

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

SANTOS CUEVAS — PETITIONER  
(Your Name)

DOJ; Brandon Kelly, vs. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

~~State of Oregon~~ United States District Court of  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE) Oregon

PETITION FOR WRIT OF CERTIORARI

SANTOS CUEVAS  
(Your Name)

2605 State Street  
(Address)

Salem, Oregon 97310  
(City, State, Zip Code)

DOJ: 503-947-4700, FAX 503-947-4794  
(Phone Number)

# Please Note: Judicial NOTICE

This is a challenge to Statutes of convictions 'as applied' to the facts of accusations tried by a Jury. Review of Trial Record is necessary.

## QUESTION(S) PRESENTED

I. May a court convict and sentence a defendant petitioner or any accused for statutory sexual offense statutes based on accusations and evidentiary facts tried, that are of 'forcible sexual conduct'?

Does the United States Constitution's ~~14th~~ Amendment and under the Ex Post Facto clause prohibit or places a constraint on the DOJ of this state to (Article I, sec 10, US. const.)

a.) convict with statutes of strict liability or statutory crimes based on accusations of forcible sexual offenses?

b.) Convict on separate, disparate criminal presumption in the form of anti-merger practice on basis of First degree 'forcible compulsion' proposition, and [then] based on the same single act convict on Third degree statutory crime due to mere age of a victim at the time of the forcible sexual offense simply because of age fact?

c.) convict on basis of a forcible sexual conduct-forcible compulsion offense, and then add the conviction of a [statutory crime] because due to [age] of victim at the time of the forcible sexual conduct violation, and based upon the same single violation within sub-paragraphs of a [single statute] (note- Disjunctions of separate class of victims)

III Does the Equal Protection Clause of The U.S. Constitution allow the DOJ to apply the states' irrationality' as to deprive First Amendment Freedom of Expression and Speech leaving defendants' defense inoperative (inoperative) and hence mis-labeling victims by the misrepresentation of their reports of accusations or ~~sex~~ sex crimes and sealed statement of law by the founded and published verdict(s). Applying statutory criminal statutes for accusations of forcible acts?

IV Does the case of State v Cottley demonstrate both, Ex-Post Facto violation and Double Jeopardy?

## 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:

Oregon Court of Appeals,

Umatilla Circuit Court

Malheur County Circuit Court C. no. ~~07-28~~ 09-08-2394-C  
~~State's Attorney~~

1.) Oregon Supreme Court

2.) ~~Court of Appeals State of Oregon~~

3.) Umatilla County Circuit Court, ~~(2) Court of Appeal~~

4.) ~~Malheur County Circuit Court (of convictions)~~  
~~C. no. 09-08-2394-C (Judge Penn)~~

[Note - Petitioner has pending a List of Writs of Habeas Corpus  
Action requesting the court to enjoin the ~~prosecution~~  
pending prosecutions at statewide Judiciary on the  
merits of his claims]

5.) U.S. District - Now Pending (Magistrate has  
issued a Findings and Recommendation to dismiss  
Petitioner's claim - Petitioner has filed 6 motions

[Only 1,3,5.] (#3, Held two hearings)

(Pl. Pro-Se Petition was extensive  
with factual content of subject  
matter - character of accusations etc.)

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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1.) <u>Leary v United States</u> 395 US 6, 23 L Ed 2d 57, 89 S Ct 1532 (1969)	
2.) <u>Barnes v United States</u> 412 US at 840 n 3, 37 L Ed (Also see Supra at 2d 380, 93 S Ct 2357 840 n 3) ( <del>also</del> also 412 US, at 843) (1973)	
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4.) <u>Younger v Harris</u> 401 US 45 (1979)	
5. <u>McNEESE v Bd. of Education</u> 873 US 668 (1983; Exception)	
6. <u>Gibson v Berryhill</u> 411 US 564, (1973) (Same for Injunction) STATUTES AND RULES 42 USC § 1983, 42 USC § 1985(2)(3) 28 USC § 2283, 28 USC § 2284 (Younger Abstention doctrine)	

DUE PROCESS Rule - There must be a rational connection between facts and ultimate fact presumed for the facts upon the ultimate fact is made to depend.

WITNESS Rule - The state must prove every essential element to a criminal offense.

DUE PROCESS Requires a unanimous jury verdict

U.S. CONST. - No state shall pass ~~any~~ EX Post Facto Law (paraphrasing)

OTHER CASES (To be over-ruled) (No rational connection / EX-Post Facto

1.) State v ROQUEZ, JR-257 Ore. App. 828  
~~State v ALRG~~

2.) State v James ALFRED CROTSLEY - 308 Ore 272, 779 P.2d 600; 1989 Ore. LEXIS 159  
NOS. TC CM 86-0273

3.) State v Donald Perkins - 346 Ore 333; 211 P.3d 262; 2009 Ore. LEXIS 32

4.) State v Black 270 Ore. App. 506 SC 5056856

another source by impermissible application of [EX Post Facto] with the statutory sexual offense (age) and physical helplessness theory - disjunctive.

