No. 17-6282

IN THE
SUPREME COURT OF THE UNITED STATES

ANTONNEO R. BOYCE – PETITIONER

VS.

ARIZONA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE ARIZONA COURT OF APPEALS

PETITION FOR REHEARING

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QUESTION(S) PRESENTED

Did the court err in denying the motion for leave to proceed in forma pauperis in this *criminal* matter, summarily dismissing the petition for writ of certiorari from the Arizona Court of Appeals' final decision in *State of Arizona v. Antonneo R. Boyce*, Yavapai County Superior Court Number CR 2013-01294, and ordering the Court's clerk to not accept any further petitions in *noncriminal* matters from petitioner unless the docketing fee required by Rule 38(a) is paid?

MEMORANDUM OF POINTS AND AUTHORITIES

On September 27, 2017, Petitioner ("Boyce") filed his petition for writ of certiorari from the Arizona Court of Appeals' final order in *State v. Boyce,* Yavapai County Superior Court Number CR 2013-01294, therein presenting two federal constitutional questions for this Court's review, to wit: 1) Did the Respondent's intentional expansion of the statutory language of Arizona Revised Statute ("A.R.S.") § 13-3101(A)(8)(a)(iv) relating to intrastate end-user modified rifles and shotguns to convict Boyce of crime, *without* legislative amendment, violate the Due Process Clause of the Fourteenth Amendment and this Court's mandate in *Bouie v. City of Columbia*; and 2) Is the Respondent bound by the dictates of the Due Process Clause of the Fourteenth Amendment to disclose material exculpatory evidence preguilty plea relating to either guilt or punishment, a question left open by the Court in *United States v. Ruiz,* 536 U.S. 622 (2002), upon which the Seventh, Tenth and Second, Fourth and Fifth

Circuits are split.

On December 11, 2017, this Court's entered its order in the case at bar holding:

> "The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in *noncriminal* matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1"

Citing *Martin v. District of Columbia Court of Appeals,* 506 U.S. 1 (1992) (*per curiam)* (emphasis original / emphasis added). In citing to Rule 39.8 the Court has determined that Respondent's intentional expansion of the statutory language of A.R.S. § 13-3101(A)(8)(a)(iv), to conform to 26 U.S.C. § 5845(a)(2) *without* legislative amendment, does not violate the Due Process Clause of the Fourteenth Amendment and this Court's mandate in *Bouie v. City of Columbia,* 378 U.S. at 351; and Respondent's intentional suppression of material exculpatory evidence preguilty plea is "frivolous or malicious." But see *In re McDonald,* 489 U.S. 180, 185-86 (1989) ("Section 1915(d) ... suggests an individualized assessment of frivolousness or maliciousness that the Court's prospective order precludes.") (Justice Brennan, with whom Marshall, Blackmun and Stevens, JJ, join, dissenting). In so holding, it appears this Court has determined that the government is not bound by the Due Process Clause to "give fair notice that [one's] contemplated conduct is forbidden by statute," therein overruling *Bouie,* 378 U.S. at 351, and, although there is a split in the Circuits, government is not bound by due process to

disclose exculpatory evidence preguilty plea demonstrating that one is innocent of crime.

In reliance upon *Martin v. District of Columbia Court of Appeals,* 506 U.S. 1 (1992), which bears no semblance of relevance to the case at bar, the Court finds that Boyce is not entitled to *in forma pauperis* status because he "has repeatedly abused this Court's process." *Id.* In *Martin,* 506 U.S. at 2, his Court held that petitioner was not entitled to *in forma pauperis* status because "Martin had filed 45 petitions in the past 10 years, and 15 in the preceding 2 years alone." [1] Justice Stevens stated, however, that "[t]he theoretical administrative benefit the Court may derive from an order of this kind is far outweighed by the shadow it casts on the great tradition of open access that [has] characterized the Court's history ...." *Martin,* 506 U.S at 4 (Stevens, J., dissenting). See *McDonald, 489 U.S. at 187* ("I am most concerned, however, that, if, as I fear, we continue on the course we chart today, we will end by closing our doors to a litigant with a meritorious claim."); *Talamini v. Allstate Ins. Co.,* 470 U.S. 1067, 1070 (1985) ("Freedom of access to the courts is a cherished value in our democratic society.") (Stevens, J., concurring); *Zatko v. California,* 502 U.S. 16, 20 (1991) ([T]he message [the Court] conveys is that [it] does not have an overriding concern about the equal access to justice for both the rich and the poor.") (Justice Stevens, with whom

