No. 22 - 23-5077

IN THE SUPREME COURT OF THE UNITED STATES

In re: Ronald Boyajian

Petitioner

Supreme Court, U.S.
FILED
JUN 28 2023
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On Petition for a Writ of Mandamus And / Or Prohibition to the United States Court of Appeals for the Ninth Circuit
Ninth Circuit case no. 16-50327

PETITION FOR WRIT OF MANDAMUS AND / OR PROHIBITION AND DECLARATION OF PROFESSOR JONA GOLDSCHMIDT IN SUPPORT

Ronald Boyajian

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Petitioner, Pro Se

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QUESTION PRESENTED

In a first appeal of right, did the U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit") violate defendant-appellant Ronald Boyajian's ("Petitioner") Due Process right of access to the court in denying Petitioner's filing a pro se supplemental brief raising issues and arguments not raised by appointed counsel?

PARTIES TO THE PROCEEDING

1. Petitioner Ronald Boyajian

The Petitioner Ronald Boyajian is the defendant-appellant in a first appeal of right below. The Respondent is the Ninth Circuit Court of Appeals.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner states that no parties are corporations.

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PETITION FOR WRIT OF MANDAMUS AND / OR PROHIBITION

The Petitioner, Ronald Boyajian, the Defendant-Appellant below, respectfully applies, pursuant to Section 1651, Title 28, United States Code, and Rule 20.3 of the Supreme Court Rules, for a writ of mandamus and/or for a writ of prohibition, directed to the Ninth Circuit Court of Appeals over direct criminal appeal Case No. 16-50327.

Petitioner, appearing in pro per, requests the Court enforce Due Process right of pro se access to the court and in following its precedent in *Jones v. Barnes*, 463 U.S. 745 (1983) to instruct the Ninth Circuit to allow Petitioner's filing of a pro se supplemental brief raising claims appointed appellate counsel has not raised on direct criminal appeal.

Professor Jona Goldschmidt, whose Declaration is attached, supports on the merits grant of Petitioner's request for pro se supplemental briefing on appeal, and intends to submit amicus brief were the Court to set the case for formal briefing.

The *Jones* Court's reasoning and mode of analysis relies on the represented appellant's right of access to the court through pro se briefing, that is, to raise and have heard on review those appellate claims that appointed counsel does not raise. Pro se direct access to the

court underpinned *Jones'* holding that appointed appellate counsel is not compelled to raise issues requested by appellant. Even the dissent in *Jones*, Justices Brennan and Marshall aligned with Petitioner's right to at least submit pro se supplemental claims while represented given they press the point that pro se appellants should enjoy full *Faretta* rights to proceed without counsel under the Sixth Amendment.

In the district court, the court ordered Petitioner to proceed without counsel which he did for one and a half years including a six-week jury trial and sentencing. In the Ninth Circuit, when Petitioner sought to maintain continuity of counsel by continuing on appeal to proceed without counsel the Appellate Commissioner (a position since revoked) deferred to government opposition to deny *Faretta* status, a ruling ratified on reconsideration by a motions panel. After breaking its own policy of ensuring continuity of counsel whenever possible between the district court and the appellate court, the Ninth Circuit later went further blocking Petitioner from filing pro se supplemental briefing to raise claims not raised by appointed counsel.

A. Pertinent Procedural History

The Court is referred to the pertinent procedural history set forth

in Petitioner's March 13, 2023 filed Pro Se Petition For Rehearing En Banc of the denial of pro se supplemental briefing seeking to raise issues not raised by appointed counsel [Dkt. 205], Appendix C.

On March 30, 2023, the Ninth Circuit issued a clerk's Order [Dkt. 209] ordering that given Petitioner is represented the court will only entertain submissions by counsel, Appendix B.

In a letter dated April 25, 2023, appointed counsel rejected Petitioner's requests asking she 'refile' on Petitioner's behalf his pro se Petition for Rehearing En Banc re pro se rights [Dkt. 205].

On May 4, 2023, Petitioner applied for an emergency stay (Supreme Court case 22 A 978) which application was finally denied June 20. On June 9, 2023, a Ninth Circuit merits panel acting as a two-judge 'quorum' issued an unpublished Memorandum Disposition affirming judgment [Dkt. 222]. Petition for rehearing is currently due by July 24, 2023; counsel has advised the court she is undecided whether to seek rehearing [Dkts. 225,226].

