

No. 23-6137

In The
Supreme Court of the United States

IN RE: RONALD BOYAJIAN,

Petitioner.

v.

Mary Helen Murguia, Chief Circuit Judge, Susan Soong, Circuit
Executive, Molly C. Dwyer, Clerk of the Court, Ryan Douglas Nelson,
Circuit Judge, Andrew David Hurwitz, Circuit Judge, Andrew Jay
Kleinfeld, Circuit Judge,

Respondents.

On Petition for Writ of Mandate
to the United States Court of Appeals for the Ninth Circuit
Ninth Circuit Case No. 16-50327

PETITION FOR REHEARING

RONALD BOYAJIAN
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Petitioner Pro Se

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PREAMBLE

Pursuant to Rule 44.2 of this Court, Petitioner Ronald Boyajian respectfully petitions for a rehearing of requested mandamus relief over Respondents' constructive denial of his right of access to the courts blocking the exercise of his right to his only appeal of right before the U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit").



PETITION FOR REHEARING

Besides the enormous stakes for Petitioner, rule of law within operations of the judiciary in this international case affects the Executive's ability to conduct the foreign relations of the United States. A pertinent history provides necessary context to the grounds for rehearing.

Without notice to himself or to the foreign courts in which he was actively defending himself over a purely local allegation, Petitioner in 2009 was extrajudicially rendered to the United States. In an extraordinary request, the United States secretly arranged international extradition in comity expressly requisitioned the foreign court case be transferred, in toto, including the foreign judge's chambers-maintained *in camera* files of petitioner's alibi witnesses testimonies, into the hands of the U.S. Attorney General so Petitioner would be tried in U.S. Courts on the same already pending purely foreign soil originated allegation.

A. Petitioner maintains factual innocence which he originally asserted in the foreign courts of competent jurisdiction and renewed in U.S. Courts.

- B. Petitioner is now in his sixteenth year of high security detention while continuously prosecuted in U.S. Courts.
- C. In 2023, the seventh year of his only appeal of right from a criminal judgment with 70 years sentence, the Ninth Circuit purported to provide Petitioner a merits proceedings. However, without notice the merits proceedings was permitted only before two judges, not the statutory (and this Court's mandated) sitting of a panel of three Article III judges. This surprise unauthorized exercise of appellate power by an invalid two-judge merits panel unveiled on May 10, 2023 when only two judges held hearing and took Petitioner's case under submission.
- D. The record shows Petitioner though represented by appointed counsel was forced to object pro se which he did repeatedly strenuously and filed several motions to reconstitute or top up the panel to its statutory three-judge complement. After neither Petitioner's appointed Criminal Justice Act counsel nor the government ever joined in requesting a rule of law bound appellate process, the usurping two judges proceeded to affirm in a Not For Publication short shrift disposition released June 9, 2023.
- E. On July 12, 2023, Petitioner presented this Court a pro se emergency application for stay of the Ninth Circuit proceedings (case 23A112 App. A) so he would not be further prejudiced while he, a prisoner under perpetual lockdown conditions, was burdened with preparing a pro se petition for mandamus relief from continuing unauthorized exercise of appellate power by

the two judges. Respondent judges and their circuit administrative enablers were noticed, including through the public docket in the Ninth Circuit case, at each step of Petitioner's ongoing efforts to instate enforcement proceedings in this Court. On October 2, 2023, the Court denied the Stay application. App. A

F. On October 12, 2023, Petitioner formally submitted pro se Petition for mandamus relief that his appeal be conducted before lawful decision-making body. The case was docketed 23-6137. App. B

The following intervening controlling circumstances relevant to support rehearing unfolded thereafter.

1. On October 20, the Ninth Circuit issued Mandate Dkt. 261 App. C (terminating jurisdiction although it has received timely submitted motion for extension of time to file the petition for rehearing)
2. On Nov. 16, the two-judge merits panel issued Order denying motion to recall the mandate and direct the clerk to file previously submitted pleadings. Motion Dkt. 264 App. D, Order Dkt. 266 App. E
3. On November 21, The two judge merits panel issued Order denying reconsideration; and denying review en banc. Motion Dkt. 267 App. F, Order Dkt. 268 App. G
4. On December 7, the Solicitor General entered an appearance asserting waiver of response on behalf of the Government unless requested from the Court. The Clerk docketed the Solicitor General's appearance as "Respondent". App. B

