

No. 17-7930

IN THE
SUPREME COURT OF THE UNITED STATES

JONATHAN BOYER, *Petitioner*,

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY, *Respondent*.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION

RICHARD BOURKE*
Louisiana Capital Assistance Center
636 Baronne Street
New Orleans, LA 70113
Telephone: (504) 558-9867
Facsimile: (504) 558-0378

** Counsel of Record*

REASONS FOR GRANTING THE PETITION

In his Reply, Mr. Boyer emphasized the importance of the question presented, particularly as to the effective application of the speedy trial guarantee to state courts, where indigent defense funding controls the access of poor defendants to the speedy trial guarantee of the federal constitution.

Since filing the reply, the importance of clarifying the proper application of 28 U.S.C. 2254(d) to speedy trial claims has been underlined by events in Louisiana.

In *State v. Robinson*, 357240 (1st JDC, LA.), a first degree murder prosecution arising from a killing in April 2018, the trial judge has been unable to appoint capitally certified counsel due to the underfunding of Louisiana's indigent defense system and the case has remained stalled.

It is now reported¹ that on September 17, 2018 the presiding judge in *Robinson* appointed the entire capitally certified bar of Louisiana to represent the defendant, though there remains no funding available for the representation. Nancy Cook & Zyneria Byrd, *Judge appoints every lawyer in state to defend alleged Facebook killer or explain why they can't*, NBC 6, (9/17/18).²

As the dissent in Mr. Boyer's previous application for certiorari noted, Mr. Boyer's case is not an isolated one but is illustrative of larger systemic problems in

¹ No order or minutes are available through the online docket system for the court, as is usual in such a short space of time, but undersigned counsel has confirmed with an attorney present at the hearing that the judge did, in fact, enter an oral order appointing all capitally certified counsel in Louisiana to the case.

² Available at <https://www.arklatexhomepage.com/news/local-news/judge-appoints-every-lawyer-in-state-to-defend-alleged-facebook-killer-or-explain-why-they-can-t/1454902858> (last viewed 9/18/18).

Louisiana that endanger constitutional rights. *Boyer v. Louisiana*, 569 U.S. 238, 249 (2013)(Sotomayor J., dissenting).

Absent the effective enforcement of federal constitutional guarantees for indigent defendants in Louisiana, those systemic conditions persist. Louisiana not only repeats the conditions that led to the delay in Mr. Boyer's case but seems to be regressing to the type of indigent defense system condemned in *Powell v. Alabama*, 287 U.S. 45 (1932).

Certiorari should be granted to correct the Fifth Circuit's erroneous interpretation of 28 U.S.C. 2254(d), an interpretation that drastically limits the effective reach of the Speedy Trial Clause to Louisiana state courts.

Respectfully submitted,

/s/ Richard Bourke
RICHARD BOURKE, *Counsel of Record*
Attorney for Petitioner

Dated: September 19, 2018