NO. 25-7233

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

EZRA C. FOSTER – PETITIONER *pro-se*

VS.

STEVEN REYNOLDS, WARDEN/RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
THE UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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USCS Supreme Ct. R. 14 Content of a Petition for a Writ of Certiorari;

1. A petition for a writ of certiorari shall contain, in the order indicated:

(a) The questions presented for review:

QUESTION 1

THIS COURT HAS HELD THAT THEY COULD NOT WRITE A CODE OF PROCEDURE TO THE PAROLE REVOCATION HEARING PROCESS; THAT IT WAS THE RESPONSIBILITY OF EACH STATE; MOST STATES HAVE DONE SO BY LEGISLATION OTHERS BY JUDICIAL DECISION USUALLY ON DUE PROCESS GROUNDS; THERE IS NO AUTHORITY FOR THE FEDERAL COURTS TO ALTER, ADD TOO, OR IMPROVE THE PROVISIONS OF A STATE'S ADMINISTRATIVE RULES TO MEET A SITUATION NOT PROVIDED FOR TO ADJUDICATE ITS FINDINGS WHERE THAT STATE DECIDED TO WRITE ITS CODE OF PROCEDURE THROUGH A LEGISLATIVE DECISION AND NOT BY A JUDICIAL DECISION; HAS DUE PROCESS BEEN AFFECTED IF THE COURT ALTERS THE STATES CODE OF PROCEDURE?

QUESTION 2

IN ADOPTING FINDINGS AND ADJUDICATING THAT A PAROLE VIOLATOR'S AVAILABILITY NO LONGER OCCURS WHEN TAKEN INTO CUSTODY DOES IT AFFECT DUE PROCESS TO A REASONABLE CONSTITUTIONAL DUTY TO PROVIDE AN ADVERSARAL HEARING PROCESS WHERE IT CAN NO LONGER BE HELD THAT THE FUNCTIONAL DESIGNATION FOR THE LOSS OF LIBERTY AS A PAROLE VIOLATOR NO LONGER OCCURS WHEN THE PAROLEE IS TAKEN INTO CUSTODY?

QUESTION 3

THIS COURT TURN TO THE NATURE OF THE PROCESS THAT WAS DUE TO THE PAROLE REVOCATION PROCESS ANALYZING THAT THERE WERE TWO IMPORTANT STAGES TO THE PROCESS; THE FIRST STAGE IS THAT OF ARREST AND A PRELIMINARY HEARING AND THE SECOND STAGE IS THAT OF THE REVOCATION HEARING TO WHICH NOTIFICATION IS REQUIRED OF BOTH STAGES; WHAT HAPPENS TO THE PROCESS IF BOTH STAGES ARE PROCEDURALLY DEFAULTED AND NOTIFICATION IS NOT GIVEN?

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(b)

(i) A **LIST OF ALL PARTIES** to the proceedings in the court whose judgment is sought to be reviewed; **A motion to change respondent is included with this filing, from Misty Mackey to Steven Reynolds.**

(ii) A corporate disclosure statement as required by rule 29.6; **Not Applicable**

(iii) A **LIST OF ALL PROCEEDINGS** in state and federal trial and appellate courts, including proceedings in this Court, that are directly related to the case in this Court. For each such proceeding, the list should include the court in question, the docket number and case caption for the proceeding, and the date of entry of the judgment. **RELATED CASES**

1. Ohio Adult Parole Authorities Revocation Hearing of March 24th, 2021.

2. State ex rel. Foster v. Foley, 2022-Ohio-35 January 10th, 2022 Decided, C.A. #21CA011812.

3. The State of Ohio In the Relations of Ezra C. Foster v. Keith Foley, Warren, Motion for Ohio Civil Rule 60 (B)(1) seeking relief from judgment of the Ohio Ninth District Court of Appeals for mistake, inadvertence, surprise, excusable neglect, filed 02/22/2022 Denied 05/05/2022.

4. State ex rel. Foster v. Foley, 170 Ohio St. 3d 86 Supreme Court of Ohio No. 2022-0186 Denied 09/12/2022.

5. Foster v. Foley, 199 N.E. 3d 553 Supreme Court of Ohio No. 2022-1300 Decided 12/13/2022.

6. Foster v. Foley, 2023 U.S. Dist. LEXIS 246111 decided & filed December 27th, 2023 Case No. 1:23-cv-00139.

7. Foster v. Mackey, 2025 U.S. Dist. LEXIS 32097 February 24th, 2025 Case No. 1:23-cv-00139.

8. Foster v. Mackey, 2025 U.S. Dist. LEXIS 66580 April 8, 2025 Filed Case No. 1:23-cv-00139.

9. Foster v. Mackey, 2025 U.S. App. LEXIS 19501 August 1, 2025 Filed No. 25-3246.

(c) Prepared under **Rule 33.2**, as an inmate of an institution and a request to proceed in forma pauperis and is not represented by counsel needing to file an original petition and motion with a table of contents and a table of cited authorities. The table of contents includes the items contained in the appendix.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari is issued, so as to review the judgments below which deprive Petitioner of Due Process.

(d) **Citations** of the official and unofficial reports of the opinions and orders entered in the case by courts or administrative agencies. **REPORTED OPINIONS BELOW**

1. The Ohio Adult Parole Authorities' Revocation Hearing of March 24th, 2021. (Appendix Page 1)

2. State ex rel. Foster v. Foley, 2022 Ohio 35 Court of Appeals of Ohio Ninth Appellate District, Lorain County C.A. No. 21CA011812 Decided January 10th, 2022. (Appendix Pages 2 – 5)

   "Did not comply with the mandatory requirements of O.R.C 2969.25 (C) or the requirements of O.R.C. 2725.04 this case is dismissed January 10th, 2022.

3. The State of Ohio In the Relations of Ezra C. Foster v. Keith Foley Warren Motion for Ohio Civil Rule 60 (B)(1) seeking relief from judgment of the Ohio Ninth District Court of Appeals for mistake, inadvertence, surprise, excusable neglect. Filed 02/22/2022 Denied 05/05/2022." (Appendix Pages 6 – 12)

4. State of ex rel. Foster v. Foley, 170 Ohio St. 3d 86 Supreme Court of Ohio No. 2022-0186 Decided 09/13/2022. (Appendix Pages 13 – 18)

   "For the foregoing reasons, the Court of Appeals correctly found Foster's petition to be procedurally defective under R.C. 2969.25 (C) and 2725.04 Dismissal was therefore proper."

5. Foster v. Foley, 199 N.E. 3d 553 Supreme Court of Ohio 2022-1300 Notice Decision Without Published Opinion In Habeas Corpus Sua Sponte, cause dismissed. (Appendix Pages 19 & 20)

6. Foster v. Foley, 2023 U.S. Dist. LEXIS 246111 Report Recommendation (Appendix Pages 23 – 27 Summary Judgment) & (Appendix Pages 28 – 55 The Petition)

   I recommend that Foster's Ground One (1) and Ground Two (2) claims be dismissed as procedurally defaulted and non-cognizable. In the alternative they may be denied for lack of merit. Foster's petition for writ of habeas corpus should be denied, and I recommend Foster not be granted a COA. Dated 12/27/2023.

