

## APPENDIX

### Table of Contents

#### Appendix A.

Motions Panel Order 11/21/22 Dkt 186 deny filing pro se brief

#### Appendix B

Clerk Order 3/30/23 Dkt. 209 court will not act on pro se submissions

#### Appendix C

Pro Se Petition For Rehearing En Banc re pro se rights 3/13/23 Dkt. 205

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NOV 21 2022

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RONALD GERARD BOAJIAN, AKA  
Ronald G. Boyajian, AKA Ronald Geral  
Boyajian, AKA Ronald Gerald Boyajian,  
AKA John,

Defendant-Appellant.

No. 16-50327

D.C. No. 2:09-cr-00933-CAS-1  
Central District of California,  
Los Angeles

ORDER

Before: O'SCANNLAIN, RAWLINSON, and OWENS, Circuit Judges.

Appellant's pro se motion (Docket Entry No. 168) for an extension of time to file a motion for reconsideration of the court's September 15, 2022, order is granted. The pro se motion for reconsideration (Docket Entry No. 170) is denied.

Appellant's opposed motion (Docket Entry No. 171) for leave to submit a pro se supplemental brief is denied. Appellant's pro se motion (Docket Entry No. 173) "to perfect" the motion for leave to file a pro se supplemental brief is denied.

Appellant's unopposed motion (Docket Entry No. 185) for an extension of time to file a consolidated reply brief is granted. The optional consolidated reply brief is due February 6, 2023. The word count limitations established in the court's May 3, 2021, order remain in effect.

The court will not entertain any motions for reconsideration of this order.

The Clerk will serve this order on appellant individually at: Reg. No.

33900-112, USP Terre Haute, U.S. Penitentiary, P.O. Box 33, Terre Haute, IN

47808.

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MAR 30 2023

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RONALD GERARD BOYAJIAN, AKA  
Ronald G. Boyajian, AKA Ronald Geral  
Boyajian, AKA Ronald Gerald Boyajian,  
AKA John,

Defendant-Appellant.

No. 16-50327

D.C. No.  
2:09-cr-00933-CAS-1  
Central District of California,  
Los Angeles

ORDER

Appellant Boyajian has sent several letters and documents asking for various relief. The clerk has marked them received. 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.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Omar Cubillos  
Deputy Clerk  
Ninth Circuit Rule 27-7

Case No. 16-50327

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

RECEIVED  
MOLLY C. DAWYER, CLERK  
U.S. COURT OF APPEALS

MAR 13 2023

FILED  
DOCKETED  
DATE  
INITIAL

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RONALD GERARD BOYAJIAN,

Defendant-Appellant.

On Appeal from the United States District Court for the  
Central District of California,  
Case No. D.C. No. 2:09-cr-00933-CAS  
THE HONORABLE CHRISTINA A. SNYDER

**DEFENDANT-APPELLANT'S PRO SE PETITION FOR  
REHEARING EN BANC  
RE PRO SE RIGHTS ON APPEAL, APPENDIX**

Ronald Boyajian  
Register no. 33900-112  
United States Penitentiary  
USP Terre Haute  
P.O. Box 33  
Terre Haute, Indiana 47808

Petitioner, Pro Se

## TABLE OF CONTENTS

	Page
TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES .....	ii
I. INTRODUCTION .....	1
A. Rule 35 Statement .....	2
B. Pertinent Procedural History .....	3
C. Timeliness .....	5
II. ARGUMENT .....	5
A. Petitioner's Right of Access .....	6
B. The Sixth Amendment Entitles Proceeding Without Counsel On Appeal As Of Right .....	9
III. CONCLUSION .....	11
APPENDIX .....	12
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Faretta v. California</i> , 422 U.S. 806 (1975) .....	9,11
<i>Jones v Barnes</i> , 463 U.S. 745 (1983) .....	<i>passim</i>
<i>Martinez v. California Court of Appeal</i> 528 U.S. 152 (2000) .....	3,9

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, ) C.A. No. 16-50327  
Plaintiff-Appellee, ) D.C. No. CR 09-933-CAS  
v. ) (Central Dist. Cal.)  
RONALD GERARD BOYAJIAN, )  
Defendant-Appellant. ) **DEFENDANT-APPELLANT'S**  
 ) **PETITION FOR REHEARING**  
 ) **EN BANC RE PRO SE**  
 ) **RIGHTS ON APPEAL;**  
 ) **APPENDIX**  
 )  
 )

---

**I. INTRODUCTION**

Defendant-Appellant Ronald Boyajian [hereinafter "Petitioner"], appearing in pro per, seeks rehearing en banc in order that the Court follow the precedent in *Jones v. Barnes*, 463 U.S. 745 (1983) to enforce a represented appellant's right of access to the court to submit and have considered on mandatory direct appeal pro se supplemental briefing raising claims counsel has not presented. 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 counsel does not raise. This direct access to the court underpinned *Jones'* holding that appointed counsel is not compelled to raise issues requested by appellant.

