No. 23-6076

IN THE

SUPREME COURT OF THE UNITED STATES

TIMOTHY R. PEDRAZA PRO SE — PETITIONER
(Your Name)

vs.

BOBBY LUMPKIN, TDCJ DIRECTOR — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TIMOTHY RICARDO PEDRAZA
(Your Name)

Ramsey One Unit; 1100 FM 655
(Address)

Rosharon, Texas 77583
(City, State, Zip Code)

(281) 595-3491
(Phone Number)

QUESTION(S) PRESENTED

1. The question is whether a State or US Court of Appeals abused its discretion and/or committed plain error for a misapplication of state law (statute); and/or whether the State or US Court of Appeals has decided an important question of federal law that has not been but should be settled by this Court?

2. The question is whether petitioner has an entitled liberty interest in his release to a mandated statute release, whether the statute at issue-i.e. 508.145(d) as petitioner reads it, a contract on how petitioner is to earn his eligibility for release on parole, more importantly, whether that release to parole is governed by the statute alone or a parole panel review process that petitioner is mandated not to be considered for?

3. The question is whether Texas violates petitioner's U.S. Constitutional Right to Due Process of Law by NOT honoring trial court's judge and petitioner plea agreement, [which] is governed under 508.145(d)?

4. The question is whether Texas law and TDCJ Rules LANGUAGE is plain and clear to the fact that petitioner must do ONE-Half of his sentence in order for his eligibility to parole constitute an liberty interest, **or does** the Court's interpretation adequately follows the laws, statutes, and TDCJ rules where as (BPP) "overreach" of authority to deny parole when there is no other avenue for release other then a serve all?

LIST OF PARTIES

[x] 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:

TABLE OF CONTENTS

INDEX TO APPENDICES

APPENDIX I **ORDER** from United States District Court Northern District of Texas Fort Worth Division, ordering Respondent to supplement its answer, addressing the **substantive merits** of Head's claims.

APPENDIX J Correspondence letter to Larry Gill from (BPP) PO IV Official, Fernando Barrera, conceding that the Board **does not determine** eligibility when governed under 508. 145(d).

APPENDIX K **Notice** of parole panel decision denying Pedraza's release based on [DMS] and [MS] formulas in 2017.

APPENDIX L **Notice** of parole panel decision denying Pedraza's release based on [DMS] and [MS] formulas in 2020.

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

STATUTES AND RULES

OTHER

CASES **PAGE NUMBER**

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

[X] 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,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits 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 _____ 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.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was June 14, 2023.

[x] 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

The following constitutional and statutory provisions are involved in this case.

U.S. CONST., AMEND.V: No person shall be held to answer for a capital, or otherwise infamaous crime..., without due process of law.

U.S. CONST., AMEND.XIV: ... No State shall... deprive any person of life, liberty, or property, without due process of law.

28 U.S.C. §2253(c)(2): A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

VERNON'S TEXAS GOVERNMENT CODE ANNOTATED §508.145(d): ... Is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years.

VERNON'S TEXAS STATUTES ANN. ART. 42.01: A judgment is the written declaration of the court signed by the trial judge..., The sentence served shall be based on the information contained in the judgment.

VERNON'S TEXAS STATUTES ANN. ART. 42.02: The sentence is that part of the judgment, or order revoking a suspension of the imposition of a sentence,...

TDCJ-OFFENDER ORIENTATION HANDBOOK STATUTE (f.) pg. 81. Rev. 2017: Sentences for offenses occurring on or after 9-1-96 will not be approved for release on mandatory supervision if a parole panel determines that the release would endanger the public. These are known as disscretionary mandatory supervision or house bill 1433 cases.

TDCJ-OFFENDER ORIENTATION HANDBOOK STATUTE (g.) pg. 81. Rev. 2017: Sentences for offenses occurring on or after 9-1-96 shall not be considered for mandatory supervision or discretionary mandatory supervision if the offender has ever been convicted of:..., Murder 1st degree.

