

No. _____

In the Supreme Court of the United States

DENNIS D. LINEHAN,
Petitioner,

v.

EMILY JOHNSON-PIPER, Commissioner of Minnesota
Department of Human Services, et al,
Respondent.

*On Petition for Writ of Certiorari to review judgment of
The lower courts.*

PETITION FOR WRIT OF CERTIORARI

**Name, Address, Zip Code, Telephone Number, And Registration License
Number Of Attorney(S) For:**

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Respondent

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INTRODUCTION

Petitioner asks this U.S. Supreme Court to intervene to resolve a serious legal dilemma whereas the Eighth Circuit Panel has “sanctioned such a departure by a lower court as to call for an exercise of this Court's supervisory power.” The issues are constitutional violations grievously harming Petitioner daily, affecting many other states as well and can only be expected to return to this court again at a later date if not finalized now. See *Rules of Supreme Court of the United States; Rule 11. Certiorari to a United States Court of Appeals before Judgment* . *A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.* See 28 U.S.C. 2101(e).

QUESTIONS PRESENTED

- (1) Did lower courts err in applying federal Title I of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 106, 110 Stat. 1220 as reason to deny Petitioner's 28 USCS §2241 Writ of Habeas Corpus on grounds of "second or successive" habeas?
- (2) Did lower courts err in denying Petitioner the right to use Title 28 U.S.C.S. §2241?
- (3) Did lower courts err in erroneously rejecting Petitioner's claim that Federal Constitution Amendment XIV Due Process, Double Jeopardy and Separation of Powers Doctrine have been violated?
- (4) Did lower courts err in failing to judge Petitioner's §2241 on its merits, whereas the Eighth Circuit Panel followed District Court's lead in simply dismissing for "lack of jurisdiction?"

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:

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APPENDIX E

Petition for Writ of Habeas corpus pursuant to 28 U.S.C. § 2241

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Federal Cases

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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 issues to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States Court of Appeals appears at Appendix B to the petition and is **Panel Decision; awaiting response to petition for rehearing served March 3, 2018)**

☐ 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 A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix F 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 22, 2018 (**Panel Decision; awaiting response to petition for rehearing served March 3, 2018**)

☐ 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 May 16, 2017.

A copy of that decision appears at Appendix F.

☐ 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. § 1254(a) and 28 & U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions and Federal Statutes

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Title 28 U.S.C.S. §2255).....	PASSIM
Title 28 USCS 2244(a).....	PASSIM

STATEMENT OF THE CASE

On or about September 18, 2017, following finalization from State's highest court, Petitioner petitioned Federal District Court for Habeas Corpus pursuant to Title 28 U.S.C.S. §2241 claiming Respondent's actions of removing him from "patient" status within a Treatment center (MSPPTC) program and placing him in a behavior counseling program (MSOP) as a client, without a judicial hearing to justify cause and jurisdiction, has deprived him of protections under state and federal Health Care Bill of Rights, violating: (1) Federal Constitution Amendment XIV Substantive/Procedural Due Process; (2) Double Jeopardy and; (3) Separation of Powers. These actions bring grievous harm upon Petitioner by infringing upon fundamental and private rights, liberty, property and safety, shocking the conscience of a rational person. In *Carey v Piphus*, 435 US 247, 259, 55 L Ed 2d 252, 98 S Ct 1042 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property") see **Appendix G**.

District Court Magistrate Judge Bowbeer did not rule on merits of Petitioner's Writ but erroneously: (1) denied granting In Forma Pauperis, reasoning that Petitioner could not use a 28 USCS §2241 Writ of Habeas Corpus; (2) that under a proper "§2255", Petitioner is guilty of presenting a "second or successive" Petition claiming that a first "§2254" was brought to the court in 2000, even though the instant and previous presentations are nowhere near "identical" (and; (4)

refused to provide a letter of appealability to the Eighth Circuit, explaining that the Eighth Circuit Court of Appeals would not rule in Petitioner's favor anyway.

In 1989, the Report of the Judicial Conference's Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, chaired by Justice Powell, noted the lengthy delays produced by collateral litigation in death penalty cases. See Committee Report and Proposal 2-4. The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) was designed to address this problem.

In Castro v. United States 540 U.S. 375; 124 S. Ct. 786; 157 L. Ed. 2d 778; 2003 U.S. LEXIS 9197; since the lower court did not inform defendant of its intent to recharacterize, warn defendant concerning restrictions on second or successive petitions, nor provide defendant with an opportunity to withdraw or amend the filing, the judgment which determined that defendant's 2255 motion was an unauthorized second or successive habeas corpus petition was vacated, and the case was remanded for further proceedings.

