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20-7344

IN THE

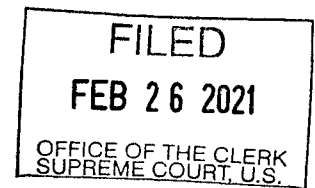
SUPREME COURT OF THE UNITED STATES

ORIGINAL

CARL DWIGHT DAVIS — PETITIONER
(Your Name)

vs.

DAVID SHINN — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

(9TH CIR. COURT OF APPEALS)
ALL STATE AND FEDERAL COURTS HAVE REFUSED TO RULE ON THE MERIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CARL DWIGHT DAVIS
(Your Name)

PO BOX 3300
(Address)

FLORENCE ARIZ 85132
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) DOES THE NINTH CIRCUIT COURT OF APPEALS DENIAL AND THE ARIZONA DISTRICT COURT'S DISMISSAL OF DAVIS' §1983 CIVIL ACTION, BY STATING HECK V HUMPHREY BAR, DIRECTLY CONFLICT WITH ESTABLISHED BINDING UNITED STATES SUPREME COURT PRECEDENT AS RULED IN SPEGLER V KEMNA, AND OTHER UNITED STATES CIRCUIT COURT OF APPEALS DECISIONS ON THE SAME CONSTITUTIONALLY IMPORTANT MATTER?
- 2) DOES THE NINTH CIRCUIT COURT OF APPEALS AND THE ARIZONA DISTRICT COURT RULINGS VIOLATE DAVIS' 5TH AND 14TH AMENDMENT GUARANTEED RIGHT TO DUE PROCESS OF THE LAW BY DEPRIVING THE PETITIONER THE OPPORTUNITY TO SEEK RESOLUTION AND ADJUDICATION IN HIS §1983 CIVIL ACTION, WHERE A PERSON OR PERSONS ACTING UNDER THE COLOR OF STATE LAW HAS DENIED DAVIS HIS DUE PROCESS RIGHTS ESTABLISHED BY THE U.S. CONSTITUTION AND FEDERAL LAW?
- 3) DID THE ARIZONA STATE COURTS ABUSE THEIR JUDICIAL DISCRETION BY REFUSING TO APPLY SOME FORM OF CORRECTIVE PROCESS WHERE DAVIS RAISED CLAIMS THAT CONSTITUTIONAL VIOLATIONS HAS CAUSED DAVIS' CONTINUED ILLEGAL DETENTION IN CONTRAVENTION OF THE 5TH AND 14TH AMENDMENT GUARANTEED RIGHT TO DUE PROCESS OF THE LAW?

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:

THE MARICOPA COUNTY SUPERIOR COURT
THE ARIZONA COURT OF APPEALS
THE ARIZONA SUPREME COURT

RELATED CASES

BRADLEY V EVANS, 531 U.S. 1023 (6TH CIR 2000) "THIS AREA OF LAW... REMAINS IN FLUX... A GUIDING HAND FROM THE SUPREME COURT SEEMS VERY MUCH IN ORDER TO PREVENT FUTURE COURTS FROM LOSING THEIR WAY IN THIS FOREST OF UNCERTAINTY."

COPEN V LONGSHORE, 621 F.3d 1311, 1316-17 (10TH CIR 2010) JOINING 2ND, 4TH, 6TH, 9TH, AND 11TH CIRCUITS IN CONCLUDING THAT "WE ARE FREE TO FOLLOW THE FIVE JUSTICE PLURALITY'S APPROACH IN SPENCER V KEMNA" AND HOLDING THAT "PETITIONER WHO HAS AVAILABLE REMEDY IN HABEAS, THROUGH NO LACK OF DILIGENCE ON HIS PART, IS NOT BARRED BY HECK FROM PURSUING A § 1983 CLAIM."

MOHAMMAD V CLOSE, 523 U.S. 1, 17 (1998) NOTING THAT MEMBERS OF THE COURT HAVE EXPRESSED THE VIEW THAT UNAVAILABILITY OF HABEAS FOR OTHER REASONS MAY ALSO DISPENSE WITH THE HECK REQUIREMENT.

