United States Supreme Court

James Everett Dutschke

Petitioner

v No-18-5788

United States of America

Respondent

Motion for Rehearing

I, James Everett Dutschke, pro-se petitioner, files this Motion for Rehearing for Writ of Certiorari seeking COA and shows unto the Court the following:

1- The Court's denial to review the case (18-5788) as presented is highly erroneous and must be corrected, reversed and reviewed

2-I now remind this court that the question/discussion/argument/issue I presented in my 2017 filing for Certiorari was exactly and precisely the very same exact argument/issue that Justice Scalia did specifically ask for just 3 weeks after my 2014 conviction (he did so June 4th, 2014 in the Bond concurrence-134 S.Ct 2077[2014]). In Scalia's section II of his concurrence, he specifically stated-

"the real question... is whether the Act (treaty enforcement Implementation Act) is constitutional..."

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"...is not".

3- The argument I presented in my 2017 Supreme Court filing is exactly that very question which Justice Scalia specifically (Bond 2014) asked for- to address the constitutionality of the treaty Implementation Act- specifically his statement that,

"we (the Court) should have welcomed and easily grasped the opportunity--NAY the obligation-- to consider and repudiate it"

Well, you cannot "repudiate" that which you deny to review. The instant denial (18-5788) is the exact opposite of grasping " the obligation to repudiate it." Thus, with the instant case denial of certiorari, the Court is, in fact, "shirk(ing) our duty" (quoting Scalia) by failing in that which Justice Scalia strongly wrote was the Court's "obligation".

The Court, in order to actually fulfill its "duty" (Scalia) and "obligation" MUST therefore rehear and review the instant case (18-5788), not doing so is to "shirk" that "duty" and "obligation" (quoting Justice Scalia from Bond, who is obviously a "reasonable jurist" therefore meeting the Slack standard for COA)

The raised issue of whether or not 195 foreign countries can write US law (legislative jurisdiction) MUST be addressed by this Court (according to Scalia) and this issue, HE strongly stated (as did I) must be addressed is exactly the issue I presented.

4-The issue of whether or not a treaty that deals with "international intercourse" can be enforced in a purely domestic issue was also raised by me in the instant case to

the Court (also a jurisdictional issue). This is specifically the issue expressly asked for by Justice Thomas (also in Bond 2014). (Note-Thomas also referred to it as "subject-matter" in his concurrence)

5-In Bond (2014), just 3 weeks after my conviction, Justice Thomas specifically asked for my argument as he wrote:

"Treaty power... extending to every conceivable domestic subject-matter-- even matters without any nexus to foreign relations-- would destroy the basic CONSTITUTIONAL distinction between domestic and foreign powers" and..."circumvent(s) the role of the House of Representatives."

And now I remind this Court that Justice Thomas himself reminded this Court (Bond) that "this Court has long recognized that the treaty power is limited, and hypothetical difficulties... are no reason to ignore a constitutional limit on federal power."

The instant case (18-5788) gave... no gives this Court exactly the discussion/issue that Thomas (in Bond) claimed he is looking for (that this Court must address)

6-There is no doubt that Justice Thomas is a "reasonable jurist" which meets the Slack standard for COA

7-Justice Thomas specifically stated (in 2014) that the exact issue I presented in 2017 (domestic enforcement) "is a matter of FUNDAMENTAL Constitutional importance"-

Therefore the instant denial of certiorari is a denial of reviewing a "matter of FUNDAMENTAL constitutional importance" and simply cannot stand. Rule 11 states that ceriorari will be granted upon showing that a cause is of imperative public importance. (Scalia & Thomas obviously both thought it to be

so)

Well, if "a matter of FUNDAMENTAL constitutional importance" (quoting Thomas) is not important to the public, then nothing can be. Clearly an issue "of Fundamental Constitutional importance" (quoting Thomas) is a "compelling reason" (quoting Rule 10) that is well within the duty of the court's "Judicial discretion" (Rule 10).

This case must be reheard if this court is to be the constitutional protector/defender of issues of "Fundamental Constitutional importance" (as Thomas has identified this issue) - then any failure by this court to do so renders this court into the appearance and fact that the Constitution is simply unimportant; such a possibilsty is unfathomable to generations of Americans all the way back to our founding.

8- It is a matter of record that Justice Thomas, at the beginning of June 2014, specifically asked for my issue to be presented for review just weeks after my May 2014 conviction. Specifically, he stated, "the court ought to address" exactly this issue "when (it is) presented"

Well, here I am, presenting exactly the issue he specifically, explicitly called for just after my conviction, and yet there is no review of it. This must be reheard

9- I remind this court that, mere weeks after my 2014 conviction, when Thomas asked for exactly this issue (which "the Court ought to address"), he stated as the final line of his concurrance that, "that chance will come soon enough." And he was right, because upon learning of his asking of this argument, I immediately briefed it (and it has not been addressed).

