Case No. 25-5235

October Term, 2025

In the Supreme Court of the United States

Carlton Vose, Petitioner,

v.

Peter F. Neronha, Rhode Island Attorney General, Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the First Circuit Court of Appeals erred when they concluded that the State of Rhode Island supreme court's *retroactive* application of a *new* interpretation of a *criminal* statute is a matter of *state* law, as opposed to *federal* law.

2. Whether the First Circuit Court of Appeals erred when they concluded that violations of a criminal defendant's federal constitutional rights by the state's *highest* appellate court require *additional* exhaustion efforts for purposes of Section 2254 habeas corpus review.

3. Whether the First Circuit Court of Appeals erroneously concluded that the Petitioner has not made a substantial showing that his federal constitutional rights have been violated in support of his request for a Certificate of Appealability in his habeas corpus case.

LIST OF PARTIES

The Petitioner is a Massachusetts attorney who was convicted of "allowing his mother to walk around the neighborhood (elder neglect)," completely unharmed, which the state alleges was "unsafe."

The Respondent is the State of Rhode Island.

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The state criminal trial that was the subject of the appeal was held in December of 2019 in Providence Superior Court, Rhode Island, Case P2-2016-2326A. Verdict was entered 12/12/2019.

The state supreme court opinion being challenged is published at State v. Vose, 287 A.3d 997 (R.I. 2023).

The habeas corpus petition filed by the Petitioner was filed in U.S. District Court for the District of Rhode Island at 1:23-cv-84, on 12/21/2023 (ECF 24). Copy attached in Appendix.

The U.S. District Court Order being challenged is dated 09/05/2024, case 1:23-cv-84, at ECF 63. To the best of the Petitioner's knowledge, the district court order is not published. A copy is attached in the Appendix.

The First Circuit Court of Appeals Order being challenged is dated 04/28/2025, Case Nos. 24-1893 and 24-2079. To the best of Petitioner's knowledge, it is not published. A copy is attached in the Appendix.

JURISDICTIONAL STATEMENT

Petitioner timely filed an Amended Petition for Habeas Corpus in the United States District Court for the District of Rhode Island on 12/21/2023 (ECF 24). Petitioner asked the district court to review a decision of the Rhode Island state supreme court pursuant to a Section 2254 habeas corpus petition.

On 09/05/24 the district court dismissed the Amended Petition (ECF 63) based on their belief that the court lacked jurisdiction to grant the Petitioner's requested relief. The court reasoned that the Petitioner's claim was based on a *state* law matter, and thus the court was without jurisdiction to grant relief based on the AEDPA. The district court also denied the Petitioner's request for an evidentiary hearing and denied entitlement to a Certificate of Appealability.

On 04/28/2025 the First Circuit also denied the Petitioner's request for a Certificate of Appealability, reasoning that the Petitioner's habeas corpus claim was a matter of *state* law.

This petition timely follows. Vose asks this Court to grant this Petition, vacating the First Circuit's decision that Vose's habeas claim is a matter of *state* law, and remanding the habeas corpus petition to the First Circuit with an Order directing them to issue the Certificate of Appealability and to remand the Petitioner's Amended Petition for Habeas Corpus to the district court for further proceedings, pursuant to this Court's authority granted by 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment
Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

R.I.Gen.L. § 11-5-12 (2015)
Neglect of adults with severe impairments

(a) Any person primarily responsible for the care of an adult with severe impairments who shall willfully and knowingly abuse, neglect or exploit that adult shall be subject to a fine of not more than two thousand dollars ($2,000), or imprisoned not more than five (5) years, or both, and ordered to make full restitution of any funds as the result of any exploitation which results in the misappropriation of funds. Every person convicted of or placed on probation for violation of this section shall be ordered by the sentencing judge to attend appropriate professional counseling to address his or her abusive behavior.

(b) As used in this section:

(1) "Abuse" means the subjection of an adult with a severe impairment to willful infliction of physical pain, willful deprivation of services necessary to maintain the physical or mental health of the person, or unreasonable confinement.

