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SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1934

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No. 135

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PANAMA REFINING COMPANY ET AL.,  
*Petitioners,*

*vs.*

A. D. RYAN, S. D. BENNETT, AND J. HOWARD  
MARSHALL.

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

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MAY IT PLEASE THE COURT:

The petition of the Panama Refining Company and others respectfully shows to this Honorable Court:

A.

**Statement of the Matter Involved.**

This is a suit by the Panama Refining Company, a refiner of crude petroleum, and A. F. Anding, a producer of crude petroleum, both of whom are residents of the Eastern District of Texas, in which they attack the valid-

ity of Subsection 9 (c), Title I, of the National Industrial Recovery Act (Public No. 67), and Regulations 4, 5, and 7 promulgated by Harold L. Ickes, Secretary of the Interior, under the purported authority of said Act. This subsection of the Act is quoted in petitioners' amended bill of complaint (R. 4), and the regulations complained of are attached to the bill of complaint (R. 16, 17, 22). Respondents had threatened petitioners with criminal prosecution for failure to comply with said regulations, and, as shown by the amended bill of complaint (R. 9), they had actually instituted criminal prosecutions against petitioners between the filing of the original bill of complaint and the amended bill of complaint. In addition to the claimed right to prosecute petitioners for failure to comply with the regulations while they were attacking the validity of the same, respondents also asserted the right to, and did, go upon petitioners' property and gauge their tanks and dig up their pipe lines and other equipment under the claimed authority to make inspections.

Upon the trial of the case upon its merits, the court found as a fact that petitioners were not engaged in interstate commerce, except that portion of gasoline that the refining petitioners sold and shipped in that commerce; that respondents had continually, over the objections of petitioners, entered upon their property, gauged their tanks, examined their books, dug up their pipe lines, and destroyed their property. That respondents have threatened and are attempting to enforce against petitioners criminal prosecutions by reason of petitioners' failure to file reports prescribed by Regulations 4 and 5, and submit their books and records for inspection as provided by Regulation 7. The court concluded, as a matter of law, that the complained of regulations were not authorized and not enforceable against petitioners, neither did respondents have the right to go upon petitioners' prop-

erty over their objections and gauge their tanks and inspect their property and books (R. 164-168); and, accordingly, a decree was entered permanently enjoining respondents from enforcing any rule or regulation promulgated under the National Industrial Recovery Act, in so far as the same applies to the production of oil or the refining and storage thereof, or the transportation of petroleum or the products thereof in intrastate commerce, and from going upon or about the premises of petitioners or molesting them in the conduct of their business, and from prosecuting them for failure to comply with the attacked regulations (R. 161).

An appeal was prosecuted from said decree to the United States Circuit Court of Appeals for the Fifth Circuit, which court, on May 22, 1934, reversed the decree of the district court and directed that the bill of complaint be dismissed (R. 235). Petitioners, on June 7, 1934, filed their application for stay of the mandate of the Circuit Court (R. 235-237), which application was on the same date granted (R. 237), provided petitioners file with the clerk of this Court their petition for certiorari and obtain service of notice thereof on opposing counsel within thirty days. A certified copy of the proceedings in the Circuit Court of Appeals, as well as eleven copies of the transcript of the record upon which this case was heard in said court, are attached to and accompany this petition.

By way of explanation, this case, with the others consolidated therewith, as shown by the record, was tried by the district judge separately from that of the Amazon Petroleum Corporation *et al. against* the Railroad Commission of Texas *et al.*, which is also a case against the respondents in this case and raises the same issues as are raised in this case, but the Railroad Commission of Texas was included as an additional defendant in that case. Therefore, the opinion in this case (R. 186) is applicable to both cases.

Likewise, the opinion of the Circuit Court (R. 222-223) is applicable and determines the issues involved in each of the cases. However, the *Amazon* case is still pending before the Circuit Court on a motion for rehearing.

B.

**Reasons Relied on for the Allowance of the Writ.**

I.

The United States Circuit Court of Appeals has, in this case, decided an important question of Federal law which has not been, but should be, settled by this Court.

II.

The United States Circuit Court of Appeals has erroneously held:

(a) That Subsection 9(c) of the National Industrial Recovery Act is a valid act of Congress.

(b) That Harold L. Ickes, designated by the President to enforce Subsection 9(c), is authorized by the provisions of the National Industrial Recovery Act to promulgate and enforce against petitioners the attacked regulations.

(c) That the effect of the opinion and holding of the United States Circuit Court of Appeals is, that while the President, or his appointee, is granted by Congress only general authority to make rules and regulations that may be necessary for the carrying out of the purposes of the National Industrial Recovery Act, yet the said Harold L. Ickes, as the appointee of the President, has, under that general grant of authority, the power to enforce against petitioners the attacked regulations, although the petitioners are not included within the terms of the act of Congress, and the things required of them by the regulations

are not required by the act of Congress, and may subject petitioners to criminal prosecutions for failure to comply with said regulations.

(d) That the petitioners are not entitled in this suit to restrain respondents from proceeding criminally against them for failure to comply with the regulations while they are attacking the same, but are relegated for their remedy to the presentation of their legal defenses as each criminal case is tried.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 7351, A. D. Ryan, S. D. Bennett, and J. Howard Marshall, Appellants, *vs.* Panama Refining Company *et al.*, Appellees, and that the said decree of the United States Circuit Court of Appeals may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

PANAMA REFINING COMPANY ET AL.,  
By F. W. FISCHER,  
*Tyler, Texas,*  
*Counsel for Petitioners.*