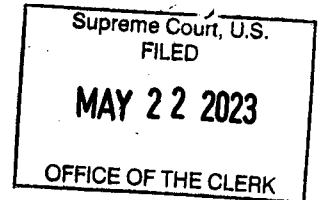


No. 22-7637

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Michael David Beiter, Jr. — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

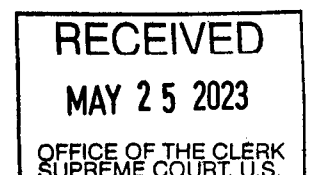
PETITION FOR WRIT OF CERTIORARI

Michael David Beiter, Jr.
(Your Name)

FCI Bennettsville, P.O. BOX 52020
(Address)

Bennettsville, SC 29512
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

this case presents an important issue concerning what constitutes "the right to have the assistance of counsel" under the Sixth Amendment to the U.S. Constitution. This Petition presents the opportunity for this Court to provide a BRIGHT LINE that defines the specific intent of Congress, thus holding the lower courts accountable to this Court's jurisprudence.

1. Whether a district court can force counsel upon a person even without inquiring the provisions set forth in §3006(A);

2. Whether a district court can force counsel upon a person even after the person time and again fired the counsel in open court, and after the fact that the district court acknowledged that the person never waived his/her right to assistance of counsel, but still forced counsel without the accused's permission, consent, or consent by assent; and

3. Whether a Circuit Court can disregard and/or ignore the Sixth Amendment to the U.S. Constitution, as unconstitutionally void-for-vagueness, and thus, give a Circuit Court the consent to ignore both this Court's jurisprudence as well as its own precedent rule with regards to the Sixth Amendment's "right to have the assistance of counsel."

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

The Petitioner herein, who was the Defendant-Appellant below, is Michael David Beiter, Jr., henceforth, Mr. Beiter, Jr. The Respondent herein, which was the Plaintiff-Appellee below, is the United States of America.

RELATED CASES

This case arises from the following proceedings in the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Southern District of Florida, Ft. Lauderdale Division:

United States v. Michael David Beiter, Jr.

Case No. 22-11978

United States v. Michael David Beiter, Jr.

Case No. 0:09-CR-60202-JIC

There are no other proceedings in state or federal trial or appellate courts. However, Application No. 22A962 with this Court may be directly related to this case.

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- APPENDIX 2 Opinion of the U.S. District Court for the Southern District of Florida, Ft. Lauderdale Division;
- APPENDIX 3 Petition for Rehearing & Order Denying Rehearing;
- APPENDIX 4 Motion to Correct the Record;
- APPENDIX 5 Federal Public Defender's Objection to Order by Magistrate Judge and Motion to Set Aside Pursuant to Fed.R.Crim.P. 59(a); and
- APPENDIX 6 Petitioner's Initial Brief on Appeal presented to the U.S. Court of Appeals for the Eleventh Circuit; Motion for Stay of Mandate Pursuant Fed.R.App.P. 41 and 11th Cir.R. 27-1(d)(8); and Decision on Judicial Complaint.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix 2 to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 21, 2022.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 23, 2023, and a copy of the order denying rehearing appears at Appendix 3.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the U.S. 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."

18 U.S.C. §3006(A) provides: "(a) Choice of plan. Each United States district court, with the approval of the Judicial Council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain to obtain adequate representation in accordance with this section...Each plan shall provide the following:

(1) Representation shall be provided for any financially eligible person who--

(H) is entitled to appointment of counsel under the Sixth Amendment of the Constitution."

STATEMENT OF THE CASE

On May 27th, AD2022, Mr. Beiter, Jr. filed a Motion to Correct the Record in district court (see APPENDIX 4). Said Motion sought the record to reflect that the Federal Public Defenders Office did not represent Mr. Beiter, Jr. in any capacity whatsoever, and if they did, they did so illegally.

On June 1st, AD2022, the district court denied Mr. Beiter, Jr.'s Motion (see APPENDIX 2).

On June 13th, AD2022, Mr. Beiter, Jr. filed a notice of appeal.

On August 11th, AD2022, Mr. Beiter, Jr. filed his Initial Brief with the Eleventh Circuit Court of Appeals (see APPENDIX 6).

On August 26th, AD2022, the government filed a motion for summary affirmance against Mr. Beiter, Jr.'s appeal.

On September 12th, AD2022, Mr. Beiter, Jr. replied to the governments motion for summary affirmance.

