No. 22-6917

IN THE

SUPREME COURT OF THE UNITED STATES

STEVIE ANDRE ROBERSON — PETITIONER
(Your Name)

vs.

BOBBY LUMPKIN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

STEVIE ANDRE ROBERSON
(Your Name)

2661 F.M. 2054 COFFIELD UNIT
(Address)

TENN. COLONY, TEXAS 75884
(City, State, Zip Code)

903-928-2211
(Phone Number)

QUESTION(S) PRESENTED

(1) WHETHER THE MANDATORY LANUAGE AND STRUCTURE OF TEXAS PAROLE STATUTE ARTICLE 42.18 §15(f) TOGETHER WITH THE REQUISITE AND SPECIAL PAROLE CONDITIONS OF THE PAROLE BOARD'S DECEMBER 19, 2019 ORDER TO GRANT PAROLE TO IT'S PRE-PAROLE F1-5 IN PRISON THERAPUETIC COMMUNITY TREATMENT PROGRAM (APPENDIX D, 1) CREATED AN "EXPECTANCY FOR RELEASE" A LIBERTY INTEREST PROTECTED UNDER THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT U.S. CONST.;

(2) WHETHER PRISONERS (AND IF SO, TO WHAT EXTENT) ENJOYS A FEDERAL CONSTITUTIONALLY PROTECTED DUE PROCESS RIGHT UNDER THE 14TH AMENDMENT U.S. CONST. TO NOT HAVE THEIR RELEASE TO PAROLE DENIED/RESCINDED BASED ON FALSE INFORMATION;

(3) WHETHER PRISONERS PARTICIPATING IN TEXAS PAROLE BOARD'S ORDERED PRE-PAROLE F1-5 IPTC TREATMENT PROGRAM HAVE A CONSTITUTIONALLY PROTECTED DUE PROCESS RIGHT UNDER THE 14TH AMENDMENT U.S. CONST. TO A PROCEDURAL HEARING BEFORE HE OR SHE CAN BE REMOVED FROM IT;

(4) WHETHER PRISONERS HAVE A CONSTITUTIONALLY PROTECTED RIGHT UNDER THE 1ST AMENDMENT TO NOT HAVE HIS PRIOR U.S. DISTRICT COURT'S LITIGATION ACTIVITY PLAY A SUBSTANTIAL PART IN THE PAROLE BOARD'S DECISION TO DENY/RESCIND PAROLE RELEASE;

(5) WHETHER PETITIONER WAS DISCRIMINATED AGAINST AS COMPARED TO OTHER PRISONERS PARTICIPATING IN THE PRE-PAROLE F1-5 IPTC PROGRAM BUT DID NOT SEEK ACCESS OF THE COURTS IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT U.S. CONST.; AND

(6) WHETHER THE DISTRICT COURT'S RESOLUTION IS "CONTRARY TO" CLEARLY ESTABLISHED FEDERAL LAW AND "CONTRADICTS" THE GOVERNING LAWS SET FORTH IN THE UNITED STATES SUPREME COURT'S PRECEDENTS AND RULINGS.

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:

RELATED CASES

(1) BOARD OF PARDONS V. ALLEN, 482 U.S. 369 (1987)

(2) COMPARE TOWNSEND V. BURKE, 334 U.S. 736 (1948)

(3) CREEL V. KEENE, 928 F 2d AT 711 N. 3 (5TH CIR 1991)

(4) GREENHOLTZ V. INMATES OF NEB. CORR. PENAL COMPLEX, 442 U.S. 1 (1979)

(5) JOHNSON V. RODRIGUEZ, 110 F 3d 299 (5TH CIR 1997)

(6) MILLER-EL V. COCKRELL, 537 U.S. 322 (2003)

(7) MORRISSEY V. BREWER, 408 U.S. 471 (1979)

(8) MONROE V. THIGPEN, 932 F 2d AT 1441-42 (11TH CIR 1991)

(9) SERIO V. LA. Bd. OF PARDONS, 821 F 2d 1112 (5TH CIR 1987)

(10) UNITED MINE WORKERS V. ILLINOIS STATE BAR ASS'N., 389 U.S. 217 (1963)

(11) WILLIAMS V. TAYLOR, 529 U.S. 362 (2000)

(12) YOUNG V. HARPER, 520 U.S. 143 (1987)

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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 A 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 B to the petition, and THE REPORT & RECOMMENDATION OF THE MAGISTRATE JUDGE, AND BOTH

[ ] 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 C 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 TEXAS COURT OF CRIMINAL APPEALS WR-24,369-10 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. DENIED WITHOUT WRITTEN ORDER ON 8/11/2021

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was NOVEMBER 28, 2022.

[✓] 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 _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THIS CASE INVOLVES FUNDAMENTAL CONSTITUTIONAL RIGHTS TO;

(1) FIRST AMENDMENT OF UNITED STATES CONSTITUTION, WHICH PROVIDES; "CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDING THE FREEDOM OF SPEECH, OR OF THE PRESS OR THE RIGHT OF THE PEOPLE PEACABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES," AND

(2) FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES; SECTION ONE: "ALL PERSON BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES, NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF THE LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW

THE AMENDMENTS IS ENFORCED BY TITLED 42 SECTION 2254, UNITED STATES CODE, EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE, ORDINANCE, REGULATION, CUSTOMS OR USAGE, OF ANY STATE TERRITORY OR THE DISTRICT OF COLUMBIA, SUBJECTS OR CAUSES TO BE SUBJECTED, ANY CITIZEN OF THE UNITED STATES OR OTHER PERSONS WITHIN THE JURISDICTION THEREOF THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS SHALL BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, SUIT IN EQUITY, OR OTHER PROPER PROCEEDING FOR REDRESS, EXCEPT THAT IN ANY ACTION BROUGHT AGAINST A JUDICIAL OFFICER FOR AN ACT OR OMMISSION TAKEN IS SUCH OFFICER JUDICIAL CAPACITY, INJUNCTIVE RELIEF SHALL NOT BE GRANTED UNLESS A DECLARATORY DECREE WAS VIOLATED OR DECLARATORY RELIEF WAS UNAVAILABLE. FOR THE PURPOSE OF THIS ~~STATUTE~~ SECTION, ANY ACT OF CONGRESS APPLICABLE EXCLUSIVELY TO THE DISTRICT OF COLUMBIA SHALL BE CONSIDERED

TO BE A STATUTE OF THE DISTRICT OF COLUMBIA.

STATEMENT OF THE CASE

AUGUST 01, 2013 PETITIONER, STEVIE ANDRE ROBERSON ACCEPTED THE STATE'S PLEA AGREEMENT OF 25 YEARS CONFINEMENT IN TEXAS DEPT. CRIMINAL JUSTICE - INSTITUTIONAL CORRECTIONAL DIVISION (TDCJ-CID) IN CAUSE NO. 114-0760-13 FOR THE OFFENSE OF FAILURE TO REGISTER AS A SEX OFFENDER. DECEMBER 19, 2019 THE TEXAS BOARD OF PARDONS & PAROLES ORDERED THE GRANT OF PAROLE TO ITS PRE-PAROLE FI-5 IN PRISON THERAPEUTIC COMMUNITY (IPTC) TREATMENT PROGRAM WITH THE REQUIREMENT, "THAT UPON SUCCESSFUL COMPLETION OF THE PROGRAM YOU WILL BE PROCESSED FOR PAROLE TO AN AFTERCARE FACILITY" WITH SPECIAL PAROLE CONDITION. (APPENDIX D PG 1). PETITIONER SATISFIED THE FI-5 IPTC TREATMENT PROGRAM'S REQUISITE BY OBTAINING A CERTIFICATE OF COMPLETION AND THE PAROLE BOARD PROCESSED HIM FOR RELEASE ON PAROLE TO THE ABODE AFTER CARE FACILITY DALLAS TEXAS (APPENDIX B AT 2) JULY 15, 2020. BUT DUE TO COVID-19 LOCKDOWN ON JULY 09, 2020 ALL PAROLE RELEASE WERE POSTPONED. WHILE ON LOCKDOWN PETITIONER FILED GRIEVANCES #2020143964 AND 2020151-054 COMPLAING OF BEING EXPOSED TO THE DEADLY COVID VIRUS BY PRISON STAFF AND HOUSED WITH OFFENDERS WHO HAVE COVID SYMPTONS AND ADMINISTRATION IGNORING COMPLAINT (APPENDIX E AT 1-4).