For Justice Thomas to state "that chance will come soon enough" (Bond 2014) then ignore "that chance" when "soon enough" did, in fact, arrive - is to say that a Supreme Court Justice does not mean the passionate words he writes. I one of the millions who refuses to believe that

It is of "imperative public importance" that the public believe that a Supreme Court Justice (in this case not only including Justice Thomas and Scalia, but the entire unanimous [Bond] Supreme Court) actually means what he or she writes. In order for this court's word to be true, this case must be reviewed.

10- Justice Alito's concurrance summarized both Scalia and Thomas and made plain that the "reach of the statute" "lies outside Congress' reach ... on constitutional grounds." It is therefore clear that the issues presented in the instant case are Constitutional and of "fundamental Constitutional importance" and are jurisdictional issues. Because jurisdiction can never be waived, it must be addressed and COA must issue. Therefore, denial of Certiorari, in the recent instant denial (of 18-5788) is Constitutionally improper and legally impossible using the Court's very own words. Rehearing must be granted.

11- AFTER the 2017 filing of this case to the US Supreme Court, this Court decided another case - Class v US, US No 16-424, on February 21st 2018.

This case (Class) and its new RULE was not available during the drafting of the instant 2017 petition, so could not be included. But it is (now) relevant. Extremely so.

The Class Rule reversed the DC Circuit's (incorrect) claim that a plea agreement bars automatically challenges to a statute's constitutionality.

Since the issues raised in my petition go to the jurisdictional heart of constitutionality, especially as applied, then my challenges, under the Class Rule cannot be automatically barred. This includes the issues that Justices Scalia, Thomas (and Alito) specifically asked for which I then (2015) provided.

The idea that Class has no effect on the very things it was designed to affect is as abhorrent as the idea that Justices can specifically demand to address a certain issue, then ignore it when that exact issue is presented to them.

Class, not available at the time of the 2017 drafting, is -however- very relevant now as the Class rule completely precludes the notion that a plea waiver bars a challenge to the constitutionality of a statute itself. Class requires COA be issued. Slack requires that COA be issued. Buck v Davis (US 2017

USLEXIS 1429) requires COA issue. Especially since the Justices themselves specifically solicited these very issues, and explicitly so.

Summary

The fate of treaty power now hangs in the balance.

The US Supreme Court, Justices already explicitly seeking these issues, and considering (post Class, 2018) that there is suddenly no legal possibility of automatically barring these issues from review, MUST perform its constitutional duty (just as Justices Thomas and Scalia asserted) and MUST rehear and grant certiorari. Rule 10 requires it. Rule 11 requires it. The integrity of the Court and its word requires it (Bond, Class, Buck). The unprecedented destructive conflict between the Circuits (as explained in the petition) requires it. This is not merely a case of national importance, but international importance.

The petition, which was not reviewed - as evidenced by the entire lack of an opinion on the very issues the Justices said in advance (in Bond) must be addressed - was never addressed by those Justices that asked for it (or any other). This instant motion for rehearing must be granted. Certiorari must be granted. COA issued. It is the only way to preserve Constitutional Structures on federal and treaty power.

Otherwise, allowing the denial to stand creates the legal effect that the discretion of any judge, anywhere can nullify, or worse - expand infinately the power of a treaty (written in part by other countries) to far beyond constitutional scope into total omnipotence. I do not believe, for one second, that this Court is the Court willing to give foreign countries unlimited power over US Citizens (by leaving this denial intact); denying rehearing does just that.

For the sake of the future of US Sovereignty, rehearing, certiorary and COA cannot be denied and must be granted. I so move the Court.

Respectfully Submitted,

James Everette Dutschke

James Everette Dutschke 10-24-18

Rule 44 Certification

I hereby certify and affirm that:

1- I am unrepresented by counsel and filing pro-se

2- The Grounds of rehearing are given to rehearing by a change in controlling effect due to the Class v US decision (US No 16-424) of Feb 21st, 2018. The controlling effect prior (to Class) that a waiver bars challenges to the constitutionality of a statute is now no longer. Thus the previously unconsidered challenges to the statute's constitutionality (and its enactment) must now be considered due to that intervening circumstance of the Class role (2018).

3- The accompanying motion is presented in good faith and for the sole purpose of allowing the Justices to address the exact and specific issues they (explicitly in Bond, 2014) asked for regarding treaty power and the jurisdictional, constitutionality and application of the 'treaty enforcing' and 'enactment' statutes.

4- This was deposited into the mail system of Tucson, USP on 10-26-18.

5- During the preparation of this instant motion, literally in the middle of it, this facility suddenly saw fit to separate me from typewriter privileges. This obstacle was overcome by completing this motion by hand, in order to beat the required 25 day deadline. I will replace this with a cleaner, typod version as soon as I am no longer encumbered by sudden extreme conditions.

Respectfully Submitted

10-26-18

James Everett Dutschke

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Signature witnessed by — N. Jackson 10-28-18

Nicholas Jackson