MONROE V PAPE, 365 U.S. 167, 81 S. CT 473, 5 L. ED 492 (1961), 42

USCS § 1483 GIVES REMEDY-ACTION AT LAW, SUIT IN EQUITY,
OR OTHER PROPER PROCEEDING FOR REDRESS-TO PARTIES
DEPRIVED OF CONSTITUTIONAL RIGHTS, PRIVILEGES, AND IMMUNITIES
BY OFFICIAL'S ABUSE OF HIS POSITION

UNITED STATES V PLATTER, 514 F.3d 782 (8TH CIR 2008) (AS
CITED BY THE ARIZONA ATTORNEY GENERAL) "...WHICH
PROVIDED THAT PROPER REMEDY WHEN DEFENDANT WAS
CONVICTED OF MULTIPLE COUNTS WAS MERGER OF
COUNTS INTO ONE COUNT..."

TABLE OF AUTHORITIES CITED

CASES

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MUHAMMAD V CLOSE, 540 U.S. 749, 751-54 (2004)	RELATED CASES
MONROE V PAPE, 365 U.S. 167, 81 S. CT. 473 5 L. ED 492 (1961)	RELATED CASES
SHAPIRO V UNITED STATES 235 U.S. 412, 35 S. CT. 122, 59 (1914)	7
GOLD LAMAR, INC V HEIMAN 369 U.S. 463, 82 S. CT 913 (1962)	8
BRADLEY V EVANS, 531 U.S. 1023 (6 TH CIR 2000)	7, 8
COWEN V LONGSHORE, 621 F.3d 1311, 1316-17 (10 TH CIR 2010)	RELATED CASES
UNITED STATES V PLATTER, 514 F.3d 782 (8 TH CIR 2008)	RELATED CASES

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APPENDIX C § 1983 CIVIL COMPLAINT

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APPENDIX E 9TH CIR COURT - DAVIS' OPENING BRIEF ORDER

APPENDIX F 9TH CIR COURT - DAVIS' OPENING BRIEF

APPENDIX G 9TH CIR COURT - DISMISSAL UNDER HECK & REHEARING DENIAL

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 G 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 D 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 SEPT 16, 2020.

☐ 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: DEC. 8, 2020, and a copy of the order denying rehearing appears at Appendix 6.

☐ 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

FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. "NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB... NOR BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW." CONSTITUTIONAL RIGHT TO PROCEDURAL DUE PROCESS. A VIOLATION OF PROCEDURAL DUE PROCESS REQUIRES (1) THAT THE STATE HAS INTERFERED WITH AN INDIVIDUAL'S PROTECTED LIBERTY OR PROPERTY INTEREST, AND (2) THAT PROCEDURAL SAFEGUARDS WERE CONSTITUTIONALLY INSUFFICIENT TO PROTECT AGAINST UNJUSTIFIED DEPRIVATION.

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. "NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW; NOR DENY ANY PERSONS WITHIN IT'S JURISDICTION THE EQUAL PROTECTION OF THE LAWS. THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION PROVIDES THAT THE DUE PROCESS CLAUSES ARE DESIGNED TO PROTECT THE INDIVIDUAL AGAINST ARBITRARY GOVERNMENT ACTION.

AS A MATTER OF SUBSTANTIVE CONSTITUTIONAL LAW, STATE ACTION REQUIREMENT OF FOURTEENTH AMENDMENT REFLECTS JUDICIAL RECOGNITION OF FACT THAT MOST RIGHTS SECURED BY CONSTITUTION ARE PROTECTED ONLY AGAINST INFRINGEMENTS BY GOVERNMENTS, AND ACCORDINGLY, CONDUCT ALLEGEDLY CAUSING DEPRIVATION OF FEDERAL RIGHT MUST FAIRLY BE ATTRIBUTABLE TO STATE; IN DETERMINING QUESTIONS OF "FAIR ATTRIBUTION," 2-PART APPROACH IS USED, REQUIRING THAT (1) DEPRIVATION BE CAUSED BY EXERCISE OF SOME RIGHT OR PRIVILEGE CREATED BY STATE OR BY RULE OF CONDUCT IMPOSED BY STATE OR BY PERSON FOR WHOM STATE IS RESPONSIBLE AND (2) PARTY CHARGED WITH DEPRIVATION BE PERSON WHO MAY FAIRLY BE SAID TO BE STATE ACTOR. LUGAR V EDMONDSON OIL CO. 457 U.S. 922, 102 S. CT 2744

