Case No. 19-8665

In The
SUPREME COURT OF THE UNITED STATES

To: Brett M. Kavanaugh, United States Supreme Court Associate Justice

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Anthony Jackson, *Petitioner,*
v.
Supreme Court of Illinois, *Respondent,*
M.R. 030370

On Petition for a Writ of Certiorari to the
Illinois Supreme Court

COMBINED S.C. RULE 22 & 23 EMERGENCY APPLICATION FOR STAY

GEORGE JACKSON III
DRED SCOTT LLP
Attorney Bar # 313137
55 W. Monroe St., Suite 990
Chicago, Il. 60603
Off: (312) 833-0896
Cell: (773) 454-7645

GJackson@DredScottLLP.Com

EDWARD IAN GROSSMAN
GROSSMAN AND GROSSMAN, INC.
Attorney Bar # 192834
7422 West Choctaw Road
Palos Heights, Il. 60463
Off: (312) 833-0896
Cell: (708) 557-3980

EGrossman1957@gmail.com

Counsel of Record
Attorney for
Applicant/Petitioner

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PENDING PETITION FOR WRIT

On June 3, 2020, (docketed June 10, 2020), Applicant/Petitioner Anthony Jackson ("Applicant") filed his *Petition and Appendices for a Writ of Certiorari to the Illinois Supreme Court*, Docket Number 19-8665, which Petition and Appendices Applicant incorporates by reference. *Dkt.* 1.[1]

REQUESTED STAY BEFORE ILLINOIS COURT

Applicant requested the Illinois Court to stay its March 20, April3, and April 7, 2020, Orders. The Illinois Court denied the Motion. *AA* p. 1-6.

[1] "Dkt" denotes Supreme Court Docket entry, followed by the docket number. "AA" denotes Application Appendix, followed by the bate stamp page number.

REASONS WARRANTING EMERGENCY STAY

Due process is such a structural and essential component of American law that it is the only right provided in two separate clauses in our Constitution, the Due Process Clause of the V Amendment and the Due Process Clause of the XIV Amendments. Blanket Orders purporting to toll Speedy Trial terms ("blanket tolling Orders") violate due process and therefore are void *ab initio*. Blanket tolling Orders are in widespread use throughout the United States. Applicant's Petition is based on the invalidity of blanket tolling Orders entered by the Illinois Court purporting to to apply in all Illinois criminal cases.

As explained in the Petition, the Illinois Court entered three blanket Orders. *AA* p. 7-9.[2] None of the criminal cases were before the Illinois Court, meaning the Illinois Court lacked jurisdiction to enter substantive tolling Orders in any of the cases including Applicant's case. All three Orders violate the VI Amendment Speedy Trial Clause, the XIV Amendment Due Process Clause, the Illinois Constitution, and the Illinois Speedy Trial Act.

Governing Criteria for Stay

In determining whether to grant a stay of a lower court's order, decision, or judgment, this Honorable Supreme Court considers "whether the applicant has demonstrated '(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant *certiorari* or to note probable jurisdiction; (2) a fair prospect that a majority of the Court will conclude

[2] The Illinois Court's labeled each Order, "M.R. 30370 - *In re*: Illinois Courts Response to COVID-19 Emergency - Impact on Trials." As of July 15, 2020, the Illinois Court did not enter additional Orders so labeled, though it did enter additional Orders in M.R. 030370. There do not appear to be any subsequent tolling Orders.

that the decision below was erroneous; and (3) a likelihood that irreparable harm will result from the denial of a stay.'" *Indiana Police Trust v. Chrysler LLC*, 129 S. Ct. 2275, 2279 (2009) (per curiam) (quoting *Conkright v. Frommert*, 129 S. Ct. 1861, 1862 (2009) (Ginsburg, J., in chambers)).

The "fair prospect" test asks whether "plausible arguments exist for reversing the decision below and [whether] there is at least a fair prospect that a majority of the Court may vote to do so." See *California v. American Stores Co.*, 492 U.S. 1301, 1306 (1989) (O'Connor, J., in chambers). "In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam) (citing *Lucas v. Townsend,* 486 U.S. 1301, 1304, 108 S.Ct. 1763, 100 L.Ed. 2d 589 (1988) (KENNEDY, J., in chambers), and *Rostker v. Goldberg,* 448 U.S. 1306, 1308, 101 S.Ct. 1, 65 L.Ed.2d 1098 (1980) (Brennan, J., in chambers)); *Chrysler*, 129 S. Ct. at 2276.

