No._____

In The
Supreme Court of the United States

GAVIN B. DAVIS,

Applicant,

v.

[STATE OF CALIFORNIA],

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI FROM SUPREME COURT OF CALIFORNIA S258194 & UNDERLYING 4TH DIST., DIV. 1 NO.: D074186

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INTRODUCTION

Pursuant to Rules 13.5, 22, 30.3, this Application is addressed to HONORABLE ELENA KAGAN, Associate Justice for the Supreme Court of the United States and Circuit Justice for the Ninth Circuit. Applicant, Mr. Gavin B. Davis, on direct appeal from a State of California criminal judgment, requests a 60-day extension of time to: (a) file a Petition for a Writ of Certiorari to review the judgment of the 4th Dist., Div. 1, Court of Appeals (California) in case no.: D074186, where Mr. Davis is represented by Attorney-at-law, Mr. John O. Lanahan (CSBN #133091, University of Chicago, J.D., Phi Beta Kappa); (b) file a Motion to Appoint Counsel[1] with this Court for these matters; and, (c) file a Motion or Application to this Court, generally, to reverse the 4th Dist., Div. 1, Remittitur, issued on December 4, 2019, and recall its mandate pending disposition of this direct appeal to the Supreme Court of the United States of America.

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[1] In *United States v. Wade*, 388 U.S. 218, 226-227 (1967) it is stated that "it is central to [the Sixth Amendment] principle that in addition to counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial."

QUESTIONS PRESENTED

Did the 4th Dist., Div. 1, Court of Appeal, California, err in its (a) inquiry and (b) application of *Boykin / Tahl*[2] analysis under its (c) "totality of circumstances" standard of review in relying on an (d) incomplete and erroneous factual record[3] in denying Appellant's appeal of his timely and diligent Withdraw of Plea (April 23, 20198) efforts prior to Sentencing (June 7, 2018); where, Petitioner states that (e) there is substantially more than a reasonable probability[4]

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[2] See *Boykin v. Ala.* 395 U.S 238, 243 (1969); *In re Tahl*, 1 Cal.3d 122, 132 (1969)

[3] See e.g., D074186, Petition for Rehearing, "the Court overlooked his statements in open court that contradicted, rather that supplemented, the waiver of rights he had initialed on the change of plea form" (pg. 5-6) and "minute orders and his own statements at the change of plea hearing show that he believed the only way he would be released was if he pleaded guilty," (*Id.*, pg. 6) in support that the factual basis and procedural background presented in the opinion are inaccurate including but not limited to overlooking such minute orders, actions and intent, and oral dialogue, where Petitioner at many instances in the record raised considerable doubt as to what rights he was waiving in exchange for his immediate (*i.e.* same day) own recognizance return to pre-trial liberty while not being provided the alternative (*i.e.* a bail review motion as previously repeatedly calendared); and, therefore, reliance on a partial and/or incorrect fact pattern

[4] A low threshold without substantial burden of proof

had Petitioner (f) been at liberty[5] subject to (i) reasonable and flexible bail[6]; or, (ii) been presented with the alternative to the Plea Hearing (i.e. a bail review hearing, as had been calendared three (3) times); he would have continued to trial on all matters (as still sought) and not entered into any Plea Agreement[7], as entered into involuntary / coerced in direct exchange for that which he was already awaiting: his pre-trial liberty; meeting the requisite standard of review under the proper application of such law)

However, the underlying proceedings, never reaching trial as sought, and violations of the Applicant are sufficiently egregious, putrefying, and so gravely unconstitutional as to rise far above harmless error, or mere misapplication of any standard.

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[5] Petitioner had: (a) made twenty-seven (27) non-duplicative court appearances while at liberty

[6] Petitioner was held in pre-trial detention and custody for approximately six (6) months awaiting three (3) bail review motions calendared without filing or argument thereupon, on excessive, and punitive bail of One Million Dollars ($1,000,000), believe to be the highest monetary bail in the history of California for one (1) felony charge, a non-violent Ca PC § 594(a) for property damage on his wholly-owned (i.e. non-communal) Recorded Homestead

[7] A coerced and involuntary plea, April 23, 2018 (see D074186 Briefing

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the Parties are as follow:

Petitioner, Mr. Gavin B. Davis (the "Petitioner" or "Mr. Davis"), is an individual that is a citizen of the United States of America. He holds a Bachelor of Science degree from Cornell University; has completed approximately Four Billion Dollars (US$4,000,000,000) of complex corporate finance and real estate transactions; is a published author; is an industry speaker, including before such law firms as DLA Piper. Petitioner is a non-public figure who has fully maintained and sought a private, non-public life. Petitioner has no history of crime or violence, has not had a trial, let alone a fair tribunal, has maintained his innocence; and, has had his Constitutional rights egregiously violated.

