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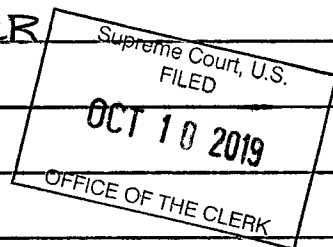
ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ADAM BOYLEN - Petitioner

VS.



UNITED STATES OF AMERICA - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT OF OHIO

PETITION FOR WRIT OF CERTIORARI

Adam D. Boylen
Elkton Federal Correctional Inst.

No. 164617-0260
8730 Scroggs Road
P.O. Box 10
Lisbon, Ohio 44432

QUESTIONS PRESENTED

- 1.) Whether, in light of JONES v. United States, 529 US 848 (2000), and the interpretive rule that constitutionally doubtful constructions should be avoided, 33 U.S.C. § 1311(a) - as purviewed through 33 U.S.C. § 1319(c)(2)(A) - applies to a truck driver for an independent-based trucking company; and if so, whether its application to the independent truck driver in the present case is constitutional?
- 2.) Whether the term "PERSON" as Congress has defined in the Clean Water Act limits its application to only an exclusive class by the use of the word "means"; and if so, does the word "individual" listed therein apply to, and mean, only non-humans?
- 3.) Does a guilty plea and waiver preclude a constitutional claim not to be haled into court, when a fact on the face of the record disproves an element of the offense?

QUESTIONS PRESENTED (CONT.)

- 4.) Whether the Clean Water Act requires a strict criminal-law interpretation given its dual civil and criminal applications?
- 5.) Does a guilty plea and waiver preclude a challenge to an Order of Restitution imposed without statutory authority?

LIST OF PARTIES

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CITATIONS OF OPINIONS AND ORDERS

The ORIGINAL conviction of Petitioner in the United States District Court for the Northern District of Ohio was not reported.

The ORIGINAL conviction of Petitioner was appealed to the United States Court of Appeals for the Sixth Circuit, which ordered the appeal dismissed in an opinion reported at 2018 U.S. App. LEXIS 116312.

The decision of the United States District Court for the Northern District of Ohio on Petitioner's Section 2255 motion is reported at 2019 U.S. Dist. LEXIS 96149 and is attached as Appendix B.

The opinion of the Court of Appeals below is attached as Appendix A.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on September 27, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1.) Article I, Section 8, Clause 3, United States Constitution, provides:

"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

2.) The Fifth Amendment, United States Constitution, provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising

in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

3.) The Sixth Amendment, United States Constitution, provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

4.) The statute under which Petitioner was prosecuted was 33 U.S.C. § 1311(A), which provided:

"Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 USC §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful."

5.) The statute under which Petitioner was prosecuted above, is purviewed through the enforcement provision 33 USC § 1319 (c)(2)(A).

6.) The statute under which Petitioner sought post conviction relief was 28 U.S.C. § 2255.

Statement of the CASE

This case is a constitutional question of first impression regarding who is a "PERSON" as defined by the Clean Water Act.

This case further involves a determination of a guilty plea and waiver that Petitioner claims is invalid due to he is not subject to, nor violated, the Clean Water Act and is, therefore, actually innocent.

The facts necessary to place in their setting the questions now raised can be briefly stated:

I. COURSE OF PROCEEDINGS IN THE SECTION 2255 CASE NOW BEFORE THIS COURT

On February 7, 2017, an indictment was filed in a cause then pending in the United States District Court for the Northern District of Ohio, entitled United States v. Adam D. Boylen, Criminal No. 1:17-CR-00050; Petitioner entered a plea of guilty on May 18, 2017 to four counts charging violations of the Clean Water Act ("CWA").

On September 5, 2017, the District Court entered judgment and Petitioner was sentenced to forty-two months imprisonment, and imposed an Order of Restitution. This judgment and sentence were appealed by the same court appointed attorney and was ordered dismissed by the United States Court of Appeals for the Sixth Circuit of Ohio, United States v. Adam D. Baylen, 2018 U.S. App. LEXIS 16316. Petitioner tried to intervene in this appeal, but his submissions were "locked" and the clerk was ordered to not accept any of Petitioner's future filings. Petitioner was serving his sentence when the motion under 2255 was filed in the District Court.

On May 30, 2018, Petitioner filed the motion in the case at bar under 28 U.S.C. § 2255 to vacate and set aside the judgment of conviction (App. M).

On June 7, 2019, the District Court - the very next day after Petitioner filed a Mandamus action for the delay - entered

its order denying the Motion under 28 USC § 2255, along with its Memorandum in support of this order (App. B).

On June 21, 2019, Petitioner Filed A Notice of Appeal and, subsequently, on July 2, 2019 Filed An Application For A Certificate of Appealability (App. O); along with a Motion for Leave to Stay Judgment-Conviction and Request for Release on Bond (App. P).

