLIKEN, JUDGE, ET AL. Affirmed on appeal from D. C. W. D. Ky. For the reasons stated in their dissent in *Wells v. Edwards*, 409 U. S. 1095 (1973), MR. JUSTICE WHITE and MR. JUSTICE MARSHALL would note probable jurisdiction and give plenary consideration to this case.

Appeals Dismissed

No. 72-1313. SILVERTON *v.* CALIFORNIA. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question.

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No. 72-6197. SHOEMAKER *v.* DWYER ET AL. Appeal from C. A. 7th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Vacated and Remanded on Appeal

No. 70-42. ROSEN *v.* LOUISIANA STATE BOARD OF MEDICAL EXAMINERS. Appeal from D. C. E. D. La. Judgment vacated and case remanded for further consideration in light of *Roe v. Wade*, 410 U. S. 113 (1973), and *Doe v. Bolton*, 410 U. S. 179 (1973). Reported below: 318 F. Supp. 1217.

Certiorari Granted—Vacated and Remanded

No. 71-939. JOINER ET AL. *v.* CITY OF DALLAS, TEXAS, ET AL. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Mitchum v. Foster*, 407 U. S. 225 (1972); *Lynch v. Household Finance Corp.*, 405 U. S. 538 (1972); and *Younger v. Harris*, 401 U. S. 37 (1971). Reported below: 447 F. 2d 1403.

No. 72-6241. WEBB *v.* UNITED STATES. Motion for leave to proceed *in forma pauperis* granted. Motion for leave to file petition for writ of habeas corpus denied. Treating the papers submitted as a petition for writ of certiorari, certiorari granted. Upon representation of the Solicitor General as set forth in his memorandum for the United States filed April 24, 1973, judgment vacated and case remanded to the United States Court of Appeals for the Tenth Circuit for further consideration in light of the position presently asserted by the Government. Reported below: 466 F. 2d 190.

Certiorari Dismissed

No. 72-498. TINDER *v.* VIRGINIA. Corp. Ct., Norfolk, Va. It appearing that petitioner, a defendant in

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a state criminal proceeding, died on March 17, 1973, petition for writ of certiorari dismissed. *Gersewitz v. New York*, 326 U. S. 687 (1945).

Miscellaneous Orders

No. 61, Orig. PETERSEN *v.* SPILIOTOPOULOS. Motion of plaintiff for leave to proceed *in forma pauperis* granted. Motion for leave to file bill of complaint denied.

No. A-1069. APPLGATE ET AL. *v.* NEW JERSEY. Super. Ct. N. J. Application for stay of judgment, presented to MR. JUSTICE DOUGLAS and by him referred to the Court, denied.

No. A-1118. MICELI ET AL. *v.* UNITED STATES ET AL. C. A. 6th Cir. Application for stay of mandate, presented to MR. JUSTICE STEWART and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would grant the stay. Reported below: 474 F. 2d 1234.

No. A-1123. REID *v.* MARQUETTE UNIVERSITY ET AL. C. A. 7th Cir. Application for stay of mandate, presented to MR. JUSTICE DOUGLAS and by him referred to the Court, denied.

No. A-1136. GREENSPHAN *v.* UNITED STATES. C. A. 7th Cir. Application for recall of mandate, presented to MR. JUSTICE DOUGLAS and by him referred to the Court, denied. Reported below: 477 F. 2d 508.

No. 72-586. CADY, WARDEN *v.* DOMBROWSKI. C. A. 7th Cir. [Certiorari granted, 409 U. S. 1059.] Motion of the State of Florida for leave to file a brief as *amicus curiae* in support of petitioner, after argument, granted.

No. 72-782. GATEWAY COAL CO. *v.* UNITED MINE WORKERS OF AMERICA ET AL. C. A. 3d Cir. [Certiorari granted, 410 U. S. 953.] Motion of National Association of Manufacturers for leave to file a brief as *amicus curiae* in support of petitioner granted.

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No. 72-812. *STORER ET AL. v. BROWN, SECRETARY OF STATE OF CALIFORNIA, ET AL.*; and

No. 72-6050. *FROMMHAGEN v. BROWN, SECRETARY OF STATE OF CALIFORNIA, ET AL.* Appeals from D. C. N. D. Cal. [Probable jurisdiction noted, 410 U. S. 965.] Motion of appellants in No. 72-812 for divided argument granted. It is ordered that Paul N. Halvonik, Esquire, and Joseph Remcho, Esquire, be permitted to present oral argument in the consolidated cases. Motion of appellant in No. 72-6050 to argue orally *pro se* denied.

No. 72-822. *RENEGOTIATION BOARD v. BANNERCRAFT CLOTHING Co., INC., ET AL.* C. A. D. C. Cir. [Certiorari granted, 410 U. S. 907.] Motion of respondents to permit two counsel to argue orally granted.

No. 72-887. *AMERICAN PARTY OF TEXAS ET AL. v. WHITE, SECRETARY OF STATE OF TEXAS.* Appeal from D. C. W. D. Tex. [Probable jurisdiction noted, *sub nom. American Party of Texas v. Bullock*, 410 U. S. 965.] Motion of appellant Dunn for leave to proceed further herein *in forma pauperis* granted only to the extent that a typewritten brief may be filed.

No. 72-1148. *CUPP, PENITENTIARY SUPERINTENDENT v. NAUGHTEN.* C. A. 9th Cir. [Certiorari granted, 411 U. S. 947.] Motion of respondent for appointment of counsel granted. It is ordered that Ross R. Runkel, Esquire, of Salem, Oregon, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for respondent in this case.

No. 72-6575. *JOHNSON v. WYOMING ET AL.*;

No. 72-6578. *LODDY v. MEACHAM ET AL.*; and

No. 72-6601. *HAWKINS v. WYOMING ET AL.* Motions for leave to file petitions for writs of habeas corpus denied.

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No. 72-6432. *SPROUSE v. UNITED STATES*. Motion for leave to file petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 72-1254. *SMITH, SHERIFF v. GOGUEN*. Appeal from C. A. 1st Cir. Probable jurisdiction noted. Reported below: 471 F. 2d 88.

Certiorari Granted

No. 72-1319. *UNITED STATES v. CHAVEZ ET AL.* C. A. 9th Cir. Motion of respondent George Apodaca for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 478 F. 2d 512.

Certiorari Denied. (See also No. 72-6197, *supra.*)

No. 72-1097. *BURKS ET AL. v. PERK, MAYOR OF CLEVELAND, OHIO.* C. A. 6th Cir. Certiorari denied. Reported below: 470 F. 2d 163.

No. 72-1153. *BRICK v. UNITED STATES.* C. A. 8th Cir. Certiorari denied.

No. 72-1200. *LINDSEY v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 2d 910.

No. 72-1211. *MENDOZA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 72-1222. *COPE ET AL. v. ALLSTATE INSURANCE Co. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 693.

No. 72-1224. *TERESI v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 72-1239. *OLSON v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 473 F. 2d 686.

No. 72-1250. *HAGEN v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 470 F. 2d 110.

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No. 72-1265. *SIMAS BROS. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied.

No. 72-1298. *COMMISSIONER OF INTERNAL REVENUE v. MORITZ*. C. A. 10th Cir. Certiorari denied. Reported below: 469 F. 2d 466.

No. 72-1312. *AOSSEY v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 201 N. W. 2d 731.

No. 72-1314. *SNITOFF v. BOARD OF MANAGERS OF CHICAGO BAR ASSN.* Sup. Ct. Ill. Certiorari denied. Reported below: 53 Ill. 2d 50, 289 N. E. 2d 428.

No. 72-1335. *MOORE v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 108 Ariz. 532, 502 P. 2d 1351.

No. 72-1336. *KEARNEY v. DISTRICT OF COLUMBIA*. Super. Ct. D. C. Certiorari denied.

No. 72-1337. *W. J. JONES & SON, INC. v. WEYERHAEUSER CO. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 471 F. 2d 369.

No. 72-1358. *O'MEARA ET AL. v. McDONALD*. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 2d 799.

No. 72-6152. *MIXEN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 469 F. 2d 203.

No. 72-6189. *HENSLEY v. HARDY*. C. A. 5th Cir. Certiorari denied.

No. 72-6291. *CONNORS v. HARRISON, CORRECTIONS DIRECTOR, ET AL.* C. A. 6th Cir. Certiorari denied.

No. 72-6332. *ARGO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 473 F. 2d 1315.

No. 72-6335. *DENMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

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No. 72-6353. *DiMARIO v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 2d 1046.

No. 72-6366. *DeBETHAM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 2d 1367.

No. 72-6367. *MANDINA v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 472 F. 2d 1110.

No. 72-6368. *BUTLER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 471 F. 2d 648.

No. 72-6373. *HAUFF v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 473 F. 2d 1350.

No. 72-6376. *MILES v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 472 F. 2d 1145.

No. 72-6457. *WASHINGTON v. MARYLAND*. C. A. 4th Cir. Certiorari denied.

No. 72-6458. *O'SHEA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1406.

No. 72-6461. *CANTY v. BOARD OF EDUCATION OF THE CITY OF NEW YORK*. C. A. 2d Cir. Certiorari denied. Reported below: 470 F. 2d 1111.

No. 72-6462. *THOMPSON v. LAMBERT'S POINT DOCKS, INC., ET AL.* C. A. 4th Cir. Certiorari denied.

No. 72-6465. *SANDER v. OHIO*. Ct. App. Ohio, Darke County. Certiorari denied.

No. 72-6474. *O'NEILL v. SUPERIOR COURT OF ALAMEDA COUNTY*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 72-6487. *RIVERA v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 7 Ill. App. 3d 983, 289 N. E. 2d 36.

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No. 72-6493. *BONAFINI v. NEW JERSEY ET AL.* C. A. 3d Cir. Certiorari denied.

No. 72-6494. *FARESE ET UX. v. HOME SAVINGS & LOAN ASSN. ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-6496. *GERMAN v. FLORIDA ET AL.* Sup. Ct. Fla. Certiorari denied.

No. 72-6501. *RICHARDSON v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 169.

No. 72-6502. *LAYMAN v. TOLLETT, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 72-6508. *MITCHELL v. CONBOY, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied.

No. 72-1064. *BARTON, REFORMATORY SUPERINTENDENT v. TABASKO.* C. A. 6th Cir. Motion to dispense with printing petition and motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 472 F. 2d 871.

No. 72-1209. *HANLY ET AL. v. KLEINDIENST, ATTORNEY GENERAL, ET AL.* C. A. 2d Cir. Application for stay presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 823.