7. Foster v. Mackey, 2025 U.S. Dist. LEXIS 32097 Judgment entry Dated February 24th, 2025 for the reasons stated in the opinion's conclusion, the Court overruled the objections to Judge Parker's second Report and Recommendation (Doc #23) and adopt second Report and Recommendation. Concluding the First Ground for relief is meritless and his second ground for relief is procedurally defaulted. The Court denies Foster's petition as to Ground One and dismiss it as to Ground Two. I also adopt Judge Parker's first Report and Recommendation and deny Foster's motion for summary judgment (Doc#22) Further the Court denies motions to conduct discovery, to expand the record, for an Evidentiary Hearing, for a control number, and for a status conference (Doc# 26, 27, 29, 34, and 35). Finally, the Court concludes there is a failure to a substantial showing of a constitutional right and declines to issue a Certificate of Appealability. (Appendix Pages 56 – 64) & (Appendix Pages 65 & 66)

8. Foster v. Mackey, 2025 U.S. Dist. LEXIS 66580 Filed April 8th, 2025 1:23-cv-00139

   I conclude the issues Foster raised in his petition are arguable on their merits, even if he is unlikely to be successful on the merits. Therefore, I grant his motion to proceed in Forma Pauperis on appeal. (Doc #40) Finally for the reasons set forth in that opinion, I conclude Foster has not made a substantial showing of the denial of a constitutional right and I certify there is not basis on which to issue a certificate of appealability. 28 U.S.C. Sect. 2253 Fed. R. of App. P. 22(b). (Appendix Pages 67 – 68)

9. Foster v. Mackey, 2025 U.S. App. LEXIS 19501 United States Court of Appeals for the Sixth Circuit. Filed 08/01/2025 No. 25-3246.

   Foster argues that the state violated his due process rights because it did not follow the procedures outlined in his parole revocation notice and the Adult Parole Authority continued his original hearing date beyond the allotted time.

   Reasonable jurists would not debate the district court's denial of this claim. The February 8, 2021, notice informed Foster of his violation hearing, outlined his rights, and summarized the alleged violations. *See id.* The March 24, 2021, hearing gave Foster the opportunity to be heard, confront witnesses, and have a neutral decision maker adjudicate his violations. Indeed, at that hearing, the Parole Authority presented evidence of Foster's violations, and he admitted to them. And his hearing occurred within a reasonable timeless than two months after his arrest. *See id.* At 488 (noting that a two-month delay is not unreasonable). So reasonable jurists would not debate the district court's conclusion

that the state court did not unreasonably apply clearly established federal law in rejecting this claim.

If Foster is arguing that the Parole Authority failed to follow state procedures in continuing and holding his hearing, reasonable jurists would agree that that is not a cognizable claim. *See Estelle v. McGuire,* 502 U.S. 62, 67, 112 S. Ct. 475, 116 L. Ed. 2d 385 (1991) ("[F]ederal habeas corpus relief does not lie for errors of state law." (quoting *Lewis v. Jeffers,* 497 U.S. 764, 780, 110 S. Ct. 3092, 111 L. Ed. 2d 606 (1990))).

For these reasons, Foster's COA application is **DENIED**. (Appendix Pages 69 – 75)

STATEMENT OF JURISDICTION

(e) A concise statement of the basis for jurisdiction in this Court: **The Sixth Circuit Court of Appeals has decided an important Federal question in a way that conflicts with relevant decisions of this Court.**

(i) the date the judgment or order sought to be reviewed was entered: **The date was that of August 1st, 2025 Seeking review of the Sixth Circuit Court of Appeals order in case No 25-3246 LEXIS 19501,**

(ii) the date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for a writ of certiorari; **None Applicable**

(iii) Express reliance on rule 12.5, when a cross petition for a writ of certiorari is filed under that rule, and the date of docketing of the petition for a writ of certiorari in connection with the cross-petition is filed. **Not applicable**

STATUTORY PROVISION BELIEVED TO CONFER JURISDICTION

(iv) the statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question; **"Pursuant to U.S.C.S. Supreme Ct. R. 10 "Review on a Certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor full measuring the**

Court's discretion, indicate the character of the reasons the court considers: § (c) Has decided an important Federal question in a way that conflicts with relevant decisions of this Court."

(v) If applicable, a statement that the notifications required by rule 29.4 (b)(c) have been made. **Not applicable.**

(f) The **CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS** involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text shall be set out in the appendix referred to in subparagraph 1(i)

1. The U.S. Constitution Amendment Fourteen (14) Sec. 1 [Citizens of the United States]
2. USCS Federal Rules of the Supreme Court of the United States; Rule 10 § (c)
3. USCS Section 2254 Case Rule 1 Scope
4. USCS Section 2254 Case Rule 4 Preliminary Review
5. Ohio's Code of Procedure to the Parole Revocation Hearing Process – Administrative Rules.
    a. 105-PBD-09 The Parole Violation Hearing Process
    b. 100-APA-14 The Sanctions for Violation of Conditions of Supervision.
6. Ohio Revised Code 2969.25 Inmate's Affidavit as to Prior Actions; Review of Multiple Actions; Waiver of Payment.
7. Ohio Revised Code 2969.21 Definitions.
8. Ohio Revised Code 2967.15 (B) ¶ 3
9. Ohio Revised Code 1.14 Excluding First and including Last Day – Legal Holidays
10. Ohio Revised Code 1.42 Common, Technical, or Particular Terms

(g) A concise **statement of the case** setting out the facts material to consideration of the questions presented, and also containing the following:

(i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e. g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(I).

(ii) If review of a judgment of a United States court of appeals is sought, the basis for federal jurisdiction in the court of first instance. **"Pursuant to U.S.C.S. Supreme Ct. R. 10 "Review on a Certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor full measuring the Court's discretion, indicate the character of the reasons the court considers: § (c) Has decided an important Federal question in a way that conflicts with relevant decisions of this Court."**

STATEMENT OF THE CASE

§ (i) The case is that of a parole revocation hearing. It is the claim that the Adult Parole Authorities unlawfully deprived Petitioner of his liberty utilizing fraudulent, defective, un-authorized, and defaulted documentation to conduct the parole revocation process, violating Due Process. Material to consideration of the questions is that of a "Document" utilized as "Evidence" to the petition's claims. (Appendix page 104)

Because in the State of Ohio there is no appeal to a parole revocation hearing, (Appendix page 105) Petitioner filed a timely writ of habeas corpus to the Appeals Court in the county by which he was being held, "The Ninth District Court of Appeals Lorain County, Ohio."

Because the filing did not meet the strict mandatory filing requirements of ORC 2969.25(C) it was procedurally defaulted and dismissed, the claims therein were never adjudicated and no weighing of the evidence. (Appendix Pages 2 – 5)

Petitioner filed a motion pursuant to Ohio Civil Rule 60 (B)(1) to have the judgment set aside, vacated, or reconsidered for mistake, inadvertence, excusable neglect; motion was denied. (Appendix Pages 6 – 12)

Petitioner filed a timely appeal as a matter of right to the Ohio State Supreme Court to which that court affirmed the appeals court decision of the strict mandatory filing requirement of ORC 2969.25(C), but the record is silent and without adjudication of the claims therein and no weighing of the "Evidence". (Appendix 13 – 18)

Petitioner filed a timely Original Action of a Writ of Habeas Corpus to the Ohio State Supreme Court to exhaust his remedies and to overcome the strict mandatory filing requirements of ORC 2969.25 because that filing requirement does not apply to that court nor to that action therein pursuant to ORC 2969.21(B)(2). The Court dismissed the petition sua sponte without written opinion. (Appendix Pages 19 & 20) Once again no adjudication of the claims or weighing of the evidence therein.