II. RELEVANT FACTS CONCERNING the UNDERLYING CONVICTION FOR CLEAN WATER ACT VIOLATIONS.

The relevant facts are contained in Petitioner's Motion under 28 USC § 2255 (App. M₂), and Petitioner's Reply (App. N).

The primary factor of focus for the determination of this case centers on the fact - established on the face of the record - that Petitioner was a "truck driver".

The Petitioner hauled NON-toxic, environmentally safe, RAIN diluted soap water (also known as surfactants) from a Colgate Palmolive Co. ("Colgate") to various locations for disposal. The soap water was processed "in compliance with" section 1311(a) of the Clean Water Act before it was loaded onto Petitioner's truck. Primarily, it was hauled to a dairy farm where it was then spread onto the crop fields that grew the feed which was fed to the dairy cattle that produced the milk given to the public.

It may not be amiss in this place to concisely further remark that the Department of Environmental Science had put out a 100 page report of a study which disclosed that surfactants are environmentally safe and are not harmful to aquatic life.

From the initiation of this case, Petitioner has questioned whether the Clean Water Act applied in this specific matter given he was a truck driver. Initially, Petitioner even sent his court appointed counsel a FAX

CONCERNED that he was NOT subject to the applications of the Clean Water Act, AND FOR COUNSEL to RAISE the preliminary challenge. However, COUNSEL Refused to do so. Instead, once Petitioner was detained, COUNSEL AND the Governments Attorney both come to the preliminary detention center wherein Petitioner was being held AND coerced him into believing he WAS, in fact, subject to the Clean Water Act, AND that he had in fact violated the Act. Upon these misrepresentations, Petitioner WAS strongly advised to plead guilty AND accept Responsibility, which is what Petitioner had done.

Upon being transferred to prison, after sentencing, AND finally gaining limited access to the law, Petitioner Researched into the matter AND discovered he WAS misled as to the understandings given by the court appointed AND Governments Attorney. Petitioner Attempted to intervene in the direct appeal, that was ALSO done by the same court appointed Attorney, to inform the Court of Appeals of Petitioner's findings

AND discoveries; however, his submissions were "locked" AND the clerk was ordered NOT to accept ANY filings by Petitioner. The direct appeal was thereafter ordered dismissed by the court appointed attorney's meritless brief.

Subsequently, Petitioner submitted his motion under 28 USC § 2255 RAISING the ineffective assistance of his court appointed attorney at his trial proceedings AND on the appeal for his failure to raise the constitutional claims Petitioner discovered.

III. EXISTENCE OF JURISDICTION BELOW

Petitioner WAS convicted in the District Court for the Northern District of Ohio of Four counts of violating the Clean Water Act, under 33 USC § 1311(a) AND 33 USC § 1319 (c) (2) (A). A Section 2255 motion was appropriately made in that Court, AND duly appealed to the Sixth Circuit.

IV. THE COURT OF APPEALS HAS DECIDED
A FEDERAL QUESTION IN A WAY IN
CONFLICT WITH THE APPLICABLE
DECISIONS OF THE COURT.

This is a constitutional question of first impression regarding who is a "Person" subject to the applications of the Clean Water Act, and whether the application of it in this specific case was in excess of Congress' authority under Article I, Section 8, clause 3, United States Constitution; Requiring the intervention of this Court's direction to the lower courts for its correct interpretation in this case and future cases.

At the time of Petitioner's criminal proceedings, this Court had previously held that a plea of guilty to a charge does not waive a claim that - judged on its face - the charge is one which the state may not constitutionally prosecute. United States v. Broce, 488 U.S. 563, 575 (1989).

It is also settled by this Court that an accused guilty plea to a felony charge does not foreclose a collateral habeas attack on the conviction when it challenges the state's right to bring any felony charge against him. Blackledge v. Perry, 417 U.S. 21 (1974). In fact, this Court re-affirmed these understandings recently in Class v. United States, 2018 U.S. LEXIS 1378, decided February 21, 2018, which was decided before petitioner's conviction became final, and before the filing of his Section 2255 motion.

In Class, a written plea agreement set forth the terms of Class's guilty plea (just as in this case), including several categories of rights that he agreed to waive. The agreement said nothing about the right to challenge the constitutionality of the statute of conviction - nor does Petitioner's. Petitioner neither expressly nor implicitly waived his constitutional claims by pleading guilty. The courts below claim that it had. Petitioner claims, however, that no matter how validly his factual guilt is established, the Government may not convict him under the Clean Water Act.