No. 72-1232. *WILLIS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 450.

No. 72-1311. *CALIFORNIA v. FRITO-LAY, INC., ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 774.

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No. 72-6201. *ELDRIDGE v. NEW YORK*. Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 31 N. Y. 2d 820, 291 N. E. 2d 719.

No. 72-6287. *ROSENTHAL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 470 F. 2d 837.

No. 72-1331. *ALLEN ET AL. v. CITY OF MOBILE ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 466 F. 2d 122.

No. 72-1349. *FREEMAN v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA (BAY FARM ISLAND RECLAMATION DISTRICT No. 2105 ET AL., REAL PARTIES IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-6075. *BLAND v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 153 U. S. App. D. C. 254, 472 F. 2d 1329.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

Petitioner was 16 years old at the time of his arrest and at the time of his indictment for armed robbery of a post office. He was charged as an adult under D. C. Code Ann. § 16-2301 (3)(A) (Supp. V, 1972).* He

*That section reads:

“(3) The term ‘child’ means an individual who is under 18 years of age, except that the term ‘child’ does not include an individual who is sixteen years of age or older and—

“(A) charged by the United States attorney with (i) murder, forcible rape, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense, or (ii) an offense listed in clause (i) and any other offense properly joinable with such an offense.”

moved to dismiss the indictment, alleging that the statutory basis for prosecuting him as an adult failed to provide him with procedural due process. The District Court dismissed the indictment, 330 F. Supp. 34, and the Court of Appeals by a divided vote reversed that judgment, 153 U. S. App. D. C. 254, 472 F. 2d 1329.

Under the statute of the District of Columbia involved in *Kent v. United States*, 383 U. S. 541, a juvenile, age 16 or older, who was charged with a felony, might be held for trial as though he were an adult, if the Juvenile Court waived jurisdiction. *Kent* held that the Act, read in light of "the essentials of due process and fair treatment," *id.*, at 562 and 557, required a hearing on whether the Juvenile Court should waive its exclusive jurisdiction over the juvenile and transfer him to the criminal court of the District. And in *In re Gault*, 387 U. S. 1, we held that where under a state juvenile court act a juvenile is declared "delinquent" and either confined or held for regular criminal prosecution, there must be a due process hearing on the issue of "delinquency."

The District of Columbia Act was modified after *Kent* so as to give the U. S. Attorney the power to remove a juvenile from the statutory category of "child" merely by charging him with a designated felony. The House Report No. 91-907, p. 50, explains the reason for the change:

"Because of the great increase in the number of serious felonies committed by juveniles and because of the substantial difficulties in transferring juvenile offenders charged with serious felonies to the jurisdiction of the adult court under present law, provisions are made in this subchapter for a better mechanism for separation of the violent youthful offender and recidivist from the rest of the juvenile community."

The "substantial difficulties" are obviously the constitutional rights explicated in *Kent* and in *Gault*. The "better mechanism" is the use of the shortcut employed, *viz.*, the discretion of the prosecutor. Two rather large questions are presented and they seem to me to be substantial.

First. A juvenile or "child" is placed in a more protected position than an adult, not by the Constitution, but by an Act of Congress. In that category he is theoretically subject to rehabilitative treatment. Can he, on the whim or caprice of a prosecutor, be put in the class of the run-of-the-mill criminal defendants, without any hearing, without any chance to be heard, without an opportunity to rebut the evidence against him, without a chance of showing that he is being given an invidiously different treatment from others in his group? *Kent* and *Gault* suggest that those are very substantial constitutional questions.

Second. The barricade behind which the prosecutor operates is that this, like other prosecutions, is committed to his informed discretion, which is beyond the reach of judicial intrusion. Mr. Justice Black and I said, in dissent in *Berra v. United States*, 351 U. S. 131, at 140:

"[I]t is true that under our system Congress may vest the judge and jury with broad power to say how much punishment shall be imposed for a particular offense. But it is quite different to vest such powers in a prosecuting attorney. A judge and jury act under procedural rules carefully prescribed to protect the liberty of the individual. Their judgments and verdicts are reached after a public trial in which a defendant has the right to be represented by an attorney. No such protections are thrown around decisions by a prosecuting attorney. Substitution of the prosecutor's caprice for

the adjudicatory process is an action I am not willing to attribute to Congress in the absence of clear command. Our system of justice rests on the conception of impersonality in the criminal law.”

The Administrative Procedure Act, 5 U. S. C. § 701 *et seq.*, gives the courts power to review “agency action” and to hold it unlawful, if found to be “contrary to constitutional right, power, privilege, or immunity.” § 706 (2)(B). This arguably is broad enough to reach the exercise of a prosecutor’s discretion in a way that violates the standards of due process laid down in *Kent* and in *Gault*.

One needs no reminder that government too can be lawless, that government cannot lead the way in law and order when it is the great malefactor. The Administrative Procedure Act is indeed part of the citizen’s arsenal against lawless government. As Professor Kenneth Davis said in *Discretionary Justice* 210 (1969): “Under the Administrative Procedure Act judicial review of the exercise of executive discretion is the rule and unreviewability is the exception.”

Respecting “the settled judicial tradition” not to interfere with the prosecuting function, Professor Davis says:

“Is it because the tradition became settled during the nineteenth century when courts were generally assuming that judicial intrusion into any administration would be unfortunate? Is it because the tradition became settled while the Supreme Court was actuated by its 1840 remark that ‘The interference of the Courts with the performance of the ordinary duties of the executive departments of the government, would be productive of nothing but mischief’? Is it because the tradition became settled before the courts made the twentieth-century discovery that the courts can interfere with executive

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action to protect against abuses but at the same time can avoid taking over the executive function? Is it because the tradition became settled before the successes of the modern system of *limited* judicial review became fully recognized?

“On the basis of what the courts know today about leaving administration to administrators but at the same time providing an effective check to protect against abuses, should the courts not take a fresh look at the tradition that prevents them from reviewing the prosecuting function? Throughout the governmental system, courts have found that other administrative or executive functions are in need of a judicial check, with a limited scope of review. *The reasons for a judicial check of prosecutors’ discretion are stronger than for such a check of other administrative discretion that is now traditionally reviewable.* Important interests are at stake. Abuses are common. The questions involved are appropriate for judicial determination. And much injustice could be corrected.” *Id.*, at 211–212.

These two questions are large questions and substantial ones. I would grant the petition for certiorari in order to resolve them.

No. 72–6491. *BECKNER v. SEARS, ROEBUCK & Co. ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

Rehearing Denied

No. 71–1097. *YUMICH ET AL. v. CITY OF CHICAGO*, 410 U. S. 908;

No. 72–1025. *B. P. O. E. LODGE No. 2043 OF BRUNSWICK ET AL. v. INGRAHAM ET AL.*, 411 U. S. 924; and

No. 72–1087. *CARD v. UNITED STATES*, 411 U. S. 917. Petitions for rehearing denied.

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No. 72-1114. HUTTER ET UX. *v.* KORZEN, 411 U. S. 912;

No. 72-1134. REIBERT ET AL. *v.* ATLANTIC RICHFIELD Co. ET AL., 411 U. S. 938;

No. 72-6040. FAYNE *v.* BERG, 410 U. S. 969;

No. 72-6052. LANDRY *v.* UNITED STATES, 411 U. S. 918; and

No. 72-6318. LANDES *v.* PAGEANT-POSEIDON, LTD., 411 U. S. 950. Petitions for rehearing denied.

No. 71-1270. MCKEE *v.* UNITED STATES, 407 U. S. 910, 409 U. S. 899 and 1019. Motion for leave to dispense with printing petition granted. Motion for leave to file third petition for rehearing denied.

No. 72-5175. MEYER *v.* WEIL ET AL., 409 U. S. 1060. Motion for leave to file petition for rehearing denied.

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Affirmed on Appeal

No. 72-287. MILLER, COMMISSIONER OF MENTAL HYGIENE OF NEW YORK, ET AL. *v.* GOMEZ ET AL.; and

No. 72-5272. DEMUNDO ET AL. *v.* MILLER, COMMISSIONER OF MENTAL HYGIENE OF NEW YORK, ET AL. Appeals from D. C. S. D. N. Y. Motion of appellees for leave to proceed *in forma pauperis* in No. 72-287 granted. Judgment affirmed. Reported below: 341 F. Supp. 323.

No. 72-6344. BELL ET AL. *v.* HEIM, EXECUTIVE DIRECTOR, NEW MEXICO HEALTH AND SOCIAL SERVICES DEPARTMENT, ET AL. Affirmed on appeal from D. C. N. M.

Vacated and Remanded on Appeal

No. 72-1302. EDELMAN, DIRECTOR, DEPARTMENT OF PUBLIC AID OF ILLINOIS *v.* TOWNSEND ET AL. Appeal from D. C. N. D. Ill. Motions of appellees Alexander

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and Hucher for leave to proceed *in forma pauperis* granted. Judgment vacated and case remanded so that District Court may enter a fresh judgment from which a timely appeal may be taken to the Court of Appeals. Reported below: 345 F. Supp. 666.

Appeals Dismissed

No. 72-1338. GIANT OF MARYLAND, INC. *v.* STATE'S ATTORNEY FOR PRINCE GEORGES COUNTY. Appeal from Ct. App. Md. dismissed for want of substantial federal question. Reported below: 267 Md. 501, 298 A. 2d 427.

No. 72-1365. LILLIAN B. A. *v.* ARTHUR O. S. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question.

No. 72-6506. SMITH *v.* CALIFORNIA. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question.

No. 72-5924. KING *v.* WEST VIRGINIA. Appeal from Cir. Ct. W. Va., Marion County, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-6412. QUINN *v.* UNITED STATES. Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-6047. LAURSEN *v.* CALIFORNIA. Appeal from Sup. Ct. Cal. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 8 Cal. 3d 192, 501 P. 2d 1145.

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Certiorari Granted—Vacated and Remanded

No. 72-780. CALIFORNIA ADULT AUTHORITY ET AL. v. GRIFFIN ET AL.; and

No. 72-5770. M'CLARY v. CALIFORNIA ADULT AUTHORITY ET AL. C. A. 9th Cir. Motion of respondents in No. 72-780 and of petitioner in No. 72-5770 for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated and cases remanded for further consideration in light of *Gagnon v. Scarpelli*, 411 U. S. 778 (1973). Reported below: No. 72-780, 464 F. 2d 585 and 602; No. 72-5770, 466 F. 2d 1122.

No. 72-5398. GARDNER v. MCCARTHY, FACILITY SUPERINTENDENT. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Gagnon v. Scarpelli*, 411 U. S. 778 (1973).