As a threshold observation, use of blanket tolling Orders is unconstitutional. There is no real challenge on that score. The challenge here is obtaining *certiorari*, which we understand statistically is granted in only 3-5% of the Petitions for Writ of *Certiorari*. This case falls squarely within that coveted percentage. As to elements one and two, Applicant presents precisely the type of meritorious issue of national importance for which lower courts need direction from this Supreme Court. The Constitution requires due process, doubly so. Illinois' top court issued substantive blanket tolling Orders abridging Applicant's Speedy Trial Clause rights.

Blanket tolling Orders also directly violate the Due Process Clause of the XIV Amendment. It is considerably probable four Justices will grant *certiorari,* and there is a strong prospect of reversal of the Illinois Court. Applicant satisfies elements one and two.

As to the third element, the resulting irreparable harm to Applicant is multi-level. Applicant will spend more of his life behind bars, he will continue to have heightened exposure to COVID-19, he has a compromised immune system from having been in an enclosed jail for nearly six years continuously and thus has a greater risk of COVID-19 infection while detained in a heightened COVID-19 environment, and he suffers the inability to present his meritorious defense that is corroborated by *independent* evidence (at least one occurrence witness and a devastating medical report of the deceased being homicidal). The harms to Applicant are indeed irreparable, deep, and inescapable absent intervention by this Supreme Court. Applicant satisfies the third element.

Save for the particulars of Applicant's individual case, federal defendants nationwide suffer the same irreparable harms. Correcting the Illinois Court will correct this systemic nationwide problem of blanket tolling Orders in cases not before the issuing court. We respectfully invite this Supreme Court to instruct nationwide on the procedures employed in the Hawaii.

District of Hawaii's Individual Case Findings—*The Proper Way to Toll*

Contrast blanket tolling Orders with the commendable approach of the District Court of Hawaii. The Chief Judge in Hawaii well recognized that tolling of Speedy Trial terms required

jurisdiction thus necessitated individual tolling determinations by assigned judges. Blanket tolling Orders were not optional. Hence the following excerpt from the Hawaii District Court:

> **Restrictions on Court Proceedings**:
>
> • All civil and criminal trials scheduled to commence before June 15, 2020 before any district or magistrate judge are CONTINUED;
>
> • With respect to criminal trials, each presiding judge assigned to any trial scheduled to commence before June 15, 2020 will make appropriate findings and enter an order tolling time under the Speedy Trial Act; that is, although all judges agree that no trials can be held before June 15, 2020, each presiding judge will make the individual findings required by the Speedy Trial Act. For trials scheduled to commence before June 15, 2020, counsel should meet and attempt to reach a stipulation as to a new trial date and tolling time under the Speedy Trial Act. For criminal trials scheduled to commence on or after June 15, 2020, counsel should confer as to whether the currently scheduled trial date is realistic given the time needed to prepare for trial and the ongoing pandemic. *AA* p. 10-12 at p. 10.

The Hawaii District Court was largely deferential and compliant with the Due Process Clause, the exception being language that the assigned judge, "enter an order tolling time under the Speedy Trial Act." *Id.* at 10. Although that language is not preceded by the command "shall," it nevertheless could be mistaken as somewhat of a directive. It is not. The passage defers to the assigned judge to "make the appropriate findings." *Id.* To clarify this important procedure, Chief Judge J. Michael Seabright expressly stressed, "that is … each presiding judge will make the individual findings required by the Speedy Trial Act." *Id.*

The Honorable Chief Judge Seabright possessed the intellectual legal acumen and acuity to ensure proper jurisdiction and due process. His COVID-19 Order allowed opposition from the defendant *before* any tolling. Under Chief Judge Seabright's Order defendants would not be

placed at the market disadvantage of having to undue tolling Orders already entered. Instead, defendants would be on equal footing with the prosecution in advocating against or for tolling. Further, the decision on whether to toll would be based on the facts of each case as opposed to focusing only on the environment. Environmental focus coupled with marginalization of defendants are faults leading to this plight on and unawareness of defendants' speedy trial and due process rights. There is no constitutional or statutory provision to delay a defendant's right to a speedy trial based on the environment, nor should such a provision exist. The environment is uncontrollable and cannot be a basis for dispensing justice. Chief Judge Seabright's Order provides due process in these respects. The tolling Orders of the Illinois Court and the Northern District of Illinois do not.