(2) "Adult with severe impairments" means a person over the age of eighteen (18) who has a disability which is attributable to a mental or physical impairment or combination of mental and physical impairments and results in substantial functional limitations in one or more of the following areas of major life activity: (i) mobility; (ii) self-care; (iii) communication; (iv) receptive and/or expressive language; (v) learning; (vi) self-direction; (vii) capacity for independent living; or (viii) economic self-sufficiency.

(3) "Exploitation" means an act or process of taking pecuniary advantage of impaired persons by use of undue influence, harassment, duress, deception, false representation, false pretenses, or misappropriation of funds.

(4) "Neglect" means the willful refusal to provide services necessary to maintain the physical or mental health of an adult with severe impairments.

(5) "Person primarily responsible for care" or "caregiver" means any person who is for a significant period of time the primary caregiver or is primarily responsible for the management of the funds of an adult with severe impairments.

R.I.Gen.L. § 42-66-1
Declaration of purpose

The legislature finds and declares:

(1) That the state has an obligation to provide for the health, safety and welfare of its elderly citizens;

R.I.Gen.L. § 42-66-8.2 (2015)
Neglect of elderly persons – Investigation of reports

(a) The director of the department shall cause the report to be investigated immediately to determine the circumstances surrounding the alleged abuse, neglect, exploitation or self-neglect and its cause. The investigation shall include personal contact with the elder victim named in the report. Any person required to investigate reports of abuse, neglect, exploitation or self-neglect may question the subjects of those reports with or without the consent of the caretaker, guardian, conservator, person possessing a power of attorney given by the subject or other person responsible for the elderly person's welfare.

(b) In cases of reported abuse, neglect and exploitation, when deemed by the investigator or other person responsible for the investigation of the report to be in the best interests of the alleged victim, the interview of the alleged victim(s) shall take place in the absence of the caretaker, guardian, conservator, person possessing a power of attorney given by the subject or other person responsible for the elderly person's welfare, or any other person allegedly responsible for the abuse, neglect, or exploitation.

(c) In the event that any person required to investigate those reports is denied reasonable access to an elderly subject of the report by the caretaker, guardian, conservator, person possessing a power of attorney given by the subject or other person responsible for the elderly person's welfare and the investigator determines that the best interests of the elder require, the investigator with the

approval of the director may request the intervention of the local law enforcement agency to secure reasonable access to the elderly subject of the report.

(d) In the event that after investigation, the department has reasonable cause to know or suspect that a person sixty (60) years of age or older has been a victim of: (1) an "assault" as defined in chapter 5 of title 11; or, (2) an "assault" as defined in chapter 37 of title 11; or, (3) an offense under chapter 10 of title 11, or has been a victim of "exploitation" as defined in this chapter, the investigator, with the approval of the director, shall immediately forward that information to the local law enforcement agency.

(e) When it is determined after investigation that protective services are necessary, the department shall develop a protective services care plan and coordinate, in conjunction with existing public and private agencies and departments, available and existing services as are needed by the person abused, neglected, exploited or self-neglecting. In developing the protective services care plan, **the elderly person's rights to self-determination and lifestyle preferences** commensurate with his or her needs **shall be of prime consideration. If the elderly person withdraws consent or refuses to accept protective services, the services shall not be provided**.

INTRODUCTION

The Petitioner seeks a Certificate of Appealability regarding his Section 2254 habeas corpus petition in U.S. District Court for the District of Rhode Island.

The Petitioner was charged with elder neglect in state court. Specifically, he was charged with "knowingly and willfully refusing to provide services necessary to maintain the health" of his mother, in accordance with the statutory of definition of "neglect" as provided by the state legislature.

At trial, the prosecution made no attempt to prove that the Petitioner's mother was in need of services "necessary to maintain her health," but instead, their theory of the case was that it was "unsafe" for the Petitioner's mother to be walking around the neighborhood (completely unharmed) and that it was somehow the Petitioner's responsibility to stop her from doing that. The Petitioner's mother, who had never been adjudicated incompetent, adamantly refused to tolerate any restrictions on her movement in the neighborhood.

