

667 (Circuit Judge)

BEFORE HONORABLE BEN F. CAMERON, JUDGE OF THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

IN RE: CAUSE #19475 IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

JAMES HOWARD MEREDITH, on behalf of  
Himself and Others similarly situated,

Appellant,

v.

CHARLES DICKSON FAIR, President of the  
Board of Trustees of State Institutions  
of Higher Learning, et al,

Appellees.

U. S. COURT OF APPEALS  
**FILED**

JUL 30 1962

EDWARD W. WADSWORTH

**CLERK**

MOTION OF APPELLEES FOR ADDITIONAL  
RELIEF PENDING APPLICATION FOR  
WRIT OF CERTIORARI

Come now Charles D. Fair. et al, who were Appellees  
in the above referenced cause and respectfully move for the  
entry of an order granting additional relief to them because  
of the action taken by the United States Court of Appeals for  
the Fifth Circuit acting through a panel thereof on the 27th  
day of July, 1962, and in support of this motion would show  
the following facts:

1.

On the 17th day of July, 1962, the United States  
Court of Appeals for the Fifth Circuit issued a Judgment  
"as and for the mandate" of the Court in the above referenced  
matter wherein the Court reversed the decision of the United  
States District Court for the Southern District of Mississippi  
and remanded the cause to said District Court with directions.

On the 20th day of July, 1962, the Clerk wired counsel for Appellees that the Court had directed the parties in this cause to file and exchange statements of position and memorandum briefs for or against the granting of any stays, including the vacating of the stay entered by Judge Cameron, the issuance by this Court of an injunction pending further appeal or other appropriate action. A true copy of the Clerk's telegram is attached to this motion as Exhibit "A".

3.

Under directions received from some member or members of the U.S. Court of Appeals for the Fifth Circuit Honorable Edward W. Wadsworth the clerk of said court has been forbidden to furnish a certified copy of the record of proceedings in said Court which must accompany the Petition for Certiorari in the Supreme Court under Rule 21 (1) of the revised rules of said Supreme Court. A true copy of the Clerk's letter so advising counsel is attached hereto as Exhibit "B".

4.

On July 28, 1962, a copy of a letter of transmittal from the Clerk of said Circuit Court of Appeals to the Clerk of the U. S. District Court at Jackson, Mississippi was received by counsel. A true copy of the letter is attached hereto as Exhibit "C". On the same date counsel for Appellees obtained a copy of an instrument styled "Judgment" and an instrument styled "Order Vacating Stay, Recalling Mandate and Issuing New Mandate Forthwith." Copies of these instruments are attached to this Motion as Exhibits "D" and "E", respectively.

5.

Appellees relied upon the express Section of 2101 (f) of the United States Code, which vests authority in your Honor as a Judge of the United States Court of Appeals for the

Fifth Circuit to stay the execution and enforcement of a final Judgment or Decree of that Court, which is subject to review by the Supreme Court of the United States on Writ of Certiorari.

Appellees objected to the recall of the Mandate which Rule 32 of this Circuit provides can only be recalled to prevent injustice and further objected to any proceedings in the United States Court of Appeals on any of the motions which the Court invited to be filed. Counsel for Appellees filed the Statement and Memorandum Brief directed in the telegram (Exhibit "B") as officers of the Court acting pursuant to the orders of the Court and under an express reservation of the rights of our clients.

6.

The necessary purpose and effect of the instruments (Exhibit "D" and Exhibit "E") are to attempt to vacate the statutory Stay Order of your Honor and are therefore contrary to the wording of Section 2101 (f) of the United States Code.

7.

The instrument Exhibit "E" is based entirely upon the assumption that the Court was not in error in refusing the findings of fact made by the District Judge that the Appellant was refused admission on valid non-discriminatory grounds and was not refused admission because of his race or color. With all due deference and respect, counsel for Appellees submit that such ipse dixit reasoning is not a valid premise upon which the Court could or should base an order setting aside the statutory stay granted by your Honor. With the same deference and respect, counsel would submit that it is better and more appropriate for a single Judge to stay a Judgment

and Mandate issued pursuant to an opinion of two Judges of a three-Judge panel than for any number of Judges of the Honorable Fifth Circuit Court of Appeals, an intermediate Appellate Court, whose decisions are subject to final Appellate review in the Supreme Court of the United States, to set aside the valid statutory right of Appellees to secure a stay from a Judge of said Fifth Circuit Court of Appeals pending the review of the decision of said Court by Writ of Certiorari. With deference and respect, counsel further submit that the proceedings by a panel of said Honorable Court of Appeals subsequent to the issuance of said statutory stay order departed from the accepted and usual course of judicial state proceedings to an extent which requires the exercise of supervision by the said Supreme Court of the United States.

WHEREFORE, premises considered, as additional relief to and to preserve the effectiveness of the statutory order entered by your Honor on the 18th day of July, 1962, Charles D. Fair, et al, move your Honor to stay the execution and enforcement of the instrument styled "Judgment" (Exhibit D), dated July 27, 1962, stated to be issued as and for the mandate of the Court on the same date, and further stay the execution and enforcement of the instrument styled "Order Vacating Stay, Recalling Mandate and Issuing New Mandate Forthwith," dated the 27th day of July, 1962, (Exhibit E) for a reasonable time to enable movants to obtain a Writ of Certiorari from the Supreme Court of the United States to review said "Judgment" and "Order," and in addition thereto Charles D. Fair, et al, move your Honor to extend the length of the stay granted in your Honor's Order dated the 18th day of July, 1962, until the

expiration of thirty (30) days from and after the date of this order to enable said parties to file with the Clerk of the Fifth Circuit Court of Appeals the Certificate of the Clerk of the Supreme Court of the United States that the Certiorari Petition and certified record required under the rules of said Supreme Court have been filed therein, which said stay, under the terms of said Order, is to continue in force until the final disposition of the case by the said Supreme Court and movants pray for such other, further and more general relief as the Court may think equitable and proper in the premises.

Respectfully submitted,

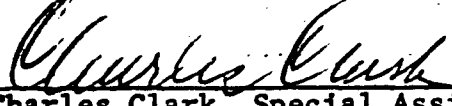
CHARLES DICKSON FAIR, ET AL, APPELLEES

BY JOE T. PATTERSON, ATTORNEY GENERAL  
OF THE STATE OF MISSISSIPPI

DUGAS SHANDS, ASSISTANT ATTORNEY GENERAL  
OF THE STATE OF MISSISSIPPI

CHARLES CLARK, SPECIAL ASSISTANT  
ATTORNEY GENERAL OF THE STATE OF  
MISSISSIPPI

BY:

  
Charles Clark, Special Assistant  
Attorney General of the State of  
Mississippi

V E R I F I C A T I O N

STATE OF MISSISSIPPI

COUNTY OF ~~KLING~~ *Lauderdale*

Personally came and appeared before me the undersigned authority in and for the jurisdiction aforesaid, the within named Charles Clark, who being by me first duly sworn, states on oath that the matters, facts and things set forth in the foregoing Motion of Appellees for Additional Relief Pending Application for Writ of Certiorari are true and correct as therein stated.

*Charles Clark*  
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CHARLES CLARK

Sworn to and subscribed before me, this the 28th day of July, 1962.

*Ben F. Carrion*  
\_\_\_\_\_  
NOTARY PUBLIC  
*H. J. Christ Judge*

My Commission Expires:  
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