25-7378

ORIGINAL

CruNo. _____

FILED
FEB 19 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

BERNARD JONES — PETITIONER

(Your Name)

vs.

DAVE BERGMAN, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES TENTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bernard Jones #49967

(Your Name)

Arkansas Valley Correctional Facility
12750 Hwy 96 @ Lane 13

(Address)

Ordway, CO 81034

(City, State, Zip Code)

None

(Phone Number)

QUESTION(S) PRESENTED

CLAIM I: Whether a prisoner has a constitutional right to have all of his jail time deducted from his sentence of incarceration irrespective of his parole eligibility date being discretionary or non-discretionary under the Due Process Clause of the United States Constitution.

CLAIM II: Whether a prisoner has a constitutional right to have all of his jail time deducted from his sentence of incarceration irrespective of his parole eligibility date being discretionary or non-discretionary under the Equal Protection Clause of the U.S. Constitutions' 14th Amendments if Colorado Department of Corrections is deducting the total amount of jail time for other prisoners to determine their correct Parole Eligibility Date.

Claim III: Whether a State agency can evade the application of the factors that the United States Supreme Court has established to determine a violation of the Ex Post Facto Clause of the United States Constitution by creating a new and novel method for calculating a prisoner's initial parole eligibility date by adding eight years after he served over twenty years in prison.

CLAIM IV: Whether a State Supreme Court can evade the application of the factors that the United States Supreme Court have established to determine a violation of the Due Process Clause under the 5th and 14th Amendments of the United States Constitution based on the Ex Post Facto Clause when it fails to cite the specific state case law that would put Mr. Jones on notice that it could add eight years to his parole eligibility date when its prior decisions specifically sanctioned the previous method for calculating a prisoner's initial parole eligibility date.

CLAIM V: Whether Mr. Jones was denied the Equal Protection of the Law in violation of his U.S. Constitutional rights under the 14th Amendment as he is entitled to have his parole eligibility date calculated like other inmates that were incarcerated as Colorado law dictated at the time that he committed his crime.

LIST OF PARTIES

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

(Note: This case was previously caption as Bernard Jones v. Mark Fairbairn, Warden in the lower federal courts but now a new Warden, namely Dave Bergman, has been promoted to head the Arkansas Valley Correctional Facility in which Mr. Jones is currently imprisoned)

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

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ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

[x] Petiton for Rehearing denied by 10th Circuit Court of Appeals appears as Appendix A to the Petition

[X] For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix B to the petition and is

[X] reported at Jones v. Fairbairn, 2025 U.S. App. LEXIS 19138; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

[X] reported at Jones v. Exec. Dir. of Colo. Dep't of Corr., 2023 Colo. App. LEXIS 3180; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Colorado District court appears at Appendix E to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished:

JURISDICTION

[X For cases from federal courts:

The date on which the United States Court of Appeals decided my case was July 29, 2025.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 22, 2025.
A copy of the order denying rehearing appears at Appendix A.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including February 19, 2026 (date) on January 8, 2026 (date) in Application No. A__.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from state courts:

The date on which the highest state court decided my case was_____.
A copy of that decision appears at Appendix_____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix_____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_____(date) on_____(date) in Application No._____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Const. Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Const. Amendment 14

Sec. 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor 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.

Sec. 2. [Representatives—Power to reduce apportionment.]

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States,

Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. [Disqualification to hold office.]

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. [Public debt not to be questioned—Debts of the Confederacy and claims not to be paid.]

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the

loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. [Power to enforce amendment.]

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

USCS Const. Art. I, § 10, Cl 1, Part 1 of 3

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

STATEMENT OF THE CASE

On December 22, 1989, Mr. Jones was arrested in Colorado Springs, Colorado, on various drug charges in Case #89CR3639 and on June 21, 1990 he accepted a packaged plea agreement in which he received a twenty-year sentence to DOC. He later discovered that the prosecutor had reneged on his packaged plea agreement by sentencing his girlfriend to DOC instead of a Community Corrections Facility. He pursued a C.R.Crim.P. 35(c) post-conviction proceeding and after serving nearly 6½ years in DOC, his conviction was vacated so on July 15, 1995, Mr. Jones was released on an appeal bond.

On March 6, 1997, nearly two years later, while Mr. Jones was still released on bond in the 89CR3639 case, he was arrested in Case #97CR873 on various charges following a house party and he was released on a bond.

On August 29, 1997, Mr. Jones was found guilty following a jury trial in case #97CR873 and he was immediately incarcerated until he was sentence.

On December 9, 1997, Mr. Jones was sentence to a 96-year sentence and a 64-year sentence in the case #97CR873. (See **EXHIBIT C**). AT NO TIME WAS THE SURETY BOND IN CASE #89CR3639 REVOKED WHILE MR. JONES'S 97CR873 CASE WAS PENDING SO ALL OF THE 123 DAYS THAT HE SPENT IN JAIL IN THE YEAR 1997 WAS BASED ON THE 97CR873 CASE.

On December 16, 1997, after Mr. Jones was found guilty of numerous drug charges and three Habitual Criminal counts in his 89CR3639 case, he was sentenced to numerous 40-year–life sentences as mandated by the Habitual

Criminal charges so he was awarded 2211 days of presentence confinement credit (PSCC)(jail time.The district court awarded Mr. Jones 2211 days of pre-sentence confinement time in the 89CR3639 case which accounted for the nearly 6½ years that he had previously served in DOC before his plea agreement was vacated and before he was released on bond.

The court stated in the MITTIMUS that all of the life sentences were to be ran CONCURRENT with each other and that they be ran CONCURRENT with the 64-yer and 96-year sentences in the 97CR873 case. The Court did not award Mr. Jones any pre-sentence confinement time based on the time that he spent in jail in the year of 1997 in his 89CR3639 case because that jail time was applied to the 97CR873 case.

Even though Mr. Jones received 2211 days of pre-sentence confinement time (jail time) in his case #89CR3639, the district court neglected to award him any of the pre-sentence confinement time that he had served in his 97CR873 case at sentencing. After many years of litigation, Mr. Jones petitioned the state district court to award him pre-sentence confinement time in his case #97CR873. On February 21, 2018, the district court granted the legal motion by issuing an AMENDED MITTIMUS in 2018 in which the court awarded Mr. Jones 123 days of pre-sentence confinement time. There was no awarding of duplicative credit for pre-sentence confinement time by courts in the two cases.