The accompanying Rule 27-3 Emergency Motion for Stay relates to the Petition because if the Petition is granted, Petitioner will exercise his pro se rights to the extent these are determined and specified by the en banc Court. Clearly, the current schedule with argument and submission of the case set for May 10 prejudices Appellant because the en banc Court could not by then resolve much less implement any asserted pro se rights that it may find exist, for example, to proceed in full *Farettta* status pursuant to the Sixth Amendment or through pro se supplemental briefing to raise uncounseled issue under Right of Access, Due Process of Law, and/or Equal Protection of the Laws. Second, the stay would allow the Court to schedule Petitioner's case after it renders its decision *United States v Pepe* Case No. 22-50024. Both cases share the same issue -- which for *Pepe* is the main overarching issue -- that Supreme Court precedent in *United States v Mortensen* controls; from which flows applications directly and through subordinate and corollary claims that arguably invalidate Petitioner's § 2423(b) and *Pepe*'s § 2423(b) and § 2241(c) travel count convictions. The utility of properly scheduling Petitioner's case after *Pepe* is discussed in the concurrently filed Motion for Stay.

A. Rule 35 Statement

Pursuant to FRAP Rule 35, Petitioner states

(A) the panel decision conflicts with a decision of the United States Supreme Court (*Jones v. Barnes*, 463 U.S. 745 (1983) and

consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; and

(B) the proceeding involves one or more questions of exceptional importance as it involves a life sentence case [given the circumstances, including the age of pro se litigant, the 70-year sentence is a de facto life sentence] *and* because the resolution of this question will impact every indigent appellant within the jurisdiction.

#### B. Pertinent Procedural History

In the district court, in year five post-indictment in an extraterritorial case involving international extradition, Petitioner was granted *Faretta* status [Dkt. 731, 11/25/14] in which capacity (all the while held in maximum security detention) he litigated for 1.5 years spanning pre-trial motions, a six-week anonymous jury trial, several months of post-trial motions and sentencing.

Upon filing notice of appeal [Dkt. 1538, 8/29/16 & 1542, 8/31/16], Petitioner informed the Court he sought to maintain continuity of counsel from the district court to the Court of Appeals through continuing to proceed without counsel, namely, in *Faretta* status. The Commissioner's Report and Recommendation disallowed Petitioner to proceed *as of right* in *Faretta* status citing *Martinez v. California Court Of Appeal*, 463 U.S. 745 (1983) and also disapproved Petitioner to proceed *permissively* in *Faretta* status citing government objection [Dkt. 28]. The panel denying *Faretta* status adopting the Commissioner's Report and Recommendation [Dkt. 29, Appendix].

After removing for objection standby counsel it had appointed initially as

appellate counsel, the Court successively forced on Petitioner four more appointed counsel. Appointed counsel number two filed an Opening Brief [Dkt. 66] and appointed counsel number four (currently appointed counsel) filed a Supplemental Opening Brief [Dkt. 142] followed by a consolidated Reply Brief [Dkt. 195] to the government's Answering Brief [Dkt. 90] and Supplemental Answering Brief [Dkt. 174]).

In June 2022, the month prior to counsel's scheduled July filing due date for the Supplemental Opening Brief, Petitioner, launched several months of unsuccessful efforts as documented in the record to obtain counsel's advice and cooperation to facilitate his motion for leave for pro se supplemental briefing on issues counsel is not raising. Eventually Petitioner conducted sufficient research to prove to counsel, showing case after case, that other appointed counsels in this jurisdiction regularly secure *leave* for pro se briefing on behalf of their clients (or such briefing was otherwise directly filed pro se) with such uncounseled issues considered by the Court alongside the counseled issues. Counsel straightaway filed a perfunctory motion for leave for Petitioner to file pro se supplemental briefing, without communicating with Petitioner about its content as requested. Petitioner notified the Court he needed to augment and refine the perfunctory motion submitted by counsel.