STATEMENT OF THE CASE

COMES NOW, TIMOTHY R. PEDRAZA, Petitioner hereinafter, (Pedraza), in this Petition For Writ of Certiorari, and shows the court the following:

Pedraza was convicted of murder upon his bargained guilty plea. He was sentenced to 25 years to serve on November 20, 2006. Pedraza was credited for his jail time, therefore his sentence begin on June 1st, 2005. Pedraza, entered into an agreement, via Plea Bargain Agreement through the 49th District Court of Webb County, with the State of Texas. Pedraza pled guilty in exchange for his sentence of 25 years and under the State's **"Aggravated Law", Sec. 508.145(d)** of the Government Code, the agreement governed by the State's Texas Code of Criminal Procedure §42.01: states...,

> "A judgment is the written declaration of the court signed by a trial judge and entered of record showing the conviction or acquittal of the defendant. **The sentence shall be based on the information contained in the judgment."**

and §42.02: states..., "Sentence is that part of the judgment, or order revoking a suspension of the imposition of a sentence, that the punishment be carried into excution **in a manner prescribed by law."**

Pedraza of the understanding from his lawyer, prosecutor at trial, and law governing his sentence, he was to serve One-Half of his sentence to be released to the **supervision of the parole board for the remainder of the sentence.**

Pedraza entered into this contract with the State believing that the State would abide by the contract as understood in law, "Black Law Dictionary, 11th Edition, (Bryan A. Garner, 2019-Thomas Reuters;

CONTRACT:n. (14c)l. An agreement between two or more parties creating obligations that are enforcable or otherwise recognizable at law.

The law of Gov' Code §508.145(d) is clear as it works in conjunction with the statutes provided to inmates for understanding how the law is to work toward their release from prison, the only definitive evidence as to what TDCJ wanted inmates to understand and know when establishing and publishing it's TDCJ-Offender Orientation Handbook, which guides the behavior of inmates as well as determines the award they are expected to receive for such behavior and work in exchange for the agreement and compliance to that agreement. Id. at TDCJ-Handbook, rev.2017, pg. 81 (g.) giving Pedraza clear understanding that he **would not by statute, be subject to Discretionary Mandatory Supervision or Mandatory Supervision formulas** and thus, could only rely on TDCJ, not a parole panel review process, governing and releasing him from prison **after** he had met the requirements of the statute. Id. at 508.145(d); TDCJ-Handbook, pg. 81 (g.) rev. 2017.

STATUTES AT ISSUE

Vernon's Texas Statutes Annotated, Government Code §508.145(d):

> "An inmate serving a sentence for an offense described by Section 3g(a)(l)(A),(C),(D),(E),(F),(G),(H),(I),(J), or (K), article 42.12, Code of Criminal Procedure, or for an offense for which the judgment contains an affirmative finding under section 3g(a)(2) of that article, or for an offense under Section 20A.03 Penal Code, is **NOT ELIGIBLE FOR RELEASE ON PAROLE UNTIL THE INMATE'S ACTUAL CALENDAR TIME SERVED, WITHOUT CONSIDERATION OF GOOD CONDUCT TIME, EQUALS ONE-HALF OF THE SENTENCE OR 30 YEARS WHICHEVER IS LESS**, but in no event is the inmate eligible for release on PAROLE IN LESS THAN TWO YEARS." Id. (emphasis added)

Texas Department of Criminal Justice-Offender Orientation Hand-Book, pg.81(**f&g**) rev. 2017, (HANDBOOK):

(f.) "Sentences for offenses occurring on or after 9-1-96 WILL NOT BE APPROVED FOR RELEASE ON MANDATORY SUPERVISION if a PAROLE PANEL determines that the release would endanger the public. These are known as "DISCRETIONARY MANDATORY SUPERVISION or House Bill 1433 cases."

(g.) "Sentences for offenses **occurring on or after 9-1-96 shall not be considered for Mandatory supervision or Discretionary Mandatory Supervision if the offender has ever been convicted of:** Capital Murder, Aggravated Kidnapping, Aggravated Sexual Assault (including Aggravated Sexual Abuse and Aggravated Rape), Aggravated Robbery, any offense with an affirmative finding of a deadly weapon, Murder 1st Degree, Sexual Assault 2nd Degree (including Sexual Abuse and Rape), Aggravated Assault (1st and 2nd Degree), injury to a Child or Elderly 1st Degree, Arson 1st Degree, Robbery 2nd Degree, Drug Free Zone offense, injury to Disabled Individual, Burglary 1st Degree, Use of Child in Commission of offense.

Pedraza shows that by his 'charge','date of offense', and 'deadly weapon finding', he is governed by 508.145 and Handbook, (g.) and is **NOT TO BE CONSIDERED** UNDER HANDBOOK, (f.), formula of House Bill 1433 cases-also known as "Discretionary Mandatory Supervision,"(DMS), a statute that is specific to a Parole Panel Review ONLY category. Id. at TDCJ-Handbook pg.81(f.) rev.2017.