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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 B 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 U.S. District Court of Oregon court appears at Appendix A to the petition and is

[ ] reported at (N/A); or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

(Pending)

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

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: \_\_\_\_\_, 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. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 4/19/2018.  
A copy of that decision appears at Appendix R.

A timely petition for rehearing was thereafter denied on the following date: (N/A), 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).

title

42 USC § 1983

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment to the U.S. Constitution

14th Amendment to the U.S. Constitution

5th Amend. to the U.S. Const.  
(Double Jeopardy Clause)

6th Amend to the Const.)

Article I, sec 10

Ex-Post Facto Clause

Article I sec

'No money shall be drawn from Treasury, but in consequence of appropriations made by law.'

14th Amend to the U.S. Const.  
(~~Double Due Process End~~)  
Equal Protection Clause

1.) ORS 161-067 1, 2, 3

2.) ~~163~~ 163-435 (first degree sexual abuse)

3.) ORS 163-415 (second degree sexual abuse (1971))

4.) 161-062 (1985)

### Statutes of Convictions

Sodomy in the first Degree -

ORS 163-405

ORS 163-395 (sodomy; second degree)

ORS 163-427 (1a)

ORS 163-365

(for discussion;

ORS 163-427 (1a)

See Also ch. 745

Oregon laws of 1970, 71

Applicable defense for Statute of conviction

Also. ORS 163-345

(Defense to statutory crimes),

(Constructs material age difference element)

## STATEMENT OF THE CASE

1) Judgements of PCR (Post conviction court) (matilla cont)  
is unconstitutional. Petitioner 'as applied' challenge to the statutes of  
convictions for the statutes are statutory sexual criminal presumptions,  
and the accusations for which Petitioner was tried in a Jury  
Trial were of forcible sex crime accusations, therefore Petitioner  
was denied Due Process and civil rights, [the] court was required to  
review the trial record under Due Process clause, to the U.S. Const.  
Two hearings took place - Pro se oral argument attacking application of  
statutes. (ss no. C0160512) (COA-A164833) (cs-no.CV160512  
Court of Appeals Dismissed

2. Petition for Review (reconsideration) (Pro Se Petition) was  
denied by the Oregon Supreme Court on 4-19-2018

(a) Note as of right now pending, Petitioner's writ of Habeas Corpus filing  
for an Injunction to enjoin DOJ Practice Policy of unequally applying  
statutes, Findings and Recommendation by Magistrate Judge are not in favor  
of Petitioner's challenge to the DOJ Policy, Petitioner stands to require DOJ  
to effectuate its Judgement, and that under title 42 USC § 1983, and  
1985 2, and 3 the court is bound to enjoin, consistent with the U.S Constitution  
and Congress and State Constitutional Interest and Policy "to provide aid in  
the states Jurisdiction or to effectuate its judgments" rather than impeding or  
obstructing Justice, [Petitioner has filed several Motions of significant Interest]  
Petitioner has demonstrated to the District Court three forms of  
Irrational rulings and Judgements thereof that require to be over-ruled,  
(including his case) and the case of State v Lee 83 Ore.506 1899, all have  
in common - its Judgement (from unequally applied statutes) disconnected from  
its very own propositions for which they were enacted,

f.) Petitioner states that a 'fundamental Fairness Analysis' is warranted because  
Petitioner's Trial were of forcible ~~accusations~~ or forcible evidentiary facts

however that the court convened a grandury and convicted him (Petitioner) with  
applied statutes of statutory - strict liability offenses that require irrelevant burdens of  
proof; persuasion (distinct theories of separate class of victims at law), and prediction thereof  
moreover ~~an~~ an age-difference element is a required burden of proof for the statutes of  
convictions, which also is why Petitioner states a Traditional Interest of the state has been compromised  
also for its violations in convicting based on 'irrationality' extending to Double Jeopardy violations.  
In Crabbey and in State v Parkers, such unconstitutional mis-use of presumptions, conviction for a single  
act of forcible compulsion (non-consensual), convicted also with presumption of age for the same act.