National Issue—*Nationwide Due Process Violations*

The major issue warranting this Honorable Court's emergency intervention and stay is that the Illinois' Court's procedure of blanket tolling Orders is practiced by courts across the country. District Court Chief Judges employ blanket tolling Orders in all criminal cases in its districts despite the cases not being before the ordering Chief Judges. Consider California for example. The Chief Judge of the Southern District (*AA* p. 13-15 at p. 14 par 5) and the Chief Judge of the Central District (*AA* p. 16-18 at p. 17 ln 7-9) entered Orders purporting to toll the Speedy Trial Act, 18 U.S.C. Section 3161(h)(7)(A).

Similarly, the Middle District of Florida is divided into 5 divisions: Fort Myers; Jacksonville; Ocala; Orlando; and Tampa. The Chief Judge of the Middle District did not enter

tolling Orders. Instead, one judge in Fort Myers, Jacksonville, and Ocala Orders each entered tolling Orders in their respective Divisions, specifically:

> Effective immediately, all jury trials in the Fort Meyers/Jacksonville/Ocala Division scheduled to begin trial before May 31, 2020, (*June 30, 2020*, Orlando) are continued pending further order of the Court. The Court may issue other orders concerning future continuances as appropriate.
>
> Individual judges presiding over criminal proceedings may take such actions consistent with this Order as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties.
>
> The Court is cognizant of the right of criminal defendants to a speedy and public trial, and the application of that right in cases against defendants detained pending trial. *Any motion by a criminal defendant seeking an exception to this Order should be filed in the respective case* (Jacksonville). *Any motion by a criminal defendant seeking an exception to this Order to exercise that right should be directed to the District Judge assigned to the case* (Fort Myers). *Any motion by a criminal defendant seeking an exception to this Order to exercise that right should be directed to the District Judge assigned to the matter* (Orlando).
>
> The time period of any continuance (*in a criminal case*, Orlando) entered because of this Order (*or any extension of this Order*, Orlando) is excluded under the Speedy Trial Act, 18 U.S.C. Section 3161(h)(7)(A), as the Court finds that the ends of justice served by taking this action outweigh the interests of the parties (*best interests of the defendant*, Fort Myers) and the public in a speedy trial. Absent further order of the Court or any individual judge, the period of exclusion is from the date of this Order to May 31, 2020 (*June 30, 2020*, Orlando). The Court may extend the period of exclusion as circumstances warrant. *AA* p. 19-28. [3]

As with the Illinois Court, one judge used a blanket tolling Order in all cases in that Division. While some of those cases likely were assigned to that judge, none were before the judge when she entered the purported tolling Order. She lacked jurisdiction to order the Speedy Trial tolled. Of equal import, none of the defendants were before the issuing judge and thus their re-

[3] Each Order is internally inconsistent as they all provide both that the continuance is until further order of court and until a date certain.

spective V Amendment rights under the Due Process Clause were violated. Attempts to correct these violations with provisions that defendants can seek "exceptions" to application of the tolls misses the point entirely. The tolling Orders are themselves inconsequential and legally ineffectual because of the complete lack of jurisdiction. There is nothing from which to seek an exception. Neither the Ocala nor Tampa Divisions appear to have entered blanket tolling Orders despite having entered COVID-19 Orders.

This use of blanket tolling Orders is of national scope. The Chief Judges of the Southern District of New York (*AA* p. 29-31), the Northern District of Illinois (*AA* p. 32-36), the Central District of Illinois (*AA* p. 37-39), the District of Montana (*AA* p. 40-48), the District of Mississippi (*AA* p. 49-52), the District of Main (*AA* p. 53-54), and the District of New Mexico (*AA* p. 55-57), to name a random few, all use a version of the tolling Order entered by the Central District of Illinois[4]:

> In criminal cases, the Court finds that the time period of any continuance entered from the date of this Order through July 17, 2020, as a result of this Order shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), as the Court finds that the ends of justice served by taking that action outweigh the interests of the parties and the public in a speedy trial, given the need to protect the health and safety of defendants, their counsel, prosecutors, court staff, and the public by reducing the number of in-person hearings to the fullest extent possible. *AA*. p. 39

We are mindful, of course, that Applicant appeals from Orders of a State, not Federal court. The procedural due process concerns are the same. A correction by this Supreme Court

[4] The District of New Mexico's tolling Order states, "Numerous courts across the country, including the United States Supreme Court, have taken measures to combat the spread of COVID-19. It appears the District of New Mexico justifies it tolling Order with a misapprehension that this Court has engaged in similar conduct.

will apply to both Federal and State courts. The Orders by the Illinois Court mirror the federal Orders in all material relevancy, namely, they:

a. Are blanket Orders;
b. Purport to toll the Speedy Trial terms across the board in criminal cases;
c. Use the ends-of-justice provision as the basis for tolling; and
d. Involve criminal cases not before the issuing court, which lacked jurisdiction.

