No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ONG VUE,

Petitioner

v.

FRANK X. HENKE, Oklahoma Board of Corrections Member; ERNEST E. HAYNES, Oklahoma Board of Corrections Member; MICHAEL W. ROACH, Oklahoma Board of Corrections Member; DIANNE B. OWENS, Oklahoma Board of Corrections Member; ADAM LUCK, Oklahoma Board of Corrections Member; JOHN HOLDER, Oklahoma Board of Corrections Member; KEVIN J. GROSS, Oklahoma Board of Corrections Member; DELYNN FUDGE, Executive Director, Oklahoma Pardon and Parole Board; THOMAS GILLERT, Chairperson of the Pardon and Parole Board; ROBERT MACY, Pardon and Parole Board Member; C. ALLEN McCALL, Pardon and Parole Board Member; MICHAEL STEELE, Pardon and Parole Board Member; ROBERTA FULLERTON, Pardon and Parole Board Member; MELISSA L. BLANTON, Pardon and Parole Staff Attorney

Respondents

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

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PETITION FOR A WRIT OF CERTIORARI

Ong Vue
DOC#264881
Pro se Litigant
Dick Conner Correctional Center
129 Conner Road
Hominy, Oklahoma 74035

QUESTIONS PRESENTED

1. Whether the Tenth Circuit Court of Appeals ruling that Petitioner Vue "failed to state a claim" is in contrary to the holding of *Wilkinson v. Dotson,* 544 U.S. 74 (2005), where Petitioner Vue, under 42 U.S.C.A. § 1983, challenges the constitutionality of the Oklahoma state parole procedures on constitutional and statutory grounds.
2. Whether Petitioner Vue's 42 U.S.C.A. § 1983 claim on the crucial distinction between judicial review of substantive agency decisions and judicial review of the agency's compliance with the *substantive* requirements of Oklahoma Statutes title 57, § 332.7 (Supp. 2017) is cognizable to the Fourteenth Amendment of the United State's Constitution's "due process of law clause" and "equal protection of law clause."

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PETITION FOR WRIT OF CERTIORARI

Ong Vue respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case

PARTIES TO THE PROCEEDING

The petitioner in this case is Ong Vue.

The respondents in this case are Frank X. Henke, Oklahoma Board of Corrections Member; Earnest E. Haynes, Oklahoma Board of Corrections Member; Michael W. Roach, Oklahoma Board of Corrections Member; Dianne B. Owens, Oklahoma Board of Corrections Member; Adam Luck, Oklahoma Board of Corrections Member; John Holder, Oklahoma Board of Corrections Member; Kevin J. Gross, Oklahoma Board of Corrections Member; Delynn Fudge, Executive Director, Oklahoma Pardon and Parole Board; Thomas Gillert, Chairperson of the Pardon and Parole Board; Robert Macy, Pardon and Parole Board Member; C. Allen McCall, Pardon and Parole Board Member; Michael Steele, Pardon and Parole Board Member; Roberta Fullerton, Pardon and Parole Board Member; Melissa L. Blanton, Pardon and Parole Staff Attorney

OPINIONS BELOW

The September 14, 2018, order denying Appellant's petition for rehearing and petition for rehearing enbanc of the court of appeals (App. 1a) is unpublished in case no. 18-6101.

The August 22, 2018, order and judgment affirming the district court order dismissing Petitioner's 42 U.S.C. § 1983 action (App. 2a – 8a) is unpublished in case no. 18-6101.

The May 29, 2018, order dismissing Petitioner's 42 U.S.C. § 1983 action (App. 9a – 10a) is unpublished in case no. 18-6101.

The May 29, 2018, judgment dismissing Petitioner's 42 U.S.C. § 1983 action (App. 11a) is unpublished in case no. 18-6101.

JURISDICTION

The judgment of the court of appeals was entered on August 22, 2018, and a timely petition for rehearing was denied on September 14, 2018. This Court's jurisdiction rests on 28 U.S.C.A. §§ 1253, 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Title 42, U.S.C.A. § 1983 provides, in pertinent part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any Sate or Territory or District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to 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 proper proceeding for redress[.]"

3. Title 28, U.S.C.A. § 1915(e)(2)(B) provides, in relevant part: "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—the action or appeal—**(ii)** fails to state a claim on which relief may be granted[.]"

4. Title 28, U.S.C.A. § 1915A(b) provides, in relevant part: "On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—**(1)** is frivolous, malicious, or fails to state a claim upon which relief may be granted[.]"

5. Oklahoma Constitution Article 6, § 10 provides, in relevant part: "There is hereby created a Pardon and Parole Board to be composed of five members…It shall be the duty of the Board to make an impartial investigation and study of applicants for commutations, pardons or paroles, and by a majority vote make its recommendations to the Governor of all deemed worthy of clemency…The Legislature shall have the authority to prescribe a minimum mandatory period of confinement which must be served by a person prior to being eligible for parole."

6. Oklahoma Statutes Title 57, Ch. 7 (Supp. 2017) (App. 12a – 16a) is reproduced in the appendix.

STATEMENT OF THE CASE

On January 16, 2018, Mr. Vue was notified and did not waive "parole consideration" at the 120-Day Adjustment Review.

On January 30, 2018, Petitioner was personally interviewed by the Parole Investigator without necessity of Application by Mr. Vue.

In March 2018, Petitioner was denied parole at the "jacket review" stage.

On April 18, 2018, Petitioner filed in the United States District Court for the Western District of Oklahoma pursuant to 42 U.S.C.A. § 1983 and 28 U.S.C.A. § 1343(a)(3).

On May 29, 2018, the District Judge dismissed Petitioner's civil complaint. App. 9a – 10a.

On June 06, 2018 Petitioner timely appealed to the United States Court of Appeals for the Tenth Circuit.

On August 22, 2018, the Tenth Circuit affirmed the dismissal of Petitioner's § 1983 action. App. 2a – 8a.

On August 28, 2018, Petitioner timely request in petition for rehearing and suggestion for en banc consideration.

On September 14, 2018, the Tenth Circuit denied the petition for rehearing and petition for rehearing en banc. App. 1a.

SUMMARY OF ARGUMENT

I.