This original action cannot be procedurally defaulted because the Strict Mandatory filing requirement of ORC 2969.25(C) (Appendix Page 76 – 77) does not apply to this filing to this Court pursuant to ORC 2969.21(B)(2). (Appendix Page 77)

Because this is a parole revocation hearing it is at this point that Petitioner has timely exhausted his remedies in State Courts and has given the highest court in the state the chance to address his claims and weigh the evidence to which the records are silent and there is no

adjudication of the claims nor weighing of the evidence in State Courts therefore now making the petition's claims reviewable to the Federal District Court.

§ (ii) Petitioner timely files to the Northern Federal District Court of Ohio Eastern Division a USCS 2254 case petition with the claims and evidence presented in State Courts. The Magistrate Judge does a preliminary review of the petition pursuant to USCS rules of 2254 Cases Rule 4 and does not dismiss the petition and order's the Respondent to answer and return the writ. (Appendix page 106 & 107)

Now all filings have been presented and now the Magistrate Judge now makes his report recommendation to both a Summary Judgment and the Petition and does report findings that both the Summary Judgment and the Petition are without merit and recommends dismissal and procedurally defaulted and no COA should be issued. (Appendix Pages 23 – 27 Summary Judgment) & (Appendix Pages 28 – 55 The Petition)

Petitioner files a timely objection to the Magistrate Judge's report recommendation to the Petition but agrees with the dismissal of the Summary Judgment. (Appendix Pages 108 – 117)

Central and material to the question to this Court is that of the Magistrate Judge's report findings in the weighing of this "Evidence/Document". (Appendix Page 104) Petitioner objects to the only claim that entitles him to relief and that is of this "Document". It has been the claim throughout that this "Document" is "invalid". It is the required notification to the hearing; without this "Document" there could be no hearing and subsequently no sentence/sanction thereof.

Petitioner agrees with the Magistrate Judge's findings that he was "Uncertain to the Origins" of this "Document" (Appendix Page 31) because this is but only a copy of the "Document" and the "Original Document" becomes an adjudicative fact as to its "validity" and was the cause for

Discovery, Expansion of the Record, an Evidentiary Hearing, and a Federal Rules of Evidence Rule 201 for the District Court to take Judicial Notice of an adjudicative fact all dismissed. (Except for the Judicial Notice never ruled on.) (Appendix Pages 118 – 121) (Appendix Pages 135 – 138 @ entry 02/08/2024 No Entry entered there to a ruling)

Without Discovery, Expansion of the record, Judicial Notice, and/or an Evidentiary Hearing Petitioner cannot prove his unlawful claim of Delinquency, Fraud, and Tampering with evidence, but what can be proven is that the "Document" is Defective and Procedurally Defaults the rescheduling and continuing of the Hearing Process.

The dates of "March 9th, 2021" and "March 24th, 2021" are defective in that they do not conform to the Ohio Code of Procedure to the Parole Revocation Proceedings in not giving the required notification and procedurally defaults the rescheduling and continuing of the hearing beyond its originally scheduled hearing date.

Both the District Court (Appendix Page 57 ¶ 2) and the Federal Circuit Court of Appeals (Appendix Page 72 ¶ 3) adopts the Magistrate Judge's report recommendation to the findings of these dates found in the "Evidence/Document".

In finding and adopting these dates these Courts abuse their authority to construct and construe its findings to alter, add too, or improve the provisions of the administrative rule to meet a situation not provided for in the State's Administrative Rules of Procedure, thereby changing this Court's precedence as to who's responsibility it is to write a code of procedure and to when a parole violator's availability occurs.

(h) A direct and concise argument amplifying the reasons relied on for allowance of the writ. See Rule 10. Pursuant to USCS Supreme Ct. R. 10 (c) **"Pursuant to U.S.C.S. Supreme Ct. R. 10 "Review on a Certiorari is not a matter of right, but of judicial discretion. A petition for**

a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor full measuring the Court's discretion, indicate the character of the reasons the court considers: § (c) Has decided an important Federal question in a way that conflicts with relevant decisions of this Court."

REASONS FOR GRANTING:

CONCISE ARGUMENT: Material to Question (1)

THIS COURT HAS HELD THAT THEY COULD NOT WRITE A CODE OF PROCEDURE TO THE PAROLE REVOCATION HEARING PROCESS; THAT IT WAS THE RESPONSIBILITY OF EACH STATE; MOST STATES HAVE DONE SO BY LEGISLATION OTHERS BY JUDICIAL DECISION USUALLY ON DUE PROCESS GROUNDS; THERE IS NO AUTHORITY FOR THE FEDERAL COURTS TO ALTER, ADD TOO, OR IMPROVE THE PROVISIONS OF A STATE'S ADMINISTRATIVE RULES TO MEET A SITUATION NOT PROVIDED FOR TO ADJUDICATE ITS FINDINGS WHERE THAT STATE DECIDED TO WRITE ITS CODE OF PROCEDURE THROUGH A LEGISLATIVE DECISION AND NOT BY A JUDICIAL DECISION THEREBY AFFECTING DUE PROCESS.

This Court has held that it could not write a code of procedure to the parole revocation hearing process and that it was the responsibility of each State to do so either through legislative decision or judicial decision to which most States have done so along the grounds of due process. *Morrissey v. Brewer*, 408 U.S. 471 @ ***LEdHN[22]*** **[22]** ***LEdHN[23]*** **[23]** "We cannot write a code of procedure; that is the responsibility of each State. Most States have done so by legislation, others by judicial decision usually on due process grounds."

Both the District Court and the Federal Circuit Court of Appeals have adopted findings that Petitioner was given notification of his initial parole hearing of March 9th, 2021 and a rescheduled continued hearing date of March 24th, 2021 at the February 8th, 2021 Preliminary Hearing. In acknowledging these dates as "valid" it is the Magistrate Judges' report recommendation that reports findings that the "Evidence/Document" dates are "valid" thereby finding the "Document" to be "valid" and therefore proper notification was given.

In reporting his findings, the Magistrate Judge had no AUTHORITY to alter the Administrative Rule of Procedure to the Violation Hearing Process utilizing Ohio's Revised Code Rules of Construction to construe his findings to the "Evidence/Document" as valid and the dates therein. *Foster v. Foley, 2023 U.S. Dist. LEXIS 246111* @ (Appendix page 45 – 46) P*1

"Foster seems to be arguing two things in his Ground One claim: (1) that the timing of his hearing did not comply with ODRC policy; and (2) that the face of two ODRC Forms 3311 showed that his hearing was impermissibly continued.[4]

Foster's first argument is that his "availability" date was inaccurately listed as February 2, 2021, when he was actually taken into custody for his parole violation on February 1, 2021. ECF Doc. 1 at 7-9. Under the ODRC policy, a parolee's "availability" triggers the timeframe within which a parole revocation hearing must be conducted. *See* ECF Doc. 1-2 at 7. Under ODRC Policy, a supervisee under APA supervision is considered "available" when he is held in custody with an active APA hold order. ODRC Policy 100-APA-14(VI)(H)(1)[5]. A hold order was issued by the APA on February 1, 2021. ECF Doc. 12 at 25. However, using an "availability" date of February 2, 2021, for purposes of counting time under the ODRC scheduling policy, is appropriate, because under Ohio law:

The time within which an act is required by law to be done shall be computed by excluding the first and including [*25] the last day; except that, when the last day falls on Sunday or a legal holiday, the act may be done on the next succeeding day that is not Sunday or a legal holiday.