Upon being granted the 123 days of pre-sentence confinement time in the case #97CR873, Mr. Jones contacted his Case Manager, Mr. Waleed Robinson, to request a time-limit on when the Colorado Department of Corrections (CDOC)

will actually deduct the 123 days of pre-sentence confinement time. He received an updated TIME COMPUTATION SHEET which indicated that CDOC acknowledged that the court had awarded him the 123 days of pre-sentenced confinement time but it did not deduct the 123 days from his Parole Eligibility date (PED). After discussing the issue with another Case Manager, Mr. Jones was told that CDOC may not deduct the 123 days of pre-sentence confinement time from his sentence and Parole Eligibility Date because his sentences were ordered to be ran CONCURRENT instead of being ran CONSECUTIVE. Such a position is clearly erroneous as it is in violation of the Colorado Revised Statutes (CRS §18-1.3-405), Colorado case law and Federal Law.

The Time Computation Department has continued to refused to deduct the 123 days of pre-sentence confinement time in the 97CR873 case from Mr. Jones's Parole Eligibility Date as Defendants have deducted only 2204 days of PSCC to calculate Mr. Jones's PED instead of the total amount of 2334 days (2211 days + 123 days = 2334 days) of PSCC that the two separate district courts have awarded Mr. Jones. All of Mr. Jones's sentences were ordered to be ran "**concurrent**" by the district courts.

After Mr. Jones had served over twenty-two years in prison, on or about December 17, 2019, Mr. Jones was informed that his Parole Eligibility Date (P.E.D.) had been increased by eight (8) years from November 30, 2022 to that of November 30, 2030, as the Time Computation Department of CDOC had decided to create a new and novel way in which to compute his sentences. Instead of applying the traditional "Governing Sentence" principle that had been

used to determine his P.E.D. for nearly twenty-two years which is based on the sentence with the "longest incarceration effect," CDOC has elected to apply a new and novel principle which allows it to combine two separate and distinct case sentences to create a completely new sentence that no court has sentenced Mr. Jones.

Mr. Jones has written the Time Computation Department of CDOC to request that his parole date be calculated pursuant to the "Governing Sentence" principle that was established and implemented at the time of his crime.

Mr. Jones committed his crimes in the years of 1989 (case #89CR3639) and 1997 (case #97CR873) in which he received an indeterminate 40-year-to-life sentence in his case #89CR3639 and a 96-year and a 64-year sentence in his case #97CR873. All of his sentences were ordered by the courts to be ran concurrent.

In 1998, CDOC calculated Mr. Jones's P.E.D. using the "governing sentence" rule by correctly determining that the 40-year-to-life sentence had the "longest incarceration effect." His initial P.E.D. was set at 12/16/2037 but with the deductions for PSCC and earned time credits, Mr. Jones's P.E.D. was set for 11/10/2022, up until 12/5/2019, as he has not received a disciplinary report in over twenty years. However, without notice or warning, the very next day Defendants increased Mr. Jones's P.E.D. by adding eight (8) years so that it was on 11/10 of the year 2030. Mr. Jones later learned that the Defendants had created a new and novel way in which to calculate his parole eligibility date.

The state district court denied Mr. Jones's C.R.C.P. 106 Complaint without providing him with an opportunity to amend his Comlaint after the Defendants attached Mary Carlson's AFFIDAVIT. **APPENDIX E** – OPINION OF THE COLORADO DISTRICT COURT). Mr. Jones filed an appeal and it was denied by the Colorado Court of Appeals. (**APPENDIX D** – OPINION OF COLORADO COURT OF APPEALS). The Colorado Supreme Court denied his Petition for Writ of Certiorari. Mr. Jones filed a timely Writ of Habeas Corpus pursuant to section 2241 in the federal district court but he was denied relief. (**APPENDIX C** – ORDER ON APPLICATION FOR WRIT OF HABEAS CORPUS). He then filed a timely Certificate of Appealability in the U.S. Tenth Circuit Court of Appeals and it denied. (**APPENDIX B** – ORDER DENYING CERTIFICATE OF APPEALABILITY). Mr. Jones filed a Motion for Rehearing in the U.S. Tenth Circuit Court of Appeals but it was denied. (APPENDIX A – ORDER DENYING PETITION FOR REHEARING). Mr. Jones filed a Motion for Extension of time in the U.S. Supreme Court in which to file his Petition for Writ of Certiorari and it was granted to include February 19, 2026. (APPENDIX G – ORDER GRANTING EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT).

REASONS FOR GRANTING THE PETITION

As a fundamental aspect of this case, the State of Colorado has embarked upon a completely novel method of sentencing as it has divided a person's sentence into two completely separate and distinct parts. The first part requires a person to serve a definitive amount in prison. The second part requires a person to serve a pre-determined amount of time on parole. A person cannot complete the service of his sentence until he is released on parole no matter how much time he has served during the first part of his sentence. Therefore, a person's Parole Eligibility Date (PED) actually determines the amount of time that a person must serve on his sentence and not the term of sentence, itself.

For example, if a person is given a ten-year sentence, he can become eligible for parole after serving 50% (or less) or he can be required to serve the entire ten years in prison by not being granted parole. In either case, the person is still mandated by law to serve a pre-determined period of parole of which he can be sent back to prison for a violation of its conditions. It is the person's PED that determines the amount of a person's sentence because if a person is granted parole after serving 50%, he will serve five years in prison and a pre-determined period of parole, whereas, if he serves the entire ten years in prison, his sentence will still not be discharged until he also completes the pre-determined period of parole. In other words, a person can never complete the service of his sentence until after he is granted parole. It is the uniqueness of the State of Colorado's sentencing scheme that has established a "liberty interest" under the First Amendment of the United States Constitution to have his PED calculated correctly.

CLAIM I

DEFENDANTS VIOLATED MR. JONES'S U.S. CONSTITUTIONAL RIGHT TO DUE PROCESS UNDER THE 5TH AND 14TH AMENDMENTS TO HAVE ALL OF HIS PRE-SENTENCE CONFINEMENT TIME ACTUALLY DEDUCTED FROM HIS SENTENCE TO DETERMINE HIS CORRECT PAROLE ELIGIBILITY DATE (P.E.D) PURSUANT TO CRS §18-1.3-405.

This Honorable Court should grant this writ because the Defendants abused their power and/or discretion in that there is no legal basis for them to deny Plaintiff his statutory rights pursuant to **CRS §18-1.3-405** and the Defendants violated Plaintiff's U.S. Constitutional right to Due Process under the 5th and 14th Amendments to have ALL of his pre-sentence confinement time deducted from his sentence to determine his correct Parole Eligibility Date (P.E.D.). Mr. Jones is entitled by statute to have the 123 days of jail time deducted from his sentence to determine his correct Parole Eligibility Date based on the plain language of **CRS §18-1.3-405**.

The Colorado Supreme Court has specifically stated in the case of *Schubert v. People*, 698 P.2d 788 (Colo. 1985) that:

> "In the case of concurrent sentences, the period of presentence confinement should be credited against each sentence. This is so because concurrent sentences obviously commence at the same time and in functional effect result in one term of imprisonment represented by the longest of the concurrent sentences imposed. Only by giving credit against each concurrent sentence will the defendant be assured of receiving credit for the full period of presentence confinement against the total term of imprisonment. When

consecutive sentences are imposed, crediting the period of presentence confinement against one of the sentences will assure the defendant full credit against the total term of imprisonment." Id., at 795.

