

Case No. ____ - ____

IN THE
SUPREME COURT OF THE UNITED STATES

Tettus Davis,
Petitioner

v.

Jonathon Hodgkiss,
Respondent

Elizabeth Saucedo,
Petitioner

v.

Jonathon Hodgkiss,
Respondent

APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Patrick J. McLain
Law Office of Patrick J. McLain
900 Jackson Street, Suite 635
Dallas, Texas 75202
Telephone: (214) 416-9100
patrick@patrickjmclain.com
Counsel for the Petitioner

CERTIFICATE OF INTERESTED PERSONS

In compliance with the fourth sentence of Supreme Court Rule 13.5, the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case.

Appellees:	Counsel for Petitioners:
Tettus Davis	Patrick McLain Dallas, Texas
Elizabeth Saucedo	Patrick McLain Dallas, Texas

Appellants:	Counsel for Respondents:
Jonathon Hodgkiss	Kelli Smith of Germer, P.L.L.C. Beaumont, Texas
Jonathon Hodgkiss	Larry Simmons of Germer, P.L.L.C. Houston, Texas

Other Interested Parties:	Counsel for Interested Parties:
None	None

/s/ Patrick J. McLain
Attorney of record for Tettus
Davis and Elizabeth Saucedo

Question Presented for Review

On Defendant-Respondent's summary judgment motion in a 42 U.S.C. § 1983 lawsuit which alleged a *Franks v. Delaware* violation of the Fourth Amendment, in which the Plaintiff-Petitioner has made a substantial preliminary showing that a portion of the Affidavit under scrutiny is false, did the U.S. Court of Appeals for the Fifth Circuit make impermissible credibility determinations by relying on, or creating, a judicially "corrected" Affidavit to determine the existence of probable cause in a search warrant application, or is the fact-finder at trial the proper and sole authority to make determinations of the contested facts that were offered in the contested Affidavit used to secure a search warrant? In short, did the US Court of Appeals make impermissible factual determinations that were beyond its scope and authority in acting on Defendant-Respondent's appeal of a denial of his motion for summary judgment?

To the Honorable Samuel A. Alito, Associate Justice of the United States Supreme Court and Circuit Justice to the Fifth Circuit:

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, Petitioners Elizabeth Saucedo and Tettus Davis apply for a sixty-day extension of time to file their Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit to 18 February 2022. The Fifth Circuit Court of Appeals issued an opinion on 25 August 2021 (Appendix A.). The Fifth Circuit Court of Appeals denied Petitioners Elizabeth Saucedo and Tettus Davis application for a rehearing *en banc* on 23 September 2021 (Appendix B).

The petition for a Writ of Certiorari is due on 22 December 2021. In accordance with S. Ct. R. § 13.5, Petitioners are filing this Application ten days before that date the petition is due. This Court would have jurisdiction over the judgment of the Court of Appeals under 28 U.S.C. § 1254(1).

This matter arises from Sergeant Jonathon Hodgkiss' violation of petitioners Tettus Davis and Elizabeth Saucedo's Fourth Amendment rights by knowing and intentional use of false statements to secure a search warrant from a Texas magistrate. Respondent Jonathon Hodgkiss, a Williamson County, Texas sheriff's deputy, sought to convict and send to confinement Petitioner Tettus Davis based upon a false affidavit submitted to support a search warrant. Petitioner Elizabeth Saucedo, Mr. Davis' common law wife, was "collateral damage", in Respondent's attack upon Mr. Davis in that Ms. Saucedo lost her job with the Clerk of Court of

Williamson County, Texas, custody of her children, and suffered other harm that was never remedied in any significant way once Respondent's misconduct was presented to a Texas District Court, and Petitioner Davis was released from his eleven months' pretrial detention and the charge against him dismissed.

