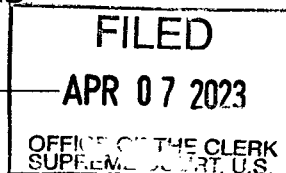


No. 22-7280 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES



RICHARD RALPH MARTINEZ,

Petitioner,

v.

STATE OF NEW MEXICO;  
MICHELLE L. GRISHAM; MELANIE  
MARTINEZ; ROBERTA COHEN, and  
all others affiliated by and with the  
Parole Board in active concert and  
participation with the defendants herein,

Respondents.

On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Tenth Circuit

**PETITION FOR WRIT OF CERTIORARI**

RICHARD RALPH MARTINEZ  
1908 Amethyst Street, Apt. 3R  
Bronx, N.Y.C. 10462,  
347.880.4528  
rmartinez04953@gmail.com

Petitioner Pro Se

## TABLE OF CONTENTS

QUESTIONS PRESENTED.....	IV, V, VIII
TABLE OF AUTHORITIES.....	VI, VII
I. PETITION FOR WRIT OF CERTIORARI.....	1
II. OPINIONS BELOW.....	1
III. JURISDICTION.....	1
IV. STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.....	1
V. STATEMENT OF THE CASE.....	1
A. Introduction.....	1, 2
B. Indeterminate Laws on Parole and Discharge: The laws applicable to Petitioner which are the Indeterminate Laws of New Mexico do mandate serving 10 years prior to appearing before the parole board and, upon release further mandate service of 2 years on parole prior to mandatory discharge upon said service of the 2 years on parole on a life sentence.....	3
C. Determinate Laws on Parole and Discharge: The Determinate laws on a life sentence mandate serving 30 years prior to appearing before the parole board and, upon release further mandate service of 5 years on parole prior to mandatory discharge of said service of the 5 years on parole on a life sentence.....	3
D. Applicability of Laws Upon Petitioner's Sentence, Parole Period and Discharge.....	5
VI. REASONS FOR GRANTING THE WRIT.....	5, 6, 7, 8
1. Whether Petitioner's allegations of violation, abridgment and denial of his constitutional rights by the named defendants' ignoring and violating the mandatory statutory rules of construction after repeated requests by Petitioner that his rights were/are being violated, denied him of his rights under the Constitution?.....	4
2. Whether the Tenth Circuit Court of Appeals erroneously dismissed his appeal when, Petitioner made attempts to properly effectuate his action although based upon the Covid-19 Epidemic wherein	

mail was delayed and/or untimely, he has tried his best but the Court ignored his pleas thereof and therefrom?..... 4

3. Whether the District Court erroneously dismissed Petitioner's cause of action without accepting the factors involved herein (Covid-19 Epidemic), that may have been and was a factor in his mail being delayed causing said same to arrive at irregular times; were it not for said epidemic such mailing would not have been late and the court committed error in not taking such account(s) into consideration?..... 4
4. Whether Petitioner's issues are of constitutional magnitude claiming violation by the defendants and should never have been denied or dismissed as said claims are cognizable by statutory and constitutional law, and Petitioner requests this Court to grant his Writ of Certiorari and such other and further relief as deemed appropriate and proper within its jurisdiction?..... 4
5. Whether the District Court committed irreversible error and abuse of discretion and powers when it failed, refused, or ignored to rule on Petitioner's issues against the named Defendants in their individual capacities?..... 4
6. Whether constitutional provisions in state law which mandates certain procedures be followed but are not followed and are ignored, although requests are made to state authorities to follow said procedures upon which state and federal constitutional rights are violated, constitutes a denial, abrogation and violation of state procedures and personal constitutional rights of an individual?..... 4

VII. CONCLUSION AND PRAYER FOR RELIEF..... 8

## **CAPITAL CASE**

### **QUESTIONS PRESENTED**

Petitioner unknowingly committed a homicide in December of 1979, in which he was tried for first degree capital murder in May 19 and 20, 1980, and May 21 he was found guilty, convicted and sentenced to life imprisonment, however, during said sentence service Petitioner was under the impression that he would have to serve a period of thirty (30) years before becoming eligible for parole hearing but, during said service of the life sentence Petitioner was informed of a case that was heard in the Tenth Circuit court of Appeals where there was two different types of life sentences in New Mexico wherein under the indeterminate laws an inmate was to serve ten (10) years before becoming eligible to appear before the parole board and thirty (30) years under the determinate laws before appearing before the parole board. The case was Devine v. New Mexico Department of Corrections; 866 F.2d 339 (C.A.10 1989).