We are equally mindful the issue of whether Federal courts' use of blanket tolling Orders violates due process has not filtered through appellate review. That issue is not before this Supreme Court in Applicant's Petition. Rather, Applicant references Federal courts in order to illustrate how deep the blanket tolling problem cores into American criminal jurisprudence.

Intervention and direction by this Supreme Court is sorely and urgently needed to guide courts in dispensing justice on both ends of our social spectrum, the rights of defendants on one end and the protections of society on the other. Defendants "shall enjoy" speedy trials and have a due process right to be heard on tolling. Judicial convenience provided by blanket tolling orders block these goals and harm defendants and society in the process. The harm to defendants is obvious, abridged constitutional rights. The required corrective measure is to dismiss all charges against defendants whose Speedy Trial terms expired during the purported tolling, including the most dangerous defendants. Society has a vested interest in courts properly removing dangerous people from its midst. The societal harm is not the release of dangerous defendants, but rather the misguided conduct of the courts (issuing blanket tolling orders) that led to the release of dangerous defendants.

Ends-Of-Justice Urgency

Further urgency stems from continued use of ends-of-justice language in the Speedy Trial Act. That provision is unconstitutionality broad in application, if not *per se*. The rampant use of ends-of-justice language during this COVID-19 crisis is dispositive illustration of how the provision is constitutionally overly broad. In application, the ends-of-justice language eviscerates the guarantee of a speedy trial.

The Chief Judge of the Northern District of Illinois, Rebecca Pallmeyer, is a member of the Judicial Conference of the United States and thus presumedly fully abreast of the limits of administrative orders as juxtaposed to the due process rights of defendants, particularly detained defendants. Yet, on March 16, 2020, Chief Judge Pallmeyer entered (docketed March 17, 2020) a blanket tolling Order in all criminal cases in the Northern District. *AA* p. 34 par 3h. As of July 16, 2020, 120 days have expired under the Speedy Trial delay, which subsumes and annihilates the 70 days a federal prosecutor has allowed to commence trial. The Speedy Trial Act cannot be in tension with the Constitution such that it overrides the Speedy Trial, as is taking place in Illinois and across the country. More troubling, defendants are not the cause of COVID-19 delays. They should not bear the burden for the delays.

The Constitution provides that a defendant, "shall enjoy the right to a speedy and public trial." *U.S. Consti. amend. VI.* "Shall enjoy" is an unavoidably powerful constitutional command, though somehow overlooked. It commands that Applicant's right to a speedy trial shall not be shelved for some undetermined later use. Courts must ensure that where a prosecutor

elects to charge a citizen with a crime, the prosecutor shall proceed to trial with due haste. Bear in mind there are no provisions for trial delay in the Constitution. Provisions allowing trial delays are for practicality. Prosecutors are not required to proceed to trial immediately following indictment. The practical allowances cannot subsume the constitutional command. Ends-of-justice language cannot be employed to shelve for later use the Constitution's explicit command that Applicant "shall enjoy" a speedy trial. *Id.* In plain words, ends-of-justice has entirely wiped-out defendants' rights to a speedy trial. The ends-of-justice provision simply is too broad and thus unconstitutional. As such the Orders purporting to toll the Speedy Trial terms based on ends-of-justice are thus void.

The alarming impact of the infirm tolling Orders is that the Orders tolled nothing. Approximately 120 days have elapsed and the Speedy Trial clocks have been running across the country in an untold number of cases, and thus expiring in untold numbers. Swarms of defendants are being detained unconstitutionally (and exposed to elevated numbers of COVID-19 jail cases), time that they can never get back. Cases will be dismissed for speedy trial violations. There is urgency to stop blanket tolling Orders. The lower courts sorely need direction.