THE PAROLE BOARD RESCHEDUDED PETITIONER FOR RELEASED AUGUST 17, 2020 ON PAROLE TO THE ABODE AFTERCARE FACILITY DALLAS TEXAS. HOWEVER ON AUGUST 14, 2020 ADMINISTRATION REMOVED HIM FROM THE FI-5 IPTC PROGRAM, PLACED HIM IN THE SPECIAL HOUSING UNIT. PETITIONER RECIEVED THE BOARD OF PARDONS & PAROLES AUGUST 21, 2020 NOTICE TO OFFENDER OF IT'S REASON TO RESCIND RELEASE ON PAROLE (D) "THE RECORD INDICATE THE OFFENDER REFUSED TO PARTICIPATE OR INTENTIONALLY FAILED TO COMPLETE THE TDCJ-CID PROGRAM (APPENDIX D AT 2). PETITIONER WAS RECLASSIFIED AND TRANSFERED TO A MAXIUM SECURITY PRISON WHERE ON NOVEMBER 19, 2020 THE PAROLE BOARD'S CORRESPONDENCE STATES, "PETITIONER IS NO LONGER ELIGIBLE FOR THE FI-5 IPTC TREATMENT PROGRAM AS BEING SANCTION BY THE U.S. DISTRICT COURT FOR FRIVILOUS LEGAL FILINGS, REFERRING TO U.S. DISTRICT COURT'S JULY 05, 2007 ORDER (APPENDIX E AT 1-2)

REASONS FOR GRANTING THE PETITION

A. THE LOWER COURT'S DECISION AND RESOLUTION OF PETITIONER'S CONSTITUTIONAL CLAIMS CONFLICTS WITH THE DECISIONS OF THE UNITED STATE'S SUPREME COURT'S AS WELL AS OTHER UNITED STATES COURT OF APPEALS' DECISIONS RELEVANT TO THIS CLAIM.

FIRST, THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS (TYLER DIVISION) RESOLUTION OF PETITIONER'S LIBERTY INTEREST IN PAROLE CLAIM DIRECTLY "CONTRADICTS" AND IS "CONTRARY TO" TO THE DECISION OF THE UNITED STATES SUPREME COURT IN BOARD OF PARDONS V. ALLEN, 482 U.S. 369 (1987) THE SUPREME COURT HELD, "THAT THE MANDATORY LANGUAGE IN MINNESOTA'S PAROLE STATUTE CREATES A LIBERTY INTEREST IN PAROLE THAT TRIGGERED DUE PROCESS RIGHTS WHEN CERTAIN CONDITION WERE MET."

PETITIONER POINTS TO THE MANDATORY LANGUAGE USED IN TEXAS PAROLE STATUE ARTICLE 42.18 § 15(f) WHICH STATES;

> BEFORE ORDERING THE PAROLE OF ANY PRISONER, THE BOARD MAY OR MAY NOT HAVE THE PRISONER APPEAR BEFORE IT AND INTERVIEW HIM. A PAROLE 'SHALL' BE ORDERED ONLY FOR THE BEST INTEREST FOR THE SOCIETY, NOT A REWARD OF CLEMENCY, IT SHALL NOT BE CONSIDERED A REDUCTION OF SENTENCE OR A PARDON. A PRISONER 'SHALL' BE PLACED ON PAROLE ONLY WHEN ARRANGEMENT HAS BEEN MADE FOR HIS PROPER EMPLOYMENT OR FOR HIS MAINTENANCE AND CARE AND WHEN THE BOARD BELIEVES HE IS ABLE AND WILLING TO FULFILL THE OBLIGATION OF A LAW ABIDING CITIZEN. SEE CREEL V. KEENE, 928 F.2d AT 711 N. 3 (5TH CIR 1991)

THE UNITED STATES SUPREME COURT FOUND THAT SUCH A PROVISION WAS OF SLIGHT RELEVANCE TO THE QUESTION OF WHETHER AN INMATE ENJOYS A CONSTITUTIONAL LIBERTY INTEREST AS DESCRIBED IN ALLEN, 107 S.Ct. AT 2420;

THE MANDATORY LANGUAGE USED IN MONTANA'S PAROLE STATUE (MONT. CODE ANN. § 46-23-201)(1985) IS IDENTICAL TO THAT USED IS TEXAS PAROLE STATUE (ARTICLE 42.18 § 15(f)) PRISONERS ELIGIBLE FOR PAROLE IN MONTANA;

(1) "SUBJECT TO THE FOLLOWING RESTRICTIONS, THE BOARD 'SHALL' RELEASE ON PAROLE ... ANY PERSON CONFINED IN THE MONTANA STATE PRISON OR THE WOMEN'S CORRECTION CENTER ... WHEN IN ITS OPINION THERE IS REASONABLE PROBABILITY THAT THE PRISONER CAN BE RELEASED WITHOUT DETRIMENT TO THE PRISONER OR TO THE COMMUNITY.,

(2) A PAROLE 'SHALL' BE ORDERED ONLY FOR THE BEST INTERESTS OF SOCIETY AND NOT AS AN AWARD OF CLEMENCY OR A REDUCTION OF SENTENCE OR A PARDON. A PRISONER 'SHALL' BE PLACED ON PAROLE ONLY WHEN THE BOARD BELIEVES THAT HE IS ABLE AND WILLING TO FULFILL THE OBLIGATION OF A LAW ABIDING CITIZEN." Id ALLEN, 107 S. Ct. AT 2420.

PETITIONER ARGUES, THAT HE MET THE CRITERIA OF THE MANDATORY LANGUAGE SET-FORTH IN TEXAS PAROLE STATUE ARTICLE 42.18 § 15(f) BECAUSE, "HAD HE NOT THE PAROLE BOARD WOULD NOT HAVE ORDERED THE GRANT OF PAROLE DECEMBER 19, 2019 TO IT'S PRE-PAROLE FI-5 IN PRISON THERAPEUTIC COMMUNITY TREATMENT PROGRAM (APPENDIX D AT 1)."

THE UNITED STATES DISTRICT COURT RESOLUTION OF PETITIONER LIBERTY INTEREST CLAIM IS THAT TEXAS PAROLE STATUE HAVE BEEN REPEATEDLY FOUND NOT TO CREATE ANY PROTECTED LIBERTY INTEREST IN PAROLE AND CITES CREEL V. KEENE, 928 F 2d 707, 712 (5TH CIR 1991)(THE 71ST TEXAS LEGISLATURE AMENDED § 8(a) REPLACING THE PHRASE 'SHALL RELEASE' WITH THE PHRASE 'MAY RELEASE'). THE DISTRICT COURT'S RESOLUTION OMITTED THE MANDATORY LANGUAGE OF THE PHRASE 'SHALL BE' USED IN TEXAS PAROLE STATUE ARTICLE 42.18 § 15(f) Id CREEL AT 711 N. 3

PETITIONER ARGUES, THE MANDATORY LANGUAGE USED IS ARTICLE 42.18 § 15(f)

TOGETHER WITH THE REQUISITE AND PAROLE RELEASE CONDITION REQUIREMENTS OF THE PAROLE BOARD'S DECEMBER 19, 2019 ORDERED GRANT OF PAROLE TO IT'S PRE-PAROLE FI-5 IPTC TREATMENT PROGRAM THAT "UPON SUCCESSFUL/SATISFACTORY COMPLETION OF THE (IPTC) PROGRAM, 'YOU WILL BE' PROCESSED FOR RELEASE TO AN AFTER CARE FACILITY", CREATED AN "EXPECTANCY FOR RELEASE" (APPENDIX D AT 1) A LIBERTY INTEREST PROTECTED UNDER THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT.

