

No. 18-7355

Supreme Court, U.S.  
FILED  
DEC 29 2017  
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ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

PRO SE MICHAEL R. HAYNES -- PETITIONER  
(Your Name)

vs.

OREGON BOARD OF PAROLE AND POST SUPERVISION et al - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES APPEAL COURT 9<sup>TH</sup> CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL R. HAYNES  
(Your Name)

2500 WESTGATE  
(Address)

PENDLETON OREGON, 97801  
(City, State, Zip Code)

10  
(Phone Number)

## QUESTIONS PRESENTED

1. When record[ p.3 Opinion and order 4/14/17] show Respondents deviated from[APPENDIX A Ex 126 p.6 -ORS 163.105(2)(b)(4)(1985), Ex 105 p.157] due process judicial procedure of division 32 to treat Petitioner differently than others similarly situated e .g adding division 62 burdens to deny created liberty interest of 2 year interval petitions for counsel representation do U.S. courts possess authority under rule of evidence 403 to exclude evidence confusing this issue?

2. Is U.S. District court of Oregon to apply Oregon law in boundaries it sits in a manner respecting equal protection of federal law encompassing mandatory language of state statute, *Felce v. Fielder* 974 F2d 1484,1492 (7<sup>th</sup> Cir 1992), when U.S. Citizen, Petitioner, claims due process and equal protection of state created liberty interest under 14<sup>th</sup> amendment rights under U.S. Constitution violated?

3. When state court directs Respondents to only use records and documents of Petitioner in future consideration of parole/ release and not other inmates named Haynes[APPENDIX H Ex 128 p.2, Ex 127 p.2] do U.S. courts possess authority under rule of evidence 403 to exclude evidence of other inmates named Haynes?

4. When U.S. District court holds no jurisdiction to deny consideration of counsel under Federal Rules of Appellant Procedure 22-1(d) but issues order denying U.S. Citizen's, Petitioner's, right is due process void and order invalid?

## QUESTIONS PRESENTED

5. When U.S. Appeals court holds sole jurisdiction under Federal Rules of Appellant Procedure 22-1(d) but allows invalid order to bar Petitioner's, a U.S. Citizen's, right of consideration of counsel is due process void?

6. When there is a diversity of state law creating different liberty interests under mandatory language of state statutes under equal protection of federal law to that fact does the U.S. Supreme court concur U.S. District court of Oregon are to apply Oregon law and not California parole statutes within boundaries it sits in a manner respecting Petitioner's 14<sup>th</sup> amendment rights under U.S. Constitution?

7. When Habeas corpus relief to a lesser form of custody is available to Petitioner under federal law, *Nettles v. Grounds* 788 F 3d 992, 998 (9<sup>th</sup> Cir. 2014), and mandatory language of state statute by Oregon law[APPENDIX A Ex 126 p.6] for Petitioner, U.S. Citizen, do U.S. courts possess authority under rule of evidence 403 to exclude all evidence that artificially inflates his custody level to Medium II institutions whereby court is empowered authority to provide effective relief?

## LISTED PARTIES

All parties appear in the caption of the case on the cover page.

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see OAR 255-32-0030(1)

11/23/15 Oregon state court order at Ex 127 p.2, 128p. 2 directing Respondents

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4/09/12 Administrative order showing Respondents act out side jurisdiction of

ORS 163.105(1985)and division 32 even know state adjudication states

notwithstanding ORS 144 Petitioner holds created liberty interest under ORS

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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 issue to review judgment below.

**OPINIONS BELOW**

1. The opinion of the United States court of appeals appears at Appendix D
2. The opinion of the United States court of appeals appears at Appendix A

**1.**

**JURISDICTION**

The date on which the United States Court of Appeals decided my case was 10/3/17 and a timely petition for my rehearing was denied by the United States Court of Appeals on same date as shown by copy of the order denying rehearing appears at appendix A.