The misconduct by Respondent Hodgkiss began upon Plaintiff Davis' early release on parole from prison. Defendant Hodgkiss and his fellow deputy sheriffs were unable to find an honest way achieve their clear aim to send Mr. Davis back to prison. In an affidavit accompanying an application for a search warrant, filed with a Texas magistrate, Respondent Hodgkiss attributed to a "source of information" statements regarding Mr. Davis that were false and were found to be false by a District Court in Williamson County, Texas almost a year later.

This vindication of Petitioner Davis occurred because he challenged the search warrant *pro se*, and after a full hearing. The District Court judge in his pending felony drug case determined that then Deputy Hodgkiss violated Mr. Davis' Fourth Amendment rights by swearing to a false affidavit that Respondent Hodgkiss knew to be false. The Texas District Court Judge suppressed the evidence, and the case was dismissed due to Mr. Hodgkiss' violation of the Constitution.

Following the dismissal of the criminal case, Mr. Davis and Ms. Saucedo filed a civil suit under 42 U.S.C. § 1983 in federal district court in the Western District of Texas against Mr. Hodgkiss. Respondent Hodgkiss filed a motion for summary judgment. That motion for summary judgment was granted in part and denied in

part by the U.S. magistrate judge in the Western District of Texas presiding over this civil rights action.

Respondent Hodgkiss filed an appeal of the partial denial of his Motion for Summary Judgment on grounds of qualified immunity. The Fifth Circuit ruled in his favor reversing summary judgment in favor of Hodgkiss. In their Petition for a Writ of Certiorari, Petitioners will seek review of the Fifth Circuit Court decision to reverse the US Court of Appeals' denial of qualified immunity and ruling of summary judgment in favor of Respondent Hodgkiss.

The Petitioners request this extension in good faith and not for the purpose of undue delay. Since the filing of the denial for rehearing en banc, counsel for the Petitioners has been traveling to appear in criminal hearings and trials for the following cases: *US v. Staff Sergeant Harnath* at Ft. Drum, New York from 27 September to 1 October, *USA v. Austin Dunn* (4:20-cr-00142 in the United States District Court for the Eastern District of Texas) on 5 October, *State of Texas v. Miguel Chavira* (F-1720604 in the 194th District Court of Dallas, Texas) on 11 October, *US v. Forrest Ficke* at Fort Hood, Texas on 18-19 October, *Board of Inquiry in the Case of Captain Viccellio* at JBSA Randolph, Texas on 24-26 October, *Hale v. Denton County* (4:19-cv-00337 in the United States District Court for the Eastern District of Texas) on 29 October-5 November, *USA v. Matthew Gibson* (7:20-cr-00047 in the United States District Court for the Northern District of Texas) on 8 November, *US v. Lieutenant Colonel Dial* at Kaiserslautern, Germany on 20-24 November, and *State of Texas v. John Conley* (DC-F201801016 in the 413th District

Court of Johnson County, Texas) on 6-13 December. Additionally, counsel has pending cases that will require him to travel to Kaiserslautern, Germany for the trial of *US v. Lieutenant Colonel Dial* from 1-5 January 2022, Minot Airforce Base for the trial of *US v. Airman Ascanio* from 18-20 January 2022 and Camp Humphreys, South Korea of the *Board of Inquiry in the Case of Major Nina Copeland* 21-30 January 2022. If granted this extension of time, counsel for the Petitioners will have sufficient time to draft and submit the writ of certiorari and appendix for this case.

For the foregoing reasons, Petitioners Elizabeth Saucedo and Tettus Davis respectfully requests that the time within which to file a petition for a writ of certiorari be extended for 60 days, to 18 February 2022.

Filed: 13 December 2021.

Respectfully Submitted,

/s/Patrick J. McLain

Patrick J. McLain
Attorney for Petitioners
900 Jackson Street, Suite 635
Dallas, Texas 75202
Telephone: (214) 416-9100
patrick@patrickjmclain.com

Appendices:

A. USCA 5th Cir. Opinion 20-50917

B. USCA 5th Cir. Order denying Petition for rehearing en banc 20-50917