The Court held in *Wilkinson v. Dotson,* 544 U.S. 74 (2005) that "state prisoners may bring a § 1983 action in declaratory and injunctive relief challenging the constitutionality of state parole procedures; they need not seek relief exclusively under the federal habeas corpus statute." *Id.* Contrary to the holding of *Wilkinson v. Dotson, supra*, the Court of Appeals for the Tenth Circuit rejected the *liberally construed* theory, on Due Process grounds, that "Vue purports to challenge the loss of his liberty—or at least the loss of an opportunity for liberty—based upon the Board's failure to meaningfully consider his parole application," App. 5a, "[t]hus, because Vue doesn't have a liberty interest in receiving meaningful consideration for parole under Oklahoma law, he fails to state a due-process claim," App. 5a. Similarly, the Tenth Circuit rejected the Equal Protection of "Vue argues that by denying him parole or certain parole processes, the Board treated him differently than it treated certain other individuals," specifically, *positive codified* law of Oklahoma Statutes title 19, § 215.39 (Supp. 2017) and the *procedural* statute of Oklahoma Statutes title 57, § 332.7(J) (Supp. 2017) "the conduct and the record of said person during his custody in the Department of Corrections."

Very similar to *Wilkinson v. Dotson, supra,* Petitioner Vue's claims are "cognizable under § 1983, *i.e.,* they do not fall within the implicit habeas exception. [Petitioner seeks] relief that will render invalid the state procedures used [,or not used] to deny parole eligibility and parole suitability." *Id.* 544 U.S., at 82. Parole suitability criteria—whether a decision's factual

basis is fitting and proper—is analogous to eligibility criteria predicated upon "[f]or a crime committed **prior to July 1, 1998**, any person in the custody of the Department of Corrections shall be eligible for consideration for parole at the earliest of the following dates[.]" 57 O.S.Supp. 2017, § 332.7(A) (emphasis added).

To be sure, Oklahoma Constitution Article 6, § 10 guarantees "parole consideration" and Oklahoma Statutes title 57, Chapter 7 "guarantees" a certain "substantial" process.

Under *Wilkinson v. Dotson, supra,* Petitioner Vue "stated a claim" from which federal relief could be granted. To the contrary, the Tenth Circuit did not recognize *Wilkinson v. Dotson,* 544 U.S. 74 in its dismissal of Petitioner's 42 U.S.C.A. § 1983 complaint nor applied its standard.

II.

It is a matter of precedent that Oklahoma prisoners do not possess a "liberty interest" in parole. *Shabazz v. Keating,* 977 P.2d 1089, 1093 (Okla. 1999); *Shirley v. Chestnut,* 603 F.2d 805, 807 (10th Cir. 1979). However, *distinguished* from this precedent, is the fact that Petitioner "bottoms" his liberty interest in the "parole consideration" process *itself,* prior to the discretionary function of parole, by command of Oklahoma Constitution Article 6, § 10 and Oklahoma Statutes title 57, § 332.7. *Cf. Phillips v. Williams,* 608 P.2d 1131, 1133 (Okla. 1980) (Petitioner does not bottom his due process claim on the Forgotten Man Act, 57 O.S.1971, § 332.7, and hence it is not necessary for us to assess here the character of interest a prisoner has in parole consideration that rests on the provisions of that act.). Of notable interest to Petitioner is the fact that the Tenth Circuit has sufficiently recognized that the "Oklahoma Legislature repealed the Forgotten Man Act in 1997 and replaced it with the Truth in Sentencing Act." *Traylor v. Jenks,* 223 Fed.Appx. 789, 790 (10th Cir. 2007).

To the authority of "the Forgotten Man Act," the Oklahoma Court of Criminal Appeals[1] previously determined that "'[p]ursuant to Title 57, Section 355, Oklahoma Statutes Annotated, it is the intent of the Board that any inmate serving forty-five years or more, including a life sentence, shall be considered for parole or clemency after serving fifteen years.'" *Fields v. State,* 501 P.2d 1390, 1394 (Okla.Crim.App. 1972). However, the application of the Oklahoma Truth in Sentencing Act, clearly recognized the Tenth Circuit, has abrogated, for Petitioner, the general understanding of a "life sentence" rule pursuant to 57 O.S. § 355 with the NEW LAW of 57 O.S.Supp. 1997, § 332.7(A)(3), specifically Schedule A. That is, the "Pardon and Parole Board shall promulgate rules for the implementation of subsections A, B and C of this section. The rules shall include, but not be limited to, procedures for reconsideration of the persons denied parole under this section and procedure for determining what sentence a person eligible for parole consideration pursuant to subsection A of this section would have received under the applicable matrix." 57 O.S.Supp. 2017, § 332.7(F).

"Statutes, Rules and case law give the notice that is required to provide the process that is due to citizens. These items also form the basis for discipline that courts must impose on themselves to ensure that all are treated consistently and validate the proposition that all will be treated equally under the law." *Lewis v. State,* 220 P.3d 1140, 1144-1145 (Okla.Crim.App. 2009) (LUMPKIN, Judge: Concur in part/dissent in part). Under this premise, and the deliberate indifference standard of the Eighth Amendment, courts retain jurisdiction to determine whether Parole Board exceeded statutory authority notwithstanding lack of jurisdiction to review substantive decisions. In other words, to determine the applicability of "matrices or schedules,"

[1] Oklahoma Constitution Article 7, § 1, in relevant part, command: "The appellate jurisdiction of the Supreme Court shall be coextensive with the State and shall extend to all cases at law and in equity; **except that the Court of Criminal Appeals shall have exclusive appellate jurisdiction in criminal cases until otherwise provided by statute** and in the event there is any conflict as to jurisdiction, the Supreme Court shall determine which court has jurisdiction and such determination shall be final." (emphasis added). See also, Okla. Const. Art. 7, § 4.

the court "must read the entire statute in light of its underlying purposes and policies." *See generally Wallace v. Christensen,* 802 F.2d 1539, 1552 (9th Cir. 1986); *Turner v. U.S. Parole Com'n,* 934 F.2d 254, 259 (10th Cir. 1991).

This Court held in *Salve Regina College v. Russell,* 499 U.S. 225 (1991) that "courts of appeals must review *de novo* district courts' state-law determinations." In the petition at bar, Petitioner Vue asserts that 57 O.S.Supp. 1997, § 332.7 creates a *substantive* interest *after* the imposition of the sentence of "imprisonment for life," 21 O.S. § 701.9 for violation of "first degree murder," 21 O.S. § 701.7, without "judicial notice" into the "underlying purposes and policies" of the "parole consideration" statute in question, the Tenth Circuit abused its discretion without "assess[ing] here the character of interest a prisoner has in parole consideration that rests on the provisions of that act."

ARGUMENT

I.

Wilkinson v. Dotson, 544 U.S. 74 (2005) Is Clearly Established Federal Law

The Tenth Circuit Court of Appeals ruling that Petitioner Vue "failed to state a claim" is in contrary to the holding of *Wilkinson v. Dotson,* 544 U.S. 74 (2005), where Petitioner Vue, under 42 U.S.C.A. § 1983, challenges the constitutionality of the Oklahoma state parole procedures on constitutional and statutory grounds.

a.

