26-6164

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
AUG 21 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

William Frank Osborne - PETITIONER

vs.

Superintendent Amber Sunquist - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

US Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

William Frank Osborne
SID # 22559896

Deer Ridge Correctional Institution
3920 East Ashwood Road
Madras, Oregon 97741

AUGUST 20, 2026

QUESTIONS PRESENTED

1) Is due process violated by the State court ignoring federal law established by Supreme Court opinions?

2) Is due process violated by the State court ignoring United States Constitutional Rights of a US citizen because he is a prisoner?

3) Is due process violated by a District Court's disregard of federal law, allowing prejudicial evidence into proceedings absent from State proceedings?

4) Is due process and the equal protection clause of the 14th Amendment violated when either a State or District Court ignores both State and federal law because it is favorable to petitioner?

5) Is a prejudicial effect upon the administration of justice created by the Oregon Attorney General repeatedly pleading fraudulent misrepresentations of statute text?

6) Is due process violated by the State court basing judgment upon fraud?

7) Is due process substantially violated when a State judge bases judgment upon a matter external to pleadings, proffered by the State itself, and kept secret?

8) Did the State of Oregon violate both the Equal Protection Clause and rights of the disabled as enumerated by the Americans with Disabilities Act (ADA), by refusing to enforce its own State disability relief statute, one the State itself admits satisfied?

LIST OF PARTIES

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

[X] 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:

Petitioner was moved from Two Rivers Correctional Institution (TRCI) to Deer Ridge Correctional Institution (DRCI), both in the District of Oregon. Reyes was superintendent of TRCI; whereas Sunquist was superintendent of DRCI. The US District Court for the District of Oregon identified the State of Oregon as the party actively defending itself by State appointed attorneys.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[x] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix D and E and the petition is reported at *Osborne V. Reyes* 374 Or. 188 575 P.3d 134 (2025).

The opinion of the United States district court appears at Appendix C to the petition and is reported at *Osborne v. Sunquist* 3:25-cv-01304-HZ (2025).
[x] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix B_and is reported at *Osborne V. Reyes* 374 Or. 188 575 P.3d 134 (2025)

The opinion of the Umatilla County Circuit court appears at Appendix A to the petition and is reported at *Osborne v. Reyes* 22cv38171 (2024)

JURISDICTION

[X] For cases from **federal courts:**
the date on which the United State Court of Appeals decided my case was June 2, 2026.

[X] A timely petition for rehearing was denied by the United States Court of Appeals for the Ninth Circuit on the following date: July 17, 2026, and a copy of the order denying rehearing appears at Appendix E.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment Right to Petition the Government for Redress of Grievances

1. The Ninth Circuit of Court of Appeals prohibited petitioner from pleading his case.

Equal Protection and Due ProcessClauses of the 14th Amendment to the US Constitution

Defendant (the State of Oregon) ignored Due Process and the Equal Protection Clause of the Fourteenth Amendment, refusing to equally enforce ORS 426.130§(1)(a)(A).

Due Process of the 14th Amendment to the US Constitution

1) Being incarcerated, courts have consistently ignored United States Constitutional Rights of petitioner;
2) Courts ignored petitioner's pleading as a state prisoner, which include not only federal law established by US Supreme Court opinions, but also Oregon law established by Oregon Supreme Court opinions;
3) The State Court based judgment not only upon fraud, but also upon misapplication of laches, and a court-contrived defense kept secret;
4) The District Court allowed evidence into federal proceedings absent from State proceedings;
5) The District Court sustained plain errors of the State Court which continued deprival of petitioner's constitutional rights.

Americans with Disability Act Rights

The State of Oregon ignored petitioner's disabilities, discriminating by refusing to abide by the ADA or provide petitioner the opportunity to participate in constitutional protections.

STATEMENT OF THE CASE

Incarceration does not divest prisoners of "constitutional protections.", *Johnson v. California* 125 S.Ct. 1141, 1160 (2025).

- The purpose of this case is to ensure the State of Oregon enforce its own statutes. *Maine v. Taylor* 477 US 131, 106 S.Ct. 2444.
- This matter is before the Supreme Court because agents/officers/officials of the State of Oregon breached their professional decorum and the public's trust, violating their oaths of office to uphold, support and defend the United States Constitution.
- Petitioner has been exploited by the State of Oregon as well as courts, both as a pro se prisoner and as a disabled person, through repeated denial of Fourteenth Amendment rights as well as ADA and Oregon disability rights, to the point of the Ninth Circuit Court of Appeals informing petitioner he is prohibited from pleading his case before that court in violation of his First Amendment right.
- Petitioner is affirmed by court opinion and medical diagnosis as disabled. He continues to be unlawfully restrained of his liberty because State of Oregon agents/officers/officials willfully refuse to enforce the state's own disability relief statute ORS 426.130, despite admission (by state agents) the statute satisfied, as well as conceding enforcement is nondiscretionary.
- State agents/officers/officials knowingly ignored the United States Constitution, including the Bill of Rights, state and federal law, the ADA, as well as the US Supreme Court (e.g. Johnson) as excuses to deprive a US citizen of his rights. As a direct consequence of state agents'/officers'/officials' conduct, petitioner has been wrongly deprived of his constitutional right to due process, equal protection and Americans with Disability Act rights, causing ongoing substantial injury.
- The State lacks legal standing to contest enforcement of ORS 426.130, or deprive petitioner of his US Constitutional rights since it had admitted the statute affirmatively satisfied and, no lawful mechanism exists in Oregon statutes to refuse enforcement of a satisfied State statute that would not violate the 14th Amendment's equal protection clause, and the ADA guarantees the equal opportunity to participate in constitutional protections. The Bill of Rights guarantees are enforced against the States under the Fourteenth Amendment "according to the same standards that protect those personal rights against federal encroachment", *McDonald v. Chicago* 561 US 742, 765, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010).
- The standing analysis for petitioner is direct: A constitutional injury is being inflicted now. Susan B. Anthony List v. Dreihaus 523 US 149 (2014); *Steffel v. Thompson* 415 US 452 (1974).
- If the State of Oregon is allowed to prevail, every US citizen's constitutional rights are in substantial jeopardy.
- Petitioner has only ever sought his constitutional right of equal enforcement of the state's own disability relief statute.

REASONS FOR GRANTING THE PETITION

likelihood of success

The fundamental reason this petition should be granted is the US Constitution's Equal Protection Clause. Courts have thus far ignored the facts: 1) ORS 426.130§(1)(a)(A), an Oregon

statute, has been satisfied establishing a warranted right to relief; 2) the State of Oregon conceded the statute satisfied; 3) the statute itself is non-discretionary, requiring court enforcement (also conceded); 4) that as a State of the United States of America, Oregon is subject to the US Constitution; 5) Oregon courts have a ministerial duty to enforce the state's own laws pursuant to both the Oregon and United States Constitutions.; 6) The Americans with Disabilities Act prohibits discrimination of public entities as occurred by defendant acting as the State of Oregon (see below), requiring equal access to laws and rights.

Petitioner only seeks his US Constitutional Right of Equal Protection Under the Law through enforcement of 426.130§(1)(a)(A).

