No. 18-798

In the Supreme Court of the United States

Joanna Blauch,
Petitioner,
v.

People of the State of Colorado by and through the
People of the City of Westminster,
Respondent.

On Petition for Writ of Certiorari to the Adams County District Court, Case No. 17CV30021; the Westminster Municipal Court, Case No. 2013-2484-DV

Motion

~~**EMERGENCY APPLICATION TO THE HONORABLE SONIA SOTOMAYOR**~~ **TO HOLD CASE IN ABEYANCE PENDING DISPOSITION OF *QUINTANA V. COLORADO*, DOCKETED 18-6728**

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QUESTIONS PRESENTED

There is a growing sinkhole-sized need for some things to be simply clearer.

1. Does ruling the substantive nature of materially relevant documentary evidence with apparent exculpatory value effected non-existent, without applying any statutorily required standards of evidentiary error, contravene constitutionally guaranteed substantial rights by applying standards of *Strickland v. Washington*, 466 U.S. 668 (1984) in a vacuum?

2. Does it breach well-established law to rule that actual existing conflicted representation, memorialized by counsel in writing, does not require upholding voluntary "knowing and intelligent" standards for valid waivers of substantial rights?

People make choices in the course of due process. People can make better choices.

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To the Honorable Sonia Sotomayor, Associate Justice of the United States Supreme Court:

INTRODUCTION

Where do all Americans go to find the equitable foundation of due process?

To have due process for just some cases defeats the entire purpose of due process. Due process is key to the foundation of our country. At the core of the questions presented here, directly correlating to the circuit split outlined in *Quintana v. Colorado* (pending, docketed 18-6728 and referred to hereinafter as "*Quintana*"), is the ability to kill by a thousand cuts well beyond incarceration or even death penalty.

A fundamental misunderstanding exists around cases like this one (docketed 18-798) that they are inconsequential. However, these failings in due process are not exclusive to the ever growing masses of prosecuted individuals. These cases devastate individual lives and the lives of families along with whole communities. Every failing of due process pokes irreparable holes into our overall economy.

It becomes a living death that spreads and spreads and spreads. (See "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction," by Gabriel J. Chin, (increased collateral consequences have caused "civil death" to reemerge in United States for those convicted of misdemeanors as well as felonies).

The unchecked scale of devastation in national misdemeanor prosecutions is so enormous that "we do not know even the most basic facts." (See "The Scale of Misdemeanor Justice," by law professors Megan Stevenson and Sandra Mayson,

citing to accord with Alexandra Natapoff, and "noting that "we still lack basic data about misdemeanors, including how many there are.") Lifelong collateral consequences "far outstrip criminal sanctions and affect defendants' housing, employment, education, and status in the United States." As articulated by legal scholar, Professor Malcolm M. Feeley, "the process is the punishment." (See Editor's Foreward to the set of Symposium publications, "Misdemeanor Machinery: The Hidden Heart of The American Criminal Justice System" by dedicated scholars convened at Boston University School of Law on November 3-4, 2017. Also attached to this application as Appendix H.)

On January 16, 2019, Supplemental Brief for this case (docketed 18-798) was filed with this Court calling attention to *Quintana v. Colorado* (pending, docketed 18-6728). Directly corresponding to the basis for the questions presented in this case, *Quintana* outlines current Circuit split and presents the overarching parallel question: What showing must a defendant make to establish that the erroneous exclusion of defense evidence at trial violated the defendant's Sixth and Fourteenth Amendment right to present a defense?

JURISDICTION

Sup. Ct. R. 22.1 and 22.3 provide for application to an individual concerned Justice with authority to grant the relief sought. 28 U.S.C. § 2102 states "[c]riminal cases on review from State courts shall have priority, on the docket of the Supreme Court, over all cases except cases to which the United States is a party and such other cases as the court may decide to be of public importance." Cf. Fed. Rule Civ.

Proc. 8(e) ("Pleadings must be construed so as to do justice.")

Both parties docketed in *Quintana* (18-6728) applied for and were granted three total extensions of time for filings so far. Two applications for extensions of time for filing were granted for Mr. Quintana, the petitioning party, on August 23 and October 9, 2019 respectively by your Honor. The latest extension in *Quintana* was made by respondent application to the Clerk's office (although appearing on the docket as a "Motion") and granted on December 4, 2018, extending time to file a response from December 19, 2018 to February 19, 2019.