42 USC § 1983 - CIVIL ACTION FOR DEPRIVATION OF RIGHTS - EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE, ORDINANCE, REGULATION, CUSTOM, OR USAGE, OF ANY STATE OR TERRITORY OR THE DISTRICT OF COLUMBIA, SUBJECTS, OR CAUSES TO BE

SUBJECTED, ANY CITIZEN OF THE UNITED STATES OR OTHER PERSON WITHIN THE JURISDICTION THEREOF TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS, SHALL BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, SUIT IN EQUITY, OR OTHER PROPER PROCEEDING FOR REDRESS, EXCEPT THAT IN ANY ACTION BROUGHT AGAINST A JUDICIAL OFFICER FOR AN ACT OR OMISSION TAKEN IN SUCH OFFICER'S JUDICIAL CAPACITY, INJUNCTIVE RELIEF SHALL NOT BE GRANTED UNLESS A DECLARATORY DECREE WAS VIOLATED OR DECLARATORY RELIEF WAS UNAVAILABLE. 42 U.S.C. § 1983 GIVES REMEDY - ACTION AT LAW, SUIT IN EQUITY, OR OTHER PROPER PROCEEDING FOR REDRESS TO PARTIES DEPRIVED OF CONSTITUTIONAL RIGHTS, PRIVILEGES, AND IMMUNITIES BY OFFICIAL'S ABUSE OF HIS POSITION.

U.S. CONSTITUTION ART. III § 2 - THE JUDICIAL POWER SHALL EXTEND TO ALL CASES, IN LAW AND EQUITY, ARISING UNDER THIS CONSTITUTION AND THE LAWS OF THE UNITED STATES. . . .

CASE AND CONTROVERSY - WHEN PLAINTIFF BRINGS SUIT TO ENFORCE LEGAL OBLIGATION IT IS NOT ANY LESS CASE OR CONTROVERSY UPON WHICH COURT POSSESSING FEDERAL JUDICIAL POWER MAY RIGHTLY GIVE JUDGEMENT, BECAUSE PLAINTIFF'S CLAIM IS UNCONTESTED OR UNCONTESTABLE. POPE V UNITED STATES, 323 U.S. 1, 65 S. CT 89 L. ED 3, 102 CT. CL. 1208 (1944)

STATEMENT OF THE CASE

IN 2006, BY WAY OF A BENCH TRIAL, PLAINTIFF DAVIS WAS ACQUITTED ON THE COUNT ONE CHARGE OF CHILD MOLESTATION, TO WIT: THE FIRST TIME, BUT CONVICTED ON SIX RELATED COUNTS OF CHILD MOLESTATION AND ONE RELATED COUNT OF SEX ABUSE. THE TRIAL COURT, IN SENTENCING DAVIS TO CONCURRENT 28 YR. TERM OF INCARCERATION DID ESTABLISH BY JUDICIAL CONSTRUCTION, ONE ALLEGED OCCURRENCE. (APPENDIX A)

IN 2014, AFTER DILIGENTLY EXHAUSTING ALL AVAILABLE STATE COURT REMEDIES, DAVIS FILED A WRIT OF HABEAS CORPUS IN THE ARIZ. DISTRICT COURT RAISING DUE PROCESS VIOLATIONS, DOUBLE JEOPARDY VIOLATION, AND THE CONSTITUTIONALITY OF THE TRIAL PROCESS.

THE ARIZONA ATTORNEY GENERAL, IN THEIR RESPONSE RENDERED A WRITTEN OPINION IN WHICH THE ATTORNEY GENERAL DISAGREED WITH DAVIS' CLAIM. THE ARIZ. DISTRICT COURT UPHELD DAVIS' CONVICTIONS AND SENTENCES.

HOWEVER, IN THE ARIZ. ATTORNEY GENERAL'S WRITTEN OPINION, THE ATTORNEY GENERAL'S LEGAL CONCLUSION DISCLOSED AND ESTABLISHED A DOUBLE JEOPARDY VIOLATION AND SENTENCING ERROR BY THE TRIAL COURT. THE ARIZ. ATTORNEY GENERAL ALSO SET FORTH THE PRESCRIBED REMEDY TO CORRECT AND CURE THE CONSTITUTIONAL VIOLATIONS AND ERRORS OF THE TRIAL COURT. (APPENDIX B) IN SO DOING, THE ARIZ. ATTORNEY GENERAL AFFIRMS THE TRIAL COURT'S DETERMINATION OF ONE OCCURRENCE AND ESTABLISHES THE CONSTITUTIONALLY PROTECTED ACQUITTAL TO THE ONLY REMAINING CHARGE OF THE ALLEGED DAYTIME INCIDENT ON THE COUCH.

