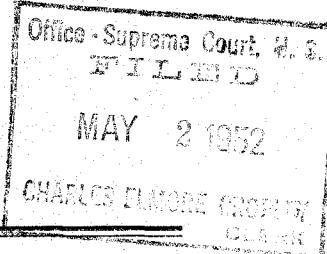


No. 745



In the Supreme Court of the United States

OCTOBER TERM, 1951

CHARLES SAWYER, SECRETARY OF COMMERCE,  
PETITIONER

v.

THE YOUNGSTOWN SHEET AND TUBE COMPANY,  
ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT AND APPLICA-  
TION FOR STAY

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PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT

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The Solicitor General, on behalf of Charles Sawyer, Secretary of Commerce, respectfully prays that a writ of certiorari issue to review the orders of the United States District Court for the District of Columbia entered in the above-entitled cases on April 30, 1952, which cases are now pending in the United States Court of Appeals for the District of Columbia Circuit on appeals by the petitioner.

OPINION BELOW

The opinion of the District Court (R. 77) is not yet reported.

(1)

**JURISDICTION**

The orders of the District Court were entered on April 30, 1952 (R. 87). On April 30, 1952, the petitioner docketed its appeals with the Court of Appeals for the District of Columbia Circuit. The cases have not been heard, submitted to, or decided by the Court of Appeals. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**QUESTIONS PRESENTED**

1. Whether, on the facts recited in the Executive Order and established by the uncontested affidavits, the President had constitutional authority to take possession of respondents' steel mills in order to avert an imminent nation-wide cessation of steel production.
2. Whether, in the circumstances of this case, the district court erred in reaching and deciding the constitutional issues on motions for preliminary injunctions.
3. Whether the district court erred in granting injunctive relief.

**CONSTITUTIONAL PROVISIONS AND EXECUTIVE ORDER INVOLVED**

Article II of the Constitution provides, in pertinent part:

SECTION 1. The executive Power shall be vested in a President of the United States of America. \* \* \*

\*       \*       \*       \*       \*

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the Presi-

dent alone, in the Courts of Law, or in the Heads of Departments.

\* \* \* \* \*

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

\* \* \* \* \*

The Fifth Amendment provides:

No person shall be \* \* \* deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Executive Order No. 10340, and Order No. 1 of the Secretary of Commerce are set out in Appendix A hereto.

#### STATEMENT

These are proceedings for injunctive relief against the petitioner, the Secretary of Commerce, to restrain through him the action of the President

in ordering the taking of possession and operation of certain of respondents' properties by Executive Order 10340, 17 F.R. 3139, issued on April 8, 1952 (R. 5).\* The events which led to the issuance of the Executive Order and the proceedings below are as follows:

1. *Events leading to the issuance of the Executive Order.*—On November 1, 1951, respondents' employees, represented by the United Steelworkers of America, C.I.O., which had a collective bargaining agreement due to expire on December 31, 1951, gave notice to the respondents that they wished in a proposed new collective bargaining agreement between the parties to effect changes in wages and working conditions over those established by the old contract (R. 2). No progress was made in the negotiations which followed and, on December 22, 1951, the dispute was referred by the President to the Wage Stabilization Board, in accordance with the provisions of Executive Order 10233, 16 F.R. 3503 (R. 47). The Presidential letter of referral, a copy of which is attached to the affidavit of Mr. Harry Weiss, Executive Director of

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\* Ten complaints were filed and ten docket numbers assigned in the district court. The entire record in all ten cases has been filed with the Clerk. Because of the shortage of time we have printed the record in two cases, which we deemed representative. Civ. No. 1635 (R. 1 *et seq.*) and Civ. No. 1625 (R. 49 *et seq.*). The only matters not printed to which we refer herein are the annexes to the affidavit of Mr. Weiss, referred to at pp. 5-7, *infra*, 20 copies of which have been filed with the Clerk, and the proceedings in the Court of Appeals, referred to at pp. 16-17, *infra*.

the Wage Stabilization Board (R. 47), requested the Board to investigate the dispute and promptly to report with recommendations as to fair and equitable terms of settlement. The President noted that the union and the steel producers had made no progress in resolving their differences and that it appeared unlikely that further bargaining or mediation and conciliation would suffice to avoid early and serious production losses in the vital steel industry. The President emphasized that the entire progress of national defense was threatened because any work stoppage would paralyze the entire steel industry and have an immediate and serious impact on the defense effort.

Pursuant to the referral, the Board immediately appointed a tripartite special steel panel (consisting of representatives of the public, of industry, and of labor) to hear all evidence and argument in the dispute and to make such reports as the Board might direct (R. 48). After a procedural meeting, public hearings were held in Washington, D. C., and New York beginning on January 10, and continuing until February 16. The participating parties and the masses of evidence and argument heard are indicated by the Panel Report, dated March 13, 1952, a copy of which is attached to Mr. Weiss' affidavit. This Panel Report outlined the issues in dispute, summarized the position of the parties, and was submitted to the parties for consideration and comment. Mean-

while, the Board met and prepared the "Report and Recommendations of the Wage Stabilization Board," dated March 20, 1952, and submitted it to the President on that date (R. 48). A copy of the Board Report is attached to the affidavit of Mr. Weiss. The Board's recommendations, acceptable to the union, were rejected by steel management. (R. 50.)

As noted above, no progress was made in negotiations between the parties pursuant to the union's notice of November 1, 1951, and a strike was called, as contemplated by the notice, for December 31, 1951. After the President's referral of the dispute to the Wage Stabilization Board on December 22, 1951, the union voluntarily deferred the strike which had previously been set. (R. 47.) After respondents' refusal to accept the Board recommendations, the strike was called for 12:01 A. M., April 9, 1952 (R. 50). Ninety-six hours' notice had been given; the mills were closing and the fires were being banked. The resulting catastrophic threat to steel production was averted by the Executive Order issued by the President directing the Secretary of Commerce to take possession of the steel industry on the night of April 8, 1952. The Secretary of Commerce thereupon issued Order No. 1 taking possession of the plants, facilities and other properties of respondents and numerous other steel companies. The Order, and the accompanying telegrams sent to the companies,

designated the president or chief executive officer of each company as the Operating Manager for the United States and directed that the management's officers and employees of the plants continue their functions. (R. 16-22.)

The union immediately called off the contemplated strike and full-scale production of steel continued without interruption until April 29, 1952 after the issuance of Judge Pine's decision in the District Court.

In his Executive Order, the President set forth his findings that steel is an indispensable component of substantially all the weapons used by the armed forces, that it is indispensable in carrying out the programs of the Atomic Energy Commission, and that a continuing and uninterrupted supply of steel is indispensable for the maintenance of the civilian economy of the United States upon which our military strength depends. He concluded with the finding that (R. 6)

a work stoppage would immediately jeopardize and imperil our national defense and the defense of those joined with us in resisting aggression, and would add to the continuing danger of our soldiers, sailors, and airmen engaged in combat in the field

and that in order to avert these dangers it

is necessary that the United States take possession of and operate the plants, facilities, and other property of [the respondents].

The affidavits filed below by petitioner, which were not controverted, spell out in greater detail these findings of the President. Secretary of Defense Lovett, the cabinet officer most directly concerned with all problems of armed forces procurement and development, points out, in his affidavit, the following (R. 22) :—That an adequate and continuing supply of steel is essential to every phase of our defense production effort at home, including the ever increasing needs of troop training; that a continued steel supply is essential to the effectiveness, safety and very existence of the armed forces fighting in Korea and stationed elsewhere overseas as part of our effort in world defense; and that no cessation of steel production can fail to add materially to the risk, from a military point of view, to which we are already subject by reason of the "stretch out" of our armament program and as a result of which we are barely able to meet our defense goals. Secretary Lovett, after disclosing, to the extent permitted by the grave considerations of security which are involved in any information of this type, the large percentage of steel production which goes into current defense requirements, emphasized the almost unbelievable extent to which our entire combat technique depends on the fullest use and availability of industrial strength and the use of vastly improved weapons, by reason of which he stated that "we are holding the line [in Korea] with ammuni-

tion and not with the lives of our troops." From all of these factors, Secretary Lovett concluded that any curtailment in the production of steel, even for a short period of time, would imperil the safety of our fighting men and that of the nation.