Respondent, State of California, Department of Justice, Office of the Attorney General ("CA AG") is the state's top legal body, overseeing more than 4,500 lawyers, investigators, sworn peace officers, and other employees, in which such duties include representing the State in civil and criminal matters before trial courts, appellate courts and the supreme courts of California and the United States; who may be Served via last direct underlying attorney-of-record, Mr. Craig H. Russell (CSBN #199274), Office of the Attorney General, 600 W Broadway, Ste 1800, San Diego, CA 92101-3375, T: (520) 612-5837; Craig.Russell@doj.ca.gov.

Party in Interest, Mr. John O. Lanahan, (CSBN #133091, past head of the San Diego Criminal Defense Attorneys Association, Criminal Defense Attorney of the Year (2012, 2016), University of Chicago, J.D., Phi Beta Kappa), is counsel to the Applicant in 4th Dist., Div. 1 (CA), case no.: D074186, from which this movement before the Supreme Court of the United States is directly taken. Service of Process of Mr. Lanahan may be completed at 501 W Broadway Ste 1510, San Diego, CA 92101-3526, T: (619) 237-5498.

Parties in Interest, the professional law firm of Ronis & Ronis, trial attorneys: Ms. Gretchen C. Von Helms (CSBN #156518, Harvard (B.A. (Government), J.D., Phi Beta Kappa), making the most recent appearance on behalf of the Applicant in regard to these matters before the Superior Court of California, San Diego County; Mr. Jan E. Ronis. (CSBN #51450), most recently favorably disposing of a related case pre-trial (M242946DV, dismissed subject to Ca PC §802(a) on February 19, 2019) concerning the same parties and events from which this movement is brought before the Supreme Court, as latent and fraudulent; and, Mr. Jason A. Ronis (CSBN #229628), who has also appeared on behalf of the Applicant in regard to these matters. Service of Process may be completed via Ms. Von Helms at, Ronis & Ronis, Senator Building, 105 West F Street, 3rd Floor, San Diego, Ca 92101, T: (619) 236-8344.

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JURISDICTION

When a challenge to a state court conviction presents a federal question, the Supreme Court has held that "the process of direct review . . . includes the right to petition this Court for a writ of certiorari." See *Barefoot v. Estelle*, 463 U.S. 880, 887 (1983); cf. *Bell v. Maryland*, 378 U.S. 226, 232 (1964) ("In the present case the judgment is not yet final, for it is on direct review in this Court."). Applicant on Petition presents federal questions.

On November 26, 2019, the Supreme Court of California, denied for hearing, Applicant's (as petitioner) Petition for Review (pro per), from underlying 4th Dist., Div. 1 (CA), D074186; on direct appeal from Superior Court of California, SCD266332, SCD273043 (June 7, 2018). On Appeal before the State of California, Applicant's attorney, Mr. John O. Lanahan (CSBN #133091) filed a Petition for Rehearing[8], on September 5, 2019 (denied September 10, 2019) (Rule 14(e)(i))

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[8] The Appellate Court has not in fact, gone through the Record, (*Douglas v. California*, 372 U.S. 353 (1963)), as put forth herein, as well as in the Petition for Rehearing citing to clear and glaring factual errors and other omissions with the Court of Appeal Opinion. See also, *O'Sullivan v. Boerckel*, 526 U.S. 838, 844-45 (1999), regarding exhaustion of state remedies, as satisfied in this case and controversy prior to movement before this Court.

The jurisdiction of this Court is invoked under each of 28 U.S.C. § 1257(a) and 28 U.S.C. § 1651(a). This Application is timely made pursuant to Rule 13.5; while, the Petition for a Writ of Certiorari, itself, is also timely.[9]

Finally, this Statement of Jurisdiction is Rule 14.1(e) compliant; and, in good faith is brought forth for the purposes of opining on the relief sought in this Application.