Applicant's Individual Case

Succinctly, Applicant's individual Speedy Trial term expired years ago. The Cook County Circuit Court of Illinois has detained Applicant continuously since January 15, 2015, which was 2009 days ago as of July 16, 2020. *AA* p. 58-71. Applicant obtained a new trial on November 9, 2016, (*AA* p. 61) which means he has been awaiting trial for 1,345 days, or 120 days

multiplied by eleven plus 3 weeks and 4 days. Pursuant to Illinois law, because Applicant has been detained the entire time while awaiting trial the State had at most 120 days to retry the case. Applicant repeatedly demanded trial, in writing.[5]

At a minimum the Speedy Trial term ran between December 7, 2017, and March 18, 2019, when the trial court and the State continued holding hearings in this case, a total of 466 days. *AA* p. 62-69. March 20, 2020, was the first blanket Order purporting to toll the Speedy Trial term, which has been 118 days as of July 16, 2020. Hence, even eliminating all of the prior delays, *arguendo*, Applicant's Speedy Trial term will expire long before this Court receives the hard copy of this Application.

Notwithstanding the speedy trial violations, Applicant has served a 5.5 year sentence thus far, and he will have served six years if this Courts does nothing. He has done all that he can to proceed to trial. His continued jailing is unconstitutional on several levels, including XIV Amendment Due Process violations.

Applicant is unable to present his compelling and corroborated defense. Specifically and concisely, within seconds after his encounter with the deceased Applicant has maintained he was defending himself against threats of death from the deceased. The State prosecutors held and hid

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[5]Applicant cannot pinpoint the date his speedy trial expired. While awaiting trial Applicant filed and prevailed on an interlocutory appeal. Although the case was supposed to be stayed pending the outcome of the interlocutory appeal, the then trial judge continued unabated holding hearings in Applicant's criminal case. Between December 7, 2017, (leave to appeal granted) and March 18, 2019, (trial judge removed by chief judge) the State and the trial judge held at least 25 hearings. Hence, the case was not stayed and the Speedy Trial clock was not tolled. Further, Applicant who was *pro se* objected to the continued hearings. The trial judge responded by holding the hearings in chambers away from Applicant and his objections. Applicant does not know what transpired in the hearings between the State and the then trial judge. The Illinois trial court refuses to disclose the content of those 25 *ex parte* hearings.

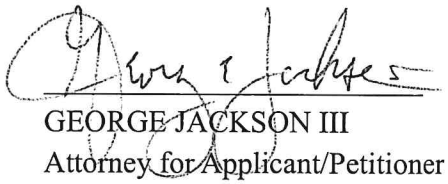
from Applicant damming information about the deceased. Counsel of Record attorney George Jackson III is a decorated former assistant United States attorney who joined Applicant's defense on the first day of the initial trial, which resulted in a conviction against which attorney Jackson succeeded in obtaining a new trial.

With dogged investigative skills honed through sixteen years with the United States Department of Justice, attorney Jackson discovered the deceased had a well-documented history of unprovoked aggression, which the State prosecutors did not disclose. The defense located an occurrence witness who witnessed the deceased in a very aggressive and agitated state shortly before the fight with Applicant. Counsel uncovered details revealing the deceased's documented aggressions at nursing homes where he resided because of his mental challenges. Counsel unearthed a Mental Health Report not disclosed by the State. The Report corroborates the self-defense. Three weeks before the fight a mental health doctor diagnosed the deceased as homicidal and suicidal and ordered him confined to a locked institution. The State did not disclose this information at the first trial and delayed disclosing it for two years after the first trial. Applicant was entitled to a speedy trial, which he did not receive. Consequently, now the Constitution entitles him to be set free, immediately. There can be no tolling of Applicant's speedy trial clock. It has expired.

RELIEF REQUESTED

Applicant requests the Honorable Brett M. Kavanaugh, United States Supreme Court Associate Justice to grant the Emergency Stay and thus stay enforcement of all tolling Orders entered by the Illinois Court.

Respectfully submitted,



JULY 16, 2020,

GEORGE JACKSON III
Attorney for Applicant/Petitioner
Anthony Jackson

GEORGE JACKSON III
DRED SCOTT LLP
Attorney Bar # 313137
55 W. Monroe St., Suite 990
Chicago, Il. 60603
Off: (312) 833-0896
Cell: (773) 454-7645

GJackson@DredScottLLP.Com

Counsel of Record
Attorney for
Applicant/Petitioner