Petitioner was informed that he was serving an indeterminate life sentence and appeared before the parole board upon service of ten (10) years of his life sentence, however, Petitioner was violated and released several times from his incarceration as he was unable to reside in the state of New Mexico, and in December of 2006, he was paroled to his home of New York where he presently resides in, and during such time he wrote to the Parole Chairman and the Governor several times requesting to be discharged from his sentence but was ignored of said requests and then filed a petition in the sentencing court alleging his illegal parole and that he was to be discharged after serving two (2) years of parole under the indeterminate laws, in which the District Court Judge granted said petition and Martinez was finally discharged, although his allegations concern him serving an illegal additional six (6) years of parole.

Petitioner filed Civil Petitions pursuant to 42 U.S.C. 1983 in the New Mexico Federal Court which was denied and thereafter filed appeals in the Tenth Circuit Court of Appeals which was also denied after going thru several years of turmoil with the Courts, and although Petitioner sought assistance of counsel he was unable to get any assistance at all.

After filing in the Tenth Circuit and Court system exhaustively, his appeal was denied and the District Court judgment affirmed on February 24, 2023, and the instant petition follows.

The following questions are presented:

1. Did the District Court and Tenth Circuit err in its reading and judgment of the parole period under the indeterminate laws concerning mandatory parole discharge?

2. Did the District Court and Tenth Circuit err in its reading and judgment of the parole period under the determinate laws concerning mandatory parole discharge?

3. Under the Rules of Construction concerning the word shall making it mandatory to follow said rules of parole laws, is it error to refuse to follow said mandatory laws and if so, is a parolee's constitutional rights violated thereof upon such refusal and denial after requests were made?

4. Did the Defendants' named herein violate Petitioner's constitutional and statutory rights to parole discharge when they ignored, and refused to respond to his repeated requests

## TABLE OF AUTHORITIES

### Federal Cases

Devine V. New Mexico Department of Corrections, 866 F.2d 339 (C.A. 10 1989).....	IV, 1, 3
Nasious v. 2 Unknown B.I.C.E. Agents, 492 F.3d 1158 (C.A. 10 2007).....	6, 7

### Federal Statutes

28 U.S.C. Section 1254(1).....	1
28 U.S.C. Section 1331.....	7
28 U.S.C. Section 1343.....	7
28 U.S.C. Section 1896.....	7
42 U.S.C. Section 1983.....	IV, 1, 5

### Rules

Fed. R. Civ. P. 60(b).....	1,
Supreme Court Rule 13.1.....	1,

### U.S. Constitution

U.S. Constitution, Amendment 8.....	1, 7
U.S. Constitution, Amendment 11.....	1, 7
U.S. Constitution, Amendment 13.....	1, 7
U.S. Constitution, Amendment 14.....	1, 7

### STATE RULES

N.M.S.A. (1978), Section 12-2-2(i).....	5
N.M.S.A. (2011) 12-2A-4(A).....	5
N.M.S.A. Laws 1977, Chapter 216.....	5
N.M.S.A. (1980), Section 31-21-10.....	3

N.M.S.A. (1976), Section 41-17-24.....3

N.M.S.A. (1953), Section 41-17-30.....3

## **QUESTIONS PRESENTED**

1) Whether Petitioner's allegations of violation, abridgment and denial of his constitutional rights by the named defendants ignoring and violating the mandatory statutory rules of construction after repeated requests by Petitioner that his rights were/are being violated, denied him of rights under the Constitution?