Statute 508.145 is to be construed in conjunction with Handbook(g.) statute as held in Boykin v. State, 818 S.W.2d 782, 785 (Tex.Crim.App.1991), which states..."The Statutory text is the only definitive evidence of what the legislators intended when the statute was enacted into law." See Coit v-State, 808 S.W 2d 473,475 (Tex.Crim.App.1991) (holding that where the statute is clear and unambigous, the legislature must be understood to mean what it has expressed, and it

is not for the courts to add or subtract from such a statute), quoting Ex parte Davis, 412 S.W.2d 46,52 (Tex.Crim.App.1967); also see Texas Dept. of Public Safety v. Story, 65 S.W.3d 675 (Tex.App. Waco 1999), review granted, vacated 51 S.W.3d 296. on remand, 115 S.W.3d 588. (holding "All statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it, and they are therefore to be construed in connection and in harmony with the existing law, and as a part of a general and uniform system of jurisprudence, and their meaning and effect is to be determined in connection, not only with the common law and the constitution, but also with reference to other statutes and the decsion of the courts."

Pedraza argues that the statutes at issue are clear that the intention of the legislators was to have Pedraza do more time to his sentence in **FLAT CALENDAR TIME**, the only reason for enacting the law. Id. 508.145. The statute did accomplish it's goal, Pedraza served Flat Calendar Time to Half of his sentence, 12½ years Flat, and specifically, "without the consideration of his good conduct time being applied to his eligibility to release to parole, also **not** to be seen by a parole panel for that determination of release. The conditions of the statute as enacted were to understandably have Pedraza, since he was within the category determined by the statute, listed under aggravated crime and, thus, subject to TDCJ-Handbook (g.) pg.81 and, the only way he was placed under the State's 508.145(d), was a **predetermined set of conditions** that were governed by the **statute alone**, such as: (1. the charge offense of murder listed in (g.) of the TDCJ Handbook, and listed as 3g offense governed by 508.145(d), (2. Pedraza is forced by

charge as listed in both statutes, to forfeit privilege of having his Good Conduct Time applied to his release and could only rely on the Flat Calendar Time category provided in the statute(s) to govern his release, a clear modification to the Mandatory Supervision formula that allows inmates benefit of their good conduct time determining an earlier release to parole in combined Good Conduct time plus Flat Calendar time to establish release requirements, (3. Pedraza is also forced by statute alone, from subject of Discretionary Mandatory Supervision formula and could not look to a PAROLE PANEL REVIEW ONLY CATEGORY to determine when he would be seen by a parole panel for release, nor does the statutes suggest that the parole panel in any manner be the releasing agent under any set of conditions of the statute. Id. at 145(d).

Pedraza argues the statute 508.145(d),(145), conveys a clear and unambigious understanding that, in conjunction with the TDCJ statute, TDCJ-Offender Orientation Handbook, pg.81(g.), he was to understand that the statutes, mandated his "eligibility to release to parole", when he satisfied the enumerated factors; (1. served one-half of his sentence, in Flat Calendar Time, (2. "without consideration of his Good Conduct Time being factored into that determination, thus, absent the definitive language authorizing a non-eligibility determined by an appointed agent, the statute(s) alone authorized the "eligibility" to release on parole, NOT TDCJ OR A PAROLE PANEL. Id. at 508,145(d), see also Handbook, pg.81 (g.).

Pedraza's offense is governed under state statute §508.145(d), in conjunction with TDCJ-Handbook pg.81 (g.) statute, which mandates Pedraza's release after he had served one-half of his 25 year sentence. Pedraza met all criteria of the Statute(s), and expected to be release on December 1. 2017, to the Supervision of Parole for the remainder of his sentence.

The lower courts of Texas denial of due process where it DOES NOT construe 508.145(d) according to the principles established in law, and as such, deprives Pedraza of a process due him and his claim(s), both violate his right to be protected in the adjudication of his release/liberty, and violate the State's and 'Pedraza's agreement at trial', agreement under law, and the Statute governing Pedraza serving his sentence as to trial court judge's order of judgment. Id. at 508.145(d).

