

18-7852
No. _____

Supreme Court, U.S.
FILED

OCT 26 2018

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Donald F. Hug II, pro se PETITIONER
(Your Name)

VS.

T.J. Conley, Warden, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Georgia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Donald F. Hug II, GDC-0000674676
(Your Name)

Baldwin State Prison, Bldg M-2, P.O. Box 218
(Address)

Hardwick, Georgia 31034
(City, State, Zip Code)

NA
(Phone Number)

ORIGINAL

RECEIVED

OCT 30 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

1

Do prisons, through their policies and actions of prison officials, have the authority to prevent (delay) pro se prisoners from getting their legal documents notarized until it is too late to "timely" file them, or is that practice unethical, illegal, and unconstitutional and therefore should not be allowed to be a factor in denying a habeas filing for "timeliness"? (Because this was done to this Petitioner.)

2. *

Does Congress have the authority to, gradually or immediately, reduce and effectively take away our Constitutional Rights by putting time limits on these rights, such as the 1996 AEDPA law that reduces the filing time for Federal habeas corpus to within one year after their conviction becomes Final, meaning that it could later be amended to a limit of within one day (or one second) of their conviction becoming Final, thereby completely nullifying these rights?

If Congress does have this power, then doesn't that precedent mean that they can put time limits on all of our Constitutional Rights, such as "You have the right to Freedom of Speech/Religion/Etc.

within one year (or one day) of your birth, and not thereafter,"
thereby completely nullifying all of these rights?

3. **

Similarly, do state legislatures have the authority to, gradually or immediately, reduce and effectively take away our Constitutional Rights by putting time limits on these rights, such as Georgia's statute O.C.G.A. § 9-14-42(c) that reduces the filing time for felony state habeas corpus to within four years after their conviction becomes Final, meaning that it could later be amended to a limit of within one day (or one second) of their conviction becoming Final, thereby completely nullifying these rights? IF state legislatures do have this power, then doesn't that precedent mean that they can put time limits on all of our Constitutional Rights, such as "You have the right to Freedom of Speech/Religion/etc. within one year (or one day) of your birth, and not thereafter," thereby completely nullifying all of these rights?

Footnotes to the above:

* = 28 U.S.C. § 2403(a) may apply, so this petition has also been served on the Solicitor General of the United States.

** = 28 U.S.C. § 2403(b) may apply, so this petition has also been served on the Georgia Attorney General.

LIST OF PARTIES

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

☒ 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:

The U.S. Attorney General (per 28 U.S.C. § 2403(a))

The Georgia Attorney General (per 28 U.S.C. § 2403(b))

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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<u>Houston v Lack</u> , 108 S.Ct. 2379 (1988)	9
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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

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; 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 _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

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

- ☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Washington County, GA, Superior court appears at Appendix C to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals 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. ____ 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 8/02/2018.
A copy of that decision appears at Appendix A & B.

☒ A timely petition for rehearing was thereafter denied on the following date: 9/10/2018 (?), and a copy of the order denying rehearing appears at Appendix D.

NA ☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

Note: Petitioner has received no notice from the Georgia Supreme Court that, pursuant to 28 U.S.C. § 2403(a) and § 2403(b), they certified to either the U.S. Attorney General or the Georgia Attorney General the fact that the constitutionality of an Act of Congress and a statute of the state of Georgia has been drawn into question.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. 8 → Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. Amend 14 → (see Appendix J)

U.S. Const., Art I, Sec 9, Clause 2 → The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Georgia Const. of 1983, Art I, Sec I, Para XV → The writ of habeas corpus shall not be suspended unless, in case of rebellion or invasion, the public safety may require it.

28 U.S.C. § 2244(d) → ("A.E.D.P.A.") → (see Appendix H.)

Georgia statute O.C.G.A. § 9-14-42(c) → (see Appendix I.)

O.C.G.A. § 16-5-1. Murder; malice murder; felony murder; murder in the second degree.

O.C.G.A. § 16-5-21. Aggravated assault.

Georgia Supreme Court Rule 27. Motions For Reconsideration.

A motion for reconsideration may be filed regarding any matter in which the Court has ruled within 10 days from the date of decision. See Rule 13.

A copy of the opinion or disposition to be reconsidered shall be attached. See Rule 61 regarding motions to stay the remittitur.

No second or subsequent motion for reconsideration by the same party after a first motion has been denied shall be filed except by permission of the Court. The Clerk may receive any later motion and deliver it to the Court for direction as to whether it shall be filed.

Georgia Supreme Court Rule 13. Determination of Filing date.

(2) Filings by pro se prisoners. → A document submitted by a prisoner who is not represented by counsel shall be deemed filed on the date the prisoner delivers the document to prison officials for forwarding to the Supreme Court Clerk. In the absence of an official United States Postal Service postmark showing a date on or before the filing deadline, such delivery shall be shown by the date on the certificate of service or on an affidavit submitted by the prisoner with the document stating that the prisoner is giving the document to prison officials with sufficient prepaid postage for first-class mail. Such a certificate or affidavit will give rise to a presumption that the date of filing reflected therein is accurate, but the State may rebut the presumption with evidence that the document was given to prison officials after the filing deadline or with insufficient postage. If the institution has a system designed for legal mail, the prisoner must use it to benefit from this rule.