Petitioner Did Not Fail To State A Claim On Due Process And Equal Protection Grounds

In the Complaint, Petitioner raises two (2) claims:

> Claim 1:
> Defendant's policies, procedures, and customs violate the U.S. Constitution's Fourteenth Amendment's Equal Protection Clause, similarly Oklahoma Constitution Article 2, § 2 "inherent right to...liberty", because they do not provide ALL offenders sentenced to life imprisonment pursuant to 21 O.S. § 701.9 a meaningful opportunity for release.

> Claim 2:
> Defendant's "deliberate indifference" in administering policies, procedures, and customs violate the U.S. Constitution's Fourteenth Amendment's Due Process Clause, similarly Oklahoma Constitution Article 2, § 7, because Defendant's do not accurately implement the 18-60 year determinative range according to Schedule A pursuant to Oklahoma Statute Title 57, § 332.7(A)(3) in the "parole consideration" process as it *strictly* pertains to Plaintiff's suspect class, "for a crime committed prior to July 1, 1998. In the alternative, the Board's "failure to train" the Executive Director and Pardon and Parole Board Members upon 57 O.S. § 332.7(A)(3) amounts to deliberate indifference liable under § 1983 only where policies are the "moving force [behind] the constitutional violation." *Canton v. Harris,* 489 U.S. 578, 109 S.Ct. 1197 (1989).

Doc. #1[2] at 24, ¶56; Doc. #1 at 43, ¶150.

To be sure, *Wilkinson v. Dotson,* 544 U.S. 74 is "clearly established federal law." That is, eight (8) Justices concurred with the ruling by the *Wilkinson* Court. Moreover, "[a] broad construction of § 1983 is compelled by the statutory language, which speaks of deprivations of "*any* rights, privileges, or immunities secured by the Constitution and laws." (Emphasis added). Accordingly, [this Court has] "repeatedly held that the coverage of [§ 1983] must be broadly construed." *Dennis v. Higgins,* 498 U.S. 439, 443 (1991) (citation omitted).

In accordance with *Wilkinson, supra,* Petitioner Vue challenges a parole eligibility determination and a parole release determination under the applicable law of Oklahoma Statutes title 57, § 332.7 (Supp. 2017) (App. 14a – 15a). The success of either challenge would result in a new hearing that would follow the appropriate procedures under Oklahoma law. Petitioner does not seek "an injunction ordering his immediate or speedier release into the community. And as in *Wolff,* a favorable judgment will not "necessarily imply the invalidity of [Petitioner's] conviction[s] or sentence[s]." *Wilkinson v. Dotson,* 544 U.S., at 82, 125 S.Ct. 1242. Similar to Ohio's law in *Wilkinson,* 544 U.S. 74, Oklahoma's law is discretionary. *See also Dotson v. Wilkinson,* 329 F.3d 463, 470 – 471 (6th Cir. 2005) (explaining Ohio law). However, the process

[2] Petitioner submits the "Civil Docket for Case #: 5:18-cv-00366-HE" with reference to the Documents ("Doc.") as App. 17a – 21a.

due is not discretionary once certain criteria has been satisfied, *i.e.,* "[h]as reached eighty-five percent (85%) of the midpoint of the time of imprisonment that would have been imposed for an offense that is listed in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 of Section 6, Chapter 133, O.S.L. 1997, pursuant to the applicable matrix[.]" 57 O.S.Supp. 2017, § 332.7(A)(3) (App. 14a).

Compared with 57 O.S.1991, § 332.7 "the Forgotten Man Act," where the *only* standard for "parole consideration" was *strictly* one-third (1/3) of the sentence, the NEW LAW of 57 O.S.Supp. 1997, § 332.7 *explicitly* made retroactive "[f]or a crime committed prior to July 1, 1998," *intentionally* altered how "parole eligibility" dates must be calculated. Contrary to the Fourth Circuit, the Tenth Circuit rejected the proven theory:

> That prisoner's interest in those proceedings is the present right to be considered for parole, a right created by Virginia law...The distinction between a right and a privilege is no longer acceptable basis for determining whether the due process clause applies to a government benefit...Thus, it is readily apparent from an examination of Virginia law that a prisoner has a right to be considered for parole, and that this right is protected by statutory safeguards...Therefore, we hold that the statutes governing the manner in which a prisoner shall be considered for parole confer on the prisoner an interest in liberty.

Franklin v. Shields, 569 F.2d 784, 788 – 790 (4th Cir. 1977), cert. denied, 435 U.S. 1003, 98 S.Ct. 1659 (mem), 56 L.Ed.2d 92 (1978).

Theoretically, to establish a "parole consideration" date, ODOC has a responsibility and a duty to *effectuate* 57 O.S. § 332.7. Per § 332.7(A)(3), as strictly pertains to Plaintiff, "3-12"[3] is the actual fulfillment of "85% of the midpoint of the time of imprisonment." However, to the contrary of 22 O.S. § 1514(6), this cannot be "accurate" for the official CRC (Exhibit B) does not reflect any constructive deduction nor is the specific year 2012, month of March noted to confer actual compliance with the statute law, nor does this omission constitute a "complete record." Doc. #1, at 36 – 37, ¶ 127.

[3] "3-12" must be construed to mean March 2012.

Because, *normally,* a motion to dismiss for failure to state a claim raises a pure question of law, "Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law." *Neitze v. Williams,* 490 U.S. 319, 326 (1989). To the contrary, the District Court's dismissal of Petitioner's Complaint for "failure to state a claim" found no support in the law nor facts.

Of course, "[a]t the initial hearing, the Pardon and Parole Board shall review the completed report submitted by the staff and shall conduct a vote regarding whether, based upon that report [which does not contemplate letters in objection (App. 22a)], the Board decides to consider the person for parole at a subsequent meeting of the Board[.]" 57 O.S.Supp. 2017, § 332.7(C)(1) (App. 14a). It is undisputed from the 2018 "report" that "No DA Narrative available. DANR requested 02/14/2018," Doc. #1-6, at 2. It is also undisputed that the February 28, 2018 letter from Ms. SuAnne Carlson (App. 22a) was submitted rather than the "substantive" predicate of "[u]pon arrest, conviction and sentencing of any defendant to the custody of the Department of Corrections, **the district attorney shall prepare a written narrative report describing the commission of the offense and any factors which might enhance or diminish the gravity of the offender's conduct**." 19 O.S.2011, § 215.39(A) (emphasis added).

In this light, there are sufficient facts to establish a denial of certain due process under Oklahoma law *clearly* entitled to Petitioner Vue "upon arrest, conviction and sentencing."

b.