Again, the gravity of any interruption in steel production to the national safety and defense efforts is sharply emphasized in the affidavit of Mr. Gordon Dean, Chairman of the Atomic Energy Commission (R. 25).<sup>1</sup> Mr. Dean, referring to the current major expansion of construction facilities for the production of atomic weapons, points out that success is governed by the completion of the facilities construction program on schedule; that time has already been lost and must be recovered; that the most varied and unusual types of structural steel and stainless steel must be continuously available; that inventories of materials needed for such critical projects as development of A.E.C. construction sites are abnormally low; and that, consequently, any cessation of deliveries of steel will have the critical effect of causing an inability to step up the production of atomic weapons to the rate required to meet goals established by the President.

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<sup>1</sup> As indicated above, grave security problems are presented in furnishing any detailed information as to the effect of a cessation of steel production on defense production schedules and needs. This consideration is particularly apposite in the case of the Atomic Energy Commission.

Mr. Henry H. Fowler, Administrator of the National Production Authority, deposes (R. 27) that the products of the iron and steel industry are indispensable in the manufacture of military weapons and equipment and in the production of items required for defense-supporting programs such as those of the Atomic Energy Commission and the construction and expansion of power plants and of steel and aluminum facilities for production of railroad equipment, ships, machine tools and the like. He points out that the effect of a stoppage of steel production would vary according to inventories available to the manufacturers but in any event would quickly diminish the volume of output. Because of inventory shortages there would be an immediate slow-down in the manufacture of certain types of ammunitions and with respect to certain essential programs of the Atomic Energy Commission, which is in short supply on certain vital specialty items. The production of anti-friction bearings, mechanical power transmissions and aircraft fasteners would be quickly affected, resulting in the immediate curtailment and early shut-down of the production of aircraft, tanks and other military equipment. The same is true as to the production of air valves required for the production program of the Atomic Energy Commission. With respect to heavy power and electrical equipment, such as engines, turbines, motors, power transformers, the situation is simi-

larly critical; shipment of such equipment would be discontinued within one to three weeks after a production stoppage and Mr. Fowler estimates that "even a one week's stoppage would cause as much as one month's delay in the production of engines and turbines." This in turn would have serious effects upon the programs of the Atomic Energy Commission, the Navy's mine sweeper program and the power, aluminum and steel expansion programs. The production of electronic equipment used for military purposes also would be immediately and seriously affected, and any loss in this field would be irretrievable.

Secretary of Commerce Sawyer's affidavit discloses the critical impact which a major stoppage in steel production would have on the transportation programs of the Maritime Administration, the Civil Aeronautics Administration, and the Bureau of Public Roads (R. 38). He points out that a ten-day interruption in steel production would result in the loss of 96,000 feet of bridge and 1,500 miles of highway, that a twenty-day interruption would result in the loss of 149,000 feet of bridge and 2,280 miles of highway, and that a thirty-day interruption would result in the loss of 196,000 feet of bridge and 2,950 miles of highway; that the highway construction program, vital in defense plant and training areas, cannot continue production from inventory, and that steel for highways and bridges is ordered for specific use, delivered

for specific use, and if it is not produced and delivered the program is delayed. With respect to the effect of a steel shutdown on the shipbuilding program, Secretary Sawyer states that of the 98 ships currently in varying degrees of construction, there is sufficient steel in the yards to permit completion of only 21 of the ships, and that 39 ships are in such a stage of construction as to be directly dependent on the receipt of steel products during the present quarter. Further, Secretary Sawyer details the critical effect which a stoppage of steel production would have on the production of carrier and noncarrier aircraft. He emphasizes, with respect to production of transport type aircraft that should the production of certain components be delayed, it is anticipated that both the Convair and Douglas production lines would have to be stopped within 60 days; and that one manufacturer of aircraft has indicated that it would be preferable to close down his operations immediately rather than wait for the anticipated unavailability of a number of items to cause him to close.

Mr. Oscar L. Chapman, Secretary of the Interior, points out in considerable detail in his affidavit the drastic repercussions of any delay in deliveries of the various types of steel permitted by Defense Production Administration allotment orders to the petroleum, gas, and electric power utility fields (R. 30). Most of the steel and steel products thus allocated are for maintenance and

expansion of facilities for production and transportation, areas of activity which are obviously of the greatest importance not only for industrial use and expansion but for direct military use. The factors involved in these considerations are elaborated in Mr. Chapman's affidavit. In addition, he sets forth the crucial importance of the continued availability of steel supplies for the maintenance, repair, and operation of coal mines and coke ovens. Failure of steel supplies would result in curtailment of power production necessary for defense and military uses and would also result in a progressively severe decline in the production and availability of coal for all purposes.<sup>2</sup>

2. *Proceedings below.*—Immediately upon the issuance of Executive Order 10340, the steel companies, respondents herein, sought, by court order, to nullify the Presidential action thus taken to prevent the complete cessation of production in the steel industry.<sup>3</sup> On the night of April 8, 1952, applications for temporary restraining orders were

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<sup>2</sup> Further details of the impact upon our national security of a cessation of steel production are contained in the affidavits of Manly Fleischmann, Administrator of the Defense Production Authority (R. 26), Homer C. King, Acting Administrator of the Defense Transportation Administration (R. 36), and Jess Larson, General Services Administrator (R. 35).

<sup>3</sup> Counsel for respondent Republic Steel Company advised the District Court that the plaintiffs (the present respondents) produce 70% of the nation's steel. In addition a complaint making similar allegations to those in the present case has been filed by Inland Steel Company in the Northern District of Indiana, Hammond Division. Civil Action No. 1381, filed April 16, 1952. Petitioner has moved to stay that action pending disposition of the present cases.

presented *ex parte* to Judge Bastian of the District Court for the District of Columbia. The Judge declined to take action without some notice to the Government, which notice was given on the morning of April 9. At 11:00 a.m., April 9, a hearing was held before Judge Holtzoff. At the conclusion of the hearing, the applications for temporary restraining orders were denied.

Briefly summarized, the complaints filed by respondents pray for declaratory judgment and injunctive relief, narrate the expiration of the wage agreement between respondents and the union, the unproductive negotiations for a new contract, and the strike call of the steel-workers for April 9, 1952. They then allege the issuance of Executive Order No. 10340 (17 F.R. 3139) authorizing and directing Secretary Sawyer to seize the steel industry, and that Secretary Sawyer, in compliance with this order, has seized the steel industry. Respondents aver that this seizure is illegal for want of any constitutional or statutory authority in the President to issue the Executive Order.

Respondents conclude that the seizure of their plants constitutes an illegal invasion of their property rights, which exposes them to injuries for which monetary damages would afford inadequate compensation. The allegations of irreparable harm vary to some extent but center around the apprehension that the seizures might interfere with respondents' normal customer relations and destroy

their good-will, that Secretary Sawyer might make improper use of respondents' trade secrets, might place incompetent management in the plants which would wreck them physically and financially, and finally, that Secretary Sawyer might put into effect the wage agreement recommended by the Wage Stabilization Board containing wage increases and union-shop provisions (R. 1, 50).

On April 24 and 25, 1952, hearings were held in the District Court before Judge Pine on respondents' motions for preliminary injunctions seeking to restrain petitioner from taking any action under the authority of Executive Order No. 10340. Judge Pine granted the motions on April 29, 1952 (R. 77). Immediately following the announcement of the District Court's opinion, the union called its men out and the production stoppage, which the President sought to avert, began. Formal orders were signed on April 30, 1952 (R. 87), and applications for stay were denied by Judge Pine (R. 89). On that same day the Court of Appeals for the District of Columbia, *en banc*, issued an order staying the orders of the District Court until 4:30 P.M. Friday, May 2, and if petition for certiorari is filed by that time, until this Court acts upon the petition for a writ of certiorari, and, if the petition be denied, until further order of the Court of Appeals. On May 1, 1952 that court, *en banc*, denied applications to modify its stay.

Notices of appeal were filed by petitioner on

April 30, 1952, in the Court of Appeals for the District of Columbia Circuit (R. 88) and the appeals were docketed the same day. The appeals have not been heard, submitted to, or decided by the Court of Appeals.