Ohio Rev. Code § 1.14.

Thus, with Foster having been arrested on February 1, 2021, it was proper to conclude that he was "available" on February 2, 2021 and to use that as the starting date for determining a hearing deadline. Foster's original hearing date of March 9, 2021 was the 25th business day after he became available with the appropriate exclusion of weekend days and the President's Day holiday. Thus, under a reasonable interpretation of the applicable policy, Foster's originally scheduled hearing was not late.

Here the Court utilizes two (2) different administrative policies to construct and construe its findings for the purpose of interpreting a parolee's "availability" that triggers the time frame by which a parole revocation hearing must be conducted.

The first policy by which the Court refers to is that of Policy 105-PBD-09 the Parole Violation Hearing as it relates to when a parole revocation hearing must be conducted @ (Appendix page 84) Section VI-E-1:

> "A violation hearing shall be conducted no later than twenty (20) business days **FROM THE DATE THE OFFENDER BECOMES AVAILABLE,**"

Here the language is clear and unambiguous.

The second policy by which the Court refers to is that of Policy 100-APA-14 Sanctions for Violations of Conditions of Supervision as it relates to Availability of Supervisees @ Section VI-H-1: (Appendix page 100)

> "A supervisee shall be considered available and time limitations for imposing sanctions shall be in effect in the following circumstances:
>
> a. **The supervisee is under APA supervision and is being held in custody with an active APA hold order,**
> b. The supervisee is being held in an ODRC institution,
> c. The supervisee is under TRC,
> d. The supervisee has posted bond,
> e. The supervisee has pending charges and has been released to electronic monitoring status,

f. The supervisee was sentenced to a period of incarceration in the local jail, CBCF, or other locked facility and has served that period of local incarceration.

Only section (H)(1)(a) applies to Petitioner and it stands to reason that once a supervisee/offender is taken into custody he/she becomes available. This active hold order is that of the first day Petitioner was taken into custody to which here the language once again is clear and unambiguous.

It is only when the Court utilizes Ohio Revise Code § 1.14 to exclude the first day of his availability to compute the time by which to conduct his revocation hearing.

In utilizing Ohio's Rules of Construction ORC 1.14

§ 1.14 Excluding first and including last day – legal holidays

The time within which an act is required by law to be done shall be computed by excluding the first and including the last day; except that, when the last day falls on Sunday or a legal holiday, the act may be done on the next succeeding day that is not Sunday or a legal holiday. When a public office in which an act, required by law, is to be performed is closed to the public for the entire day that constitutes the last day for doing the act or before its usual closing time on that day, the act may be performed on the next succeeding day that is not a Sunday or a legal holiday as defined in this section.
"Legal holiday" as used in this section means the following days:
(A) The first day of January, known as New Year's day;
(B) The third Monday in January, known as Martin Luther King day;
(C) The third Monday in February, known as Washington-Lincoln day;
(D) The day designated in the "Act of June 28, 1968," 82 Stat. 250, 5 U.S.C. 6130, as amended, for the commemoration of Memorial day;
(E) The nineteenth day of June, known as Juneteenth day;
(F) The fourth day of July, known as Independence day;
(G) The first Monday in September, known as Labor day;
(H) The second Monday in October, known as Columbus day;
(I) The eleventh day of November, known as Veterans' day;
(J) The fourth Thursday in November, known as Thanksgiving day;
(K) The twenty-fifth day of December, known as Christmas day;
(L) Any day appointed and recommended by the governor of this state or the president of the United States as a holiday.
If any day designated in this section as a legal holiday falls on Sunday, the next succeeding day is a legal holiday.

While the Court may consider an administrative agency's construction of a legal text in exercising its duty to independently interpret the law, an administrative interpretation should

never be used to alter the meaning of clear text. If the text is unambiguous the Court should stop right, there. *Klickovich v. State Med. Bd. of Ohio*, 2025-Ohio-2783 @ **HN13**. "Instead, the court declared that while "a court *may* consider an administrative agency's construction of a legal text in exercising its duty to independently interpret the law . . ., an administrative interpretation should never be used to alter the meaning of clear text. *If the text is unambiguous, the court* [**13] *should stop right there*." (Emphasis added.) *Id. At* ¶ 44."

In State ex rel. Cunningham v. Industrial Com. Of Ohio, 30 Ohio St. 3d 73 @ **HN3** "There is no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend, or improve the provisions of the statute to meet a situation not provided for."

This is an unauthorized construction of ORC 1.14 applied to the Ohio Administrative Rules of these Policies because the Court now alters these policies by adding to, enlarging, suppling, expanding, extending, or tries to improve upon the provisions of the statute to meet a situation not provided for.

There is no provision to either of these policies to exclude a supervisee's/offender's first day of "availability" it is only when the Court constructs and construes its findings with that of ORC 1.14 that the dates of March 9th, 2021 and March 24th, 2021 are made "valid".

It was this Court that held that it could not write a code of procedure to the parole revocation hearing process. This Court held that it was the responsibility of each State to do so either through a legislative decision or a judicial decision to which most States have done so along the grounds of due process. Here the State of Ohio has done so through a legislation decision, but now both the District Court and the Federal Circuit Court of Appeals adopt findings that allow for these Courts to alter the States Code of Procedure to the Parole Revocation Hearing Process.

Based on these Courts findings that Petitioner was given notification of a March 9th, 2021 initial originally scheduled hearing date and a rescheduled continued hearing date of March 24th, 2021 these Courts have altered and added to the States Code of Procedure.

Ohio's Code of Procedure Policy 105-PBD-09 section VI-E-1 under ORC 1.14 newly constructed findings now construes:

> "A violation hearing shall be conducted no later than twenty (20) business days **THE DAY AFTER THE DATE THE OFFENDER BECOMES AVAILABLE,"**

Ohio's Code of Procedure Policy 100-APA-14 section VI-H-1 under ORC 1.14 newly constructed findings now construes:

> "A supervisee shall be considered **AVAILABLE A DAY AFTER HE IS TAKEN INTO CUSTODY** and time limitations for imposing sanctions shall be in effect in the following circumstances:

In the State of Ohio, the Director of the Ohio Department of Rehabilitation and Correction is authorized by ORC 5120.01 as the executive head of the department and has the total control of operations and management of the department by establishing procedures as set forth in Ohio Policy 105-PBD-09 the "Violation Hearing Process Policy," to which the effective date was 12/02/2019 in this case. (Appendix Page 78 § I Authority)

The policy is presented to this Court as evidence as it was presented throughout State Courts and the District Court for consideration. This policy conforms to the U. S. Supreme Courts' finding that it is the responsibility of each State to write a code of procedure. Ohio has done so by legislation, not by judicial decision.

The applicability of the policy is addressed within the Policy and does state:

II APPLICABILITY OF THE POLICY (See Appendix Page 78)

"This policy applies to all employees of the Ohio Department of Rehabilitation and Correction (ODRC) Adult Parole Authority (APA) and all offenders under court, parole, post-release control (PRC) Transitional Control (TRC), and interstate compact supervision."

It is clear that the Courts have no authority to change the Administrative Rules of the Policy. It is also clear that the Adult Parole Authority is governed by the Director's Policy and have no authority to change the Policy.

It is proven by the Magistrate Judge that Petitioner's first day of being taken into custody was excluded through its construction to construe its findings to its report to allow for an unauthorized altering, adding too, and trying to improve the provisions to the administrative code of procedure to meet for a situation not provided for.