PROCEEDINGS THAT TOOK PLACE IN THE LOWER COURTS

1) On or about August 30, 2021, petitioner filed his application for a writ of habeas corpus, in the District Court, 406th Judicial District Webb County, Texas.

2) On or about August 31,2021, State filed response to the Application for a writ of Habeas corpus. See Appendix F

3) Petitioner filed a timely "Motion to Object" to the trial court's response.

4) On or about October 7, 2021, State filed a Proposed Order After Hearing, denying Motion to Object and recommended that Petitioner's writ of habeas corpus application be denied. See Appendix G

5) On or about October 21, 2021, Court of Criminal Appeals of Texas dismissed petitioner's "MOTION TO OBJECT TO STATE'S RESPONSE TO THE APPLICATION FOR A WRIT OF HABEAS CORPUS". See Appendix E

6) On or about April 06, 2022, Court of Criminal Appeals of Texas **ordered** State Trial Court's district clerk to forward reporter's record from hearing on October 7, 2021. See Appendix H

7) On or about May 4, 2022, Court of Criminal Appeals of Texas denied Petitioner's application for writ of habeas corpus without written order. See Appendix D

8) Petitioner filed his 28 U.S.C. § 2254 petition for habeas relief within the United States District Court Southern District Of Texas, Laredo Division.

9) On or about January 11, 2023, Southern District of Texas Laredo Division, DENIED Petitioner's §2254 petition and a certificate of appealability. See Appendix B

10) Petitioner filed a "Notice of Appeal", application to proceed in forma pauperis, and a Certificate of Appealability within the United States District Court Southern District of Texas, Laredo Division, to the United States Court of Appeals, Fifth Circuit.

11) On or about March 7, 2023, Southern District of Texas Laredo Division DENIED petitioner's application to proceed (IFP). See Appendix C

12) On or about June 14, 2023, United States Court of Appeals for the Fifth Circuit DENIED petitioner's COA motion and motion for leave to proceed (IFP). See Appendix. A.

REASONS FOR GRANTING THE PETITION

I. THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT MISAPPLICATION OF THE PREJUDICE STANDARD OF SLACK V. MCDANIEL WARRANT'S THIS COURT'S ATTENTION.

The petitioner, Timothy R. Pedraza in PRO SE, in necessity, and hereby MOVES this Court to ISSUE a writ of certiorari for the reasons listed herein:

1) The petitioner hereby argues that the United States Court of Appeals for the Fifth Circuit abuses its discretion and/or commits PLAIN ERROR by misapplying Federal Habeas Rules to Petitioner claim(s) and depriving a citizen of his Constitutional Rights to Due Process of Law. The Fifth Circuit denied Petitioner's application for (COA), based on the grounds that petitioner has not made a substantial showing of a denial of a constitutional right and petitioner has not made the requisite showing that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong, afterwards, cited Slack v. McDaniel, 529 U.S. 473, 484, (2002). See Appendix A. Fifth Circuit also denied Petitioner's motion for leave to proceed in forma pauperis on appeal,(IFP).

The Fifth Circuit Court's decision was erroneous, and as a result abused its discretion by misapplying the law to undisputed facts. "A petitioner is entitled to a certificate of appealability if he makes a substantial showing of the denial of a constitutional right," 28 U.S.C. §2253(c)(2). The U.S. Supreme Court in Barefoot v. Estelle, 463 U.S. 880, 893 (1983), held this means that the

appellant need not show that he would prevail on the merits, but must "demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issue [in a different manner]; or that the questions are 'adequate to deserve encouragement to proceed further.' [Citations omitted]." See Flieger v. Delo. 16 F.3d 878, 883 (8th Cir. 1994).

Petitioner was prejudiced by the Fifth Circuit Court by applying **incorrect law principles** to the facts of petitioner's "Due Process Constitutional Claim(s)". The Court's adjudication on the merits "resulted in a decision that was contrary to, or involved an unreasonable application of, cleary established federal law, as determined by the Supreme Court of the United States," The United States Supreme Court interpreted that language in Williams (Terry) v. Taylor, 529 U.S. 362 (2000).

