

PRYOR *v.* UNITED STATES

ON APPLICATION FOR STAY OF MANDATE OR, IN THE
ALTERNATIVE, FOR CONTINUATION OF BAIL
PENDING CERTIORARI

No. A-403. Decided October 29, 1971

Since three members of the Court have manifested their willingness in the past to consider certain aspects of constitutional questions arising from conscription for a presidential war, bail shall be continued in this case, which involves one such issue, pending disposition of applicant's petition for certiorari.

See: 448 F. 2d 1273.

MR. JUSTICE DOUGLAS, Circuit Justice.

Applicant is a Jehovah's Witness who was convicted for failing to report for civilian work in lieu of induction. The Court of Appeals for the Ninth Circuit affirmed his conviction, rejecting, *inter alia*, applicant's argument that forced alternate service in the absence of a congressional declaration of war violated his rights under the First Amendment. He seeks a stay of the mandate of the Court of Appeals or, in the alternative, a continuation of bail pending disposition of his petition for certiorari.

I have expressed at length my view that the constitutional questions raised by conscription for a presidential war are justiciable, substantial, and should be reviewed by this Court. *Hart v. United States*, cert. denied, 391 U. S. 956 (DOUGLAS, J., dissenting); *Holmes v. United States*, cert. denied, 391 U. S. 936 (DOUGLAS, J., dissenting). MR. JUSTICE BRENNAN, this term, has also dissented from the denial of certiorari in cases raising this issue. See, *e. g.*, *Thompson v. United States*, cert. denied, *ante*, p. 916; *Gidmark v. United States*, cert. denied, *ante*, p. 868. MR. JUSTICE STEWART has in the past indicated a willingness to consider aspects of the problem. *Holmes*

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Opinion in Chambers

v. United States, supra (Memorandum of STEWART, J.). There are now two vacant seats on the Court. Moreover, three out of seven are enough to grant a petition for certiorari.

In light of the foregoing, I no longer feel precluded, *Drifka v. Brainard*, 89 S. Ct. 434, 21 L. Ed. 2d 427, from granting such relief as is requested here. Bail will therefore be continued in the same amount and under the same conditions as presently in effect, pending disposition of the petition for certiorari.

It is so ordered.