The Colorado Supreme Court and Court of Appeals have consistently reaffirmed their declaration that the defendant is entitled to presentence confinement credit against each sentence. See *Brinklow v. Riveland*, 773 P.2d 517, 520-521 (Colo. 1989) (We have held that when concurrent sentences are imposed, credit for presentence confinement should be granted against each concurrent sentence in order to assure the defendant of receiving credit for the full period of presentence confinement against the total term of imprisonment)(*Underlines added*); *Massey v. People*, 736 P.2d 19, 22 (Colo. 1987) (Thus, where two or more charges form multiple bases for the defendant's presentence confinement, the defendant is entitled to credit against each sentence imposed on those charges, as long as the credit would not be duplicative); *People v. Howe*, 292 P.3d 1186, 1189 (Colo. App. 2012) (When multiple charges form the basis for a defendant's presentence confinement, "the defendant is entitled to credit against each sentence imposed on those charges, as long as the credit would not be duplicative. Massey, 736 P.2d at 23.

Defendants have a statutorily-imposed and a constitutional duty to actually deduct the 123 days of jail time for a total of 2334 days. The CDOC's simple acknowledgement of the 123 days of pre-sentence confinement time on Mr. Jones's Time Computation Report is simply not enough. Its failure to give Mr. Jones "credit" by actually deducting the 123 days of pre-sentence confinement time from

his sentence to determine his Parole Eligibility Date (PED) is in violation of his rights under Colorado Law and a violation of his U.S. Constitutional Rights. At no time does **CRS §18-1.3-405** give CDOC the discretion to withhold or to refuse to deduct the presentence confinement time that has been awarded by the courts as designated on the offender's MITTIMUS. Instead, CDOC must abide by the plain language of **CRS §18-1.3-405** when it unambiguously states, "The period of confinement shall be deducted from the sentence by the department of corrections."

The Colorado Department of Corrections, via its Time Computation Department, has a clear statutory duty to deduct the 123 days of presentence confinement time from Mr. Jones's sentence and Parole eligibility date as the Colorado Supreme Court has determined in *Edwards v. People*, 196 P.3d 1138, 1139 (Colo. 2008):

> **It then becomes the statutory obligation of the Department of Corrections ("DOC") to deduct the number of days of PSCC noted on the mittimus from the offender's sentence**." (*Underlines and bold added*).

Thus, it is absolutely clear that CDOC has a legal obligation and a legal duty to deduct the 123 days of pre-sentence confinement time from Mr. Jones's PED. See *People v. Ostuni*, 58 P.3d 531, 533-534 (Colo. 2002):

> **Rather than permitting the court to adjust an offender's sentence downward to account for presentence confinement, the legislature has reserved to the department the duty to deduct this period of confinement from the sentence. §18-1.3-405**. (*Underlines and bold added*).

Also see *Meredith v. Zavaras*, 954 P.2d 597, 605-606 (Colo. 1998) ([Section **16-11-**

306] removes from the trial court the discretion whether to grant or deny a defendant credit against his sentence for presentence confinement time, **and imposes upon the Department of Corrections a duty to assure that credit is given in every case**. Under the [statute as amended], the only judicial function is to make a finding of fact concerning the number of days spent by a defendant in presentence confinement. *Dempsey*, 624 P.2d at 375. See also *People v. Patrick*, 683 P.2d 801, 803 (Colo. App. 1983); *People v. Hardman*, 653 P.2d 763, 764 (Colo. App. 1982). (*Underlines and bold added*).

As additional legal authority, the Federal Courts have already determined that an inmate has a U.S. Constitutional Right to credit for pre-sentence confinement time in Colorado. See *Godbold v. Wilson*, 518 F. Supp. 1265, 1269 (D. Colo. 1981):

> A sentencing judge who wants to may circumvent an indigent defendant's constitutional right to credit for pre-sentence confinement by imposing a correspondingly longer sentence before giving credit. I find that it is still mandatory that the sentencing judge explicitly credit such a defendant for pre-sentence confinement. Otherwise, there is a serious danger that the constitutional right will become completely illusory. See *Johnson v. Prast*, 548 F.2d 699, 703 (7th Cir. 1977). (Underlines and bold added).

The Colorado Supreme Court also determined an inmate is entitled to pre-sentence credit when calculating a Parole Eligibility Date even when an inmate is serving a Life sentence. See *Fields v. Suthers*, 984 P.2d 1167, 1172 (Colo. 1999)

CLAIM II

AS A PARTY OF ONE AND AS AN AFRICAN AMERICAN MALE AND PART OF A "PROTECTED CLASS" OF PEOPLE THAT CANNOT BE DISCRIMINATED UPON DUE TO HIS RACE, MR. JONES IS ALSO BEING DENIED THE EQUAL PROTECTION OF THE LAW IN VIOLATION OF THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION AS THE TIME COMPUTATION DEPARTMENT OF CDOC HAS AWARDED OTHER INMATES PRE-SENTENCE CONFINEMENT TIME WHEN CASES ARE RAN "CONCURRENT" BY THE COURTS.

This Honorable Court should grant this writ because Mr. Jones states that he is also being denied the equal protection of the law as the Time Computation Department of CDOC has awarded other inmates pre-sentence confinement time in either one case or both cases to reduce their P.E.D. when the cases are ordered to be ran "CONCURRENT" by the courts. Since Mr. Jones is an African American male, he is part of a "protected class" of people that cannot be discriminated upon due to his race as it is a violation of the 14th Amendment of the U.S. Constitution. Mr. Jones also claims that he is a party of one that has been denied the Equal protection of the law in violation of the *14th Amendment* of the United States Constitution. See *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) Since CDOC has awarded other inmates pre-sentence confinement time in both cases when the sentences are ran concurrent by the courts, it cannot deny Mr. Jones the same opportunity to have it deducted in his case. Inmate Ryan Maples was awarded all of his presentence confinement time and all of it was deducted from his sentence to determine his correct P.E.D.