The Fifth Circuit Court adjudicated petitioner constitutional "Due Process" claim(s) based on the prejudice standards set forth in Slack v. McDaniel Id. Petitioner is challenging the specific fact finding of the Fifth Circuit and argues that the findings was not supported by factually or legally sufficient evidence. To the contrary, petitioner presented factually and legally sufficient evidence supporting a **substantial showing** of the denial of a constitutional right; such evidence resides in 508.145(d) itself acting in conjunction with the State's TDCJ-Offender Handbook, pg.81(g.). The Court of Criminal Appeals (CCA) in Boykin v. State 818 S.W.2d. 782,785 **explicitly state:** "The statutory text is the only **definitive evidence** of what the legislators intended when the statute was enacted into law." See Coit v. State. Id, also Texas Dept. of Public Safety v. Story. Id.

2) The Fifth Circuit Court further abuses it discretion and error by "adopting" the Southern District of Texas fact finding and conclusion of law, resulting in a misapplication of federal law. See Slack v. McDaniel Id. The Fifth Circuit Court stated:

> "An applicant must show "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack, 529 U.S. at 484. Pedraza has not made the requisite showing." See Appendix A

Petitioner disagrees with the Fifth Circuit decision because he presented record proof/exhibits as evidence to support his claim(s) to the Fifth Circuit in his (COA) Motion disputing the assessment of the Southern District fact finding and conclusion of law. Another Federal Judge from the Northern District of Texas, Mark T. Pittman assessment pertaining to the same issue at hand, ie. 508.145(d), and State of Texas Board of Pardons and Paroles PO IV. Official, Fernando Barrera **[both] whom Trmster of the State** have **different analyses then the Fifth Circuit Court and Southern District Court.**

Petitioner is similar situated liken unto Larry Gill and Jonathan T. Head. **"ALL"** three prisoners are Governed under 508.145(d), because of the nature of their offenses. The Northern District of Texas Forth Worth Division District Judge reviewed Jonathan T. Head petition, then after **order** the State of Texas to supplement its answer, **addressing the substantive merits** of Head's claims. Head petition is based on the same claims as Petitioner's **claim(s). Statute 508.145(d) governs their release.** See Appendix I. The State of Texas Board of Pardons and Parole (BPP), PO IV. Official

Fernando Barrera responded back to Larry Gill correspondence pertaining to 508.145(d), and acknowledge that the (BPP) **does not determine eligibility**, as that is strictly a determination made by the TDCJ Records and Classification Office, See Appendix J.

Petitioner was prejudiced by the Fifth Circuit Court of Appeals and the Southern District of Texas Laredo Division by entering a decision in conflict with the decision of another United States Court of appeals on the same important matter. ie. statute 508.145(d),

The Northern District of Texas Fort Worth Division in Jonathan T. Head petition, CIV, ACTION NO. 4:21-CV-1304-P, reviewed Head's petition and the administrative record and **concluded** that Head's claims has **substantive merits.** See Appendix I. Petitioner is similar situated liken unto Head and governed under the same statute ie. 508.145(d), but the Southern District Court's decision and assessment is substantially different from that of the Northern District Court's decision and assessment.

Petitioner argues and believes [if] two different federal Court judges in the United States District Court **construing** the same STATUTE ie.508.145(d) **differently** whom both is well advance with the knowledge and understanding of the law, surely petitioner has shown and demonstrated with **facts** that the issue are debatable among jurists of reason; that a court could resolve the issue [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further. See Barefoot Id. and Flieger Id.

The Fifth Circuit Court's determination was unreasonable and contrary to the **facts** in light of the record. "A federal court may grant relief if the state court adjudicated a constitutional claim contrary to, or unreasonably applied clearly established federal law as determined by the Supreme Court." See Harrington v. Richter, 562 U,S. 86, 100-01 (2011) (citing (Terry) Williams v. Taylor, 529 U.S. 362, 412 (2002)).

Petitioner shows by clear and convincing evidence that he **satisfied** the prejudiced standard of Slack v. McDaniel, thus resulting in the Court's abusing its discretion by misapplying the law to undisputed facts, the records does not reasonably support it's findings, therefore the Court's acted arbitrarily or unreasonably. See Charlie Thomas Courtesy Leasing Inc. v. Taylor 44 S.W.3d at 684 (Tex.App.San Antonio 2002). Petitioner argues and believes that he was entitled to a (COA) from the Fifth Circuit Court because he made a "substantial showing of the denial of a constitutional right, jurists of reason would find it debatable whether the grounds of his petition at issue states a valid claim of a constitutional right, and reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. See Slack v. McDaniel Id. Any doubt as to whether (COA) should issue must be resolved in petitioner's favor. Fuller v. Johnson, 114 F.3d 491,495 (5th Cir.1997), also see Buxton v. Collins, 925 F.2d 816,819 (5th Cir. 1991).