REASON FOR GRANTING THE WRIT

1. As a result of the decision below, a situation of the gravest national peril has been recreated. The action taken by the President on April 8 averted a threatened cessation of steel production which, as is readily apparent from the uncontested facts (*supra*, pp. 8-14), endangered every aspect of national security. The district court nullified the protective action taken by the President. Even if continuation of Government possession of respondents' properties resulting from the stay already ordered might, to some extent, permit stabilization of the situation by voluntary or compulsory methods, the uncertainty which necessarily inheres in the present status of these cases overshadows all other considerations and requires an immediate resolution in the public interest of the substantive issues which were sweepingly decided below.

We think it plain that the district judge erred in his disposition of the specific issues considered by him. Of at least equal significance, particularly in view of the impact of his decision on national security, is the fact that long established standards of adjudication of constitutional issues were ig-

nored. The well-settled principle is that the courts will not pass on constitutional questions where the pending matter can be disposed of on non-constitutional grounds. "If two questions are raised, one of non-constitutional and the other of constitutional nature, and a decision of the non-constitutional question would make unnecessary a decision of the constitutional question, the former will be decided. This same rule should guide the lower courts as well as this one. *Alma Motor Co. v. Timken Co.*, 329 U.S. 129, 136-137. See also *Rescue Army v. Municipal Court*, 331 U.S. 549, 568 ff. This rule has particular application in passing upon requests for preliminary injunctions. *Mayo v. Canning Co.*, 309 U.S. 310, 316. Here, on the motions for interlocutory relief, the immediately dispositive issue was not the constitutionality of the Presidential seizure but whether respondents could demonstrate that they would suffer irreparable injury and whether that irreparable injury outweighed the uncontested showing of injury to the public interest. Cf. *Yakus v. United States*, 321 U.S. 414, 440-441; *Harrisonville v. Dickey Clay Co.*, 289 U.S. 334. Reversing proper procedure, the district judge first held that the President's action was unconstitutional. He then utilized this central holding as the springboard<sup>4</sup> from which to hold

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<sup>4</sup> Judge Pine stated (R. 85): "As to the necessity for weighing the respective injuries and balancing the equities, I am not sure that this conventional requirement for the issuance of a preliminary injunction is applicable to a case where the

that respondents would suffer irreparable injury, that they have no adequate legal remedy, and that any injury to the public resulting from "the contemplated strike, with all its awful results, would be less injurious to the public than the injury which would flow from a timorous judicial recognition that there is some basis for this claim to unlimited and unrestrained power,<sup>5</sup> which would be implicit in a failure to grant the injunction."

2. The constitutional issues resolved by the district court are of the utmost general importance. The basic question presented is whether the President possesses constitutional power to take action necessary to meet national emergencies. It is impossible to over-emphasize the need of resolving the problem with reference to the realities of each situation in which it arises. Here, the question cannot be resolved without a reference to the specific action, temporary in nature,<sup>6</sup> which the Presi-

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Court comes to a fixed conclusion, as I do, that defendant's acts are illegal. On such premise, why are the plaintiffs to be deprived of their property and required to suffer further irreparable damage until answers to the complaints are filed and the cases are at issue and are reached for hearing on the merits. Nothing that could be submitted at such trial on the facts would alter the legal conclusion I have reached."

<sup>5</sup> We, of course, do not contend that the President has "unlimited and unrestrained" power. We contend only that in a situation of national emergency the President has authority under the Constitution and subject to constitutional limitations to take action necessary to meet the emergency. See *infra*, pp. 20-21.

<sup>6</sup> The temporary nature of the President's action is clearly shown by his Message to the Congress of April 9, 1952, House Doc. 422, 82d Cong., 2d Sess., 98 Cong. Rec. 3962. He there stated that "the idea of Government operation of the steel

dent took in the light of the factual needs of the crisis with which he was confronted.<sup>7</sup> In this frame of reference, we submit that the Constitution clearly confers the power upon the President to act as he did here.

We do not argue, in any sense, from expediency nor do we urge that the President possesses unlimited powers. On the contrary, we argue that Article II must be construed as a grant of power sufficient to permit emergency action in protection of the national interest. In no sense can this power be seen as dictatorial or without boundaries. We do not urge that the President could take action in non-federal fields or in violation of the specific commands, for example, contained in the First or Fourth Amendments. Here, the action taken by President Truman is specifically subject, among

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mills is thoroughly distasteful to me and I want to see it ended as soon as possible" but, that after canvassing the available alternatives, he had concluded that "Government operation of the steel mills for a temporary period was the least undesirable of the courses of action which lay open." After suggesting various courses of action which Congress might deem desirable, he stated that he "would, of course, be glad to cooperate in developing any legislative proposals which the Congress may wish to consider."

<sup>7</sup> We are prepared to show, should certiorari be granted, that the Labor Management Relations Act, 61 Stat. 136, 29 U.S.C. (Supp. IV), 141 *et seq.*, was not intended to provide an exclusive remedy in areas in which national emergencies may result from labor strife. Here, it suffices to say that the substantive mediation purpose of that statute was fully satisfied by the voluntary acts of the parties to the labor dispute, and that the statute does not provide, nor purport to provide, any mechanism which would have sufficed to meet the national crisis presented on the night of April 8.

other limitations, to that imposed by the Fifth Amendment with regards to just compensation.<sup>8</sup> As stated above, the Court can easily ascertain from the uncontested facts presented in these cases that cessation of steel production gravely imperiled every aspect of national security. Clearly, the threatened stoppage of such production presented an emergency situation. Cf. *Hirabayashi v. United States*, 320 U.S. 81, 95. Equally clearly, the action taken by the President was effective to ward off this damaging blow to the national safety.<sup>9</sup>

If the validity of the President's action in seizing the mills on April 8 is to be passed upon, decision

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<sup>8</sup> Respondents' right to compensation under the Fifth Amendment, as well as the Government's conceded obligation to pay in this case, not only constitutes a limitation upon the executive power here exercised but clarifies the nature of respondents' position. It has been said that the Fifth Amendment necessarily implies the right to take on making just compensation. *Kohl v. United States*, 91 U.S. 367, 372-373. See also *Hurley v. Kincaid*, 285 U.S. 95, 104; *United States v. Causby*, 328 U.S. 256, 267. Whether or not the Fifth Amendment provides a complete answer to respondents' challenge to the President's action, we think it clearly gives them an adequate legal remedy. Moreover, since respondents impliedly concede that the same taking as that here involved could have been constitutionally carried out under statute, their present argument seems to be a quarrel more with the method of taking or the source of the power to take rather than with the taking itself. In this connection, it should be noted that there is no substance to the District Court's pronouncement that eminent domain is exclusively a Congressional matter. *Kohl v. United States*, *supra*, 371-2; *Portsmouth Co. v. United States*, 260 U.S. 327; *United States v. Pewee Coal Co.*, 341 U.S. 114; *United States v. Causby*, *supra*.

<sup>9</sup> Throughout these cases, realistic recognition must be given to the thorough efforts on the part of the United States to interfere as little as possible with the management of respondents' plants and mills. *Supra*, pp. 7-8.

must be rooted in such considerations. And fair recognition must be given, not merely to rhetorical speculation and hypothetical abuse of power, but to the real and much more serious dangers which would arise if the executive branch of the Government be found helpless to meet such national emergencies.

The Constitution must be and on great occasions always has been read as a living document. The development of this country has never received impetus from any fixed and arid application of "immutable" principles as limitations upon the Constitution in the light of changing conditions and national needs.<sup>10</sup> As this Court said in *Yakus v. United States*, 321 U.S. 414, 424, "The Constitution as a continuously operative charter of government does not demand the impossible or the impracticable." Concededly, the federal government is one of limited powers. But these powers must be given realistic construction. Given such construction, we submit there can be no doubt that President Truman possessed ample constitutional power to take protective action, as he did, on April 8.<sup>11</sup>

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<sup>10</sup> Prophecies of enormous danger and of "impending legal and moral chaos" upon failure rigorously to limit the powers of the Federal Government by such "immutable" principles have often been made in connection with attacks upon Congressional enactments of social legislation in the recent past. See, e.g., Mr. Justice McReynolds, dissenting, in the *Gold Clause Cases*, 294 U.S. 240, 361, 381.