This Petition for Issuance of Writ of Mandamus follows.

B. Timeliness

The Court denied leave to file pro se supplemental briefing on

November 21, 2022 [Dkt. 186], Appendix A. Petitioner timely sought three sequential extension requests which the Ninth Circuit never acted on. Petitioner timely filed in pro se Petition for Rehearing En Banc re pro se rights on March 13, 2023 [Dkt. 205], Appendix C. The Ninth Circuit through a clerk's Order entered March 30, 2023 informed that only submissions by counsel will be acted on [Dkt. 209], Appendix B.

In correspondence dated April 25, 2023, counsel rejected to refile Petitioner's Petition for Rehearing En Banc on his behalf so that the court could act on it. Petitioner having exhausted all avenues for relief on pro se rights applied on May 4 for stay before this Court which application was finally denied June 20.

There has been no lapse in Petitioner's pursuit of the right to submit pro se supplemental briefing.

OPINIONS AND ORDERS ENTERED

On November 21, 2022, the Ninth Circuit denied Mr. Boyajian leave to prepare and file pro se supplemental briefing [Dkt. 186]. This same order also denies Mr. Boyajian to seek reconsideration "the court will not entertain reconsideration". Appendix A.

On March 30, 2023, more than two weeks after Petitioner filed his

Petition for Rehearing En Banc re pro se rights, a Ninth Circuit deputy clerk ordered, "because Mr. Boyajian is represented by counsel, no action will be taken on his pro se letters and documents. Mr. Boyajian's communications to the court shall be through counsel."[Dkt 209] Appendix B.

JURISDICTION

The United States Supreme Court has jurisdiction to hear and determine this Petition For Writ Of Mandamus and/or Writ of Prohibition under 28 U.S.C. § 1651(a) and Supreme Court Rule 20.3.

RELEVANT LEGAL PROVISIONS

I. **Due Process Clause of the Fifth Amendment**: "...nor be deprived of life, liberty, or property, without due process of law...."

RULE 20.1 STATEMENT

Grant of the writ will be in aid of the Court's appellate jurisdiction. Issues brought to light by enabling their review below would thereby become available to the Court. Without allowance of pro se claims crucial issues, often taboo for career practitioners, such as government misconduct, judicial misconduct, and other topics become

are suppressed which impedes the Court's ability to monitor the criminal justice system, enforce rule of law, and lead the correct development of the law.

There exist truly exceptional circumstances that mandate the issuance of the writ. Petitioner was denied his fundamental right of access to the court. The Ninth Circuit incorrectly barricades Petitioner from pro se submission of appellate claims not raised on appeal by appointed counsel. It even refuses to circulate for a vote his pro se submitted Petition For Rehearing En Banc re pro se rights [Dkt. 205], Appendix C.

This is fundamentally wrong on two levels—first, it violates Petitioner's Due Process rights as guaranteed to him under the Fifth Amendment to the Constitution since it barricades him from the court. Moreover, in Petitioner's particular case, it violates his right to a defense perfected on appeal through assertion of preserved available appellate claims bearing on factual innocence which his government lawyer refuses to raise (a lawyer installed by the court despite no criminal defense experience whatsoever, never defended at trial).

The Ninth Circuit's rejecting Petitioner to file pro se claims not

raised by counsel is contrary to *Jones* and thus impermissibly fails to follow this Court. In *Jones*, the Court's *ratio decidendi* is that given represented appellants can, and in *Jones* did, exercise their right of access to the court through direct filing of pro se appellate claims, an appointed lawyer is not compelled to raise every issue requested by appellant.

The Court's decision to grant the Petition would go a long way towards remedying the Ninth Circuit's failure to follow the *ratio decidendi* of the Court's holding in *Jones*. Here the Ninth Circuit in barricading Petitioner's right of access has usurped power not granted it. Mandamus is necessary to confine the lower court to a lawful exercise of its jurisdiction.