PETITIONER SATISFIED THE REQUISITE OF THE FI-5 IPTC TREATMENT PROGRAM'S REQUIREMENT BY SUCCESSFULLY COMPLETING THE PAROLE ORDERED FI-5 IPTC TREATMENT PROGRAM AND WAS PROCESSED FOR RELEASE AUGUST 17, 2020 ON PAROLE TO THE ABODE AFTERCARE FACILITY DALLAS TEXAS (APPENDIX B AT 4).

THE LOWER COURTS HAS SERIOUSLY MISINTERPRETED THE UNITED STATES SUPREME COURT'S DECISION IN BOARD OF PARDON V. ALLEN, 482 U.S. 369 (1987) GOVERNING "LIBERTY INTEREST IN PAROLE", AND ENTER DECISION THAT IS "CONTRARY TO" AND "CONTRADICTS" CLEARLY ESTABLISHED FEDERAL LAW AND CONFRONTS FACTS THAT ARE "MATERIALLY INDISTINGUISHABLE" FROM RELEVANT SUPREME COURT PRECEDENT YET REACHES AN OPPOSITE RESULT. WILLIAM V. TAYLOR, 529 U.S. 362, 405-06 (2000)

THE UNITED STATES SUPREME COURT IN ALLEN EXPLAINED IT'S DECISION, SEE OVERVIEW:

> "AFTER BEING DENIED PAROLE, THE INMATES CLAIMED THAT THEIR CIVIL RIGHTS WERE VIOLATED BECAUSE THE BOARD DID NOT FOLLOW THE PAROLE ELIGIBILITY CRITERIA NOR DID IT PROVIDE AN EXPLANATION FOR ITS DENIAL OF PAROLE. THE APPELLATE COURT FOUND FOR THE INMATES. ON APPEAL, THE COURT DETERMINED THAT THE STATE PAROLE STATUE, MONT. CODE ANN. § 46-23-201 (1985) "(WHICH IS IDENTICAL TO TEX. PAROLE STAT. ART. 42.18 § 15(f))", CREATED A LIBERTY INTEREST IN PAROLE RELEASE BY ITS USE OF MANDATORY LANGUAGE TO CREATE A PRESUMPTION THAT RELEASE WOULD BE GRANTED WHEN THE DESIGNATED FINDINGS WERE MADE. THE COURT HELD THAT THE RELEASE DECISION WAS

NECESSARILY SUBJECTIVE AND PREDICTIVE, THAT THE DISCRETION OF THE BOARD WAS VERY BROAD, AND THAT THE BOARD SHOULD RELEASE THE INMATE WHEN THE FINDINGS PREREQUISITE TO RELEASE WERE MADE. THE COURT CONCLUDED THAT THE LIBERTY INTEREST WAS PROTECTED BY THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT. "THE COURT REJECTED THE ARGUMENT THAT A STATUE THAT MANDATED RELEASE "IF, WHEN, OR SUBJECT TO" SUCH FINDINGS BEING MADE.

PETITIONER RESPECTFULLY MOVES THAT THE UNITED STATES SUPREME COURT OVERRULE THE DISTRICT COURT'S RESOLUTION OF HIS LIBERTY INTEREST CLAIM, "THAT THE AMENDMENT TO TEX. PAROLE STAT. 42.18 § 8(a) REPLACING THE PHRASE 'SHALL RELEASE" WITH THE PHRASE "MAY RELEASE" TO END THE "EXPECTANCY OF RELEAS" AS DESCRIBED IN ALLEN. (APPENDIX B AT 2) BECAUSE AS ARGUED, PETITIONER MET THE PREREQUISITES OF THE MANDATORY LANUAGE USED IN TEX. PAROLE STAT. ART. 42.18 § 15(f) ALONG WITH THE REQUIREMENTS OF THE PAROLE BOARDS ORDERED GRANT PAROLE TO PRE-PAROLE FI-5 IPTC TREATMENT PROGRAM (APPENDIX D AT 1) CREATED AN "EXPECTANCY OF RELEASE" A LIBERTY INTEREST PROTECTED BY THE DUE PROCESS OF THE 14TH AMENDMENT.

SIGNIFICANTLY, THE TEXAS PAROLE STATUE ARTICLE 42.18 § 15(f), LIKE THE MONTANA PAROLE STATUE MONT. CODE ANN. § 46-23-201 (1985) AND LIKE THE NEBRASKA PAROLE STATUE NEB. REV. STAT. § 83-1-114(d)(1981) USES MANDATORY LANGUAGE 'SHALL' ALONG WITH 'WILL BE' USED IN THE MANDATORY LANGUAGE OF THE ORDER PAROLE TO PRE-PAROLE FI-5 IPTC TREATMENT PROGRAM (APPENDIX D AT 1) TO CREATE A PRESUMPTION THAT PAROLE RELEASE WILL BE GRANTED WHEN THE DESIGNATED FINDINGS ARE MADE. GREENHOLTZ, 442 U.S. AT 12. PETITIONER SATISFIED THE PREREQUISITE OF TEX. PAROLE STAT. ART. 42.18 § 15(f) TOGETHER WITH THE REQUIREMENTS SETFORTH IN THE PRE-PAROLE FI-5 IPTC TREATMENT PROGRAM'S REQUIREMENTS, HE EXPECTED TO BE RELEASED AUGUST 17, 2020 ON PAROLE TO THE ABODE AFTERCARE FACILITY DALLAS TEXAS. SEE

BOARD OF PARDONS V. ALLEN, 482 U.S. AT 378-80 (1987) THE UNITED STATES SUPREME COURT HELD, "IF THE CRITERIA IS MET, THEN A LIBERTY INTEREST IS CREATED."

THE LOWER COURT'S RESOLUTION DEPRIVES PETITIONER OF A CONSTITUTIONALLY PROTECTED RIGHT TO A "LIBERTY INTEREST" IN RELEASE ON PAROLE UNDER THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION.

SECONDLY, THE BOARD OF PARDONS & PAROLES AUGUST 21, 2020 NOTICE TO OFFENDER OF ITS DECISION TO RESCIND/DENY RELEASE ON PAROLE STATES FOR REASON[S] 6D "THE RECORD INDICATES THE OFFENDER REFUSED TO PARTICIPATE IN OR INTENTIONALLY FAILED TO COMPLETE TO TDCJ-CID PROGRAM (APPENDIX D AT 2). HOWEVER, THE DISTRICT COURT'S RESOLUTION "CONTRADICTS" THIS CAITICAL MATERIAL EVIDENCE BY DECIDING PETITIONER INSIST THE INFORMATION THAT LED TO RESCISSION OF HIS PAROLE GRANT (INCLUDING LITIGATION DISMISSED AS FRIVILOUS) WAS FALSE, AND THAT THE TRUE MOTIVATION FOR THE RESCISSION WAS RETALIATION (APPENDIX B AT 3). BUT THE MAGISTRATE JUDGE CORRECTLY FOUND THAT THE RECORD CONCLUSIVELY DISPROVE THIS CLAIM.