Miscellaneous Orders

No. A-1137. SMITH v. TEXAS. Ct. Crim. App. Tex. Application for stay of mandate, presented to MR. JUSTICE DOUGLAS and by him referred to the Court, denied. Reported below: 491 S. W. 2d 924.

No. A-1164. MARBURGER, COMMISSIONER OF EDUCATION OF NEW JERSEY, ET AL. v. PUBLIC FUNDS FOR PUBLIC SCHOOLS OF NEW JERSEY ET AL. D. C. N. J. Application for stay of preliminary injunction, presented to MR. JUSTICE BRENNAN and by him referred to the Court, granted pending further order of this Court. Reported below: 358 F. Supp. 29.

No. A-1173. RUDERER v. UNITED STATES ET AL. Applications for immediate equitable and all other relief, presented to MR. JUSTICE REHNQUIST and by him referred to the Court, denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of these applications.

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No. 72-782. GATEWAY COAL CO. *v.* UNITED MINE WORKERS OF AMERICA ET AL. C. A. 3d Cir. [Certiorari granted, 410 U. S. 953.] Motion of Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* in support of petitioner granted.

No. 72-1118. PHILLIPS, ACTING DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY, ET AL. *v.* KENNEDY ET AL. Appeal from D. C. N. D. Ill. [Probable jurisdiction noted, 411 U. S. 915.] Motion of Michael Kaye for leave to intervene and to file a brief on the merits denied.

No. 72-6773. SHAVER *v.* SANDELL ET AL. Justice Court, East Phoenix Precinct No. 2, Maricopa County, Arizona. Motion of petitioner to expedite denied.

No. 72-6551. LEWIS *v.* UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT ET AL. Motion for leave to file petition for writ of mandamus denied.

No. 72-6553. DIXON *v.* YOUNG, U. S. DISTRICT JUDGE. Motion of petitioner to add Harry Friberg et al. as parties respondent granted. Motion for leave to file petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 72-1180. OLD DOMINION BRANCH No. 496, NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, ET AL. *v.* AUSTIN ET AL. Appeal from Sup. Ct. Va. Probable jurisdiction noted and case set for oral argument with No. 72-617 [*Gertz v. Robert Welch, Inc.*, certiorari granted, 410 U. S. 925]. Reported below: 213 Va. 377, 192 S. E. 2d 737.

Certiorari Granted

No. 72-1355. UNITED STATES *v.* MATLOCK. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma*

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pauperis and certiorari granted. Reported below: 476 F. 2d 1083.

Certiorari Denied. (See also Nos. 72-5924, 72-6412, and 72-6047, *supra.*)

No. 72-304. HOWARD, WARDEN *v.* HEMPHILL. C. A. 6th Cir. Certiorari denied.

No. 72-679. UNITED MINE WORKERS OF AMERICA ET AL. *v.* YABLONSKI ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 151 U. S. App. D. C. 253, 466 F. 2d 424.

No. 72-1059. SCREEN EXTRAS GUILD *v.* KERR. C. A. 9th Cir. Certiorari denied. Reported below: 466 F. 2d 1267 and 1271.

No. 72-1119. GOLDEN GRAIN MACARONI Co. *v.* FEDERAL TRADE COMMISSION. C.A. 9th Cir. Certiorari denied. Reported below: 472 F. 2d 882.

No. 72-1165. KAPRELIAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 6 Ill. App. 3d 1066, 286 N. E. 2d 613.

No. 72-1181. PRIM *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 53 Ill. 2d 62, 289 N. E. 2d 601.

No. 72-1183. GIANONE ET AL., DBA GIANONE'S STEAK HOUSE *v.* ALCOHOLIC BEVERAGE CONTROL BOARD OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 72-1268. WILLIAMS *v.* AETNA LIFE & CASUALTY Co. C. A. 5th Cir. Certiorari denied. Reported below: 468 F. 2d 952.

No. 72-1271. BRUMBAUGH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 2d 1128.

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No. 72-1281. *ESSEX, ADMINISTRATRIX v. WALTERS, COMMISSIONER OF INTERNAL REVENUE, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 72-1295. *CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE v. GILSTRAP, COLLECTOR OF REVENUE OF MISSOURI, ET AL.* Sup. Ct. Mo. Certiorari denied. Reported below: 503 S. W. 2d 1.

No. 72-1299. *GARRIS v. UNITED STATES;*

No. 72-6389. *WILHELM v. UNITED STATES;* and

No. 72-6429. *TERRY v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 2d 909.

No. 72-1332. *LOEVSKY ET AL. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 3d Cir. Certiorari denied. Reported below: 471 F. 2d 1178.

No. 72-1344. *CALIFORNIA v. KRIVDA ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 8 Cal. 3d 623, 504 P. 2d 457.

No. 72-1347. *LOMBARDI v. TAURO ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 470 F. 2d 798.

No. 72-1352. *IN RE BAKER.* C. A. 9th Cir. Certiorari denied.

No. 72-1357. *WESTERN DEALER MANAGEMENT, INC. v. ENGLAND, TRUSTEE IN BANKRUPTCY.* C. A. 9th Cir. Certiorari denied. Reported below: 473 F. 2d 262.

No. 72-1364. *WESTROADS, INC. v. PEDERSEN ET AL.* Sup. Ct. Neb. Certiorari denied. Reported below: 189 Neb. 236, 202 N. W. 2d 198.

No. 72-1372. *DAILEY v. LISZKA, AKA GREENE.* C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 2d 906.

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No. 72-1373. *TRIMBLE v. TEXAS STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS*. Ct. Civ. App. Tex., 8th Sup. Jud. Dist. Certiorari denied. Reported below: 483 S. W. 2d 275.

No. 72-1376. *PERMIAN CORP. ET AL. v. COFFEE*. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1040.

No. 72-5709. *MARTINEZ v. ALLDREDGE*. C. A. 3d Cir. Certiorari denied. Reported below: 468 F. 2d 684.

No. 72-6203. *HALL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6224. *BERKLEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 2d 655.

No. 72-6230. *MARTIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-6244. *ESCOBAR v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6295. *BOYSAW v. OHIO*. Ct. App. Ohio, Ash-tabula County. Certiorari denied.

No. 72-6309. *LARSEN v. PROCUNIER, CORRECTIONS DIRECTOR, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-6315. *RODRIGUES v. DAGGET, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 72-6324. *O'DELL v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: See 8 Ill. App. 3d 203, 289 N. E. 2d 686.

No. 72-6336. *JACOBS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 473 F. 2d 461.

No. 72-6351. *STUDT v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

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No. 72-6357. *MAXWELL v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 297 A. 2d 771.

No. 72-6363. *MATNEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 472 F. 2d 704.

No. 72-6370. *RANCE v. NEW YORK*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 72-6375. *STANSEL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 2d 1045.

No. 72-6384. *O'CLAIR v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 470 F. 2d 1199.

No. 72-6386. *BETANCOURT v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6392. *WHEELER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-6393. *ALVAREZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 472 F. 2d 111.

No. 72-6394. *BRIGHT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 723.

No. 72-6395. *KACZYNSKI v. UNITED STATES ET AL.* C. A. 6th Cir. Certiorari denied.

No. 72-6404. *FISCH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 474 F. 2d 1071.

No. 72-6405. *HEARD v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-6408. *BURNS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-6415. *DUCKWORTH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

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No. 72-6420. *TATE v. BLACKWELL, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 72-6516. *REARDON v. MEACHAM, PENITENTIARY SUPERINTENDENT.* C. A. 10th Cir. Certiorari denied.

No. 72-6517. *DAVID v. MARYLAND.* C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 2d 906.

No. 72-6521. *BRYANT ET AL. v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 49 Ala. App. 359, 272 So. 2d 286.

No. 72-6525. *LEE v. BLACKLEDGE, WARDEN.* C. A. 4th Cir. Certiorari denied.

No. 72-6536. *REESE v. MARSINO, CORRECTIONAL SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied.

No. 72-6545. *POTTER v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-1207. *BRANDYWINE-MAIN LINE RADIO, INC. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 153 U. S. App. D. C. 305, 473 F. 2d 16.

No. 72-1212. *COUNTY OF NASSAU ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 470 F. 2d 675.

No. 72-1367. *RHINEHART v. RHAY, PENITENTIARY SUPERINTENDENT, ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6308. *SANDERS v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: See 6 Ill. App. 3d 820, 286 N. E. 2d 785.

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No. 72-6528. SOLOMON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 489 S. W. 2d 547.

No. 72-6541. SULLIVAN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 450 Pa. 273, 299 A. 2d 608.

No. 72-1341. PLACID OIL CO. ET AL. *v.* McILWAIN ET AL. C. A. 5th Cir. Motion of respondent McIlwain for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 472 F. 2d 248.

No. 72-1343. LENNY *v.* MELLODY ET AL. Pa. Commw. Ct. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-1353. CORPORACION DEL COBRE ET AL. *v.* ANACONDA Co. ET AL. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

No. 72-1375. HOBART BROTHERS Co. *v.* MALCOLM T. GILLILAND, INC. C. A. 5th Cir. Motion of Ohio Manufacturers Assn. for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 471 F. 2d 894.

Rehearing Denied

No. 72-871. SILVERS *v.* DOWLING, JUDGE, ET AL., 411 U. S. 944;

No. 72-5961. KELLY *v.* UNITED STATES, 411 U. S. 933; and

No. 72-6264. KRIKMANIS *v.* ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL., 411 U. S. 937. Petitions for rehearing denied.

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No. 72-6273. *BOYD v. NEW MEXICO*, 411 U. S. 937;
and

No. 72-6409. *HAWKINS v. HAWKINS*, 411 U. S. 971.
Petitions for rehearing denied.

No. 71-6873. *NEELY v. FIELD*, U. S. DISTRICT JUDGE,
ET AL., 409 U. S. 871, 1050, and 410 U. S. 917. Motion
for leave to file third petition for rehearing denied.

No. 72-1294. *WASHINGTON KELPERS ASSN. v. WASH-
INGTON ET AL.*, 411 U. S. 982. Motion to dispense with
printing petition for rehearing granted. Petition for re-
hearing denied.

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Affirmed on Appeal

No. 72-745. *RYAN v. KLEIN ET AL.* Affirmed on ap-
peal from D. C. E. D. N. Y. Reported below: 347 F.
Supp. 946.

No. 72-943. *FISHER, COMMISSIONER, DEPARTMENT OF
HEALTH AND WELFARE OF MAINE, ET AL. v. GRAVES ET AL.*
Appeal from D. C. Me. Motion of appellees for leave
to proceed *in forma pauperis* granted. Judgment af-
firmed. Reported below: 361 F. Supp. 1356.