Jurisdiction of this court is invoked 28 U.S.C. § 1254(1), 28 U.S.C. §1257(a).

The date on which the highest state court decided my case was 2/2/15 and a timely petition for my rehearing thereafter was denied on same date. A copy of that decision appears at appendix A on p. 1 of writ.

## STATEMENT OF THE CASE

U.S. District court treated Petitioner differently than others similarly situated by not reviewing his created liberty interest under mandatory language of state statute [APPENDIX A Ex 126 p.6] to petition in 2 year intervals for appointment of counsel, exclusion of relevant evidence [APPENDIX H Ex 128 p.2, Ex 127 p.2] confusing issues- e. g. other inmates named Haynes actions on his record, burdens of division 62 added to deny Petitioner 2 year petitions for counsel representation.

U.S. District Court court further treated Petitioner differently when its case closed on 4/14/17 and it issued 6/12/2017 order denying consideration of counsel when U.S. Appeals court held sole jurisdiction under FRAP 22-1(d) over due process of consideration[APPENDIX E Ex 5, Ex 8 p. 1-2] and District court closed its case on 4/14/17. Court does not dispute Federal Rules of Evidence 403 authorizes remedy for Petitioner's claims under habeas corpus that could lead to immediate release to a lesser form custody: Medium I institutions and rehabilitation programming so in, work release, leave, employment at forest camp, nor does court dispute that U.S. Supreme court on own discretion may correct any violations of Petitioner's U.S. Constitutional rights, clarify laws and rules or its authority to fashion meaningful relief in diversity of citizenship cases where different liberty interests exist and or where U.S. court departs from accepted course of judicial proceeding.



## REASONS FOR GRANTING WRIT

Mandatory language of Oregon Revised Statute 163.105(1985) holds created liberty interest secured under equal protection under Federal law for U.S. Citizens, Petitioner, sentenced under Id. ORS 163.105(1) to fair due process hearings upon petition any time after 20 years and further petitions not less than 2 years Id. ORS 163.105(4) OAR 255-32-0035(2010) notwithstanding Oregon Revised Statute 144 as adjudicated by Oregon court [APPENDIX B Ex 126 p.2 lines 1-12] so indigent Petitioner is provided his fair due process to counsel appointment at state expense in 2 years intervals within confines of Respondents jurisdiction and authority under division 32 and ORS 163.105(1985)[APPENDIX A Ex 105 p.157 and Ex 126 p.6] as supported by his claims 1 and 2 [APPENDIX A 3 page writ Habeas Corpus]- *Felce v. Fielder* 974 F2d 1484,1492(7<sup>th</sup> Cir 1992) "State statute using mandatory "Shall.. Unless" language creates liberty interest." Petitioner is not barred from remedy for violations to his 14<sup>th</sup> Amendment rights under U.S. Constitution above as it pertains to appointment of counsel. U.S. District court closed its case 4/14/17 then issued order denying Petitioner fair consideration of appointment of counsel two months later[APPENDIX A 6/12/17/ U.S. District court Order] U.S. court of Appeals under Federal Rules of Appellant Procedure 22-1(d)held sole jurisdiction; U.S. Appeals court on 10/3/17 refused hearing en banc on issue[APPENDIX A].

