

In the Supreme Court of the United States

OCTOBER TERM, 1943

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No. 374

ALBERT YAKUS, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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OPINIONS BELOW

The district court and the Circuit Court of Appeals for the First Circuit did not render opinions in this case. Their rulings on the questions here presented were governed by respective opinions filed in the companion case of *Benjamin Rottenberg and B. Rottenberg, Inc.*, which arose in the same District and is now before this Court in proceedings on petition for a writ of certiorari (*Rottenberg v. United States*, No. 375, present Term). The memorandum opinion of the district court in the *Rottenberg* case is reported in 48 F. Supp. 913

(1)

and appears at pp. 59-67 of the Record in that case. The opinion of the circuit court of appeals in that case appears in the present Record at pp. 42-56.

#### JURISDICTION

The judgment of the United States Circuit Court of Appeals for the First Circuit was entered on August 23, 1943 (R. 56). The petition for a writ of certiorari was filed in this Court on September 22, 1943. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code of the United States as amended by the Act of February 13, 1925.

#### QUESTIONS PRESENTED

1. Whether Section 204 (d) of the Emergency Price Control Act of 1942 operates to prevent consideration of the validity of maximum price regulations in criminal or other suits for enforcement of the Act.

2. Whether Section 204 of the Act, in providing an exclusive procedure for review of maximum price regulations under the Act, and in prohibiting consideration of the validity of such regulations in suits to enforce the Act, contravenes the Fifth and Sixth Amendments of the Federal Constitution and works an unconstitutional legislative interference with the judicial branch in violation of the doctrine of separation of powers.

**STATUTES AND REGULATION INVOLVED**

The case involves the Emergency Price Control Act of 1942 (Act of January 20, 1942, 56 Stat. 23, 50 U. S. Code, Appendix, Supp. II, Sec. 901 *et seq.*), as amended by the Act of October 2, 1942 (56 Stat. 765, 50 U. S. Code, Appendix, Supp. II, Sec. 961 *et seq.*) and Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381), issued thereunder on December 10, 1942.

Copies of the Emergency Price Control Act and the Act of October 2, 1942, are contained in the Appendix to the Government's Memorandum filed in the companion case of *Rottenberg v. United States, supra*. The applicable provisions are summarized in that Memorandum at p. 3 thereof.

**STATEMENT**

Petitioner seeks review of a judgment of the Circuit Court of Appeals for the First Circuit which affirmed a judgment of conviction against petitioner in the District Court for the District of Massachusetts (R. 12) under an indictment charging sales of wholesale cuts of beef at prices above the maximum legal prices established by Revised Maximum Price Regulation No. 169 (R. 1-4). Petitioner was found guilty under three counts, and received a concurrent sentence of six months imprisonment and one thousand dollars fine on each count (R. 13).

Petitioner filed a plea of not guilty in the District Court (R. 5), but offered no testimony in

disproof of the violations charged. The District Court overruled a number of motions and requests for rulings raising defenses of law. Among the contentions so overruled were the following: that the Regulation is invalid and that an offer of proof of such invalidity should be received (R. 7-12, 14-16, 17-24, 26, 28, 31; *Rottenberg v. United States, supra*, R. 61-67); and that Section 204 (d) of the Act (the "exclusive jurisdiction" provision) is unconstitutional if construed to bar consideration of the validity of the Regulation (R. 13-16, 25-26; *Rottenberg v. United States, supra*, R. 61-67).

The Circuit Court of Appeals, in affirming the conviction, held that Section 204 (d) of the Act operates to bar the attack sought to be made by petitioner against the Regulation; and that Section 204 (d) as so construed, is constitutional (R. 42-56).<sup>1</sup>

#### DISCUSSION

This case presents the same questions respecting the operation and constitutionality of Section 204 (d) of the Emergency Price Control Act—the "exclusive jurisdiction" provisions—as are presented in the companion case of *Rottenberg v. United States, supra*. For the reasons stated in

<sup>1</sup> Petitioner has at no time attempted to obtain administrative or judicial relief in accordance with the available statutory procedures.

the Government's memorandum in that case, we do not oppose the petition in the present case.

Respectfully submitted.

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GEORGE J. BURKE,  
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OCTOBER 1943.