While the Courts here utilized the Ohio Revised Code of Construction to exclude Petitioner's first day of being taken into custody, what did the Ohio Adult Parole Authorities utilize to exclude Petitioner's first day of being taken into custody???

The petition to the District Court has a grounds #1 facts that has two parts to the one ground, (Appendix pages 122 – 130) to which the District Court's judgment of the petitions' Grounds # 1 Facts only adjudicates part one of the claim and fails to include part two of that Ground. (Appendix pages 122 – 130) Part 1 establishes that the Ohio Adult Parole Authorities exceeds the allotted timeframe to conduct the originally scheduled parole revocation hearing and Part 2 presents "Evidence" of a "Document" (Appendix page 104) utilized that authorizes the rescheduling of that hearing. This document does not conform to the Director's Ohio Violation Hearing Process rendering it "defective".

Part #1 alone does not entitle Petitioner to relief but combined with Part #2 the document utilized to reschedule and continue the hearing beyond the allotted time frame becomes unreasonable in that the document is defective and causes the Continuance Process to be procedurally defaulted.

Both the District Court and Federal Circuit Court of Appeals rely on the appearance of the dates therein to adjudicate its validity to whether proper notification was given; looks can be deceiving. In order to make this document appear valid the Adult Parole Authorities utilize what is known as a "Legerdemain," – "trickery, a slight of hands" in this case a "slight of dates" to mask the true appearance of the document.

Both the District Court and Federal Circuit Court of Appeals have adopted and adjudicated that Petitioner's claim to Grounds # One as meritless and in so doing have now declared the Ohio Code of Procedure to the Policy meritless and allows for changes to the Time Frame to Conduct a hearing, and when a parole violator becomes available, and to the Continuance Rescheduling Process of the Policy.

It is the Petitioner's contention that the "Evidence/Document" utilized to conduct a March 24th, 2021 hearing does not conform to the Director's Policy and that it was procedurally defaulted because there is a "legerdemain" – a slight of hands to the dates utilized to the "Document" that allows for improper procedure to service, certify, and give notification to the Petitioner and is therefore procedurally defaulted because it makes unauthorized changes to the Director's Policy, a due process violation.

It is the "Evidence/Document" that allows the hearing to be conducted beyond the allotted time frame as set forth in the Continuance Section of the Policy. (Appendix page 84 – 85) Without the "Document" there could be no March 24th, 2021 hearing and subsequently no sanction/sentence thereof.

It is the Magistrate Judge who renders findings to the "Evidence/Document" to which the Petitioner has but one objection to the District Court and it is of this "Document". It is material as it relates to this petition because both the District Court and Federal Circuit Court of Appeals

have adopted findings that Petitioner was given initial notice to a March 9th, 2021 hearing date, and that initial hearing date had to be rescheduled to March 23rd, 2021 and then again to March 24th, 2021 and is done so with this "Document".

The Policy dictates that a violation hearing shall be conducted no later than twenty (20) business days from the date of the offender becomes available, (Appendix page 84 § E. Violation Hearing Timeframe) with an additional five (5) business days pursuant to the ODRC Policy/Operation Manual Variance Request of 12/30/2020, (Appendix pages 95 & 96) for a total of twenty-five (25) business days.

Petitioner became available February 1st, 2021. (Appendix page 1) The question is; when is the initial date to conduct a hearing? Courts utilize the calendar to manage its docket here the calendar manages the hearing process.

All of the bold dates represent the twenty-five business days by which the initial hearing must be conducted. February the 15th, 2021 is a holiday and does not count as a business day.

It is the claim that the "Evidence/Document" bolsters an unauthorized March 9th, 2021 initial originally scheduled hearing date and both the District Court and Federal Circuit Court of Appeals adopt the findings of this date and renders its judgment according to that date. After close examination of the calendar it reveals that the initial hearing date is that of March 8th, 2021 and not March 9th, 2021 revealing a "legerdemain" a slight of the dates and that the first day of arrest is that of a Monday which is neither a Sunday nor a holiday and no exclusion is needed and all weekends and holidays have properly been excluded.

Based on this calculation of the time frame to conduct a hearing it is clear that the time frame was violated to conduct an initial originally scheduled hearing date of March the 9th, 2021.

February 2021						
Sun.	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.
	1	**2**	**3**	**4**	**5**	6
7	**8**	**9**	**10**	**11**	**12**	13
14	*15*	**16**	**17**	**18**	**19**	20
21	**22**	**23**	**24**	**25**	**26**	27
28						

MARCH 2021						
Sun.	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.
	1	**2**	**3**	**4**	**5**	6
7	**8**	9/***1***	10/***2***	11/***3***	12/***4***	13
14	15/***5***	16/***6***	17/***7***	18/***8***	19/***9***	20
21	22/***10***	23/***11***	24/***12***	25	26	27
28	29	30	31			

In the month of March, the calendar dates of 9 through 24 of the bold & italic numbers count the number of days to the rescheduling and continuing of the hearing.

Further the "Evidence/Document" does state the ten business days by which the hearing can be continued but the calendar shows that the date of March 24th, 2021 violates the ten (10) allotted business days to conduct the hearing. The dates of March 9th, 2021 and March 24th, 2021 do not conform to the Ohio Violation Hearing Process Policy.

This calendar was presented in the records to the District Court which the Court never utilized to its findings or judgment. (Appendix pages 131 & 132)

Now the Federal Courts have taken on the responsibility of writing Ohio's Code of Procedure where the State decided to write its Code of Procedure through a Legislative decision and not a Judicial Decision. *Morrissey v. Brewer*, 408 U.S. 471 @ ***LEdHN[22]*** **[22]** ***LEdHN[23]*** **[23]**

This Court has held that it was the responsibility of each State to write a Code of Procedure, here the District Court and the Federal Circuit Court of Appeals have adopted findings that allow them also to write a Code of Procedure to the State's Code of Procedure.

Now the question for this Court is; do Federal Courts now, also have the responsibility of writing a Code of Procedure to the Parole Revocation Hearing Process and does that affect Due Process?

Now there becomes a question also to the original claim to the petition in all courts and that is of this "Evidence/Document" being defective and procedurally defaulted where the Federal Courts have acknowledged that they constructed and construed that it was permissible to exclude a parole violator's first day taken into custody to which those Courts had no authority to alter, add too, or improve the provisions of the administrative rules to meet a situation not provided for through the ORC 1.14 rule of construction to exclude the first day.

Now that it has been established that the Court utilized an unauthorized rule of construction to exclude Petitioner's first day of custody to construe its findings, what did the Adult Parole Authorities utilize to exclude Petitioner's first day of custody???

As it is Material to **QUESTION (2)**

IN ADOPTING FINDINGS THAT A PAROLE VIOLATOR'S AVAILABILITY NO LONGER OCCURS WHEN TAKEN INTO CUSTODY VIOLATES THE CONSTITUTIONAL DUTY TO PROVIDE A REASONABLE ADVERSARIAL HEARING PROCESS BECAUSE IT CAN NO LONGER BE HELD THAT THE FUNCTIONAL DESIGNATION FOR THE LOSS OF LIBERTY AS A PAROLE VIOLATOR IS NO LONGER TRIGGERED WHEN THE PAROLEE IS TAKEN INTO CUSTODY.

In the previous question it was established that both Federal Courts relied upon an unauthorized construction to construe their findings that the day Petitioner was taken into custody was excluded from the computing of his Parole Revocation Hearing.

