

ROSENBERG ET AL. *v.* UNITED STATES.

MOTION TO VACATE A STAY.

No. —, June 18 Special Term, 1953. Decided June 19, 1953.

After the stay granted by MR. JUSTICE DOUGLAS had been vacated by the Court, *ante*, p. 273, counsel for the Rosenbergs moved for a further stay pending action by the President on a petition for executive clemency. *Held*: Further stay denied.

Emanuel H. Bloch submitted the motion for a further stay.

PER CURIAM.

Motion of the petitioners for a further stay of the execution, as set forth in the written motion, is denied.

MR. JUSTICE BLACK dissents.

MR. JUSTICE FRANKFURTER.

On the assumption that the sentences against the Rosenbergs are to be carried out at 11 o'clock tonight, their counsel ask this Court to stay their execution until opportunity has been afforded to them to invoke the constitutional prerogative of clemency. The action of this Court, and the division of opinion in vacating the stay granted by MR. JUSTICE DOUGLAS, are, of course, a factor in the situation, which arose within the last hour. It is not for this Court even remotely to enter into the domain of clemency reserved by the Constitution exclusively to the President. But the Court must properly take into account the possible consequences of a stay or of a denial of a stay of execution of death sentences upon making an appeal for executive clemency. Were it established that counsel are correct in their assumption that the sentences of death are to be carried out at 11 p. m.

tonight, I believe that it would be right and proper for this Court formally to grant a stay with a proper time-limit to give appropriate opportunity for the process of executive clemency to operate. I justifiably assume, however, that the time for the execution has not been fixed as of 11 o'clock tonight. Of course I respectfully assume that appropriate consideration will be given to a clemency application by the authority constitutionally charged with the clemency function.