Petitioner Was Denied Due Process Of Law And Equal Protection Of Law

In *Citizens to Preserve Overton Park, Inc. v. Volge,* 401 U.S. 402, 420 (1971), this Court noted that judicial review of agency decision is limited to "the full administrative record that was before the [Board] at the time [they] made [their] decision." To this end, there is a "presumption of regularity" applied to the record designated by the agency. However, because, the District

Court applied an "overbroad" application of 28 U.S.C.A. §§ 1915(e)(2)(B) and 1915A(b) for "failure to state a claim upon which relief may be granted," and the Tenth Circuit affirmed, Petitioner's "presumption of regularity" is critically affected in "parole consideration" process.

Because review of agency action is normally restricted to the administrative record, the Tenth Circuit has recognized that consideration of extra-record materials is appropriate in "extremely limited" circumstances, such as where the agency ignored relevant factors it should have considered or considered factors left out of the formal record. *See American Min. Congress v. Thomas,* 772 F.2d 617, 626 (10th Cir. 1985); *Lee v. United States Air Force,* 354 F.3d 1229, 1242 (10th Cir. 2004) (Agency action must be reviewed on basis articulated by agency and on evidence and proceedings before agency at time it acted.).

Without the *minimal* protection of *Neitze v. Williams,* 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989), Petitioner's Complaint was dismissed as no different than "frivolous" rather than the differentiated "failure to state a claim." "What Rule 12(b)(6) does not countenance are dismissals based on a judge's disbelief of a complaint's factual allegations." *Neitze,* 490 U.S., at 327.

To this point, in 2012:

> [Petitioner] was denied the "consideration" process itself when the Pardon and Parole Board at the 2012 "Stage 2" proceeding scheduled for Wednesday, April 18, 2012 (Exhibit G) recommended, with a 5-0 unanimous vote, parole and subsequently without contrary reason denied parole/commutation.
> Due to "miscommunication," "lack of adequate training" and/or "arbitrary discretion"[4] Plaintiff was somehow, within the scope of Pardon and Parole Board Policy and discretion, set for a Jacket Review Docket for Commutation on Tuesday, May 15, 2012, where to the knowledge of Plaintiff, the some Board Members "forgot" Plaintiff was on such a docket. (Exhibit H).

[4] As an issue for REMAND is whether "arbitrary discretion" can be "plausible" to the terminology "on account of race as nonwhite, non U.S. citizen" where Petitioner was afforded the specific language of "[t]o the extent Plaintiff intended to assert claims or allegations not addressed herein, he will have the opportunity to clarify the same in an objection to this Recommendation." Doc. #28, at 2.

> Once again, due to "miscommunication," "lack of adequate training" and/or "arbitrary discretion" Plaintiff was set for a Jacket Review Docket for Commutation on Tuesday, June 19, 2012 (Exhibit I).
> Consequently, due to complete arbitrary discretion, Plaintiff was simply "denied parole," in light of the fact that the Pardon and Parole Board had *only* to take into account the "District Attorney's Version or Other Version of Instant Offense," without the District Attorney's Narrative Report as belayed to Plaintiff by the Pardon and Parole Board on December 12, 2017 (Exhibit F at 8), the only "facts" as to violation of 21 O.S. § 701.7, was/is: "Cts. 1, 2, 3, On 5/6/97, subject shot and killed the victim with a .380 handgun. The other two victims were shot with a .380 handgun, with the intent to kill." Exhibit J at 1.

Doc. #1 at 37 – 38, ¶¶ 128 – 131. The factual allegations is "clear and convincing" in a departure from the process due Petitioner. It is undisputed that the "material fact" of a 5 – 0 unanimous vote in favor of parole at the 2012 "personal appearance" stage was subsequently revoked due to the "fact" that Petitioner Vue was subject to an ICE detainer. Moreover, being further treated differently than other prisoners, Petitioner was subjected to the "commutation" process, a matter of grace, without application by Petitioner Vue. *See* Docs. 1-12, 1-13, 1-14. Which was also subsequently denied without stated reason.

In 2015:

> Plaintiff was once again recommended for parole by the Parole Investigator. However, Plaintiff was arbitrarily denied at the Jacket Review Stage, when Mr. Vue was 3 years improved on Class level 4 with no misconducts, earned an Associates' Degree from Tulsa Community College, and completed Victim's Impact. *See* Exhibit K (We are in receipt of your letter(s) and will be placing your letter in the Apology Bank. It is important that a copy of this letter be placed in your file along with a copy of your certificate for Victim Impact.).
> However, from 2013 to 2015, the Pardon and Parole Board was subject to upheaval. This is reported by The Frontier by Dylan Goforth (May 1, 2017):
> During a nearly three-year period beginning in 2013 and lasting until late 2015, the Oklahoma Pardon and Parole Board did not review a single application for commutation, an investigation by the Frontier found…
> **Terry Jenks**—Retired June 1, 2013 after 14 years, resigned in scandal after five-member board was charged with violating Open Meetings Act. Jenks would have been charged had he not resigned, Oklahoman wrote.
> **Tracy George**—The former Pardon and Parole Board general counsel served as executive director after Jenks resigned.
> **Jari Askins**—Interim director appointed Aug. 18, 2014. Served until March 2015.

> **Van Guillotte**—Former Oklahoma Highway Patrol Chief was hired March 30, 2015, resigned May 11, 2015.
> **Melinda Romero**—Served in interim capacity between Guilote and Fudge.
> **Delynn Fudge**—Appointed July 20, 2015 and has served since...
> "The pardon and parole process is very difficult, and most people don't have any kind of experience with it. We've tried to develop information so they might understand it a litter better." [Fudge said.]
> "The reality is that (commutation) is a rare process," [Fudge] said. "People want it to be a get-out-of-jail-free card, but it's really there to correct an excessive or unjust sentence."
>
> The potential of both "political" and "a very difficult" process, more than likely, *prejudiced* any relevant factors in the "parole consideration" process for Plaintiff, and those similarly situated, in 2015. This is even so for Plaintiff, whose family had compensated the law firm of Phillips, Coventon, Quillian & Banner, PLLC; 1900 N.W. Expressway, Suite 601; Oklahoma City, Oklahoma for their *legal* services. Exhibit L at 2.

Doc. #1 at 39 – 40, ¶¶ 135 – 137. In 2015, the theory that "parole" was not a liberty interest is contrary to the very idea that Mr. Ryan Vonn Coventon charged Petitioner's family $3,000 to "represent" Petitioner at his hearing. Nonetheless, the defect of the District Attorney's Narrative Report is duly noted in Petitioner's 2015 "Investigative Report."

In fiscal year 2016, the Parole Board considered 1130 total violent offender cases and recommended only 21 offenders or 1.9% for recommendation to the Governor for final approval.