SINCE 2015, DAVIS HAS EXHAUSTED EVERY AVAILABLE STATE AND FEDERAL JUDICIAL REMEDY AVAILABLE IN A DILIGENT EFFORT TO GET ANY COURT TO ADDRESS THE MERITS OF DAVIS' ILLEGAL DETENTION CLAIM AND CLAIMS OF CONSTITUTIONAL DUE PROCESS AND DOUBLE JEOPARDY VIOLATIONS THAT ARE FORCEFULLY SUPPORTED BY THE ARIZ. ATTORNEY GENERAL'S WRITTEN OPINION AND LEGAL CONCLUSION AND CORRECTED BY THE ATTORNEY

GENERAL'S PRESCRIBED REMEDY.

ALL OF THE FOREMENTIONED STATE AND FEDERAL COURTS EITHER DENIED OR DISMISSED DAVIS' CLAIMS WITHOUT ADDRESSING THE CONSTITUTIONAL VIOLATIONS OR THE MERIT OF DAVIS' CLAIMS.

ON JAN 22, 2020, DAVIS, WITH NO CLEAR PATH LEFT FOR ADJUDICATION, FILED A 1983 CIVIL ACTION WITH THE ARIZ. DISTRICT COURT (DIST COURT NO. 2; 20-CV-00163 CMS-MHB) RAISING TWO CLAIMS. (1) THE STATE COURTS VIOLATED DAVIS' 14TH AMENDMENT RIGHT TO DUE PROCESS PROTECTION BY DEPRIVING DAVIS PROTECTED LIBERTY INTEREST RIGHT WITHOUT DUE PROCESS OF LAW.

(2) THE STATE COURTS VIOLATED DAVIS' 5TH AMENDMENT RIGHT TO CONSTITUTIONAL DOUBLE JEOPARDY PROTECTION WHICH ENCOMPASSES DAVIS' ILLEGAL PROTECTION CLAIM, BY FAILING TO ADJUDICATE CLAIMS OF CONSTITUTIONAL VIOLATIONS AND COURT ERROR BASED ON THE MERIT OF THOSE CLAIMS. (APPENDIX C)

WITHOUT CONTESTING, DENYING OR OTHERWISE ADDRESSING THE MERIT OF DAVIS' CLAIMS, THE DISTRICT COURT DISMISSED DAVIS' CLAIM AS "BARRED BY HECK V HUMPHREY." (APPENDIX D)

ON APRIL 24, 2020, DAVIS FILED A NOTICE OF APPEAL IN THE NINTH CIRCUIT COURT OF APPEALS

ON JUN 26, 2020, THE HONORABLE 9TH CIR COURT JUDGES GRABER AND NELSON ORDERED DAVIS' OPENING BRIEF DUE ON AUGUST 5TH, 2020. (APPENDIX E)

ON JULY 30, 2020, DAVIS FILED A TIMELY PROPER OPENING BRIEF BEFORE CIRCUIT COURT JUDGES GRABER AND NELSON. (APPENDIX F)

ON SEPT. 16, 2020, NINTH CIRCUIT COURT JUDGES SILVERMAN, TASHIMA, AND OWENS DISMISSED DAVIS' 1983 CIVIL ACTION AS BARRED UNDER HECK V HUMPHREY. (APPENDIX G)

ON OCT. 8, 2020, DAVIS DID PETITION FOR REHEARING.

ON DEC. 8, 2020, WITH NO REASON GIVEN, CIRCUIT COURT JUDGES TASHIMA, SILVERMAN, AND OWENS DENIED DAVIS' REQUEST FOR REHEARING (APPENDIX G)

REASONS FOR GRANTING THE PETITION

DAVIS UNDERSTANDS THAT REVIEW OF A WRIT OF CERTIORARI IS NOT A MATTER OF RIGHT, BUT OF JUDICIAL DISCRETION. THE FOLLOWING INDICATES THE CHARACTER OF REASONS WHY THE UNITED STATES SUPREME COURT SHOULD CONSIDER GRANTING DAVIS' WRIT OF CERTIORARI.