Phrase "except as provided in 28 USCS 2255" at conclusion of 28 USCS 2244(a) means exactly what it says: provisions of 2244(a) do not apply to claims that may be brought under 2255; accordingly, petitioner is not required by 2255(h) to obtain circuit authorization before filing 28 USCS 2241 petition. Stanko v. Davis (2010, CA10 Colo) 617 F.3d 1262, cert dismd, motion den (2011, US) 131 S Ct 973, 178 L Ed 2d 742.

On or about October 30, 2017, Petitioner appealed to the full Federal District Court to reconsider the ruling of Magistrate Bowbeer whereas Judge Susan R. Nelson's November 09, 2017 response was that her [Bowbeer] ruling was proper. Judge Nelson also refused to rule on merits, reasoning that "Petitioner is being held

pursuant to the judgment of a state court, so his habeas is governed by § 2254.” This is not entirely correct whereby 28 U.S.C.S. §2241; Instructions; *Petitions brought under 28 U.S.C. § 2241 usually involve one of the following situations: 1(d) “a person is in federal or state custody because of something other than a judgment of conviction.”* Petitioner is a “patient” under civil commitment, not a state or federal “prisoner” under judgment of conviction.

Petitioner then sent a Motion to Appeal directly to the Eighth Circuit Court of Appeals explaining what appeared to be a politically and biased decision against Petitioner as a targeted and demonized ex sex offender. The Eighth Circuit apparently saw merit in Petitioners claims and immediately ordered the District Court to GRANT Petitioner’s *in forma pauperis* and to send a Letter of Appealability to the Eighth Circuit, at which time Petitioner was informed that his Habeas complaints would be reviewed by a panel. One week later, Petitioner received another letter from the federal clerk’s office informing Petitioner that his litigation was being forwarded to the Eighth Circuit Court for review. The Circuit Court Panel did not rule on merits either but simply decided, without explanation, **“this appeal be dismissed for lack of jurisdiction.”** Something changed their minds following their Order to District Court to GRANT *in forma pauperis* and forward a letter of appealability! It is a fact that the Commissioner(s) of DHS complies with Governor Dayton’s letter¹ directing that there should be no discharges from MSOP, and Attorney General Lori Swanson dictates the procedure. Our legal system should not be allowing this obvious collusion to allow constitutional violations.

¹ See Appendix E

March 3, 2018, Petitioner filed a **“Motion to Accept Petitioner’s Petition for Rehearing of Judgment of This Court”** and in the meantime, Petitioner suffers continued daily loss of liberty as well as inhumane treatment in a detention center mandating behavior counseling while disregarding psychiatric care and treatment of an alleged mental illness, as ordered by the original court adjudication.

REASON FOR GRANTING WRIT

The Minnesota Attorney General's Office, supported by Governor Dayton's letter of direction (Appendix F) is too politically powerful an influence on the lower courts and the lower courts are seemingly biased against this and other cases brought before them from Minnesota Sex Offender Program. Petitioner's case requires a helpful decisive understanding of law from this U.S. Supreme Court, in a matter that should have been decided decades ago.

This court vacated and remanded, *Linehan v. Minnesota* 522 U.S. 1011, 118 S. Ct. 596, 139 L. Ed. 2d 486 (1997), back to the Minnesota supreme court "in light of *Hendricks*" as an opportunity for Minnesota to "fix" its sex offender civil commitment act (Sexually Dangerous Person (SDP)) see **Appendix H**. Minnesota rejects this Courts Order by refusing to provide a psychiatric facility with psychiatric care and treatment, and denying annual psychiatric evaluations as *Hendricks* found in *Allen v. Illinois*. Petitioner has been removed from the original Treatment Center (MSPPTC) program as a "patient" and placed in the behavior counseling program (MSOP) as a "client" without a judicial hearing to determine cause and jurisdiction, thereby denying Petitioner Due Process under Federal Constitution Amendment XIV.

The lower courts have failed to take responsibility for making a decision that might be viewed as politically dangerous, therefore, leaving it up to the U. S. Supreme Court to properly decide this distasteful case.

CONCLUSION

Undoubtedly, Petitioner should be immediately released from what has become an illegal DHS/MSOP confinement whereas, DHS has removed Petitioner from "patient" status indicating he has been cured. Without a mental illness to treat, there is no longer a purpose in continuing Petitioner's confinement.

**Name, Address, Zip Code, Telephone Number, And Registration License
Number Of Attorney(S) For:**

Petitioner

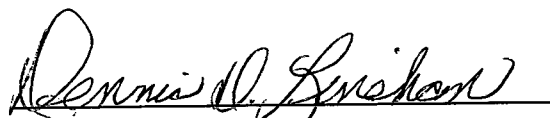
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Pursuant to 28 U.S.C. 1746, I, Dennis D. Linehan, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and ability.

Executed on April 10, 2018



Dennis D. Linehan, *Pro Se*
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