On November 21, 2022 a motions panel issued a multipart Order, ruling in

relevant portion: “Appellant’s opposed motion (Docket Entry No. 171) for leave to submit a pro se supplemental brief is denied. Appellant’s pro se motion (Docket Entry No. 173) ‘to perfect’ the motion for leave to file a pro se supplemental brief is denied. [...] The court will not entertain any motions for reconsideration of this order.” [Dkt. 186, Appendix].

A merits panel is assigned with argument calendared for May 10, 2023.

This Petition with emergency motion for stay follows.

### **C. Timeliness**

The Court denied leave to file pro se supplemental briefing on November 21, 2022 [Dkt. 186, Appendix]. Thereafter, Petitioner submitted three extension requests as to the time to file a petition for rehearing en banc, explaining USP Terre Haute is conducting incessant in-cell lockdowns. [Dkt. 189, 193, 203] The Court has taken no action on these requests.

## **II. ARGUMENT**

En banc rehearing is necessary for the Court to resolve pro se rights. In this mandatory direct criminal appeal, the Court neither afforded Petitioner his asserted right to submit pro se supplemental briefing nor honored his election to proceed without counsel in *Farettta* status. The Court’s policy of denying right of access conflicts with other circuits, e.g., Second Circuit, Firth Circuit, etc.

### A. Petitioner's Right of Access

The Supreme Court precedent in *Jones* controls Petitioner's *right* of access to the Court for the express purpose to raise issues not presented for review by his appointed appellate counsel. This Petition seeks relief from denial of the right of access to the courts which denial implicates deprivation of Due Process and Equal Protection.

Here, a motions panel, contrary to the precedent in *Jones*, barred Petitioner from submission of pro se supplemental briefing raising claims not presented by counsel. 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 in the form of counseled issues, that is, with assistance of counsel. Although it was clear that Barnes has been forced by counsel to submit uncounseled briefing in order to raise his pro se issues that counsel declined to present, the *Jones* Court struck down the Second Circuit *per se* rule, holding that appointed counsel is not compelled to raise requested by appellant. This holding is a part of the precedent<sup>1</sup> developed from a specific context wherein the Court

---

<sup>1</sup> 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 (9<sup>th</sup> Cir. 2016) (courts bound by opinion's "mode of analysis"). In other words, the required "deference

reasoned and analyzed and found sufficient to pass constitutional muster that appellant Barnes (Respondent before the Court) had right of access to the court and in fact had exercised that right through submitting three pro se briefs<sup>2</sup> raising claims not raised by counsel.

For example, at argument it is evident the Justices relied on Barnes having presenting his pro se claims regardless that the claims were reviewed in their uncounseled form. The Jones Court relied on access to the court (as defined by the “access cases” the parties had briefed as adequate and effective means of presenting his issues) in rendering its holding. The following are transcribed excerpts from the audio recording at argument<sup>3</sup> (Ms. Riesel represented Barnes):

---

extends to the reasoning of Court decisions, too—not just their holdings.” *Langere v. Verizon Wireless Services, LLC*, 983 F.3d 1115, 1121 (9<sup>th</sup> Cir. 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).

<sup>2</sup> “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

<sup>3</sup> Audio of argument archived at <https://www.oyez.org/cases/1982/81-1794>. Corresponding pages of official transcript attached at Appendix, full transcript available at [https://www.supremecourt.gov/pdfs/transcripts/1982/81-1794\\_02-22-1983.pdf](https://www.supremecourt.gov/pdfs/transcripts/1982/81-1794_02-22-1983.pdf)

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.

Justice 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

Justice Stevens

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

Justice White

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

Chief Justice 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 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 controls in a manner favorable to grant of the Petition.

Specifically, Petitioner, in being denied by this Court that right of access, is distinguished from *Jones*. Petitioner is facing a Court that is impermissibly barricades itself in forbidding his supplemental pro se briefing. This circuit is 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 en banc Court is asked to restore and/or enforce Petitioner's right of access (with the underlying rights to due process and to equal protection of the laws).