The trial judge allowed all manner of testimony regarding the alleged "safety" of the Petitioner's mother walking around the neighborhood, and the jury therefore concluded "safety" was relevant, and found the Petitioner guilty of allowing his mother to walk around the neighborhood.

The Petitioner appealed to the state supreme court, arguing that the state had relieved the prosecution of the obligation to prove all elements of the crime, since the state offered no evidence whatsoever that the Petitioner's mother was "in need of services necessary to maintain her health."

On direct appeal, the state supreme court agreed that there was no evidence that the Petitioner's mother was in need of services "necessary to maintain her health." However, instead of overturning the conviction, in accordance with *In re Winship,* (397 U.S. 358 (1970)), the state supreme court simply *rejected* that element of the crime, and declared that the state was not required to prove it.

The state supreme court then changed the meaning of "neglect," by rejecting the *statutorily-provided* definition, and replaced it with the *dictionary* definition: "*the failure to care for or attend to properly.*" The state supreme court then analyzed the evidence in accordance with the *new* definition of neglect, and concluded that the evidence was sufficient to support a conviction of *that* crime.

The Petitioner appealed the conviction to the federal district court for Rhode Island pursuant to Section 2254 habeas corpus proceedings, alleging that the state supreme court violated his federal constitutional due process right to notice of the crime charged as guaranteed by the Fourteenth Amendment. Both the district court and the First Circuit Court of Appeals concluded that this was a "state law matter" and that there was no federal constitutional violation involved with the state supreme court *changing* the elements of the crime *after* the trial, and then *retroactively* convicting the Petitioner of the *new* version of the elder neglect statute.

Petitioner asks this Court to clarify that such a move by the state supreme court is a matter of *federal* law, that the district and circuit courts *do* have authority to remedy, pursuant to the Fourteenth Amendment. Bouie v. City of Columbia, 378 U.S. 347 (1964).

STATEMENT OF THE CASE

I. State Court Litigation

a. State Elder Neglect Statute

The state elder neglect statute (R.I.Gen.L. § 11-5-12) defines "neglect" in the statute itself, and states that: " 'Neglect' means the willful refusal to provide services necessary to maintain the physical or mental health of an adult with severe impairments." (To be clear: it says nothing about "*safety*," but only "*health.*").

b. Jury Instructions

The trial judge issued jury instructions indicating that the prosecution was required to prove that the alleged victim was in need of services "necessary to maintain her health," which tracked the *statutory* definition of neglect: "***the knowing and willful refusal to provide services necessary to maintain the health of an adult with severe impairments***." See App. at A-2.

c. Prosecution's Theory of the Case

The prosecution's theory of the case was stated by the attorney general: "*The [Petitioner's] mother wandering in the neighborhood formed the basis of the state's charges against the [Petitioner].*" App. at 37, 1st ¶.

The problem with that theory of the case, is that the state's elder neglect statute does not require a person to "keep their mother ***safe***," but rather only requires the person to provide "services necessary to maintain ***health***." Keeping the state's elderly ***safe,*** is the legal responsibility of the ***state***, per R.I.Gen.L. 42-66-

1(1) (2015) ("*The legislature finds and declares... That **the state** has an obligation to provide for the... safety... of its elderly citizens.*").

d. Absence of Evidence of a Necessary Element of the Crime

The prosecution made no attempt at trial to argue that the alleged victim was in need of "services necessary to maintain her health," as the jury instructions required, but instead argued only that it was "unsafe" for her to be walking in the neighborhood. The trial judge inexplicably allowed all manner of testimony regarding the alleged victim's "safety," over the objection of the Petitioner's counsel. However, the damage had been done. The jury was led to believe that "safety" was a relevant consideration, and they found the Petitioner guilty of "failing" to keep his mother "safe."