Therefore, a writ of certiorari is required by this Honorable Supreme Court and specifics drawn in Petitioner's Questions he presented to the Fifth Circuit and Southern District of Texas Courts, as to (1) whether Pedraza has an entitled liberty interest in his release to a mandated statute release, (2) whether the statute at issue, ie. 508.145(d) is as Pedraza reads it, a contract on how Pedraza is to earn his eligibility to release on parole, (3) more importantly, whether Peraza's release to parole is govern by statute or a parole panel review process [which] Pedraza is mandated "not to be considered for".

The issues listen herein [is sufficient] as to why this Court should exercise sound judicial discretion and grant petitoner's writ of certiorari. Petitioner has put forth compelling reasons and shows with clear and convincing evidence, that the decision of the Fifth Circuit and Southern District of Texas Courts was erroneous; also the Courts decision is in conflict with the decision of the Northern District of Texas on the same important matter. See Appendix I. Petitioner asserts that his case is **very important**, not only to him, but to others who is similar situated. The National importance of having the Supreme Court decide the Question(s) involved pertaining to Statute 508.145(d) is paramount because anytime there is a dispute or disagreement involving a state statue, it needs to be resolved by this court according to law.

II. THE DECISION OF THE SOUTHERN DISTRICT OF TEXAS IS IN CONFLICT WITH THE NORTHERN DISTRICT OF TEXAS PERTAINING TO THE CONSTRUING OF THE LANGUAGE INSIDE STATE STATUTE 508.145(d), WARRANT'S THIS COURT'S ATTENTION.

The State of Texas Violates Petitioner's U.S. Constitutional Right to Due Process of Law by **NOT HONORING** Vernon's Texas Government Code §508.145(d) that governs petitioner's release from prison and **Not a Parole Panel "Review" Process.** Petitioner was of the understanding from his lawyer, prosecutor at trial, and law governing his sentence, he was to serve One-Half of his sentence then be release to the supervision of the parole board for the remainder of the sentence. Petitioner entered into this contract with the State believing that the State would abide by the contract as understood in Law. "It is well established that plea agreements are contracts" See Santobello v. New York, 404 U.S. 257, 262-63 (1971).

Petitioner met all criteria of the statute, served One-Half of his sentence in flat calendar time, without consideration of good conduct time being applied, thus expected to be **release on parole** December 1. 2017.

The Southern District of Texas, "abused its discretion" and/ or commits plain error by "adopting" the trial court response, and the (CCA), decision to deny petitioner writ of habeas corpus without written order. See Appendix B. pg.3. The Southern District Stated..."Pedraza's due process rights were not violated when BPP denied him parole. Nor were they violated when the Texas trial court and Texas Court of Criminal Appeals denied his state writ."

"Trial Court's conclusion of law should be attacked on the ground that the law was incorrectly applied". See Heritage Resources, Inc. v. Hill 104 S.W.3d at 612 (Tex.App.El Paso 2003). The trial court applied "incorrect law principles to the facts" of petitioner due process claim(s). The trial court stated...,

> "However, Applicant overlooks the discretionary nature of parole. A defendant **does not** have a cognizable due process interest in mere consideration for release on parole..., He also **does not** accurately presents the contents of section 508.145(d). The **statute governs eligibility for parole, not release: See appendix F. pg. 2.**

Trial Court response resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States. See Williams (Terry) id. Trial Court stated..., "However, Applicant overlooks the **discretionary nature of parole**": **Statute 508.145 (d)** is explicit and specific in its language and how it is to be understood to be in conjunction with the TDCJ-Offender Orientation Handbook, pg.81 (g.) states: "Sentences for offenses occurring on or after 9-1-96 WILL NOT BE CONSIDERED FOR MANDATORY SUPERVISION OR DISCRETIONARY MANDATORY SUPERVISION **IF**, THE OFFENDER **HAS EVER BEEN CONVICTED OF; ie. "MURDER"**. see TDCJ-Handbook pg.81(g.) rev. 2017. Statute(s) language is clear and unambigous, and **mandated** that Pedraza's case **shall not be considered for mandatory supervision or discretionary mandatory supervision, an act explicitly excluding the parole panel from the review and release process.**