B. The Sixth Amendment entitles proceeding in pro se on appeal as of right

Finally, Petitioner asks the Court to interpret the Sixth Amendment (for example, as interpreted by the Supreme Court in *Faretta v. California*, 422 U.S. 806 (1975)) that in *federal* criminal direct appeals appellants may proceed without counsel *as of right*. Petitioner asserts the Court misapplied *Martinez* to prohibit his proceeding in Faretta status in the Court of Appeals, breaking the continuity of counsel from the district court where he litigated extensively in Faretta status for more than 1.5 years. He pointed out then and respectfully suggests now that as it explicitly states in its conclusion *Martinez* binds the State of California, and thus not the federal courts. As seen from the audio excerpt above, Chief Justice Burger, who delivered the opinion in *Jones*, makes clear he comprehends *Faretta* extends to federal appeals, "And Faretta guarantees him that right". Petitioner agrees. Accordingly, he presses the en banc Court to rule whether Petitioner is *entitled as*

*of right* to proceed without counsel under the Sixth Amendment, in essence asking the Court to either recognize, or interpret, *Faretta* extends to direct appeal in federal courts.

The en banc Court can find that the Sixth Amendment frames the right to counsel in federal appeals -- and thus find the correlative right to proceed without counsel -- by following the viewpoints Justices Brennan and Marshall jointly expressed in their powerful lengthy detailed dissent in *Jones* which Petitioner incorporates as if set forth in full. Their dissent explicated that they felt in time the Sixth Amendment would be recognized as the constitutional source for the right to assistance of counsel at every stage of the proceedings, and more particularly that there is or should be recognized today a federal *constitutional* right to an appeal. In that result if applied here would mandate reversing the Commissioner and panel denial of Petitioner's election as of right to proceed without counsel on appeal.

In closing, Petitioner respectfully urges that his *right* to submit uncounseled, i.e., pro se claims for review alongside counseled claims derives from the Right of Access cases, including right to Due Process and Equal Protection, and that his *right* to control the frame of the appeal including all claims raised i.e., full *Faretta* status derives from the Sixth Amendment right to counsel.

## CONCLUSION

At minimum, the en banc Court should adhere to the *Jones* precedent as framed by its rationale and mode of analysis in assuring right of access to the courts in accepting pro se briefing from represented litigants raising claims not presented by their court-appointed counsel.

Petitioner respectfully requests the en banc court grant the following relief:

1. Stay proceedings (pursuant to the concurrently filed Motion for Stay) until the disposition of the Petition and the decision in *Pepe*;
2. Authorize Petitioner's pro se supplemental briefing for the purpose of presenting "pro se" appellate claims additional to those raised by counsel.
3. Determine that in the present time there has evolved in criminal jurisprudence a cognizable constitutional right to a federal appeal, and if so, that *Faretta* / Sixth Amendment entitles Petitioner to proceed without counsel *as of right*.

Dated: March 7, 2023

Respectfully submitted,



Ronald Boyajian  
Petitioner, Pro Se

## APPENDIX

Case: 16-50327, 05/31/2017, ID: 10453753, DktEntry: 29, Page 1 of 2

**FILED**

UNITED STATES COURT OF APPEALS

MAY 31 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RONALD GERARD BOYAJIAN, AKA  
Ronald G. Boyajian, AKA Ronald Geral  
Boyajian, AKA Ronald Gerald Boyajian,  
AKA John,

Defendant-Appellant.

No. 16-50327

D.C. No.

2:09-cr-00933-CAS-1

Central District of California,  
Los Angeles

ORDER

Before: REINHARDT, CALLAHAN, and NGUYEN, Circuit Judges.

Appellant Ronald G. Boyajian requested leave to represent himself on appeal and to relieve appointed standby counsel, George W. Buehler, Esq. Boyajian's request was referred to the Appellate Commissioner pursuant to Ninth Circuit General Order 6.3(e). The Appellate Commissioner has recommended that the court deny Boyajian's request for self-representation. Boyajian's objections to the report and recommendation are overruled.

The Appellate Commissioner's report and recommendation is adopted in full. Boyajian's request for self-representation (Docket Entry No. 17) is denied.

gml/Appellate Commissioner

Case: 16-50327, 05/31/2017, ID: 10453753, DktEntry: 29, Page 2 of 2

George W. Buehler, Esq. is relieved as appointed standby counsel. New counsel will be appointed by separate order.

The Clerk shall electronically serve this order on the appointing authority for the Central District of California, who will locate appointed counsel. The appointing authority shall send notification of the name, address, and telephone number of appointed counsel to the Clerk of this court at [counselappointments@ca9.uscourts.gov](mailto:counselappointments@ca9.uscourts.gov) within 14 days of locating counsel.