Mr. Jones also argues that he is also being denied the equal protection of the law as the Time Computation Department of CDOC is subjecting him to the reality

that he will be required to serve more time than his wealthy counterparts due to his poverty. As the Colorado Supreme Court stated in *Fields v. Suthers*, 984 P.2d 1167, 1172 (Colo. 1999):

> Thus, if a statute is capable of alternative constructions, one of which is constitutional, then the constitutional interpretation must be adopted." *People v. Zapotocky*, 869 P.2d 1234, 1240 (Colo. 1994). Here, the interpretation that the DOC urges us to follow raises equal protection concerns. Indigent defendants who are not able to post bail and who are subsequently sentenced to life imprisonment would be treated more harshly than defendants who have the financial resources to post bond. *Cf. State v. Seeley*, 212 Wis. 2d 75, 567 N.W.2d 897, 901 (Wis. Ct. App.) (indicating that an inmate's equal protection argument would have merit if financial considerations were the only considerations in denying inmate presentence incarceration credit for purposes of parole eligibility). It was precisely to prevent this unequal treatment of rich and poor that the General Assembly made presentence confinement credit mandatory rather than discretionary. See *Massey v. People*, 736 P.2d 19, 21 (Colo. 1987) (stating that "the purpose of section 16-11-306 is to eliminate the unequal treatment suffered by indigent defendants who, because of their inability to post bail, are confined longer than their wealthier counterparts"). (Underlines added).

Mr. Jones states that Defendants failed to follow their normal course of action as other inmates' sentences are calculated by the DOC so that all of their pre-sentence confinement time is deducted from their P.E.D. when they are

sentenced to "concurrent" sentences so he is entitled to relief from the Defendants' violation of the *14th Amendment* of the United States Constitution under the "equal protection clause." See *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)

CLAIM III

THE DEFENDANTS HAVE VIOLATED MR. JONES'S U.S. CONSTITUTIONAL RIGHTS TO DUE PROCESS UNDER THE 5TH AND 14TH AMENDMENTS AS THEY HAVE INCREASED HIS PAROLE ELIGIBILITY DATE BY AN ADDITIONAL EIGHT (8) YEARS IN VIOLATION OF THE UNITED STATES CONSTITUTION'S EX POST FACTO CLAUSE AFTER HE HAS SERVED OVER TWENTY-TWO (22) YEARS IN PRISON.

This Honorable Court should grant this writ because Mr. Jones states that he is entitled to relief from the Defendants' failure to observe his U.S. Constitutional Rights under the *Ex Post Facto* Clause and the Due Process Clause under the 5th and 14th Amendments. This is one of the rare situations where the Colorado Department of Corrections and the state courts have created a new and novel method in which to deny Mr. Jones his U.S. Constitutional rights. Please see *Cruz v. Arizona*, 598 U.S. 17, 30-31 (2023) and *Bouie v. Columbia*, 378 U.S. 347, 353-54 (1964)

1. The Defendants cannot increase Mr. Jones's initial Parole Eligibility Date after he has served 22 years by applying a new and novel Department of Corrections policy as it is in violation of the United States Constitution's Ex Post Facto Clause.

Under Colorado law, the Legislature has given the Colorado Department of Corrections (CDOC) the authority to calculate an inmate's Parole Eligibility Date (P.E.D.) and Mandatory Release Date M.R.D.). See *Edwards v. People*, 196 P.3d

1138, 1139 (Colo. 2008) ("It then becomes the statutory obligation of the Department of Corrections to deduct the number of days of PSCC noted on the Mittimus from the offender's sentence). Ergo, the Colorado General Assembly has delegated its rule and decision making authority to CDOC. See *Love v. Fitzgerald*, 460 F.2d 382, 385 (9th Cir. 1972) (The interpretation of the relationship between the statues placed upon them by the administrative agency charged with their enforcement has the force and effect of law).

Although the U.S. Constitution only prohibits the states from passing ex post facto laws pursuant to U.S. Const. Art. I section 10, an agency regulation which is legislative in nature is encompassed by this prohibition because a legislative body, "cannot escape the constitutional restraints on its power by delegating its lawmaking function to an agency." (Quoting *United States v. Bell*, 991 F.2d 1445, 1450 (8th Cir. 1993); also see *Akins v. Snow*, 922 F.2d 1558, 1561 (11th Cir. 1991). An agency's statement that an amendment is nothing more than a clarification cannot be accepted as conclusive because such a result would enable the agency to make substantive changes in the guise of clarification. *United States v. Saucedo*, 950 F.2d 1508, 1514-15 (10th Cir. 1991); *Collins v. Youngblood*, 497 U.S. 37, 46 (1990). When a state law has been applied using different interpretations, the proper inquiry in an ex post facto challenge is whether the current interpretation was foreseeable. See *Devine v. New Mexico Dep't of Corrections*, 866 F.2d 339, 342 (10th Cir. 1982). This analysis comports with the U.S. Supreme Court's pronouncement in Weaver that "lack of fair notice" is a critical element in ex post facto relief. *Weaver v. Graham*, 450 U.S. 24, 30 (1981).

The legal standard for establishing a violation of the **Ex Post Facto Clause of Art. I, §9 & 10** of the United States Constitution is as follows: (1) That Congress or the State has enacted a law which imposes punishment for an act which was not punishable at the time it was committed, or to impose additional punishment to that previously prescribed; (2) The law must be retroactive or applied retroactively; and (3) The law must disadvantage the offender affected by it.

The first part of the test is satisfied by the fact that Defendants have imposed 8 years of additional punishment to the then previously prescribed punishment by arbitrarily and capriciously increasing Mr. Jones's initial after he had already served over twenty years in prison. CDOC has chosen to completely abandon its previous "governing sentence" rule. At the time that Mr. Jones committed his crimes, the law was absolutely clear as the Colorado Supreme Court had repeatedly sanctioned CDOC's previous "governing sentence" rule. See, e.g., *Price v. Mills*, 728 P.2d 715, 718 (Colo. 1986); Vaughn v. Gunter, 820 P.2d 659, 661-62 (Colo. 1991). In *Spoto v. Colorado Dep't of Corrections*, 883 P.2d 11, 14 (Colo. 1994), the court explained the need for CDOC to utilize its "governing sentence" rule as it stated, "Where concurrent sentences with conflicting parole provisions have been imposed, it is necessary to apply the governing sentence principle. In such contexts, for purposes of determining an individual's parole eligibility date, one of the sentences must of course govern."

To determine the "governing sentence," the Colorado Supreme Court has previously determined that an indeterminate sentence, which includes a "life" sentence, has a "longer incarceration effect" and is more severe than a determinate

sentence of many, many years. See *People v. Montgomery*, 737 P.2d 413, 416-17 (Colo. 1987); also see People v. Apodaca, 58 P.3d 1126, 1131 (Colo. App. 2002). This is due to the fact that that an indeterminate sentence of "life imprisonment" is more severe because by its very terms, an inmate can literally spend the rest of his life in prison as he has no right to be paroled under a life sentence. See *Dean v. People*, 366 P.3d 593, 600 (Colo. 2016).

Based on the "governing sentence" rule, CDOC had calculated Mr. Jones's Parole Eligibility Date (P.E.D.) based on his 40-years-to life sentence from 1998 to the year 2019 because it was the law at the time that he committed his crimes. There has been no case law or statute that would have put Mr. Jones on notice that CDOC might change or abolish the application of the "governing sentence" rule to his sentences. As a result, this correct method of calculating his sentences produced a P.E.D. in the year 2022 and it must remain as such.