Petitioner is left without any adequate relief from any other court, as the Ninth Circuit has informed him that its decisions in this matter are not subject to reconsideration. Further, the Ninth Circuit is withholding processing [Dkt. 209, Ap. B] his timely 'filed' Petition for Rehearing En Banc re pro se rights [Dkt. 205, Ap. C]. Meanwhile court-appointed counsel refuses to refile it 'through' counsel. Thus, this Petition is Petitioner's only avenue for relief.

STATEMENT OF THE CASE

This is Petitioner's only appeal of right in a wrongful conviction[1] and 70-year de facto life sentence. In February 2009 the lead case agent and another case agent concurring, admitted to their wide email distribution there was no probable cause but assured that he would proceed immediately to "scoop" Petitioner up per plan and on schedule. After seven years litigation in the district court, a length of time required primarily due to the extraterritorial origin of the prosecution case which was transferred from Cambodia criminal court to the United States criminal court, Petitioner is now well into the seventh year of his only appeal of right. Meanwhile, Petitioner has been incarcerated 14 years federally imprisoned under maximum security restrictive conditions ever since being detained *abroad* and held 'on ice' by U.S. law enforcement while said 'law enforcement' backfilled to create a case after the above referenced preplanned arrest without probable cause.

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[1] See text below, illustrating due to government misconduct, Petitioner was (a) blocked from putting on an affirmative DNA defense based on the government's own evidence, and (b) blocked from presenting his 2016 jury evidence that the only charged victim in this case, SL, had previously testified exonerating him before a three-judge tribunal in his December 2009 trial facilitated by the U.S. Department of State in an Asian courtroom with U.S. officials in attendance.

Throughout the entire seven years on appeal Petitioner labored unsuccessfully for some measure of input into the framing of his appeal case—trying unsuccessfully to instill in court-appointed counsel objectives of the litigation in which, after all, he is the *movant*. Further, appointed counsel rejecting to ever speak with or meet with Petitioner prevented useful communications on complicated and crucial issues that must be raised on appeal by an appointed lawyer who has no criminal defense experience whatsoever.

Petitioner's exercise of right of access is therefore absolutely essential under these circumstances. There are several categories of preserved claims Petitioner would raise pro se in his direct appeal. The available claims range from highly case-specific to more general relevance to the criminal justice system but only if they were to reach a reviewing court.

A. Available Appellate Claims With Potential For Broad Impact

(I) racial discrimination in the composition of the grand jury pool;

(II) whether the court is deprived jurisdiction due to outrageous government conduct e.g., committing forcible disappearance intercontinentally (which is a crime internationally).

(III) whether federal courts lack jurisdiction to host and resolve extraterritorial criminal cases for same reasons the Court forbids federal courts to resolve foreign facts in civil/civil rights

cases-- don't fly in villages from foreign countries; cannot resolve foreign soil facts to 'preponderance of evidence' [51 percent civil standard].

(IV) rights infringements in government foreign witnesses 'testifying' while *not* under the possibility of penalty of perjury.

(V) resolving the rights implications of blanket policy of shackling; in Petitioner's case, of seven years and *dozens* of pretrial conferences and evidentiary hearings always five-point shackled with denials of repeated requests for court to make individualized risk determination; forcibly bound with heavy chains--sometimes painfully cinched restricting blood circulation--always visible to the court and to the public.

(VI) whether intergovernmental joint venture prosecution with jeopardy attaching at foreign country criminal trial (with Petitioner's acquittal) in a civil law system country deprives the U.S. federal court jurisdiction to proceed on the same charge and case; and how the *Bartkus* exception affects this determination.

(VII) competence of a federal court to host criminal litigation in a foreign country-originated case once the court finds foreign country residing witnesses are necessary to prevent a failure of justice, satisfying requirement for F.R.Crim.P. Rule 15 foreign depositions in the absence of defendant, particularly in countries without Mutual Legal Assistance Treaty with the United States.[2]

It's noteworthy that five of the six above preserved claims involve

[2] Letters rogatory do not work. The State Department is inevitably involved on behalf of the prosecutor in extraterritorial cases. In Petitioner's case, the district court issued letters rogatory which the State Department, in fact an advertised formal partner investigating and prosecuting Petitioner's case, apparently never presented the letters rogatory to their destination foreign court. The district court denied to continue trial on grounds of outstanding letters rogatory.

the consequences of his forcible disappearance from his home in Asia, while he was temporarily incarcerated during criminal proceedings in foreign country courts.