STATEMENT OF THE CASE

1.

In 1989, Petitioner (who was college-educated, always stably employed, never used drugs, and had no criminal record) was rear-ended at high speed, his car was totalled, and he suffered a head injury that temporarily left him in a confused and deranged state of mind. Soon after this car accident, only because of his head injury, he assaulted someone in a single incident and was arrested for it. (He later fully recovered, and he's had no problems with violence or any other "mental health" problems since that one tragic episode on December 4, 1989.) Then, because he had a jury trial with a D.A. that "makes an example" out of anyone who does so, he received a maximum sentence of "40 years to serve". Then, even though the Parole Guidelines Gridsheet said he'd likely be paroled after serving only 16, 20, or 24 months, the Parole Board has repeatedly refused to parole him and has repeatedly refused to tell him or his family why. So he has now served nearly 29 years and will likely serve the next 11 years too, unless he obtains relief with this vital habeas.

2.

Only recently did he discover major errors in his files that are provably

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False, such as his arrest warrant erroneously including the Georgia O.C.G.A. statute number for "murder" [16-5-1, instead of 16-5-21] on one of the two charges for "aggravated assault" (when the victim is still alive to this day). This error was doubled the day after his arrest, when he was transferred from the small Smyrna city jail to the big Cobb County jail ("C.C.A.D.F.") and they sent those same charges to the GBI and FBI again, as if he'd been arrested a second time (supposedly after making bond? -- when he never got a bond) for two more crimes. So his GBI and FBI Files erroneously now list him as having two arrests (on December 4 and 5, 1989), both for "aggravated assault" and "murder" (like he's a "serial killer"), when in fact he was only arrested once in his life for a single assault on a single person who suffered no permanent injury, soon fully recovered, and is still alive to this day... Add to that the misportrayal of his crime at his trial and sentencing, which was very different from the true facts revealed at his December 12, 1989 Probable Cause Hearing (by ballistics experts, medical reports, and the victim's own testimony at that time), none of which was presented at trial or sentencing, in order to make the crime and Petitioner seem worse than they actually were... And there are

other serious errors in his police, prison, and parole files that are provably false, but Petitioner has not yet been able to get any cooperation from state officials to get any of these errors corrected. So they continue to (unfairly) prejudice judges, police, parole officials, etc., who see these erroneous records, that he's someone who doesn't deserve to ever get out of prison, when, in actuality, he has zero interest in drugs or crime of any kind and he only wants to return home to his family and resume a normal productive life. (It is likely for this reason that other Cobb County judges (who only know him from these erroneous files) have three times denied him the opportunity to have his extremely harsh sentence reviewed by the "Sentence Review Panel", and why they also denied declaring that sentence (in 2011) "VOID", when caselaw and the facts said it was "VOID".) He has sadly watched, for decades, as career criminals (who never want to do anything but crime) go home, one after the other, while he's still in prison. And if he doesn't win this habeas, then he'll likely never be able to go home. One technicality or another has always kicked him out of court. So he prays that it doesn't happen again. And he prays that the above provably false errors in his files do not dissuade this Honorable Court

from giving him a full and fair hearing on the merits and a just judgment on this case.

3.

The basis for this habeas corpus is the ground-breaking case LaFler v Cooper, 132 S.Ct. 1376 (decided March 21, 2012), which held that defendants given erroneous legal advice to talk them out of an offered plea bargain and take it to trial instead, are "prejudiced by counsel's performance in advising petitioner to reject the plea offer and go to trial." And my situation was exactly like that. (See a copy of Petitioner's Sworn Affidavit of material evidence (Appendix G) sent to the habeas court on 8/03/2016.)

4.

For this current habeas, Petitioner first found the key caselaw for his new ground (LaFler v Cooper, *supra*) on Thursday afternoon, March 10, 2016, and he had to "File" it with the court on or before Monday, March 21, 2016 (to meet or beat the five-year deadline imposed by Georgia statute O.C.G.A. § 9-14-42(c)(3)). These e/leven days would seem to be enough time, but under the circumstances he was forced into, it was not. Because he first had to return to his dorm to look up

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all of the information necessary to fill out the habeas form. By then, the law library was closed, and his habeas petition (and his "pauperis" form) had to be notarized before he could send them to the court, so he had to wait until he could get his documents notarized. And therein the problem lay...

5.

The policies and procedures at the numerous prisons in Georgia definitely vary. Petitioner knows this fact well, because in the past 29 years he's been at fourteen different Georgia prisons. Some of these prisons let you get notaries done five days a week just by getting a pass written and going there. Some prisons only let you do this one or two days a week. And some prisons make you request it a week or two in advance. And one prison Petitioner was at (Coastal State Prison) can delay even a diligently-trying inmate from getting a notary for months. So it definitely matters greatly which prison a prisoner happens to be at, to be able to file notarized documents (like habeas petitions) to the courts "timely".

6.