This case's docket (18-798) currently shows distribution for conference of February 22, 2019. Given that *Quintana* has already benefited from three filing extensions granted through applications to both your Honor and the Clerk's office, a possibility exists of another. Even though *Quintana* was granted in forma pauperis status, he did benefit from representation. Further, Colorado's Attorney General has clarified that he will be responding to the question presented in *Quintana.*

Via Emergency Application, relief sought here is to hold this case in abeyance pending disposition before this Court of *Quintana.* All reasonable good faith efforts were made to review all applicable rules, statutes and caselaw pertinent to jurisdictional requirements to make an application to your Honor as the individual concerned Justice here. No jurisdictional impediments to application to your Honor as the individual concerned Justice to hold this case in abeyance pending disposition of *Quintana* appear to exist.

All avenues of state appeal are exhausted. Appeal to lower level federal courts is

legally precluded. Adequate relief cannot be obtained from any other court.

REASONING

This Court's precedents recognize sound discretion in holding one case in abeyance "to abide the outcome of another, especially where the parties and the issues are the same." *Amer. Life Ins. Co. v. Stewart*, 300 U.S. 203, 215-16 (1937), citing to *Landis* v. *North American Co.*, 299 U.S. 248. This Court's precedents recognize similar approaches for pending cases, held functionally in abeyance, flexible "to this Court's longstanding approach to applications for stays and other summary remedies granted without determining the merits of the case under the All Writs Act, 28 U.S.C. § 1651." (See, *Lawrence v. Chater*, 516 U.S. 163, 168 (1996); citing to, *e.g.*, *Heckler* v. *Lopez*, 463 U.S. 1328 (1983) (REHNQUIST, J., in chambers) (staying a District Court order pending the decision on the merits of the Court of Appeals.)

The parties and issues of this case both match those of *Quintana*. Respondents in both cases are docketed with this Court as the state of Colorado. Both cases deal with evidence supporting self-defense—in the face of imminent danger—excluded from jury consideration casting reasonable doubt. Both cases cover a defendant's right to present a complete defense. Neither case generated published opinions.

Appellate decisions in both cases fail to determine how the excluded evidence, when considered next to the evidence actually presented to the jury, gives rise to reasonable doubt about the convictions' reliability. The issues presented to both appellate courts for review did not, in either case, speak to sufficiency of evidence

admitted in light of the totality of circumstances with the addition of excluded evidence. Rather, both cases showed how the due process deprivation of fair trial irrevocably tainted any decision a jury might make.

Appellate judges in both cases subtracted the facts proven by the excluded evidence. In this case here, that the alleged victim strangled me, leaving strangulation marks on my neck. (Can anyone really credibly claim not to understand the natural instinct causing parallel physical reaction when someone has his hands wrapped around your neck, squeezing out your ability to breathe?) Correspondingly, this case shows the granular-level functional pervasiveness of the current Circuit split outlined in *Quintana.* Both cases exemplify the active daily degradation of due process for all defendants systematically denied fair trials.

One respective distinction of both cases sharpens support for holding this case in abeyance pending disposition in *Quintana.* Mr. Quintana was represented by a public defender who appears, from the appellate decision in that case, to have adequately prepared a defense including a robust set of evidence for which admission was sought. In this case, private counsel was retained with funds from my senior-citizen mother's retirement account. Counsel confessed post-conviction that she misrepresented what she was actually doing to present and prepare a defense. (See, e.g., *Tr.* 07/12/16, pp.44:15-48:11 and Exhibits H, E, and AO. See also Petition.) Her own implicit bias, counsel confessed, was such that she didn't even believe materially relevant evidence that she was repeatedly informed about even existed and never bothered ever to even look at it. (*Tr.* 07/12/16, pp.25:20-

27:14. See also Supplemental Brief.) This case also raises a second issue of respective valid waiver of substantial trial rights.