The racial discrimination in the jury pool composition is prejudicial because, for example, the systematic underrepresentation affecting Asians in the jury pool of the Central District of California. Asians are Petitioner's peers and "community" who are in the best position to judge facts on the ground inside Asia from which Petitioner was abducted for U.S. trial (though already incarcerated abroad pending Cambodian court case in proceedings).

Petitioner's record in the district court displays how the extraterritorial prosecution transferred to the United States (instead of resolution within the foreign country courts of competent jurisdiction) abrogates the Fifth Amendment Due Process right to present a defense and the Sixth Amendment right to compulsory process. The record showcases the necessity to dismiss an indictment for the impossibility to implement these Fifth and Sixth Amendment rights, due to the government's removing Petitioner from the foreign country jurisdiction where the conduct and facts to be resolved allegedly occurred and where

Petitioner enjoyed full effective compulsory process and brought into a jurisdiction (U.S.) with no compulsory process effective as to the extraterritorial witnesses.

Petitioner's preserved claims, if allowed to be raised through grant of this Petition, showcase the government's playbook of illicit conduct in deliberately targeting Americans while they are abroad -- as in Petitioner's case -- is being implemented pursuant to its clear calculation that the U.S. Constitution does not have any protective effect when the U.S. government acts against Americans *abroad.* This is certainly the memorialized position of Petitioner's district court and Petitioner's prosecuting U.S. Attorney Office in the Central District of California.[3]

In Petitioner's case he was making use of Cambodia's court of competent jurisdiction's subpoena power to compel, and did compel duly sworn eyewitness police testimony providing a complete alibi from that country's law enforcement.

But instead of the preliminary charge being dismissed and his

[3] Associate Justice Kavanaugh, while in Senate confirmation hearing, told the world that the Constitution protects Americans wherever they are in the world. That is certainly untrue within the Ninth Circuit as Petitioner's judge and army of U.S. Attorney prosecutors insist.

released, Petitioner was left in Asia's most notorious torture prison for six months which it later emerged in Wikileaks Leaked Diplomatic Cables that personages including Secretary Hillary Clinton and Senator James Webb were directed to orchestrate and then they did carry out to abduct Petitioner from that foreign prison without notice to his Cambodian court presiding judge and then did forcibly disappear Petitioner from that foreign country altogether.[4]

The government's intercontinental forcible disappearance bears on this Petition. It set the frame for several pro se claims Petitioner would raise on appeal. Since the founding of this nation, Americans expect witnesses -- the alpha and omega of a defense at trial -- will be available through subpoena. But that is completely untrue in Petitioner's extraterritorial prosecution after, and as a direct result of, the transfer of his case from the originating foreign country courts to the U.S. court

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[4] See Supreme Court original jurisdiction case no. 16M70 seeking relief and redress against defendants including but not limited to Secretary Clinton and Senator Webb among several heads of state and other high leadership and officials who personally participated in Petitioner's forcible disappearance. The file should include litigation continuing seven months beyond the docket's last public entry on January 9, 2017. This Supreme Court case has a subsequent history in the D.C. Circuit case no. 18-5288 Petition for Writ of Mandamus *In re Ronald Boyajian, Petitioner, v. U.S. Supreme Court, Respondent*, denied (per curium) 11/220/18; rehearing en banc denied (per curium) 18/18/19.

for trial.

International transfer predictably results in a failure of justice. When Petitioner reappeared to the world now re-imprisoned but on a different continent, Petitioner was brought before a U.S. District Judge presiding over the very same foreign country-initiated case and allegation but now Petitioner no longer had compulsory process through effective subpoena power. For the next seven years Petitioner litigated seeking relief over and over from absence of compulsory process guaranteed under the Sixth Amendment and the right to present a defense under the Fifth Amendment Due Process Clause.

Petitioner argued this irreparable denial of right to a two-sided trial mandates dismissal. The trial that ensued proved this point, exemplified at Section B. following below in two case-specific claims. Petitioner's record proves the magnitude of how prejudicial the impact can be from governmental violation of rights under the Due Process Clause of the Fifth Amendment and Compulsory Process Clause of the Sixth Amendment. The government forcibly removed Petitioner from the country in which the foreign soil allegation arose, with the effect of barricading Petitioner's access to and use of compulsory process

which had already resulted in a complete alibi. The international transfer instantly placed all Petitioner's witnesses beyond subpoena power, and turned the Cambodian court judge's *in camera* case file with the alibi witnesses and evidence to the U.S. prosecutors and their allied partners.

