

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN GRAY — PETITIONER
(Your Name)

vs.

LORIE DAVIS, Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH CIRCUIT U.S. COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHN GRAY (TDCJ #475245)
(Your Name)

BOYD UNIT; 200 Spur 113
(Address)

Teague, Texas 75860
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

1. Whether certiorari is warranted to correct disobedience by the state courts and lower federal courts if their decisions are contrary to clearly established Supreme Court law and the United States Constitution where the Petitioner was denied the federal right to due process and he has no other adequate remedy at law to challenge his ongoing illegal confinement by the Respondent after the lawful correct sentence expiration date of 8-9-2014 assessed by the state jury under number 481656 and TDCJ #475245.

2. Whether certiorari is warranted where there is a presumption of vindictiveness to deny the Petitioner due process and habeas relief by the lower federal courts and the state courts when the factual circumstances indicate a "reasonable likelihood of vindictiveness" to conceal or improperly enforce unconstitutional retroactivity of state laws to illegally confine the Petitioner past his true and correct sentence maximum expiration date which is contrary to clearly established Supreme Court law and the United States Constitution.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties ~~do~~ **not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix 3A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 12-15-2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: DN or about 2/9/2018, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution:

Article I, Section 9, clause 3; Section 10, clause 1.

Amendment V;

Amendment XIII, Section 1.

Amendment XIV

28 U.S.C. § 2254

28 U.S.C. § 453

AEDPA (Antiterrorism and Effective Death Penalty Act)

STATEMENT OF THE CASE

On or about 8-9-1987 Petitioner began serving a jury sentence of 27 years under cause 481656 and TDCJ #475245 for a non-violent 3rd degree felony offense as shown on the trial court judgment and sentence and, on 8-9-2014 he lawfully served the complete sentence by remaining at all times lawfully "in custody of TDCJ (Respondent)" as required under Texas Gov't Code Section 508.143 (a) and (b) while twice on authorized prison release to parole.

On 8-12-1999 Petitioner's parole was revoked for a non-criminal technical violation and the Respondent retroactively applied the first amended version of Texas Gov't Code §§ 508.149 in tandem with 508.283 on 9-23-1999.

On or before 2-26-2010 the Respondent removed the retroactive application of §§ 508.149 and 508.283 enacted on September 1, 1997, from the Petitioner's 1987 offense under TDCJ #475245 and authorized his immediate eligibility for mandatory prison release to Mandatory Supervision under Texas Gov't Code § 508.147(a).

On 8-25-2014 when the Petitioner appeared at the parole office and requested his sentence discharge papers for the primary offense, the Respondent and associate TDCJ agents responded by charging and convicted Petitioner of committing FELONY terroristic threat against the United States by use of the TDCJ revocation procedure [without a lawful arrest, Grand Jury indictment, and without a judicial court of law], where Respondent retroactively canceled 4,096 calendar days already served on the jury sentence and created a new sentence maximum expiration date of 10-25-2025 by ~~falsely declaring that~~ the Petitioner was "out of custody" from TDCJ for 4,096 calendar days and retroactively applied 508.149 and 508.283 enacted in 1997 to the 1987 offense to increase the original jury punishment imposed under cause 481656.

Petitioner is illegally confined since 8-9-2014 without due process.

REASONS FOR GRANTING THE PETITION

Petitioner is unlawfully and unconstitutionally restrained and confined 'in custody of TDCJ' by the Respondent after he had completely served the jury sentence of 27-years on or after the date of 8-9-2014 under TDCJ#475245 in violation of his federal rights and contrary to clearly established U.S. Supreme Court decisions and decisions by the Fifth Circuit U.S. Court of Appeals which prohibited retroactivity of Texas Gov't Code § 508.149 to unconstitutionally increase the original trial court punishment imposed as occurred in the primary case. See: Johnson v. U.S., 120 S.Ct. 1795, at 1800-1801 (2000) and; McCall v. Dretke, 390 F.3d 358, at 361, 365-366 (5th Cir.2004).

Certiorari is necessary because there was an unconstitutional motive by the lower federal courts and the state courts to deny habeas corpus relief to the Petitioner for attacking the Respondent's unlawful or unconstitutional administration of his 1987 jury sentence under TDCJ#475245, who has previously filed a federal habeas corpus petition challenging the validity of his conviction or sentence, which was to defy or be disobedient and contrary to clearly established U.S. Supreme Court law and the Fifth Circuit's own rule of law because, the Fifth Circuit U.S. Court of Appeals has clearly stated that Congress did not intend for the federal AEDPA (Antiterrorism and Effective Death Penalty Act) to be used to preclude federal courts from providing habeas corpus relief for alleged procedural due process violations relating to an unconstitutional administration of a prisoner's sentence as occurred in the primary case. See: In re Cain, 137 F.3d 234-236 (5th Cir.1998) and; Wade v. United States, 504 U.S. 181,185, 112 S.Ct. 1840,1843, 118 L.Ed.2d 524 (1992). The federal courts and state courts clearly recognized to deny Petitioner the right to due process and the equal protection of the Ex Post