Court Opinions are Contrary to Established Law

- The State of Oregon (State) depriving a prisoner of constitutional rights violates the Fourteenth Amendment and the United States Supreme Court pursuant to *Johnson v. California* at 1160;
- The State Court ignoring petitioner's well-pled claim for relief (i.e. statutory relief) and misapplying summary judgment violates due process pursuant to *Bell Atlantic Corp. v Twombly* 550 US 544, 546, 127 S.Ct. 1955, 1959 (2007);
- The State Court refusing to construe pleadings liberally and to afford a PRO SE petitioner the benefit of any doubt violates due process pursuant to e.g. *Bretz v. Kelman* 773 F.2d 1026, n.1 (9th Cir. 1985).
- The State Court's misapplication of laches violated due process pursuant to e.g. *Lewis v. Casey* 518 U.S. 343, 351, 116 S.Ct. 2174, 2180 (1996), *Rehaif v. U.S.* 139 S.Ct. 2191, 2198 (2019), *Neder v. US* 127 US 1, 119 S.Ct. 1827, 1830, 144 L.Ed. 2d. 3 (1989), *Home v. Flores* 557 U.S. 433, 447, 494 (2009), *Danjaq LLC v. Sony Corp.*, 263 F.3d, 942, 955 (9th Cir 2001), *A.C. Aukerman Co. v. R.L. Chaides Const. Co.* 960 F.2d 1020, 1033 (9th Cir. 1992), *State v. Peekema* 328 Or 342, 346 (1999), *Duncan v. Augter* 286 Or. 723, 731, 596 P.2d 555, 559 (1979) and *In re Marriage of Menard* 180 Or.App. 181, 185 (2020);
- The State Court's refusal to order warranted relief violates the equal protection clause, as well as law established by e.g. *Fallini v. Hodel* 783 F.2d 1343, 1345 (9th Cir. 1986), *Bowles* at 435, *Johnson v. Babcock* 206 Or.App. 217, 222 (2005) and *State v. D.L.* at 336.
- The State trial judge basing judgment upon her own undisclosed defense is a substantial denial of due process, notwithstanding judicial ethics, Oregon Rules of Professional 8.4, ORS 1.212, ABA 3.4(b) and e.g. *Turner* at 584, *US v. US Gypsum Co* at 395, *Dayton Heidelberg Distributing Co., Inc. v. Vineyard Brands Inc.* 74 Fed.Appx. 509, 515 (6th Cir. 2003), *State v. Nascimento* 360 Or. 28, 37, 379 P.3d 484, 489 (Or. 2016), *State v. Brown*, 310 Or. 347, 356, 800 P.2d 259 (1990), *State v. Burgess*, 352 Or. 499, 504, 287 P.3d 1093 (2012), *In re Dubuff* 370 Or 720, 727, 525 P.3d 62 (2023);
- Allowing evidence into federal proceedings absent from state proceedings violates due process pursuant to Fed.R.Civ.P.12(f) and e.g. *Shinn v. Ramirez* 596 US 366, 367 (2022);
- Denying petitioner partial summary judgment when facts were not in dispute facts violates due process pursuant to Fed.R.Civ.P.56(a) and *Ashcroft v. Iqbal* 556 US 662, 670-671, 129 S.Ct. 1937, 1949-1950 (2009);
- Denying petitioner default judgment when defendant failed to timely plead violates due process pursuant to Fed.R.Civ.P. 33(b)(4), Fed.R.Civ.P. 55(a), e.g. *Adams v. Travelers Indem. Co.*

of Connecticut 465 F.3d 156, 161 (9th Cir. 2006) and *Lam v. City & County of San Francisco* 4:10–cv–04641–PJH (LB) 2 (2015);

- The State Court's refusal to order warranted disability relief violates the Americans with Disability Act by discrimination against the disabled pursuant to 42USC§§ 12102 to 12117;
- 42 USC§12132: No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.
- 42 USC§12111(10)(A) prohibits significant difficulty or expense;
- 42 U.S.C.A. § 1981 ensures the full and equal benefit of all laws;
- ORS 34.610 is violated if petitioner is not released;
- 28 USC §2254 was satisfied multiple times but ignored by federal courts.

The reason this matter is before this court is petitioner has been deprived of a neutral-based forum in lower courts (i.e. due process), where his arguments, including favorable Supreme Court caselaw, have been utterly ignored, allegedly because he is a prisoner, and deprived of the opportunity to equally participate in the constitutional protections pursuant to the ADA.

Americans with Disabilities Act (ADA)

Under Title II, Americans with Disabilities Act, petitioner is lawfully owed the opportunity to participate in the guaranteed rights and protections of the United Sates Constitution, including due process and equal protection under the law pursuant to the 14th Amendment.

Since pursuant to the ADA, officers and officials of the State of Oregon act as the State (as a public entity), it is the State itself acting as defendant. Title II specifically calls out unlawful actions of public entities, 42 U.S.C. §12131 (1990). Thus, the state as a public entity can be held responsible for its collective action or inaction. *Tennessee v. Lane* 541 US 509, 524-526 (2004). It is therefore the State of Oregon defying the equal protection clause when defendant (as the state, or state courts) refuse to equally enforce ORS 426.130.

Because petitioner is a US citizen, defendant (the State of Oregon pursuant to ADA) owes him equal access to the 14th Amendment's equal protection clause, a right denied by defendant.

Defendant has a sworn contractual duty to uphold the US Constitution as well as a responsibility under ADA to ensure petitioner is not discriminated against through deprival of constitutional protections. The sole purpose of this appeal is to compel enforcement of the State of Oregon's own disability relief statutes. *Maine* at 137.

Irreparable Harm

Petitioner's injury due to ongoing color of law deprival of his US Constitutional rights, unnecessarily and unlawfully restrained of his liberty, causing emotional distress, separation from family and financial hardship. Thus, petitioner has standing because constitutional injury is ongoing. *Ex parte Young* 28 S.Ct. 441, 470 (1908).

Balance of Equities

The balance of equities favors petitioner. He seeks only his right of Equal Protection Under the Law by court enforcement of ORS 426.130 §(1)(a)(A), of which he is entitled. Moreover, enforcement of ORS 426.130 imposed no cognizable burden upon either defendant or any government. Neither does compliance with the Oregon and US Constitutions impose any

cognizable harm or expense to defendant, courts or governments but, benefits the State of Oregon in that it relieves the financial burden of unlawful incarceration.

Public Interest

The public has a compelling interest to ensure a State of the United States of America obey the United States Constitution, by enforcing their own statutes equally. The State of Oregon should not be permitted to benefit from fraud, ignoring constitutional rights, disregard the Supreme Law of the Land or discriminating against a disabled US citizen. Should the state court's unreasonable color of law deprival of constitutional rights be not remedied, every US citizen is at jeopardy of his constitutional rights stripped ad hoc by state courts' color of law abuse of discretion and disregard of the US Constitutional rights.