No. 72-1251. *STANDARD OIL COMPANY OF CALIFORNIA
v. UNITED STATES.* Affirmed on appeal from D. C. N. D.
Cal. MR. JUSTICE WHITE took no part in the consider-
ation or decision of this appeal.

No. 72-1406. *OLDROYD ET AL. v. KUGLER, ATTORNEY
GENERAL OF NEW JERSEY, ET AL.* Affirmed on appeal
from D. C. N. J. MR. JUSTICE DOUGLAS would note
probable jurisdiction and set case for oral argument. Re-
ported below: 352 F. Supp. 27.

No. 72-1408. *CARLESON, DIRECTOR, DEPARTMENT OF
SOCIAL WELFARE v. YEE-LITT ET AL.* Appeal from D. C.
N. D. Cal. Motion of appellees for leave to proceed *in*

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forma pauperis granted. Judgment affirmed. Reported below: 353 F. Supp. 996.

Appeals Dismissed

No. 72-1178. *STEIN v. HOWLETT, AUDITOR OF PUBLIC ACCOUNTS OF ILLINOIS, ET AL.* Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. Reported below: 52 Ill. 2d 570, 289 N. E. 2d 409.

No. 72-1413. *ITZ ET UX. v. PENICK ET AL.* Appeal from Sup. Ct. Texas dismissed for want of substantial federal question. Reported below: 493 S. W. 2d 506.

No. 72-1415. *RICHTER ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* Appeal from C. A. 2d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-1447. *BLACKBURN v. INDIANA.* Appeal from Sup. Ct. Ind. dismissed for want of substantial federal question. Reported below: — Ind. —, 291 N. E. 2d 686.

No. 72-6221. *SAYLES v. ALBERT MIRMAN & ASSOCIATES, INC.* Appeal from Ct. App. D. C. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-6293. *GEMMILL ET AL. v. CALIFORNIA.* Appeal from Super. Ct. Cal., Shasta County, dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument.

Vacated and Remanded on Appeal

No. 72-770. *COMMISSIONER OF SOCIAL SERVICES OF NEW YORK ET AL. v. KLEIN ET AL.*; and

No. 72-803. *NASSAU COUNTY MEDICAL CENTER ET AL. v. KLEIN ET AL.* Appeals from D. C. E. D. N. Y. Judg-

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ment vacated and cases remanded for further consideration in light of *Roe v. Wade*, 410 U. S. 113 (1973), and *Doe v. Bolton*, 410 U. S. 179 (1973). Reported below: 347 F. Supp. 496.

Certiorari Granted—Vacated and Remanded. (See No. 72-1164, *ante*, p. 427.)

Certiorari Granted—Reversed and Remanded. (See No. 72-6198, *ante*, p. 430.)

Miscellaneous Orders

No. A-1124. *HENRY ET AL. v. WARNER, SECRETARY OF THE NAVY, ET AL.* Application for order to vacate in part order of the United States Court of Appeals for the Ninth Circuit, dated May 8, 1973, presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. 71-1255. *UNITED STATES v. ASH.* C. A. D. C. Cir. [Certiorari granted, 407 U. S. 909.] Motion of respondent for leave to file supplemental brief after argument granted.

No. 72-6660. *BUCKLES v. MEACHAM, PENITENTIARY SUPERINTENDENT, ET AL.;*

No. 72-6662. *WARD v. ANDERSON, WARDEN;* and

No. 72-6682. *McKINNEY v. CRAVEN, WARDEN.* Motions for leave to file petitions for writs of habeas corpus denied.

No. 72-6537. *ACARINO v. MISHLER, CHIEF JUDGE, U. S. DISTRICT COURT.* Motion for leave to file petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 72-6156. *LEWIS v. CITY OF NEW ORLEANS.* Appeal from Sup. Ct. La. Motion for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 263 La. 809, 269 So. 2d 450.

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Certiorari Granted

No. 72-851. ONEIDA INDIAN NATION OF NEW YORK ET AL. *v.* COUNTY OF ONEIDA, NEW YORK, ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 464 F. 2d 916.

No. 72-1061. WINDWARD SHIPPING (LONDON), LTD., ET AL. *v.* AMERICAN RADIO ASSOCIATION, AFL-CIO, ET AL. Ct. Civ. App. Tex., 14th Sup. Jud. Dist. Certiorari granted. Reported below: 482 S. W. 2d 675.

No. 72-1371. WALTERS, COMMISSIONER OF INTERNAL REVENUE *v.* "AMERICANS UNITED" INC. C. A. D. C. Cir. Certiorari granted. Reported below: 155 U. S. App. D. C. 284, 477 F. 2d 1169.

Certiorari Denied. (See also Nos. 72-1415 and 72-6221, *supra.*)

No. 71-6416. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 453 F. 2d 1317.

No. 71-6770. FIELDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 458 F. 2d 1194.

No. 72-267. KELLY ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 2d 147.

No. 72-1117. PROSCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 72-1219. BALLARD *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of San Francisco. Certiorari denied.

No. 72-1243. RACHAL *v.* UNITED STATES; and

No. 72-6364. HUNNICUTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 2d 1338.

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No. 72-1262. *STANLEY WORKS v. FEDERAL TRADE COMMISSION*. C. A. 2d Cir. Certiorari denied. Reported below: 469 F. 2d 498.

No. 72-1266. *SEUSS v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 474 F. 2d 385.

No. 72-1270. *CUNDY v. SOUTH DAKOTA*. Sup. Ct. S. D. Certiorari denied. Reported below: 86 S. D. 766, 201 N. W. 2d 236.

No. 72-1290. *BUFALINO v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 3d Cir. Certiorari denied. Reported below: 473 F. 2d 728.

No. 72-1293. *SELB MANUFACTURING CO. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 472 F. 2d 207.

No. 72-1324. *GOODING v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 2d 425.

No. 72-1354. *GRACI ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 124.

No. 72-1363. *MONROE AUTO EQUIPMENT CO., HARTWELL DIVISION v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 1329.

No. 72-1381. *UNITED STATES v. TINNEY*. C. A. 3d Cir. Certiorari denied. Reported below: 473 F. 2d 1085.

No. 72-1384. *DUMON v. KENTUCKY*. Ct. App. Ky. Certiorari denied. Reported below: 488 S. W. 2d 343.

No. 72-1397. *LOPEZ v. WASHINGTON, MAYOR OF WASHINGTON, D. C., ET AL.* C. A. D. C. Cir. Certiorari denied.

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No. 72-1400. *CARTER-WALLACE, INC. v. OTTE, TRUSTEE IN BANKRUPTCY*. C. A. 2d Cir. Certiorari denied. Reported below: 474 F. 2d 529.

No. 72-5496. *BRUMLEY ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 466 F. 2d 911.

No. 72-5691. *YOUNG v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 2d 109.

No. 72-5776. *SPROSS v. CRAVEN, WARDEN*. Sup. Ct. Cal. Certiorari denied.

No. 72-6288. *JONES v. SWENSON, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 469 F. 2d 535.

No. 72-6321. *ROJAS v. ARIZONA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-6322. *MEYER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 652.

No. 72-6358. *GRANGER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 475 F. 2d 1022.

No. 72-6388. *MARTIN v. ADMINISTRATOR OF VETERANS' AFFAIRS*. C. A. D. C. Cir. Certiorari denied.

No. 72-6398. *ALLEN v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 72-6400. *BURROUGHS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 72-6402. *LEMONS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 470 F. 2d 135.

No. 72-6411. *TUCKER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 470 F. 2d 220.

No. 72-6418. *TREXLER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 369.

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No. 72-6424. *STROUD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 474 F. 2d 737.

No. 72-6425. *WASHINGTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 402.

No. 72-6427. *SMITH v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 609.

No. 72-6435. *NOVAK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 475 F. 2d 180.

No. 72-6436. *SAVAGE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 470 F. 2d 948.

No. 72-6440. *ROWE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 72-6445. *SUMIDA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6450. *PREZZI v. BERZAK ET AL.* C. A. 2d Cir. Certiorari denied.

No. 72-6488. *BARFIELD v. HARRIS, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 72-6543. *OLIVER v. SHAPP, GOVERNOR OF PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 72-6557. *SMILEY v. LAVALLEE, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 72-6558. *SMILEY v. LAVALLEE, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 72-6571. *TANNER v. TWOMEY, WARDEN*. C. A. 7th Cir. Certiorari denied.

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No. 72-6572. *LICON v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-6577. *WHEELER v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 40 App. Div. 2d 348, 340 N. Y. S. 2d 196.

No. 72-6581. *DODGE v. JOHNSON, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 2d 1249.

No. 72-6584. *SCOTT v. ESTELLE, CORRECTIONS DIRECTOR*. Ct. Crim. App. Tex. Certiorari denied.

No. 72-6590. *HINSON v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. Reported below: 17 N. C. App. 25, 193 S. E. 2d 415.

No. 72-6603. *JAYNES v. JAYNES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1345.

No. 72-1108. *MOBIL OIL CORP. v. FEDERAL POWER COMMISSION*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 469 F. 2d 130.

No. 72-1169. *ENVIRONMENTAL DEFENSE FUND, INC., ET AL. v. CORPS OF ENGINEERS OF THE UNITED STATES ARMY ET AL.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 470 F. 2d 289.

No. 72-1247. *TWO v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 287.

No. 72-1291. *ATKINS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 308.

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No. 72-6355. *MOSLEY v. SMITH, WARDEN*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 470 F. 2d 1320.

No. 72-6391. *THOMAS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 110.

No. 72-6503. *DRAGONETTE v. CITY OF EAST CLEVELAND*. Sup. Ct. Ohio. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 32 Ohio St. 2d 147, 290 N. E. 2d 571.

No. 72-6529. *DUKE v. NORTH TEXAS STATE UNIVERSITY ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 469 F. 2d 829.

No. 72-6559. *WILLIAMS v. CLINCHFIELD COAL Co.* Sup. Ct. Va. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 213 Va. 445, 192 S. E. 2d 751.

No. 72-1048. *CARDWELL, WARDEN v. WORKMAN*; and
No. 72-6600. *WORKMAN v. CARDWELL, WARDEN*. C. A. 6th Cir. Motion to dispense with printing petition and motion of respondent for leave to proceed *in forma pauperis* in No. 72-1048 granted. Certiorari denied. Reported below: 471 F. 2d 909.

No. 72-1279. *DIAMOND v. UNITED STATES*. C. A. 9th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 471 F. 2d 771.