The Petitioner submitted that the Clean Water Act had no application to the facts on the face of the record and, therefore, he is actually innocent. As conceded by the Government, being a 'truck driver', this fact excluded the Petitioner from the Clean Water Act's definition of "Person" by Congress' exclusive use of the word "means". See, Burgess v. United States, 553 U.S. 124, 130 (2008) (A "definition which declares what a term 'means' . . . excludes any meaning that is not stated"). To place it in a light still more satisfactory, the Petitioner asserted that Congress' framing of the word "individual" within the definition of person, and by applying the maxim NOSCITUR A SOCIIS - it is known from its associates - the word "individual" is distinctly used with non-human terms. (App. M.p. 7 and App. N.p. 11)

Petitioner claims the courts below merely "Rubber-stamped" this case without a full and fair examination of his claims; that their decisions are erroneous and at variance with this Court's decisions, and that it

can be shown that, "neither the accused, nor his counsel, nor the court correctly understood the essential element[] of the crime with which [Petitioner] was charged." Bousley v. United States, 523 U.S. 1014 (1998). As this Court has further pointed out, "judges should be hesitate... to treat statutory terms in any setting [as surplusage], and resistance should be heightened when the words describe an element of a criminal offense." Jones v. United States, 529 U.S. 848, 857 (2000).

Another observation that went unnoticed by the court below - of another question of first impression concerning the Clean Water Act - is this Court holding that when an Act of Congress has dual civil and criminal applications, the one-interpretation rule means a strict criminal-law construction of the statute - with the rule of lenity - is required, Clark v. Martinez, 543 U.S. 371, 380, not a broad interpretation, which the lower courts have applied to the Clean Water Act.

In reaching its decision to affirm the District Court's Ruling, the court below decided that these settled principles were not to be applied to the case at bar because:

- 1.) The Petitioner had entered a valid guilty plea and knowingly waived his right to pursue the issues asserted in his grounds 1-5 in support of ground 6.
- 2.) The Petitioner failed to establish that trial and appellate counsel (who were the same) were ineffective because the claims sought lacked merit.
- 3.) That this Court's Mohamad v. Palestinian Auth., 566 U.S. 449 (2012), decision concluded that courts are to construe a statutory undefined term in accordance with its ordinary or natural meaning, and that the word "individual" ordinarily means a human being.

The Petitioner respectfully urges that all aspects of this decision are erroneous.

AND AT VARIANCE with this Court's decisions, AND that the courts below never fully AND fairly addressed Petitioner's claims, NOR held AN evidentiary hearing in violation of due process of the LAW.

ARGUMENT FOR ALLOWANCE OF THE WRIT

I. THE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTION ON THE BASIS OF THE DISTRICT COURT'S CONCLUSIONS

The word "individual" within the definition of the term "PERSON" in the Clean Water Act does NOT refer to human beings. Comparing this definition with the exact same definition of the term "PERSON" in the Safe Drinking Water Act (42 USC § 300f), this understanding becomes evident.

In the Safe Drinking Water Act, Congress' framing of the definition clarified that the word "individual" only refers to NON-HUMANS by having added "AND includes officers, employees, AND AGENTS of ANY CORPORATION,

company, association, state, municipality, or Federal Agency." 42 USC § 300f(12).

The courts below interpreting the word "individual" within the definition of the term "PERSON" in the Clean Water Act (33 USC § 1362 (5)) to include human beings, ignores not only Congress' use of the word "means" to limit the definition's application to only an exclusive class, but it makes the added definitions of the natural persons:

"owner or operator" (33 USC § 1311(4));
"Responsible Corporate Officer" (33 USC § 1319(4));
and, "federal employees" (33 USC § 1323),
meaningless.

The Petitioner urges that this Court's needed clarification is necessary for all future cases under the Clean Water Act, as it is believed that the courts below, in struggling with the complexities of the new points raised, failed to recognize what was both ancient and settled.

Congress' plain language of the statutory definition of "PERSON" under the Clean Water Act, along with Congress adding the

specific inclusion of the definitions of the natural persons mentioned above, undeniably establishes that the word "individual" refers only to artificial entities. See, Leocal v. Ashcroft, 543 U.S. 1, 9 (2004) (stating that statutory interpretation "begins with the language of the statute", and such language construed "in its context and in light of the terms surrounding it."); see also, Erlendbough v. United States, 409 U.S. 239, 243-44 (1972) (Statutes that "pertain to the same subject" may be treated "as if they were one law", because "whenever Congress passes a new statute, it acts aware of all previous statutes on the same subject.").

