

No.

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IN THE SUPREME COURT OF THE UNITED STATES

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KENNETH ALLEN ROGERS,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

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On Petition for a Writ of Certiorari to  
The Supreme Court of California

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**APPLICATION FOR EXTENSION OF TIME TO  
FILE PETITION FOR WRIT OF CERTIORARI**

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**To the Honorable Elena Kagan  
Associate Justice of the United States Supreme Court  
and Circuit Justice for the Ninth Circuit**

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**KENNETH ROGERS (AC8841)  
SQSP 4-W2  
SAN QUENTIN, CA 94974  
In Pro Se**

**To the Honorable Elena Kagan Associate Justice of the United States Supreme Court and Circuit Justice for the Ninth Circuit:**

**Applicant-Defendant Kenneth Allen Rogers respectfully request an extension of time to file a petition for writ of certiorari, Sup. Ct. R. 13.5. The earliest deadline for the Applicant to file his petition is Tuesday, August 20, 2019, which is ninety days from May 22, 2019, the date when the California Supreme Court issued its order denying the Petition for Review Exhausting all state remedies in applicant's conviction.**

**For good cause set forth herein, Applicant asks that the deadline be extended by sixty days so that the new deadline would be Tuesday October 29, 2019.**

#### **BACKGROUND**

**This case arises from a criminal conviction in which the trial court's failure to appoint legal counsel in pre-trial proceedings after the retained legal counsel withdraw and left applicant without any resources to retain new legal counsel.**

**The "People" through supervising Deputy District Attorney Newman, made a motion before the Trial Court to reconsider the Order relieving defense legal counsel because the Deputy District Stoen misrepresented that defense legal counsel was going to be called as a witness.**

**The position of the People was that retained legal counsel could not be called as a witness in applicant's criminal trial and that if retained legal counsel refuses represent the defendant in the criminal case then retained legal counsel must account to**

**both the court and the applicant the for all legal fees advanced in this case, some \$128,500.00.**

The trial court granted the “Peoples” request but, did not appoint legal counsel for applicant a criminal defendant for a pre-trial hearing at which applicant rights were before the trial court.

This failure to appoint legal counsel for the May 9, 2008, court hearing deprived applicant to present the retainer agreements proving that defense legal counsel retainers paid in the amount of \$128,500.00, violated the California Rules of Professional Conduct.

Applicant had no additional resources to retain legal counsel for the pretrial hearing or for that matter to retained legal counsel for trial in the criminal case.

The court never held a hearing on the people’s motion and the retained legal counsel at all times refused to provide an accounting and or a refund of the unearned retainer.

Both the California Supreme Court and the State Bar refused to enforce the California Rules of Professional Conduct requirements requiring attorney to refund the advanced flat fee retainer of \$128,500.00 upon withdrawing from legal representation of defendant in a criminal case.

The State Court of Appeal First Appellant District held that it was not “Structural Error” to deny a criminal defendant legal representation in pre-trial proceedings were the defense legal counsel moved to withdraw from representation of a client.

Applicant during subsequent court hearings was denied legal representation when even the “People” acknowledged that legal defense

counsel could not be called by Deputy District Attorney Stoen and requested the Trial Court to reconsider the order reliving defense counsel.

The “**People**” also asserted at the April 25, 2008, court hearing that if defense legal counsel does not continue to represent the client, (applicant), then the legal defense counsel must account to the court and the client for legal fees advance (\$128,500.00), so the client can retain new legal counsel.

The trial court granted the “**People**” request and never Supreme Court against the State Bar Member and the State Bar had also filed for conformation of the very same conduct against the very same member of the State Bar. Both cases were pending simultaneously and the California Supreme Court conform the disciplinary action refund of the unearned retainer and suspension of license but stayed and denied applicant request for refund of the unearned retainer.

The issues raised in this Petition for Writ of Certiorari is it “Structural Error” when the trial court denied a criminal defendant legal representation when the “**People**” brought a motion for reconsideration of the order relieving criminal defense legal counsel, which deprived a criminal defendant of having a ruling on the merits.

Additionally, the second issues presented is can the State of California deprive a criminal defendant of a hearing, which was requested by the “**People**” to make defense legal counsel to account for the advance legal fees pre-paid in the amount of \$128,500.00, which was done to prevent applicant form being able to retain legal counsel of his choice.

The money here was the property of applicant and had already been ruled as such by the trial court as the "People" had levied applicant bank account, but it was determined that those funds came from a bank refinance and was released.

Both the State Bar and the California Supreme Court found nothing wrong with having a retainer agreement between a criminal defendant and retained legal counsel, which had as provisions that all fees advance were non-refundable even through the defense legal counsel never performed the work contracted for.

Applicant had filed an Accusation in the California Supreme Court requiring the State Bar to bring disciplinary action against defense legal counsel so that applicant could be able to retain legal counsel to bring a habeas corpus petition through retained legal counsel.

What is most interesting here is that the California State Bar Court had to file a petition into the California Supreme Court against defense legal counsel to confirm the holding of the State Bar Court imposing suspension of the defense legal counsel and did so on December 23, 2014.