2) Whether the Tenth Circuit Court of Appeals erroneously dismissed his appeal when, Petitioner made attempts to properly effectuate his action although based upon the Covid-19 Epidemic wherein mail was delayed and/or untimely, he has tried his best but the Court ignored his pleas thereof and therefrom?

3) Whether the District Court erroneously dismissed Petitioner's cause of action without accepting the factors involved herein (Covid-19 Epidemic), that may have been and was a factor in his mail being delayed causing said same to arrive at irregular times; were it not for said epidemic such mailing would not have been late and the court committed error in not taking such account(s) into consideration?

4) Whether Petitioner's issues are of constitutional magnitude claiming violation by the defendants and should never have been denied or dismissed as said claims are cognizable by statutory and constitutional law, and Petitioner requests this Court grant his Writ of Certiorari and such other and further relief as deemed appropriate and proper within its jurisdiction?

5) Whether the District Court committed irreversible error and abuse of discretion and powers when it failed, refused, or ignored to rule on Petitioner's issues against the named Defendants in their individual capacities?

6) Whether constitutional provisions in state law which mandates certain procedures be followed but are not followed and are ignored, although requests are made to state authorities to follow said procedures upon which state and federal constitutional rights are violated, constitutes denial, abrogation and violation of state procedure and personal constitutional rights of an individual?



## **I. PETITION FOR WRIT OF CERTIORARI**

Richard Ralph Martinez petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit, seeking a reversal of said judgment.

## **II. OPINIONS BELOW**

The Tenth Circuit's Order and Judgment affirming the decision of the District Court is attached as Appendix 1. The District Court's Final Judgment dismissing Petitioner's Civil Complaint without prejudice is attached as Appendix 2.

## **III. JURISDICTION**

The Tenth Circuit entered judgment on February 24, 2023. See Appendix 1. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. 1254(1).

## **IV. STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED**

This case involves the relationship between 42 U.S.C. 1983, the primary avenue for collateral review of federal civil judgments, and Fed. R. Civ. P. 60(b), which authorizes a district court to grant relief from a final judgment in a civil case on equitable grounds.

The Constitutional provisions involved are the U.S. Constitution, 8th, 11th, 13th and 14th Amendments in which violations of these amendments are alleged.

## **V. STATEMENT OF THE CASE**

### **A. Introduction:**

This petition arises from an effort by Petitioner who was sentenced to life imprisonment for first degree murder that occurred on or about December 1979, wherein he was tried May 19 and 20, and sentenced on May 21, 1980, and thereafter while serving his sentence was advised he was to serve thirty (30) years before appearing before the parole board, however, during service of his sentence the case of Devine v. New Mexico Department of Corrections, 866 F.2d 339 (C.A.10 1989), was ruled upon and Petitioner's

sentence was thereafter resolved where he was to serve ten (10) years to appear before the parole board wherein he did serve said time and released on parole, however, he was returned upon violation of his parole and thereafter released again but, because Petitioner was unable to properly serve his parole in the State of New Mexico, on December of 2006, he was released to his home in New York City wherein he served his parole period.

During his parole period, Petitioner wrote to the New Mexico Governor, **Exhibit A**, and Parole Chairperson, **Exhibit B**, on December 30, 2009. Thereafter, on December 27, 2013, **Exhibit C**, Petitioner again wrote to the Governor and Parole Chairperson in regards to his being discharged of his parole period, and thereafter, on June 12, 2016, the Governor and Parole Chairperson were written another letter in regard to parole discharge **Exhibit D**, however, neither responded to all of Petitioner's letters/requests which were completely ignored by both individuals as none of Petitioner's requests were responded to and were ignored continually by the named individuals.

In a final attempt to connect and/or discuss the matter with the Governor and Parole Chairperson, Petitioner wrote a final letter regarding the matter and trying to resolve it amicably and without any type of civil action see **Exhibit E**, but, as usual, was ignored by said individuals. It has been a very difficult and trying matter to make every attempt to request assistance in every kind of way from the Governor and Parole Chairperson to receive discharge from parole but, to no avail, neither individual responded or assisted in any way, shape or form to help Petitioner discharge his parole period under the laws of New Mexico.