The second prong of the test is satisfied by the fact that in 2019, CDOC created a new and novel way in which to calculate Mr. Jones's initial P.E.D. and it applied this new way "retroactively" to increase it by an additional eight (8) years. Now, Defendants choose to use two different sentences to calculate his P.E.D. and his M.R.D. separately as it now uses Mr. Jones's 96-year determinate sentence to calculate his P.E.D. even though it is not the sentence with the "longest incarceration effect." This new and novel method creates a new minimum base sentence of 48 years (50% of 96 years) which is eight more years than the 40-years –to-life sentence of 40 years of incarceration before becoming eligible for parole. Since CDOC still cannot get around the fact that the 40-years-to-life sentence has

the "longest incarceration effect," it then determines that it will use that particular sentence to calculate Mr. Jones's M.R.D. as being that of a life sentence. CDOC has effectively usurped the power of the courts in Mr. Jones's cases by creating a completely new sentence of 96-years-to life. Such an act is not only in violation of the **Separations of Powers Act**, it is also in violation of the United States **Ex Post Facto Clause**.

The third prong of the test is satisfied based on the U.S. Supreme Court's declaration in *Warden v. Marreo*, 417 U.S. 653, 662-63 (1974), in which the court stated, "First, only an unusual prisoner could be expected to think that he was not suffering a penalty when he was denied eligibility for parole" and "Second, a repeal of parole eligibility previously available to imprisoned offenders would clearly present the question under the ex post facto clause of Art. I, §9, cl. 3, of whether it imposes a greater or more severe punishment than that prescribed by the law at the time of the offense." In this case, Defendants have definitely increased Mr. Jones's punishment to his disadvantage by adding eight years to his initial P.E.D. See *United States ex rel. Graham v. United States Parole Com.*, 629 F.2d 1040, 1043 (5th Cir. 1980).

A state agency such as CDOC is not exempt from the demands of the Ex Post Facto Clause. See *Rodriguez v. United States Parole Com.*, 594 F.2d 170, 176 (7th Cir. 1979); *Knuck v. Wainwright*, 759 F.2d 856, 859 (11th Cir. 1985); and *Bouie v. Columbia*, 378 U.S. 347, 353-54 (1964). The Defendants' decision to retroactively increase Mr. Jones's initial parole date by an addition eight years is clearly in violation of the Ex Post Facto Clause of the United States Constitution. See *Smith*

v. Scott, 223 F.3d 1191, 1195-96 (10th Cir. 2000) (Although the constitution only prohibits the states from passing ex post facto law, U.S. Const. Art. I, 10, an agency regulation which is legislative in nature is encompassed by this prohibition).

It is clear that the retroactive curtailment of parole eligibility constitutes retroactive enhancement of punishment which violates the ex post facto clause. See *Lance v. Mathis*, 519 U.S. 433, 445-46 (1997); Weaver v. Graham, 450 U.S. 24, 28-29 (1981); and *Devine v. New Mexico Dep't of Corrections*, 866 F.2d 339, 344 (10th Cir. 1989). Moreover, a law or agency rule need not be a "vested right" to violate the ex post facto prohibition. *Weaver*, 450 U.S. at 29-30. Also, the court made clear that the fact that parole is discretionary "does not displace the protections of the ex post facto clause." Quoting *Peugh v. United States*, 569 U.S. 530, 546 (2013). Thus, the adding of eight years to Mr. Jones's initial parole eligibility date is in violation of the United States Constitution.

Defendants were free to continue their use of the "governing sentence" rule by easily applying the FETZER decision by starting its calculation of Mr. Jones's P.E.D. one week earlier to create a composite sentence that begins on the "sentence effective date" of the 96 and 64-year sentences that he received in case #97CR873 which is 12/9/1997, instead of the sentence effective date of solely the 40-year-to-life sentence which is 12/16/1997. *Exec. Dir. Of the Colo. Dep't of Corr. V. Fetzer*, 2017 CO 77, 396 P.3d 1108 (Colo. 2017) (respectfully referred to as the Fetzer case throughout this writ). This would have encompassed ***all*** of Mr. Jones's sentences as required by **C.R.S. §17-22.5-101**'s mandate of "one continuous sentence." In the alternative, Defendants could simply reinstate its previous calculation of Mr.

Jones's P.E.D. using the court-sanctioned "governing sentence" rule as Mr. Jones never requested the application of the FETZER decision and since Defendant Mary Carlson informed Warden Scott Dauffenbach that it would not be applied to Mr. Jones's sentences.

The Defendants' arbitrary change to a new and novel way in which to calculate Mr. Jones's P.E.D. was not foreseeable as they had relied upon their "governing sentence" rule for nearly thirty-five years and both the Colorado Supreme Court and the Colorado Court of Appeals have sanctioned their use of their "governing sentence" rule on numerous occasions as cited earlier. Moreover, even the federal courts have cited and relied upon the Defendants' "governing sentence" rule when deciding cases in the U.S. Tenth Circuit. See *Mahn v. Gunter*, 978 F.2d 599, 601 (10th Cir. 1992): and *Gray v. Zavaras*, 220 F.3d 1170, 1171 (10th Cir. 2000). Mr. Jones was not put on notice at the time of his sentencing that the CDOC could arbitrarily deviate from its then current practice of applying its "governing sentence" rule and he has done nothing to warrant such an 8-year increase of his initial P.E.D. so he was entitled to rely upon the "governing sentence" rule because any change was not foreseeable. Still, the most compelling evidence that CDOC's new and novel way of recalculating Mr. Jones's P.E.D. was not foreseeable is found in the Colorado Supreme Court's decision in the FETZER case, itself, as the court granted Defendants the authority to continue to use its previously sanctioned "governing sentence" rule as discussed below.

2. Colorado Supreme Court's Fetzer decision did not mandate that Defendants completely abandon its previously sanctioned "governing

sentence" rule.

Since Defendants know that its 8-year increase of Mr. Jones's initial parole eligibility date would not survive a challenge under the Ex Post Facto Clause, they have attempted to justify the increase by blaming it on the Colorado Supreme Court's decision in the *Exec. Dir. Of the Colo. Dep't of Corr. V. Fetzer*, 2017 CO 77, 396 P.3d 1108 (Colo. 2017) case.

In its Fetzer decision, the Colorado Supreme Court upheld the part of the Court of Appeals OPINION when it found that it was unlawful for CDOC to force Fetzer to serve an additional twelve years in prison before reaching his initial parole date by starting its calculation of his P.E.D. from the "sentence effective date" of his latest case. Fetzer, 2017 CO 77, para. 16, 18, &20. Both courts ordered CDOC to start its calculation of Fetzer's P.E.D. from the earliest "sentence effective date" of his concurrent sentences. More pointedly, that was the only thing that the Colorado Supreme Court mandated for CDOC to do so Defendants' attempts to rely on the Fetzer decision to create a new and novel way in which to increase Mr. Jones's P.E.D. is without substance or merit.