Sup. Ct. R. 12.3 states petitioners have the duty of notifying all respondents promptly as required by Sup. Ct. R. 29. Sup. Ct. R. 29.3 stipulates that in the case of a respondent's representation by an attorney, a petitioner must affect notice by service to counsel of record. Colorado is a state populated by several hundred home rule municipalities with legislative authority to create and enforce their own ordinances. C.R.S. 13-10-111 (1) directs municipal courts to style cases bringing actions for municipal ordinance violations, as this one here, to file "in the corporate name of the municipality in which the court is located by and on behalf of the people of the state of Colorado."

All full good faith diligence has been employed to ensure full compliance with this Court's Rules. In January 23, 2019 correspondence to Scott S. Harris, Clerk of this Court (United States Postal Service tracking #9505 5122 5274 9023 4504 62 shown as delivered at 6:15 AM on January 28, 2019) applied for additional time "to determine the correct valid respondent for this matter before this Court and for Colorado Attorney General, Philip J. Weiser to file any responsive pleadings." (See copy of said correspondence attached as Appendix I).

The January 23 letter application to the Clerk's office reiterated that Supplemental Brief here draws attention to the parallels of the two pending cases. Further, docketed for *Quintana*: "in its November 29, 2018 correspondence to your office requesting time extension, the Colorado Attorney General's office states its

commitment to brief and "respond to the issues raised." Further stating that their office "requires the extension to ensure adequate time and attention may be paid to the issues raised in the petition." (See a copy of said docketed letter filing attached as Appendix J.)

Also attached to this application as Appendix K are copies of multiple attempts to seek clarification by the Colorado Attorney General's office of who actually has legislative authority to represent respondent here in filings to this Court, (date stamped as received). No party to this Petition and Supplemental Brief or any possible corresponding counsel for—no one from Westminster Municipal Court or the Colorado Attorney General's office or anyone else—has ever responded back to any notifications or written requests for clarifications by me. In simpler terms, if this were two regular citizens involved as parties to a suit and I knew that the respondent had an attorney; I would need to ensure proper service.

C.R.S. 24-31-101 does seem to indicate that Colorado's Attorney General would be charged with binding authority as counsel for respondent. Although, as of this application, absolutely no one has clarified such. The possibility exists, given what appears to be an almost complete lack of appeals to this Court from actions lodged at the baseline municipal court level, that this case poses as extraordinarily unusual. "Colorado municipalities are creatures of either legislative enactment or constitutional provision or both, as the case may be, and are not city states. See *Denver v. Sweet* (1958), 138 Colo. 41, 329 P.2d 441. They have only powers expressly or impliedly granted to them." *Golden v. Ford*, 141 Colo. 472, 478 (Colo.

1960).

CONCLUSION

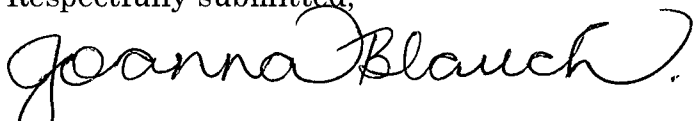
"Because that was a public defender case. And we were all flabbergasted in the public defender's office. Because I was in the public defender's office..." defense's legal expert, Eric Sims, testified about Colorado's seminal case, *People v. Bergerud*, 223 P.3d 686 (Colo. 2010). Before becoming a private criminal defense attorney, Mr. Sims spent decades in several public defender's offices in Colorado.

Right before serving as legal expert here in this case, Mr. Sims had served as legal expert in a felony murder case. Colorado public defenders, he testified, "were given an edict to really know that case afterwards." That case changed the overall public defender practice, he testified, it "changed the landscape and changed the understanding." (*Tr.* 08/30/16, pp. 18:25-20:1.)

Within these few recent years, data was summarized estimating that misdemeanor prosecutions outstrip felony prosecutions: 10 to 1. (See California Law Review article, "Misdemeanors, "by Alexandra Natapoff at 1320.) Outside of some sort of science fiction or fantasy novel, humans cannot change the past. We can, however, make the future. No harm exists in holding this case in abeyance pending disposition of *Quintana*.

Emergency relief for abeyance of this case pending disposition of *Quintana v. Colorado* (pending, docketed 18-6728) is respectfully requested of your Honor.

Respectfully submitted,



JOANNA BLAUCH, *Petitioner Pro Se*
Dated: February 14, 2019