When the Petitioner moved for acquittal and new trial, the trial judge stated that:

> "*His priority, as Pauline Vose's primary caregiver, should have been to make sure she received services that would keep her **safe**...*" (TT@615:5-8) and "*a jury found beyond reasonable doubt that he **failed** to...keep her **safe**...*" (TT@613:20-22).

e. Direct Appeal to State Supreme Court

Petitioner appealed the conviction to the state supreme court. Petitioner's counsel argued that the state had failed to identify a single "service that was necessary to maintain the alleged victim's *health*." The state supreme court *admitted* that there was no evidence that the alleged victim was in need of services "necessary to maintain her *health*" when they stated:

> *"We are not confronted with a situation in which the type and degree of services provided to this elderly woman were insufficient "to maintain [her] physical or mental health[.]"* Section 11-5-12(b)(4). State v. Vose, 287 A.3d 997, 1004 (R.I. 2023). See App. at A-7, third full ¶.

The state supreme court then made an unconstitutional move when they *changed* the elements of the crime after the trial. The state supreme court *rejected* the *statutory* definition of "neglect" (the 'willful refusal' to provide services necessary to maintain the physical or mental ***health***"...), and replaced it with the *dictionary* definition of "neglect": "***the failure to care for or attend to properly***." The state supreme court infinitely expanded the scope of criminal liability to include literally anything that the court deemed, in its sole discretion, to be "improper."

Additionally, they eliminated the *mens rea* requirement, and made the statute a strict liability crime, requiring only a "failure," no matter how hard a person tried to comply. The elder neglect statute is not a public health or regulatory statute, thus the absence of a *mens rea* requirement makes the statute unconstitutionally vague on its face.

The state supreme court stated:

> *"The defendant further contends that "services necessary to maintain * * * physical or mental health" is an essential required element of the statute. We reject these contentions."* State v. Vose, 287 A.3d 997, 1003 (R.I. 2023); See App. at A-7, first sentence; and

> *"We reject defendant's contention that "services necessary to maintain * * * physical or mental health" is an essential element of the charged offense, as it is used only to further define the actus reus of the charge of neglect, and thus the state was not required to prove specific available services."* State v. Vose, 287 A.3d 997, 1005 (R.I. 2023). See App. at A-7, fourth full ¶.

As noted above, the *trial court* instructed the Petitioner and his trial attorney that "services necessary to maintain health" *was in fact an essential element of the crime* that the state was required to prove. When the state offered no such evidence, the Petitioner was lulled into a false sense of security that he did not need to continue with a defense, because the jury instructions indicated that the Petitioner was entitled to a verdict of not guilty if the state did not prove that element, and thus his defense was severely prejudiced.

After acknowledging that there was no evidence that the alleged victim was in need of services "necessary to maintain her health," the state supreme court then stated:

> "There were no services and no support ***to protect her from harm***." State v. Vose, 287 A.3d 997, 1004 (R.I. 2023). See App. at A-7, third full ¶, last sent.

The state supreme court knew that the elder neglect statute, as written by the state legislature, did not require a person "to protect from harm," so they changed the definition of "neglect" from the *statutory* definition, and replaced it with the *dictionary* definition:

> *"The term 'neglect' means the 'fail[ure] to care for or attend to properly.' The American Heritage* ***Dictionary*** *of the English Language 1179 (5th ed. 2011)."* State v. Vose, 287 A.3d 997, 1004 (R.I. 2023). See App. at A-7, 2nd ¶.

After changing the definition of "neglect," the state supreme court then analyzed the evidence to determine if it was sufficient to support a conviction for "*failure to care for properly*," and they concluded that it did. Because the state supreme court used the *wrong standard* to evaluate the evidence, their findings of

fact are entitled to no deference. Rogers v. Richmond, 365 U.S. 534, 547 (1961) ("Historical facts found in the perspective of an erroneous legal standard cannot plausibly be expected to furnish the basis for correct conclusions."); Minnesota v. Dickerson, 508 U.S. 366, 383 (1993) (because state court findings made pursuant to Fourth Amendment analysis which differs significantly from that now adopted by this Court, state court findings of fact deserve no deference).

i. State supreme court's new interpretation was unexpected.