ARGUMENT IN SUPPORT OF THIS APPLICATION

A priori, Applicant has a Constitutional right embedded in the 4th Amendment to pre-trial liberty; and, also a Constitutional right to be held on non-excessive, non-punitive, reasonable and flexible terms and conditions of bail embedded in the 8th Amendment. If these rights are egregiously violated, as alleged (Applicant was held on the highest bail ever in the State of California for the one (1) felony charge (i.e. property damage to his wholly owned recorded homestead), and "weaponized" (as alleged) for illicit purposes, a party suffers prima facie harm

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[9] Supreme Court of California, denied Applicant's Petition for Review (S258194) on November 26, 2019; availing the 90-day window to file a Petition for a Writ of Certiorari to the Supreme Court of the United States on direct appeal, as expressly sought, on or about February 24, 2020; (*Bowen v. Roe*, 188 F.3d 1157, 1158-60 (9th Cir. 1999); *Patterson v. Stewart*, 251 F.3d 1243, 1246 (9th Cir. 2001))

and injury. Applicant, and Applicant's 4th Dist., Div. 1, appellant attorney, Mr. John O. Lanahan (CSBN #133091) have each found that Deputy District Attorney, Mr. Leonard Nyugen Trinh (CSBN #236873), of the San Diego County District Attorney's Office (SDDA), misused bail and pre-trial custody to unlawfully coerce an involuntary plea, which Applicant immediately sought to withdraw after being released on his Own Recognizance on April 23, 2018 with no other terms and conditions of bail, thereafter, lawfully leaving the State of California on April and returning, at liberty, for Sentencing on June 7, 2018, at which time (and before) he sought to withdraw the plea. Applicant maintains his innocence, and has not been afforded a jury trial as protected by the 7th Amendment. Secondarily, as a result of his 4th, 8th and 7th Amendment rights being violated; Applicant's Due Process rights under each of the 5th and 14th Amendments have been violated. This controversy, and the level of unlawful, unconscionable, and vindictive actions of the Respondent, in gross, deliberate violation of the Applicant's Constitutional rights also rise to a level to be actionable under a 9th Amendment 42 U.S.C. § 1983 claim.

The 4th Dist., Div. 1 Court of Appeal's (CA) Opinion (August 21, 2019) in not liberally allowing for and granting a Withdraw of the April 23, 2018 Plea, as sought, after being held on excessive, punitive and unreasonable bail of One Million Dollars ($1,000,000), several magnitudes of order off the bail schedule, while facing one non-violent felony charge for property damage on Applicant's wholly-owned Record Homestead is

(a) an error that has a "substantial and injurious effect or influence in determining the jury's verdict [or the prejudice of a non-satisfactory verdict / judgment absent the benefit of a jury trial in the form of a plea agreement, prima facie] . . .,"; and, (b) is contrary to, or involved an unreasonable application of, clearly established federal law[10], as determined by the Supreme Court of the United States; where Petitioner had, in priority, his: Fourth (pre-trial liberty), Eighth (non-Excessive or Punitive bail), Fifth (Due Process), Fourteenth (Due Process), Seventh (Jury Trial) and even Ninth Amendment, rights violated. (see e.g. 28 U.S.C. § 2254(d)(1))

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[10] "For its part, *Alford* states that *United States v. Jackson* (1968) 390 U.S. 570 [20 L. Ed. 2d 138, 88 S. Ct. 1209], "established no new test for determining the validity of guilty pleas. The standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." (400 U.S. at p. 31 [27 L.Ed.2d at pp. [1 Cal. 4th 1200] 167- 168].)" (citation omitted) Applicant was not afforded bail review (i.e. the alternative to the plea as timely contested and withdrawn), as diligently sought, while held on Excessive Bail for six (6) months.

PRIMARY FEDERAL PROVISIONS INVOLVED

The primary constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, are noted below.

4th Amendment (pre-trial liberty); 8th Amendment (non-excessive bail); 7th Amendment (jury trial); 5th Amendment (due process); 14th Amendment (due process); and, 9th Amendment.