FACTS

- Petitioner is incarcerated by the State of Oregon.
- Petitioner suffered substantial physical and psychological injuries as a result of ODOC's refusal to provide safety and security. Petitioner has been diagnosed with Traumatic Brain injury, which is a qualified disability pursuant to ORS 410.715. Petitioner's life activities have been curtailed as a result of prison injuries, confined to a wheelchair and need of a walker after the second assault.
- Petitioner sought State habeas corpus relief (*Osborne v. Reyes* 22cv38171 (2025)) because ODOC refused to provide medical care for injuries, and prevailed. Judgment established superintendent Reyes culpable of Eighth Amendment cruel and unusual punishment, but also affirmatively satisfied ORS 426.130§(1)(a)(A), a State mental illness disability relief statute.
- In the State habeas corpus opinion, the judge noted petitioner was wheelchair bound.
- Satisfaction of ORS 426.130§(1)(a)(A) established petitioner is entitled to disability relief, where the statute further establishes court-ordered enforcement is nondiscretionary. The State in fact admitted ORS 426.130§(1)(a)(A) compels a court to act.
- Based upon satisfaction of ORS 426.130§(1)(a)(A), petitioner sought disability relief by mandamus petition (*Osborne V. Reyes* 24cv40198 (2025)), to compel the court to enforce the statute.
- The State of Oregon (through official representatives) acknowledged ORS 426.130§(1)(a)(A) satisfied.
- In pleadings officers of the State of Oregon fraudulently misrepresented ORS 426.130§(1)(a)(A), as well as improperly pled laches and duty disqualifies petitioner's right to disability relief.
- The State court was wrongly influenced by the State's fraudulently misrepresentations, as well as the improper laches and duty pleadings, ignoring favorable Supreme Court, as well a Ninth Circuit Court of Appeals and Oregon Supreme Court opinions, ruling petitioner's statutory and constitutional right can be dismissed, depriving him of due process and equal protection under the law.
- The State court created its own defense, unsupported and contradicting ALL facts on record (including court records), failed to disclose its defense, and further based judgment upon its own concoction.
- Petitioner appealed first to the Oregon Supreme Court (*Osborne V. Reyes* 374 Or. 188 575 P.3d 134 (2025)), but the court quickly dismissed the case without opinion.

- Petitioner appealed the District Court (*Osborne v. Sunquist* 3:25-cv-01304-HZ (2025)) as a habeas corpus petition for unlawful restraint of liberty. The District Court ignored ALL petitioner pleadings (as a prisoner), affirming the State Court's plain errors *except*, acknowledging the state court's duty error, i.e. petitioner sought court-enforcement of ORS 426.130, not superintendent enforcement of the statute.
- Petitioner appealed to the Ninth Circuit Court of Appeals (*Osborne v. Sunquist* 26-177 (2025)). However, upon notice of appeal the court informed petitioner no pleadings would be accepted and, all inquiries to the court went unanswered until receiving denial, depriving petitioner of his First Amendment right to redress the government for injuries.
- A motion was filed to rehear the case but the court informed petitioner the court would not consider any pleadings, closing the case.

ASSIGNMENTS of ERROR Depriving Petitioner of Constitutional Rights

ASSIGNMENT of ERROR #1 Disallowed Evidence

Petitioner incorporates by reference all paragraphs in this brief as if fully set forth herein.

Petitioner was prejudiced by the defense's introduction of evidence to Federal proceedings. The case did not involve petitioner's conviction in any way, but rather the non-discretionary duty of the State of Oregon, pursuant to the Equal Protection Clause and the ADA, to order ORS 426.130§(1)(a)(A) enforced (satisfied by State habeas corpus judgment and acknowledged satisfied by the State of Oregon agents). Federal law prohibits a federal court consider evidence "beyond the state-court record", *Shinn v. Ramirez* at 367. Fed.R.Civ.P.12(f). Moreover, this evidence was/is immaterial inasmuch defendant failed to make ANY reference to it in pleadings. Thus, petitioner moved to strike this prejudicial, disallowed evidence.

Defendant failed to timely defend petitioner's motion to strike and, failed to provide any reasonable excuse for failure to timely defend. A "failure to timely respond means that they waived their right to object. See Fed.R.Civ.P. 33(b)(4)", *Lam* at 2. Petitioner's right to due process was denied by the District Court's allowance of disallowed evidence. When the opposition fails to "plead or otherwise defend", a party is entitled to default judgment, Fed.R.Civ.P.55(a). The motion for default judgment was ignored.

The District Court deprived petitioner of due process by ignoring federal court rules, the fact defendant admits failure to timely defend, and petitioner's due process right by unreasonably allowing this evidence into proceedings, depriving petitioner of a fair and equitable tribunal, prejudicing him. A "court abuses its discretion when it applies the incorrect legal standard", *US v. Williams* 68 F.4th 564, 571 (9th Cir. 2023).

ASSIGNMENT of ERROR #2 Failure to State a Claim

Petitioner incorporates by reference all paragraphs in this brief as if fully set forth herein.

Petitioner was prejudiced by defendant's allegation petitioner failed to state a claim for relief and defendant moved for summary judgment in State court. However, petitioner's claim for relief was clearly stated, based upon the **undisputed fact** his State habeas corpus judgment (*Osborne v. Reyes* 22cv38171 (2025)) affirmatively satisfied all lawful elements of ORS 426.130

§(1)(a)(A) required for statute enforcement, establishing entitled, warranted relief, since it states a court is required to act (i.e. "court Shall order ...").

Pursuant to *Bell* at 546, a motion to dismiss must be denied if pleadings allege sufficient facts to state a claim for relief. See also *Moore v. Trader Joe's Company* 4 F.4th 874, 880 (9th Cir. 2024) (for sufficient facts doctrine and "all factual allegations [are to be construed] in the light most favorable to the plaintiffs."). Moreover, courts have an "obligation where the petitioner is **pro se**, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the **benefit of any doubt**. *Jones v. Community Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir.1984).", *Bretz* at n.1 (emphasis added). *Johnson* at 1160.

Nevertheless, despite both defendant and the State court conceding ORS 426.130 compels court action and, petitioner clearly stated his claim for relief, the State court unreasonably disregarded *Twombly*, *Moore* and *Bretz*, by affirming defendant summary judgment, depriving petitioner of due process.

The District Court unreasonably misapprehended petitioner's claim for relief by stating "he is alleging to challenge a state court ruling on matters of state law, adding "his federal claim is wholly dependent upon a reexamination of state law". At no point in proceedings did petitioner contest the legality of ORS 426.130, rendering this determination of fact unreasonable (satisfying both §2254(d)(1) for failing to obey clearly established Federal law, i.e. due process, and §2254(d)(2) for an unreasonable determination of fact). The entire argument is absurd. Why would petitioner challenge State law favorable to him? The primary issue for Federal appeal is State court deprival of petitioner's Federal 14th Amendment and ADA right to equal protection and enforcement of State law.

Petitioner filed a writ of mandamus to compel the State court to enforce ORS 426.130§(1)(a)(A) which is a well-established State law See Note 3. The purpose of a writ of mandamus is to provide a legal remedy to enforce an established legal right, imposing a corresponding duty created or imposed by law. *State ex. Rel. Ricco v. Biggs* 198 Or. 413, 425, 255 P.2d 1055, 1061-1062 (1953)

Thus, the question necessitating an answer is: Does a State of Oregon court have authority to nullify the US Constitution by refusal to enforce one of its own laws? No caselaw supports this position. The District Court, in affirming the State court's plain error deprived petitioner of due process.

ASSIGNMENT of ERROR #3 Petitioner's Summary and Default Judgments

Petitioner incorporates by reference all paragraphs in this brief as if fully set forth herein.