In this case, the state supreme court did not create a new "interpretation," so much as they simply *rewrote* the statute. The statute as written by the legislature contained a definition of "neglect." The state supreme court did not simply *expand* or *reinterpret* that element, but rather they outright *rejected* that element, and wrote an *entirely new* element, by replacing the *statutory* definition with the *dictionary* definition.

Such a move was completely unexpected for several reasons. Initially, because it is *illegal* under state law for the court to do so. The state supreme court itself has stated over and over and over again, that when a statute contains a *defined* term, they are *bound* by that term, and they have *no authority* to look elsewhere (such as a dictionary) for its meaning:

> "*Where a statute contains its own definition of words used therein, the court has no occasion, nor the right, to look elsewhere for their meaning.*" State v. Foster, 46 A. 833, 22 R.I. 163 (1900).

That has been the law in Rhode Island for more than a century, and it continues to be law:

> *"When the General Assembly defines a word or phrase used in its enactment, that definition is binding upon the appellate court."* Kelly v. Marcantonio, 678 A.2d 873 (1996).

To be clear, the state supreme court did not abolish a *common law doctrine* of criminal law, they abolished part of a *state statute.*

Additionally, the Petitioner was told over and over and over again by the state, throughout the years 2014 and 2015 that his "conduct" (allowing his mother to walk around the neighborhood) was *not* criminal. When the police were asked at trial why they never took any action during 2015 when these alleged "crimes" were taking place, the police actually testified at trial that "***These matters are not normally considered to be criminal.***" See App. at A-38, line 23.

Additionally, state law *prohibits* forcing protective services upon an elderly person who has refused them. R.I.Gen.L. 42-66-8.2(e) (2015) ("In developing the protective services care plan, the elderly person's *rights to self-determination and lifestyle preferences* commensurate with his or her needs shall be of *prime consideration.* If the elderly person withdraws consent or *refuses* to accept protective services, the services *shall not be provided.*") [emphasis added]. Everyone agreed that "Pauline herself refuses all services." See App. at A-40.

Based on the state supreme court's *new interpretation* of the elder neglect statute, the Petitioner would have to violate his mother's rights, by locking her in the house against her will, which is a kidnapping, in order to avoid committing elder neglect. The Petitioner could not have expected that he would be required to

commit the more serious crime of kidnapping, in order to avoid committing elder neglect.

ii. State supreme court's new interpretation is indefensible.

The new definition of neglect created by the state supreme court ("failure to care for or attend to properly") is indefensible for two reasons: (a) it has no *mens rea* requirement, and (b) it is unconstitutionally vague. The elder neglect statute is not a regulatory or public health statute, and it criminalizes simple "failures," no matter how hard someone tries to comply. Furthermore, it gives police, prosecutors, and judges absolute discretion to criminalize *anything* that they deem in their sole discretion to be "improper."

Such an ordinance was found to be facially invalid in *Papachristou v. Jacksonville*, according to Justice Douglas for the Court, because it does not give fair notice, it does not require specific intent to commit an unlawful act, it permits and encourages arbitrary and erratic arrests and convictions, it commits too much discretion to policemen, and it criminalized activities that by modern standards are normally innocent (allowing a mentally competent, physically healthy woman to walk in her neighborhood). 405 U.S. 156 (1972).

II. Review in Federal District Court

a. The Habeas Petition and the Motion for Summary Judgment

Following the state supreme court's decision, the Petitioner submitted a

petition for habeas corpus in U.S. District Court for the District of Rhode Island. See App. at A-11 to 15. The Petitioner's "Ground One" claim was that "the state courts relieved the prosecution of the obligation to prove all elements of the crime in violation of his Fourteenth Amendment due process rights."