## REASONS FOR GRANTING WRIT

Rather fair procedures under rules and or law create liberty interest Petitioner, a U.S. Citizen, is entitled to fair due process, equal protection, and or relief thereof-  
-“When a judge acts in the clear absence of all jurisdiction, i.e., of authority to act officially over the subject-matter in hand, the proceeding is coram non iudice. In such a case the judge has lost his judicial function, has become a mere private person, and is liable as a trespasser for damages resulting from his unauthorized acts. Such has been the law from the days of the case of *The Marshalsea*, 10 Coke 68. It was recognized as such in *Bradley v. Fisher*, 13 Wall. (80 U.S.) 335, 351, 20 L. Ed. 646. In *State ex rel. Egan v. Wolever*, 127 Ind. 306, 26 N.E. 762, 763, the court said: " The converse statement of it is also ancient. Where there is no jurisdiction at all there is no judge; the proceeding is as nothing." In proceeding that are as nothing due process is void and capricious act and deviations of judicial procedures apparent. In this case where OAR 255-32-0030(1) directs Respondents to remove irrelevant, immaterial, unduly repetitious evidence added onto Petitioner's record to inflate his custody level denying him a lesser form of custody: Medium I institutions and rehabilitative programs so in, work release; ect, and order by state court directs evidence not to be considered [APPENDIX C Ex 128 p.2, Ex 127 p.2] [APPENDIX C Ex 126 p.3 lines 22-35 ]relief via Federal rules of evidence 403 is

## REASONS FOR GRANTING WRIT

not barred thus allowed to Petitioner on or after 11/23/15 for violations of his 14<sup>th</sup> amendment rights under the U.S. Constitution as so claimed in 1 and 2 of his writ-  
“In fashioning a remedy for constitutional violations a federal court must order effective relief.” *Smith v. Sullivan*, 611 F.2d 1039, 1044 (5th Cir. 1980); Removal of evidence capriciously incorporated outside division authority 32 e.g. division 62 that is ordered not to be considered in future release considerations likewise pertains to release to lesser form of custody under equal protection and due process of federal law-See *Nettles v. Grounds*, 788 F 3d 992, 998 (9<sup>th</sup> Cir. 2014) “In addition, a prisoner is deemed to be seeking "release" from custody even when the prisoner will not gain freedom, but will be released into a different form of custody See *id.* at 486 (stating that the writ of habeas corpus is available to obtain release from the wrong institution to the correct institution)(citing *Humphrey v. Cady*, 405 U.S. 504, 92 S. Ct. 1048, 31 L. Ed. 2D 394(1972) *In re Bonner*, 151 U.S. 242, 14 S. Ct. 323, 38 L. Ed 149(1894). In unique cases of diversity U.S. Supreme court has held in *Erie v Tompkins* (US) supra, judicial decisions are laws of the states within meaning of the Rules of Decision Act; Ever since that decision overruled *Swift v Tyson* (US) 16 Pet 1, 10 L ed 865 federal courts have held as law where no federal question was involved, and parties were before a federal court solely because of

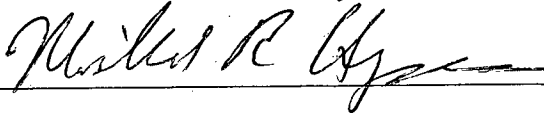
## REASONS FOR GRANTING WRIT

diversity of citizenship, federal District Court was bound to apply the law of the state within whose boundaries it sat whether such local law was statutory or common law. See *Angel v Bullington*, 330 US 183, 91 L ed 832, 67 S Ct 657; *Cohen v Beneficial Industrial Loan Corp.* 337 US 541, 93 L ed 1528, 69 S Ct 1221; *Guaranty Trust Co. v York*, 326 US 99, 89 L ed 2079, 65 S Ct 1464, 160 ALR 1231. Respondents do not refute they acted outside their authority of division 32 to incorporate evidence state ordered not to be considered in release decisions in future nor refute that they restraint indigent Petitioner from his fair due process of petitioning for appointment of counsel in 2 year to be provided at state expense. In this unique case U.S. Supreme court can offer effective relief by remanding this case U.S. District court where fair due process can restart and evidence removed via rule 403 that inflates Petitioner's custody level and or U.S. Appeals court can conduct fair due process consideration under FRAP 22-1(d) and Petitioner's claims 1 and 2 of his writ honored justly.

## CONCLUSION

For above reasons the petition for a writ of certiorari should be granted.

I Pro Se Michael R. Haynes state above is true under penalty of perjury.

  
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