Petitioner moved for partial summary judgment in District court inasmuch defendant failed to defend the fact petitioner's State habeas corpus judgment affirmatively satisfied **lawful** elements of ORS 426.130§(1)(a)(A). Pursuant to court instructions, paragraph (d), dated August 1, 2025, "Not later than 60 days ... Respondent will file and serve an Answer, or other pleading ..." (underline added). However, despite defendant having substantially more time to plead than petitioner (petitioner's postal delays versus email) and more resources (i.e. Oregon Justice Department team), defendant's response to petitioner's motion for summary judgment is dated October 1, 2025, untimely by exceeding the court-assigned deadline for all pleadings. A "failure to timely respond means that they waived their right to object. See Fed.R.Civ.P. 33(b)(4)", *Lam* at 2. Moreover, the appellate court ruled "Adams failed to timely respond to Appellees' motion ... The court affirmed *Travelers'* undisputed motion for summary judgment.", *Adams* at 161.

When the opposition fails to "plead or otherwise defend", a party is entitled to default judgment. Fed.R.Civ.P.55(a). Thus, petitioner moved for default judgment. A court may set aside an entry of default for good cause. However, defendant failed to provide good cause (or any excuse) for its failure to respond within the court's deadline, except claiming exemption from court instructions. Note pattern of disregard for pleading timeliness court rules/instructions also in motion to Disallowed Evidence Error # 1.

A court must accept as true all well-pled factual allegations for summary judgment. *Ashcroft* at 670-671. Since defendant failed to timely respond, the only fact available to the court to base judgment upon was petitioner's motion for summary judgment. However, the Federal court unreasonably refused to enforce *its* own instructions with regard to *its* timeline for pleadings, or federal court rules regarding an untimely pleading, or petitioner's pleadings in this matter, depriving petitioner of fair and equitable treatment, revealing "a deep-seated favoritism or antagonism ... [rending] fair judgment impossible", *Liteky v. U.S.* 114 S.Ct. 1147, 1157 (1994). See also *Williams* at 571 for court abuse of discretion.

It is noteworthy petitioner acted *pro se*, where the court established unequal standards for defendant and petitioner, refusing to enforce timeliness rules upon defendant, despite the relative unlimited resources of the State of Oregon (compared to petitioner). Yet unreasonably enforced pleading timeliness upon petitioner, who lacked adequate legal resources, a law degree, but *in fact* had a lawful excuse for a filing delay, as established by both Oregon and US Supreme Courts – see Laches Errors # 4. Thus, the court erred by ignoring pleadings, caselaw and court rules.

ASSIGNMENT of ERROR #4 **Misapplication of Laches**

Petitioner incorporates by reference all paragraphs in this brief as if fully set forth herein.

Background

Petitioner's State habeas corpus case (*Osborne v Reyes* 22cv38171 – 2024), affirmatively satisfied lawful elements of 426.130§(1)(a)(A), establishing the basis for petitioner's statutory right to relief. The State of Oregon (through acting agents) affirmed 426.130§(1)(a)(A) had been satisfied. Furthermore petitioner, lacking a legal education claimed he had no knowledge how and where to file his petition and, denied appointment of council by the State court, turned to the only source of legal advice available: A prison legal assistant. None of these facts were contested by the State as defendant, establishing them as true facts.

Based upon prison legal advice, petitioner timely filed with the court, to the best of his abilities. However, due to prison-supplied misinformation (unknown at the time to be misinformation), petitioner filed his mandamus petition to the incorrect court (Wasco County Circuit Court – a fact also acknowledged by State and Federal court opinions). Petitioner had no reasonable means to determine the correct legal action until his petition was rejected, corrected and resubmitted. A "mistake of law is a defense if the mistake negates the "knowledge ... required to establish a material element", *Rehaif* at 2198. Court records document the Wasco County Court denied the petition on 4/5/2025, well before any filing deadline. Nevertheless, defendant pled a laches defense for failure to timely file his petition.

ERROR #4a Laches - Unreasonable Delay / Delay Prejudice

Petitioner incorporates by reference all paragraphs in this brief as if fully set forth herein.

To lawfully prevail in a laches defense, a defendant MUST PROVE petitioner unreasonably delayed in filing. *Danjaq* at 955. Defendant did not plead petitioner unreasonably delayed filing (merely delayed), let alone PROVE unreasonable delay occurred.

Furthermore, to prevail in a laches defense, a defendant must ***further prove*** prejudice as a result of a filing delay. *Danjaq* at 955. Defendant failed to plead they suffered any prejudice, let alone prove prejudice. Petitioner citing *Danjaq* in state court should have been sufficient **on its own** to disqualify laches as a defense. Material prejudice is "essential to a laches defense", *A.C. Aukerman Co.* at 1033. This critical element was not satisfied. The State court affirming this defense deprived petitioner of due process.

ERROR #4b Laches - Court Determination of Prejudice

Petitioner incorporates by reference all paragraphs in this brief as if fully set forth herein.

State v. Peekema at 346 established that prior to a court applying laches, it shall determine "whether any delay prejudiced the adverse party" and, the Oregon Supreme Court establishes Oregon law. *Dimitroff v. State Indus. Acc. Commission* 209 Or. 316, 409, 306 P.2d 398 (1957). The State court failed to considered this critical matter prior to applying laches. A State circuit court defying the Supreme Court is both a trespass against the law and due process, nullifying any court order or judgment (see *Elliott v. Peirsol's Lessee* 26 U.S. 328, 340 (1828) for court trespass of law). Moreover, a judge's duty is to apply the correct rule of law and protect rights. *State ex rel. Bethke v. Bain,* 193 Or. 688, 703, 240 P.2d 958, 965 (1952). See also ORS 1.212 for Judicial Oath to uphold laws and constitutions.

ERROR #4c Laches - Prison-Supplied Misinformation

Petitioner incorporates by reference all paragraphs in this brief as if fully set forth herein.

It is federal law that prison-supplied misinformation prejudices a prisoner. *Lewis* at 351. It was/is an undisputed fact petitioner was provided misinformation by the prison, causing a delay in a timely filing to the correct court. Failure to adhere to well-established law renders its application of laches unlawful, *Elliott* at 340.

ERROR #4d Laches - Excusable Delay

Petitioner incorporates by reference all paragraphs in this brief as if fully set forth herein.

"Misinformation", no matter the source, is an "excusable delay", is Oregon law, *Duncan* at 731. Again, undisputed is the fact petitioner was supplied misinformation. Thus, pursuant to Oregon State law, petitioner has an Oregon Supreme Court qualified legal excuse for a delay in filing. Furthermore, it is "immaterial ... whether he was misinformed deliberately or by mistake.", *id. Duncan,* on its own, should have been sufficient caselaw to defeat a laches defense in a fair court.

ERROR #4e Laches - Court Rules

Petitioner incorporates by reference all paragraphs in this brief as if fully set forth herein.

"[W]hat a "reasonable time" is for purposes of laches depends on the circumstances of each case as opposed to some mechanical formula, McIver v. Norman, 187 Or. 516, 544, 213 P.2d 144 (1949)", *Menard* at 185.

A pleading rule (i.e. laches) "should not be permitted to defeat a party's right", *Perkins v. Standard Oil Co.*, 235 Or. 7, 19 (1963). Moreover, *Menard* and *Perkins* are established Oregon law. *Dimitroff* at 316. Nevertheless, the State court decided to elevate a court rule (laches) above a warranted statutory right (i.e. satisfaction of ORS 426.130 §(1)(a)(A) entitles petitioner his right to statutory disability relief pursuant to statute text itself as well as the equal protection clause of the US Constitution). A lower State court lacks authority to supersede the Oregon Supreme Court in any matter of law and, failure to adhere to well-established Oregon law renders the court's misapplication of laches an unreasonable trespass of law. *Elliott* at 340.