The Petitioner detailed his Ground One claim in his Motion for Summary Judgment. See App at A-16 to 19. The Petitioner argued that: *the state supreme court* improperly used the "plain meaning rule" to substitute the ***dictionary*** definition of "neglect" for the ***statutory*** definition of neglect, then applied the *new interpretation* of the criminal statute *retroactively* to the Petitioner's elder neglect case. The Petitioner argued that such a move was a violation of his *federal* constitutional right to due process guaranteed by the Fourteenth Amendment, as established in *Bouie v. City of Columbia*, 378 U.S. 347 (1964).

b. District Court's Denial of Habeas Corpus and COA

On page seven of its Order dated 09/05/2024, the district court recited the jury instructions provided at trial, including the instruction that the state must prove "services necessary to maintain health." App. at A-26. On page eight of the same Order, the court stated, "Viewing the instructions and trial record, the Court finds that the trial court defined each element as written in the statute, in accordance with what the state had to prove." App. at A-27. The district court thereby ***overruled*** the state supreme court, by declaring that "services necessary to maintain health" was in fact an element of the crime that the state was required to prove, warranting reversal of the convictions. In re Winship, 397 U.S. 358 (1970).

However, in a bizarre opinion, the district court concluded that states can define their own crimes, and that the state supreme court could *change* elements of the crime *after* the trial, then apply the *new* interpretation *retroactively*, because doing so is a "state law matter." It certainly is not a state law matter.

The state of Rhode Island can define the elements of their crimes, but what they *cannot* do is *change* the elements of the crime *after a trial,* and then apply the *new interpretation retroactively*, when the new interpretation is unexpected and indefensible. Bouie v. City of Columbia, 378 U.S. 347 (1964). That is clearly a ***federal*** law matter, as the U.S. Supreme Court held:

> *"The State Supreme Court, in giving retroactive application to its new construction of the statute, has deprived petitioners of their right to fair warning of a criminal prohibition, and thus has violated the Due Process Clause of the Fourteenth Amendment."* Id. at 348-363.

The Petitioner provided the district court judge with an extensive memorandum of law on this topic, clearly establishing entitlement to a Certificate of Appealability. See App at A-16 to 19. However, the district court judge stated that he saw no federal constitutional violation in what the state supreme court had done, so a Certificate of Appealability was denied.

c. Exhaustion of State Remedies

The district court further stated that the Petitioner had not exhausted his state remedies regarding his Ground One claim. However, the Ground One claim pertained to a federal constitutional violation *by the state's highest court itself*, thus there is no state remedy, because there is no other entity in the state who can overrule

the state supreme court. Because there is no state remedy, the Petitioner's claim is exempt from exhaustion, per 28 U.S.C. § 2254 (b)(1)(B)(i) (absence of available state corrective process).

III. Review in First Circuit Court of Appeals

Petitioner appealed the district court's denial of the Certificate of Appealability to the United States Court of Appeals for the First Circuit. The First Circuit did not write an opinion, but rather only stated that the Petitioner's claim was a ***state law*** claim, citing Estelle v. McGuire, 502 U.S. 62, 67–68, (1991) (reemphasizing "that it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions"); and United States v. Starks, 861 F.3d 306, 315 (1st Cir. 2017) ("We rely on state law for the elements of the crime and what conduct satisfies those elements."). See Order dated 04/28/25, App. at A-34 to 35.

Regarding exhaustion, the First Circuit simply cited Sanchez v. Roden, 753 F.3d 279, 294 (1st Cir. 2014) (exhaustion general principles), upholding the district court's decision that the Petitioner's Ground One claim was not exhausted, notwithstanding that there is no higher state court to which the Petitioner can appeal.

IV. Substantial Showing

A habeas corpus petitioner is entitled to a Certificate of Appealability if he makes a substantial showing of the denial of a constitutional right. 28 U.S.C. §2253.