Instead of disavowing CDOC's continued use of the courts' previously sanctioned "governing sentence" rule, the Colorado Supreme Court went out of its way to explain and overturn the part of the Court of Appeals OPINION which had instructed CDOC to completely abolish its use of their "governing sentence" rule when it remanded the case back to the district court as it stated, "because, however, Fetzer's multiple sentences are not subject to the same statutory parole scheme, as indicated in the Court of Appeals opinion, reference to a governing sentence, or

some comparable means of determining the applicable incidents of parole, may remain necessary to calculate Fetzer's parole eligibility date." (Underlines added) *Fetzer,* 2017 CO, para. 21. More importantly, the Colorado Supreme Court could have easily used the *Fetzer* case to simply abolish and prohibit the CDOC from using the "governing sentence" rule once and for all by upholding that particular part of the Court of Appeals OPINION if that was the Court's intentions. Thus, there was no mandate or directive issued by the Colorado Supreme Court for the Defendants to create a new and novel way in which to calculate Mr. Jones's sentence in a way that would add eight years to his initial parole date. Instead, Defendants were completely free to continue their use of the previously court-sanctioned "governing sentence" rule which would not have increased Mr. Jones's initial P.E.D. by an additional eight years.

Defendants could have – and they should have – continued to use Mr. Jones's 40-year-to-life sentence as his "governing sentence" to calculate his P.E.D. by simply starting its calculation from the earliest "sentence effective date" of his two cases as the Colorado Supreme Court issued these specific parameters in the *Fetzer* case as it stated, "It is the responsibility of the department to fairly and consistently administer an inmate's statutorily required continuous sentence, whether disparate provisions otherwise governing the inmate's separate sentences result from subsequent statutory amendments or not." *Fetzer*, 2017 CO 77, para. 19. There is nothing "fair" about Defendants' new way of calculating Mr. Jones's P.E.D. by increasing it by eight years after he has already served over twenty years in prison. Also, there is nothing "consistent" in the Defendants' new and novel way

in which to calculate Mr. Jones's sentences as it has completely abandoned its previous "governing sentence" rule in this case. Therefore, the defendants' new method of calculating Mr. Jones's initial P.E.D. is not mandated by the Colorado Supreme Court's decision in the Fetzer case.

Since there was no need for CDOC to abandon its previous "governing sentence" rule pursuant to the *Fetzer* decision, CDOC's act of changing its rule and applying it retroactively to increase Mr. Jones's initial P.E.D. by eight years does indeed run afoul of his U.S. Constitutional rights under the **Ex Post Facto Clause** and the **Due Process Clause** of the *14th Amendment*. See *Devine v. New Mexico Dep't of Corrections*, 866 F.2d 339, 344 (10th Cir. 1989); *Smith v. Scott*, 223 F.3d 1191, 1196 (10th Cir. 2000). The very purpose of the ex post facto clause is to prevent the government, and its agencies and officials, from retroactively increasing a citizen's punishment no matter what creative or expansive reasoning it can conjure up. This is especially true in this case.

The Colorado Supreme Court suggested that if CDOC wished to utilize a "comparable" method as that of the previously court-sanctioned "governing sentence" rule, it ***may*** be acceptable "unless the methodology selected by the department contravenes a statute or constitutional rights of an inmate." *Fetzer*, 2017 CO 20, para. 20. Since the methodology that Defendants have chosen violates Mr. Jones's U.S. Constitutional rights under the **Ex Post Facto Clause** and/or the **Due Process Clause**, its new methodology does not meet the Supreme Court's requirements so they cannot be applies to Mr. Jones. In addition, Webster's Dictionary defines "comparable" as, "capable of being compared. Syn – parallel,

similar, like, alike, corresponding." CDOC's new and novel method of calculating Mr. Jones's PED is not at all "comparable" to the previous "governing sentence" rule that the Colorado courts had previously sanctioned as it does not use the sentence with the "longest sentence effective effect" to calculate Mr. Jones's PED. Therefore, Defendants have completely trashed the previous "governing sentence" rule. By creating a new and novel way in which to increase Mr. Jones's initial parole date by eight years, Defendants have violated his U.S. Constitutional rights under the **Ex Post Facto** and the **Due Process Clauses**. See *Smith v. Scott*, 223 F.3d 1191, 1196 (10th Cir. 2000); and *Knuck v. Wainwright*, 759 F.2d 856, 859 (11th Cir. 1985).

CLAIM IV

WHETHER A STATE SUPREME COURT CAN EVADE THE APPLICATION OF THE FACTORS THAT THE UNITED STATES SUPREME COURT HAVE ESTABLISHED TO DETERMINE A VIOLATION OF THE DUE PROCESS CLAUSE UNDER THE 5TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION BASED ON THE EX POST FACTO CLAUSE WHEN IT FAILS TO CITE THE SPECIFIC STATE CASE LAW THAT WOULD PUT MR. JONES ON NOTICE THAT IT COULD ADD EIGHT YEARS TO HIS PAROLE ELIGIBILITY DATE WHEN ITS PRIOR DECISIONS SANCTIONED THE PREVIOUS METHOD FOR CALCULATING A PRISONER'S INITIAL PAROLE ELIGIBILITY DATE.

The U.S. Supreme Court has made it absolutely clear that if a State's Legislature is barred by the **Ex Post Facto Clause** from passing retroactive laws which increase an inmate's punishment, "It must also follow that the State Supreme Court is barred by the process from obtaining the same result by judicial

construction." Quoting *Bouie v. Columbia*, 378 U.S. 374, 353-54 (1964); also see *Marks v. United States*, 430 U.S. 188, 192-93 (1977). This has been deemed to be a violation of the Due Process Clause of the U.S. Constitution.

In its Order of Dismissal, the state district court seems to rely on Defendants' assertion that they were free to increase Mr. Jones's punishment by increasing his initial PED because the Colorado Supreme Court's decision in Fetzer mandated such a change of the "governing sentence" rule, itself. However, the court erred as it failed to make the necessary findings to determine whether such a mandate could be applied retroactively based on the appropriate legal standard as it did not reference any statute or prior Colorado Supreme Court precedent that would ***not*** make the change "unexpected or indefensible." Since there is absolutely no Colorado Supreme Court precedent that would have put Mr. Jones on notice that CDOC would completely abandon its previously sanctioned "governing sentence" rule at the time that he committed his crimes over twenty years ago, the new and novel way in which Defendants now choose to calculate an inmate's PED cannot be applied to Mr. Jones's sentences because it was not foreseeable.