Laches Plain Error Summary

"[I]ncarceration does not divest prisoners" of constitutional protections, including due process, *Johnson* at 1160 (emphasis added); Wolff at 555-556. Moreover, the "US Supreme Court has recognized the existence of the legal defense of outrageous governmental conduct ... [when it violates] "fundamental fairness", *People v. Auld* 815 P.2d 956, 957 (Colo.App. 1991), citing *US v. Russell* 411 US 423 (1973).

Had the State court considered even one favorable caselaw opinion pled by petitioner, it would have (allegedly) realized its misapplication of laches plain error, as any fair court would. Likewise, has the District Court considered any of petitioner's laches arguments fairly, rather than rubberstamping the State court's laches plain error, it (again allegedly) reasonably would recognize misapplication of laches by the State court is plain error, intrinsically harmful abuse of discretion (see *Neder* at 1830), where that court recognizes under color of law, such misapplication of law deprives a party of his right to due process through "abuse of discretion", but is likewise abuse of discretion under Federal law (see *Home* at 447 for similar). Court bias in both State and Federal courts deprived petitioner of warranted relief, outrageous governmental conduct since it is fundamentally unfair.

ASSIGNMENT of ERROR #5 Court Refusal to Enforce its Own Disability Statute

Petitioner incorporates be reference all paragraphs in this brief as if fully set forth herein.

- Petitioner. Claim for relief is grounded upon: i) *Osborne V. Reyes* 22cv38171 (2024) court opinion: "There has been clear and convincing evidence the plaintiff suffers from ... PTSD.", p.3. Court opinions are made with the "understanding that the court intended it", *Union Oil Co. v. Board of Co. Comm. Of Clack. Co.* 81 Or.App. 1, 6 (1986); ii) The State of Oregon recognizes PTSD as a Serious Persistent Mental Illness (SPMI) (see Note 4); iii) Court opinion, establishing mental illness by clear and convincing evidence, satisfies ORS426.130§(1)(a)(A). See Note 2 for material statute text. The state (represented by its agents) admits: the statute is "satisfied here based on the Court's opinion in the habeas corpus matter".; iv) ORS426.130 is well established state law. See Note 3.; v) Enforcement of ORS426.130 is nondiscretionary. See e.g. *Fallini* at 1345 for nondiscretionary court action.; vi) The US Constitution's equal protection clause guarantees equal enforcement of state laws. See e.g. *Timb v. Indiana* 585 US ____, 139 S.Ct. 682, 686 (2019).
- Based upon court satisfaction of ORS426.130§(1)(a)(A), petitioner sough enforcement by mandamus petition: *Osborne V. Reyes* 24cv40198 (2025).

- The court denied relief, producing both petitioner and the fair administration of justice, basing judgment in part upon on being improperly influenced by defendant's fraudulent misrepresentations of ORS426.130§(1)(a)(A), alleging a nonexistent prior-commitment element disqualifies enforcement. See *In re Carini* 354 Or 47, 55 (2013). for improperly influencing the "court's decision-making process".
- Defendant pled: "Or.Rev.St.§ 426.130 applies to someone in custody pursuant to civil commitment", and, "that statute applies, when a party initiated civil commitment proceedings [, requiring a court determine] if facts outlined in applicable statutes for civilly committing someone have been met".
- Nowhere in ORS426.130§(1)(a)(A) (subparagraph sought enforced) is the word **commitment** even mentioned, let alone any constraint upon enforcement based upon pre-commitment. "[W]hen a statute enumerates the things which it is to operate, or forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned.", *Taylor v. Taylor*, 70 Or. 510, 525 (1914) (emphasis added). *Taylor* is Oregon law. *Dimitroff* at 409. Thus, pursuant to Taylor, subparagraph §(1)(a)(A) cannot contain any lawful element (or constraint) upon statute enforcement because the word **commitment** IS NOT "expressly mentioned", *id.* Statute words "speak for themselves", *Berry Transport v. Heltzel,* 202 Or. 161, 166-167, 272 P.2d 965 (1954).
- Defendant had undeniable knowledge commitment is absent from subparagraph §(1)(a)(A) since she quotes the subparagraph in pleadings. Defendant (as well as the Oregon Attorney General representing defendant) swore oaths to honesty, professional decorum, to obey law (including constitutions). This clearly includes not to knowingly deceive courts (e.g. ORPC 8.4(a)(1)(3)(4), DOC Policy 20.1.2 Code of Ethics CD1382), ORS 1.025(1)).
- **Misrepresentation** may include "an affirmative misstatement, an intentional failure to disclose material facts that may or may not have been intended to deceive, or a combination of both.", *In re Hiller,* 298 Or. 526, 532–33, 694 P.2d 540 (1985). Even a "half-truth or silence can be as much a misrepresentation as a lie").", *In re Conduct of Huffman* 331 Or. 209, 215 (2000) (emphasis added). Defendant failed to disclose the material fact commitment is not expressly mentioned in subparagraph §(1)(a)(A). A claim is regarded as false or misleading if it contains a "material misrepresentation of fact or law or **omits** a fact necessary to make the statement considered as a whole not materially misleading", *In re Conduct of Magar* 296 Or. 799, 813 (1984) (emphasis added). Dispositive proof of fraudulent misrepresentation is the *incontrovertible* fact '**commitment**' is not mentioned within the text body of ORS 426.130§(1)(a)(A).
- A prejudicial effect exists when conduct, such as defendant fraudulent misrepresentations, harms "substantive rights of a party to the proceedings", *In re Mauer* 364 Or 190, 199 (2018). Prejudice is shown by "several acts that cause some harm or a single act that causes substantial harm to the administration of justice.", *In re McGraw* 363 Or 667, 692 (2018). "Fraud is a question of fact ... [that] cannot be sustained", *Brown v. Laird* 134 Or. 150, 159-160 (1930). See also Note 5 for defendant's continuing pattern of fraudulent misrepresentation regarding ORS 426.130 and a nonexistent treatment element.
- The Oregon Court of Appeals similarly confutes defendant's claim regarding prior-commitment material to §(1)(a)(A) enforcement:

> "If a mentally ill person is willing and able to participate in treatment on a voluntary basis, and the trial court finds that the person "will probably do so," the court **must** release the person and dismiss the case.", *State v. D.L.* at 336 (emphasis added).

The court's primary concern was whether lawful elements of §(1)(a)(A) had been satisfied, not whether D.L. had first been committed prior to ordering the lower court to act.