Defense legal counsel in the State Bar Court entered into a stipulation that defense legal counsel while representing a client abandoned a client for the retainer.

Applicant filed a Accusation into the California Supreme Court asserting that this very same defense legal counsel refusal to refund the unearned advance fee retainer violated the Rules of Professional

Conduct and contrary to Public Policy as defense counsel abandoned the client for collection of retainer.

Both cases were before the California Supreme Court simultaneously from January 16, 2015 through February 19, 2015, against the very same legal defense counsel over the very same factual issues i.e. abandonment of a criminal defendant by taking a advance retainer and never performing the legal work.

The California Supreme Court on February 19, 2015, denied applicant's Accusation against this legal defense counsel but on March 19, 2015, confirmed the suspension of legal defense counsel for adornment of the criminal defendant for the unearned retainer.

The two Federal Question presented by Applicant's Petition for Certiorari here is can the State of California and the State Bar of California deny a criminal defendant legal representation at a pretrial hearing, which the "People" requested.

The second question presented in Applicant's Certiorari Petition does the State of California and the State Bar California refusal to enforcement of the Rules of Professional Conduct protect the Public whose only loyalty was to walk away with a client's advance retainer totaling \$128,500.00.

These policy and practices of both the California Supreme Court as well as the State Bar of California where done to prejudice applicant's fundamental rights of a criminal defendant's Sixth Amendment rights to the Assistance of legal counsel of his choice.

This guaranteed is only based upon the decision in **United States v Gonzales-Lopez**, which is not some quixotic right but is actual a fundamental right under our core values as a nation.

Both of these issues where decided by this very Court in March 30, 2016, **Luis v. United States**, 578 U.S. \_\_\_, (2016) and **Weaver vs. Massachusetts**, 582 U.S. \_\_\_, (2017).

Applicant still has never received a refund from legal defense counsel as the State of California Court system holds that the criminal defense attorneys' retainers are non-refundable and that the defense legal counsel can keep the clients money and never performed teh work contracted for.

Applicant has been left without resources to contest these illegal acts of the State of California as legal defense counsel took all of applicant's money leave the applicant with no ability to retain legal counsel to file even habeas corpus petitions and this petition.

### **OPINION BELOW**

The May 22, 2019, order of the California Supreme Court denying relief from these illegal acts, which prevents a criminal defendant from the use of his property any ability to retain legal counsel.

These failures has and is deprived applicant of both legal representation and his ability to have a hearing with legal representation for the release of the advance retainer paid to the legal defense counsel of \$128,500.00 for representation through trial as a flat fee.

These denials of places the fundamental character of a criminal defendant's Sixth Amendment rights to the "Assistance of Counsel" out applicant's ability.

The right to counsel is a "structural error" that so affects the very framework which the criminal case proceeds that the courts may not even ask whether the error harmed the defendant, **United States v Gonzales-Lopez**, 548 U.S. 140, 148 (2006).

Applicant raised "Structural Error" on appeal and the Court of Appeal asserted "**[H]e claims the order relieving Masuda was structural error requiring reversal without a showing of prejudice. We disagree.**"

## **JURISDICTION**

This Court has jurisdiction under 28 U.S.C. § 1257.

## **REASONS EXTENSION IS JUSTIFIED**

Supreme Court Rule 13.5 provides that "An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting a rehearing, and set out specifics reasons why an extension of time is justified are as follows:

1. Applicant is currently in custody in State Prison on these very charges and has very limited access to the institutional law library and no resources to retain legal counsel.
2. The respondents at all times refuse to enforce the Rules of Professional Conduct against legal defense counsel who refuses to refund the unearned retainer totaling \$125,500.00 even through the

retainer agreement was for a flat fee and legal defense counsel never proceeded to trial.

3. I have contact law firm of Goldstein & Russell, P.C. for legal representation in this Court and have sent then the record of these proceedings.

4. The Law Firm is currently reviewing the documents and have expressed an interest because of the two prior rulings on this Court that dealing the definitions of “Structural Error” and release of a defendant property need to retain legal counsel of one choice for trial in a criminal case.

5. The requested extension is also necessary to accommodate the fast approaching deadline of August 20, 2019.

6. The California Supreme Court’s decision warrants this Court’s review because the federal questions in this case does not comply with this very Court’s decision in **Luis v. United States**, 578 U.S. \_\_\_, (2016), which held that placing pre-trial restraints on untrained asserts of a criminal defendant who needs those asserts to retain legal counsel of his choice.

7. The California Court’s decision in this case also ruled that a criminal defendant must show actual prejudiced from a denial of legal counsel at pre-trial proceeds which were brought by the “People” in an attempt assure that the defense legal counsel account for the advance retainer which defense legal counsel refused to refund .

8. Applicant needs this 60 day extension to finalize applicant’s ability to obtain legal representation by a member of this Court’s Bar.

## CONCLUSION

For the forgoing reasons and for good cause shown, applicant respectfully requests that this Court grant this application for an extension of time to file a petition for writ of Certiorari until October 29, 2019.

Dated 7/13/2019



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Kenneth Allen Rogers