Petitioner's case is important, arguably a perfect storm for a reviewing court, because the government and the district court acceded and ruled, respectively, that Petitioner had made a showing there were **over one hundred foreign national witnesses with exculpatory and material testimony** who all met the stringent criteria of F.R.Crim.P. Rule 15 Depositions "(3) Taking Depositions Outside the United States Without the Defendant's Presence. The deposition of a witness who is outside the United States may be taken without the defendant's presence if the court makes case specific findings of all the following: (A) the witness's testimony could provide substantial proof of a material fact in a felony prosecution;" The district court granted Petitioner's Rule 15 Motion for Deposition Testimony for over 100 foreign witnesses. Notation to (a)(1) emphasizes the Rule 15 requires a showing of exceptional circumstances. Exceptional circumstances is met

when the **"testimony of witnesses is necessary in order to prevent a failure of justice."**

Thus, Petitioner's record contains fundamental issues about compelling witnesses who can't be compelled by the U.S. court which has no jurisdiction. F.R.Crim.P. Rule 17 does not extend abroad.

To no avail, Petitioner explained to the court the necessity for relief due to the government's placing Petitioner's witnesses beyond the court's subpoena power, citing *United States v. Valenzuela-Bernal*, 458 U.S. 858 (1982), *United States. v. Ramirez-Lopez*, 315 F.3d 1143 (9th Cir. 2003), *United States v. Leal-Del Carmen*, 697 F.3d 964 (9th Cir. 2012), and requested missing witness jury instructions (denied).

While no one in Petitioner's circumstances could compel testimony from foreign nationals residing abroad -- not even to attend a foreign deposition – the inter-country transfer subjected Petitioner to further vulnerability to additional government misconduct. This is shown by what occurred to two crucial witnesses who carrying district judge-issued trial witness subpoenas in hand voluntarily presented themselves to the U.S. embassy.

These witnesses identities were very well known, with even the

U.S. prosecutor previously traveled to the foreign country for the purpose of meeting these witnesses who were expected to be called to testify in Petitioner's case. These witnesses included, crucially, two court clerks who administered the oath and received SL's exonerating testimony and prepared and memorialized corresponding court documents. The State Department straightaway forbid these two court clerks entry into the United States though, and it bears emphasizing, they were carrying district judge issued trial witness subpoenas, resulting in the government's successful exclusion of sole charged alleged victim SL's exoneration of Petitioner evidence from the jury.

The State Department officials who partnered with the prosecutors had thus helped to engineer Petitioner's absence of constitutional rights and the ability to defend himself, followed up right after the verdict with official correspondence instructing the maximum possible sentence, which the court followed.

Justice Thomas and Justice Alito in their dissent from denial of certiorari presciently anticipated Congress' foray into universal jurisdiction could reach "startling' consequences. *Baston v. United States*, 137 S. Ct. 850, 197 L. Ed. 2d 478 (2017). In sum, all of the

foregoing subject matter giving rise to several preserved claims in Petitioner's case will turn on the reality, or unreality, of the Constitution applied extraterritorially which is yet to be presented for review to any courts.

Currently, within the Ninth Circuit jurisdiction Americans, like Petitioner, accused of conduct outside the United States may NOT invoke the Constitution because the Constitution ends at the border. This controversy can be reviewed but *only* if the Court grants the Petition affording Petitioner a pro se contribution in his appeal.

This is an existential fight on behalf of the millions of Americans who will step abroad, or who have stepped abroad for any reason whether on vacation, or tourism, business, to see relatives, or while residing temporarily or permanently abroad. Petitioner's case stands to, and could, establish the rules of engagement: which rights, if any, may Americans rely upon when the Executive turns its newly minted universal jurisdiction prosecutorial tools on that American? This Court may not yet have looked at but is surely aware that Executive branch 'mission creep' is mainstreaming extraterritorial jurisdiction prosecutions into formerly purely domestic white collar, corporate,

espionage, conspiracy to commit computer intrusion, obtaining or disclosing (or conspiring to) national defense information, bribery, sanctions violations, and innumerable other criminal statutes--while an increasingly globalized world necessarily includes Americans' occasional and even regular periods abroad *without* Constitutional protections.