- Defendant's prior-commitment claim also violates state law. ORS 426.130§(1)(a)(C) establishes the lawful temporal order between commitment and release. Defendant alleged ORS 426.130 is disqualified because being *civilly committed* must precede *release*. Actual Oregon State law, as established by the Oregon Legislature in §(1)(a)(C) clarifies its intent: A court *may* order a person *committed* but only after a court FIRST establishes ORS 426.130 §(1)(a)(A): *Release* **and**, ORS 426.130 §(1)(a)(B): *Conditional release*, *is not* in the person's best interest. Commitment cannot lawfully precede a court first determine release.
- The court not only deprived petitioner of due process and equal protection under the law, but in allowing fraud into proceedings breached the Oregon Constitution's Separation of Powers clause (Or.Const.Art. III§1) as well as violating ORS 174.010 prohibiting court alteration of state statutes. A court may not "enlarge or limit the terms of a legislative enactment.", *U. of O. Co-Oper. v. Dept. of Revenue* 273 Or. 539, 550, 542 P.2d 900 (1975).
- A competent court will know, or should have known, i) Statute words speak for themselves. *Berry* at 166-167; ii) A court cannot lawfully alter a state statute. *Taylor* at 525 and ORS 174.010; iii) Failure of a court to order warranted relief is not only obstruction of the administration of justice under Oregon law. *Bowles* at 435; iv) Prisoners cannot be deprived of constitutional protections. Johnson at 1160; v) A court's (judge's) duty is to apply the correct rule of law and protect rights. *Bethke* at 703. particularly when defendant **admits** statute satisfaction. See also ORS 1.212 for Judicial Oath to uphold laws and constitutions.; vi) ORS 426.130 is enforced by the 14th Amendment's Equal Protection Clause. See e.g. *Timb at* 686; vii) Court action in this case violated state and federal constitutions as well as state and federal laws. *Lee v. Ferrano* 284 f.3d 1188, 1194 (11th Cir. 2019); See also *Elliott* at 340 for trespass against law. viii) Judgment based upon fraud is subject to reversal at any time. *Dixon v. C.I.R.* 316 F.3d 1041, 1046 (9th Cir. 2003); ix) ORS 426.130 establishes the expectation of relief, which is also is a federally protected Right. *Board of Pardons v. Allen* 82 US 369, 372-373, 107 S.Ct. 2415, 2417-2418 (1987).

Due process should have been the safety valve restraint against this abuse of judicial power, *Murry's Lessee v. Hoboken Imp. Co.* 18 US 272, 276 (1855), particularly when it violates "fundamental fairness", *Auld* at 957.

ASSIGNMENT of ERROR #6 **FAILURE to APPEAL**

Petitioner incorporates be reference all paragraphs in this brief as if fully set forth herein.

The District Court ruled petitioner failed to appeal by unreasonably misapprehending petition dates. The undeniable facts, affirmed by court records, are:

1) The Umatilla County Circuit Court issued its denial on February 12, 2025 for *Osborne v. Reyes* 24cv40198 and,

2) Westlaw reports:

Osborne, William Frank v. REYES (A181016) (S072003), Supreme Court of Oregon. August 28, 2025 374 Or. 188 575 P.3d 134 2025 WL 2652072.

The district court admits "the Oregon Supreme Court ... has denied relief", but misapprehends August 28, 2025 is before the February 12, 2025 denial of *Osborne v. Reyes* 24cv40198, erroneously ruling petitioner failed to appeal by misapprehension of dates. See *Holland v. US* 75 S.Ct. 127, 141 (1955) for the incontrovertible physical-facts doctrine.

ASSIGNMENT of ERROR #7 **Defendant Duty**

Petitioner incorporates be reference all paragraphs in this brief as if fully set forth herein.

Reyes was named defendant in petitioner's writ of mandamus (*Osborne v. Reyes* 25cv40198) because she was responsible for petitioner being unlawfully restrained of liberty after State habeas corpus judgment (*Osborne v. Reyes* 22cv38171) satisfied ORS 426.130, entitling petitioner's release. See also *Johnson v. Babcock* at 222, for "unlawful restraint of liberty can constitute harm" and *Johnson v. California* at 1160, for prisoners are afforded "constitutional protections."

Although Reyes was named defendant responsible for causing injury, the mandamus petition compelled the court, having authority, to enforce ORS 426.130. "[T]he traditional function of the writ is to secure release from illegal custody.", *Preiser v. Rodriguez* 93 S.Ct. 1827,1833 (1973).

Defendant obfuscated the writ's purpose, claiming defendant Reyes, as prison superintendent, lacks duty to act because ORS 426.130 does not explicitly identify her as having a duty to act, inferring the statute does not apply to petitioner. The State court unreasonably accepted the defense's excuse, ruling petitioner attempted to "force" defendant to release him, ignoring the purpose of the mandamus petition and the fact his petition did not compel defendant to act. On appeal, the district court correctly identified both the State court's plain error as well as the petition's purpose: "Petitioner's case concerned compelling action by a trial court, not his warden" AND reemphasized this material fact adding, "Petitioner ... asked the Umatilla Court to order his warden to release him."

State v. D.L. at 336 reaffirms legislative intent, that court enforcement of ORS 426.130 is not contingent upon a court establishing any individual having a duty to act. There, the appeals court instructed the lower court must order release without consideration of duty beyond the lower court's non-discretionary duty to enforce state law. See *Fallini* at 1345 regarding a court's nondiscretionary duty. Depending upon ORS 426.130 subparagraph satisfaction (habeas corpus judgment satisfied subparagraph A), courts are not provided discretion and must order either: ORS 426.130§(1)(a)(A) RELLEASE; (B) CONDITIONAL RELEASE; (C) COMMITMENT not to exceed 180 days. *State v. J.R.B.* 209 Or.App. 858, 859-60 (2018).

Osborne v. Reyes 22cv38171 judgment itself likewise undermines defendant's lack-of-duty defense. That court ruled defendant Reyes culpable of violating petitioner's 8th Amendment constitutional rights, ordering defendant to act despite the 8th Amendment does not identify defendant specifically as having any duty to act. Defendant's theory ORS 426.130 does not apply because she is not named is absurd because it ignores critical facts: 1) Courts have lawful authority to enforce state statutes, not defendants; 2) *D.L.* and *Osborne v. Reyes* 22cv38171 ordered courts to enforce statutory rights without regard to duty imposed upon any individual since it is the duty of courts to enforce state law; 3) The lawful function of mandamus petitions; 4) the Equal Protection Clause guarantees equal enforcement of state statutes.

Despite the District court identifying *and* acknowledging the State court's plain error, it nevertheless unreasonably rubberstamped the state court's plain error, ignoring petitioner's pleadings (as prisoner), ignoring the State court's injury to petitioner be denying him his Federal Equal Protection right, ignoring continuing injury to petitioner by unlawful restraint of liberty.

The State of Oregon is using this duty defense to compartmentalize duty, obfuscating attention from the undeniable fact it is the State (see also ADA error) itself with duty to enforce its own laws. In fact, the district court noted the "state" is pleading the case, for its benefit but on behalf of defendant. State attorneys (representing defendant) allege as a state employee she has no duty to act. This is correct but also an irrelevant distraction since it is the State with duty, and State courts' authority to enforce State laws, as petitioner's mandamus petition stated. Thus, defendant attempted to void 14th Amendment's due process and equal protection rights, as well as Or.Const.Art.1, §20 rights by duty compartmentalization.

ASSIGNMENT of ERROR #8 **Court as Defense Advocate**

Petitioner incorporates be reference all paragraphs in this brief as if fully set forth herein.

Petitioner's Habeas case (*Osborne v. Reyes* 22cv38171 - 2024) prevailed against defendant Reyes for deprival of his 8th Amendment rights. Whereas petitioner's mandamus petition (*Osborne v. Reyes* 24cv40198 – 2025) sought enforcement of State law ORS 426.130§(1)(a)(A) based on prevailing in his state habeas corpus case. It is of critical material importance to note petitioner's warranted right to statutory relief DID NOT EXIST prior to habeas judgment.