On or after September 27, 2016, the Petitioner filed a Habeas Corpus Petition in the Sentencing Court in regards to his parole discharge and the mandatory language regarding his illegal parole period, **Exhibit F**, wherein under the indeterminate parole laws he should have been discharged from his parole after service of two (2) years on parole and, in addition, pursuant to the determinate laws he should have been discharged from his parole after service of five (5) years on parole in which the sentencing court granted his Habeas Corpus Petition with an Amended Judgment and Sentence, **Exhibit G**, although it mistakenly states ten (10) years as the limit of service on parole, and he thereafter was granted parole discharge **Exhibit H**, after March 15, 2019.

Over the past few years the Petitioner has filed a 1983 civil suit and appealed in the Tenth Circuit several times wherein he has filed in defendants official capacity and their individual capacity, however, Petitioner has made his claims that his civil action has been dismissed and/or not

pursued because said actions are against state officials, and he has spent over two (2) years going back and forth with both jurisdictional courts doing his best, however, he has been unable to receive counsel assistance in the matter(s) so he has remained pro-se and continues to file pro-se.

Petitioner was released on parole in December 21, 2006 and he remained on parole until March 15, 2019, where he was finally discharged therefrom based on the Sentencing Court Amended Judgment (Exhibits G and H) upon his filing of his habeas corpus petition.

## **B. INDETERMINATE LAWS ON PAROLE AND DISCHARGE:**

Prior to February 22, 1980, New Mexico's criminal statutes employed procedures known as Indeterminate Laws of N.M.S.A. 41-17-24 (1976) **Exhibit I**, wherein an individual serves ten (10) years before seeing the parole board and upon release serves a minimum of (two (2) years on parole, N.M.S.A. 31-21-10) one year to be mandatorily discharged therefrom, in addition the law further holds that the board "shall" make a final order of discharge and issue a certificate of discharge pursuant to N.M.S.A. 41-17-30 (1953). Furthermore and pursuant to New Mexico Rules of Construction the word shall is mandatory, however, the leading case is *Devine v. N.M. Department of Corrections*, 866 F.2d 339 (10 Cir. 1989), which applied to Petitioner serving an indeterminate sentence and parole period.

Under the indeterminate laws, everything basically applied to Petitioner, beginning with the amount of time to be served before appearing to see the Parole Board, and release from incarceration thereafter, except for the period of parole to be served in regard to discharge therefrom, which was ignored by the parole board and other state officials even after Petitioner had mailed letters requesting his discharge. Had the indeterminate parole laws been applied to Petitioner his parole period would have "mandatorily" ended on or about December 21, 2008.

## **C. DETERMINATE LAWS ON PAROLE AND DISCHARGE:**

The determinate laws on a life sentence was effective on or after February 22, 1980, N.M.S.A. 31-21-10, which requires an inmate to serve a mandatory thirty (30) years in prison prior to appearing before the parole board, and upon release to undergo a mandatory five (5) year period on parole, and upon completion of said five years to be mandatorily discharged from said parole period thereby being relieved from said conviction, of which said laws do not apply to Petitioner based on both statutory law and *Devine*, supra., however, had said law been made to apply to Petitioner's parole

period he would have mandatorily discharged his parole period on or about December 21, 2011. See, Exhibit J

#### **D. APPLICABILITY OF LAWS UPON PETITIONER'S SENTENCE, PAROLE PERIOD AND DISCHARGE:**

Although Petitioner's crime was allegedly committed on or about the end of December 1979, it was determined that the indeterminate laws of New Mexico pursuant to Devine, supra., applied to his crime including the parole period under the indeterminate laws making it two (2) years which, based on use of the word shall making said laws mandatory pursuant to N.M.S.A. Rules of Construction, 1978, 12-2-2(I) wherein it states in part that "the words shall and will are mandatory and the word may is permissive or directive." Therefore, indeterminately, Petitioner's discharge was on 2008.