(1) THE NINTH CIRCUIT COURT OF APPEALS DENIAL AND THE FEDERAL DISTRICT COURT OF ARIZONA'S DISMISSAL OF DAVIS' 1983 CIVIL ACTION, AS BEING BARRED BY HECK V HUMPHREY, IS IN DIRECT CONFLICT WITH RELEVANT DECISIONS OF THE UNITED STATES SUPREME COURT

(2) THE NINTH CIRCUIT COURT OF APPEALS' RULING UPHOLDING THE ARIZONA DISTRICT COURT'S DISMISSAL OF DAVIS' 1983 CIVIL ACTION, AS BEING BARRED BY HECK V HUMPHREY, IS IN DIRECT CONFLICT WITH THE DECISIONS OF OTHER UNITED STATES CIRCUIT COURT OF APPEALS DETERMINATIONS IN THE MATTER OF THE EXCEPTION TO HECK'S FAVORABLE TERMINATION REQUIREMENT

THE FIVE JUSTICE FLURALITY APPROACH OF THE UNITED STATES SUPREME COURT IN SPENCER V KEMNA, 523 U.S. 1, 17 (1998), HAS BEEN FOLLOWED BY MANY U.S. CIRCUIT COURTS INCLUDING THE 2ND CIR., 4TH CIR., 6TH CIR., 9TH CIR., 10TH CIR AND 11TH CIR. IN RECOGNIZING THAT "PETITIONER WHO HAS NO AVAILABLE REMEDY IN HABEAS, THROUGH NO LACK OF DILIGENCE ON HIS PART, IS NOT BARRED BY HECK

SPELLER'S REVELATION OF A 5-JUSTICE MAJORITY READY TO MODIFY THE HECK RULE TO EXEMPT SITUATIONS IN WHICH THE FEDERAL HABEAS CORPUS REMEDY IS UNAVAILABLE FURTHER COMPLICATED AN ALREADY COMPLEX AREA OF LAW. BRADLEY V EVANS, 531 U.S. 1023 (2000)

THE UNITED STATES SUPREME COURT HAS PREVIOUSLY RULED IN SHAPIRO V UNITED STATES, 235 U.S. 412, 35 S. CT. 122, 59 L. ED 291 (1914) THAT "PARTLY BECAUSE OF IMPORTANCE OF QUESTIONS INVOLVED, WRITS

OF CERTIORARI WILL BE GRANTED.

THE UNITED STATES SUPREME COURT RULED IN POPE V UNITED STATES, 323 U.S. 1, 65 S. CT 16, 89 L. ED 3, 102 CT (1944) RULED "WHEN PLAINTIFF BRINGS SUIT TO ENFORCE LEGAL OBLIGATION IT IS NOT ANY LESS CASE OR CONTRAVERS^Y UPON WHICH COURT POSSESSING FEDERAL JUDICIAL POWER MAY RIGHTLY GIVE JUDGEMENT, BECAUSE PLAINTIFF'S CLAIM IS UNCONTESTED OR INCONTESTABLE."

THE UNITED STATES SUPREME COURT WILL GRANT CERTIORARI TO REVIEW DECISION OF UNITED STATES COURT OF APPEALS WHERE DECISION PRESENTS CONFLICT WITH UNIFORM COURSE OF DECISIONS PREVIOUSLY MADE ON SAME QUESTION BY OTHER COURT OF APPEALS. GOLDLAWR, INC V HELMAN, 369 U.S. 463, 82 S. CT 913, 8 L. ED 39 (1962)

DAVIS, AS A LAYPERSON UNLEARNED IN LAW, RESPECTFULLY REQUESTS THE UNITED STATES SUPREME COURT GRANT THIS WRIT OF CERTIORARI. AS DEMONSTRATED BY THE NINTH CIRCUIT COURT OF APPEALS AND THE ARIZONA FEDERAL DISTRICT COURT'S DISMISSAL OF PLAINTIFF'S § 1983 CIVIL ACTION IN WHICH BOTH FEDERAL COURTS CITED HECK V HUMPHREY AS BARRING DAVIS' § 1983 CIVIL ACTION, DAVIS FINDS HIMSELF AS AN UNWITTING LITIGANT IN THE COMPLEX LEGAL UNCERTAINTY ENCOMPASSING PROCEDURAL BAR UNDER HECK V HUMPHREY AND THE EXCEPTIONS TO THE HECK BAR AS ESTABLISHED IN THE SPENCER PLURALITY CITED IN SPENCE V KEMNA.