The State court absurdly attempted to merge petitioner's state habeas case with his state mandamus case. However, each case was independently numbered (i.e. 22cv38171 and 24cv40198 respectively), no attempt to merge the cases was pled and, the cases had unique and non-overlapping purposes that any reasonable person can easily understand, providing the court no reasonable excuse for misapprehension: Petitioner's Habeas case (*Osborne v. Reyes* 22cv38171 (2024)) was concerned with defendant Reyes' deprival of 8th Amendment rights. Whereas petitioner's mandamus case (*Osborne v. Reyes* 24cv40198 (2025)) sought enforcement of State law ORS 426.130§(1)(a)(A) based on State habeas corpus case judgment. The two cases cannot be merged inasmuch mandamus action had no lawful basis prior to habeas corpus judgment. It is absurd for the cases to even exist concurrently. Habeas HAD TO END prior to mandamus action commencing.

Undisputed facts on record document petitioner acted pro se. Despite even the court's own records documenting petitioner lacked counsel, the state court claimed petitioner had an attorney as excuse to deny the writ: "Relator had an attorney … relator's writ is [therefore] barred".

The State court saw no "logical basis" for a writ of mandamus, unreasonably misapprehending "the underlying case was a habeas case", concluding "Relator apparently did not consult with his attorney to address these [statutory relief] issues". This conclusion is documented absurd. Patrick Block represented petitioner in his state habeas corpus case but had no involvement in the mandamus case (see Patrick Block declaration stating he had no mandamus involvement). It is unreasonable for the court to allege Patrick Block should automatically assume new, and uncompensated mandamus council duties without support from facts. Court records affirm Mr. Block was not assigned to the mandamus case. Furthermore, the habeas corpus court's satisfaction of ORS 426.130§(1)(a)(A) was unanticipated (i.e. it was not possible to consult with Mr. Block's

prior to judgment because the future is unpredictable) and, Mr. Block's duties ended with habeas judgment, particularly for an issue not raised in proceedings (i.e. unable to predict the future). Thus, consultation regarding ORS 426.130 relief after judgment is also unreasonable. Moreover, the court had more than sufficient, incontrovertible, and uncontested on-the-record facts to recognize ruling 'petitioner had an attorney' is plain error:

1. The State court denied petitioner appointment of counsel, but fully aware petitioner was incarcerated and thus financially unable to afford counsel;

2. Incontrovertible proof are court records affirming *no attorney* had been assigned to the case. No reasonable person would argue the court lacked access to its own records;

3. Petitioner created and submitted ALL mandamus pleadings while in prison, not through council as required by ORCP Rules 9 and 17;

4. All court mandamus documents were mailed directly to petitioner, not to council, signifying the court was aware petitioner acted *pro se*;

5. Petitioner acted *pro se* at all proceedings, presenting oral arguments without assistance of counsel. Audio recordings of hearings document this fact;

6. Defendant acknowledged petitioner acted *pro se*, i.e. every certificate of service submitted to the court by defendant declared "Plaintiff, *pro se*". Thus, defendant DID NOT plead writ dismissal because petitioner had an attorney.

7. Had the court been actually confused regarding petitioner's pro se status, i.e. interested in truth, it could have easily inquired to Patrick Block for clarification. Again, see Patrick Block's declaration.

A competent court would *easily recognize* any court creating its own defense injures and prejudices a party. *In re Mauer* at 199, notwithstanding basing a decision on an unreasonably absurd determination of fact because:

1) Court speculation contradicting on-the-record facts prejudiced petitioner (reviewed under the clearly erroneous standard Fed.R.Civ.P. *52(a)(6)* – see *Turner* at 584 for violating the right of the due process; see also *US v. US Gypsum Co* at 395. See also *Holland* at 141 for the incontrovertible physical-facts doctrine;

2) Court failure to reference ANY on-the-record evidence or fact in support of its speculation also violates due process. In fact, courts generally reject legal theories lacking a factual basis. *Dayton* at 515. "A court abuses its discretion when it applies the incorrect legal standard, was illogical, implausible or without the support from facts on the record", *Williams* at 571;

3) Court judgment based on an unpled defense violates due process. *State v. Nascimento* at 37. In fact, a court has no authority to render a decision on issues not presented. *Hurlbutt v. Hurlbutt* 36 Or.App. 721, 725 (1978);

4) Court introduction and reliance on a previously unpled defense clearly prejudiced petitioner. However, the court failed to disclose its new defense until issuing judgment, ensuring petitioner could not respond, additionally depriving petitioner of due process, but also violated Or.Const.Art.1,§10, the preservation rule (ORAP 5.45), and law established by the Oregon

Supreme Court:"[T]he preservation rule is to ensure that adverse parties are not taken by surprise, misled, or denied the opportunity to present their positions on an issue raised by an adversary.", *State v. Brown* at 356.

Alleging petitioner had an attorney was not raised by defendant, signifying court advocacy for defendant and thus the preservation rule applies *id.* Therefore, it is reasonable to conclude this unprofessional court speculative defense was adverse party action:

> "[I]t would be fundamentally unfair to ... [base a decision] on a separate factual and legal theory that has been proffered by the state for the first time on appeal.", *State v. Burgess*, at 504.

No daylight exists between the fundamental unfairness identified in *Burgess* and the State mandamus court withholding its own unpled defense until judgment, since the result is identical: Parties were taken by surprise and denied the right to respond. Pursuant to *Brown* and *Burgess*, mandamus court speculation is antithetical to the legal definition of due process i.e. "the right to a fair hearing", *Black's Law Dictionary* 12th ed. (2024), demonstrating the extreme malfunction bias of the state court. *Shinn* at 367, and identified in *Russell* at 423, as "outrageous governmental conduct", subject to reversal. "Fair competition in the adversary system is secured by prohibitions against ... concealment of evidence, ABA Model Rules, Rule 3.4(b), Comment [1] (2019)", *In re Dubuff* at 727The District Court simply ignored the outrageous conduct of the state court, allowing continuation of petitioner unlawful injury.

ASSIGNMENT of ERROR #9 Deprival of Equal Opportunity of Laws and Rights

Petitioner incorporates be reference all paragraphs in this brief as if fully set forth herein.

Petitioner was diagnosed with PTSD and affirmed by court opinion. This is a qualified disability pursuant to the ADA because his mental illness substantially limits his ability to interact with others, sleep, as well as other major life activities. Petitioner has also been diagnosed with Traumatic Brain Injury (TBI) as a result of a prison attack. Oregon recognizes PTSD as a qualified mental illness (see Note 4); Under ORS 410.715 TBI is a "disability".

Based upon the foregoing, defendant, the state and state courts had knowledge that at all material times petitioner is disabled pursuant to the 42 USC12101 ADA standard. In fact, the state habeas opinion noted petitioner had been confined to a wheelchair as a result of the prison assault.

Title II of the ADA mandates public entities (including parties representing the state) may not disregard the plight and distress of a disabled person. And failure to provide reasonable accommodations constitutes discrimination. *Patten v. District of Columbia* 9F 4th 921, 928 (D.D> Cir. 2021). Title II in fact imposes an affinitive obligation upon public entities, to make their services and programs equal and accessible, and explicitly "calls out the unlawful actions or inaction.", *Tennessee* at 524-526.

