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May 19, 2023

Scott S. Harris, Esq., Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

Subject: renewed Emergency Application for stay; Court action requested by May 31

Dear Mr. Harris,

Thank you for docketing my application. I received Justice Kagan's order denying.

I do understand that renewed application is disfavored by rule. I ask that you process this renewed application because the question underlying my application is of exceptional public importance, namely does the Constitution extend to Americans prosecuted extraterritorially?

Please direct this renewed application to Associate Justice Brett Kavanaugh along with this letter. Stay is needed now, before the Ninth Circuit concludes my only appeal of right.

When he testified before the Senate on his nomination to this Court, Justice [then Judge] Kavanaugh assured a global audience that our Constitution follows Americans everywhere. Well, regrettably, my case proves the opposite. This is not my opinion; the government and the district court admonished that Americans like me accused of conduct outside the United States may NOT invoke the Constitution because the Constitution ends at the border.

This controversy can be adjudicated but only if the Court affords me a pro se voice in my appeal. This is an existential fight on behalf of the millions of Americans who will or who have stepped abroad whether for vacation, tourism, business, to see relatives, or while residing temporarily or permanently abroad. This case would establish the rules of engagement, what rights may Americans rely upon when the executive turns its newly minted universal jurisdiction prosecutorial tools on that American. This Court may not yet have looked into but is surely aware executive branch 'mission creep' is mainstreaming extraterritorial jurisdiction prosecutions into formerly purely domestic white collar, corporate, espionage, conspiracy to commit computer intrusion, obtaining or disclosing (or conspiring to) national defense information, bribery, sanctions violations, and innumerable other criminal statutes.

I am asking the Court to instruct the Ninth Circuit to allow the filing of a pro se supplemental brief raising appellate issues not raised by appointed counsel.

This is my only appeal of right in a wrongful conviction[1] and 70-year de facto life sentence. After seven years litigation in the district court required primarily due to the extraterritorial origin and nature of the prosecution, I am now well into the seventh year of my only appeal of right. I am approaching the Court having already served 14 years hard time federally imprisoned under maximum security restrictive conditions since being ordered detained in a preplanned arrest abroad without probable cause in February 2009.

For all of these six and half years on appeal I labored unsuccessfully for some measure of pro se input into the framing and the issues presented on appeal, for which I was the main architect in the district court. The appellate record is replete with order after order denying requests to proceed in *Faretta* status --though I was ordered to litigate in *Faretta* status in the district court-- and with orders denying requests to file any pro se supplemental brief raising claims not presented by appointed counsel.

Appointed counsel acts as a barricade rejecting to file my pleadings on my behalf, refusing to file any pro se supplemental brief, petition for rehearing en banc on pro se rights, two motions for emergency stay, etc.

I am asking this Court, in effect, to support my raising to the Ninth Circuit whether a district judge may continue to preside in an extraterritorially originated prosecution once it's determined that the court cannot competently effectuate the constitutional right guaranteed to all domestic case litigants, the right to a two-sided trial. One formula might be that, for an extraterritorial prosecution originating from conduct alleged on foreign soil (and in my case being prosecuted that foreign country's courts of competent jurisdiction) of a nation with which the United States does not have a Mutual Legal Assistance Treaty, once the court rules there are witnesses satisfying F.R.Crim.P. Rule 15 depositions, the case must be dismissed.[2]

My record in the district court displays how the extraterritorial prosecution transferred to the United States (instead of resolution within the foreign country courts of competent jurisdiction) abrogates the Fifth Amendment Due Process right to present a defense and the Sixth Amendment right to compulsory process. The record showcases the necessity to dismiss an indictment for the impossibility to implement these Fifth and Sixth Amendment rights, due to the government's removing me from the foreign country jurisdiction where the conduct and facts to be resolved allegedly occurred and where I enjoyed full effective compulsory process and

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[1] See text below, illustrating due to government misconduct, I was blocked from putting on an affirmative DNA defense based on the government's own evidence, and excluded from presenting my 2016 jury evidence the only charged victim-witness, SL, testified exonerating me before a three judge tribunal in my previous "show trial" put on by the U.S. in an Asian courtroom packed with U.S. officials in December 2009.

[2] Letters rogatory do not work. The State Department is inevitably involved on behalf of the prosecutor in extraterritorial cases. In my case, the district court issued letters rogatory which the State Department, in fact a formal partner investigating and prosecuting my case, apparently never presented the letters rogatory to their destination foreign court. The district court denied to continue trial on grounds of outstanding letters rogatory.

brought into a jurisdiction (U.S.) with no compulsory process effective as to the extraterritorial witnesses.

Mr. Harris, since the founding of this nation, Americans expect witnesses -- the alpha and omega of a defense at trial -- will be available through subpoena. But that is completely untrue in my extraterritorial prosecution after, and as a direct result of, the transfer of my case from the originating foreign country courts to the U.S. court for trial.