Trial Court further abuses its discretion and/or commits plain error by continuing to misapply incorrect law principles to the facts of Pedraza's due process claim(s) by stating..., "He also **does not** accurately present the contents of section 508.145(d) The statute governs **eligibility for parole, not release:**"**See Appendix F. pg.2.** The State misconstrued Sec. 508.145, the facts are clear of what the language of the statute states. The **Sub Heading clearly states:** ["Eligibility for release on parole;... **NOT** "Eligibility for parole, not release:] as the trial court suggested and applied. See Sub Heading Sec. 508.145. Therefore, the trial court is the actors who **does not** accurately present the contents of §508.145, resulting in a misapplication of law to undisputed facts, records does not reasonably support it's findings, therefore the Court's acted arbitrarily or unreasonably. See Charlie Thomas Courtesy Leasing Inc. Id.

The Trial Court, (CCA), Southern District of Texas, and the United States Court of Appeals Fifth Circuit **[ALL] abuses its discretion and/or commits plain error** by applying **the incorrect** law principles to his claim(s) and his situation under 508.145(d) language/text of the statute. Petitioner argues [ALL] COURTS at issue did not construe the 508.145(d) statute as established by the Waco Court in Texas Dept. of Public Safety Id., or the (CCA) own ruling in Boykin v. State Id. and Coit v. State Id. Specifically relying on the **statutes own text** to determine what the legislators intended the statute to relay to the reader governed by the law enacted at the time. Id.

[ALL] COURTS at issue piviting to law statutes that do not apply to petitioner's entitled release. Petitioner argues that even if the Statute **"only"** offers the eligibility as the State so confidently states, the eligibility being mandated by the statute. Statute 508.145(d) has no language inside of it assigning any agent, enumerated factors, or otherwise Non-eligibility application determining agency goverance, or default of the eligibility to release on parole. Further, the State fatally flaws where it strongly suggest that the statute provides TDCJ or the (BPP) goverance to DENY Petitioner's eligibility and/or release based on: (1. the past criminal history, (2. the nature of his crime. See Appendix K & L,'NOTICE OF PAROLE PANEL DECISION'. (BPP) is clearly applying DMS and MS formulas to Petitioner (handbook,TDCJ (f.),pg.81.rev.2017). Where as, petitioner is **forced by charge** as listed in both statutes, ie. 508.145(d) & TDCJ Handbook (g.), to forfeit privilege of having his good conduct time applied to his release and could only rely on the flat calendar time category provided in the statute to govern his release, a clear modification to the Mandatory Supervision formula that allows inmates benefit of their good conduct time plus flat calendar to establish release requirements. Therefore, petitioner is force by statute alone, from subject of Discretionary Mandatory Supervision formula **and** could not look to a PAROLE PANEL REVIEW ONLY category to determine when he would be seen by a parole panel for release, nor does the statutes suggest that the parole panel in any manner **be the releasing 'agent** under any set of conditions of the statute. Id. at 145(d), Id. at Handbook (g.).

__ Petitioner was furthered prejudiced by the Southern District of Texas Court of his due process rights when the Court applied their own incorrect law principles to the facts of Petitioner's claim(s).

The Court's stated..., "Additionally, "[a] state prisoner's liberty interest in parole is define by a state statute." Id. Texas law creates no liberty interest in parole. (emphasis added) See Appendix B.pg.2.

To the contrary of the Court's assessment pertaining to liberty interest in parole in the State of Texas. The State's own GEIKEN 28 S.W.3d 553-558 states:

> "Having determined that the procedures used by the Board are subject to judicail review, even though its decision is not, we now turn to next questions whether to release an eligible offender to mandatory provided sufficient procedural liberty interest created under the Statute. This is a two-step inquiry, First, we must decide if any liberty interest is created by the Texas Statute.., [9] as for the first question, the language of the statute does create a liberty interest." GEIKEN Id.

Court's assessment is clearly in conflict with the State's own holding in GEIKEN. A state prisoner liberty interest in parole is defined by state statute. See Bd of Pardons v. Allen, 482 US. 369,371, 107 S.Ct 2415 (1987). Court determined that a liberty interest in parole is created when state law provides an expectancy of parole by limiting official discretion to deny parole. Green Holtz Id., at 442 U.S. (1979).

The Court's assessment was contrary to, and unreasonably applied clearly established federal law as determined by the Supreme Court. See Harrington Id., (Terry) Williams Id.

