

ET 1964

KATZENBACH (as acting Attorney General) v.

OLLIE McCLUNG, SR.

Appeal from the USDC for the ND of Ala.

We have sent you a copy of the lower court opinion in this case. A stay of execution of the judgment was granted yesterday by Justice Black, and we are sending along a copy of his opinion, which we received a half-hour ago.

As far as we can tell, Chief Justice Warren and Justices Black, Harlan, Brennan, Stewart and White are in town.

The parties filed here today a joint motion to expedite the briefing and argument in this case. According to the clerk's office it has been agreed that the Government's brief will be filed in type-written form on Monday, September 28. The record will be printed and available the same day.

Appees will file their papers on Oct. 2 and the argument will be held immediately following that in Heart of Atlanta on Oct. 5.

4:40 p.m. 9/24/64

MWM

*Send home
here*

To: The Chief Justice
Mr. Justice Douglas
~~Mr. Justice Clark~~
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Goldberg

SUPREME COURT OF THE UNITED STATES

From: Black, J. 9-23-1964

OCTOBER TERM, 1964. Circulated: SEP 23 1964

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Nicholas deB. Katzenbach, as
Acting Attorney General of
the United States of America;
Macon L. Weaver, as
United States Attorney for
the Northern District of Alabama,
Appellants,

On Application for Stay
of Execution of Judgment.

v.

Ollie McClung, Sr., and Ollie
McClung, Jr.

[September 23, 1964.]

MR. JUSTICE BLACK.

This is an application for stay of execution of a judgment of the United States District Court for the Northern District of Alabama temporarily restraining and enjoining the Acting Attorney General of the United States and all others under his authority or in concert with him from enforcing the provisions of Title II of the Civil Rights Act of 1964 on the ground that the Act is unconstitutional as applied to the operation of a restaurant by plaintiffs Ollie McClung, Sr. and Ollie McClung, Jr.

As I said recently in a memorandum on application for stay in *Heart of Atlanta Motel, Inc. v. Kennedy*, — Law Ed. —, — Sup. Ct. —:

“a temporary injunction against enforcement is in reality a suspension of an act, delaying the date selected by Congress to put its chosen policies into effect.”

In recognition of this fact, it is an established rule that courts of equity will not exercise their power to enjoin

the enforcement of an act of Congress except under the most imperative or exigent circumstances. Because of this policy I grant the application to stay the execution of the temporary restraining order and injunction of the United States District Court for the Northern District of Alabama.

The issues raised in this case, like the related issues raised in the *Heart of Atlanta Motel* case now pending before this Court, are important and their final determination should not be unnecessarily delayed. For this reason I have consulted with the five other members of the Court now in Washington and am authorized to say that the Court is prepared, if the parties desire, to set this case down for argument on all questions involved, immediately following the argument in the *Heart of Atlanta Motel* case, which is already scheduled for argument on Monday, October 5, 1964. To this end the parties will be authorized to submit typewritten briefs and also will be given ample opportunity to file such additional briefs as they may deem desirable within a reasonable time after oral arguments are completed.

The application for stay of execution is granted and the injunction of the District Court is hereby stayed.