Defendant, representing the state pursuant to the ADA, as well as state courts, the US District Court and the 9th Circuit Court of Appeals assumed they could exploit petitioner, treating

him in an arbitrary and capricious manner. That due to his disability, incarceration, and dire financial situation (unable to afford an attorney), he would be unable to stop them denying warranted statutory relief or otherwise vindicate his right. Thus far, they have succeeded.

Fundamentally, petitioner is entitled to statutory relief because: 1) ORS 426.130 has been satisfied: 2) the state acknowledged it satisfied; 3) ORS 426.130 is plainly worded, establishing the expectation of relief. Expectation of relief is a federally protected right. *Allen* at 372-373; 4) the equal protection clause guarantees equal enforcement of state laws. *Timb* at 686; 5) the ADA guarantees the equal opportunity to participate in the law, such as the equal protection clause.

Thus, under Title II, petitioner is lawfully owed the opportunity to benefit from protections and guarantees of the US Constitution, particularly the 14th Amendment. State (defendant) refusal to enforce ORS 426.130 is not just deprival of a constitutional right, but also ADA discrimination.

ASSIGNMENT of ERROR #10 Denial of Petition for Redress of Grievances

Petitioner incorporates be reference all paragraphs in this brief as if fully set forth herein.

- Petitioner's status as a prisoner was exploited by the Ninth Circuit Court of Appeals.
- Petitioner is denied access to courts except by US Mail.
- Petitioner submitted his notice of appeal the Appeals Court by mail.
- The court responded by assigning a case number (*Osborne v. Sunquist* 26-177 9th Cir. 2025) and informed petitioner no further pleadings would be considered.
- Petitioner wrote to the court, wanting to submit a case brief and generally inquiring about the case.
- The court failed to respond.
- Petitioner inquired to the court a second time.
- The court failed to respond.
- The court's first response was its case denial.
- Upon motion to rehear the court made it clear it would not hear anything pled by petitioner.

> "The very idea of a government, republican in form, implies a right on the part of its citizens to ... petition for a redress of grievances." *United States v. Cruikshank,* 2 Otto 542, 92 U.S. 542, 552, 23 L.Ed. 588 (1876). The right to petition is "among the most precious of the liberties guaranteed by the Bill of Rights," *Mine Workers v. Illinois Bar Assn.,* 389 U.S. 217, 222, 88 S.Ct. 353, 356, 19 L.Ed.2d 426 (1967), and except in the most extreme circumstances citizens cannot be punished for exercising this right "without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions," *De Jonge v. Oregon,* 299 U.S. 353, 364, 57 S.Ct. 255, 260, 81 L.Ed. 278 (1937).", *New York Times Co. v. Sullivan,* 376 U.S. 254, 270-271, 84 S.Ct. 710, 720-721, 11 L.Ed.2d 686 (2022).

Petitioner was deprived of his First Amendment right to petitioner the government for redress of grievance (also deprival of equal protection under the law and deprival of even the opportunity to participate in petitioning the government) and his injury continues because of this deprival of right.

"To safeguard the First Amendment's values, "defeasance of the privilege" set forth in *New York Times* "is conditioned, not on mere negligence, but on reckless disregard for the

truth." *Garrison v. Louisiana,* 379 U.S. 64, 79, 85 S.Ct. 209, 218, 13 L.Ed.2d 125 (1964).", *New York Times Co.* n.1.

REQUESTED RELIEF

Based upon the foregoing, petitioner respectfully requests that this court:

a) Issue a preliminary injunction pending final resolution of this action, ordering (i) petitioner's immediate and unconditional release from State custody pursuant to ORS 426.130§(1)(a)(A) (supported by ORS 34.610§(2) when discharge is entitled by some act), pending resolution of the case; (ii) prohibition by any State court, State agency, or State agent/employee from rearresting, retaliating, harassing, detaining, intimidating, coercing, or any other injury to petitioner;

b) Issue a permanent injunction pursuant to the Fourteenth Amendment's equal protection clause and the Americans with Disabilities Act, ordering enforcement of ORS 426.130426.130§(1)(a)(A) by ordering: (i) Petitioner's permanent release from State custody pursuant to (1)(a)(A); (ii) permanent dismissal of State cases pertaining to petitioner pursuant to §(1)(a)(A);

c) Retain jurisdiction to ensure compliance with all orders entered herein;

d) Grant such other and further relief as the court may deem proper and just.

Dated this 20th day of August, 2026

William Frank Osborne

NOTE 1.

"There has been clear and convincing evidence the plaintiff suffers from ... PTSD.", *Osborne V. Reyes* 22cv38171 (2024) p.3

NOTE 2.

ORS 426.130 §(1)(a): Court determination of mental illness

(1) After hearing all of the evidence, and reviewing the findings of the examiners, the court shall determine whether the person has a mental illness and is in need of treatment. If, in the opinion of the court, the person:
(a) Is a person with mental illness based upon clear and convincing evidence, the court:
(A) Shall order the release of the person and dismiss the case if:
(i) The person is willing and able to participate in treatment on a voluntary basis; and
(ii) The court finds that the person will probably do so.
(B) May order conditional release under this subparagraph subject to the qualifications and requirements under ORS 426.125. If the court orders conditional release under this subparagraph, the court shall establish a period of commitment for the conditional release.
(C) May order commitment of the person with mental illness to the Oregon Health Authority for treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best interest of the person. If the court orders commitment under this subparagraph:
(i) The court shall establish a period of commitment.
(ii) The authority may place the committed person in outpatient commitment under ORS 426.127.
(D) Shall order that the person be prohibited from purchasing or possessing a firearm ...

NOTE 3.

ORS 426.130 has a material history of enforcement:
State v. D.L. 202 Or. App. 329, 336, 122 P.3d 97, 101 (Or. App. 2005);
Matter of K.M. 314 Or.App. 586, 592, 496 P.3d 1099, 1103 (2021);
State v. M.J.F. 306 Or.App. 544, 548, 473 P.3d 1141, 1144 (2020);
State v. J.R.B. 209 Or.App. 858, 859-60 (2018) for ORS 426.130.

NOTE 4.

For example, OAR 308-036-0105, OAR 309-091-0005 and OAR 419-110 0010 establish PTSD as a serious persistent mental illness (SPMI).

NOTE 5.

State v. D.L. references treatment elements requiring satisfaction. However, defendant **again** misrepresents statute text: "His petition is based on ORS 426.130, which sets forth a statutory scheme under which Oregon trial courts assess whether a person with mental illness needs treatment and whether such a need requires that person to be released from custody." (underlined text is again is NOT found in the Oregon Legislature's construction of ORS 426.130). Creating an unsubstantiated claim, particularly when a claim adds (i.e. alters) statute text, does not establish law. Generally, courts reject unsubstantiated legal theories such as this which lack a factual basis. *Dayton* at 515. Notwithstanding defendant's misrepresentations, treatment elements represent no bar to statute enforcement. Petitioner demanded in his state habeas corpus case he be provided mental illness treatment after years of defendant refusals and, the State habeas court ordered defendant provide mental illness treatment (although never complied with). Thus, even §(1)(a)(A)(i)(ii) are satisfied.