However, because the state initially disregarded Petitioner's continued requests for his discharge from parole, pursuant to the determinate laws where parole is five (5) years and use of the word shall therein pursuant to N.M.S.A. 2011, 12-2A-4(A) wherein it states that "Shall" and "Must" express a duty, obligation, requirement or condition precedent. Irregardless, under both the indeterminate and determinate laws of New Mexico on Parole Authority and Procedure they both state in part that "When a person on parole has performed the obligations of his release for the period of parole provided...the board 'SHALL' make a final order of discharge and issue him a certificate of discharge."

Furthermore, 1977 N.M. Laws, Ch. 216 states that: "The Court shall include in the judgment and basic sentence...authority for a period of parole to be served in accordance with law...The period of parole shall be deemed part of the sentence of the convicted person." It is further alleged by Petitioner that the Sentencing Court, in violating and not following this law, further violated Petitioner's constitutional rights to due process under the Eleventh and Fourteenth Amendments; wherein Petitioner filed for said relief (Exhibit F) and, and amended Judgment, Sentence and Commitment was ordered/issued by the Sentencing Court (Exhibit G) and he was finally discharged from his illegal parole period on March 15, 2019.

#### **VI. REASONS FOR GRANTING THE WRIT**

a) On January 10, 2020, Petitioner mailed a 42 U.S.C. 1983 petition to the U.S. District Court of New Mexico and free process with proof of finances which was received and filed January 16, assigned to Judge Laura Fashing,

however, on said date the Court issued an order to Cure Deficiency attaching a Free Process Application stating that the short form application does not provide sufficient information for the court to determine whether a plaintiff is unable to pay the required fees, however, the long form contains basically the same questions as the short form submitted to the court only worded differently and petitioner submitted the same proof of finances which the court filed February 3, 2020.

b) On February 13, 2020, the District Court granted free process but issued a show cause order granting Petitioner opportunity to file an amended complaint based on its judgment that: "Plaintiff does not state with any particularity what each defendant did to Plaintiff," further holding that: "To state a claim in federal court, a complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant's action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated," citing *Nasious v. Two Unknown B.I.C.E. Agents*, at Arapahoe County Justice Center, 492 F.3d 1158, 1163 (10th Cir. 2007). In addition, the Court ordered Plaintiff to file a "motion for service which includes the address of each defendant, because Plaintiff has not provided the Defendants addresses."

c) On February 27, 2020, Martinez forwarded his amended complaint and Motion For Service with the Defendants' addresses, received and filed by the court on March 4, 2020, and thereafter on March 16, 2020, the case was assigned to Judge Martha Vazquez who, on March 31, 2020, dismissed the suit without prejudice based primarily on Defendants' official capacity, however, the court ignored the individual capacity portion of the suit or the failure and illegality to follow mandatory statutory laws even after Plaintiff requested the defendants to issue his discharge and follow the laws, and on April 29, 2020, Martinez filed his Notice of Appeal to the District Court, which was received and filed on May 7, 2020, of which said date the Tenth Circuit Court of Appeals docketed the Appeal assigning a case number.

d) On May 12, 2020, Petitioner filed his Docketing Statement, Motion for Free Process, Pro-Se Entry of Appearance, and Transcript Order Form to the Tenth Circuit Court of Appeals, however, on said same date it was alleged that the Court issued an order that: "Mr. Martinez shall file a memorandum brief addressing whether he can establish timely filing of the Notice of Appeal," however, such was never received until a later date but, then on May 18, 2020, Petitioner mailed his Appellant's Opening Brief received and filed by the District Court on May 21, 2020.

e) On May 27, 2020, the Court of Appeals issued an order that

Petitioner address timely filing of his Notice of Appeal, which Petitioner received on June 2, 2020, and, in his response addressed/pleaded on the issue of the Covid-19 Pandemic as being a factor for the mail being timely/untimely, and again on June 9, 2020, the Court issued a second similar order in which Petitioner responded to said order on or by July 8, 2020, to which said response was mailed on June 27, 2020, and on July 6, 2020, the Court of Appeals dismissed the case.