No. 72-1425. *UNITED STATES v. LEATHERS ET AL.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE BLACKMUN took no part in the

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consideration or decision of this petition. Reported below: 471 F. 2d 856.

No. 72-1436. UNITED TRANSPORTATION UNION LODGE 550 ET AL. *v.* ROCK ET AL. C. A. 4th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 473 F. 2d 1344.

Rehearing Denied

No. 71-1082. ASKEW, GOVERNOR OF FLORIDA, ET AL. *v.* AMERICAN WATERWAYS OPERATORS, INC., ET AL., 411 U. S. 325;

No. 71-1545. BUTZ, SECRETARY OF AGRICULTURE, ET AL. *v.* GLOVER LIVESTOCK COMMISSION Co., INC., 411 U. S. 182; and

No. 72-6133. LANDIS *v.* UNITED STATES, 411 U. S. 935. Petitions for rehearing denied.

No. 72-5024. CAMPBELL *v.* GEORGIA ET AL., 409 U. S. 984; and

No. 72-5921. STOKES *v.* UNITED STATES POSTAL SERVICE ET AL., 410 U. S. 985. Motions for leave to file petitions for rehearing denied.

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Miscellaneous Order

No. A-1219. HELFANT *v.* KUGLER, ATTORNEY GENERAL OF NEW JERSEY, ET AL. Application for injunction pending disposition of appeal in the United States Court of Appeals for the Third Circuit presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of this application.

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Affirmed on Appeal

No. 72-1327. REA EXPRESS, INC. *v.* ALABAMA GREAT SOUTHERN RAILROAD Co. ET AL. Affirmed on appeal from D. C. S. D. N. Y. MR. JUSTICE POWELL took no part in the consideration or decision of this appeal. Reported below: See 343 F. Supp. 851.

No. 72-1594. DIAMOND ET AL. *v.* UNITED STATES ET AL. Appeal from D. C. D. C. Motion to dispense with printing jurisdictional statement granted. Judgment affirmed. Motion for injunction denied. MR. JUSTICE POWELL took no part in the consideration or decision of this appeal and these motions.

No. 72-6725. ROSS ET AL. *v.* BROWN TITLE CORP. ET AL. Affirmed on appeal from D. C. E. D. La. MR. JUSTICE DOUGLAS dissents from affirmance. Reported below: 356 F. Supp. 595.

Appeals Dismissed

No. 72-1405. MOSES LAKE SCHOOL DISTRICT 161 ET AL. *v.* BIG BEND COMMUNITY COLLEGE, DISTRICT 18, ET AL. Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. Reported below: 81 Wash. 2d 551, 503 P. 2d 86.

No. 72-1438. SMITH *v.* VIRGINIA. Appeal from Sup. Ct. Va. dismissed for want of substantial federal question.

No. 72-6611. ANDER *v.* ANDER. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question.

No. 72-6350. MASON *v.* PANAMA CANAL Co. Appeal from C. A. 5th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a

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petition for writ of certiorari, certiorari denied. MR. JUSTICE DOUGLAS dissents from denial of petition believing that case is not moot, and would vacate judgment and remand the cause to the trial court for resolution of respondent's counterclaim. Reported below: 469 F. 2d 1120.

Certiorari Granted—Vacated and Remanded

No. 71-1245. SLAYTON, PENITENTIARY SUPERINTENDENT *v.* HAMMER. C. A. 4th Cir.;

No. 71-1472. NEIL, WARDEN *v.* PENDERGRASS. C. A. 6th Cir. Reported below: 456 F. 2d 469;

No. 71-1495. COWAN, PENITENTIARY SUPERINTENDENT *v.* BRUCE. C. A. 6th Cir. Reported below: 457 F. 2d 365; and

No. 72-400. ROSE, WARDEN *v.* RIVERA. C. A. 6th Cir. Reported below: 465 F. 2d 727. Motions of respondents for leave to proceed *in forma pauperis* and certiorari granted. Judgments vacated and cases remanded for further consideration in light of *Michigan v. Payne, ante*, p. 47, and *Chaffin v. Stynchcombe, ante*, p. 17. MR. JUSTICE DOUGLAS would affirm the judgments. See *Michigan v. Payne, ante*, p. 58, *Chaffin v. Stynchcombe, ante*, p. 35, and *Moon v. Maryland*, 398 U. S. 319, 321 (1970), dissenting opinions.

No. 71-1281. LINDER, WARDEN *v.* RECOR. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Chaffin v. Stynchcombe, ante*, p. 17. MR. JUSTICE DOUGLAS would affirm the judgment. See *Chaffin v. Stynchcombe, ante*, p. 35, and *Moon v. Maryland*, 398 U. S. 319, 321 (1970) (dissenting opinions).

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No. 72-761. UNITED STATES *v.* McGRATH. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Russell*, 411 U. S. 423 (1973). Reported below: 468 F. 2d 1027.

Certiorari Granted—Reversed. (See No. 72-1310, *ante*, p. 543.)

Miscellaneous Orders

No. D-10. IN RE DISBARMENT OF KIRTZ. It is ordered that Frank G. Kirtz, of St. Louis, Missouri, be suspended from the practice of law in this Court and that a rule issue returnable within 40 days requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. A-1034. RUDERER *v.* JOHNSON. Application for equitable relief by injunction and enforcement of orders, etc., denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this application.

No. 35, Orig. UNITED STATES *v.* MAINE ET AL. Motion of Commonwealth of Massachusetts for preliminary injunction denied. MR. JUSTICE DOUGLAS would grant the preliminary injunction. [For earlier orders herein, see, *e. g.*, 408 U. S. 917.]

No. 72-700. HERNANDEZ ET AL. *v.* VETERANS' ADMINISTRATION ET AL. C. A. 9th Cir. Certiorari granted, 411 U. S. 981. Motion of petitioners for leave to proceed on original record granted.

No. 72-936. UNITED STATES *v.* ROBINSON. C. A. D. C. Cir. [Certiorari granted, 410 U. S. 982.] Motion of Americans for Effective Law Enforcement, Inc., et al., for leave to file a brief as *amici curiae* in support of petitioner granted.

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No. A-1194 (72-1418). SENDAK, ATTORNEY GENERAL OF INDIANA *v.* DILLIN, U. S. DISTRICT JUDGE. C. A. 7th Cir. Application for stay of order of U. S. District Court for the Southern District of Indiana, dated March 19, 1973, denied.

No. A-1196 (72-6862). BROWN *v.* UNITED STATES. C. A. 4th Cir. Application for stay of mandate presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. 72-6753. HYDE *v.* CRAVEN, WARDEN. Motion for leave to file petition for writ of habeas corpus denied.

No. 72-6555. PARKER *v.* UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT ET AL. Motion for leave to file petition for writ of mandamus and/or prohibition denied.

No. 72-6608. RICE *v.* BOURBON CIRCUIT COURT, PARIS, KENTUCKY. Motion for leave to file petition for writ of mandamus denied.

Certiorari Granted

No. 72-1035. ROGERS *v.* LOETHER ET AL. C. A. 7th Cir. Motion to dispense with printing respondents' brief and petition for writ of certiorari granted. Case set for oral argument with No. 72-6041 [*Pernell v. Southall Realty*, certiorari granted, 411 U. S. 915]. Reported below: 467 F. 2d 1110.

No. 72-1322. BRADLEY ET AL. *v.* SCHOOL BOARD OF THE CITY OF RICHMOND ET AL. C. A. 4th Cir. Certiorari granted. MR. JUSTICE MARSHALL and MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 472 F. 2d 318.

No. 72-1410. EDELMAN, DIRECTOR, DEPARTMENT OF PUBLIC AID OF ILLINOIS *v.* JORDAN. C. A. 7th Cir. Mo-

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tion of respondent Jordan for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 472 F. 2d 985.

No. 72-6476. HAGANS ET AL. *v.* LAVINE, COMMISSIONER, NEW YORK DEPARTMENT OF SOCIAL SERVICES, ET AL. C. A. 2d Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 471 F. 2d 347.

No. 72-6520. LAU ET AL. *v.* NICHOLS ET AL. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted.

Certiorari Denied. (See also No. 72-6350, *supra.*)

No. 72-1163. BITHONEY ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 472 F. 2d 16.

No. 72-1166. WRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 468 F. 2d 1184.

No. 72-1179. KANAREK *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-1182. GAUS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 2d 495.

No. 72-1198. AN ARTICLE OF DRUG . . . "BENTEX ULCERINE" *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 875.

No. 72-1235. WHITMAN CENTER, INC. *v.* GULF OIL CORP. C. A. 9th Cir. Certiorari denied.

No. 72-1285. STANDARD OIL Co., INC., ET AL. *v.* WRIGHT ET UX. C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 1280.

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No. 72-1300. *RUGGIERO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 472 F. 2d 599.

No. 72-1306. *RADIO-TELEVISION, S. A., ET AL. v. FEDERAL COMMUNICATIONS COMMISSION*. C. A. D. C. Cir. Certiorari denied.

No. 72-1309. *WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL UNION 46, ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 471 F. 2d 408.

No. 72-1321. *NORTHERN NATURAL GAS CO. ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 470 F. 2d 1107.

No. 72-1325. *MANGAIAMELI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-1329. *H. KESSLER & Co. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1147.

No. 72-1346. *RYAN ET UX. v. COMMISSIONER OF INTERNAL REVENUE ET AL.* C. A. 7th Cir. Certiorari denied.

No. 72-1351. *ARBAUGH'S RESTAURANT, INC. v. SMITH ET UX*. C. A. D. C. Cir. Certiorari denied. Reported below: 152 U. S. App. D. C. 86, 469 F. 2d 97.

No. 72-1361. *WOOD v. UNITED STATES POST OFFICE DEPARTMENT ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 472 F. 2d 96.

No. 72-1380. *BRELAND v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 489 S. W. 2d 623.

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No. 72-1390. *SANSANESE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-1402. *CALANDRILLO v. O'CONNOR ET AL.* Super. Ct. N. J. Certiorari denied. Reported below: 121 N. J. Super. 135, 296 A. 2d 326.

No. 72-1403. *LOCAL 42, INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 469 F. 2d 163.

No. 72-1417. *SIMMONS v. WETHERELL ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 472 F. 2d 509.

No. 72-1419. *STROM ET AL. v. ALFVEBY, REFEREE*. C. A. 8th Cir. Certiorari denied.

No. 72-1421. *DEKALB COUNTY ET AL. v. ATLANTA GAS LIGHT Co. ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 230 Ga. 65, 195 S. E. 2d 427.