REASONS FOR GRANTING THIS APPLICATION

I. APPLICANT HAS STEADFASTLY MAINTAINED HIS INNOCENCE AND NOT HAD A TRIAL AS SOUGHT, WHERE THE U.S. CONSTITUTION COMPELS REVERSAL

The underlying state proceedings have not satisfied due process (*Holley*, 568 F.3d at 1101 (citing *Jammal v. Van de Kamp*, 926 F.2d 918, 919-20 (9th Cir. 1991)), irrespective of substantial abuses of process in such underlying proceedings; while the Respondent held the Applicant in protracted jeopardy on the highest monetary bail ever for the charge in question, causing serious harm and injury in clear and egregious violation of this Constitutional rights as protected by the 4th and 8th Amendments. Through coercion, Respondent freely released the Applicant on his

Own Recognizance (emphasis) with no other terms and conditions of bail, while Applicant awaited bail review, as calendared on three (3) separate occasions over a six month period, but never filed in writ or argued before the Superior Court of California. No reasonable person of a jury would find that the Applicant has endured an actual legitimate binding conviction of any sorts.

"When constitutional error calls into question the objectivity of those charged with bringing a defendant to judgment, a reviewing court can neither indulge a presumption of regularity nor evaluate the resulting harm. Accordingly, when the trial judge is discovered to have had some basis for rendering a biased judgment, his actual motivations are hidden from review, and we must presume that the process was impaired. See *Tumey v. Ohio*, 273 U. S. 510, 273 U. S. 535 (1927)" (citation omitted)

"A defendant claiming ineffective assistance of counsel must show that counsel's incompetence caused him actual prejudice. *Strickland v. Washington*, 466 U. S. 668, 466 U. S. 687 (1984)." In this case, having a bail review calendared and not heard on multiple occasions over a protracted period meets a prima facie cause of clear prejudice. (see e.g. *United States v. Frady*, 456 U. S. 152, 456 U. S. 170 (1982); see also *Wainwright v. Sykes*, 433 U. S. 72 (1977)) As well, these Constitutional violations of the Applicant by the Respondent and underlying process are not harmless in any uncertain capacity.

To wit, this case is the quintessential opportunity for the Supreme Court to deter unconstitutional conduct by state officials; where the remedy, is rather quite simple: allow a withdraw of plea under a totality of circumstances when presented the alternatives, namely a bail review, and proceed to trial on all allegations against a citizen brought by a state, as sought. (see e.g. *United States v. Leon*, supra, at 468 U. S. 906-907; *Stone v. Powell*, supra, at 428 U. S. 489.) Further, the misuse of bail and pre-trial custody is a matter of national and state importance (28 U.S.C. §§ 1657, 2101(e)) (also a "first impression" question, with the great potential for Circuit Court split absent this Court's Opinion, as the Third Circuit has recently published a 52-page Opinion centered around the Constitutionality of Bail and on Constitutional protections related to crimes (*Brittan Holland; Lexington National Insurance Corporation, v. Kelly Rosen, Mary Colalillo, Christopher S. Porrino*; 3rd Cir., No. 17-3104, (2018)), which found no constitutional requirement for monetary bail, rendering such as "a product of economic opportunity" and cited instances in which the use of money to secure a person's release has been criticized as "discriminatory, arbitrary and ill- suited to ensuring a defendant's appearance in court," and also stating, "monetary bail often deprived presumptively innocent defendants of their pretrial liberty, a result that surely cannot be fundamental to preserving ordered liberty")

the State is able to retry successful petitioners, and since "the State remains free to use all the proof it introduced to obtain the conviction in the first trial." *Id.* at 443 U. S. 558." (citation omitted)

Applicant has not been afforded a full and fair opportunity to litigate his legal positions; having his Constitutional rights, the most fundamental of civil rights, ironically, though sadly, resting on the bloodshed of American colonists and Federalists believing in Liberty and the idea of a Federal Republic as put forth in the Federalist Papers, enshrined in order to provide the procedural safeguards to ensure fundamental fairness against the state; and, in this case and controversy, a state that looks shockingly akin to the types of oppressive and unlawful behaviors and actions that gave rise to this Mighty Republic in the first place.

CONCLUSION

For these aforementioned reasons and good cause, the application for an extension of time from February 24, 2020 to April 24, 2020, to properly move before this Court on direct appeal from a contested criminal conviction in order to prepare and file a petition for a writ of certiorari on direct appeal, a motion to appoint counsel for such purposes, and other movement before the Court, should be granted. Applicant has not previously sought an extension of time from this Court.

Respectfully submitted, on this day, December 24, 2019.

/s/ Gavin B. Davis

GAVIN B. DAVIS, PRO PER