In fiscal year 2017, the Parole Board considered 900 total violent offender cases and recommended only 23 offenders or 2.5% to the Governor for final approval.

In 2018:

> In February 2018, Plaintiff was informed by the Parole Investigator that the Cleveland County District Attorney would "protest" his parole consideration. This new information concerned Mr. Vue in that the District Attorney's "protest" contained facts not "stipulated-to" in his "Summary of Facts" sheet or the required "Narrative Report."
> As required by law, Mr. Vue filed a motion with the Cleveland County District Court requesting the Cleveland County District Attorney to produce the Narrative Report, at the same instance contemporaneously objecting, to favor the stipulated facts submitted by trial counsel in her 120-Day Judicial Review Motion pursuant to 22 O.S. § 982a. (*See* Exhibit F).
> The Parole Investigator, once again, recommended parole:
> Yes, parole is recommended. He was 18 years old when he committed the Instant Offense, and has served twenty years of his life sentence. He has not

> been a management problem since his 1998 DOC reception. He has completed all available programs prescribed by the DOC, as well as the Faith/Character Community Program, and has also earned his Associates Degree in Business Management. Additionally, he is part of STAR-Safe-Train-Rehabilitate Dog Program and also works in the law library. Exhibit E at 4.
> In addition, Plaintiff was 3 more years improved on Class level 4 with 1 misconduct. He had volunteered for and participated in the "Gone to the Dogs" obedience training program, passed the DOC legal research assistant test and hired for employment in the Dick Conner Correctional Center Law Library, and volunteered for the STAR obedience training program.

Doc. #1 at 40 – 41, ¶¶ 140 – 143 (footnote omitted). The factual allegations implicate the *positive* codified law of Oklahoma Statutes title 19, § 215.39. While it is a matter of law that the State of Oklahoma has a *duty* and *is required* to provide the District Attorney Narrative Report to the Oklahoma Pardon and Parole Board, without this *process*, in the first instance, Petitioner could not have been afforded the *minimal* due process under the "scope of discretion" afforded the Board. In the petition at bar, the particular facts "in which the crime was committed shall prepare a written narrative report describing the commission of the offense and any factors which might enhance or diminish the gravity of the offender's conduct," 19 O.S. § 215.39(A), of Petitioner's criminal case must be a "substantive" element to consider. For "'[o]ne can imagine nothing more cruel, inhuman, and frustrating than serving a prison term without knowledge of what will be measured and the rules determining whether one is ready for release.'" *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 35, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979) (Mr. Justice MARSHALL, with whom Mr. Justice BRENNAN and Mr. Justice STEVENS join, dissenting in part) (citation omitted).

The federal system recognizes that the Board's decision to grant or deny parole are "substantive" in nature, therefore unreviewable. However, a court has jurisdiction to consider whether the Board violated the Constitution. *See Califano v. Sanders,* 430 U.S. 99, 109 (1977). *See also Wallace v. Christensen,* 802 F.2d 1539, 1546 (9th Cir. 1986); *Turner v. U.S. Parole*

Com'n, 934 F.2d 254, 259 (10th Cir. 1991) (To determine whether the issuance of the second warrant falls within Congress's intended scope of authority, we must read the entire statute in light of its underlying purposes and policies.).

Not only is there a "clear" procedural defect in Petitioner's "parole consideration" process but Petitioner's "substantive due process of law" is also violated. The Fourteenth Amendment's "due process of law" includes a substantive component, which forbids the government to infringe certain "fundamental" liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. *Reno v. Flores,* 507 U.S. 292, 302 – 303 (1993). To be sure, federal law recognizes that the "Commission must also consider the "nature and circumstance of the offense" and the "history and characteristics of the prisoner," 18 U.S.C. § 4206(a), and take into account whether release would "depreciate the seriousness of [the] offense," "promote disrespect for the law," or "jeopardize the public welfare." *Id.* §§ 4206(a)(1), (2)." *Wallace v. Christensen,* 802 F.2d, at 1544.

Obviously, the state interest is not to infringe on the Board's discretionary powers prior to the 57 O.S.Supp. 2017, § 332.7(C)(1) (App. 14a) process. To this point of law, the Tenth Circuit "deny as moot Vue's motion to take judicial notice of certain facts and his motion to consolidate appeals," (App. 8a) in the State of Oklahoma, Assistant District Attorney SuAnne Carlson's letter objecting to Petitioner's parole.

Because of the *strict* imposition of "imprisonment for life," 21 O.S. § 701.9 is "plain on its face" does not implicate 57 O.S.Supp. 2017, § 332.7, the ruling of *Fields v. State,* 501 P.2d 1390 (Okla.Crim.App. 1972), is dispositive into the "interest" of 57 O.S.Supp. 2017, § 332.7 as a safeguard to equal protection of law. In *Fields,* the "Appellants further claim that the 1,000 year

sentence deprive them of equal protection of law...Appellant's contend that on the basis of the above-cited statutory provision, the socalled 'Forgotten Man' statute, that they would have to wait some 333 years and 4 months before having any possibility of parole consideration, and in effect, the 1,000 year sentence effectively repeals the statute, insofar as they are concerned." *Id.* 501 P.2d, at 1394. The Oklahoma Court of Criminal Appeals determined that they "are unable to find any merit in this contention...[and] that policy is also dispositive of appellant's final contention that the 1,000 year sentence is an encroachment upon the executive branch." *Ibid.*

In addition, the Oklahoma Court of Criminal Appeals has previously determined that the "statute [of 57 O.S. § 332.7] was enacted for the purpose of giving relief to unfortunate persons unable to employ counsel, or bring to their assistance someone who can present to the proper authorities the facts surrounding their case. It was not intended that this statute should be so construed as to deny such prisoners their just rights." *Petition of Leaser,* 207 P.2d 365 (Okla.Crim.App. 1949). In other words, Petitioner Vue's "injury stems directly from the operation of the statute he challenges. His injury presents the necessary "actionable causal relationship" [where the Board did not "consider" what was legally due Mr. Vue when exercising its "constitutional and statutory" duties in the "parole consideration" process]. *Chadha v. Immigration and Naturalization Service,* 634 F.2d 408, 418 (9th Cir. 1980).

Petitioner Vue's case illustrates how Petitioner was treated differently in the "parole consideration" process clearly in violation of the title 19, § 215.39 law. Moreover, Ms. SuAnne Carlson has subjected Petitioner to a "life without parole" sentence in her request that Petitioner "serve the full term of his sentence to protect the citizens of the State of Oklahoma." App. 22a. While parole is not a protected liberty interest, a *meaningful hearing* needs to become a protected liberty interest because the Board's "substantive" "impartial" determinations arise from

Oklahoma Constitution Article 6, § 10 and Oklahoma Statutes title 57, Ch. 7 "Pardons and Paroles."