No. 72-1430. *PERKINS v. STANDARD OIL COMPANY OF CALIFORNIA*. C. A. 9th Cir. Certiorari denied. Reported below: 474 F. 2d 549.

No. 72-1433. *INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 12 v. SOUTHERN CALIFORNIA TESTING LABORATORY, INC., ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-1456. *McCLUNG v. FORD MOTOR Co.* C. A. 4th Cir. Certiorari denied. Reported below: 472 F. 2d 240.

No. 72-1459. *STOCKHOLDERS' PROTECTIVE COMMITTEE FOR MOULDED PRODUCTS, INC. v. BARRY, TRUSTEE, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 474 F. 2d 220.

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No. 72-1607. *PFINGST v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 477 F. 2d 177.

No. 72-5507. *WILLIAMS v. HENDERSON, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 1136.

No. 72-6282. *MORTON v. WYOMING ET AL.* C. A. 10th Cir. Certiorari denied.

No. 72-6290. *BRUCE v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 72-6312. *CASTELLON-DUARTE v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied.

No. 72-6443. *MACKEY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 474 F. 2d 55.

No. 72-6447. *STANFIELD v. UNITED STATES*; and
No. 72-6448. *TERRELL v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 72-6459. *BILLINGSLEY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 72-6460. *ISENBERG v. UNITED STATES*; and
No. 72-6466. *ISENBERG v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-6463. *WALSH v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 72-6464. *BARROW v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-6468. *LAUGHLIN v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 154 U. S. App. D. C. 196, 474 F. 2d 444.

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No. 72-6469. *BATTLE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 72-6478. *LAVAN ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6481. *HAMILTON v. UNITED STATES*; and
No. 72-6482. *BENTON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6483. *TUCKER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 2d 1290.

No. 72-6485. *McDONNELL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 472 F. 2d 1153.

No. 72-6489. *NOCERINO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 474 F. 2d 993.

No. 72-6495. *KUNG HOW FONG v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 475 F. 2d 189.

No. 72-6568. *SCHUTT v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 72-6593. *COOK ET UX. v. OHIO*. C. A. 6th Cir. Certiorari denied.

No. 72-6598. *BOAG v. CRAVEN, WARDEN*. Sup. Ct. Cal. Certiorari denied.

No. 72-6607. *MORGAN v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 72-6623. *ROY v. MANCHESTER GAS Co.* Sup. Ct. N. H. Certiorari denied. Reported below: 113 N. H. 140, 302 A. 2d 825.

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No. 72-6625. BRADLEY *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 2d 1039.

No. 72-6633. ECKERT *v.* BUDD CO. ET AL. C. A. 3d Cir. Certiorari denied.

No. 72-6691. BEZAK *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 72-1305. GRAY ET AL. *v.* SHELL OIL CO. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 469 F. 2d 742.

No. 72-1362. STRINGER ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 381.

No. 72-1443. SAVARD, ADMINISTRATRIX, ET AL. *v.* PERINI CORP. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 536.

No. 72-6467. SHEARD, AKA NIXON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 154 U. S. App. D. C. 9, 473 F. 2d 139.

No. 72-6622. MOORE *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 54 Ill. 2d 33, 294 N. E. 2d 297.

No. 72-6666. THOMPSON *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: — Ind. —, 290 N. E. 2d 724.

No. 72-1389. PENNSYLVANIA *v.* STAFFORD. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 450 Pa. 252, 299 A. 2d 590.

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No. 72-1424. VOWELL, COMMISSIONER OF PUBLIC WELFARE OF TEXAS *v.* RODRIGUEZ ET AL. C. A. 5th Cir. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 472 F. 2d 622.

No. 72-1426. NANES *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 471 F. 2d 651.

Rehearing Denied

No. 71-1178. GULF STATES UTILITIES CO. *v.* FEDERAL POWER COMMISSION ET AL., 411 U. S. 747;

No. 72-1086. DELONG CORP. ET AL. *v.* OREGON, BY AND THROUGH STATE HIGHWAY COMMISSION, 411 U. S. 965;

No. 72-1281. ESSEX, ADMINISTRATRIX *v.* WALTERS, COMMISSIONER OF INTERNAL REVENUE, ET AL., *ante*, p. 919;

No. 72-5572. GAY *v.* UNITED STATES, 411 U. S. 974;

No. 72-6211. LUCAS *v.* WYOMING ET AL., 411 U. S. 983;

No. 72-6374. RANDO *v.* ESTELLE, CORRECTIONS DIRECTOR, 411 U. S. 972;

No. 72-6410. WALTERS *v.* WALTERS, COMMISSIONER OF INTERNAL REVENUE, 411 U. S. 985;

No. 72-6452. MORRIS *v.* SPARROW ET AL., 411 U. S. 985; and

No. 72-6496. GERMAN *v.* FLORIDA ET AL., *ante*, p. 908. Petitions for rehearing denied.

No. 71-6423. HOUSE *v.* HOUSE, 409 U. S. 812; and

No. 72-1084. GROSSMAN *v.* KAVANAGH, CHIEF JUSTICE, SUPREME COURT OF MICHIGAN, 411 U. S. 914. Motions for leave to file petitions for rehearing denied.

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No. 72-1134. REIBERT ET AL. *v.* ATLANTIC RICHFIELD CO. ET AL., 411 U. S. 938, and *ante*, p. 914. Motion for leave to file second petition for rehearing denied.

No. 72-5925. RUDERER *v.* SESSIONS ET AL., 410 U. S. 949;

No. 72-6153. RUDERER *v.* UNITED STATES ARMY AVIATION MATERIEL COMMAND ET AL., 411 U. S. 928; and

No. 72-6255. RUDERER *v.* UNITED STATES ET AL., 411 U. S. 945. Motions for leave to file petitions for rehearing and all other relief denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of these motions.

No. 72-6271. RUDERER *v.* VANCE ET AL., 411 U. S. 961. Petition for rehearing and all other relief denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

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Miscellaneous Orders

No. A-1221. SHAPIRO *v.* FERRANDINA. C. A. 2d Cir. Application for stay of mandate presented to MR. JUSTICE MARSHALL and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would grant the application. Reported below: 478 F. 2d 894.

No. A-1206 (72-1173). INTERNATIONAL BUSINESS MACHINES CORP. *v.* UNITED STATES. Application for stay of execution and enforcement of pretrial order No. 5 of the United States District Court for the Southern District of New York and for a stay of mandate of the United States Court of Appeals for the Second Circuit presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied. MR. JUSTICE STEWART, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL took no part in

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the consideration or decision of this application. MR. JUSTICE DOUGLAS would grant the application. Reported below: See 471 F. 2d 507.

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Dismissal Under Rule 60

No. 72-1573. APPLGATE ET AL. *v.* NEW JERSEY. Super. Ct. N. J. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court.

Affirmed on Appeal

No. 72-1565. UNITED STATES *v.* TRANS TEXAS BAN-CORPORATION, INC., ET AL. Affirmed on appeal from D. C. W. D. Tex. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument.

Appeals Dismissed

No. 72-1259. TEITELBAUM *v.* CALIFORNIA. Appeal from Ct. App. Cal., 2d App. Dist. Motion to dispense with printing jurisdictional statement granted. Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-6329. MCALLISTER *v.* VIRGINIA. Appeal from Sup. Ct. Va. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-6385. LOGAN *v.* WESTERN UNION TELEGRAPH Co. Appeal from D. C. S. D. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

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Vacated and Remanded on Appeal

No. 72-635. GLUSMAN ET AL. *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF NORTH CAROLINA. Appeal from Sup. Ct. N. C. Judgment vacated and case remanded for further consideration in light of *Vlandis v. Kline*, *ante*, p. 441. MR. JUSTICE DOUGLAS would affirm the judgment. Reported below: 281 N. C. 629, 190 S. E. 2d 213.

Certiorari Granted—Vacated and Remanded

No. 72-6012. KELSAW *v.* OREGON. Ct. App. Ore. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Wardius v. Oregon*, *ante*, p. 470. MR. JUSTICE DOUGLAS would grant certiorari and reverse the judgment for reasons set forth in his separate opinion in *Wardius v. Oregon*, *ante*, p. 479. Reported below: 11 Ore. App. 289, 502 P. 2d 278.

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No. A-1079. JOHNSON *v.* MISSOURI. Sup. Ct. Mo. Application for bail presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. A-1186. WALLER *v.* FLORIDA. Application for stay of execution and enforcement of judgment of conviction in Circuit Court for Pinellas County, Florida, presented to MR. JUSTICE POWELL, and by him referred to the Court, granted pending further order of this Court.

No. 72-1035. ROGERS *v.* LOETHER ET AL. C. A. 7th Cir. [Certiorari granted, *ante*, p. 937.] Motion of respondents for leave to proceed further herein *in forma pauperis* or in the alternative to submit respondents' brief in typewritten form denied.

No. 72-1086. DELONG CORP. ET AL. *v.* OREGON, BY AND THROUGH STATE HIGHWAY COMMISSION, 411 U. S. 965. Motion of respondent for allowance of attorney's fees denied.

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No. 72-1264. *MAYOR OF PHILADELPHIA ET AL. v. EDUCATIONAL EQUALITY LEAGUE ET AL.* C. A. 3d Cir. [Certiorari granted, 411 U. S. 964.] Motion of respondents for leave to proceed further herein *in forma pauperis* denied.

No. 72-1355. *UNITED STATES v. MATLOCK.* C. A. 7th Cir. [Certiorari granted, *ante*, p. 917.] Motion of respondent for appointment of counsel granted. It is ordered that Donald S. Eisenberg, Esquire, of Madison, Wisconsin, be, and he is hereby, appointed as counsel for respondent in this case.

No. 72-6534. *ORSINGER v. RICHARDSON, ATTORNEY GENERAL.* Motion for leave to file petition for writ of habeas corpus denied.

Probable Jurisdiction Noted

No. 72-1465. *PROCUNIER, CORRECTIONS DIRECTOR, ET AL. v. MARTINEZ ET AL.* Appeal from D. C. N. D. Cal. Motion of appellees for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 354 F. Supp. 1092.

Certiorari Denied. (See also Nos. 72-1259, 72-6329, and 72-6385, *supra*.)

No. 72-1218. *VALENTINE ET AL. v. OREGON.* Sup. Ct. Ore. Certiorari denied. Reported below: 264 Ore. 54, 504 P. 2d 84.

No. 72-1345. *MOSCA ET AL. v. UNITED STATES;*

No. 72-6456. *WOLFSON v. UNITED STATES;* and

No. 72-6479. *ZAVOD ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 475 F. 2d 1052.

