

NO. 17-8575

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.

AMENDED MEMORANDUM OF LAW
in Support Of
Writ of Habeas Corpus 28 U.S.C. § 2241
(District Court Case # :17-cv-04355 (SRN))

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

Petitioner

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Respondent

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445 Minnesota Street Suite 1800
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Dennis D. Linehan)
Petitioner, Pro Se)
)
 v.)
 Emily Johnson Piper, Comm. Dept. of)
 Human Services, et al)
Respondent)

CIVIL CASE NO: 0:17-cv-04355-SRN-HB

Petitioner herein petitions this Court pursuant to Title 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.”* Because Respondent is excessively restricting Petitioner’s liberty without a *judgment of conviction*, due to the unlawful and unconstitutional actions of various agents within Minnesota’s government, this writ is appropriate under § 2241(a), (b), (c)(3), and (d); as petitioner is not a prisoner convicted of crime nor is he serving a criminal sentence under *judgment of conviction*.

Sexually Dangerous Person (**SDP**)
Sexual Psychopathic Personality (**SPP**)
Minnesota Sexual Psychopathic Personality Treatment Center (**MSPPTC**)
Minnesota Sex Offender Program (**MSOP**)
Department of Human Services (**DHS**)
Department of Corrections (**DOC**)
Minnesota Civil Commitment And Treatment Act (**MCTA**)

PURPOSE

Petitioner's §2241 Writ clearly shows that DHS/MSOP, with deliberate indifference: (1.) is holding Petitioner illegally, lacking jurisdiction, in violation of Federal Amendment XIV Substantive/Procedural Due Process, Double Jeopardy and Separation of Powers Act; (2.) has been causing grievous physical, psychological and mental harm to fall upon Petitioner by willfully and knowingly infringing upon and depriving him his fundamental and private rights, liberty, freedom, property and safety, all of which are guaranteed to any citizen or "patient" under protections from our constitution and statutes, as well as protections from under federal and state Patient Health Care Bill of Rights; (3.) has been intentionally using retroactive departmental *variances*,¹ conflicting with federal and state statutes and state court order, to wrongly authorize those harmful acts, thus "**shocking the conscience**" of a rational person. *Under Minn. Stat. 645.21 (1989) there is a presumption against giving statutes retroactive effect, and this presumption is applicable to rules, as well as statutes, as set forth under Minn. Stat. 645.001 (1989). Ottertail Nursing Home v. Minnesota Dept. of Human Services, 1992 Minn. App. LEXIS 484 (Minn. Ct. App. May 8 1992).*

¹ However the interpretation of statute and/or departmental variance may be, it does not confer virtual plenary power over judicial decisions. Certiorari should be granted in this case to consider the proper scope of Executive and Legislative power. See *Baston v. U.S.* 137 S. Ct. 850; 197 L. Ed. 2d 478; 2017 U.S. LEXIS 1569; 85 U.S.L.W. 3416

VARIANCE to the RULE 26 LICENSE for the MINNESOTA SEX OFFENDER PROGRAM (MSOP) **February 1, 2014** Subp. 4. "Minnesota Sexual Psychopathic Personality Treatment Center means the secure facility established at Moose Lake by Minnesota Statutes, section 246B.02 to provide care and treatment for [SDP/SPP patients]. Variance #1 to Minnesota Rules, part 9515.3000, subpart 4 The name of the program will be given in Minnesota Statutes, section 246B.02, Minnesota Sex Offender Program (MSOP).

STATEMENT OF THE ISSUES

1. The purpose of Petitioner's civil commitment cannot be, as the State would have the courts believe, to counsel his prior bad behavior that was previously punished and corrected with a lengthy prison term ordered by a criminal court.
2. DHS/MSOP's actions, wrongly authorized under departmental variances, are punitive and cause violations of our federal constitution in that they deprive Petitioner fundamental and private rights and protections he previously enjoyed and are still enjoyed by civilly committed patients other than SDP/SPP's.
4. **MSOP:** claiming that Petitioner no longer has a mental illness; mandates behavior counseling rather than the required psychiatric care and treatment and; because there is *no current dangerousness* to show, cites Petitioner's past criminal trial data as the sole justification for continued civil confinement, giving cause for Petitioner to claim violation of the Federal Double Jeopardy clause. This action has been taken without a judicial hearing to determine a need for continued confinement outside MSPPTC (patient) and under MSOP (client), violating federal Amendment XIV Substantive/Procedural Due Process. This action constitutes punishment above and beyond the sentence of the original trial court Order and conflicts with the later Order of the civil commitment court.
6. DHS/MSOP has removed Petitioner from "patient" status under jurisdiction of MSPPTC, admitting that he does not suffer a mental illness, indicating that Petitioner is cured and should be released. This leaves Petitioner in a shadowy abyss whereas he has been removed from a mental health program and, without a court order, has been placed in a behavioral counseling program. Thus, Petitioner suffers under prison instituted policies of liberty violations, penal rules, policies,

restrictions and punishments . . . “clear and convincing” proof that Petitioner is being punished with extended incarceration.

IN CLOSING

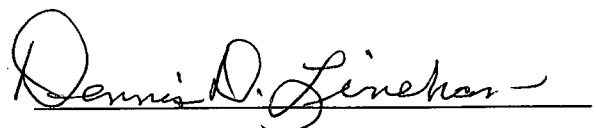
It is a fact that Petitioner, following a lengthy prison term, has only been evaluated by one psychiatrist, Dr. Hulsing, in 1992, who determined Petitioner was not mentally ill. Petitioner has not been “written” up by officials as having acted out dangerously, under influence of a mental illness, nor displayed traits of mental illness. Respondent justifies continued confinement by focusing on decades-old behavior and trial data, disregarding the mental illness element and current dangerousness altogether, persuading courts to treat their “variances” as enforceable as law.

A reputable medical facility would never harm its patients by denying them proper and expected care and treatment, substituting “psychiatric treatment” with “behavior counseling,” and “care” with “oppressive punitive prison conditions of confinement.” But, this is exactly what DHS/MSOP is subjecting Petitioner to.

The sanctity of elected officials vows, statutory purposes and constitutional guarantees of rights and protections are being eroded and ultimately may become nonexistent if litigation such as this writ is not remedied fully and properly, today.

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.

Dated this 26th day of July, 2018



Dennis D. Linehan, *Pro Se*
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No. 17-8575

In the
Supreme Court of the United States

Dennis D. Linehan — Petitioner,

vs.

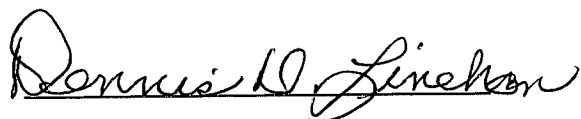
Emily Johnson-Piper, Commissioner of Minnesota Department of
Human Services (DHS) — Respondent,

CERTIFICATION OF AMENDED BRIEF LENGTH

As required by Supreme Court Rule 33.1(h), for a brief produced with a double-spaced 12 point typeface Century Schoolbook font, The length of this brief is 907 words excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).. This brief was prepared using Microsoft Word 2010.

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.

Dated: July 26, 2018



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