

The Burger Court Opinion Writing Database

Joseph v. United States
405 U.S. 1006 (1972)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-251

From: Dissenting, J.

Circulated: 2/29/72

Lionel Adolph Joseph, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[March —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

The Solicitor General makes a very limited confession of error that Joseph's local board erroneously thought a prima facie case had been made out, and denied Joseph's exemption because it believed him to be insincere.

The record is devoid of evidentiary support of that position. A registrant whose local board believed him to have made out a prima facie case for a conscientious objector exemption is entitled to a statement of reasons if the exemption is denied.

The Solicitor General emphasizes that this registrant did not make out a prima facie case. While I think the judgment should be vacated and the case remanded, I would not do so on the Solicitor General's confession of error.

Joseph, then classified I-A, applied for a conscientious objector exemption in April 1967. He stated in his conscientious objector form (SSS Form 150) that he believed in a Supreme Being, that he was a member of the Nation of Islam (Black Muslims), and that he had joined Muhammed's Mosque No. 12, in Philadelphia, in April 1965, at the age of 17. He represented the views of the Black Muslims regarding participation in war as follows:

"We believe that we who declared ourselves to be Rightous [sic] Muslims Should not Participate in



To: The Chief Justice;
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

S/
2nd DRAFT

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No. 70-251

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Recirculated: *3-1*

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On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[March —, 1972]

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The Solicitor General makes a very limited confession of error that Joseph's local board erroneously thought a *prima facie* case had been made out, and denied Joseph's exemption because it believed him to be insincere.

The record is devoid of evidentiary support of that position. *Deleted*

While I think the judgment should be vacated and the case remanded, I would not do so on the Solicitor General's confession of error, but rather for the reason that meaningful administrative and judicial review of selective service classification decisions is impossible where the service does not state reasons for its actions.

Joseph, then classified I-A, applied for a conscientious objector exemption in April, 1967. He stated in his conscientious objector form (SSS Form 150) that he believed in a Supreme Being, that he was a member of the Nation of Islam (Black Muslims), and that he had joined Muhammed's Mosque No. 12, in Philadelphia, in April 1965, at the age of 17. He represented the views of the Black Muslims regarding participation in war as follows:

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3rd DRAFT

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To: The Chief Justice
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4th DRAFT

SUPREME COURT OF THE UNITED STATES

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v.
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[March —, 1972]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE MARSHALL concurs, dissenting.

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"We believe that we who declared ourselves to be Rightous [sic] Muslims Should not Participate in wars which take the lives of humans. We do not believe this nation should force us to take part in such wars, for we have nothing to gain from it unless America agrees to give us the necessary territory wherein we may have something to fight for."

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 16, 1972

Re: No. 70-251 - Joseph v. United States

Dear Bill:

Please join me in your dissent.

Sincerely,


T.M.

Mr. Justice Douglas

cc: The Conference