Accordingly, Petitioner Vue prays for grant of certiorari and remand the instant case for proper consideration under the applicable standard of *Wilkinson v. Dotson,* 544 U.S. 74, 125 S.Ct. 1242, 161 L.Ed.2d 253 (2005)

II.

The State Law Is Made Explicitly Retroactive For A Crime Committed Prior To July 1, 1998.

Petitioner Vue's 42 U.S.C.A. § 1983 claim on the crucial distinction between judicial review of substantive agency decisions and judicial review of the agency's compliance with the *substantive* requirements of Oklahoma Statutes title 57, § 332.7 (Supp. 2017) is cognizable to the Fourteenth Amendment of the United State's Constitution's "due process of law clause" and "equal protection of law clause." However, the Tenth Circuit, as well as the District Court, passed upon the question of "Whether Oklahoma Statute title 57, § 332.7, "the Oklahoma Truth in Sentencing Act" is applicable to Mr. Vue in the "parole consideration" process?"

a.

State-law Determination Of Oklahoma Statutes Title 57, Section 332.7

Contrary to the Tenth Circuit's finding that "an Oklahoma jury convicted Vue of one count of first-degree murder and two counts of shooting with intent to kill. He received a life sentence for the murder conviction and two 20-year sentences for the shooting-with-intent-to-kill convictions" (App. 3a), Petitioner's conviction was predicated upon a "plea agreement." Under the federal case law of *Santobello v. New York,* 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971), "a constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Id.* 404 U.S., at 262.

According to the Supreme Court authority of *Wilkinson, supra,* Petitioner merely request an opportunity for a "fair and untainted parole hearing" and if, in fact, "[a]liens are clearly entitled to a fair and uniform application of the statutory criteria of which the courts are the ultimate guarantor." *Chadha,* 634 F.2d, at 430. Since Petitioner was not convicted by "jury trial" but rather by "change-of-plea" process, Mr. Vue seeks judicial clarification if the U.S. Constitution Article 1, § 10, cl. 1, "contract clause" is implicated where there is contractual agreement regarding specific terms allegedly impacted by the statute of 57 O.S. § 332 et seq. in question when addressed specifically in the 22 O.S. § 982a "collateral" motion when Mr. Vue is *simply* and *plain on its face* sentenced to "imprisonment for life." Because "the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment," the Tenth Circuit applied an unreasonable application of 28 U.S.C.A. §§ 1915(e)(2)(B) and 1915A(b) without consideration of Petitioner's claim:

> Defendant's "deliberate indifference" in administering policies, procedures, and customs violate the U.S. Constitution's Fourteenth Amendment's Due Process Clause, similarly Oklahoma Constitution Article 2, § 7, because Defendant's do not accurately implement the 18-60 year determinative range according to Schedule A pursuant to Oklahoma Statute Title 57, § 332.7(A)(3) in the "parole consideration" process as it *strictly* pertains to Plaintiff's suspect class, "for a crime committed prior to July 1, 1998. In the alternative, the Board's "failure to train" the Executive Director and Pardon and Parole Board Members upon 57 O.S. § 332.7(A)(3) amounts to deliberate indifference liable under § 1983 only where policies are the "moving force [behind] the constitutional violation." *Canton v. Harris,* 489 U.S. 578, 109 S.Ct. 1197 (1989).

Doc. #1 at 43, ¶ 150. Under this pretext, prior to 1999, the Board of Corrections is delegated with the authority to *constitutionally* effectuate the "parole consideration" statute of 57 O.S. § 332.7, made *explicitly* retroactive by the Oklahoma Legislature. Thus, the "duty of the Judiciary under this and other statutory schemes is to determine, at the conclusion of administrative proceedings, whether the Executive branch has correctly applied the statute that establishes its authority." *Chadha, supra,* 634 F.2d, at 430. In other words, it is recognized that, an officer or

agency has, by implication and in addition to the powers expressly given by statute law of Oklahoma Statutes title 57, such powers are necessary for the due and efficient exercise of the powers expressly granted, or such as may be fairly implied from the statute granting the express powers. However, an agency created by statute may only exercise the powers granted by statute and cannot expand those powers by its own authority. Therefore, "under certain circumstances, such liability is permitted by [42 U.S.C.A. § 1983]." *Canton v. Harris,* 489 U.S. 378, 380 (1989)

More succinctly:

> By utilizing principles of statutory construction *strictly* in favor of the State, and otherwise in favor of the Plaintiff. The only applicable, and reasonable expectation of finality, as strictly pertains to Plaintiff and all similarly situated, is "[a]ll references in this section to matrices or schedules shall be construed with reference to the provisions of Sections 6, 598, 599, 600 and 601, Chapter 133, O.S.L. 1997." 57 O.S. § 332.7(M) (emphasis added).
> That is, "NEW LAW" of Section 598 is "clear" and in "plain and ordinary" language:
> Schedule A is first degree murder, punishment = imprisonment for 18-60 yrs (life), life imprisonment without parole, death.
>
> Under this authority of Title 57 Law into how Plaintiff's Life sentence is administered, by utilizing the Consolidated Record Card (DOC 060211H) "the official document used to record the earned credit history and all actions effecting the release date of any inmate remanded to custody of the agency," OP-060211 Section VII.A. and *pertinent* statute law of 57 O.S. § 332.7(A)(3), Plaintiff can *legally* assert that the recorded reference of "3-12 [March 2012]" on page 2, of Exhibit A in respect to "Date, Parole Board Action" is *cognizable* according to "85% of the midpoint of the time of imprisonment that would have been imposed."
> That is, because, Plaintiff was received into Department of Corrections custody on or about "06/11/1998," he was credited with "393 Days Jail Time" and he was considered for parole in March 2012, his *de facto* discharge date, *mathematically*[5], is no more than 35.29[6] years, or an approximate discharge date of 2032, notwithstanding deductions of earned credits and achievement days. *See,* Pardon and Parole Board Manual Policy 004 I.A.2.c. (For a crime committed prior to July 1, 1998, any person...shall be eligible for consideration

[5] 15 years = 85%(1/2)(Schedule A)

[6] According to ODOC Policy OP-060211 Section II "Sentences to be served by an inmate in ODOC are calculated by first establishing a beginning release date which is the term of incarceration, as designated by the commitment document, added to the reception date. This date is converted to the total days to be served. At least once a month thereafter, the days remaining to be served are updated based upon the number of credits earned or lost and the number of days served (57 O.S. 138(I)). When the days remaining to be served reaches zero, the inmate has completed the sentence.

for parole...Has reached 85% of the midpoint of the time of imprisonment that would have been imposed for an offense listed in schedule[ ] A.). *See* also, Id., Policy 004 I.A.7.f. n. 1 (Truth in Sentencing refers to legislation codified in 57 O.S. 332.7(a)(1), (2), (3) and (4) and applies to crimes committed prior to July 1, 1998.)