AS STATED IN BRADLEY V EVANS, 531 U.S. 1023 (2000), "THIS AREA OF LAW... REMAINS IN FLUX... A GUIDING HAND FROM THE SUPREME COURT SEEMS VERY MUCH IN ORDER TO PREVENT FUTURE COURTS FROM LOSING THEIR WAY IN THIS FOREST OF UNCERTAINTY."

IN DETERMINING WHETHER TO GRANT THIS WRIT OF CERTIORARI, DAVIS RESPECTFULLY ASK THE REVIEWING JUSTICES OF THE UNITED STATES SUPREME COURT, TO CONSIDER THE FOLLOWING COMPELLING REASONS AS TO WHY DAVIS' § 1983 CIVIL ACTION DOES NOT MEET THE HECK BAR REQUIREMENTS.

(1) AS IS A REQUIREMENT ESTABLISHED IN THE FIVE JUSTICE PLURALITY APPROACH OF THE UNITED STATES SUPREME COURT IN SPENCER V KEMNA, AND HELD AS CORRECT PROCEDURAL APPLICATION BY MOST OF THE UNITED STATES CIRCUIT COURTS, A "PETITIONER WHO HAS NO AVAILABLE REMEDY IN HABEAS, THROUGH NO LACK OF DILIGENCE ON HIS PART, IS NOT BARRED BY HECK FROM PURSUING A §1983 CLAIM."

THE RECORD CLEARLY ESTABLISHES THAT DAVIS HAS DILIGENTLY EXHAUSTED EVERY STATE AND FEDERAL COURT REMEDY IN AN EFFORT TO HAVE MERITORIOUS CONSTITUTIONAL VIOLATIONS AND COURT ERROR, THAT ARE FIRMLY ESTABLISHED AND REPRESENTED BY THE WRITTEN OPINION, LEGAL CONCLUSION AND REMEDY OF ARIZONA'S OWN STATE ATTORNEY GENERAL, HEARD AND ADJUDICATED BY ANY OF THE ARIZONA STATE COURTS. IT IS THIS PURPOSEFUL DEPRIVATION OF DAVIS' RIGHT TO THE DUE PROCESS OF LAW BY THE ARIZONA STATE COURTS THAT DAVIS CHALLENGES IN HIS §1983 CIVIL ACTION.

THE NINTH CIRCUIT COURT OF APPEALS AND THE ARIZONA FEDERAL DISTRICT COURT HAVE EITHER DENIED OR DISMISSED DAVIS' CHALLENGE TO THE HECK BAR WITHOUT ADDRESSING THE MERIT OF DAVIS' CHALLENGE THE COURT'S ASSERTION OF A HECK BAR. WITH NO CLEAR PATH TO ADJUDICATION LEFT, DAVIS IS RELIANT ON THE UNITED STATES SUPREME COURT TO RENDER CONSTITUTIONALLY FUNDAMENTAL JUDICIAL FAIRNESS.

(2) DAVIS REQUESTS THE HONORABLE SUPREME COURT JUSTICES TO ALSO CONSIDER THAT DAVIS IS NOT CHALLENGING A SENTENCE OR CONVICTION AS IS A REQUIREMENT FOR A HECK BAR. DAVIS DOES NOT, FOR THE MOST PART, DISPUTE THE WRITTEN OPINION, LEGAL CONCLUSION, AND LAWFUL CONSTITUTIONALLY PROPER REMEDY PROVIDED BY THE ARIZONA ATTORNEY GENERAL. A WRITTEN OPINION AND LEGAL CONCLUSION THAT DISCLOSED IN PLAIN LANGUAGE THE DOUBLE JEOPARDY VIOLATION AND ERRORS OF THE TRIAL COURT AND PROVIDES A LEGAL REMEDY WHICH (A) REAFFIRMS THE TRIAL COURT'S IMPLIED ASSERTION OF ONE OCCURRENCE; (2) AND AFFIRMS THE CONSTITUTIONALLY PROTECTED ACQUITTAL AS THE ONLY REMAINING CHARGE TO THE ALLEGED INCIDENT ON THE COUNCIL. THE

ALZONA ATTORNEY GENERAL'S WRITTEN OPINION AND
LEGAL REMEDY NEGATES THE NECESSITY FOR ANY POS-
SIBLE CHALLENGE DAVIS COULD BRING TO A CONVICTION OR
SENTENCE.