New counsel shall designate the reporter's transcripts by July 10, 2017. The transcript is due September 11, 2017. Appellant's opening brief and excerpts of record are due October 23, 2017; appellee's answering brief is due November 22, 2017; and the optional reply brief is due within 14 days after service of the answering brief.

The Clerk shall serve this order on appellant individually: Ronald Gerard Boyajian, Reg. No. 33900-112, USP Tucson, U.S. Penitentiary, P.O. Box 24550, Tucson, AZ 85734.

Case: 16-50327, 11/21/2022, ID: 12592801, DktEntry: 186, Page 1 of 2

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

NOV 21 2022

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 16-50327

Plaintiff-Appellee,

D.C. No. 2:09-cr-00933-CAS-1

v.

Central District of California,  
Los Angeles

RONALD GERARD BOYAJIAN, AKA  
Ronald G. Boyajian, AKA Ronald Geral  
Boyajian, AKA Ronald Gerald Boyajian,  
AKA John,

ORDER

Defendant-Appellant.

Before: O'SCANNLAIN, RAWLINSON, and OWENS, Circuit Judges.

Appellant's pro se motion (Docket Entry No. 168) for an extension of time to file a motion for reconsideration of the court's September 15, 2022, order is granted. The pro se motion for reconsideration (Docket Entry No. 170) is denied.

Appellant's opposed motion (Docket Entry No. 171) for leave to submit a pro se supplemental brief is denied. Appellant's pro se motion (Docket Entry No. 173) "to perfect" the motion for leave to file a pro se supplemental brief is denied.

Appellant's unopposed motion (Docket Entry No. 185) for an extension of time to file a consolidated reply brief is granted. The optional consolidated reply brief is due February 6, 2023. The word count limitations established in the court's May 3, 2021, order remain in effect.

Case: 16-50327, 11/21/2022, ID: 12592801, DktEntry: 186, Page 2 of 2

The court will not entertain any motions for reconsideration of this order.

The Clerk will serve this order on appellant individually at: Reg. No.  
33900-112, USP Terre Haute, U.S. Penitentiary, P.O. Box 33, Terre Haute, IN  
47808.

DKT/CASE NUMBER

FILE NUMBER  
CORRECT

PLATE

DATE

PAGES

48

1 IN THE SUPREME COURT OF THE UNITED STATES  
2 - - - - - x  
3 EVERETT W. JONES, SUPERINTENDENT, :  
4 GREAT MEADOW CORRECTIONAL :  
5 FACILITY, ET AL., :  
6 Petitioners :  
7 v. : No. 81-1794  
8 DAVID BARNES :  
9 - - - - - x  
10 Washington, D.C.  
11 Tuesday, February 22, 1983  
12 The above-entitled matter came on for oral argument  
13 before the Supreme Court of the United States at 2:22 p.m.  
14 APPEARANCES  
15 MISS BARBARA D. UNDERWOOD, ESQ., Assistant District  
16 Attorney, Brooklyn, New York; on behalf of the  
17 Petitioners.  
18 MRS. SHEILA GINSBERG RIESEL, ESQ., New York, N. Y.;  
19 on behalf of the Respondent.  
20  
21  
22  
23  
24  
25

## CONTENTS

	<u>ORAL ARGUMENT OF:</u>	<u>PAGE</u>
2	MISS BARBARA D. UNDERWOOD On behalf of the Petitioners	3
3		
4	MRS. SHEILA GINSBERG RIESEL On behalf of the Respondent.	19
5		
6	<u>REBUTTAL ARGUMENT OF:</u>	
7	MISS BARBARA D. UNDERWOOD On behalf of the Petitioners	38
8		

1 MRS. RIESEL: Exactly that.

2 QUESTION: Am I correct that the constitutional  
3 provision on which you have relied is not the 6th Amendment,  
4 not the Due Process Clause and not the Equal Protection Clause,  
5 but just the right of access cases?

6 MRS. RIESEL: Well, we rely on the right of access  
7 cases and those, in turn, Your Honor, I believe rely on the due  
8 process and equal protection.

9 QUESTION: But, in those cases, the prisoner access  
10 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.

11 MRS. RIESEL: Well, Your Honor, the access cases are  
12 limited only to the prisoner cases. Of course, we believe  
13 a Griffin and Douglas were also access cases.