In *Rogers v. Tennessee*, 532 U.S. 451, 457 (2001), the U.S. Supreme Court stated the legal standard for determining if a State Supreme Court's decision is in violation of the United States Constitution when it increases an inmate's punishment retroactively. In doing so, the Supreme Court stated, ""f a judicial construction of a criminal statute is 'unexpected and indefensible' by reference to law which had been expressed prior to the conduct at issue, the construction must not be given retroactive effect." Quoting *Bouie*, 378 U.S. at 354.

Prior to its *Fetzer* decision, the Colorado Supreme Court had both consistently and unequivocally sanctioned CDOC's use of its previous "governing sentence" rule at the time that Mr. Jones's committed his crimes in 1989 and 1997. As a result, Mr. Jones's PED calculation remained consistent over twenty years as his 40-year life sentence was used to calculate both his PED and his MRD which determined that his PED was in the year 2022 at the time that Defendants elected to change it. In *Fetzer*, the Colorado Supreme Court did not in any way disavow its previous sanctioning of the "governing sentence" rule as it cited those particular lines of cases in its ruling in the *Fetzer* case, itself, e.g., *Price v. Mills*, 728 P.2d 715 (Colo. 1986) (Fetzer, 2017 CO 77 at para. 13, 16 and 20); *Thiret v. Kautsky*, 792 P.2d 801, 803-804 (Colo. 1990) (Fetzer, 2017 CO 77 at para. 9, 15, 16 and 19); *Bynum v. Kautzky*, 784 P.2d 735, 738-39 (Colo. 1989) (Fetzer, 2017 CO 77 at para. 11); and *Vaughn v. Gunter*, 820 P.2d 659, 662 (Colo. 1991) (Fetzer, 2017 CO 77 at para. 15 and 16). At no time did the court state that it was overturning the decisions in those cases even though it could have easily done so. Instead, the court emphasized that it was the CDOC's new and novel way of applying the "governing sentence" rule to nullify the time that Fetzer had actually served in prison on his other sentences that were concurrent that the court rejected as the Colorado Supreme Court stated,

> "Similarly, we have never sanctioned a governing sentence methodology that would permit the calculation of an inmate's parole eligibility date solely on the basis of his longest concurrent sentence, in lieu of a composite continuous sentence accounting for all his separate sentences." Fetzer, 2017 CO 77,

para.16.

In essence, the Colorado Supreme Court found that it was CDOC that "errs in construing the precedent of this court as sanctioned its current governing sentence at all, much less directed that it be applied in lieu of the continuous sentence requirements of section 17-22.5-101." Ergo, it was not the Colorado Supreme Court's precedent that was deemed to be erroneous or unlawful but instead, it was CDOC's recently contrived "current" application of the "governing sentence" rule which ignored the time that an inmate had actually served in prison on their other concurrent sentences that was deemed by the court to be unlawful. The Colorado Supreme Court goes on to distinguish the previous way in which CDOC had applied the "governing sentence" rule from its current way of applying it as the court stated, " Apart from the fact that both this court and the court of appeals itself have determined that the ***novel*** governing sentence method advocated here by the department violates the continuous sentence requirement and therefore may not be applied under any circumstances, we believe a broad rule to the effect that no governing sentence principle could ever be proper in administering part 4 would be both precipitous and unnecessarily restrictive of the department's discretion." Fetzer, 2017 CO 77, at para. 18.

It is clear that the Colorado Supreme Court specifically rejected CDOC's new and novel method of applying the "governing sentence" rule to increase an inmate's parole date by starting its calculation on the "sentence effective date" of his last sentence and not the "governing sentence rule," itself. The Supreme Court did not overturn its prior decisions or precedent so for it to do so in theory is "unexpected

and indefensible." Defendants were still free to use its previous "governing sentence" method to calculate Mr. Jones's Parole Eligibility Date by using his 40-year life sentence instead of the 96-year sentence because the 40-year life sentence still has the "longest incarceration effect."

The U.S. Court of Appeals erred by simply accepting Defendants suggestion that it was forced to increase Mr. Jones's Parole Eligibility Date by eight years as it had a duty to make its own findings as to whether the Fetzer decision mandated the complete abandonment of its previous "governing sentence rule" because an agency's statement alone cannot be accepted as conclusive since such a result would enable an agency to make substantive changes in its policies in the guise of simply "claraification." See *United States v. Saucedo*, 950 F.2d 1508, 1514 (10th Cir. 1991); *Collins v. Youngblood*, 497 U.S. 37, 46 (1990).

The U.S. Court of Appeals also erred because even if it determines the *Fetzer* decision actually mandated that CDOC completely abandon its current "governing sentence rule," it was required to apply the United States Supreme Court's legal standard that was established in *Rogers v. Tennessee*, 532 U.S. 451, 457 (2000) by conducting its own inquiry and findings of facts to determine if the *Fetzer* decision was "unexpected and indefensible" based on the Colorado Supreme Court's prior decisions and precedent. This legal standard could not be met by CDOC in this case as the Colorado Supreme Court continued to both sanction and rely upon the "governing sentence rule" for nearly thirty-five (35) years so the CDOC's change in its rule to completely abandon the "governing sentence rule" was not "foreseeable." See *Iacaboni v. United States*, 251 F.Supp.2d 1015, 1040-41 (D. Mass. 2003) and

Harris v. Booker, 738 F.Supp.2d 734, 741 (E.D. Mich. 2010).

This Honorable Court should grant this writ because the CDOC and the Colorado Courts have sanctioned and relied upon the previous "governing sentence rule" which required CDOC to start its calculation of an inmate's PED from the "sentence effective date" of the earliest sentence (instead of from the latest sentence) for nearly 35 years, this Honorable Court should also find that any change in the Colorado Supreme Court's precedent and Mr. Jones's reliance upon it was "unforeseeable" and as such, the new interpretation cannot be applied to Mr. Jones's sentences as it would be in **violation of the Ex Post Facto Clause and the Due Process Clause** of the U.S. Constitution especially when the Federal Courts have also relied upon the CDOC's and the Colorado Court's previously sanctioned "governing sentence rule" when deciding cases. See *Mahn v. Gunter*, 978 F.2d 599, 601 (10th Cir. 1992): *Childs v. Clements*, 2013 U.S. Dist. LEXIS 13324, para. 14-16; and *Gray v. Zavaras*, 220 F.3d 1170, 1171 (10th Cir. 2000). By applying its new and novel way of calculating Mr. Jones's Parole Eligibility Date, Defendants are treating him completely different than other inmates that committed crimes during the same time period. See *Vaughn v. Gunter*, 820 P.2d 659, 661-62 (Colo. 1991) and *Thiret v. Kautzky*, 792 P.2d 801, 808 (Colo. 1990). This is being done in violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution. See *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991); and *People v. Alexander*, 797 P.2d 1250, 1255 (Colo. 1990).