DAVIS, IN HIS 1983 CIVIL ACTION, IS CHALLENGING THE ARIZONA
COURTS FOR THEIR VIOLATIONS OF DAVIS' FIFTH AND FOURTH
TEENTH AMENDMENT RIGHTS TO DUE PROCESS PROTECTION,
RIGHT TO DOUBLE JEOPARDY PROTECTION AND THE RIGHT
TO EQUAL PROTECTION OF THE LAW.

CONSTITUTIONAL DUE PROCESS REQUIRES A FULL AND FAIR
HEARING, THE OPPORTUNITY TO BE HEARD, AND ADJUDICATION
ON THE MERIT OF THE CLAIMS OF CONSTITUTION VIOLATION.
THE JUSTICES OF THE UNITED STATES SUPREME COURT SHOULD
GRANT THIS WRIT OF CERTIORARI, AND ALLOW DAVIS' 1983
CIVIL ACTION TO GO FORWARD BECAUSE

(A) HEEK V HUMPHREY IS INAPPLICABLE IN DAVIS' 1983 CIVIL
ACTION

(B) THE ARIZONA COURTS, BY THEIR FAILURE TO ABIDE BY THE
REQUISITE RULES OF DUE PROCESS, HAVE UNCONSTITUTIONALLY
DENIED DAVIS' LIBERTY INTEREST

(C) BY RULE, CLAIMS OF CONSTITUTIONAL VIOLATIONS REQUIRE
ADJUDICATION ON THE MERIT AND NOT DENIAL OR DISMISSAL.

DAVIS SUBMITS THAT THE CONSTITUTIONALLY GUARANTEED RIGHT TO
DUE PROCESS OF THE LAW SHOULD NOT BE MARKED BY DENIAL,
DISMISSAL, OR REVERSAL OF THE LAW DUE TO PERCEIVED
BIAS OR PREJUDICE, OR THE DISCRIMINATORY MANNER IN WHICH
ADJUDICATION OF DAVIS' CLAIMS OF CONSTITUTIONAL VIOLATIONS
HAVE BEEN MET WITH UNREASONED DISMISSALS AND DENIALS
WITHOUT EVER ADDRESSING THE MERIT OF THE CONSTITUTIONAL
VIOLATION CLAIMS AND THE CLAIM OF CONSTITUTIONALLY ILLEGAL
DETENTION.

FOR ALL THE FOREGOING REASONS AND CONSTITUTIONAL PROVISIONS,
THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME
COURT SHOULD GRANT DAVIS' WRIT OF CERTIORARI.

CONCLUSION

THE RIGHT TO THE DUE PROCESS OF THE LAW, DOUBLE JEOPARDY PROTECTION, AND EQUAL PROTECTION OF THE LAW, ARE FUNDAMENTAL RIGHTS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION. BASIC CONSTITUTIONAL RIGHTS DENIED BY THE ARIZONA JUDICIAL SYSTEM.

AFTER MORE THAN FIFTEEN YEARS OF CONTINUED ILLEGAL INCARCERATION, DAVIS IS RELIANT UPON THE U.S. SUPREME COURT TO PROVIDE THE MEANS BY WHICH THE PLAINTIFF MAY RECEIVE A CONSTITUTIONALLY FAIR JUDICIAL PROCEEDING FREE FROM THE PRESUDILE, BIAS, AND DISCRIMINATION EXPERIENCED IN THE ARIZONA JUDICIAL SYSTEM.

AS ESTABLISHED BY U.S. SUPREME COURT IN SPENCER V KEMNA, AND MANY OF THE U.S. CIRCUIT COURTS, DAVIS' 1983 CIVIL ACTION IS NOT BARRED BY WELLS V HUMPHREY.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Carl N. Davis

Date: FEB 24 2021