Furthermore, the Board is not without authority to "commute" Plaintiff's life imprisonment sentence according to 57 O.S. § 332.7(A)(3) statute law, with specific reference to § 332.7(M) (2017) when the Board already used a similar process in 2012. According to Pardon and Parole Board Policy and Procedure Manual, Policy 004 I.A.7.i.1. "[t]he Board may consider sentence commutation at **any** parole consideration date." Id. (emphasis added). See also, 2B Vernon's Okla. Forms 2d, Crim. Prac. & Proc. § 32.29. Service of sentences and credit applicable to offenders in the custody of the Oklahoma Department of Corrections (2017) Section IV.A.

That is, only the Governor, after majority vote by the Pardon and Parole Board, can legally commute a Life sentence to a term of years as set forth in 57 O.S. § 332.7(A)(3) predicated upon the *strict* mathematical formula therein. Because "earned credits" is a matter of Legislature prerogative, without this "commutation" procedure Plaintiff would be denied meaningful opportunity for "earlier or speedier" release at all.

In other words, "parole and commutation" both fall under the general meaning of "clemency." That is, "[i]t shall be the duty of the Board to make an impartial investigation and study of applicants for commutations, pardons or paroles, and by a majority vote make its recommendations to the Governor of all deemed worthy of clemency." Okla. Const. Art. VI, § 10. (emphasis added).

Moreover, this assertion is not without weight for the OCCA previously ruled "that the decision to set [a prisoner's life] sentence to a term of years is the responsibility of the Pardon and Parole Board, not the district court." *See Lang v. State,* PC-2016-934, *Lanford v. State,* PC-2017-663 ("Lanford is subject to the provisions of parole set forth in 57 O.S.Supp.2013 § 332.7, and that the decision to set Lanford's sentence to a term of years is the responsibility of the Pardon and Parole Board, not the district court.").

The OCCA, vested with superintending CRIMINAL matters, concluded in so many words that "Equal Protection of Law" could withstand the "Forgotten Man Act" where pursuant to Title 57, § 332.7 every inmate must be considered for parole on or before the expiration of one-third of his maximum sentence in such a manner as the Board may determine and pursuant to "policy of Pardon and Parole Board...filed in the office of the Secretary of State during the month of June, 1972" "any inmate serving forty-five years or more, including a life sentence, shall be considered for parole or clemency after serving fifteen years." *See Fields v. State,* 501 P.2d 1390, 1394 (Okla.Crim.App. 1972).

However, the imposition of "Oklahoma's Truth in Sentencing Act" recognized in *Traylor v. Jenks,* 223 Fed.Appx. 789, and declared "retroactive" in *Nestell v. State,* 954 P.2d 143, 144-45 (Okla.Crim.App. 1998) and *Castillo v. State,* 954 P.2d 145, 147 (Okla.Crim.App. 1998) has no need for the Board to establish policies to "effectuate" 57 O.S. § 332.7(A)(3) when Plaintiff's crime was clearly committed "prior to July 1,1998" for the Legislature clearly established its parameters in § 332.7(M).

> Theoretically, with the "retroactive" determination of *Nestell, supra* and *Castillo, supra*, the holding of *Fields v. State,* 501 P.2d 1390 (Okla.Crim.App. 1972) is inapplicable, and constitutionally infirm as adequate due process mechanism, as applied to Plaintiff.
> The Defendant's "deliberate indifference" to this statute law and failure to establish "TIS" dates in the form of commutation, at any parole consideration cannot be a part of the "discretionary powers" conferred on the Pardon and Parole Board for the *actual* meaning of life imprisonment is not blind to their purview and certainly within their authority to "construe" and "accurately" determine predicated upon 57 O.S. § 138 for the record is made whole to the "paroling authority" according to 57 O.S. § 332.7(J).

Doc. #1 at 54 – 57, ¶¶ 187 – 196. In the case of *Farmer v. Brennan,* 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994), this Court held that "prison officials may be held liable under Eighth Amendment for denying humane conditions of confinement only if they know that inmates face substantial risk of serious harm and disregard that risk by failing to take reasonable measures to abate it." *Id.* 511 U.S., at 842.

From the legislative history of the "parole consideration" statute of 57 O.S. § 332.7, (Doc. #1 at 45 – 52, ¶¶ 156 – 177), it is apparent that the Board of Corrections "acted or failed to act believing that harm actually would befall an in inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm." *Farmer v. Brennan, supra,* 511 U.S., at 842, 114 S.Ct. 1970. That is, the State Board of Corrections should establish a policy or rule providing what one-third (1/3) of a life sentence **shall constitute for purposes of mandatory parole consideration**, Attorney General Opinion No. 69-208 (June 17, 1969); 57 O.S. § 332.7 was not intended to be construed as to deny prisoners their just rights, *Petition of Leaser, supra,* 89 Okl.Cr. 356 – 357; "parole consideration" provides "equal protection" from excessive sentences, *Fields v. State, supra,* 501 P.2d, at 1394; "parole consideration" was *retroactively* determined by matrices/schedule, Laws 1997, 1st Ex. Sess. (H.B. No. 1213 "Oklahoma Truth in Sentencing Act), Ch. 133, § 613; H.B. No. 1213 does not authorize the District Court to modify the sentences, but instead, directs the Department of Corrections and the

Pardon and Parole Board to develop procedures for modifying the sentences given to inmates prior to July 1, 1998, *State of Oklahoma v. Partlo,* CF-95-3229 (District Court of Oklahoma County); Section 613 only makes effective certain administrative functions relating to community sentencing, *Nestell v. State,* 954 P.2d 143, 144 – 145 (Okla.Crim.App. 1998); the retroactive parole eligibility portion of the Act specifically does *not* replace the method of calculating parole eligibility prior to the Act, but rather includes the pre-Act criteria as a factor to determine eligibility. *See* 1997 Okla. Sess. Laws, ch. 133, § 26(A); 57 O.S.Supp. 1997, § 332.7, *Castillo v. State,* 954 P.2d 145, 147 (Okla.Crim.App. 1998) (emphasis in original); the Oklahoma Legislative repealed the Forgotten Man Act in 1997 and replaced it with the Truth in Sentencing Act, *Traylor v. Jenks,* 223 Fed.Appx. 789 (10th Cir. 2007); with enactment of the 85% Rule [Oklahoma Statutes title 21, §§ 12.1, 13.1], the legislature completely changed this traditional understanding of parole. Far from a discretionary procedure exercised by the executive branch, the 85% Rule is a legislatively-imposed restriction upon executive branch discretionary authority...application of the 85% Rule is determined by statute, before a defendant is convicted, sentenced, or imprisoned...The issue is when, under Oklahoma law, a defendant is eligible to be considered for parole on a particular sentence, *Anderson v. State,* 130 P.3d 273, 279 (Okla.Crim.App. 2006).