No. 72-1368. *ROSCIANO v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 2d 1350.

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No. 72-1370. *BERLIN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 472 F. 2d 1002.

No. 72-1374. *NEFF v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 475 F. 2d 861.

No. 72-1383. *DECKER ET AL. v. WEINSTEIN, TRUSTEE, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 72-1387. *AMERICAN CONCRETE CONSTRUCTION Co., INC., ET AL. v. BRENNAN, SECRETARY OF LABOR*. C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 2d 1183.

No. 72-1414. *MUELLER v. NIXON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 470 F. 2d 1348.

No. 72-1418. *SEDAK, ATTORNEY GENERAL OF INDIANA v. DILLIN, U. S. DISTRICT JUDGE*. C. A. 7th Cir. Certiorari denied.

No. 72-1431. *LEONHARD v. RICHARDSON, ATTORNEY GENERAL, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 473 F. 2d 709.

No. 72-1434. *HITCHCOCK v. CIVIL SERVICE COMMISSION OF CITY OF MOSES LAKE*. Ct. App. Wash. Certiorari denied.

No. 72-1435. *ROBBINS v. NOBLE DRILLING Co. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 651.

No. 72-1442. *TRAVELERS INSURANCE Co. v. CHOUDEST*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1026.

No. 72-1444. *KELLEN v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 49 Ala. App. 467, 273 So. 2d 227.

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No. 72-1451. *LAVINE, COMMISSIONER, NEW YORK DEPARTMENT OF SOCIAL SERVICES v. LINDSAY, MAYOR OF NEW YORK, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 473 F. 2d 923.

No. 72-1452. *OWNBY v. UNITED STATES.* C. C. P. A. Certiorari denied. Reported below: 471 F. 2d 1233.

No. 72-1464. *VAN VLIET v. LEBOSQUET.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 72-1466. *ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION v. WILLIAMS ET AL.* C. C. P. A. Certiorari denied. Reported below: 59 C. C. P. A. (Pat.) 1329, 463 F. 2d 1391.

No. 72-1467. *PERRERRA ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 474 F. 2d 1246.

No. 72-1468. *WILSON v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 600.

No. 72-1471. *AMERICAN DAIRY ASSN. ET AL. v. RASMUSSEN.* C. A. 9th Cir. Certiorari denied. Reported below: 472 F. 2d 517.

No. 72-5432. *BROWN v. JOSEPH.* C. A. 3d Cir. Certiorari denied. Reported below: 463 F. 2d 1046.

No. 72-6115. *JACKSON v. ZELKER, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied.

No. 72-6231. *GUTHRIE v. GEORGIA.* C. A. 5th Cir. Certiorari denied.

No. 72-6233. *KENNEDY v. WAINWRIGHT, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 1405.

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No. 72-6286. *NELSON v. MOORE*, CORRECTIONAL SUPERINTENDENT. C. A. 1st Cir. Certiorari denied. Reported below: 470 F. 2d 1192.

No. 72-6316. *BURBANK v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 53 Ill. 2d 261, 291 N. E. 2d 161.

No. 72-6365. *CONKLIN v. GASAWAY*, TRUSTEE. C. A. 8th Cir. Certiorari denied. Reported below: 468 F. 2d 752.

No. 72-6372. *MCLEOD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 2d 962.

No. 72-6379. *SAUNDERS v. SLAYTON*, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied. Reported below: 470 F. 2d 734.

No. 72-6401. *EVANS v. JOHNSON*, CORRECTIONAL SUPERINTENDENT. C. A. 3d Cir. Certiorari denied.

No. 72-6455. *OWENS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 472 F. 2d 780.

No. 72-6490. *MONTGOMERY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 72-6498. *JACKSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 684.

No. 72-6507. *IRONS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 475 F. 2d 40.

No. 72-6511. *WOODS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 474 F. 2d 1343.

No. 72-6512. *JUDSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6524. *HANKS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

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No. 72-6532. KRULL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1345.

No. 72-6546. COPELAND *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 710.

No. 72-6585. ANDRADE *v.* HAUCK, SHERIFF, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 468 F. 2d 950.

No. 72-6635. BABCOCK *v.* SWENSON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 72-6641. CRENSHAW *v.* JAMES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 2d 655.

No. 72-6643. SMILEY *v.* LAVALLEE, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied. Reported below: 473 F. 2d 682.

No. 72-6656. CLEVELAND *v.* WARDEN, MARYLAND STATE PENITENTIARY. C. A. 4th Cir. Certiorari denied.

No. 72-6664. HIGGENS, AKA ROBINSON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 16 N. C. App. 434, 192 S. E. 2d 93.

No. 72-6673. OAKES *v.* BLACK, REFORMATORY SUPERINTENDENT. C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 2d 672.

No. 72-6674. LEMMO *v.* VINCENT, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied.

No. 72-1041. DOUGLAS ET AL. *v.* COVELL. Sup. Ct. Colo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant the petition and affirm the judgment. Reported below: — Colo. —, 501 P. 2d 1047.

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No. 72-1090. *ANNUNZIO v. HOELLEN*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 468 F. 2d 522.

No. 72-1249. *STOVER v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-1317. *WHITAKER ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 1246.

No. 72-1340. *STANLEY ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 472 F. 2d 1204.

No. 72-1377. *METROPOLITAN SCHOOL DISTRICT OF LAWRENCE TOWNSHIP, MARION COUNTY, INDIANA, ET AL. v. DILLIN, U. S. DISTRICT JUDGE, ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6499. *RETFERFORD v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 270 So. 2d 363.

No. 72-6513. *CIOFFI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6523. *MANCINO v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 1240.

No. 72-6647. *GRON v. VICONOVIC*. Sup. Ct. Ohio. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6689. *RODRIGUEZ ET AL. v. JONES ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 599.

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No. 72-1260. *MCCUNE v. NEBRASKA*. Sup. Ct. Neb. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 189 Neb. 165, 201 N. W. 2d 852.

No. 72-1350. *MEISEL ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 472 F. 2d 548.

MR. JUSTICE DOUGLAS, dissenting.

Electronic surveillance has increasingly infected criminal trials. My hearing in the *Pentagon Papers* case last summer (*Russo v. Byrne*, 409 U. S. 1219), was the beginning of vast disclosures which showed how seriously that trial had in fact been infected. See also 409 U. S. 1013. The indictments involved in it were indeed later dismissed, in part on the grounds that the prosecution failed to disclose the existence and results of wiretaps.

It has become painfully apparent that wiretapping and electronic surveillance are a commonplace tool of those who pursue prosecutions with zeal that knows no bounds, not even the clear mandate of our Constitution or laws. The Nation early eschewed this Machiavellian philosophy.

“The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man’s spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable

intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." *Olmstead v. United States*, 277 U. S. 438, 478 (Brandeis, J., dissenting).

This case presents a more related facet of the problem than *Russo v. Byrne, supra*. Here we are concerned with witnesses called to testify before the grand jury. See *Tierney v. United States*, 410 U. S. 914 (DOUGLAS, J., dissenting). This particular grand jury was investigating firearms transactions between certain Irish-Americans and the Irish Republican Army. The center of attention apparently was one Charles Farrell Malone, who, subsequent to the proceedings below, pleaded guilty to a federal firearms offense. Petitioners, one a friend of Malone's and the other a babysitter for his seven children, were subpoenaed to appear before the grand jury on October 25 and 26, 1972. Both appeared but refused to testify. Approximately one month later, the Government advised petitioners' counsel that it would apply for an order granting petitioners testimonial immunity, see 18 U. S. C. § 6003, and in the event immunity was granted and petitioners still refused to testify, it would seek immediately to have petitioners held in contempt.

On November 28 petitioners were granted immunity, and the same morning they were brought before the grand jury. They refused to testify on the grounds, *inter alia*, that the questions propounded to them were the product of illegal electronic surveillance of themselves and *their attorney*.¹ The contempt hearing took place

¹ Petitioners' attorney, who also represented Malone, who had been indicted before petitioners were granted immunity, had withdrawn as counsel that morning in order to avoid any conflict of interest. It is clear to me that we must treat that attorney as petitioners' counsel in considering their constitutional rights before the grand jury.

at 2 o'clock that afternoon. Petitioners again asserted that they had been subjected to illegal electronic surveillance, and they submitted *an affidavit of their attorney claiming that his telephones had been wiretapped*. The Government attorney filed affidavits disclaiming any surveillance upon petitioners or their premises. The affiant also stated that he knew "the identity of all the sources of information upon which the questioning of [petitioners] is based and no questions asked are the result of electronic surveillance . . ." *The Government did not specifically respond to the allegation that the attorney had been subjected to surveillance*.

Based upon these affidavits and oral argument, the District Court held petitioners in civil contempt. The District Judge refused to hold a hearing regarding the claims of electronic surveillance and wiretapping or to require the Government to search its files to assure the non-existence of electronic surveillance on their attorney. Bail was denied, and petitioners were ordered to jail for the life of the grand jury, but not to exceed 18 months. The Court of Appeals, however, granted bail pending appeal. On December 29, 1972, the Court of Appeals affirmed the contempt adjudications and revoked bail. 472 F. 2d 548. I ordered that petitioners be released on their own recognizance pending the timely filing and disposition of a petition for a writ of certiorari. I now would grant their petition and set this case for oral argument.

The sole ground for denying a hearing was the Government disclaimer that petitioners themselves had been subject to electronic surveillance or that any questions to be asked were the result of surveillance of third parties. In *Alderman v. United States*, 394 U. S. 165, we held that when the results of electronic surveillance are arguably relevant to the defense, the records must be

submitted for adversary hearing before the trial judge. "Adversary proceedings are a major aspect of our system of criminal justice. Their superiority as a means for attaining justice in a given case is nowhere more evident than in those cases, such as the ones at bar . . ." *Id.*, at 183. I find the failure to afford a hearing especially troubling in this case. The Government's affiant, an official of the Internal Security Division of the Justice Department, stated that he had "caused an inquiry to be made" among certain listed federal agencies and this inquiry had not disclosed that petitioners had been subject to any illegal electronic surveillance. Even though the subject of the grand jury investigation was firearms transactions with the Irish Republican Army, the affiant had not checked with military intelligence agencies. We have learned that the results of illegal surveillance often are secreted away, whether for reasons of national security or for fear of public disclosure. For that reason, no stone should remain unturned. Although the District Judge himself was concerned with the failure to consult with these agencies, he nevertheless denied petitioners an evidentiary hearing either on the adequacy of the Government's denial or the actual existence of surveillance of petitioners by more federal agencies. Moreover, the *Government totally failed to respond to the claim that petitioners' attorney had been subjected to illegal surveillance.*²

We should no longer tolerate procedures which allow the prosecution to pyramid the secrecy of its clandestine

² In *Gelbard v. United States*, 408 U. S. 41, we held that a grand jury witness has standing to challenge questions propounded to him on the ground that they are derived from illegal electronic surveillance. The interrelationship of the Fourth, Fifth, and Sixth Amendments in this area requires, in my mind, that this rule extend to surveillance of a witness' attorney. See *Tierney v. United States*, 410 U. S. 914 (DOUGLAS, J., dissenting).