<sup>11</sup> The reference in the instant and all similar Executive Orders to the authority vested in the President "by the Constitution and laws of the United States" might well be taken,

To reach the opposite conclusion, the district judge in these cases not merely employed a discredited technique of constitutional interpretation but brushed aside more than 100 years of constitutional precedent.<sup>12</sup> He referred to a showing that prior Presidents throughout history had always exercised executive power necessary to meet emergencies, apparently including such famous occasions as the issuance of the Emancipation Proclamation and the Louisiana Purchase, as "repetitive, unchallenged, illegal acts" of no probative value.<sup>13</sup>

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if a narrow view were needed, to refer to the President's duty to execute all obligations flowing from mutual security statutes, international commitments such as those in Korea, treaty obligations, and other aspects of our complex international relationships, in addition to all aspects of our own defense needs. Cf. Statement by Attorney General Jackson, *The New York Times*, June 10, 1941, p. 16; *In re Debs*, 158 U.S. 564.

<sup>12</sup> A partial list of such precedents includes the seizure by President Lincoln during the Civil War of the railroads and telegraph lines between Washington and Annapolis (War of the Rebellion, Official Records of the Union and Confederate Armies, Series I, v. II, p. 603); the seizure by President Wilson of the properties of the Smith & Wesson Company during World War I (Baker, *Woodrow Wilson, Life & Letters, Armistice* (1939), vol. 8, pp. 401-402); and twelve seizures by President Franklin D. Roosevelt prior to the enactment of the War Labor Disputes Act of 1943, 57 Stat. 163 (Executive Orders 8773, 8868, 8928, 8944, 9108, 9141, 9220, 9225, 9254, 9340, 9341, 9351, 6 F.R. 2777, 4349, 5559, 5947, 7 F.R. 2201, 2961, 6413, 6627, 8333, 8 F.R. 5695, 6323, 8097). The first seizure of President Roosevelt occurred as much as six months prior to Pearl Harbor (Executive Order 8773; see statement of then Attorney General Jackson, *The New York Times*, June 10, 1941, p. 16). See also the opinions of Attorneys General Murphy and Biddle, 39 Op. A. G. 347-348; 40 Op. A. G. 319-320.

<sup>13</sup> Neither the opinion below nor arguments of respondents can be permitted to vary the true nature of the constitutional question here presented by attempting to focus exclusively

We submit that, contrary to the view of the district judge, past practice and usage constitute strong constitutional precedent. *Inland Waterways Corp. v. Young*, 309 U.S. 517, 525; *United States v. Midwest Oil Co.*, 236 U.S. 459, 473.<sup>14</sup>

The force of this uniform constitutional usage, embodied in the actions of past Presidents when confronted by emergency situations, is given added weight by occasions on which Congress has legislated in ratification of such executive action already taken. In so doing, responsible spokesmen in both Houses of Congress have emphasized that they acted, not in derogation of, but in confirmation of the exercise of presidential power. Thus, Congress, in considering the legislation which became the War Labor Disputes Act (57 Stat. 163, 50 U.S.C. App. 1501-1511), confirmed and ratified the executive seizure of the bituminous coal mines by

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on the seizure of industrial plants in instances of labor strife. As shown above, fn. 12, there are numerous past instances of such seizures and, even taking the issue on that narrow basis, there is no lack of constitutional precedent for the seizure here involved. However, the issue should not be thus narrowed. The interest represented by this petition is the public interest in the uninterrupted flow of critical steel production, not the interest of either partisan in a labor dispute.

<sup>14</sup> Quoting a statement as to the limited view of the executive function set forth by William Howard Taft as historian, the district judge states that he will "stand on that as a correct statement of the law" (R. 82). In this connection, it is interesting to note that the executive action approved by this Court in the *Midwest Oil* case, *supra*, was taken, in the absence of statute, by Mr. Taft as President. Mr. Taft's views, as Chief Justice, are set forth in *Myers v. United States*, 272 U.S. 52, 128, 151-152, a standard expression of the broad view of executive power.

Franklin D. Roosevelt in May, 1943, and, earlier, his executive seizure of industrial plants, such as the North American Aviation plant, in which production was threatened by labor strife. 87 Cong. Rec. 5895, 5901, 5910, 5972, 5974, 5975; 89 Cong. Rec. 3807, 3885, 3886, 3887, 3896, 3898, 3992, 3993.<sup>15</sup> Similarly, the 1862 Congress which passed legislation confirming the executive power, already exercised by President Lincoln by virtue of the Constitution, to take over railroad and telegraph facilities, indicated plainly the legislative understanding that absent such legislation the President possessed the necessary constitutional power to take such action. Cong. Globe, 37th Cong., 2d Sess., 509, 510, 512, 516, 520, 548.

The district judge appears to have reached his final position with regard to the constitutional issue on the ground that there was no specific

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<sup>15</sup> For example, Senator Connally stated (89 Cong. Rec. 3807):

There is no explicit and definite provision in any statutory enactment authorizing the taking over of plants on account of labor disturbances. The authority heretofore exercised has been the general power of the President as Commander in Chief of the Army and Navy, and such subsidiary powers as were derived from the War Powers Act. The Second War Powers Act carries a clause with regard to condemnation, under which the Government may take over temporarily any plant or property, but even that does not carry the specific authority. It was my thought that, regardless of the legal technicalities involved, it would be a wholesome thing for the Congress of the United States specifically, and in direct language, to authorize the President to do these things, and to confirm and ratify, if necessary, what the President has done and let the country know that the Congress is squarely behind the President.

judicial precedent at hand. Since the judge had viewed the Government as contending for an unlimited executive power, it is difficult to understand what types of judicial precedent he sought. Obviously, there are no cases which hold as a broad or abstract proposition that the President possesses unlimited powers or powers ranging beyond the Constitution, nor do we advance any such contention. If, however, heed be paid to the much more narrow nature of the Government's contention in these cases, there appears to be ample judicial precedent which sustains indirectly or by necessary inference the constitutional power of the President to take specific action to meet the needs of specific emergency situations. *Cf. United States v. Pewee Coal Co.*, 341 U.S. 114; *United States v. Russell*, 13 Wall. 623; *United States v. Pacific Railroad*, 120 U.S. 227; *Alexander v. United States*, 39 C. Cls. 383; *Dakota Coal Co. v. Fraser*, 283 Fed. 415 (D. N.D.), vacated on appeal as moot, 267 Fed. 130 (C.A. 8).<sup>16</sup> Concededly, as we have said above, none of these cases contains an abstract declaration as to presidential power. It may be suggested that this absence of an explicit broad

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<sup>16</sup> The validity of the action challenged here has also been recognized in dicta of several lower federal courts. See *Roxford Knitting Co. v. Moore & Tierney*, 265 Fed. 177, 179 (C.A. 2); *Employers Group of Motor Freight Carriers, Inc., et al. v. National War Labor Board*, 143 F. 2d 145, 151 (C.A.D.C.), certiorari denied, 323 U.S. 735; *Ken-Rad Tube and Lamp Corp. v. Badeau*, 55 F. Supp. 193 (W.D. Ky.); *Alpirn v. Huffman*, 49 F. Supp. 337, 340 (D. Neb.).

ruling such as that required by the district judge can be explained by reference to the fundamental principle of case adjudication, namely, that decision, particularly on questions of grave importance, should never run beyond the needs of the case. *Federation of Labor v. McAdory*, 325 U.S. 450, 461. Again, the absence of explicit judicial declaration as to the scope of presidential power may be explained by the reluctance of courts in the past to reach into the delicate field of separation of powers which such declaration would necessarily entail. Cf. *Mississippi v. Johnson*, 4 Wall. 475; *State ex rel. Burnquist v. District Court*, 141 Minn. 1; *Dakota Coal Co. v. Fraser*, 283 Fed. 415 (D. N.D.), vacated on appeal as moot, 267 Fed. 130 (C.A. 8); *Holzendorf v. Hay*, 20 App. D.C. 576, writ of error dismissed, 194 U.S. 373; see also *Trial of Thomas Cooper*, Wharton's *State Trials of the United States*, pp. 659, 662.

The attitude of the district judge in this case contrasts markedly with that shown by District Judge Amidon, when called upon to issue an injunction against the Adjutant General of North Dakota in a situation comparable to that presented in these cases. Judge Amidon there said (*Dakota Coal Co. v. Fraser*, 283 Fed. at 418):

I am asked to issue a writ of injunction which will necessarily say that the acts of the Governor have been illegal and unconstitutional. If I do that, I am not simply deal-

ing with his acts; I am defining the powers of the Chief Executive of an American commonwealth to meet a crisis which threatens loss of life. I am not willing to strip the Governor of his power to protect society. I do not believe it comports with good order, with wise government, with a sane and ordered life, to thus limit the agencies of the state to protect the rights of the public as against the exaggerated assertions of private rights.