Facto Clause when they all agreed that Respondent properly applied Texas Gov't Code § 508.149 in tandem with § 508.283 retroactively to the 1987 offense of TDCJ#475245 for the purpose of retroactively increasing the original jury punishment imposed by increasing the jury sentence maximum expiration date to October 25, **2025**, where all of the state and federal courts were clearly made aware of the Texas case of Ex Parte Schroeter, 958 S.W.2d 811 (1997) which clearly prohibited retroactivity of Texas Gov't Code § 508.149 to felony offenses committed before the September 1st, 1997, enactment of the code in which the Texas appellate court cited Supreme Court law of Lynce v. Mathis, 117 S.Ct. 891 (1997). The written decisions by the federal district court and the Fifth Circuit U.S. Court of Appeals (attached to Appendices) demonstrates factual circumstances which indicates a "reasonable likelihood of vindictiveness" by the judges of the state and federal courts to arbitrarily permit the Respondent to retroactively apply § 508.149 and § 508.283 for the underlying purpose of authorizing Petitioner's unlawful and unconstitutional prison confinement and custody under TDCJ. See: United States v. Goodwin, 457 U.S. 368, 373, 102 S.Ct. 2485, 2488, 73 L.Ed.2d 74 (1982); **28 U.S.C. §453.**

Certiorari is also necessary because the federal courts' decisions to deny Petitioner habeas relief because he was ["out of custody from TDCJ" for a total of 4,096 calendar days while serving the primary jury sentence on parole] demonstrates disobedience and contrary to clearly established U.S. Supreme Court law including decisions by the Fifth Circuit U.S. Court of Appeals and Texas Appellate Courts. See: Jones v. Cunningham, 83 S.Ct. 373 (1963); Cruz v. Johnson, 2001 U.S.App. LEXIS 30588, No.00-50720 (5th Cir. 8-8-2001); Werner v. State, 445 S.W.3d 301, 303-304 (Tex.App. LEXIS 4295 [1st Dist.] HOUSTON, April 4, 2013).

Certiorari is necessary to enforce Supreme Court law prohibiting retroactivity of the 1997 enactment of Texas Gov't Code §§ 508.149 and 508.283 to Petitioner's 1987 offense of TDCJ#475245 because the lower federal courts and state courts have denied him the federal right to due process and the equal protection under the Fifth Amendment's "Taking Clause" and Ex Post Facto Clause to the United States Constitution. It is undisputed and claimed by the lower federal courts and state courts that there were ~~two times~~ in which the Respondent retroactively applied the 1999 amended version and 2013 amended version of §§ 508.149 and 508.283 to Petitioner's 1987 offense for the underlying purpose of twice increasing the original jury punishment imposed as a penalty for non-criminal technical parole violations which demonstrates the showing of the newest sentence expiration date of 10-25-2025. The Respondent can again retroactively apply 508.149 in tandem with 508.283 in the future in violation of the federal ex post facto clause, because under Texas Gov't Code § 508.147(a) the Petitioner remains eligible for mandatory non-discretionary prison release to Mandatory Supervision as determined by the Texas Court of Criminal Appeals. See: Ex Parte Keller, 173 S.W.3d 492, (Tex.Crim.App.2005)(at 495). Therefore because of Respondent's ability to retroactively apply §§ 508.149 and 508.283 in the future to retroactively cancel additional calendar time already served on the jury sentence under TDCJ#475245, this factual circumstance ~~is justiciable under~~ the "capable of repetition, yet evading review" doctrine of Weinstein which should warrant the grant of certiorari. Weinstein v. Bradford, 423 U.S. 147, 149, 46 L.Ed.2d 350, 96 S.Ct. 347 (1975).

Certiorari is necessary because it is inexcusable for the Fifth Circuit U.S. Court of Appeals and the lower courts to defy or disobey the federal

Ex Post Facto Clause to the United States Constitution contrary to clearly established Supreme Court law under *Johnson v. U.S.*, 120 S.Ct. 1795, at 1800-1801 (2000) and in *Lynce v. Mathis*, 117 S.Ct. 891 (1997).

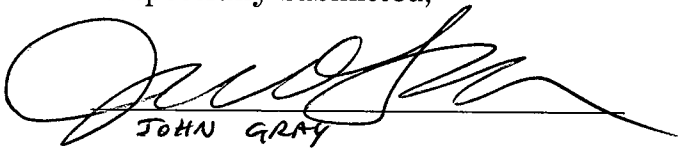
The Fifth Circuit U.S. Court of Appeals' panel decision to defy or disobey Supreme Court law against retroactivity of Texas Gov't Code § 508.149 is in conflict with decisions by other U.S. Court of Appeals and contrary to its own decision in *McCall v. Dretke*, 390 F.3d at 361, 365-366 (2004). See: *United States v. Beals*, 87 F.3d 854, at 860 (7th Cir.1996); and *United States v. Robinson*, 62 F.3d 1282 (10th Cir.1995).

Moreover, the Fifth Circuit's panel judges and the federal district court's adamant disobedience to Supreme Court law prohibiting retroactivity of any state law which factually increases the original punishment imposed as occurred to the Petitioner was motivated by substantial personal bias and prejudice against the Petitioner by viewing him as a previously convicted [felony terrorist against the United States as promoted and influenced by the Respondent's TDCJ entity and parole agents] even though the Petitioner had never been lawfully indicted by a Grand Jury, tried or convicted in a court of law for felony terrorism. Re: USDC Document 25 on page 13 (of 15) at Lines 17-18. The district court and Fifth Circuit panel reasonably knew as fact that the reason for Petitioner's recommitment back to TDCJ prison - after completely serving the jury sentence on 8-9-2014 - was to serve additional penalty for the felony terroristic threat conviction obtained by Respondent's parole division in clear violation of Petitioner's 'Morrissey' federal rights. Re: *Morrissey v. Brewer*, 408 U.S. 471, 475, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972); *Wade v. United States*, 504 U.S. 181, 185, 112 S.Ct. 1840, 1843, 118 L.Ed.2d 524 (1992).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



JOHN GRAY

Date: MARCH 20, 2018.