

Mcarthur Vs. Clifford

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Court : US Supreme Court

Decided On : 1968

Appeal No. : 393 U.S. 1002

Appellant : Mcarthur

Respondent : Clifford

Judgement :

MCARTHUR v. CLIFFORD - 393 U.S. 1002 (1968)

U.S. Supreme Court MCARTHUR v. CLIFFORD , 393 U.S. 1002 (1968)

393 U.S. 1002

Thomas W. Mc ARTHUR et al., petitioners, v. Clark CLIFFORD, Secretary of Defense, et al.

No. 613.

Supreme Court of the United States

December 16, 1968

Philip J. Hirschkop, for petitioners. Solicitor General Griswold, for respondents.

Motions to dispense with printing petition and to amend petition granted. Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit

denied.

Mr. Justice DOUGLAS, dissenting.

I dissent from a denial of certiorari in this case. An important unresolved constitutional issue of immediate importance to many Americans is involved. It is whether men may be sent abroad to fight in a war which has not been declared by Congress. This is a point on which I wrote a rather elaborate dissent in *Holmes v. United States*, [391 U.S. 936](#) , and *Hart v. United States*, [391 U.S. 956](#) . This certainly is a substantial question and one which has never been resolved by this Court.

The question of the power of the President to conduct a war without a declaration of war was raised in the Prize Cases [*The Amy Warwick*], 2 Black 635, during the Civil War. That was an internal insurrection which would perhaps be analogous here if the Vietnamese were invading the United States.

It was a five-to-four decision, upholding Presidential power. Would it have been the same if Lincoln had had an expeditionary force fighting a 'war' overseas?

There should not be the slightest doubt but that whenever the Chief Executive of the country takes any citizen by the neck and either puts him in prison or subjects him to some ordeal or sends him overseas to fight in a war, the question is a justiciable one. To call issues of that kind 'political' would be to abdicate the judicial function which the Court honored in the midst of the Civil War in the Prize Cases.

The spectre of executive war-making is an ominous threat to our republican institutions. What can be done

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in Vietnam can be done in many areas of this troubled world without debate or responsible public decision.

I would put the case down for argument and resolve this important constitutional problem.