PETITIONER ARGUES, THAT THERE IS A MATERIAL VARIANCE BETWEEN THE RECORD USED BY THE MAGISTRATE JUDGE AND THE BOARD OF PARDONS & PAROLES AUGUST 21, 2020 NOTICE TO OFFENDER OF IT'S REASON TO RESCIND HIM RELEASE ON PAROLE (APPENDIX D AT 2). EVIDENCE IS MATERIAL IF IT HAS SOME LOGICAL CONNECTION TO A CONSEQUENTIAL FACT. UNDER BRADY LAW, DUTY TO DISCLOSE FAVORABLE EVIDENCE TO PETITIONER IS CRITICAL TO PETITIONER'S CLAIM OF FALSE INFORMATION USED TO RESCIND PAROLE RELEASE. BRADY V. MARYLAND, 373 U.S. 83; 83 S. Ct. 1194; 10 L.Ed 2d 215 (1963).

THE INFORMATION THE BOARD OF PARDONS & PAROLES USED TO RESCIND PETITIONER RELEASE ON PAROLE THAT, "THE RECORD INDICATES THE OFFENDER REFUSED TO PARTICIPATE OR INTENTIONALLY FAILED TO COMPLETE THE TDCJ-CID PROGRAM" IS THE FALSE INFORMATION CLAIM. PETITIONER ARGUES, BECAUSE IT IS INDISPUTABLE HE SATISFACTORY COMPLETED THE PRE-PAROLE F1-5 IPTC TREATMENT PROGRAM BY OBTAINING A CERTIFICATE OF COMPLETION JULY 16, 2020 AND THIS MATERIAL FACT IS EVIDENCED IN

THE REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE APPENDIX B AT 4. THE VARIANCE OCCURRED WHEN THE DISTRICT COURT APPLIED PETITIONER'S PREVIOUS FRIVOLOUS LAWSUIT FILING AS HIS FALSE INFORMATION CLAIM (APPENDIX B AT 3 AND 10) IN THE RESOLUTION OF PETITIONER'S CONSTITUTIONAL PROTECTED DUE PROCESS CLAIM. CARDENAS V. STEPHENS, 820 F 3d 197, 201-02 (5TH CIR 2016)

FEDERAL HABEAS REVIEW OF STATE COURT PROCEEDINGS IS GOVERNED BY THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT (AEDPA) OF 1996. UNDER AEDPA, A PETITIONER WHO IS IN CUSTODY, "PURSUANT TO THE JUDGEMENT OF A STATE COURT" IS NOT ENTITLED TO FEDERAL HABEAS RELIEF WITH RESPECT TO ANY CLAIM THAT WAS ADJUDICATED ON THE MERITS IN STATE COURT PROCEEDINGS UNLESS THE ADJUDICATION OF THE CLAIM;

(1) RESULTED IN A DECISION THAT WAS CONTRARY TO OR INVOLVED AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES; OR

(2) RESULTED IN A DECISION THAT WAS BASED ON UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN STATE COURT PROCEEDINGS. 28 U.S.C. § 2254(d)

THE ISSUE HERE IS THAT BOTH THE TEXAS BOARD OF PARDONS & PAROLES AND U.S. DISTRICT COURT'S DECISION VIOLATES CLEARLY ESTABLISHED FEDERAL LAW AS DETERMINED BY THE UNITED STATES SUPREME COURT AND "CONTRADICTS" AND IS "CONTRARY TO" DECISIONS OF THE U.S. SUPREME COURT AND OTHER U.S. COURT OF APPEALS RELEVANT CASES.

STARTING WITH THE TEXAS BOARD OF PARDONS & PAROLES DECISION TO RESCIND PAROLE RELEASE TO PETITIONER FOR REASON[3] 6D "THE RECORD INDICATES THE OFFENDER REFUSED TO PARTICIPATE OR INTENTIONALLY FAILED TO COMPLETE THE TDCJ-CID PROGRAM" (APPENDIX D AT 2). IT IS INDISPUTABLE THAT PETITIONER OBTAINED A CERTIFICATE OF COMPLETION JULY 15, 2020 AND THE PAROLE BOARD WAS NOTIFIED OF THIS "EXCULPATORY INFORMATION" AND THIS MATERIAL EVIDENCE IS REPORTED IN APPENDIX B AT 4.

AT ISSUE HERE IS, "WHETHER PETITIONER HAS A CONSTITUTIONALLY PROTECTED RIGHT UNDER THE DUE PROCESS OF THE 14TH AMENDMENT TO NOT HAVE HIS RELEASE ON PAROLE RECINDED BASED ON FALSE INFORMATION." SEE COMPARE TOWNSEND V. BURKE, 334 U.S. 736 (1968) (DUE PROCESS VIOLATION FOR DISTRICT COURT TO SENTENCE DEFENDANT BASED ON FALSE INFORMATION).

THE DISTRICT COURT RESOLUTION OF PETITIONER'S DUE PROCESS CLAIM ASSERTS THAT "TEXAS LAW DOES NOT CREATE A LIBERTY INTEREST IN PAROLE THAT IS PROTECTED BY THE DUE PROCESS CLAUSE." (APPENDIX B AT 7). HOWEVER, THE U.S. EASTERN DISTRICT OF TEXAS (TYLER) COURT'S RESOLUTION TO THE FALSE INFORMATION USED IN AN OFFENDER'S PAROLE RELEASE FILES CONFLICTS WITH THAT OF THE 11TH CIRCUIT COURT OF APPEAL FOR THE UNITED STATES IN MONROE V. THIGPEN, 932 F 2d. AT 1441-42 (1991) WHERE THE COURT REJECTED THE STATE ARGUMENT, "THAT ALABAMA PAROLE STATUTE CONFERS NO LIBERTY INTEREST IN PAROLE THEY MAY RELY ON ADMITTEDLY FALSE INFORMATION IN DENYING PAROLE WITHOUT OFFENDING THE DUE PROCESS CLAUSE." THE COURT HELD PLAINTIFF INMATE WAS ENTITLED TO HAVE FALSE INFORMATION EXPUNGED FROM HIS PRISON RECORDS, BECAUSE DEFENDANTS PAROLE OFFICIALS' RELIEANCE ON IT, WHEN THEY KNEW IT WAS FALSE, WAS A FLAGRANT ABUSE OF DISCRETION.

LIKE ALABAMA PAROLE STATUTE, TEXAS ASSERTS IT'S PAROLE STATUTES CONFER NO LIBERTY INTEREST IN PAROLE EXPECTANCY. HOWEVER, THE BOARD OF PARDONS & PAROLES CAN NOT ENGAGE IN "FLAGRANT OR UNAUTHORIZED ACTION." THE DISCRETION CONFERRED ON TEX. PAROLE STAT. ART. 42.18 § 8(a) DO NOT AUTHORIZE THEM TO RELLY ON FALSE IN THEIR DECISION TO RESCIND PAROLE. THEREFORE, BY RELYING ON THE FALSE INFORMATION IN PETITIONER'S PAROLE FILE, THE PAROLE BOARD EXCEEDED IT'S AUTHORITY UNDER ART. 42.18 § 8(a) AND TREATED PETITIONER ARBITRARLY AND CAPRICIOUSLY IN VIOLATION OF DUE PROCESS. THOMAS, 691 F. 2d AT 489. SEE MONROE V. THIGPEN, 932 F. 2d. AT 1441-42 (11TH CIR 1991). ABSENT THE FALSE INFORMATION IN PETITIONER'S PAROLE FILE THE PAROLE BOARD WOULD HAVE RELEASED HIM AUG. 17, 2020 ON PAROLE TO THE

ABODE AFTERCARE FACILITY DALLAS TEXAS.