f) On July 16, 2020, Petitioner, based on the dismissal without prejudice by the District Court, filed another 42 U.S.C. 1983 complaint in the defendants' individual capacities, since the suit was dismissed without prejudice based on official capacity.

g) Each and every pleading and decision up to and including the final judgment leading up to the instant review before this Court (See, Appendix 1) is alleged as wrongfully issued and ruled on by the lower courts and as Petitioner feels and alleges that said decisions, rulings and further judgments by said courts is because the action(s) is made against state officials, in addition to the fact that Petitioner has tried and was unable to retrieve, receive or have any type of counsel represent him or assist him in the actions against the state officials herein in addition to the fact that the courts would not assist him in this regard.

h) Furthermore, the action(s) filed alleges deprivation of rights, privileges and immunities secured by the 8th, 11th, 13th and 14th Amendments, in addition to violation of 28, U.S.C. 1343, 1331 and 1986, and that during such time Petitioner was on parole, he wrote to the Governor and Parole Chairman several times requesting to be discharged from parole as mandated by statutes, that he was entitled to discharge after serving two (2) years on parole under the indeterminate laws applicable to him or, if the determinate laws were being applied to be discharged after five (5) years of parole, but neither state official responded, acknowledged, accepted or denied his repeated requests for discharge and was thus made to serve an illegal parole in violation of the laws denying him constitutional rights and privileges, he could not receive employment, suffered loss of all his personal property, home pets and a legal medical support dog and, had the defendants responded to Petitioner's requests for discharge from his parole when he should have been mandatorily discharged he would not have suffered any losses at all, and he sought damages in Defendants' official and individual capacities.

i) The Courts' reasoning(s) for dismissing Petitioner's complaints and the citation used (Nasious v. Two Unknown B.I.C.E. Agents, supra.) is alleged

as misplaced because Petitioner did (1) state what Defendants did or didn't do; (2) when they did/didn't do the same; (3) how their actions/inactions harmed the Petitioner; and (4) what specific legal right(s) Petitioner believed the Defendants' violated and the case should not have been dismissed but continued based on Defendants' individual capacity.

j) The decisions of the Courts' and Court of Appeals dismissal of the action(s) additionally based on time limitations should not have been a consideration or justification for denying and/or dismissing Petitioner's appeals as he pleaded with the Court additionally about the Covid-19 situation among other factors including official court filing stamp and timeliness/delay of various filings based on the virus, but his actions was nevertheless ignored and dismissed. It is Petitioner's further contention that because the action filed was against state servants, he alleges taint and prejudice as all the officials therein know each other and one another and the various decisions against Petitioner creates/created a presumption of prejudice against him, based on the manners in which the Courts' made their rulings, decisions and continued in attempts to dissuade Petitioner from continuing with his civil action as it is alleged.

k) In addition, Petitioner had parole officers at the Bronx Parole Office in 79 Alexander Avenue call New Mexico Authorities between 2009 and 2015, to determine and ask about his discharge in which said requests were ignored, non-responsive and even though the Bronx Parole Officers made several requests there was nothing done in regard to said requests.

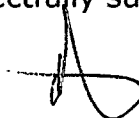
## **VII. CONCLUSION AND PRAYER FOR RELIEF**

For the foregoing reasons, Petitioner respectfully prays and requests that this Court issue its Writ of Certiorari to review the judgment of the Tenth Circuit Court of Appeals, and any further relief just and proper, and reverse and remand the case for further proceedings within the purview of Defendants' individual capacities (and, if applicable or reasonable in their official capacity as well) and including any further relief applicable within its jurisdiction.

Dated this 6<sup>th</sup> day of April, 2023

Respectfully submitted,

7





Richard Ralph Martinez  
Petitioner Pro-Se  
1908 Amethyst St. Apt. 3R  
Bronx, New York 10462  
(347)880-4528  
rmartinez04953@gmail.com