

SUPREME COURT REPORTER

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OCTOBER TERM, 1942

317 U.S. 1

Ex parte QUIRIN.

Ex parte HAUPT.

Ex parte KERLING.

Ex parte BURGER.

Ex parte HEINCK.

Ex parte THIEL.

Ex parte NEUBAUER.

UNITED STATES ex rel. QUIRIN v. COX,
Brig. Gen., U. S. A., Provost Marshal of
the Military District of Washington,
and 6 other cases.

Nos. — Original and Nos. 1, 2, 3, 4, 5, 6 and
7—July Special Term, 1942.

Argued July 29, 30, 1942.

Decided July 31, 1942.

Habeas corpus ⇨ 16

Writs of habeas corpus were properly denied petitioners held in custody for trial before military commission appointed by the President, on grounds that the President was authorized to order trial before commission, that commission was lawfully constituted, and that petitioners were held in lawful custody.

Motions for leave to file petitions for writs of habeas corpus.

63 S.Ct.

On writs of certiorari to the United States Court of Appeals for the District of Columbia.

Motions by Richard Quirin, by Herbert Hans Haupt, by Edward John Kerling, by Ernest Peter Burger, by Heinrich Harm Heinck, by Werner Thiel, and by Herman Otto Neubauer for leave to file petitions in the Supreme Court for writs of habeas corpus; and petitions by the same parties for writs of certiorari to review habeas corpus proceedings begun in the District Court for the District of Columbia and appealed to the Court of Appeals for the District of Columbia.

Petitions for writs of certiorari granted, motions for leave to file petitions for writs of habeas corpus denied, and orders of the District Court affirmed.

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Colonel Kenneth C. Royall, of Raleigh, N. C., for petitioners.

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Mr. Francis B. Biddle, Atty. Gen., for respondent.

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PER CURIAM.

In these causes motions for leave to file petitions for habeas corpus were presented to the United States District Court for the District of Columbia, which entered orders denying the motions. Motions for leave to file petitions for habeas corpus were then presented to this Court, and the merits of the applications were fully argued at the Special Term of Court convened on

July 29, 1942. Counsel for petitioners subsequently filed a notice of appeal from the order of the District Court to the United States Court of Appeals for the District of Columbia, and they have perfected their appeals to that court. They have presented to this Court petitions for writs of certiorari before judgment of the United States Court of Appeals for the District of Columbia, pursuant to 28 U.S.C. § 347(a), 28 U.S.C.A. § 347(a). The petitions are granted. In accordance with the stipulation between counsel for petitioners and for the respondent, the papers filed and argument had in connection with the applications for leave to file petitions for habeas corpus are made applicable to the certiorari proceedings.

The Court has fully considered the questions raised in these cases and thoroughly argued at the bar, and has reached its conclusion upon them. It now announces its decision and enters its judgment in each case, in advance of the preparation of a full opinion which necessarily will require a considerable period of time for its preparation and which, when prepared, will be filed with the Clerk.

The Court holds:

(1) That the charges preferred against petitioners on which they are being tried by military commission appointed by the order of the

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President of July 2, 1942, allege an offense or offenses which the President is authorized to order tried before a military commission.

(2) That the military commission was lawfully constituted.

(3) That petitioners are held in lawful custody, for trial before the military commission, and have not shown cause for being discharged by writ of habeas corpus.

The motions for leave to file petitions for writs of habeas corpus are denied.

The orders of the District Court are affirmed. The mandates are directed to issue forthwith.

Mr. Justice MURPHY took no part in the consideration or decision of these cases.

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Extended opinion filed Oct. 29, 1942.

1. Habeas corpus ⇨16

The duty rests on courts, in time of war as well as in time of peace, to preserve unimpaired the constitutional safeguards of civil liberty.

2. Habeas corpus ⇨59

It is the usual procedure on an application for a writ of habeas corpus in a federal court for the court to issue the writ and on the return, to hear and dispose of the case but it may without issuing the writ consider and determine whether the facts alleged by the petition, if proved, would warrant discharge of the prisoner.

3. Habeas corpus ⇨113(3), 114

Presentation for judicial review of petition for writ of habeas corpus is the "institution of a suit" so that the denial by federal district court of leave to file the petition was a "judicial determination" reviewable on appeal to the United States Court of Appeals for the District of Columbia and reviewable in the Supreme Court by certiorari. Jud.Code § 240(a), 28 U.S.C.A. § 347(a).

See Words and Phrases, Permanent Edition, for all other definitions of "Institution of a Suit" and "Judicial Determination".