True it is that courts are to construe undefined words in accordance with its ordinary or natural meaning, but this specific matter is not such a case. The Clean Water Act limits the word "individual" in its definition of "person", giving it a different meaning other than its ordinary usage. The lower courts have misapplied

the understandings of this Court's decision in Mohamad v. Palestinian Auth., 566 U.S. 449 (2012), mandating clarification by this Court to the specific facts of this case. For this reason, Petitioner submits that by failing to recognize this Court's direction that "[w]ords that can have more than one meaning are given context . . . by their surroundings," Mohamad, supra, at LED 2d 729, the Court of Appeals taking this Court's interpretation out of context to this case, sets a bad precedent for future cases which is not sanctioned by Congress' language in the Clean Water Act.

Almost all compositions contain words, which, taken in their rigorous sense, would convey a meaning different from that which is obviously intended. It is essential to just construction, however, that the use of artful and numerous words of influence which import something excessive or beyond its literal meaning should be understood in a more mitigated sense.

Let us now pause and ask ourselves what indeed seems to be so obvious and conclusive as scarcely to justify such a discussion in any place; by holding in comparison the two definitions of "Person" side-by-side (Clean Water Act and Safe Drinking Water Act), does it not undeniably reveal with absolute demonstration that Congress meant the word "individual" in the Clean Water Act to mean non-humans only.

II. THE COURT OF APPEALS ERRED BY DETERMINING THE PLEA WAIVER PRECLUDED RELIEF IN THIS MATTER

The Petitioner's guilty plea waiver did not explicitly act as a bar to his constitutional claims, which this Court's above precedents have already settled when the fact (truck driver) is established on the face of the record and claiming the Government had no right to hale Petitioner into court on this felony charge. In fact, the court of appeals ignored that the waiver did not act as a bar, preserving "any legal

Remedies" on collateral challenge with respect to ineffective assistance of counsel and prosecutorial misconduct.

III. THE COURT OF APPEALS ERRED IN FAILING TO CORRECT, SUA SPONTE OR OTHERWISE, THE FACT THAT THE DISTRICT COURT'S ORDER OF RESTITUTION IS UNCONSTITUTIONAL AND WITHOUT STATUTORY AUTHORITY.

The Petitioner's guilty plea and waiver certainly did not waive "any sentence in excess of statutory authority." The District Court imposed an Order of Restitution that continues being enforced to the prejudice and injury of your Petitioner in violation of the Due Process Clause.

In fact, 18 USC § 3663 (a) (1) (A) only authorizes Restitution under three Titles:

- 1.) Violations of Title 18;
 - 2.) Certain provisions of Title 21; and
 - 3.) A few provisions of Title 49;
- this does not include authority for violations of Title 33 as charged in this case.

IV. THE QUESTIONS RAISED IN THIS ARE IMPORTANT AND UNRESOLVED.

The Sixth Circuit has decided important questions of Federal law that have not been, but should be, settled by this Court and are a firm basis for granting certiorari in this case:

1.) The Sixth Circuit made a fundamental and highly questionable ruling on the understanding of the word "individual" as contained in the definition of the term "Person" under the Clean Water Act contrary to this Court's understandings of that word addressed in the Mohamad v. Palestinian Auth. case. The question has yet to be answered directly by the Supreme Court.

2.) This petition presents to this Court even more fundamental questions for Review:

A) whether the Clean Water Act Requires a strict criminal-law

interpretation OR A BROAD CIVIL-LAW interpretation it has been given by the lower courts thus far, CONTRARY to this Court's holdings;

B.) whether a guilty plea AND WAIVER BAR A COLLATERAL HABEAS ATTACK ON A CONVICTION involving ineffective counsel when a fact conceded on the face of the record not only disproves an element of the offense, but establishes a challenge concerning the right not to be haled into court by the Government on the felony charge.

This Court has always held in the negative, AND the decision of the Sixth Circuit is sufficiently UNUSUAL that it is important that this Court REITERATE this principle by applying its PRIOR CASES to the facts of this case. ENFORCING the WAIVER in this case RESULTS in a MISCARriage of justice, AS "the cases to which [Petitioner] have referred make clear that a defendant's guilty plea does not make irrelevant the kind of constitutional claims [Petitioner] seeks to make." CLASS, SUPRA.

CONCLUSION

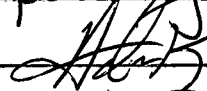
The judgment below is a unique departure from decisions of this Court that require its intervention to clarify the maxims of interpretation with respect to Congress' wishes. It is true that force and right are necessarily on the same side in showing the Petitioner is actually innocent in this matter as he is not subject to the Clean Water Act; but if this Court, in your duty as faithful guardians of the Constitution, do not correct the prejudice and injustice by accepting this case to show America that an injustice to one is an injustice to all, then it may be doubtful from here out on which side justice lies.

This petition for a writ of certiorari should, therefore, be granted.

Dated:

October 10, 2019

Respectfully submitted,



Adam Baylen

Elkton F.C.I.

No. 64617-060

P.O. Box 10

Lisbon, Ohio 44432