NEXT, THE DISTRICT COURT RESOLUTION OF PETITIONER'S FALSE INFORMATION USED TO RESCIND HIS RELEASE ON PAROLE THAT THE REPORT OF HIS FRIVOLOUS LITIGATION HISTORY ARE IN THE RECORD (APPENDIX B AT 10) IS "MATERIAL EVIDENCE" THAT THE RESPONDENT VIOLATED PETITIONER'S CONSTITUTIONALLY PROTECTED 1ST AMENDMENT RIGHT TO ACCESS OF THE COURTS FREE OF RETALIATION BY USING HIS U.S. DISTRICT COURT'S JULY 05, 2007 FRIVOLOUS LITIGATION FILING IN THE PAROLE BOARD'S DECISION TO RESCIND RELEASE ON PAROLE (APPENDIX E AT 1-2) SEE UNITED MINE WORKERS V. ILLINOIS BAR ASS'N., 389 U.S. 217, 222 (1963)("THE RIGHT TO PETITION GOVERNMENT FOR REDRESS OF GRIEVANCE IN BOTH THE JUDICIAL AND ADMINISTRATIVE FORUMS IS AMOUNG MOST PRECIOUS LIBERTIES SAFE GUARDED BY THE BILL OF RIGHTS)."

THE RESPONDENT'S USE OF PETITIONER'S PRIOR JULY 05, 2007 U.S. DISTRICT COURT'S FRIVOLOUS LITIGATION FILING IN THE PAROLE BOARD'S DECISION PLAYED A SUBSTANTIAL PART IN HIS RELEASE ON PAROLE BEING RESCINDED, SERIO, 821 F 2d 1112, 1114 (5TH CIR 1987) AND DIRECTLY VIOLATED THE MAGISTRATE'S ORDER IN JOHNSON V. RODRIQUEZ, 110 F 3d AT 310 (5TH CIR 1997) THE MAGISTRATE JUDGE ORDERED THE PAROLE BOARD TO ADOPT BY RULE A POLICY "THAT PROHIBITS CONSIDERATION OF INMATES EXERCISE OF THE CONSITITUTIONALLY PROTECTED RIGHT TO ACCESS TO THE COURTS" AND "SHALL SPECIFY THAT SUCH ACTIVITY IS WHOLLY IRRELEVANT TO THE PAROLE DECISION PROCESS." HE FURTHER REQUIRED "THAT THIS RULE SHALL ESTABLISH SPECIFIC, ENFORCABLE SANCTIONS FOR ALL VIOLATIONS," THEREOF. IN ADDITION, THE ORDER REQUIRED "THAT ALL EXISTING INMATES FILES BE REVIEWED FOR AND PURGED OF ANY AND ALL DOCUMENTATION RELATED TO AN INMATES LITIGATION ACTIVITY AS THE SPECIFIC INMATE BECOMES ELIGIBLE FOR PAROLE REVIEW. ONLY UPON WRITTEN REQUEST BY AN INMATE SHALL ANY LITIGATION MATERIAL OR INFORMATION BE INCLUDED OR RETAINED IN HIS OR HER PAROLE FILE.

APPENDIX E AT 1-2 IS MATERIAL EVIDENCE THAT PETITIONER'S CONSTITUTIONALLY PROTECTED RIGHT TO ACCESS TO THE COURTS PLAYED A SUBSTANTIAL PART IN THE PAROLE BOARD'S

DECISION TO RESCIND PAROLE RELEASE TO PETITIONER. SEE JOHNSON V. ROBRIQUEZ, 110 F 3d AT 313 (5TH CIR. 1997) THE FIFTH CIRCUIT HELD, "THERE MUST BE A FINDING, ADEQUATELY SUPPORTED BY THE EVIDENCE, THAT PURSUANT TO AN ESTABLISHED POLICY OR CUSTOM (FORMAL OR INFORMAL), THE BOARD RETALIATED AGAINST WRIT WRITERS FOR ENGAGING IN PROTECTED ACTIVITY BY WITHHOLDING PAROLE. THE BOARD OF PARDONS & PAROLES' NOVEMBER 19, 2023 CORRESPONDENCE (APPENDIX E) IS CLEAR AND CONVINCING EVIDENCE THAT UNDER THE DISCRETION OF TEXAS PAROLE STATUTES THE PAROLE BOARD DECLARED THE PETITIONER "NO LONGER ELIGIBLE FOR THE FI-5 IPTC TREATMENT PROGRAM" AFTER BEING GRANTED PAROLE (APPENDIX D AT 1)" AS BEING SANCTIONED BY THE U.S. DISTRICT COURT FOR FRIVOLOUS LEGAL FILINGS." THE CAUSATIVE COMPONENT OF THIS CLAIM IS AN ADEQUATELY SUPPORTED FINDING THAT THE TEXAS BOARD OF PARDONS & PAROLES POLICY, STATUTE OR CUSTOM PLAYED A PART IN IT'S RESCISSION OF PAROLE RELEASE TO PETITIONER, AND THAT BUT FOR THE BOARD'S POLICY, STATUTE OR CUSTOM PETITIONER WOULD NOT HAVE BEEN DENIED RELEASE ON PAROLE, AND WITHOUT A PROCEDURAL DUE PROCESS HEARING.

THE UNITED STATES DISTRICT COURT FAILED TO ADDRESS OR ACKNOWLEDGE PETITIONER'S CONSTITUTIONAL CLAIM THAT HE WAS DENIED DUE PROCESS WHEN THE RESPONDENT REMOVED HIM FROM THE PAROLE BOARD'S ORDERED PRE-PAROLE FI-5 IPTC TREATMENT PROGRAM AND RESCINDED IT'S GRANT OF PAROLE WITHOUT A REVOCATION HEARING AS DESCRIBED IN MORRISSEY V. BREWER, 408 U.S. 471 (1979). HOWEVER THE MAGISTRATE'S JUDGE REPORT & RECOMMENDATION CONCLUDED THAT "PETITIONER HAD NO LIBERTY INTEREST IN PAROLE THAT TRIGGERED ANY DUE PROCESS PROCESS DESPITE THE CONDITIONAL GRANT OF A RELEASE DATE (APPENDIX B AT 9-10), AND CITES SEXTON V. WISE, 494 F 2d 1176 (5TH CIR 1974). NOT ONLY DO THIS CONCLUSION "CONTRADICTS" AND IS "CONTRARY TO" SEVERAL UNITED STATES SUPREME COURT'S DECISIONS, IT CONFLICTS WITH OTHER UNITED STATES COURT OF APPEALS DECISIONS. ADDICTIONALLY, UNLIKE SEXTON WHO VIOLATED A STATE RULE THAT RESULTED IN THE RESCISSION OF RELEASE ON PAROLE, THE PETITIONER RELEASE ON PAROLE WAS RESCINDED BASED OF FALSE INFORMATION

AND WITHOUT A PROCEDURAL HEARING. "THE ESSENCE OF PAROLE IS RELEASE FROM PRISON, BEFORE THE COMPLETION OF SENTENCE, ON THE CONDITION THAT THE PRISONER ABIDE BY CERTAIN RULES DURING THE BALANCE OF THE SENTENCE." MORRISSEY, 408 U.S. AT 477. THE PETITIONER WAS GRANTED PAROLE TO PRE-PAROLE F1-5 IPTC TREATMENT PROGRAM WITH THE REQUISITE THAT "**UPON SATISFACTORY COMPLETION OF THE PROGRAM YOU WILL BE RELESED ON PAROLE TO AN AFTERCARE FACILITY**" WITH THE BELOW SPECIAL PAROLE RELEASE CONDITIONS (APPENDIX D AT 1). PETITIONER EARNED A CERTIFICATE OF COMPLETION JULY 15, 2020 AND WAS PROCESSED TO BE RELEASED AUGUST 17, 2020 (APPENDIX B AT 4). IF THE THE CRITERIA IS MET, THEN A LIBERTY INTEREST IS CREATED. ALLEN, 107 S. CT. AT 2420. HOWEVER, PETITIONER WAS REMOVED FROM THE F1-5 IPTC PRE-PAROLE TREATMENT PROGRAM AUGUST 14, 2020, RELEASE ON PAROLE TO THE ABODE AFTERCARE FACILITY DALLA TEXAS WAS RESCINDED, AND PETITIONER WAS RECLASSIFIED AND TRANSFERED TO A MAXIUM SECURITY PRISON WITHOUT A PROCEDURAL DUE PROCESS HEARING.