To make a "substantial showing," a petitioner must demonstrate that "reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000) (citations and internal quotation marks omitted). This is a ***low bar***; a claim can be considered "debatable" even if every reasonable jurist would agree that the petitioner will not prevail. See Miller-El v. Cockrell, 537 U.S. 322, 338 (2003).

In this case, the state supreme court violated its own law, by using the plain meaning rule to *reject* a statutorily-defined element of the crime, and *replace* it with the dictionary definition, then applied the *new* interpretation *retroactively*. They also created a blatantly unconstitutionally vague criminal statute which has no *mens rea* requirement, and which provides *no guidance* to law enforcement. The constitutionality of the state supreme court's actions are certainly debatable – warranting issuance of a COA.

REASONS FOR GRANTING THE WRIT

This court should grant the writ because the First Circuit has made an extremely dangerous break from both the United States Supreme court and all of the circuit courts.

The First Circuit has granted state courts in the First Circuit the authority to change the elements of a crime, after a trial, and then apply the new interpretation of the criminal statute retroactively.

The First Circuit has paved the way to allow the state of Rhode Island to

imprison anyone they want, simply by creating new laws, to fit the facts, after a criminal trial.

This case has implications that go far beyond the matter between the Petitioner and the Respondent, as it endangers every person in states within the First Circuit.

A. The First Circuit's Decision Contradicts This Court in *Bouie*.

This Court stated in *Bouie* that a state court's retroactive application of a new interpretation of a criminal statute was a violation of the defendant's ***federal*** constitutional due process right to notice of the crime charged, guaranteed by the Fourteenth Amendment. The First Circuit has broken from that decision, and has concluded that it is now a matter of "**state law**" and that a federal court is powerless to do anything about it.

B. The First Circuit's Decision Breaks From All Circuits.

All Circuits, including the First Circuit, follow this Court's decision in *Bouie*, insofar as it concerns whether or not the *retroactive* application of a *new* interpretation of a criminal statute is a matter of *state* law (states having the right to define their own crimes) or *federal* law (right to notice of the crime charged pursuant to the 14th Amendment's due process clause), and all Circuits conclude that it is a matter of ***federal*** law.

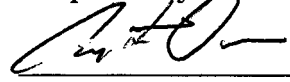
Bouie v. City of Columbia is universally followed, including by the First Circuit itself. Royal v. Superior Court of N.H., 531 F.2d 1084 (1st Cir. 1976); United States v. Velastegui, 199 F.3d 590 (2d Cir. 1999); Hallowell v. Keve, 555 F.2d 103

(3d Cir. 1977); United States v. Benjamin, 223 F. App'x 296 (4th Cir. 2007); United States v. Martinez, 496 F.3d 387 (5th Cir. 2007); United States v. Bryant, 716 F.2d 1091 (6th Cir. 1983); United States v. Burnom, 27 F.3d 283 (7th Cir. 1994); Niederstadt v. Nixon, 505 F.3d 832 (8th Cir. 2007); Kamana'o v. Frank, 450 F. App'x 631 (9th Cir. 2011); Devine v. N.M. Dep't of Corr., 866 F.2d 339 (10th Cir. 1989); United States v. Ingram, 165 F. App'x 793 (11th Cir. 2006); McKee v. United States Parole Comm'n, 214 F. App'x 1 (D.C. Cir. 2006).

CONCLUSION

Petitioner respectfully requests that this Honorable Court grant the Petitioner's Writ and issue an Order to the First Circuit Court of Appeals indicating that: (a) retroactive application of a new interpretation of a criminal statute is a matter of *federal* law, not *state* law; and (b) that violations of federal constitutional rights by the state's *highest* court are exempt from further exhaustion requirements per 28 U.S.C. § 2254(b)(1)(B)(i); and (c) that Petitioner has made a substantial showing of a violation of his federal constitutional rights, and the circuit court shall issue a Certificate of Appealability and remand the case to the United States District Court for the District of Rhode Island for further proceedings; together with any other relief this Court deems proper.

Respectfully submitted,



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