B. Case-Specific Claims Petitioner's Would Bring On Appeal

There are specific claims particular to Petitioner's case that he would additionally raise to the Ninth Circuit. For example, the State Department prohibited two Cambodian court officials from testifying at Petitioner's 2016 trial, resulting in exclusion from the jury the sole charged victim SL's 2009 Cambodian trial court testimony exonerating him:

> SL **"I never had sex with that foreigner",** while pointing at Petitioner's photo being displayed to her by three judges in the foreign court tribunal facilitated by the U.S. State Department in December 2009. See case 16-50327, Government's Further excerpts of record Vol. 2, sealed (not made available to Petitioner).

No argument on this issue was raised in Petitioner's pending direct appeal.

Nor was there any argument or claim raised about the exclusion of evidence from the Homeland Security Lab contractor Bode Labs

identifying a person other than Petitioner as the contributor of DNA essential to the identification of the alleged participant in sexual activity with SL, the sole alleged victim charged in the indictment.

Government admits, "The swabs were taken from SL." RT 4/12/15 (100).

Government agrees, BODE LAB Report says, "[Def.'s] DNA is excluded as a possible contributor." RT 2/19/16 pm (116).

Bode having excluded Petitioner as a suspect warned Homeland Security "DNA connects to un-identified perpetrator," and "You got the wrong guy." Homeland Security Science Officer advised the government including my lead prosecutor "**we're batting zero on this one. No semen found on the bedding and <u>the suspect is eliminated</u>**" [Bates 101307]

On eve of trial, the government agreed to bring to trial all of its technical witnesses necessary for the defense to put on the announced affirmative DNA defense. In its minute order, the district court states, "You can argue, "DNA from un-identified perpetrator definitely not [def.] found on SL's vagina, breasts or mouth." "Given the DNA is already exculpatory ..." Minute Order 1/25/16 Dkt. 1202.

However, late in the six-week jury trial the government surprise revealed it did not bring any witnesses for the defense to put on because the government now disavowed prior sworn affidavits of its case agent and several other agents assuring the government's samples were obtained from SL. The court denied Petitioner's request to prove source within hours if provided a mouth ('buccal') swab from SL. The court denied buccal swab from SL, citing SL's privacy rights (though the court advised Petitioner he faced 130 years sentence for SL's allegation and violated Petitioner's privacy rights taking samples from him). The court also was not inclined, in the alternative, to hold the jury for possibly days or a week in order that the defense could secure DNA from SL's mother's in Asia to prove source. Thus, Petitioner's trial closed without the jury ever hearing about the exculpatory DNA results and the absence of semen on seized bedding – and that there was another male's semen found on SL. The jury never heard from Homeland Security Science Officer that she reported "suspect [Petitioner] is eliminated".

Post-trial and before sentencing Petitioner obtained said maternal DNA from Asia and presented the court with sworn forensic DNA expert declaration that the government's samples were in fact sourced

from SL (confirming years earlier case agent sworn affidavits that the government surprise disavowed mid trial). Despite this proof that the defense was precluded to present for the jury to see and hear the legitimate evidence from the government's own samples of Petitioner's affirmative DNA defense, the court provided no relief and proceeded to sentence Petitioner to life in prison (70 years imprisonment is a *de facto* life sentence given Petitioner's age).

These are examples of arguments that Petitioner repeatedly urged appointed counsel to make—and that were not made, in a case in which the Government will likely claim, going forward, that Petitioner allegedly waived or otherwise failed to make arguments critical to his obtaining relief on appeal.

Because of the limitations placed on Petitioner's participation in the appellate process, Petitioner was restricted to attempting to negotiate with appointed counsel for meritorious claims and arguments to be raised in his appeal—and Petitioner indeed has now received an appellate ruling on an appeal that did not present compelling claims to the reviewing court. This happened in large part because of the reviewing court's decision to deny Petitioner—a litigant who was

ordered to defend himself at trial—the prerogative to file documents in the appellate court record in pro se.