3. We submit that immediate review by this Court of the judgment below is necessary. This Court has stated that the fact "that the public interest will be promoted by prompt settlement in this court of the questions involved may constitute a sufficient reason" for the issuance of a writ of certiorari before judgment in the Court of Appeals. Rule 39.<sup>17</sup> This case presents a situation of greater exigency than many others in which the Court has exercised its discretionary authority to issue a writ of certiorari prior to decision by the Court of Appeals. The circumstances recited above amply demonstrate the crucial importance to the national security and to the defense of the North Atlantic community and the conduct of

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<sup>17</sup> This Court has found such considerations to exist, and has granted the writ before judgment, in a number of cases. *E.g., Norman v. Baltimore & Ohio R. Co.*, 294 U.S. 240; *Railroad Retirement Board v. Alton Railroad Co.*, 295 U.S. 330; *Rickert Rice Mills, Inc. v. Fontenot*, 297 U.S. 110; *Carter v. Carter Coal Co.*, 298 U.S. 238; *Hood & Sons, Inc. v. United States*, 307 U.S. 588; *Ex parte Quirin*, 317 U.S. 1; *United States v. Mine Workers*, 330 U.S. 258.

hostilities in Korea, of maintaining uninterrupted production of steel. The decision of the district court would strike down the power of the President to take action necessary to maintain such production. More broadly, it casts doubt on the powers of the President under the Constitution—powers exercised on numerous occasions by past Presidents—to take possession, in time of strife and siege, of property outside the actual scene of military operations whenever such a temporary emergency taking is necessary to protect vital national interests. The decision of the district court, if not reviewed forthwith, will stand as a rigid and dogmatic barrier not only to the efforts of the President to maintain continued production of steel, but to any kind of executive action which may become necessary to meet other and unpredictable emergencies which may hereafter crowd upon the United States. That decision can and should be set aside on any of the grounds urged above.

Even if, however, we consider only the immediate impact of the decision, we submit that the need for review and reversal by this Court is also urgent. The President's executive order had successfully averted an imminent strike. The steel plants continued in production until Judge Pine's decision was filed. Fifteen minutes thereafter a strike was called and by midnight of April 29, 1952, approximately 650,000 workers in plants pro-

ducing 95% of the country's steel had walked out and production of steel had substantially come to a stop. The evident basis of the strike was the view, embodied in Judge Pine's opinion, that the seizure is illegal and that the steel workers are no longer employees of the United States. A reversal of that decision, and a vacation of the injunctions issued by the district court would return the matter to the status in which it was prior to Judge Pine's decision, and the steel workers would again clearly be under a legal responsibility as Government employees not to strike against the Government. See *United States v. Mine Workers*, 330 U.S. 258. Meanwhile the President and the Congress would be free to take such further action as might appear appropriate to remove any further threat of cessation of steel production.

The fact that the district court's order has been temporarily stayed does not remove the urgency. A stay is necessary to preserve the situation pending determination by this Court, and for that reason we have appended to this petition a request that if certiorari is granted the judgments of the district court be further stayed until decision by this Court. But a stay can of necessity be only a stop-gap. As long as the ultimate disposition of these cases is in doubt, the respective rights and obligations of all parties affected will be uncertain and the ability of the United States to take steps necessary to protect the nation against any further

cession or impairment of steel production will be a matter of potential controversy.

Respectfully submitted,

PHILIP B. PERLMAN,

*Solicitor General.*

MAY 2, 1952.

**APPLICATION FOR CONTINUATION OF STAY**

By order of the Court of Appeals, dated April 30, 1952, made after extensive argument on both sides, that court directed

that the orders of the District Court granting the preliminary injunctions in these cases be, and they are hereby, stayed until 4:30 o'clock P.M., Daylight Saving Time on Friday, May 2, 1952, and if petitions for writs of certiorari in these cases have then been filed in the Supreme Court, then until the Supreme Court acts upon the petitions for writs of certiorari; and, if the petitions for writs of certiorari be denied, then until the further order of this Court.

In the event that certiorari is granted, the stay granted by the Court of Appeals will cease, evidently because that court felt that once certiorari had been granted it was for this Court to provide for any stay pending final decision by this court. The considerations which, in our view, render nec-

essary the continuance of the stay granted by the Court of Appeals, should certiorari be granted by this Court, are essentially the same as those which we have urged in the foregoing petition as grounds for immediate action by this Court—namely, that while the orders are stayed the matter will remain in the status in which it was before Judge Pine's opinion was rendered, and the steel workers will continue to be under a legal responsibility as Government employees not to strike against the government.

Accordingly, the Solicitor General, on behalf of Charles Sawyer, Secretary of Commerce, prays that in the event the writ of certiorari is granted, this Court simultaneously enter an order continuing, until final disposition of the cause by this Court, the stay heretofore granted by the Court of Appeals.

Respectfully submitted.

PHILIP B. PERLMAN,  
*Solicitor General.*

MAY 2, 1952

**APPENDIX****EXECUTIVE ORDER No. 10340****DIRECTING THE SECRETARY OF COMMERCE TO TAKE  
POSSESSION OF AND OPERATE THE PLANTS AND FA-  
CILITIES OF CERTAIN STEEL COMPANIES**

WHEREAS on December 16, 1950, I proclaimed the existence of a national emergency which requires that the military, naval, air, and civilian defenses of this country be strengthened as speedily as possible to the end that we may be able to repel any and all threats against our national security and to fulfill our responsibilities in the efforts being made throughout the United Nations and otherwise to bring about a lasting peace; and

WHEREAS American fighting men and fighting men of other nations of the United Nations are now engaged in deadly combat with the forces of aggression in Korea, and forces of the United States are stationed elsewhere overseas for the purpose of participating in the defense of the Atlantic Community against aggression; and

WHEREAS the weapons and other materials needed by our armed forces and by those joined with us in the defense of the free world are produced to a great extent in this country, and steel is an indispensable component of substantially all of such weapons and materials; and

WHEREAS steel is likewise indispensable to the carrying out of programs of the Atomic Energy Commission of vital importance to our defense efforts; and

WHEREAS a continuing and uninterrupted supply of steel is also indispensable to the maintenance

of the economy of the United States, upon which our military strength depends; and

WHEREAS a controversy has arisen between certain companies in the United States producing and fabricating steel and the elements thereof and certain of their workers represented by the United Steel Workers of America, CIO, regarding terms and conditions of employment; and

WHEREAS the controversy has not been settled through the processes of collective bargaining or through the efforts of the Government, including those of the Wage Stabilization Board, to which the controversy was referred on December 22, 1951, pursuant to Executive Order No. 10233, and a strike has been called for 12:01 A.M., April 9, 1952; and

WHEREAS a work stoppage would immediately jeopardize and imperil our national defense and the defense of those joined with us in resisting aggression, and would add to the continuing danger of our soldiers, sailors, and airmen engaged in combat in the field; and

WHEREAS in order to assure the continued availability of steel and steel products during the existing emergency, it is necessary that the United States take possession of and operate the plants, facilities, and other property of the said companies as hereinafter provided:

Now, THEREFORE, by virtue of the authority vested in me by the Constitution and laws of the United States, and as President of the United States and Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

1. The Secretary of Commerce is hereby authorized and directed to take possession of all or such of the plants, facilities, and other property of the companies named in the list attached hereto, or any part thereof, as he may deem necessary in the interests of national defense; and to operate or to arrange for the operation thereof and to do all things necessary for, or incidental to, such operation.
2. In carrying out this order the Secretary of Commerce may act through or with the aid of such public or private instrumentalities or persons as he may designate; and all Federal agencies shall cooperate with the Secretary of Commerce to the fullest extent possible in carrying out the purposes of this order.
3. The Secretary of Commerce shall determine and prescribe terms and conditions of employment under which the plants, facilities, and other properties possession of which is taken pursuant to this order shall be operated. The Secretary of Commerce shall recognize the rights of workers to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining, adjustment of grievances, or other mutual aid or protection, provided that such activities do not interfere with the operation of such plants, facilities, and other properties.
4. Except so far as the Secretary of Commerce shall otherwise provide from time to time, the managements of the plants, facilities, and other properties possession of which is taken pursuant to this order shall continue their functions, including the collection and disbursement of funds in the

usual and ordinary course of business in the names of their respective companies and by means of any instrumentalities used by such companies.