It is clear that the Oklahoma Court of Criminal Appeals has determined that there exists "interest" in eligibility for early release or "parole." As such, the Oklahoma Board of Corrections, a creature of statute, 57 O.S.2011, § 503, is constitutionally bound to effectuate Oklahoma Statutes title 57 *in toto* without repugnance to Oklahoma Statutes title 21, §§ 12.1, 13.1 and Oklahoma Statutes title 22, § 1514. The prejudice suffered is not knowing what "parole consideration" law, without discovery, is applied, or not applied to Petitioner Vue, in the first

instance. To this legislative construction, this Court has deemed it "constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority." *Mistretta v. United States,* 488 U.S. 361, 373, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989).

b.

The Oklahoma Court Of Criminal Appeals Has Exclusive Jurisdiction Over Title 57 Law

The Western District Court did not apply the correct law of Oklahoma Statutes title 57, § 332.7(A)(3) rather the Western District Court "concluded that plaintiff is unable to rely on Graham v. Florida and Miller v. Alabama to support his Eighth and Fourteenth Amendment claims and that he has suffered no Due Process or Equal Protection violations based on the allegations in his complaint."[7] App. 9a. Nonetheless, the Western District Court was able to determine that the "remainder of plaintiff's objections are simply reassertions of arguments raised in his complaint and properly considered by Judge Purcell." App. 10a. To the contrary of *Salve Regina College v. Russell,* 499 U.S. 225 (1991), the Tenth Circuit did not "review *de novo* a district court's determination of state law." *Id.* 499 U.S., at 231, 111 S.Ct. 1217.

Petitioner Vue "bottomed" his Fourteenth Amendment violations upon the applicable statute of 57 O.S. § 332.7(A)(3), however, without regard to the fact that this Court "repeatedly held that the coverage of [§ 1983] must be broadly construed,"[8] the Tenth Circuit's dismissal of Petitioner Vue's § 1983 complaint was premature without remand to assess the "nature" of 57 O.S. § 332.7(A)(3).

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[7] At the time of the commitment offense, Petitioner Vue was 18 years 24 days old, although Petitioner is not a "child" per se, to say that the law 21 O.S. § 701.9, the statute under which Petitioner was convicted, distinguishes between 24 days is in conflict to the reasoning of *Hall v. Florida,* 572 U.S. 5, 134 S.Ct. 1986, 188 L.Ed.2d 1007 (2014), where this Court held: The SEM (standard error of measurement) reflects the reality that an individual's intellectual functioning cannot be reduced to a single numerical score."

[8] *Golden State Transit Corp. v. Los Angeles,* 493 U.S. 103, 105, 110 S.Ct. 444, 107 L.Ed.2d 420 (1989)

At its core, Petitioner's case is about the relationship between rights and remedies. While it is an old maxim that rights must have remedies, see, *e.g., Marbury v. Madison,* 1 Cranch (5 U.S.) 137, 163, 2 L.Ed 60 (1803), this does not "establish that the individual's protection must come in the form of a particular remedy." *Nixon v. Fitzgerald,* 457 U.S. 731, 755 n. 37 (1982).

In the Fourteenth Amendment's "due process of law" and "equal protection of the law" privileges; the remedy "due process and equal protection" is a part of the right. Because a Fourteenth Amendment violation is not completed until the nature of "interest", within Oklahoma Statutes title 57, § 332.7(A)(3), specifically Schedule A, represents a "liberty interest" or a "vested right" is determined, declaratory or injunctive relief is the sole remedy under 42 U.S.C.A. § 1983. This Court has given full effect to § 1983's broad language, recognizing that § 1983 "provide[s] a remedy, to be broadly construed, against all forms of official violation of federally protected rights." *Monell v. New York City Dept. of Social Services,* 436 U.S. 658, 700 – 710 (1978)

The Oklahoma Court of Criminal Appeals has exclusive jurisdiction in criminal matters, *e.g.*, "personal liability, defenses thereto, and the imposition and execution of a criminal sentence." *Dutton v. City of Midwest City,* 353 P.3d 532, 540 (Okla. 2015); Okla. Const. Art. 7, § 4. Under this State law authority delegating jurisdiction to the Oklahoma Court of Criminal Appeals, 57 O.S. § 332.7(A)(3) "for a crime committed prior to July 1, 1998" represent a "liberty interest" in light of the *specific* fact that Petitioner after "change-of-plea" process, Petitioner Vue was *strictly* sentenced to "imprisonment for life," 21 O.S. § 701.9.

The importance of fair procedures separate *procedural* from *substantive* due process. Substantive due process raises a standard "barring certain government actions regardless of the procedures used to implement them." *Daniels v. Williams,* 474 U.S. 327, 331 (1986).

As a remedial statute, 42 U.S.C.A. § 1983 should be "liberally and beneficially construed." *Monell, supra,* 436 U.S., at 684. Because Petitioner challenges the statute of 57 O.S.Supp. 2017, § 332.7(A)(3), as inaccurately or not applied to Petitioner Vue, in violation of the Fourteenth Amendment, the Tenth Circuit's lack of independent review deprived Mr. Vue of the *minimal* process due in accordance with the Rules of Civil Procedure—the civil action.

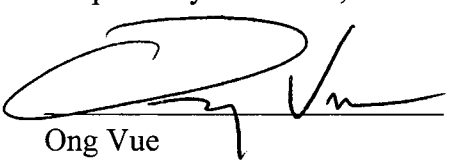
REASON FOR GRANTING WRIT

Because Mr. Vue is entitled to due process of law and equal protection of law "a United States court of appeals [for the Tenth Circuit] has decided an important question of federal law that has not been, but should be settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court," U.S.Sup.Ct. Rule 10 (c), 28 U.S.C.A., contrary to the holding of *Wilkinson v. Dotson,* 544 U.S. 74 (2005).

Respectfully, the writ should be granted, and the case remanded for application of the correct standard of *Wilkinson v. Dotson,* 544 U.S. 74 (2005) and the correct application of Oklahoma Statute title 57, § 332.7(A)(3), specifically Schedule A.

September 28, 2018

Respectfully submitted,



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