Reasons for Granting the Writ

Petitioner respectfully suggests it is in the Court's interest to promote rule of law by enforcing Petitioner's right to file pro se supplemental briefing raising issues appointed counsel did not present. Petitioner respectfully urges the right to submit pro se claims additional to counseled claims derives from the Right of Access cases, including Fifth Amendment right to Due Process of Law and Equal Protection Clause of the Constitution.

A. Petitioner's Due Process Right of Access

The Court's precedent in *Jones* favorably controls Petitioner's right of access to the court to raise issues not presented for review by his appointed appellate counsel. On this basis the Petition seeks intervention to right the wrong of being denied his right of access to the courts in violation of Due Process and Equal Protection.

In *Jones*, the Supreme Court reversed the Second Circuit per se rule that to be effective appointed counsel must present all issues requested by their client appellant. As a represented appellant,

Barnes was forced by appointed counsel to submit uncounseled briefing raising pro se issues counsel declined to present. The Court struck down the Second Circuit per se rule, holding appointed counsel is not compelled to raise every issue requested by appellant. This holding is but a *part* of the precedent[5] which developed from a specific context wherein the Court reasoned and analyzed and found met constitutional requirements so long as appellant Barnes (Respondent before the Court) had right of access to the court. The Court recognized he in fact had exercised that right through submitting three pro se briefs[6] raising claims not raised by counsel and which pro se claims were considered by

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[5] *Stare decisis* requires that when the Supreme Court issues an opinion, "it is not only the result but also those portions of the opinion necessary to that result by which [courts] are bound." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 67 (1996). The entire "rationale upon which the Court based the results of its earlier decisions" is precedent. Id. at 66-67; see also *MK Hillside Partners v. Commissioner of Internal Revenue*, 826 F.3d 1200, 1206 (9thCir. 2016) (courts bound by opinion's "mode of analysis"). In other words, the required "deference extends to the reasoning of Court decisions, too—not just their holdings." *Langere v. Verizon Wireless Services, LLC*, 983 F.3d 1115, 1121 (9thCir. 2020); see also *Seminole Tribe*, 517 U.S. at 67 (*stare decisis* requires adherence "not only to the holdings of the Supreme Court's "prior cases, but also to their explications of the governing rules of law.") (cleaned up); *Sonner v. Premier Nutrition Corporation*, 971 F.3d 834, 841 n.4 (9th Cir. 2020) (even Supreme Court's "considered dicta" must be afforded due deference). Lower courts "don't have license to adopt a cramped reading of a case or to create razor-thin distinctions to evade the reach of precedent." *Tandon v. Newsom*, 992 F.3d 916, 937 (9th Cir.) (Bumatay, CJ, concurring in part and dissenting in part) (cleaned up), further proceedings, 141 S. Ct. 1294 (2021).

[6] "In addition [to appointed counsel's brief], [appointed counsel] submitted [appellant Barnes'] own pro se brief. Thereafter [Barnes] filed two more pro se briefs." Id., at 748

the reviewing court.

It is evident at argument the Justices state how they explicitly rely on Barnes having successfully accessed the court with access to the court defined by the "access cases" the parties had briefed as adequate and effective means of presenting his issues. The colloquy[7] included (Ms. Riesel represented Barnes):

34:12

Ms. Riesel — Well, we rely on the right of access cases and those, in turn, Your Honor, I believe rely on the Due Process and Equal Protection.

J Stevens — But, in those cases, the prisoner access to the courts, for example, usually pro se submissions have been adequate. And here you did, in fact, get... Your client's letter did go to the court.

35:50

J Stevens — I do not know of any access case that said there had been a denial of access when the message gets through,

[7] Audio of argument on 2/22/1983 at https://www.oyez.org/cases/1982/81-1794. Transcript at https://www.supremecourt.gov/pdfs/transcripts/ 1982/81-179402-22-1983.pdf

even though it may be poorly written and pro se and all the rest.

53:01

Ms. Riesel — It is an access case because the question is whether the appellate lawyer denied his client access on direct appeal.

J White — He did not deny him anything. He said if you want to go argue it, argue it yourself.

CJ Burger — And *Faretta* guarantees him that right.