5. Except so far as the Secretary of Commerce may otherwise direct, existing rights and obligations of such companies shall remain in full force and effect, and there may be made, in due course, payments of dividends on stock, and of principal, interest, sinking funds, and all other distributions upon bonds, debentures, and other obligations, and expenditures may be made for other ordinary corporate or business purposes.

6. Whenever in the judgment of the Secretary of Commerce further possession and operation by him of any plant, facility, or other property is no longer necessary or expedient in the interest of national defense, and the Secretary has reason to believe that effective future operation is assured, he shall return the possession and operation of such plant, facility, or other property to the company in possession and control thereof at the time possession was taken under this order.

7. The Secretary of Commerce is authorized to prescribe and issue such regulations and orders not inconsistent herewith as he may deem necessary or desirable for carrying out the purposes of this order; and he may delegate and authorize subdelegation of such of his functions under this order as he may deem desirable.

HARRY S. TRUMAN,  
*President of the United States.*

THE WHITE HOUSE,  
April 8, 1952:

## LIST

- American Bridge Company,  
525 William Penn Place,  
Pittsburgh, Pennsylvania.
- American Steel & Wire Company of New Jersey,  
Rockefeller Building,  
Cleveland, Ohio.
- Columbia Steel Company,  
Russ Building,  
San Francisco, California.
- Consolidated Western Steel Corporation,  
Los Angeles, California.
- Geneva Steel Company,  
Salt Lake City, Utah.
- Gerrard Steel Strapping Company,  
2915 W. 47th Street,  
Chicago 32, Illinois.
- National Tube Company,  
525 William Penn Place,  
Pittsburgh, Pennsylvania.
- Oil Well Supply Company,  
2001 North Lamar Street,  
Dallas, Texas.
- Tennessee Coal, Iron & Railroad Company,  
Fairfield, Alabama.
- United States Steel Company,  
525 William Penn Place,  
Pittsburgh, Pennsylvania.
- United States Steel Corporation,  
71 Broadway,  
New York 6, New York.
- United States Steel Products Company,  
30 Rockefeller Plaza.  
New York, New York.

- United States Steel Supply Company,  
208 South La Salle Street,  
Chicago, Illinois.
- Virginia Bridge Company,  
Roanoke, Virginia.
- Alan Wood Steel Company and Subsidiaries,  
Conshohocken, Pennsylvania.
- American Chain and Cable Company, In-  
corporated,  
929 Connecticut Avenue,  
Bridgeport 2, Connecticut.
- American Chain and Cable Company,  
Monessen, Pennsylvania.
- Armco Steel Corporation,  
703 Curtis Street,  
Middletown, Ohio.
- Armco Drainage & Metal Products, Incorporated,  
703 Curtis Street,  
Middletown, Ohio.
- Atlantic Steel Company,  
P. O. Box 1714,  
Atlanta, Georgia.
- Babcock and Wilcox Tube Company,  
Beaver Falls, Pennsylvania.
- Borg-Warner Corporation,  
310 S. Michigan Avenue,  
Chicago 4, Illinois.
- Continental Copper and Steel Industries, In-  
corporated,  
Braeburn, Pennsylvania.
- Continental Steel Corporation,  
West Markland Avenue,  
Kokomo, Indiana.

Copperweld Steel Company,  
Glassport, Pennsylvania.

Detroit Steel Corporation,  
1025 South Oakwood Avenue,  
Detroit 9, Michigan.

Eastern Stainless Steel Corporation,  
Baltimore 3, Maryland.

Firth Sterling Steel and Carbide Corporation,  
Demmler Road,  
McKeesport, Pennsylvania.

Follansbee Steel Corporation,  
3rd and Liberty Avenue,  
Pittsburgh 22, Pennsylvania.

Granite City Steel Company,  
20th Street and Madison Avenue,  
Granite City, Illinois.

Great Lakes Steel Corporation,  
Tecumseh Road,  
Ecorse, Detroit 18, Michigan.

Hanna Furnace Corporation,  
Ecorse, Detroit 18, Michigan.

Harrisburg Steel Corporation,  
10th and Herr Streets,  
Harrisburg, Pennsylvania.

Boiardi Steel Company,  
Milton, Pennsylvania.

Heppenstall Company,  
4620 Hatfield Street,  
Pittsburg, Pennsylvania.

Inland Steel Company,  
38 S. Dearborn Street,  
Chicago 3, Illinois.

Joseph T. Ryerson & Son, Incorporated,  
2558 W. 16th Street,  
Chicago 80, Illinois.

- Interlake Iron Corporation,  
1900 Union Commerce Building,  
Cleveland 14, Ohio.
- Pacific States Steel Corporation,  
Lathan Square Building,  
Oakland 12, California.
- Pittsburgh Coke & Chemical Company,  
1905 Grant Building,  
Pittsburgh 19, Pennsylvania.
- H. K. Porter Company, Incorporated,  
1932 Oliver Building,  
Pittsburgh 22, Pennsylvania.
- Buffalo Steel Division,  
H. K. Porter Company, Incorporated,  
Fillmore Avenue,  
Tonawanda, New York.
- Joslyn Manufacturing & Supply Company,  
20 N. Wacker Drive,  
Chicago 6, Illinois.
- Joslyn Pacific Company,  
5100 District Boulevard,  
Los Angeles 11, California.
- Latrobe Electric Steel Company,  
Latrobe, Pennsylvania.
- E. J. Lavino & Company,  
1528 Walnut Street,  
Philadelphia, Pennsylvania.
- Lukens Steel Company,  
S. First Avenue,  
Coatesville, Pennsylvania.
- McLouth Steel Corporation,  
300 S. Livernois,  
Detroit 17, Michigan.

- Newport Steel Corporation,  
Ninth and Lowell Streets,  
Newport, Kentucky.
- Northwest Steel Rolling Mills, Incorporated,  
4315 9th Street, N. W.,  
Seattle, Washington.
- Northwestern Steel & Wire Company,  
Sterling, Illinois.
- Reeves Steel Manufacturing Company,  
137 Iron Avenue,  
Dover, Ohio.
- John A. Roebling's Sons Company,  
640 South Broad Street,  
Trenton, New Jersey.
- Rotary Electric Steel Company,  
Box 90,  
Detroit 20, Michigan.
- Sheffield Steel Corporation,  
Sheffield Station,  
Kansas City 3, Missouri.
- Shenango-Penn Mold Company,  
812 Oliver Building,  
Pittsburgh 30, Pennsylvania.
- Shenango Furnace Company,  
812 Oliver Building,  
Pittsburgh 30, Pennsylvania.
- Stanley Works,  
195 Lake Street,  
New Britain, Connecticut.
- Universal Cyclops Steel Corporation,  
Station Street,  
Bridgeville, Pennsylvania.
- Vanadium-Alloys Steel Company,  
Latrobe, Pennsylvania.

Vulcan Crucible Steel Company,  
1 Main Street,  
Aliquippa, Pennsylvania.

Wheeling Steel Corporation,  
1134 Market Street,  
Wheeling, West Virginia.

Woodward Iron Company,  
Woodward, Alabama.

Allegheny Ludlum Steel Corporation,  
Oliver Building,  
Pittsburgh 22, Pennsylvania.

Bethlehem Steel Company,  
701 East 3rd Street,  
Bethlehem, Pennsylvania.

Bethlehem Pacific Coast Steel Corporation,  
20th & Illinois Streets,  
San Francisco, California.

Bethlehem Supply Company of California,  
Los Angeles, California.

Bethlehem Supply Company,  
Tulsa, Oklahoma.

Buffalo Tank Corporation,  
Lackawanna, New York,  
Charlotte, North Carolina,  
Dunellen, New Jersey.

Dundalk Company,  
Sparrows Point, Maryland.

A. M. Byers Company,  
717 Liberty Avenue,  
Pittsburgh 30, Pennsylvania.

Colorado Fuel & Iron Corporation,  
575 Madison Avenue,  
New York 22, New York.

Claymont Steel Corporation,  
Claymont, Delaware.