THE UNITED STATES SUPREME COURT **DECISION IN** YOUNG V. HARPER, 520 U.S. 143; 117 S. CT. 1148; 137 L. ED. 2d 270 (1997) THE COURT GRANTED CERTIORARI AND AFFIRMED, HOLDING THAT THE PREPAROLE CONDITIONAL SUPERVISION PROGRAM (PROGRAM) WAS A KIND OF PAROLE AND THAT DUE PROCESS MANDATED THAT RESPONDENT, LIKE A PAROLEE, WAS CONDITIONALLY RELEASED BEFORE HE FINISHED HIS TERM. THE TENTH CIRCUIT COURT OF APPEALS IN HARPER V. YOUNG, 64 F 3d. 563 (10TH CIR 1995) "THE APPELLANT COURT REVERSED THE DENIAL OF APPELLANT'INMATE'S PETITION FOR WRIT OF HABEAS CORPUS, AND INSTRUCTED THE WRIT TO ISSUE UNTIL APPELLANT WAS REINSTATED IN STATE'S PRE-PAROLE CONDITIONAL SUPERVISION PROGRAM (PROGRAM). APPELLANT HAD A LIBERTY INTEREST IN REMAINING IN THE PROGRAM AND TERMINATION WITHOUT NOTICE AND A MEANING OPPORTUNITY TO BE HEARD VIOLATED DUE PROCESS."

IN PETITIONER'S CASE, HE WAS REMOVED FROM THE F1-5 IPTC PREPAROLE TREATMENT PROGRAM, AND HIS RELEASE ON PAROLE RESCINDED WITHOUT NOTICE AND A MEANINGFUL OPPORTUNITY TO BE HEARD IN VIOLATION OF HIS DUE PROCESS RIGHTS UNDER THE

THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION.

THE DISTRICT COURT'S RESOLUTION OF PETITIONER'S FIRST AMENDMENT RIGHT TO ACCESS OF THE COURTS FREE FROM RETALIATION CLAIM "CONFLICTS OR CONTRADICTS" THE DECISION OF THE FIFTH CIRCUIT COURT OF APPEALS IN SERIO V. LA. Bd. OF PARDONS, 821 F. 2d 1112 (5TH CIR 1987), BY DECIDING THAT RESCINDING PETITIONER'S RELEASE ON PAROLE AND REMOVING HIM FROM THE FI-5 IPTC PREPAROLE TREATMENT PROGRAM, "THE CONSEQUENCES OF PETITIONER'S TWO DISMISSALS OF FRIVOLOUS COMPLAINTS ARE THE RESULT OF TEXAL LAW" (APPENDIX B AT 10) NOT RETALIATION. SEE SERIO, 821 F 2d AT 1112, 1114 "(SERIO'S COMPLAINT WAS NOT SUBJECT TO DISMISSAL ON THE GROUND THAT THE ALLEGATION MERELY STATES LEGAL CONCLUSIONS. SERIO'S CLAIM THAT LOUISIANA STATE BOARD OF PARDONS DENIED HIM PAROLE PRIVILEGE AT LEAST IN SUBSTANTIAL PART BECAUSE HE HAD PREVIOUSLY FILED LAWSUITS AGAINST PRISON OFFICIALS, THUS, VIOLATING HIS CONSTITUTIONAL RIGHT TO BE FROM FROM RETALIATION FOR SEEKING ACCESS OF THE COURTS, U.S. CONST. AMEND. 1)"

THE MATERIAL EVIDENCE IN APPENDIX E AND F CLEARLY PROVES THE RESPONDENT USED PETITIONER'S PREVIOUSLY U.S. DISTRICT COURT LAWSUITS AND GRIEVANCE COMPLAINTS AGAINST PRISONN OFFICIALS IN THE PAROLE BOARD'S DESCISION TO RESCIND PAROLE RELEASE. SEE JOHNSON V. RODRIQUEZ, 110 F. 3d AT 316 (5TH CIR 1997) THE COURT HELD,

> "IF IN A RARE, GIVEN INSTANCE SUCH A GENERAL APPROACH HAPPENS TO RESULT IN THE BOARD'S ADVERSE CONSIDERATION OF A GIVEN INMATE'S CONSTITUTIONALLY PROTECTED WRIT WRITING ACTIVITY HAVING ACTUALLY PLAYED A PART IN IT'S DENIAL OF PAROLE TO THAT PARTICULAR INMATE, THEN THAT MAY BE ADDRESSED AND REDRESSED UNDER STANDARDS COMPARABLE TO THOSE APPLICABLE TO THE RETALIATION THEORY."

THE PAROLE BOARD'S NOVEMBER 19, 2020 CORRESPONDENCE TO PETITIONER CLEARLY STATES, "THE BOARD DECLARED HIM NO LONGER ELIGIBLE FOR THE FI-5 IPTC PREPAROLE TREATMENT PROGRAM AS BEING SANCTIONED BY THE U.S. DISTRICT COURT FOR FRIVOLOUS

LEGAL FILINGS" (APPENDIX E AT 2) IN IT'S DECISION TO RESCIND RELEASE ON PAROLE.

PETITIONER'S RETALIATION THEORY

THE ELEMENTS OF A CLAIM UNDER A RETALIATION THEORY ARE THE PETITIONER'S INVOCATION OF "A SPECIFIC CONSTITUTIONAL RIGHT," THE RESPONDENT INTENT TO RETALIATE AGAINST THE PETITIONER FOR HIS EXERCISE OF THAT RIGHT, A RETALIATORY ADVERSE ACT, AND CAUSATION, I.E., "BUT FOR THE RETALIATORY MOTIVE THE COMPLAINED OF INCIDENT... WOULD NOT HAVE OCCURRED." WOODS V. SMITH, 60 F. 3d 1161; 1166 (5TH CIR 1995) CERT. DENIED _ U.S. _ 116 S. Ct. 800; L. Ed. 2d 747 (1996) IN THIS CASE, PETITIONER MUST PROVE THAT HE ENGAGED IN CONSTITUTIONALLY PROTECTED LITIGATION ACTIVITY, WERE DENIED PAROLE, AND THAT SUCH ACTION WAS TAKEN TO PUNISH HIM FOR HAVING FILED LAWSUITS. EXPLANAR INC. V. MARSH, 11 F 3d 1284, 1296 (5TH CIR) CERT. DENIED, 513 U.S. 926; 115 S. Ct. 312; 130 L. Ed 2d 275 (1994). SEE ALSO SERIO V. MEMBERS OF LA. STATE Bd. OF PARDONS, 821 F 2d 1112, 1114 (5TH CIR 1987). THE RELEVANT SHOWING IN SUCH CASES MUST BE MORE THAN THE PETITIONER'S "PERSONAL BELIEF THAT HE IS THE VICTIM OF RETALIATION" EDWARDS, 51 F. 3d AT 580.