1 In researching this Court's docket Boyce only finds two (2) previous cases before this Court, *Antonneo R. Boyce v. Dora Schriro,* No. 03A943 (motion for extension of time), and *Boyce v. Schriro,* No. 04-5605 (petition for writ of certiorari) (linked), arising from the *criminal* prosecution in *State v. Boyce,* Maricopa County Superior Court Number CR 90-01763, which bears no semblance of relevance or relation to the *criminal* cause of action on appeal before this Court in *State v. Boyce,* Yavapai County Superior Court Number 2013-01294.

Blackmun, J., joins, dissenting); *In re Sindram,* 498 U.S. 177, 181 (1991) ("I continue to believe that departures of this sort from our generous tradition of welcoming claims from indigent litigants is neither wise nor warranted by statute or our rules, ...") (Justice Marshall, with whom Blackmun and Stevens, JJ., join dissenting). Boyce does not believe that his appeal to this Court from the *criminal* cause of action against him in *State v. Boyce,* Yavapai County Superior Court Number CR 2013-01294, nor his petition for a writ of certiorari to this Court from the Ninth Circuit Court of Appeals in the *criminal* cause of action in *Boyce v. Shriro,* No. 04-5605, bears any relation to *Martin* relied upon by the Court.

In the instant case the Respondent has never denied nor been made to answer the federal constitutional allegations at bar, and even went so far as to not even file a waiver of response before this Court, evidently relying upon the Respondent courts' finding that Boyce had no right to appeal when he accepted a plea in *State v. Boyce,* Yavapai County Superior Court Number CR 2013-01294. (Yet see *Appendix D* to Petition, Reporter's Transcript 15: 2-11, 12/10/13). However, currently pending opinion before this after oral argument is *Class v. United States,* No. 16-424, wherein the D.C Circuit Court held that *Class* inherently waived his right to appeal constitutional violations *without* any waiver within his plea agreement, as Respondent has nothing more than held in *State v. Boyce,* Yavapai County Superior Court Number CR 2013-01294. The procedural history in *Class* is indistinguishable from the case at bar, as the question in *Class* is whether his

constitutional challenges survived his guilty plea pursuant to this Court's holdings in *Blackledge v. Perry,* 417 U.S. 21 (1974), and *Menna v. New York,* 423 U.S. 61 (1975), as argued by Boyce in the instant petition. [2]

Wherefore, given the facts and law advanced herein, Boyce prays this Court shall reverse its order of December 11, 2017, and order Respondent to make answer to the instant petition, or, in the alternative, reverse its order of December 11, 2017, and stay the instant proceeding pending its Opinion in *Class v. United States,* No. 16-424.

Respectfully submitted,

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Antonneo R. Boyce

Original and 10 copies to Court and, pursuant to 28 U.S.C. 1746 and Rule 29, copy to Mark Brnovich, Arizona Attorney General, counsel for Respondent, at same time.

Antonneo R. Boyce

2 There is no waiver of appeal concerning constitutional issues within Boyce's plea agreement of December 10, 2013, and Respondent has never denied nor presented evidence before this, nor any other court, of any such waiver.

CERTIFICATION

Pursuant to 28 U.S.C 1746(2) and Rule 44(1) I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that this Petition for Rehearing is presented in good faith and not for delay.

Antonneo R. Boyce