Intra. The State violate the Due Process Rule - "No rational connection between the ultimate fact proved and the facts tried (Credibility contest - very significant) AND unique

#### REASONS FOR GRANTING THE PETITION

The DOJ and the Judiciary of the State of Oregon does not have the power; lacks the authority to act in itself as an alliance or league of governing practice of overthrowing or (against) the Federal Laws that is consistent with ~~THE~~ U.S. Constitution, DOJ lacks the authority and does not have the power to pass Ex-Post Facto laws therefore lacks the authority to [not] lay down the laws effeuated by its connection to its propositions understood by the 'Ancient or old traditional distinction (one that has a mens rea requirement and the other does not,) DOJ lacks the power and authority, including the Legislature, to enact and enforce and apply ambiguous (ambiguity) of text, phrases, and words with an uncertainty or degree of vagueness that allowed DOJ and the Judiciary to carry out its purposeful and criminal intent from such gross disregard to the secured and protected rights of the class of persons implicated by the unequally applied statutes [depriving] the civil rights of the accused including Petition and the class of persons (victim) the DUE COURSE OF JUSTICE (not Petitioners accused) form an Obstruction of Justice the enforcement application of the Ex Post Facto laws is a civil tort itself, the convictions pronounced and sentencing is the intellectual and clear evidence of Ex Post Facto laws passed by the state. Conclusions of criminal presumptions with no rational connection to the logic of evidencing facts of prosecution is against Federal Law.

## Statement of the case addition-1

-Conclusiveness for the statement of the case, is that unconstitutional application of the statute presents an American departure from the Constitutional norm; the basis, the propositions for which the purpose of the enactment for which the applied statutes are to enforce, Petitioner states that such departure 'reading forcible acts into statutory criminal statutes has been an unconstitutional norm, that in the case of State v Crotzley, with the anti-merger procedure defendant was convicted for a single act of rape, held a knife to the female's throat, convicted on the theory of forcible compulsion and for a single act of sodomy - based on theory of forcible compulsion, [then] a subsequent separate indictment charged, tried, and convicted defendant Crotzley, (with Ex Post Facto) violations, then presumptions - Criminal statutes of Third degree rape and third degree sodomy were applied for conviction on the subsequent Indictment because the female was below a specified age - 18 at the time for the single acts of forcible compulsion, The same practice for ~~non~~ merger (within the same statute) the first degree statute, therefore the court multi-convictions out of [initial single acts] of forcible compulsion theory, Ex Post Facto violation when the court charged and convicted on the disjunctive - separate class of female criminal presumption, (that lack the capacity to consent, a legal consent, below the legal age of 18 in Oregon Statutory criminal presumption) subsequently from or based on the [same] single acts of ~~any~~ previous conviction (same trial) of a separate legal theory of forcible compulsion, this was the case in State v Parkins, Constitutional concerns are inherent the Judiciary of Oregon depend

on those rulings, therefore the 'impact' and significance is tremendous. the DOJ of Oregon and the Judiciary act in concertion to 'apply, 'try' and 'convict' a defendant statutes of statutory of underage sexual criminal presumptions [and] statutes of forcible sexual criminal presumptions for a single act (sexual offense act), where fore Petitioner states that such type of ruling are not on principle for the propositions of historical practice and 'rationale' of the propositions itself, therefore that the rulings - judgement in Petitioners' trial his convictions can not stand from 'irrational' and 'arbitrary' unconstitutionally applied statutes of statutory criminal presumption for the facts for which he was 'tried and inferences of forcible sexual conduct presented to the jury, conclusively that the statutes of convictions are [overly broad] in its application to the facts of accusations which fall outside the scope of the statutes of convictions effectively [mis-labeled the class of victim] inherently [excluded] such a class, violating First Amendment Right Freedoms of expression in a DOJ practice of censorship or prohibiting the class of victims 'en masse' reports of forcible sexual conduct for the practice mis-lables the sexual conduct reported by the victims in its [inequality] and wrongly applied statutes rendering arbitrary judgement with mis-statements of law at a great level (Petitioner asserts his standing to vindicate these rights for the class of victims, does not include his accusers, Petitioner here asserts his innocence)

DOJ Practice also and simultaneously violates First Amendment rights to the class of Defendants.

## Statement of the case addition 2

Constitutional rights to Due Process, in trying him before a jury on evidentiary forcible sexual conduct accusations and yet when the court allowed the jury to consider the Indictment and return a verdict on statutory criminal presumptions that are of different, and distinct burdens that relate to a [different class of victim]. Petitioner supported this rationale with the fact that an ['age difference'] element is a [required proof of burden] to establish a conviction for the criminal presumptions submitted to this jury, and of further support, Petitioner cited the case of Supreme Court and [State v Tharp] that depicts the rationale of the presumptions applied for which is predicated on basis of 'both are doers of the action' a phrase that Petitioner stated at the hearing, meaning, and explaining to the court that such presumptions encompasses only 'co-participants' to the conduct proscribed, that the criminal presumptions are of statutory crimes, and therefore and Petitioner expressed, in stating that the types of burdens in State v Hobbs - statutory criminal presumption depicting the rationale of sexual conduct between two - coparticipants the male and female, including the distinct material state-of-mind for the particular class of victims classified and implicit in Hobbs, simply, that those types of burdens are [not] logically relevant [to] the facts or burdens for which he (Petitioner) was tried [and] convicted, essentially that those burdens relate to the same rationale of the counts of the Indictment and Jury Instructions. (Hobbs and Tharp)

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: \_\_\_\_\_