PETITIONER ARGUES THE JULY 05, 2007 U.S. DISTRICT COURT'S ORDER DISMISSING AS FRIVOLOUS HIS LAWSUIT CLAIMS (APPENDIX E AT 1), THE RESPONDENT USED IN THE DECISION TO RESCIND RELEASE ON PAROLE HAS NO RELEVANCY TO HIS CURRENT CONVICTION BECAUSE THE LAWSUIT WAS FILED UNDER TDCJ-CID CAUSE NO. 114-1462-03, AND THAT THE RESPONDENT THROUGH THE CLASSIFICATION DIVISION AND PAROLE DIVISION KNEW OF OR SHOULD HAVE KNOWN ABOUT THIS FRIVOLOUS LITIGATION PRIOR TO THE PAROLE BOARD'S ORDER TO GRANT PETITIONER PAROLE TO IT'S FI-5 IPTC PREPAROLE TREATMENT PROGRAM UNDER HIS CURRENT TDCJ-CID CONVICTION CAUSE NO. 114-0760-13 TO WHICH HE HAS NO FRIVOLOUS U.S. DISTRICT COURT LAWSUIT FILINGS. THE RESPONDENT OFFERS NO EXPLANATION AS TO WHY HE WAITED UNTIL THE PETITIONER SATISFACTORY COMPLETED THE FI-5 IPTC PREPAROLE TREATMENT PROGRAM AND WAS PROCESSED FOR RELEASE ON PAROLE TO AN AFTERCARE FACILITY TO DECLARE HIM NO LONGER ELIGIBLE FOR

FOR THE F1-5 IPTC PROGRAM AS BEING SANCTION BY THE U.S. DISTRICT COURT FOR FRIVOLOUS LAWSUIT FILINGS (APPENDIX E AT 2) EDWARDS, 51 F.3d AT 580 WHEN THIS LITIGATION INFORMATION WAS AVAILABLE PRIOR TO THE PLACEMENT OF PETITIONER IN THE F1-5 IPTC PREPAROLE TREATMENT PROGRAM.

PETITIONER'S RETALIATORY THEORY, PETITIONER WAS FIRST PROCESSED FOR RELEASE JULY 15, 2020 ON PAROLE TO THE ABODE AFTERCARE FACILITY DALLAS TEXAS, BUT DUE TO COVID LOCKDOWN ON JULY 09, 2020 HALTING ALL PAROLE RELEASES HIS RELEASE WAS POSTPONED. WHILE ON LOCKDOWN PETITIONER FILED GRIEVANCES #2020143964 AND #2020-151054 COMPLAINING THAT HE IS BEING EXPOSED TO THE DEADLY COVID VIRUS BY TDCJ - GUARDS, PRISON STAFF AND BEING HOUSED WITH OFFENDERS WHO HAVE COVID SYMPTONS AND ADMINISTRATION IGNORING HIS COMPLAINT (APPENDIX F AT 1-4). THE RESPONDENT RETALIATED, "THE PAROLE BOARD RESCHEDULED PETITIONER FOR RELEASE AUGUST 17, 2020 ON PAROLE TO THE ABODE AFTERCARE FACILITY DALLAS TEXAS. HOWEVER, AUGUST 14, 2020 PETITIONER WAS REMOVED FROM THE F1-5 IPTC PREPAROLE TREATMENT PROGRAM AND PLACED IN THE SPECIAL HOUSING UNIT." THE RESPONDENT DECLARED HIM NO LONGER ELIGIBLE FOR THE F1-5 IPTC PREPAROLE TREATMENT PROGRAM, AS BEING SANCTIONED BY THE U.S. DISTRICT COURT FOR FRIVOLOUS LAWSUIT FILINGS AND HIS AUGUST 17, 2020 PAROLE RELEASE WAS CANCELED. WHILE IN REALITY THE RESPONDENT WAS PUNISHING PETITIONER FOR HAVING FILED GRIEVANCES #2020143964 AND #2020151054. JOHNSON V. RODRIQUEZ, 110 F 3d AT 313 (5TH CIR 1997) BY HIS RETALIATORY ANIMUS IN RESCINDING PAROLE RELEASE.

IN SUPPORT, PETITIONER ARGUES THAT HAD THERE NOT BEEN A COVID-19 LOCKDOWN ON JULY 09, 2020 HALTING ALL PAROLE RELEASES, HE WOULD HAVE BEEN RELEASED JULY 15, 2020 TO THE ABODE AFTERCARE FACILITY. THE RESPONDENT DID NOT USE0 PETITIONER'S PRIOR FRIVOLOUS LITIGATION ACTIVITY UNTIL JULY 29, 2020 (APPENDIX B AT 10) SHORTLY AFTER PETITIONER FILED GRIEVANCES #2020143964 AND #2020151054 (APPENDIX F AT 1-4) TO REMOVE HIM FROM THE F1-5 IPTC PREPAROL PROGRAM. BUT FOR THE RETALIATORY MOTIVE THE PAROLE BOARD WOULD NOT HAVE RESCINDER PAROLE RELEASE TO PETITIONER. WOODS V. SMITH, 60 F 3d 1161, 1166 (5TH CIR 1995)

FINAL CLAIM, UNDER THE EQUAL PROTECTION CLAUSE PETITIONER MUST PROVE THE EXERCISE OF PURPOSEFUL RETALIATION MOTIVATING THE RESPONDENT'S ACTION THAT CAUSED THE PAROLE BOARD TO RESCIND PAROLE RELEASE TO HIM, McCLESKY V. KEMP, 431 U.S. 279, 292-93 (1997) SEE ALSO ARLINGTON HEIGHTS V. METROPOLITAN HOUSING DEVELOPMENT CORP., 428 U.S. AT 252, 264-66; DAVIS, 426 U.S. AT 238-40. "(THE RETALIATORY PURPOSE OF AN EQUAL PROTECTION CONTEXT IMPLIES IMPLIES THAT THE RESPONDENT SELECTED A PARTICUAR COURSE OF ACTION AT LEAST IN PART "BECAUSE OF" AND NOT "IN SPITE OF" THE ADVERSE IMPACT IT WOULD HAVE ON THE PETITIONER. WOODS V. EDWARD, 951 F.2d AT 64-65 (5TH CIR 1992).

AT ISSUE HERE, THE RESPONDENT THROUGH THE TEXAS BOARD OF PARDONS & PAROLES RETALIATED AGAINST PETITIONER "BECAUSE OF" HIS EXERCISING CONSTITUTIONALLY PROTECTED RIGHT TO ACCESS THE COURTS THROUGH GRIEVANCES AND LAWSUITS AGAINST PRISON OFFICIALS (APPENDIX E AND F) AS COMPARED TO OTHER OFFENDERS SIMILARLY SITUATED IN THE F1-5 IPTC PREPAROLE TREATMENT PROGRAM BUT DID NOT SEEK ACCESS TO THE COURTS, WHO COMPLETED THE F1-5 IPTC PREPAROLE PROGRAM AND WERE RELEASED ON THEIR SCHEDULED PAROLE RELEASE DATE. JOHNSON V. RODRIQUEZ, 110 F 3d AT 310 (5TH CIR 1997)

B. IMPORTANCE OF THE QUESTIONS PRESENTED

THIS CASE PRESENTS FUNDAMENTAL QUESTIONS OF THE INTERPRETATION OF THE SUPREME COURT OF THE UNITED STATES DECISIONS IN FIVE CASES RELEVANT TO THE PETITIONER'S LIBERTY INTEREST IN PAROLE UNDER THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT; (1) WHETHER THE MANDATORY LANGUAGE, "THE USE OF THE PHRASE 'SHALL BE'" IN TEXAS PAROLE STATUTE ARTICLE 42.18 § 15(f) TOGETHER WITH THE PAROLE BOARD'S ORDERED PAROLE TO IT'S F1-5 IPTC PREPAROLE TREATMENT PROGRAM'S USE OF THE PHRASE 'WILL BE PROCESSED FOR RELEASE' (APPENDIX D AT 1) CREATE AN "EXPECTANCY FOR RELEASE" A LIBERTY INTEREST PROTECTED UNDER THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT AS DESCRIBED IN BOARD OF PARDONS V. ALLEN, 482 U.S.