This Court has held that the functional designation for the loss of liberty occurs when the parolee is taken into custody as a parole violator and it is at that time that the constitutional duty to provide an adversary hearing occurs. *See also Moody v. Daggett,* 429 U.S. 78,87,97 S. Ct.

274, 50 L. Ed. 2d (1976) ("[T]here is no constitutional duty to provide prisoners an adversary parole hearing until they are taken into custody as parole violators.").

In *McCoy v. United States Parole Comm'n*, 2015 U.S. Dist. LEXIS 129226 @V. DISCUSSION [*7] "Plaintiff does not state grounds upon which mandamus relief may be granted. Instead he attempts to assert the violation of a legal interest that clearly does not exist. Plaintiff's right to a **[*7]** parole revocation hearing is triggered when the parole violator warrant is executed, not when it is issued. *See United States v. Romero,* 511 F. 3d 1281, 1284 (10th Cir. 2008) ("[T]here is no constitutional duty to provide prisoners an adversary parole hearing until they are taken into custody as parole violator."). *See also Moody v. Daggett,* 429 U.S. 78,87,97 S. Ct. 274, 50 L. Ed. 2d (1976) (holding that the USPC could issue a warrant without promptly executing it or triggering the right to a hearing). And, as the court found in Plaintiff's § 2241 action, any adverse collateral consequences of the detainer while he remains in state custody do not trigger constitutional protections."

What does trigger the constitutional duty to provide an adversarial hearing process is that of being taken into custody as a "parole violator". Here Petitioner is taken into custody as a "parole violator" but the constitutional duty to provide an adversary hearing process is not triggered when Petitioner is taken into custody as a "parole violator", because the day he is taken into custody has been excluded from his availability as a parole violator the constitutional duty is thereby not triggered.

Here in the present case at hand the functional designation for the loss of liberty did not occur when Petitioner was taken into custody as a parole violator and as a result Petitioner is prejudiced to the constitutional duty to provide an adversary hearing process as to the time frames to conduct that hearing and the rescheduling and continuing of that hearing.

Once again *In State ex rel. Cunningham v. Industrial Com. Of Ohio*, 30 Ohio St. 3d 73 @ **HN3** "There is no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend, or improve the provisions of the statute to meet a situation not provided for."

The Court had no authority to add to and improve the provisions therein to exclude Petitioner's first day of being taken into custody as a parole violator to Ohio's Administrative Rule of the Policy. In utilizing Ohio's Rules of Construction ORC § 1.14 to Exclude the first day as a parole violator was inappropriate and violated the constitutional duty to provide a timely adversary hearing based on Ohio's time frame to conduct a hearing.

Ohio's time frame to conduct a hearing includes the day a parolee is takin into custody. Ohio's Code of Procedure, Administrative Rule Policy 105-PBD-09 § VI-E-1 TIMEFRAME TO CONDUCT A HEARING (Appendix page 84)

1 "A violation hearing shall be conducted no later than twenty (20) business days **from the date the offender becomes available,"**

Continuing in *Cunningham* @ **[*P20] HN9** The court's primary goal of statutory construction is to give effect to the legislative intent. *Silver Lining Group EIC Morror Cty. V. Ohio Dept. of Edn. Autism Scholarship Program, 2017-Ohio-7834, ¶ 34, 85 N.E. 3d 789 (10th Dist.)*, citing *State v. Banks, 2011-Ohio-4252, ¶ 13 (10th Dist.)*, citing *State v. Hairston,* 101 Ohio St. 3d 308, 2004-Ohio-969, ¶ 11, 04 N.E. 2d 471. "To determine legislative intent, we first look to the language of the statute." *Id.*, citing *Hubbell v. City of Xenia,* 2007-Ohio-4839, ¶ 11, 873 N.E. 2d 878, 115 Ohio St. 3d 77, citing *State ex rel. Burrows v. Indus. Comm.,* 1997-Ohio-310, 78 Ohio St. 3d 78, 676 NE. 2d 519. The statutory language must be considered in context, and the court must construe words and phrases "according to the rules of grammar and common usage." (Citations omitted.) *Silver Lining Grp. at* ¶ 34.

[*P21] HN10 Where the words in a statute are "'free from ambiguity and doubt, and express plainly, [**11] clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation.'" *Id.*, citing *Hairston* at ¶ 12, quoting *Slingluff v. Weaver,* 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph two of the syllabus. "'It is only where the words of a statute are ambiguous, uncertain in meaning, or conflicting that a court has the right to interpret a statute.'" *Id. At* ¶ 35, quoting *In re Adoption of Baby Boy Brooks, 136 Ohio app. 3d Ohio App 3d 824, 829, 737 N.E. 2d 1062 10th Dist. 2000).* An ambiguity exists only "if the language of a statute is susceptible of more than one reasonable interpretation." *Id.*, citing *Columbus v. Mitchell,* 2016-Ohio-7873, ¶ 6 (10th Dist.).

[*P22] HN11 Courts "apply the rules of statutory construction to administrative rules as well." *McFee v. Nursing Care Mgmt. of Am., Inc., 126* Ohio St. 3d 183, 2010-Ohio-2744, ¶ 27, 931 N.E. 2d 1069, citing *State ex rel. Brilliant Elec. Sign Co. v. Indus. Comm.,* 57 Ohio St. 2d 51, 54, 386 N.E. 2d 1107 (1979) (finding the "ordinary meaning rule" of statutory construction applies equally to administrative rules). Thus, "'[t]he interpretation of statutes and administrative rules should follow the principle that neither is to be construed in any way other than as the words demand.' We must read undefined words and phrases in context and construe them in accordance with rules of grammar and common usage." *State ex rel. Turner v. Eberlin,* 117 Ohio St. 3d 381, 2008-Ohio-1117, ¶ 14, 884 N.E. 2d 39, quoting *Morning View Care Ctr.-Fulton v. Dept. of Human Servs., soow-Ohio-2878,* ¶ 36, 148 Ohio App. 3d 518, 774 N.E. 2d 300 (10th Dist.).

[*P23] HN12 Courts lack authority to ignore the plain and unambiguous language of a statute under the guise of statutory interpretation or liberal or narrow constructions. *State ex rel. Massie v. Bd. Edn. Of Gahanna-Jefferson Pub. Schools,* 76 Ohio St. 3d 584, 58, 669 N.E. 2d 839

(1996). Instead, a court's duty is to give effect to the words used in a statute, not to delete or insert [**12] words. *State v. Maxwell, 95 Ohio State v. Maxwell, 95 Ohio St 3d 254, 2002-Ohio-2121, ¶ 10, 767 N.E. 2d242*. "If we were to brazenly ignore the unambiguous language of a statute, or if we found a statute to be ambiguous only after delving deeply into the history and background of the law's enactment, we would invade the role of the legislature: to write the laws." *Jacobson v. Kaforey,* 149 Ohio St. 3d 398, 2016-Ohio-8434, ¶ 8, 75 N.E. 3d 203. Thus, if "the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation," because "[a]n unambiguous statute is to be applied, not interpreted." *Sears v. Weimer,* 143 Ohio St. 312, 55 N.E. 2d 413, paragraph five of the syllabus.

Because the Court applied a statutory construction to an administrative rule the plain language of the rule should give effect to the words used in the rule and not delete or insert words. Here the Court deletes the word; **from** the date and adds the words; **the day after** the date and now Petitioner's day that he was taken into custody has been excluded from the calculating of his time frame to conduct a hearing.