My case is the best exemplar for appellate review precisely because I was making use of that foreign country's court of competent jurisdiction's subpoena power to compel, and did compel duly sworn eyewitness police testimony providing *a complete alibi from law enforcement*. But instead of the preliminary charge being dismissed and me released, I was left in Asia's most notorious torture prison for six months which it later emerged in Wikileaks Leaked Diplomatic Cables that personages including Secretary Hillary Clinton and Senator James Webb were directed to orchestrate and then did carry out to abduct me from that foreign prison without notice to my foreign court presiding judge and then did forcibly disappear me from that foreign country altogether.

The government's intercontinental forcible disappearance bears on this application. It sets up the pro se claims I would raise on appeal. Accordingly, please provide Justice Kavanaugh, along with this letter and accompanying original application, your complete file of my Supreme Court original jurisdiction case no. 16M70 seeking relief and redress against defendants including but not limited to Secretary Clinton and Senator Webb among several heads of state and other high leadership and officials who personally participated in my forcible disappearance. The file should include litigation continuing seven months beyond the docket's last public entry on January 9, 2017.[3]

General claims I would bring pro se on appeal

International transfer predictably results a failure of justice. When I reappeared to the world imprisoned on a different continent, I was brought before a U.S. District Judge presiding over the very same foreign country-initiated case and allegation but now I no longer had compulsory process through effective subpoena power. For the next *seven years* I litigated seeking relief over and over from absence of compulsory process guaranteed under the Sixth Amendment and the right to present a defense under the Fifth Amendment Due Process Clause. I argued this irreparable denial of right to a two-sided trial mandates dismissal. The trial that ensued proved this point, exemplified below in two specific claims.

My record proves the magnitude of how prejudicial the impact can be from governmental violation of rights under the Due Process Clause of the Fifth Amendment and Compulsory

[3] As you may recall from service copies of the proceedings, this case has a subsequent history in the D.C. Circuit case no. 18-5288 Petition for Writ of Mandamus *In re Ronald Boyajian, Petitioner, v. U.S. Supreme Court, Respondent,* denied (per curium) 11/220/18; rehearing en banc denied (per curium) 18/18/19.

Process Clause of the Sixth Amendment. The government forcibly removed me from the country in which the foreign soil allegation arose in order to halt my access to and use of compulsory process. The international transfer instantly placed all my witnesses beyond subpoena power.

My case is important, arguably a perfect storm for a reviewing court, because the government and the district court acceded and ruled, respectively, that I had made a showing there were *over one hundred foreign national witnesses* with exculpatory and material testimony who all met the stringent criteria of F.R.Crim.P. Rule 15 Depositions "(3) *Taking Depositions Outside the United States Without the Defendant's Presence*. The deposition of a witness who is outside the United States may be taken without the defendant's presence if the court makes case specific findings of all the following: (A) the witness's testimony could provide substantial proof of a material fact in a felony prosecution;" The district court granted my Rule 15 Motion for Deposition Testimony for over 100 foreign witnesses. Notation to (a) (1) emphasizes the Rule 15 requires a showing of exceptional circumstances. Exceptional circumstances is met when the "**testimony of witnesses is necessary in order to prevent a failure of justice**."

Constitution applied extraterritorially

Thus, my record contains fundamental issues about compelling witnesses who can't be compelled by the U.S. court which has no jurisdiction. F.R.Crim.P. Rule 17 does not extend abroad. I explained to the court the necessity for relief due to the government's placing my witnesses beyond the court's subpoena power, citing *United States v. Valenzuela-Bernal*, 458 U.S. 858 (1982), *U.S. v. Ramirez-Lopez*, 315 F.3d 1143 (9th Cir. 2003), *United States v. Leal-Del Carmen*, 697 F.3d 964 (9th Cir. 2012), and requested missing witness jury instructions (denied).

While no one in my circumstances could compel testimony from foreign nationals residing abroad -- not even to attend a foreign deposition – the inter-country transfer subjected me to further vulnerability to additional government misconduct. This is shown by what occurred to two crucial witnesses who carrying district judge-issued trial witness subpoenas in hand voluntarily presented themselves to the U.S. embassy. These witnesses were very well known because the U.S. prosecutor had traveled to the foreign country employing tactics face to face and otherwise to dissuade these witnesses from testifying in my case. These witnesses were the court clerk who administered the oath and received SL's exonerating testimony and prepared and memorialized corresponding court documents. The State Department straightaway forbid them entry to the United States resulting in the government's successful exclusion of SL's exoneration evidence from the jury. The State Department officials who thus engineered my wrongful conviction, followed up after the verdict with official correspondence instructing the maximum possible sentence, which the court followed.

I hope Justice Kavanaugh will have an opportunity to mention about my claims to Justice Thomas and Justice Alito. Both Justices in their dissent from denial of *certiorari* presciently anticipated Congress' foray into universal jurisdiction might reach "startling' consequences. *Baston v. United States*, 137 S. Ct. 850, 197 L. Ed. 2d 478 (2017).