14 But, I think it is clear from this Court's holding  
15 and from logic that an indigent appellant's pro se presentation  
16 will not suffice and does not equate to the presentation of  
17 counsel and particularly in this regard --

18 QUESTION: If it doesn't equate, then it is an equal  
19 protection matter, but there is access --

20 MRS. RIESEL: No, Your Honor, I think that when the  
21 Petitioner must proceed pro se, his ability to frame his issues  
22 and to present them effectively and fairly to the court is so  
23 imputed as to infringe on his access right, particularly when

1 standing side by side with him is his lawyer, whose refusal to  
2 raise the issue communicates to the court --

3                   QUESTION: But that goes to the presuasive character  
4 of the presentation. But it seems to me that the communication  
5 by the client is intelligible and his point is understandable by  
6 the court. And that, it seems to me, satisfies the access point.

7                   MRS. RIESEL: No, Your Honor --

8                   QUESTION: I do not know of any access case that said  
9 there had been a denial of access when the message gets through,  
10 even though it may be poorly written and pro se and all the rest.  
11 I understand the equal protection, due process, effective  
12 assistance of counsel, but I do not think your access case is  
13 really right on the button here.

14                   MRS. RIESEL: Well, Your Honor, I beg to disagree. I  
15 think that the access cases make clear that the client must have  
16 the means for -- I think the words are -- adequate and effective  
17 way of presenting his issues.

18                   QUESTION: Which case, do you think, is your strongest  
19 access case?

20                   MRS. RIESEL: I think Bounds is very helpful to us,  
21 Your Honor.

22                   QUESTION: Which case?

23                   MRS. RIESEL: Bounds against Smith, which is a prisoner's  
24 case, Your Honor.

25                   QUESTION: You use the term effective, although earlier

1 would still be here in my example, what is it then?

2 MRS. RIESEL: It is an access case because the question  
3 is whether the appellate lawyer denied his client access on direct  
4 appeal.

5 QUESTION: He did not deny anything. He said if you  
6 want to go argue it, argue it yourself.

7 QUESTION: And Faretta guarantees him that right.

8 MRS. RIESEL: But, he did not want to proceed pro se,  
9 Your Honor. He wanted to proceed with the assistance of counsel.

10 QUESTION: I know, but counsel said no. The question  
11 is was counsel -- was that a competent performance of counsel.

12 MRS. RIESEL: The answer --

13 QUESTION: Was it a constitutional performance?

14 MRS. RIESEL: No, it was an unconstitutional performance.

15 QUESTION: But, not because of competence?

16 MRS. RIESEL: No, because of a denial of access.

17 QUESTION: Competent but unconstitutional?

18 MRS. RIESEL: The question of competence does not  
19 pertain to this issue because counsel failed or refused to  
20 present the issue.

21 QUESTION: Sort of a malpractice claim?

22 MRS. RIESEL: Perhaps, but not providing sufficient  
23 relief to this defendant.

24 Contrary to Petitioner's concern, the Second Circuit  
25 rule encourages lawyers to exercise the responsibility that

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Adapted from Form 11. Certificate of Compliance for Petitions for  
Rehearing/Responses

9th Cir. Case Number: 16-50327

I am the appellant, moving the court in pro se on matters concerning pro se rights.

I certify that pursuant to Circuit Rule 35-4 or 40-1, the attached petition for  
Rehearing En Banc is prepared in a format, typeface, and type style that complies  
with Fed. R. App. P. 32(a)(4)-(6) and contains approximately 2,473 words:

Ronald Boyajian

Ronald Boyajian  
Petitioner, in pro per

Date: March 7, 2023

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Adapted from Form 25. Certificate of Service for Paper Filing

9th Cir. Case Number(s): 16-50327

Case Name: United States v Ronald Boyajian

I certify that I served on the person(s) listed below, either by mail or hand delivery, a copy of the Defendant-Appellant's Pro Se Petition For Rehearing En Banc Re Pro Se Rights on Appeal, and any attachments:

Molly Dwyer, Clerk of the Court  
Office of the Clerk  
U.S. Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

I understand that should there be any parties requiring service, any such parties are registered with this court's electronic filing service such that any service requirements that might pertain are met thereby.

Ronald Boyajian

Date: March 7, 2023

Ronald G. Boyajian  
Petitioner, Pro Se

**Additional material  
from this filing is  
available in the  
Clerk's Office.**