This argument illustrates the *Jones* Court's confidence that Barnes' filing of his pro se briefing satisfied the requirement for adequate and effective access. On this foundation, the *Jones* Court reasoned and ruled that appointed counsels need not be compelled to raise issues requested by appellant. In other words, not all issues need be presented as counseled issues, so long as appellant's right of access is adequate and effective. Petitioner insists on the same right of access. Accordingly, the *Jones* precedent favors grant of the Petition.

But the Ninth Circuit, denying Petitioner his constitutional right of access, acts contrary to *Jones* which guarantees Petitioner's right to

file supplemental pro se briefing. In so barricading Petitioner, the Ninth circuit is also in conflict with other circuits such as the Second Circuit (also Fifth Circuit, etc.) which honor pro se right of access as seen in *Jones*. The Court is asked to enforce Petitioner's right of access so he can move ahead with a completely presented case on first appeal of right.

As mentioned at *Jones* argument shown above, the Court's authority to grant the Petition also derives from the Sixth Amendment. Chief Justice Warren Burger underscored that *Faretta* applies to direct appeal at argument in *Jones*. "And *Faretta* guarantees him that right" (audio at 53m17s, transcript (37)]. Accordingly, the Court is empowered to grant the Petition under the Fifth Amendment Due Process Clause, the Equal Protection Clause of the Constitution, and arguably the Sixth Amendment right to counsel.

B. Mandamus in Aid of the Court's Appellate Jurisdiction

Ninth Circuit's barring Petitioner's filing pro se claims directly adversely impacts the Court's appellate jurisdiction. When issues are suppressed, the Court is impeded in its appellate jurisdiction because it has no access to them and cannot use them to safeguard the rule of law

or guide development of the law.

As mentioned under Statement Of The Case, subsection A, above, Petitioner's case could open for review, if allowed to file pro se claims, some of most fundamental rights deprivations impacting the integrity and dignity of the courts. For example, absent grant of the Petition, this Court will never see or address the racial discrimination in the composition of the jury pool, and the blanket policy of indiscriminate shackling of all defendants in court at all times without allowing for any individualized risk determinations. These two abusive "policies" alone have prejudiced the legal interests of *thousands* of defendants prosecuted within the jurisdiction of the Central District of California during the 7 year pendency of Petitioner's prosecution case.

Furthermore, though impacting to date only hundreds of defendants, it is of nationwide concern whether federal courts can properly exercise jurisdiction to find facts alleged to occur inside a foreign nation, on a foreign country's soil in a criminal case. This Court, in a recent series of landmark decisions that constricted jurisdiction of federal courts, forbad federal courts to host civil / civil rights cases based on foreign soil originated factual allegations.

Importantly, in effort to secure those facts abroad, after being abducted from a foreign county and from courts where he enjoyed full compulsory process and was using it, Petitioner obtained a district court ruling granting foreign depositions in finding over 100 exculpatory witnesses or witnesses without whose testimony at trial there would be a failure of justice. In Petitioner's case, the government falsely promised to secure for U.S. trial every one of the more than one hundred witnesses if the defense waived the court-approved and already scheduled and paid-for by defense foreign depositions. The depositions being thus cancelled the government later reneged on its promise as to the entirety of the more than one hundred witnesses without which there would be a failure of justice as ruled by the court.

The purpose of this narrative is to underscore that maybe Petitioner's case, if the pro se claims are permitted, will be the case providing the Court the kind of fulsome factual predicate to justify further limiting the jurisdiction of federal court's forbidding their hosting extraterritorial (foreign soil) originated criminal cases (as they are now forbidden to host foreign soil originated civil/civil rights cases). Petitioner is asking the Court, in effect, to grant the Petition to enable

raising to the Ninth Circuit – for eventual access by the Court – such pro se claims as described impacting on the right to a *two-sided* trial.

CONCLUSION

Mandamus is essential if Petitioner, as with other represented appellants, is to be empowered to exercise his constitutional rights to have a voice in his federal criminal appeal. At minimum, the Court should enforce the *Jones* precedent as framed by its rationale and mode of analysis by directing the Ninth Circuit to accept filing and consider on review and Petitioner's pro se briefing raising claims and arguments appointed counsel did not present.

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Respectfully submitted,

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