While it may not seem unreasonable to exceed Petitioner's initially originally scheduled hearing date by one day what becomes unreasonable is the rescheduling and continuing the hearing beyond that one day, defaulting the Continuance Hearing Process of the Policy, and prejudicing the Parole Hearing Violation Process all together.

Continuing back to *Foster v. Foley, 2023 U.S. Dist. LEXIS 246111 @,* The subsequent continuances approved by the hearing officer were expressly permitted under the scheduling policy. *See* ECF Doc. 1-2 at 7-8 (Sections F (3) and F (4)). Under that policy, the hearing officer "may continue, reschedule, or cancel a violation hearing without a request from any party. The

hearing officer shall provide notice of any such change to all parties." ECF Doc. 1-2 at 7 (APA policy Section F (3)). And "[a] violation hearing shall be rescheduled for no more than ten (10) business days from the previously scheduled **[*26]** hearing date." ECF Doc. 1-2 at 8 (APA policy Section F (4)). The first continuance of the March 9, 2021 hearing was properly rescheduled to a time within 10 business days, when the hearing officer continued it to March 23, 2021. And, the hearing officer then approved a one-day continuance, as permitted under the ODRC policy, when the hearing was again continued to March 24, 2021 due to unavailability of the hearing site. Thus, both continuances complied with the APA policy. I find that there was no timing error."

Here the Court's construction to construe the Policy's Continuation Process relies on the initial originally scheduled hearing date to adhere to the time frame by which to reschedule and continue the hearing. If the initial hearing date is defective it stands to reason that the rescheduling and continuing of the hearing is not only defective but also is defaulted.

This "Document" of the DRC 3311 form is the "Document" that reschedules and continues the hearing beyond the originally scheduled hearing date. Utilizing the calendar provided on Page 19 it becomes clear that without excluding the first day taken into custody the time to conduct the original hearing date is that of March 8th, 2021. Ten business days to reschedule and continuing the hearing to March 23rd, 2021 exceeds ten business days and Petitioner's evidence with his objection to the District Court shows that one DRC 3311 form does not allow for the rescheduling and continuing the hearing twice on one form, that would then allow the hearing process to be continued twenty business days per form, this does not conform to the Continuance Process of the Policy. (Appendix pages 84 & 85 § F. Continuance)

Here the Court suggest that the hearing was rescheduled and continued to March 23rd, 2021 and then again rescheduled and continued to March 24th, 2021, all on one DRC 3311 form thereby once again altering the Policy.

The dates of March 9th, 2021 and March 24th, 2021 are defective dates and are a direct result of a parole violator's exclusion of their first day of being taken into custody violating the constitutional duty to provide a reasonable adversary hearing process.

As it is Material to **QUESTION (3)**

THIS COURT TURN TO THE NATURE OF THE PROCESS THAT WAS DUE TO THE PAROLE REVOCATION PROCESS ANALYZING THAT THERE WERE TWO IMPORTANT STAGES TO THE PROCESS; THE FIRST STAGE IS THAT OF ARREST AND A PRELIMINARY HEARING AND THE SECOND STAGE IS THAT OF THE REVOCATION HEARING TO WHICH NOTIFICATION IS REQUIRED OF BOTH STAGES; WHAT HAPPENS TO THE PROCESS IF THE STAGES ARE PROCEDURALLY DEFAULTED AND NOTIFICATION IS NOT GIVEN?

In *Morrissey v. Brewer*, 408 U. S. 471 @ in the opinion Section III We now turn to the nature of the process that is due, bearing in mind that the interest of both State and **[*485]** parolee will be furthered by an effective but informal hearing. In analyzing what is due, we see two important stages in the typical process of parole revocation: Stage 1) Arrest of Parolee and Preliminary Hearing; Stage 2) The Revocation Hearing.

Morrissey @ ***LEdHN[14]*** [14] [****27] (*a*) *Arrest of Parolee and Preliminary Hearing.* The first stage occurs when the parolee is arrested and detained, usually at the direction of his parole officer. The second occurs when parole is formally revoked. There is typically a substantial time lag between the arrest and the eventual determination by the parole board whether parole should be revoked. Additionally, it may be that the parolee is arrested at a place distant from the state institution, to which he may be returned before the final decision is made concerning revocation. Given these factors, ***HN8*** due process would seem to require that some minimal inquiry be

conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest while information is fresh and sources are available. Cf. *Hyser v. Reed, 115 U. S. App. D. C. 254, 318 F. 2d 225 (1963).* Such an inquiry should [***497] be seen as in the nature of a "preliminary hearing" to determine whether there is probable cause or [****28] reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions. Cf. *Goldberg v. Kelly, 397 U. S., at 267 – 271.*

Morrissey @ ***LEdHN[17]*** [17] ***LEdH[18]*** [18]"**With respect to the preliminary hearing before this officer,** ***HN11*** **the parolee should [****31] be given notice that the hearing [*487] will take place"** and that its purpose is to determine whether there is probable cause to believe he has committed a parole violation.

LEdHN[19] [19] ***LEdHN[20]*** [20]***HN12*** **"The hearing officer shall have the duty of making a summary, or digest, of what occurs at the hearing in terms of the responses of the parolee and [****32] the substance of the documents or evidence given in support of parole revocation and of the parolee's position;"**

This Court has analyzed what is due, we see two important stages in the typical process of parole revocation. Stage 1. *Arrest of Parolee and Preliminary Hearing.* What is significant in this stage is that of the Parolee being given notice that the hearing will take place and the Hearing Officer having the duty of making a summary, or digest, of what occurs at the hearing in terms of the responses of the parolee and the substance of the **documents** or evidence given in support of parole revocation and parolee's position.

In the present case Petitioner was given notice to a March 9th, 2021 hearing, and a rescheduled continued hearing date of March 24th, 2021 both defective dates. Neither the Adult

Parole Authorities nor the Federal Courts had authority to exclude Petitioner's first day he was taken into custody thereby not triggering the constitutional duty to provide an adversary hearing process.

It is clear that the dates provided to this "Document" were defective and proper notice was not given to when a hearing would take place. These defective dates were placed on all the documentation utilized to the Preliminary Hearing.

Prejudicial to the proceedings is the date this "Document" was created. The "Document" was created February 2nd, 2021 the day after Petitioner was arrested, from that time forward the proceedings can no longer be held reliable.

Continuing in *Morrissey @* ***LEdHN[21]*** [21]*(b) "The Revocation Hearing.* ***HN13*** There must also be an opportunity for a hearing, if it is desired by the parolee, prior to the [****33] final decision on revocation by the parole **[*488]** authority. This hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation. The parolee must have an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation. The revocation [**2604] hearing must be tendered within a reasonable time after the parolee is taken into custody. A lapse of two months, as respondents suggests occurs in some cases, would not appear to be unreasonable."

What becomes unreasonable in the present case is not the lapse of time to conduct the hearing but the procedural default to reschedule and continue the hearing beyond the originally scheduled hearing date with defective documentation. Here the hearing officer fails to assure that there were no delaying tactics and an abuse does occur and it was reported to APA officials and

to the hearing officer for them to take note of this defective document as it relates to the time frames not being adhered to and how proper procedures were not followed. (Appendix pages 133 & 134)

Morrissey @ **[*490]** ***LEdHN[24]*** [24]"We have no thought to create an inflexible structure for parole revocation procedures. The few basic requirements set out above, which are applicable to future revocations of parole, should not impose a great burden on any State's parole system. Control over the required proceedings by the hearing officers can assure that delaying [**2605] tactics and other abuses sometimes present in the traditional adversary trial situation do not occur.