5. As of January 2, 2024, all six named judiciary Respondents default on their due date to contact the Court. Consequently, the docket makes no reference to the six Respondents individually named in the title of the Petition. App. B
6. On January 9, Petitioner submitted documentation of Notice provided to the Respondents, requesting it be made available for any conference.
7. On January 18, one day prior to the Court's January 19 scheduled conference, the Clerk mailed a letter to Petitioner returning the Notice documentation advising he may resubmit the notice documentation for inclusion in the case folder while the case is pending.
8. On January 19, the Court held conference.
9. On January 22, the Court denied the Petition. App. B

Petitioner presents three grounds for rehearing due to intervening controlling circumstances arising after Petitioner submitted his Petition.

REASONS FOR REHEARING

A petition for rehearing should present intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Supreme Court Rule 44.2. Here, there are substantial circumstances that mandate the Court step in enforce rule of law in the Ninth Circuit's judiciary operations, for the sake of not just Petitioner but litigants all around the country.

Moreover, this litigation originates on another continent inside another nation's courts concerning purely foreign soil allegations. The Court must act to repair international stakeholders' lost confidence in the U.S. judiciary in order to

preserve the Executive's ability to conduct the Foreign Relations of the United States.

I. GOVERNMENT IS ESTOPPED FROM WAIVER—MUST ADVOCATE *FOR* RELIEF

The government is estopped from waiver and must advocate for grant of the Petition. Though the United States is not a named Respondent in the Petition, the Solicitor General entered appearance submitting the United States into the Court's jurisdiction.¹ App. B Contrary to the government's prior enunciated stance, the Solicitor General couched its appearance as waiver to respond.

The Solicitor General's waiver is disinformation. The maneuver hides the government's previously asserted position, a position the Court incorporated in providing relief in *Nguyen v. United States*, 539 U.S. 69 (2003); namely, that the Court deploy supervisory powers to staunch the Ninth Circuit's violation of 28 U.S.C. § 46 in staffing only two Article III judges not the statutory three Article III judges to merits panel deciding appeal cases.

In *Nguyen*, the government, through the Attorney General's delegated representative, the Office of the Solicitor General, conceded error where the Ninth Circuit provides only two Article III judges who exercise the appellate power in deciding a merits case. Assistant Solicitor General Patricia A. Millett, now the

¹ The Solicitor General is in a fundamental conflict of roles. The Solicitor General (if permitted to do so) cannot defend the actions of the judicial branch/judicial officers named *and* represent the Government's interests in a case in which the Government has a major institutional interest.

Honorable Circuit Judge of the District of Columbia Circuit Court of Appeals,
prescribed the remedy the Court then imposed:

ASG Millett And if the Ninth Circuit were to engage, which is not to be
 presumed by governmental officials, court or executive... but
 were to engage in some pattern of violating the statute [28
 U.S.C. § 46], I think this Court's supervisory authorities could
 take care of that.²

Principles of estoppel prohibit the government to waive, contrary to and with
effect of concealing conceal it's prior principled position, especially *while* the
government reaps the fruits of Respondents' violations of § 46 in Petitioner's case
(and several additional cases), see Petition for list of cases and docket details. The
Court should call the Solicitor General to respond on behalf of the government.

II. PETITIONER WITHOUT REMEDY AFTER RESPONDENTS' SERIATIM INVALID TWO-JUDGEMERITS PANEL ORDERS TERMINATE APPEAL

As set forth in the original Petition, six individually named Respondents --
four circuit judges and two senior administrators of the Ninth Circuit Court Of
Appeals -- defied this Court in refusing to properly constitute the statutory three-
judge merits panel in six cases, including Petitioner's appeal. *Nguyen*, Id.

The record shows, beyond the objections and motions to reconstitute a
statutory panel, that Respondents were on notice of the several months pending
Stay application followed closely by a pending Petition for mandamus relief over

² See transcript and audio of oral argument archived at <https://www.oyez.org/cases/2002/01-10873>
from Assistant Solicitor General Millett 3/24/03 argument, audio at 30m25s.

their ongoing usurpation of power. Nevertheless, the usurping authority (supported by administrative enablers) persisted issuing, seriatim, invalid two-judge merits panel orders including unlawfully terminating the appeal case and denying review en banc. See Petitioner's Emergency Motion For Recall Of Mandate and Directing Clerk To File Previously Submitted Pleadings [Dkt. 264, App. D], Two-judge Merits Panel Order denying the Motion [Dkt. 266, App. E], Motion for Reconsideration Of Recall Of Mandate,, etc., With Request For En Banc Review [Dkt. 267, App. F], Two-judge Merits Panel Order denying reconsideration and denying review en banc [Dkt. 268, App. G].