On December 21st, AD2022, the Eleventh Circuit issued its Opinion denying Mr. Beiter relief (see APPENDIX 1).

On January 9th, AD2023, Mr. Beiter, Jr. filed a timely Petition for rehearing or rehearing en banc (see APPENDIX 3). On February 23rd, AD2023, the Eleventh Circuit denied Mr. Beiter, Jr.'s petition. id.

Today, Mr. Beiter, Jr. asks this Court if the Sixth Amendment is unconstitutionally void-for-vagueness where its text fails to provide a bright line limitation, allowing the lower courts to force counsel upon a defendant who (a) never

waived his right to assistance of counsel; (b) never received any 18 U.S.C. §3006(A) inquiry into his financial abilities, and (c) repeatedly sought to terminate, during open court, the district court's attempts to force unwanted counsel upon him, counsel who even admitted to be fired time and again.

REASONS FOR GRANTING THE PETITION

This Court needs to clarify if the Sixth Amendment to the U.S. Constitution is ambiguous, and if not, this Court needs to clarify what the law really intends. For as will be shown infra, an ambiguity seemingly exists when the lower courts can disavow this Court's jurisprudence as well as their own biding jurisprudence and panel precedent rule, allowing for a defendant to have counsel both thrust and forced upon them while the defendant never waived any rights, was never subject to an appropriate 18 U.S.C. §3006(A) inquiry, and while the defendant repeatedly fired his counsel in open court as he sought to terminate the district court's attempts to force counsel upon him.

This case presents a delicate issue of national importance in that this Court's standing jurisprudence seems to have been subject to cancel culture, thus the abandonment of societal norms and the rule of law. That the lower courts are the perpetrators is all the more alarming, in short, untenable. "Where law ends tyranny begins." Merritt v. Welsh, 26 L.Ed. 896, 104 U.S. 694 (1882); "It would be well to take heed of what Kenneth Culp Davis teaches: 'Where law ends tyranny begins.' I think that in our system of government, where law ends tyranny need not begin. Where law ends, discretion begins, and the exercise of discretion may mean either beneficence or tyranny, either justice or injustice, either reasonableness or arbitrariness." Davis, Discretionary Justice, 3 (1969). "Inmates of the Boys' training School et al. v. John Affleck,

346 F.Supp. 1354; 1972 U.S. Dist. LEXIS 12562 (D.R.I. July 28, 1972).

This Court, at three distinct cases, has laid forth Congressional intent with regards to the Sixth Amendment's assistance of counsel, to wit-

1. Johnson v. Zerbst, 304 U.S. 458, 463, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938):

Holding that "[t]he Sixth Amendment withholds from federal courts, in all criminal proceedings, the power and authority to deprive an accused of his life or liberty 'UNLESS' he has or waives the assistance of counsel." id. (emphasis added).

2. Faretta v. California, 422 U.S. 806, 807, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975):

Holding that "[w]hen a defendant 'CHOOSES' to have a lawyer manage and represent his case, law and tradition may allocate to counsel the power to make binding decisions of trial strategy in many areas. 'This allocation can ONLY be justified, however,' by the defendant's consent, at the outset, to accept counsel as his representative. An unwarranted counsel 'represents' the defendant only through a tenuous unacceptable legal fiction. 'UNLESS' the accused 'ACQUIESCED' in such representation, the defense presented is not the defense guaranteed him by the Constitution, for in a very real sense, 'it is not his own defense.'" id. (emphasis added).

3. United States v. Gonzalez-Lopez, 548 U.S. 140, 144, 147 S.Ct. 2557, 165 L.Ed.2d 409 (2006):

Holding that "[a] trial court's erroneous

deprivation of a criminal defendant's '**CHOICE**' of counsel entitles him to a reversal of his conviction." id. (emphasis added).

Here, a persons' Constitutional rights under the Sixth Amendment as well as this Court's jurisprudence were either ignored or violated by the lower courts.

For example, On August 17th, AD2010, now seated Federal Judge, Kathleen M. Williams, who was then the Federal Public Defender for the Southern District of Florida, Ft. Lauderdale Division, filed an Objection to Order by Magistrate Judge and Motion to Set Aside Pursuant Federal Rule of Criminal Procedure (see **APPENDIX 5**). As the now seated federal judge aptly pointed out, the following matters were clearly established on the district court record-

1. Mr. Beiter, Jr. repeatedly **FIRE**D and **REPEATEDLY TERMINATED** the Federal Public Defenders Office from representing him;
2. Mr. Beiter, Jr. never waived any of his rights nor his right to assistance of counsel. Something that the district court acknowledged; and
3. No inquiry into the eligibility of counsel, as required by 18 U.S.C. §3006(A)(a)(1) & (2) was ever performed neither by the magistrate judge nor the District Court. Something that the government acknowledged on record.