Crucible Steel Company,  
Oliver Building,  
Pittsburgh 22, Pennsylvania.

Jones & Laughlin Steel Corporation,  
Third Avenue and Ross Street,  
Pittsburgh 30, Pennsylvania.

J. & L. Steel Barrel Company,  
3711 Sepviva Street,  
Philadelphia 37, Pennsylvania.

National Supply Company,  
1400 Grant Building,  
Pittsburgh 30, Pennsylvania.

Pittsburgh Steel Company,  
1600 Grant Building,  
Pittsburgh 19, Pennsylvania.

Johnson Steel & Wire Company, Incorporated,  
53 Wiser Avenue,  
Worcester 1, Massachusetts.

Republic Steel Corporation,  
Republic Building,  
Cleveland 1, Ohio.

Truscon Steel Company,  
1315 Albert Street,  
Youngstown, Ohio.

Rheem Manufacturing Company,  
Russ Building,  
San Francisco 4, California.

Sharon Steel Corporation,  
S. Irvin Avenue,  
Sharon, Pennsylvania.

Valley Mould & Iron Corporation,  
Hubbard, Ohio.

Youngstown Sheet & Tube Company,  
44 Central Square,  
Youngstown 1, Ohio.

Emsco Derrick & Equipment Company,  
6811 S. Alameda Street,  
Los Angeles 1, California.

## TELEGRAM

President, \_\_\_\_\_ Steel Company

The President of the United States by virtue of the authority vested in him by the Constitution and laws of the United States and as Commander in Chief of the armed forces of the United States has directed me, as Secretary of Commerce, by an Executive Order dated April 8, 1952, to take possession of all properties of your company which I deem necessary in the interests of national defense. I deem it necessary in such interests to take possession of, and hereby do take possession effective twelve o'clock midnight, Eastern Standard Time, April 8, 1952, of all properties of your company exclusive of railroads whose employees are subject to the Railway Labor Act and any and all coal and metal mines. You are being called upon as a loyal and patriotic citizen to serve as and are appointed Operating Manager for the United States of the properties of your company, possession of which is hereby taken, to continue operation of them for the United States. Please make acknowledgment of this call to serve by return wire in substantially the following form:

“I acknowledge receipt of appointment as Operating Manager on behalf of the United States of properties of my company.”

You are authorized and directed to continue operations for the United States. All officers and

employees are directed forthwith to perform their usual functions and duties in connection with plant and office operation, and sale and distribution of products. Fly the flag of the United States and post notice of taking possession by the United States at all premises affected. In respect of all production and distribution, proceed in accordance with previously prevailing practices. Set up books in order to keep separate the period of Government operation. Advise all employees of the program. Be governed by applicable State and Federal laws and orders, regulations and directives which have been or may be issued thereunder. In respect of any properties which you feel are not, or will not be, involved in controversies referred to in the Executive order of the President, you may submit a recommendation that operation of such properties on behalf of the Government be terminated. Further instructions will follow.

Am mailing immediately copies of Executive order of the President, my Order No. 1 under that Order, and notice of taking possession.

If you are not acting as chief executive officer of the company, consider this telegram as directed to the officer who is so acting.

CHARLES SAWYER,  
*Secretary of Commerce.*

UNITED STATES DEPARTMENT OF COMMERCE

ORDER No. 1

April 8, 1952

By virtue of the authority vested in me by the President of the United States under an Executive Order dated April 8, 1952, "Directing the Secretary of Commerce to take possession of and operate

the plants and facilities of certain steel companies," I deem it necessary in the interests of national defense that possession be taken of the plants, facilities, and other properties of the companies named in the list specified in Appendix A attached hereto. I therefore take possession effective at twelve o'clock midnight, eastern standard time, April 8, 1952, of such plants, facilities and other properties for operation by the United States in order to assure the continued availability of steel and steel products during the existing national emergency proclaimed on December 16, 1950. The term "plants, facilities and other properties" as used herein shall include but not be limited to any and all real and personal property, franchises, rights, funds and other assets used or useful in connection with the operation of such plants, facilities and other properties and in the distribution and sale of the products thereof, but shall exclude in every instance railroads whose employees are subject to the Railway Labor Act and any and all coal and metal mines.

The president of each company named in the list specified in Appendix A attached hereto (or the chief executive officer of such company) is hereby designated Operating Manager for the United States for such company until further notice, and is authorized and directed, subject to such supervision as I may prescribe, in accordance with such regulations and orders as are promulgated by me or pursuant to authority delegated by me, to operate the plants, facilities and other properties of

such company and to do all things necessary and appropriate for the operation thereof and for the distribution and sale of the products thereof.

The managements, officers and employees, of the plants, facilities and other properties, possession of which is taken pursuant to said Executive Order, are serving the Government of the United States and shall continue their functions, including the collection and disbursements of funds in the usual and ordinary course of business, in the names of their respective companies and by means of any instrumentalities used by such companies.

Existing rights and obligations of such companies shall remain in full force and effect, and there may be made in due course payments of dividends on stock, and of principal, interest, sinking funds, and all other distributions, upon bonds, debentures and other obligations, and expenditures may be made for other ordinary corporate or business purposes.

No person shall interfere with the operation of the plants, facilities and other properties by the United States Government or the sale or distribution of the products thereof in accordance with this order.

The Operating Manager for the United States shall forthwith fly the flag of the United States upon all premises, and post in a conspicuous place upon the plants, facilities and other properties a notice of taking of possession by the United States.

Possession and operation of any plant, facility, or other property may be terminated by the Sec-

retary of Commerce at such time as he may find that such possession and operation are no longer required in the interests of national defense.

CHARLES SAWYER,  
*Secretary of Commerce.*

#### APPENDIX A

Mr. F. K. McDanel, President,  
AMERICAN BRIDGE COMPANY,  
525 Wm. Penn Place,  
Pittsburgh, Pa.

Mr. H. B. Jordan, President  
AMERICAN STEEL & WIRE Co. OF N. J.  
Rockefeller Building  
Cleveland 13, Ohio

Mr. Alden G. Roach, President  
COLUMBIA STEEL COMPANY  
Russ Building  
San Francisco 6, Calif.

Mr. Joseph H. Carter, President  
PITTSBURGH STEEL COMPANY  
1600 Grant Building  
Pittsburgh 19, Pa.

Mr. Richard S. Rheem, President,  
RHEEM MANUFACTURING COMPANY,  
570 Lexington Avenue,  
New York 22, New York.

Mr. Henry A. Roemer, Jr., President,  
SHARON STEEL CORPORATION,  
Sharon, Pa.

Mr. Wm. Haig Ramage, President,  
VALLEY MOULD & IRON CORPORATION,  
Hubbard, Ohio.

Mr. J. Lester Mauthe, President,  
YOUNGSTOWN SHEET & TUBE COMPANY,  
Stambaugh Building,  
Youngstown 1, Ohio.

Mr. C. L. Austin, President,  
JONES & LAUGHLIN STEEL CORPORATION,  
Third Avenue and Ross Street,  
Pittsburgh 30, Pa.

Mr. A. E. Walker, President,  
NATIONAL SUPPLY COMPANY,  
1400 Grant Building,  
Pittsburgh 30, Pa.

Mr. A. F. Franz, President,  
COLORADO FUEL & IRON CORPORATION,  
575 Madison Avenue,  
New York 22, New York.

Mr. W. H. Colvin, Jr., President,  
CRUCIBLE STEEL COMPANY,  
405 Lexington Avenue,  
New York 17, New York.

Mr. Arthur B. Homer, President,  
BETHLEHEM STEEL COMPANY,  
701 East 3rd Street,  
Bethlehem, Pa.

Mr. Alden G. Roach, President,  
CONSOLIDATED WESTERN STEEL CORPORATION.  
P. O. Box 2105.  
Terminal Annex,  
Los Angeles 54, California.

Mr. Walther Mathesius, President,  
GENEVA STEEL COMPANY,  
P. O. Box 269,  
Salt Lake City 8, Utah.

