

Opinion in Chambers

MARSHALL, SECRETARY OF LABOR v.
BARLOW'S, INC.

ON APPLICATION FOR STAY

No. A-600. Decided February 3, 1977

Application by the Secretary of Labor for stay of a three-judge District Court's injunction against further searches pursuant to § 8 (a) of the Occupational Safety and Health Act, which allows warrantless entry and inspection of work places for OSHA violations, is granted, pending the timely filing of an appeal and the disposition thereof by this Court, insofar as it affects persons other than respondent. The Act, being presumptively constitutional, should remain in effect pending this Court's final decision on the merits.

MR. JUSTICE REHNQUIST, Circuit Justice.

The Solicitor General, on behalf of the Secretary of Labor, applies for a partial stay of an injunction issued by a three-judge District Court for the District of Idaho. That court held that § 8 (a) of the Occupational Safety and Health Act of 1970, 84 Stat. 1598, 29 U. S. C. § 657 (a), allowing warrantless entry and inspection of work places for OSHA violations, is in conflict with the Fourth Amendment of the United States Constitution, and enjoined further searches by the Secretary's representative pursuant to that section. The applicant does not seek a stay of the order insofar as it protects the respondent from future searches, but only as it protects persons not party to this suit. On January 25, 1977, I granted a stay of the order to the extent that the order restrains the applicant's conduct outside of the District of Idaho.

Upon consideration of the response subsequently filed, I now grant in full the applicant's request for a stay of the three-judge court order as it affects persons other than the respondent. On the merits of the Fourth Amendment question, the District Court relied on our decisions in *Camara v.*

Municipal Court, 387 U. S. 523 (1967), and *See v. City of Seattle*, 387 U. S. 541 (1967). The applicant relies on our decisions in *Colonnade Catering Corp. v. United States*, 397 U. S. 72 (1970), and *United States v. Biswell*, 406 U. S. 311 (1972), to urge a contrary result. The proposed stay will not affect the respondent in any way, and there are no equities weighing against it which may be asserted by persons actually before the Court. In such a situation, where the decision of the District Court has invalidated a part of an Act of Congress, I think that the Act of Congress, presumptively constitutional as are all such Acts, should remain in effect pending a final decision on the merits by this Court.

The Secretary's application for a stay is accordingly granted pending the timely filing of a notice of appeal and jurisdictional statement, and the disposition of the same by this Court.