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activities.³ It is by no means an easy task to uncover the intricacies and interrelationships of the Executive's ever-expanding security mechanism, but we certainly cannot even start without the rudiments of due process.

No. 72-1409. LOCAL UNION 1791, UNITED MINE WORKERS OF AMERICA, ET AL. v. MCGUIRE SHAFT & TUNNEL CORP. ET AL. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 475 F. 2d 1209.

MR. JUSTICE DOUGLAS, dissenting.

We are asked to review a decision of the Temporary Emergency Court of Appeals holding that § 210 (a) of the Economic Stabilization Act of 1970,¹ 84 Stat. 799, as amended, 85 Stat. 748, 12 U. S. C. § 1904, Note (1970 ed., Supp. II), overrides the anti-injunction provisions of

³ As we said in *Alderman v. United States*, 394 U. S. 165:

"An apparently innocent phrase, a chance remark, a reference to what appears to be a neutral person or event, the identity of a caller or the individual on the other end of a telephone, or even the manner of speaking or using words may have special significance to one who knows the more intimate facts of an accused's life. And yet that information may be wholly colorless and devoid of meaning to one less well acquainted with all relevant circumstances. Unavoidably, this is a matter of judgment, but in our view the task is too complex, and the margin for error too great, to rely wholly on the *in camera* judgment of the trial court to identify those records which might have contributed to the Government's case." *Id.*, at 182.

¹ That section provides:

"Any person suffering legal wrong because of any act or practice arising out of this title, or any order or regulation issued pursuant thereto, may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment, writ of injunction (subject to the limitations in section 211), and/or damages."

the Norris-LaGuardia Act,² 47 Stat. 70, 29 U. S. C. § 101 *et seq.*, and permits a district court to enjoin a work stoppage in violation of regulations of the Pay Board.

On January 14, 1972, respondent construction companies entered into a collective-bargaining agreement with the United Mine Workers of America providing for a wage increase in excess of 18%. In accordance with the Economic Stabilization Act, this agreement was submitted to the Pay Board for approval, but the Board authorized an increase of only 9.54%. Subsequently, employees of the construction companies, members of three different locals of the United Mine Workers, went out on strike in support of their demand for a wage increase as provided by the agreement. Pickets soon appeared at five coal mines operated by two other respondents, and the miners honored the picket lines.

The four employers affected by the work stoppages immediately sought preliminary injunctions from the District Court. The District Court issued the injunctions, and the Temporary Emergency Court of Appeals affirmed.³ 475 F. 2d 1209. It determined that the work stoppages constituted a violation of § 1 (a) of Executive

² Section 1 of the Norris-LaGuardia Act provides:

"That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act."

Section 4 specifies acts which may not be enjoined, including "[e]asing or refusing to perform any work or to remain in any relation of employment."

³ The District Court also concluded that the strike violated provisions of the collective-bargaining agreement and could be enjoined under *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U. S. 235. The Court of Appeals did not reach this issue.

Order 11640, which provides that "no person shall, directly or indirectly, . . . use any means to obtain payment of wages and salaries in any form, higher than those permitted hereunder" 37 Fed. Reg. 1214. It also determined that the stoppages constituted a violation of Pay Board Reg. § 201.17 (c), which provided that it shall be a violation of Pay Board regulations to "[i]nduce, solicit, encourage, force, or require, or attempt to induce, solicit, encourage, force or require, any other person to pay or to receive any portion of a wage and salary increase not authorized by such regulations or Pay Board decision" 6 CFR § 201.17 (c) (1972). The court concluded that respondents were persons "suffering legal wrong" within the meaning of § 210 (a) of the Economic Stabilization Act of 1970 and were thereby entitled to injunctive relief. As to petitioners' claim that the Norris-LaGuardia Act barred injunctive relief against a union work stoppage in an action brought by an employer,⁴ the court stated:

"In light of the importance of the Economic Stabilization Program to economic welfare of the United States, the Norris-LaGuardia Act must be interpreted to accommodate the overriding Congressional intent expressed in the Economic Stabilization Act. Such accommodations have been made in the past when the provisions of the Norris-LaGuardia Act conflicted with other specific intentions of Congress." 475 F. 2d, at 1215.

Heretofore, this Court has recognized implicit exceptions to the anti-injunction provisions of the Norris-LaGuardia Act only when there was an unavoidable clash

⁴ Petitioners concede that the Norris-LaGuardia prohibitions do not apply in Government suits to enforce the Economic Stabilization Act. See § 209 of the Act, 85 Stat. 748.

with other labor legislation. See, e. g., *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U. S. 235 (§ 301 of the Labor Management Relations Act); *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768. We have stated before that "the Norris-LaGuardia Act's ban on federal injunctions is not lifted because the conduct of the union is unlawful under some other, nonlabor statute." *Order of Railroad Telegraphers v. Chicago & N. W. R. Co.*, 362 U. S. 330, 339. See also *Brotherhood of Railroad Trainmen v. Chicago R. & I. R. Co.*, 353 U. S. 30, 42. The unmistakable mandate of the Norris-LaGuardia Act is to preclude the federal courts from interfering with peaceful labor disputes by resort to "objective tests." See *Order of Railroad Telegraphers v. Chicago & N. W. R. Co.*, *supra*, at 336; *Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc.*, 311 U. S. 91, 101. Although the Economic Stabilization Act affects wages, it is clear to me that it falls within the area of general economic legislation rather than the narrow scope of "labor legislation" as that concept is used in our prior decisions.

Moreover, even when we have carved out an exception to the Norris-LaGuardia Act to accommodate it with later, more specific labor legislation, we have circumscribed the courts' discretion to award injunctive relief. In *International Association of Machinists v. Street*, 367 U. S. 740, 772-773, we stated:

"The Norris-LaGuardia Act . . . expresses a basic policy against the injunction of activities of labor unions. . . . [T]he policy of the Act suggests that the courts should hesitate to fix upon the injunctive remedy for breaches of duty owing under the labor laws unless that remedy alone can effectively guard the plaintiff's right."

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Petitioners contend that private injunctions are not a necessary part of the enforcement scheme of the Economic Stabilization Act, which includes provisions for governmental enforcement, supplemented by private actions for damages.

Finally, § 210 (a) of the Economic Stabilization Act provides for "appropriate relief." Petitioners argue that the word "appropriate" must be construed to encompass the ordinary constraints of federal equity jurisprudence, thus precluding private suits for injunctive relief against a union in a labor dispute.⁵ See *Hecht Co. v. Bowles*, 321 U. S. 321. They buttress this argument with the assertion that the legislative history of the Act gives no indication that § 210 (a) was meant to override the anti-injunction provisions of the Norris-LaGuardia Act.

To my mind, this case presents substantial questions that deserve consideration by this Court. The decision below is a clear extension of the accommodation doctrine as it has developed in this Court and threatens to erode the Norris-LaGuardia Act. We hardly can conclude that wage and price controls are merely a specter of the past. I would grant the petition for a writ of certiorari and set the case for oral argument. I would not without impelling legislative reasons make the Norris-LaGuardia Act—once the pillar of labor strength—a mere ghost to be driven hence by the slogan "stabilization" and made a mockery by financial aggrandizement.

No. 72-6359. *REECE v. CRAVEN, WARDEN*. Sup. Ct. Cal. Certiorari denied. MR. JUSTICE DOUGLAS concurs in the denial of certiorari solely because the judgment below rests on an adequate state ground.

⁵ The Government contended below, as *amicus curiae*, that the dispute between the parties does not come within the Norris-LaGuardia Act's definition of "labor dispute," 29 U. S. C. § 113 (c).

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No. 72-6526. *MUNCASTER v. UNITED STATES*. C. A. 5th Cir. Motion for leave to file an amended petition granted. Certiorari denied. Reported below: 472 F. 2d 1407.

Rehearing Denied

No. 72-10. *MOOR ET AL. v. COUNTY OF ALAMEDA ET AL.*, 411 U. S. 693;

No. 72-1112. *COFFEE-RICH, INC., ET AL. v. FIELDER, DIRECTOR OF AGRICULTURE, ET AL.*, 411 U. S. 979;

No. 72-1199. *CULPEPPER v. UNITED STATES*, 411 U. S. 982;

No. 72-5398. *GARDNER v. MCCARTHY, FACILITY SUPERINTENDENT*, *ante*, p. 916;

No. 72-5964. *BLACK ET AL. v. ILLINOIS*, 411 U. S. 967;

No. 72-6090. *KING v. CALIFORNIA*, 411 U. S. 983;

No. 72-6149. *HOUSE v. ST. AGNES HOSPITAL, INC., ET AL.*, 411 U. S. 961;

No. 72-6197. *SHOEMAKER v. DWYER ET AL.*, *ante*, p. 902;

No. 72-6392. *WHEELER v. UNITED STATES*, *ante*, p. 921;

No. 72-6423. *MENDES v. BROTHERHOOD OF RAILWAY & AIRLINE CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES, AFL-CIO-CLC, ET AL.*, 411 U. S. 971; and

No. 72-6603. *JAYNES v. JAYNES ET AL.*, *ante*, p. 931. Petitions for rehearing denied.

No. 6505, October Term, 1970. *NIEMEYER v. CICCONE, MEDICAL CENTER DIRECTOR, ET AL.*, 401 U. S. 1011. Motion for leave to file petition for rehearing denied.

No. 72-780. *CALIFORNIA ADULT AUTHORITY ET AL. v. GRIFFIN ET AL.*, and

No. 72-5770. *M'CLARY v. CALIFORNIA ADULT AUTHORITY ET AL.*, *ante*, p. 916. Petition for rehearing or modification denied.

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No. 72-5935. RUDERER *v.* KLEINDIENST, ATTORNEY GENERAL, 410 U. S. 949. Motion for leave to file petition for rehearing and all other relief denied.

JUNE 19, 1973

Dismissal Under Rule 60

No. 72-6818. DIAZ-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 478 F. 2d 1005.