- Mr. Henry G. Walter, President,  
GERRARD STEEL STRAPPING COMPANY,  
2915 West 47th Street,  
Chicago 32, Illinois.
- Mr. J. E. Goble, President,  
NATIONAL TUBE Co.,  
Frick Building,  
Pittsburgh 19, Pa.
- Mr. F. F. Murray, President,  
OIL WELL SUPPLY COMPANY,  
2001 North Lamar Street,  
Dallas, Texas.
- Mr. A. V. Wiebel, President,  
TENNESSEE COAL, IRON & RAILROAD Co.,  
Brown-Marx Building,  
Birmingham, Alabama.
- Mr. Benjamin F. Fairless, President,  
UNITED STATES STEEL COMPANY,  
525 Wm. Penn Place,  
Pittsburgh, Pa.
- Mr. John Hanerwaas, President,  
UNITED STATES STEEL PRODUCTS Co.,  
30 Rockefeller Plaza,  
New York, New York.
- Mr. L. B. Worthington, President,  
UNITED STATES STEEL SUPPLY Co.,  
208 South LaSalle Street,  
Chicago, Illinois.
- Mr. F. K. McDanel, President,  
VIRGINIA BRIDGE COMPANY,  
Roanoke, Virginia.
- Mr. J. T. Whiting, President,  
ALAN WOOD STEEL COMPANY AND SUBSIDIARIES,  
Conshohocken, Pa.

- Mr. Cyrus N. Johns, President,  
AMERICAN CHAIN AND CABLE COMPANY,  
929 Connecticut Avenue,  
Bridgeport 2, Conn.
- Mr. Weber W. Sebald, President,  
ARMCO STEEL CORPORATION,  
703 Curtis Street,  
Middletown, Ohio.
- Mr. R. S. Lynch, President,  
ATLANTIC STEEL COMPANY,  
P. O. Box 1714,  
Atlanta, Georgia.
- Mr. Luke E. Sawyer, President,  
BABCOCK AND WILCOX TUBE COMPANY,  
Beaver Falls, Pa.
- Mr. Roy C. Ingersoll, President,  
BORG-WARNER CORP.,  
301 South Michigan Avenue,  
Chicago 4, Illinois.
- Mr. Ernest G. Jarvis, President,  
CONTINENTAL COPPER AND STEEL INDUSTRIES, INC.,  
345 Madison Avenue,  
New York 17, New York.
- Mr. D. B. McLouth, President,  
MCLOUTH STEEL CORP.,  
300 S. Livernois,  
Detroit 17, Michigan.
- Mr. Ralph K. Clifford, President,  
CONTINENTAL STEEL CORPORATION,  
1109 South Main Street,  
Kokomo, Indiana.
- Mr. F. R. S. Kaplan, President,  
COPPERWELD STEEL COMPANY,  
39 Teifeld Street,  
Glassport, Pa.

Mr. John M. Curley, President,  
EASTERN STAINLESS STEEL CORP.,  
122 Rolling Mill Avenue,  
Baltimore 3, Md.

Mr. K. D. Mann, President,  
FIRTH STERLING STEEL AND CARBIDE CORP.,  
3115 Forbes Street,  
Pittsburgh 13, Pa.

Mr. Marcus A. Follansbee, President,  
FOLLANSBEE STEEL CORP.,  
3rd and Liberty Ave.,  
Pittsburgh 22, Pa.

Mr. John N. Marshall, President,  
GRANITE CITY STEEL COMPANY,  
Hamilton & Randolph Streets,  
Granite City, Illinois.

Mr. George R. Fink, President,  
GREAT LAKES STEEL CORP.,  
Tecumseh Road at Fink,  
Ecorse, Detroit 18, Michigan.

Mr. M. J. Zivian, President,  
DETROIT STEEL CORP.,  
1025 South Oakwood Ave.,  
Detroit, Michigan.

Mr. J. C. Cairns, President,  
STANLEY WORKS,  
195 Lake Street,  
New Britain, Conn.

Mr. George R. Fink, President,  
HANNNA FURNACE CORPORATION,  
Walbridge Building,  
Buffalo, New York.

Mr. Hector Boiardi, President,  
BOIARDI STEEL COMPANY,

- 400 Lower Market Street,  
Milton, Pa.
- Mr. Robert B. Heppenstall, President,  
HEPPENSTALL COMPANY,  
4624 Hatfield Street,  
Pittsburgh, Pa.
- Mr. Clarence B. Randall, President,  
INLAND STEEL COMPANY,  
38 S. Dearborn Street,  
Chicago 3, Illinois.
- Mr. C. L. Hardy, President,  
JOSEPH T. RYERSON & SON, INC.,  
Box 8000-A,  
Chicago 80, Illinois.
- Mr. E. L. Clair, President,  
INTERLAKE IRON CORPORATION,  
1910 Union Commerce Building,  
Cleveland 14, Ohio.
- Mr. Bentley S. Handwork, President,  
JOSLYN MANUFACTURING & SUPPLY COMPANY,  
20 N. Wacker Drive,  
Chicago, Illinois.
- Mr. M. L. Joslyn, President,  
JOSLYN PACIFIC COMPANY,  
5100 District Blvd.,  
Los Angeles 11, Calif.
- Mr. W. W. Saxman, Jr., President,  
LATROBE ELECTRIC STEEL COMPANY,  
1944 Haller Street,  
Latrobe, Pa.
- Mr. E. M. Lavino, President,  
E. J. LAVINO & COMPANY,  
1528 Walnut Street,  
Philadelphia, Pa.

Mr. Charles Lukens Huston, Jr., President,  
LUKENS STEEL COMPANY,  
1949 Gillen Street,  
Coatesville, Pa.

Mr. Frank S. Gibson, Jr., President,  
NEWPORT STEEL CORP.,  
1501 Beard Avenue,  
Detroit, Mich.

Mr. H. L. Goetz, President,  
NORTHWEST STEEL ROLLING MILLS, INC.,  
4315 9th N. W.,  
Seattle, Washington.

Mr. Paul W. Dillon, President,  
NORTHWESTERN STEEL & WIRE COMPANY,  
1927 Griswold Street,  
Sterling, Ill.

Mr. Jos. Eastwood, Jr., President,  
PACIFIC STATES STEEL CORPORATION,  
Nathan Square Building,  
Oakland 12, California.

Mr. J. H. Hillman, Jr., Chairman of Board,  
PITTSBURGH COKE & CHEMICAL Co.,  
1970 Grant Building,  
Pittsburgh 19, Pa.

Mr. T. M. Evans, President,  
H. K. PORTER COMPANY, INC.,  
1932 Oliver Bldg.,  
Pittsburgh 22, Pa.

Mr. A. J. Krantz, President,  
REEVES STEEL MFG. Co.,  
137 Iron Avenue,  
Dover, Ohio.

- Mr. Charles R. Tyson, President,  
JOHN A. ROEBLING'S SONS COMPANY,  
640 South Broad Street,  
Trenton, New Jersey.
- Mr. Nathaniel D. Devlin, President,  
ROTARY ELECTRIC STEEL COMPANY,  
Box 90,  
Detroit 20, Michigan.
- Mr. Ralph L. Gray, President,  
SHEFFIELD STEEL CORPORATION,  
Sheffield Station,  
Kansas City 3, Missouri.
- Mr. Wm. P. Snyder III, President,  
SHENANGO PENN MOLD COMPANY,  
812 Oliver Building,  
Pittsburgh, Pa.
- Mr. E. H. Taylor, President,  
TAYLOR FORGE & PIPE WORKS,  
P. O. Box 485,  
Chicago 90, Illinois.
- Mr. Edward L. Stockdale, President,  
UNIVERSAL CYCLOPS STEEL CORPORATION,  
Bridgeville, Pa.
- Mr. R. C. McKenna, President,  
VANADIUM ALLOYS STEEL COMPANY,  
Latrobe, Pa.
- Mr. Stephen B. Minton, President,  
VULCAN CRUCIBLE STEEL COMPANY,  
1 Main Street,  
Aliquippa, Pa.
- Mr. John L. Neudoerfer, President,  
WHEELING STEEL CORPORATION,  
1134 Market Street,  
Wheeling, W. Va.,

Mr. B. C. Colcord, President,  
WOODWARD IRON COMPANY,  
Woodward, Alabama.

Mr. E. J. Hanley, President,  
ALLEGHENY LUDLUM STEEL CORPORATION,  
Oliver Building,  
Pittsburgh 22, Pa.

Mr. L. F. Rains, President,  
A. M. BYERS COMPANY,  
717 Liberty Avenue,  
Pittsburgh 30, Pa.