III. SIX JUDICIARY RESPONDENTS REFUSED CONTACT WITH THE COURT

Dockets in extraordinary writs do not list Respondents by name unless they respond. Regrettably, on January 18, one day before the January 19 scheduled conference, the Clerk return mailed Petitioner's Notice documentation (App. H) proving formal service on the non-responding six judiciary Respondents. The Clerk advised he may "resubmit" this Notice documentation while the case is pending. The Clerk's return mail reached Petitioner after Court denied the Petition.

Hence, the docket shows Solicitor General/United States as the "Respondent". App. B To a busy law clerk reviewing dozens of cases for conference, this docket looks like an orderly process: "Respondent" Solicitor General responds via waiver. Had the clerk been provided the proffered Notice documentation the law clerk would immediately see six judiciary Respondents collectively defaulted refusing to contact the Court.

Given Petition is as much concerned with judicial ethics as rule of law in the operations of the judiciary, the Notice to Respondents of case docketing *and* the Court's assigned due date for their responses is relevant to the proceedings.

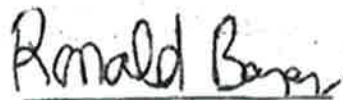
Petitioner resubmits the Notice documentation served on the six judiciary Respondents. App. H The six judiciary Respondents are direct subordinates of this Court, their immediate supervisory body, and arguably are duty-bound to cooperate with the Court given the subject matter. The Court should call for their responses.

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CONCLUSION

Intervening controlling circumstances warranting rehearing include Respondents' abrupt unlawful termination of Petitioner's direct criminal appeal case and blockade of review en banc. The Court should as the Solicitor General endorsed at argument in *Nguyen, Id*, exercise its supervisory powers to provide Petitioner relief and reassert rule of law guardrails on the operations of the judiciary. Finally, the Court reinforcing the United States has a model Rule of Law Judiciary will protect the Executive's ability to obtain international extraditions.

Dated: February 3, 2024

Respectfully submitted,



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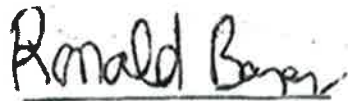
No. 23-6137

IN RE RONALD BOYAJIAN,

Petitioner.

CERTIFICATE OF GOOD FAITH

Pursuant to Rule 44, Rules of the Supreme Court, I hereby certify that this Petition For Rehearing is restricted to the grounds specified in Rule 44, paragraph 2, Rules of the Supreme Court, and is being presented in good faith and not for delay.

A handwritten signature in black ink, appearing to read "Ronald Boyajian", written over a horizontal line.

RONALD G. BOYAJIAN

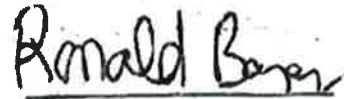
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IN RE RONALD BOYAJIAN,

Petitioner.

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the PETITION FOR REHEARING in the above entitled case complies with the typeface requirement of Supreme Court Rule 33.1(b), being prepared in New Century Schoolbook 12 point for the text and 10 point for the footnotes, and this brief contains 1,831 words, excluding the parts that are exempted by Supreme Court Rule 33.1(d), as needed.

A handwritten signature in black ink, reading "Ronald Boyajian", written over a horizontal line.

RONALD G. BOYAJIAN

No. 23-6137

IN RE RONALD BOYAJIAN,

Petitioner.

PROOF OF SERVICE

I, Ronald Boyajian, declare that the foregoing Petition for Rehearing in the above entitled case, and any attachments, was placed in U.S. Mail for collection and mailing to:

Scott Harris, Esq., Clerk of Court
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No. 23-6137

IN RE RONALD BOYAJIAN,

Petitioner.

PROOF OF SERVICE (continued)

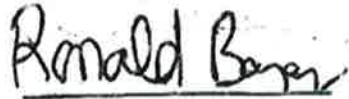
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Dated: February 3, 2024

A handwritten signature in black ink that reads "Ronald Boyajian". The signature is written in a cursive style with a horizontal line underneath the name.

RONALD G. BOYAJIAN