Specific claims I would bring on appeal

There are specific claims particular to my case that I would additionally raise to the Ninth Circuit. For example, as mentioned above in relation to the State Department prohibiting two court officials from testifying at my trial, resulting in exclusion from the jury SL's 2009 Cambodian trial court testimony exonerating me:

> **SL** **"I never had sex with that foreigner",** while pointing at my photo being displayed to her by three judges in the foreign court tribunal put on by the U.S. in December 2009. See case 16-50327, Government's Further excerpts of record Vol. 2, sealed (not made available to me).

No argument on this issue was raised in my pending direct appeal.

Nor was there any argument or claim raised about the exclusion of evidence from the Homeland Security Lab contractor Bode Labs *identifying a person other than me* as the contributor of DNA essential to the identification of the alleged participant in sexual activity with SL, the sole alleged victim charged in the indictment.

Gov't admits, "The swabs were taken from SL." RT 4/12/15 (100).

Gov't agrees, BODE LAB Report says, "[Def.'s] DNA is excluded as a possible contributor." RT 2/19/16 pm (116).

Bode having excluded me as a suspect warned Homeland Security "DNA connects to un-identified perpetrator," and "You got the wrong guy." Homeland Security Science Officer advised the government including my lead prosecutor "**we're batting zero on this one. No semen found on the bedding and the suspect is eliminated**" [Bates 101307]

On eve of trial the government agreed to bring to trial all of its technical witnesses necessary for the defense to put on the announced affirmative DNA defense. In its minute order, the district court states, "You can argue, "DNA from un-identified perpetrator definitely not [def.] found on SL's vagina, breasts or mouth." "Given the DNA is already exculpatory ..." Minute Order 1/25/16 Dkt. 1202.

However, late in the six-week jury trial the government surprise revealed it did not bring any witnesses for the defense to put on because the government now disavowed prior sworn affidavits of its case agent and several other agents that the government's samples were obtained from SL. The court denied my request to prove source within hours but required a mouth ('buccal') swab from SL. The court denied expressing concern to protect SL's privacy (although the court had advised me I was facing 130 years sentence for the allegation from SL). The court also was not inclined, in the alternative, to hold the jury for possibly days or a week in order that the defense could secure DNA from SL's mother's in Asia to prove source. Thus, my trial closed without the jury ever hearing about the exculpatory DNA results and the absence of semen on seized bedding – but that there was another male's semen found on SL. The jury never heard from Homeland Security Science Officer her reporting out "suspect is eliminated".

Post-trial and before sentencing I obtained said maternal DNA from Asia and presented the court with sworn forensic DNA expert declaration that the government's samples were in fact sourced from SL (confirming years earlier case agent sworn affidavits that the government essentially surprise disavowed mid trial). Despite this proof that the defense was precluded to present and the jury to see and hear the legitimate evidence from the government's own samples of my affirmative DNA defense, the court provided no relief and proceeded to sentence me to life in prison (more accurately, sentenced me to death by incarceration).

These are examples of arguments that I repeatedly urged appointed counsel to make—and that were not made, in a case in which the Government will likely claim, going forward, that I allegedly waived or otherwise failed to make arguments critical to my obtaining relief on appeal.

Because of the limitations placed on my participation in the appellate process, I was restricted to attempting to negotiate with appointed counsel for meritorious claims and arguments to be raised in my appeal—and I am on the cusp (since the oral argument on the matter was held last week) of an appellate ruling on an appeal that did not present compelling claims to the reviewing court. This happened in large part because of the reviewing court's decision to deny me—a litigant who was ordered to defend himself at trial—the prerogative to file documents in the appellate court record in pro se.

I respectfully suggest it is in the public interest I be allowed to file a pro se supplemental brief raising issues appointed counsel did not present.

For its authority on which to act, the Court may consider Chief Justice Warren Burger underscoring that *Faretta* applies to direct appeal at argument in *Jones v. Barnes*, 464 U.S. 745 (1983). At its core, *Jones* concerned an appellant represented by appointed counsel who in pro se directly filed several uncounseled briefs raising additional issues that the court of appeals considered alongside the counseled issues. "**And *Faretta* guarantees him that right**" CJ Burger, *Jones* oral argument 2/22/1983 audio at 53m17s, transcript at p. 37)]. The *ratio decidendi* for the holding in *Jones* that Criminal Justice Act lawyers are not compelled to raise every nonfrivolous issue urged by their clients because their clients have the right of direct access to the reviewing court to raise and have considered pro se issues not presented by counsel, as recognized throughout the Court's written opinion in *Jones*.

Cordially,

Ronald Boyajian
Applicant, Petitioner

Pro Se

Enc. Original application and proof of service

Proof of Service

I, Ronald Boyajian, declare that the foregoing Emergency Application for Stay and any attachments was placed in U.S. Mail for delivery to:

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c/o OFFICE OF THE CLERK
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Dated: May 19, 2023

Ronald Boyajian