In the peculiar posture of this case, given the absence of an adequate record, we conclude the ends of justice will be best served by remanding the case to the Court of Appeals for its return of the two consolidated cases to the District Court with directions to make findings on the procedures actually followed by the Parole Board in these two revocations. If it is determined that petitioners admitted parole violations to the Parole Board, as respondents contend, and if those violations are found to be reasonable grounds for revoking parole under state standards, that would end the matter. If the procedures followed by the Parole Board are found to meet the standards laid down in this opinion [***500] that, too, would dispose of the due process claims for these cases.

We reverse and remand to the Court of Appeals for further proceedings consistent with this opinion.

Reversed and remanded."

In the case here Petitioner sought a Certificate of Appealability to the Court of Appeals (Appendix Page 144 – 149) but it was never granted. It was the District Court that reported and adopted findings that allowed for the exclusion of Petitioner's first day after being taken into

custody as a "parole violator", never triggering the constitutional duty to properly provide an adversary hearing process.

Had the Court taken Judicial Notice pursuant to Federal Rules of Evidence Rule 201 (B)(2) to the adjudicated fact of this "Document's" validity it would have been able to adjudicate the "Uncertainty of the Origins of the Document" and the "Validity of the Document".

Had the Parole Board followed its own proper procedures and those found in *Morrissey v. Brewer*, it would have found that the documentation allows for a defective, defaulted, and unreasonable rescheduling and continuing of the initial originally scheduled hearing date.

Proper procedures were not followed and there is no notification to the hearing and the Continuing of the hearing was defaulted by the Parole Board's documentation. The defects and procedural defaults are well before the two stages of the proceedings as found in this Court's Opinion in *Morrissey.* Without the "Evidence/Document" there could be no March 24th, 2021 hearing and subsequently no sanction/sentence thereof. "Plain Error"!

Based on Ohio Revised Code 2967.15 (Appendix Page 139) Petitioner should have been released back to parole where he left off. Petitioner only seeks further proceedings of an evidentiary hearing with judicial notice of his adjudicative facts to the District Court to be given a fair opportunity to further prove his claims and afforded Due Process.

If this Court finds that the Federal Courts may not have the responsibility of writing a code of procedure to the Parole Revocation process it must now separate those States who decided their decision through Legislative decision and those who decided through Judicial Decision because the Court now creates a conflict with States that decided through Legislative decision which is the case here, it now becomes a matter of Jurisdiction.

Lastly if it is decided that a parole violator's first day of being taken into custody no longer triggers the constitutional duty to provide an adversary hearing, and that it is only a parole violator's availability that triggers the constitutional duty to provide an adversary hearing then being taken into custody as a "parole violator" is no longer needed to trigger the constitutional duty to provide an adversary hearing.

In conclusion the constitutional violation has always been that of Due Process throughout. The "Document/Evidence" herein is not a "valid" document as proven through this Petition of Certiorari. Here the previous Courts were left with a "Conundrum", either to grant discovery to the original document, expand the record to authenticate the original document, and to grant an evidentiary hearing to adjudicate the "origins of this document" or whether there was a Dereliction of duty and an adjudication of this evidence being Tampered with; or whether the "validity" of this "Document", where the defective dates therein default the hearing process and in either case there was a failure to give the required notification to the hearing process.

Without discovery, expanding the record, or an evidentiary hearing Petitioner cannot prove a claim of Dereliction of duty or Tampering with Evidence, but what he can prove is that the dates utilized by the District Court and the Federal Circuit Court of Appeals to this "Document" are defective and procedurally default the Continuance of the hearing.

Petitioner filed a Federal Rule of Evidence 201 for the District Court to take Judicial Notice of an adjudicative fact as to the origins and the validity of this "Document" and the Court was required to take Judicial Notice pursuant to Evidence Rule 201 (B) (2) but never ruled on this Judicial Notice. (Appendix Page 135 – 138) The Judicial Notice was part of seeking a COA to the Federal Circuit Court of Appeals but a COA was denied. (Appendix Page 118 – 121) (Appendix Page 108 – 117)

There are two different precedence's set in this case that are contrary to this Court's decisions; 1. *Morrissey v. Brewer, 408 U.S.* 471 the responsibility for writing a code of procedure for the parole revocation process; 2. *Moody v. Dagget,* the being taken into custody as a "parole violator" no longer triggers the constitutional duty to provide an adversary hearing.

But there is also a conundrum for this Court in that continuing in Morrissey @ **[*490]** ***LEdHN[24]*** [24] P*2 If it is determined that petitioners admitted parole violations to the Parole Board, as respondents contend, and if those violations are found to be reasonable grounds for revoking parole under state standards, that would end the matter. If the procedures followed by the Parole Board are found to meet the standards laid down in this opinion [***500] that, too, would dispose of the due process claims for these cases.

There are two different contentions that would end the and dispose of the due process claims; the first is that of the petitioner admitting the parole violations and two if procedures were followed by the Parole Board are found to meet the standards laid down in this opinion.

In the present case at bar petitioner admits the parole violation with mitigating circumstances, but the Parole Board do not meet the standards laid down in this opinion and because the "Document" utilized to conduct the hearing predated to the two (2) stages of the proceedings the Preliminary Hearing and the Revocation Hearing the proceedings were thereby prejudiced by the hearing process with defective dates and procedurally defaulting the Continuing of the hearing process the required notification is never given.

All "Documentation" contains these defective dates and the proceedings can no longer be held as reliable. There is but one claim that entitles Petitioner to relief and it is that of this "Document", without the "Document/Evidence" there can be no March 24th, 2021 hearing and no subsequent sanction/sentence therein.

(i) An appendix containing, in the order indicated: (Appendix attached)

(j) the opinions, orders, findings of fact, and conclusions of law, whether written or orally given and transcribed, entered in conjunction with the judgment sought to be reviewed;

(ii) any other relevant opinions, orders, findings of fact, and conclusions of law entered in the case by courts or administrative agencies, and, if reference thereto is necessary to ascertain the grounds of the judgment, of those in companion cases (each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry);any order on rehearing, including the caption showing the name of the issuing court, the title and number of the case, and the date of entry;

(iii) the judgment sought to be reviewed if the date of its entry is different from the date of the opinion or order required in sub-subparagraph (i) of this subparagraph;

(vi) material required by subparagraphs 1(f) or 1(g)(i); and

(v) any other material the petitioner believes essential to understand the petition.
If the material required by this subparagraph is voluminous, it may be presented in a separate volume or volumes with appropriate covers.

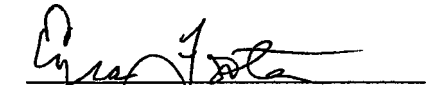
2. All contentions in support of a petition for a writ of certiorari shall be set out in the body of the petition, as provided in subparagraph 1(h) of this Rule. No separate brief in support of a petition for a writ of certiorari may be filed, and the Clerk will not file any petition for a writ of certiorari to which any supporting brief is annexed or appended.

3. A petition for a writ of certiorari should be stated briefly and in plain terms and may not exceed the word or page limitations specified in Rule 33. **(Petitioner does attest and affirm that the Petition for a writ of certiorari does conform to Rule 33 with page limitation as prescribed)**

4. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.

5. If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition submitted in accordance with Rule 29.2 no more than 60 days after the date of the Clerk's letter will be deemed timely.

Prayerfully Submitted,



Ezra C. Foster #213-888 *pro-se*