At the time that Mr. Jones committed his crimes in the year 1989, the Colorado Supreme Court required CDOC to calculate an inmate's PED using the

"governing sentence rule." See *Vaughn v. Gunter*, 820 P.2d 659, 661-62 (Colo. 1991) and *Thiret v. Kautzky*, 792 P.2d 801, 808 (Colo. 1990). CDOC began its calculation of the Parole Eligibility Date from the "sentence effective date" of the earliest sentence instead of starting its calculation from the latest "sentence effective date." Using this method, CDOC was able to incorporate ***ALL*** of an inmate's sentences to create one composite sentence which was consistent with the mandates of CRS 17-22.5-101:

> **One continuous sentence**. For the purposes of this article, when any inmate has been committed under several convictions with separate sentences, the department shall construe all sentences as one continuous sentence.

CDOC should be required to continue to calculate Mr. Jones's Parole Eligibility Date the same way that it did in 1989 to calculate other offenders' concurrent sentences. There was no need for CDOC to change its "governing sentence" method by then starting its calculation from an inmate's latest sentence effective date.

In addition, Mary Carlson stated in her AFFIDAVIT that "Different methods of calculation have been developed since the decision in Fetzer." (CR., p.185, item #8) The different method that she chose to calculate a Jewish inmate's (Ryan Maples) PED resulted in his PED being shortened by several months while the method that Defendants have chosen to calculate Mr. Jones's PED has increased it by eight years. One of the main differences is that CDOC actually applied its "governing sentence rule" and they also doubled Mr. Maple's Pre-sentence confinement time and deducted the total amount to determine his PED but that was not done to determine Mr. Jones's PED. These types of arbitrary acts are the

very definition of unequal protection under the law. Since Mr. Jones is an African-American, he is part of a protected class as a minority that can and does raise the legal claim of discrimination based on race.

Mr. Jones also raises a claim of the denial of equal protection as he is a class of one and as such, he is entitled to have his sentences calculated the same as inmate Maples and any other CDOC offender. Since Mary Carlson's AFFIDAVIT was new evidence that fell outside of Mr. Jones's original COMPLAINT, he should have been allowed the opportunity to amend his COMPLAINT to address the contents of her AFFIDAVIT by providing information and documents concerning the specific differences in which Defendants calculated Offender Maples's PED than that of Mr. Jones. See *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). The State Courts of Colorado have failed to abide by this U.S. Constitutional bedrock of **Due Process**. The court erred by not addressing this particular legal claim even though it was raised in Mr. Jones's COMPLAINT.

CLAIM V

MR. JONES WAS DENIED THE EQUAL PROTECTION OF THE LAW IN VIOLATION OF HIS U.S. CONSTITUTIONAL RIGHTS UNDER THE 14TH AMENDMENT AS HE IS ENTITLED TO HAVE HIS PAROLE ELIGIBILITY DATE CALCULATED LIKE OTHER INMATES THAT WERE INCARCERATED AS COLORADO LAW DICTATED AT THE TIME THAT HE COMMITTED HIS CRIME.

A.

This Honorable Court should grant this writ because by applying its new and novel way of calculating Mr. Jones's Parole Eligibility Date, Defendants are

treating him completely different than other inmates that committed crimes during the same time period. This is being done in violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution. See *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

At the time that Mr. Jones committed his crimes in the year 1989, the Colorado Supreme Court required CDOC to calculate an inmate's PED using the "governing sentence rule." See *Vaughn v. Gunter*, 820 P.2d 659, 661-62 (Colo. 1991) and *Thiret v. Kautzky*, 792 P.2d 801, 808 (Colo. 1990). In doing so, CDOC began its calculation of the Parole Eligibility Date from the "sentence effective date" of the earliest sentence instead of starting its calculation from the latest "sentence effective date." Using this method, CDOC was able to incorporate ***ALL*** of an inmate's sentences to create one composite sentence which was consistent with the mandates of CRS 17-22.5-101:

> **One continuous sentence**. For the purposes of this article, when any inmate has been committed under several convictions with separate sentences, the department shall construe all sentences as one continuous sentence.

CDOC should be required to continue to calculate Mr. Jones's Parole Eligibility Date the same way that it did in 1989 to calculate other offenders' concurrent sentences. There was no need for CDOC to change its "governing sentence" method by then starting its calculation from an inmate's latest sentence effective date as the change was after Mr. Jones had committed his crime.

In addition, Mary Carlson stated in her AFFIDAVIT that "Different methods of calculation have been developed since the decision in Fetzer." (CR.,

p.185, item #8) The different method that she chose to calculate a Jewish inmate's (Ryan Maples) PED resulted in his PED being shortened by several months while the method that Defendants have chosen to calculate Mr. Jones's PED has increased it by eight years. One of the main differences is that CDOC actually applied its "governing sentence rule" by using his sentence with the longest incarceration effect to calculate his PED and starting its calculation from the earliest sentence effective date but that was not done to determine Mr. Jones's PED. These types of arbitrary acts are the very definition of unequal protection under the law. Since Mr. Jones is an African-American, he is part of a protected class as a minority that can and does raise the legal claim of discrimination based on race.

B.

Mr. Jones also raises a claim of the denial of equal protection as he is a class of one and as such, he is entitled to have his sentences calculated the same as inmate Maples and any other CDOC offender. See *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

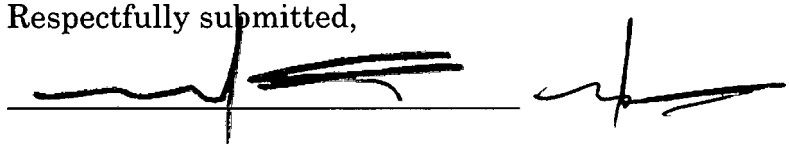
Since Mary Carlson's AFFIDAVIT was new evidence that fell outside of Mr. Jones's original COMPLAINT, he should have been allowed the opportunity to amend his COMPLAINT to address the contents of her AFFIDAVIT by providing information and documents concerning the specific differences in which Defendants calculated Offender Maples's PED than that of Mr. Jones's PED. *See Flaudung v. City of Boulder*, 438 P.2d 688, 689 (1968). The State Courts of Colorado have failed to abide by this U.S. Constitutional bedrock of **Due Process** by

admitting error by not allowing Mr. Jones to amend his Complaint but it provided no meaningful remedy. The court erred by not addressing this particular legal claim even though it was raised in Mr. Jones's COMPLAINT.

CONCLUSION

Mr. Jones humbly asks this Honorable Court to grant this petition for writ of certiorari or to issue an ORDER vacating the state district court's ORDER by ordering the District Court to reinstate his prior Parole Eligibility Date and to deduct the entire 2334 days of Pre-sentence Confinement Credit (jail time) from his sentence to determine his correct Parole Eligibility Date.

Respectfully submitted,



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Date: 2/19/2026