Now seating Judge, Williams got it legally and factually correct in her Objection. The lower courts disregarded an Act of Congress as well as this Court's

jurisprudence with regards to congressional intent concerning the Sixth Amendment.

Counsel was forced upon a person in violation of his Constitutional Rights, a fact that has been proven beyond all reasonable doubt as reflected on the district court's record (**revisit APPENDIX 4**). Furthermore, the Eleventh Circuit also disregarded Congress's, this Court's, as well as its own binding jurisprudence and panel precedent rule in support of the district court.

In United States v. Jimenez-Antunez, 820 F.3d 1269, 1270 (11th Cir. 2016), the Eleventh Circuit held that "[a] defendant may substitute a retained or appointed counsel 'regardless of the quality of representation he received.'" And that "[a] defendant exercises the right to counsel of choice when he moves to dismiss retained counsel, regardless of the type of counsel he wishes to engage afterward." It further held that "[t]he Sixth Amendment right to counsel of choice means that a defendant has a right to **'FIRE'** his retained...lawyer...for **ANY REASON** or [for] **NO REASON**.'" (quoting United States v. Rivera-Corona, 678 F.3d 976, at 980 (9th Cir. 2010)) (alterations in original) (emphasis added).

Hence the question laid supra, "Has the Sixth Amendment to the U.S. Constitution been deemed void-for-vagueness? If in fact the Sixth Amendment as well as this Court's jurisprudence in Zerbst, Faretta and Gonzalez-Lopez continue to stand as Case Law and Jurisprudence, then every person is due relief for the egregious denial/neglect of

constitutional rights as reflected in the present case.

To force a person into trial with counsel that was **REPEATEDLY TERMINATED** (revisit APPENDIX 5) will only profoundly increase the guarantee of a higher rate of mass incarceration for people whom the Sixth Amendment was written for.

"It is one thing to hold that every defendant has the right to assistance of counsel, and **QUITE ANOTHER** to say that a state may compel a defendant to accept a lawyer that he does not want." United States v. Garey, 540 F.3d 1267, at 1263 (11th Cir. 2008) (quoting Faretta, 422 U.S. at 833) (brackets and ellipses omitted).

Furthermore, "[t]he right to defend is personal. The defendant, and not his lawyer or the state, will bear the personal consequences of a conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage." Faretta, 422 U.S. 806, at 834 (1975).

"A defendant who does not require counsel enjoys both the right to effective assistance of counsel and the right to choose who will represent him." Gonzalez-Lopez, 548 U.S. 140, 144, 147 (2006). "The right to select counsel of one's choice...has been regarded as the root meaning of the constitutional guarantee." id. at 147-148.

"The Sixth Amendment right to counsel encompasses two distinct rights: a right to adequate representation and a right to choose one's own counsel. The adequate-representation right applies to all defendants and focuses on

the adversarial process, not on the accused's relationship with his lawyer as such." Daniels v. Lafler, 501 F.3d 735, at 738 (6th Cir. 2007) (quoting United States v. Cronin, 466 U.S. 648, 657 n.21 S.Ct. 2039, 80 L.Ed.2d 657 (1984)).

"The denial of right to counsel is a structural error." Gonzalez-Lopez, at 150. "The Sixth Amendment right to counsel of choice means that a defendant has a right to FIRE his retained...lawyer...for any reason or [for] no reason." Jimenez-Antunez, at 1271. "A defendant may substitute a retained or appointed counsel regardless of the quality of representation he received." id. at 1270.

Mr. Beiter, Jr. urges this Honorable Court to review APPENDIX 6 for a thorough analysis of this case. He Petitions this Court to set a bright line standard for all courts to follow in subsequent Supreme Court's jurisprudence in order to avoid constitutional violations such as the one in the present case.

CONCLUSION

The Petition for a Writ of Certiorari should be Granted.

Respectfully submitted on this 22 day of May, Year of YAHWEH 2023.

x Michael David Beiter, Jr.

Michael David Beiter, Jr., PRO SE

REG. NO. 91383-004