AT 376-78 (1987) QUOTING GREENHOLTZ V. NEBRASKA PENAL CORR. COMPLEX, 99 S. CT. 2106 (1979)

(2) WHETHER PRISONER PARTICIPATING IN TEXAS PREPAROLE FI-5 IPTC TREATMENT PROGRAM HAVE A CONSTITUTIONALLY PROTECTED DUE PROCESS RIGHT OF THE 14TH AMENDMENT TO A PROCEDURAL HEARING BEFORE HE OR SHE CAN BE REMOVED FROM IT AS DESCRIBED IN MORRISSEY V. BREWER, 408 U.S. 471 (1979) AND YOUNG V. HARPER, 520 U.S. 143 (1987), AND

(3) WHETHER PETITIONER (AND IF SO, TO WHAT EXTENT) ENJOY A FEDERAL DUE PROCESS RIGHT OF THE 14TH AMENDMENT TO NOT HAVE HIS RELEASE ON PAROLE RESCINDED BY THE PAROLE BOARD'S USE OF INFORMATION IT KNEW TO BE FALSE AS DESCRIBED IN COMPARE TOWNSEND V. BURKE, 334 U.S. 736 (1948), AND

(4) WHETHER PETITIONER'S CONSTITUTIONAL PROTECTED FIRST AMENDMENT RIGHT WAS VIOLATED WHEN THE PAROLE BOARD USED HIS PRIOR FRIVOLOUS LEGAL FILINGS IN IT'S DECISION TO RESCIND PAROLE RELEASE. UNITED MINE WORKERS V. ILLINIOS STATE BAR ASS'N., 389 U.S. 217, 222 (1963)

THE ABOVE CONSTITUTIONAL QUESTIONS ARE OF GREAT PUBLIC IMPORTANCE BECAUSE THE UNITED STATES SUPREME COURT'S MANDATED CLARIFICATION OF IT'S EARLIER DECISION IN THESE CASES WILL CEASE OR END THE WIDE SPREAD ABUSE OF DISCRETION BY STATE PAROLE BOARD UNDER STATE PAROLE LAWS IN ALL 50 STATES AND THE DISTRICT OF COLUMBIA. IN THE VEENW OF THE LARGE AMOUNT OF LITIGATION CHALLENGING THE CONSTITUTIONALITY OF STATE PAROLE STATUTES, GUIDANCE ON THE ABOVE QUESTIONS IS ALSO IMPORTANCE TO PRISONERS PARTICIPATING AND SUCCESSFULLY COMPLETING PREPAROLE TREATMENT PROGRAMS ORDER BY THE STATE'S PAROLE BOARD, BECAUSE IT AFFECTS THE UNDERSTANDING OF WHETHER THEY WILL BE RELEASED ON PAROLE WHEN THEY MEET THE PREREQUISITIES AND REQUIREMENTS OF THE PREPAROL TREATMENT PROGRAM'S MANDATORY LANGUAGE.

THE ISSUES' IMPORTANCE IS ENHANCED BY THE FACT THAT THE LOWER COURTS IN THIS CASE HAVE SERIOUS MISINTERPRETED BOARD OF PARDONS V. ALLEN, 482 U.S.

369 (1987) THIS COURT HELD THAT "THE MANDATORY LANGUAGE, THE USE OF THE WORD 'SHALL' IN MONTANA'S PAROLE STATUTE (MONT. CODE ANN. § 46-23-201) TO WHICH IS IDENTICAL TO TEXAS PAROLE STATUTE (ART. 42.18 § 15(f)) WHICH ALSO USES 'SHALL', LIKE NEBRASKA'S PAROLE STATUTE (NEB. REV. STAT. § 83-1-114(d) CREATES A LIBERTY INTEREST IN PAROLE PROTECTED BY THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT AS DESCRIBED IN GREENHOLTZ, 442 U.S. 2106 (1979), AND THE DECISION OF THE UNITED STATES SUPREME COURT IN YOUNG V. HARPER, 520 U.S. 143, 147-52 (1987) THE COURT GRANTED CERTIORARI AND AFFIRMED, HOLDING THAT THE PREPAROLE CONDITIONAL SUPERVISION PROGRAM (PROGRAM) WAS A KIND OF PAROLE AND THAT DUE PROCESS MANDATED RESPONDENT RECIEVE CERTAIN PROCEDURAL PROTECTIONS. THERE WAS NO REAL DIFFERENCE BETWEEN PAROLE AND PREPAROLE; RESPONDENT, LIKE A PAROLEE, WAS CONDITIONALLY RELEASED BEFORE HE FINISHED HIS TERM.

LIKE THE RESPONDENT, PETITIONER WAS GRANTED PAROLE TO TEXAS PREPAROLE FI-5 IPTC TREATMENT PROGRAM AND DEPRIVED OF LIBERTY INTEREST OF RELEASE ON PAROLE WITH OUT DUE PROCESS OF LAW.

FURTHER, THE UNITED STATES SUPREME COURT GRANTED CERTIORARI IN MILLER-EL V. COCKRELL, 537 U.S. 322 (2003) HOLDING THAT, "A CERTIFICATE OF APPEALABILITY (COA) DOES NOT REQUIRE THAT THE APPEAL WILL SUCCEED. ACCORDINLY, A COURT OF APPEALS SHOULD NOT DECLINE THE APPLICATION FOR COA MERELY BECAUSE THE PETITIONER WILL NOT DEMONSTRATE AN ENTITLEMENT TO RELIEF, THAT STANDARD WOULD MEAN VERY LITTLE IF APPEALLATE REVIEW WERE DENIED BECAUSE THE PETITIONER DID NOT CONVINCE A JUDGE, OR FOR THAT MATTER, THREE JUDGES, THAT HE OR SHE WOULD PREVAIL. IT IS CONSISTENT WITH 28 U.S.C. § 2253 THAT A COA WILL ISSUE IN SOME INSTANCES WHERE THERE IS NO CERTAINTY OF ULTIMATE RELIEF, AFTER ALL, WHEN A COA IS SOUGHT, THE WHOLE PREMISES IS THAT THE PRISONER HAS ALREADY FAILED IN THAT ENDEAVOR."

THE IMPORTANCE OF THE UNITED STATES SUPREME COURTS REVIEW OF THE ABOVE ARGUED CONSTITUTIONAL QUESTION IS ENHANCED BY THE FACT THAT THE LOWER COURTS

IN THIS CASE HAS SERIOUSLY MISINTERPRETED THIS COURT'S DECISIONS BY DECIDING TEXAS PAROLE STATUTES CONFERS NO LIBERT INTEREST IN PAROLE. THEREFORE PETITIONER'S CONSTITUTIONAL CLAIMS ARE NOT COGNIZALE.

INMATE DECLARATION

I, STEVIE ANDRE ROBERSON, DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING WRIT OF CERTIORARI IS TRUE AND CORRECT, AND THAT THE DOCUMENTS IN APPENDIX A-F ARE TRUE COPIES OF THE ORIGINALS. 28 U.S.C. § 1746

EXECUTED ON THIS 17TH DAY OF FEBRUARY 2023

Stevie A. Roberson

CONCLUSION

ABOVE THE ENTRANCE INTO THE UNITED STATES SUPREME COURT ARE THE WORDS "EQUAL JUSTICE FOR ALL", BY THIS TOKE PETITIONER PRAYS FOR REVIEW OF HIS CONSTITUTIONAL CLAIMS ON THE MERITS.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Stevie A. Roberson

Date: FEB. 17, 2023

END