Petitioner argues the Statute at issue 508.145(d), FIRST governs his release to parole, SECOND, the Statute sets the mandate on how he will be entitled to such eligibility to release on parole, THIRD, the statute sets the conditions entitling Petitioner to **expect** his eligibility and that eligibility is directed **ONLY** TO HIS RELEASE TO PAROLE, as instructed a construing of the statute under the set principles of law and court can only determine, since the statute at issue does not convey a NON-RELEASE to parole under a set of conditions enumerated in the text of the statute, the only take-away from the text and mandates of the statute is, it **specifically entitles an expectation of release after enumerated factors are triggered**, i.e. "ONE-HALF THE SENTENCE SERVED IN FLAT CALENDAR TIME AND WITHOUT CONSIDERATION OF GOOD CONDUCT TIME BEING APPLIED TO AN EARLIER "ELIGIBILITY" AND/OR "RELEASE TO PAROLE", the only **subject matter** of the statute. Id. at 508.145(d), the most important factor at issue is Statute 145 DOES NOT ENVOKE ANY SPECIFIC OR OTHERWISE INFERENCE TO PETITIONER BEING DENIED RELEASE "BASED ON" (denied release to parole due to his criminal history and the nature of the offense) these expressed reasons given by (BPP), and the Courts for denial of petitioner's release are not expressed or mandated within 145 statute and go against the application of principles of law set by the (CCA) in GEIKEN Id, BOYKIN Id., COIT Id, and Waco Court Judge in TDPS v. STORY Id, and since the Southern District of Texas assessment DOES NOT cite/identify/specify or show where the court drew this conclusion from that is not supported by any law or mandate in the statute governing non-release, See 508.145(d).

It is evident that the Court's assessment offer this conclusion directly from the PAROLE PANEL REVIEW ONLY PROCESS it draws from, an application of law that is NOT applicable to petitioner's situation or claim(s), thus applying DMS and MS formulas, a process that petitioner IS NOT TO BE CONSIDERED FOR. See 508.145(d), TDCJ-HANDBOOK pg81.(g.)rev.2017. Courts assessment also in conflict with the Northern District of Texas Judge assessment and construing of the statute. i.e. 508.145(d). see appendix I.

Petitioner shows in every instant that the trial court, (CCA), Southern District of Texas Court, and the Fifth Circuit, [ALL] presents a conclusion of the law and principles of law that DO NOT APPLY to petitioner's situation or his claims in his habeas, therefore Pedraza believes this writ of certiorari shall be granted by this Honorable Supreme Court and specifics drawn in whether Pedraza has an entitled liberty interest in his release to a mandated statute release, whether the statute at issue, 508.145(d) is as Pedraza's reads it, a contract on how Pedraza is to earn his eligibility to release on parole, more importantly, whether that release to parole is governed by the statute or a parole panel review process that Pedraza is mandated Not to be considered for.

Pedraza equally believes that this Honorable Supreme Court has the discretion to determined its own Facts and Conclusion of Law and/or determine that the claim(s) in Pedraza v. Lumpkin No. 5:22-CV-60 has not been exhausted according to law and remanded back to the Court for such exhaustion.

Pedraza further believes the law on Due Process entitles him to a just determination and construing of the statute(s) at issue as set in principles by the Court(s) and Law(s) cited within this writ of certiorari, to see if in fact Pedraza is held in illegal restraint in violation of his U.S. Const. Amend. 5th & 14th Protected Rights by the State of Texas.

Pedraza presents this writ of certiorari in GOOD FAITH, and believes he made a showing that the State of Texas violates his U.S. Constitutional Right to Due Process of law by NOT HORONING Vernon's Texas Government Code §508.145(d) that governs his release from prison and NOT A PAROLE PANEL REVIEW PROCESS.

Pedraza believes he has met the constitutional requirements in this writ that would allow under conditions of fundamental miscarriage of justice, this Honorable Supreme Court hearing his claim(s) on the merits and determining the facts as to his illegal restraint.

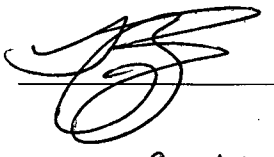
The cases Pedraza listed within this writ "illustrate" the fact that the United States Court of Appeals Fifth Circuit is out of step with this Honorable Supreme Court and with other Appellate Court(s) in its decision in Pedraza's cause.

For the above reasons, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit Court of Appeals.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



TIMOTHY RICARDO PEDRAZA

Date: 9-11-23