When this habeas was filed, Petitioner was then at Wheeler S.P. [a camp of nearly 3000 inmates], a prison that only allows notarizations on Tuesdays

and Thursdays, so he had to wait until Tuesday, March 15, to get his documents notarized. But on March 14, Monday morning, a surprise camp-wide "shakedown" [a mass search for drugs, weapons, and cellphones] was announced, so no one was allowed to go anywhere for the whole week. So Petitioner was not allowed to get his documents notarized on Tuesday or Thursday of that week. But on Friday afternoon, the "shakedown" was finally over, so Petitioner got permission (from a compassionate guard, because she easily could have said "No" and made him wait until the next Tuesday) to go see the notary that Friday afternoon, since Petitioner had a deadline to meet. So he got them notarized and mailed, Friday afternoon, March 18, 2016. Petitioner even had the prison mailroom stamp each copy of his habeas as "Received March 18, 2016" to prove when he mailed it to the courts. They were then taken to the Post Office Monday morning, and the court clerk received them on Tuesday, March 22, 2016, which was one day past the deadline imposed by Georgia statute O.C.G.A. § 9-14-42(c)(3), unless Georgia's "Mailbox Rule" applied (Massaline v Williams, 274 Ga. 552 (2001), similar to the federal case Houston v Lack, 108 S.Ct. 2379 (1988)) and it was deemed "Filed" on March 18, 2016, when Petitioner handed it over to prison mailroom officials.

7.

Concerning his "Pauper's" Form, Petitioner had to wait until March 18 to get that notarized too. Then he mailed it to the prison "Business Office". The lady there received it Monday morning, promptly processed it, and Petitioner got it back that same afternoon, so he mailed it to the court that same Monday, March 21. The U.S. Post Office should have gotten it Tuesday morning, so the court clerk should have gotten it on Wednesday morning, March 23. But since the clerk didn't stamp it "Filed" until Monday, March 28, then either the prison mailroom held it a few days before mailing it, or else it sat on some desk at the courthouse until Monday, March 28. And since the court clerk won't stamp a habeas petition as "Filed" until she has both the petition and the Filing Fee (or "Pauper's" Form), my habeas petition (received by her on Tuesday morning, March 22) wasn't stamped "Filed" until March 28, the day she says my "Pauper's" Form reached her.

8.

Petitioner sent his Sworn Affidavit (of material evidence) to the habeas court on 8/03/2016, to give notice of its introduction before his upcoming habeas hearing. (See Appendix G.)

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9.

Petitioner's 8/29/2016 evidentiary hearing (in Wheeler County) is postponed because Petitioner had been transferred to another prison, so jurisdiction was transferred to that county's habeas court (in Washington County).

10.

In September, 2016, the SAAG Filed a "Motion To Dismiss" before the rescheduled evidentiary hearing could be held. But Petitioner Filed a counter-motion that shot down the SAAG's claims for doing so, so the upcoming hearing would still be held.

11.

Petitioner's 10/28/2016 evidentiary hearing (in Washington County) is postponed because early in that hearing the SAAG asked for (and was granted) a second chance to try to dismiss this habeas with another brief. But The judge allowed Petitioner to file another counter-brief.

12.

In November and December, 2016, the SAAG and Petitioner both timely filed their second brief and counter-brief to Dismiss (or not Dismiss) this case before an evidentiary hearing is held. Petitioner's counter-brief (sent in 11/30/2016) included arguments for all three of the Questions now

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being presented herein to the U.S. Supreme Court.

13.

On 6/08/2017, the Washington County habeas judge dismissed the case as "appearing" to be "untimely", so no evidentiary hearing will be held on it, ^{and} the merits of the case will not be considered or ruled on. (See Appendix C.)

14.

On 6/28/2017, Petitioner Filed his "Application For Certificate Of Probable Cause To Appeal" (his habeas denial) to the Georgia Supreme Court, since (to Petitioner's pro se understanding) the Georgia Supreme Court is the only state court authorized to rule on the constitutionality of issues regarding the Georgia Constitution, which Petitioner's current habeas requires.

15.

On 10/31/2017, Petitioner is transferred to Coastal State Prison, but is unable to send a "change-of-address" letter to the court until 11/30/2017, because Coastal is the only prison he's ever been at (out of 14 such prisons) that doesn't have "Indigent Postage" forms in the dorm buildings' control booths, so he had to wait weeks to get them from the prison library, which was often closed for various reasons (staff shortages, gang fights,

late serving breakfast, etc.). And if you miss that once-a-week "Library Call", you have to wait until the next week, and the next... (And Coastal unfairly won't let you just get a pass to go where you need to, even for cases of need like this.) [Note: Petitioner Filed a grievance on this issue, as well as on the "no notary" issue and other serious issues. And none of Petitioner's five grievances Filed at that prison were ever responded to, even when Petitioner wrote the "Grievance Coordinator" asking about it dozens of times. No response on any of them ever.]

16.

On 01/21/2018, Petitioner Filed (to the Georgia Supreme Court) a "Supplement To His Application For Certificate Of Probable Cause To Appeal" explaining how, at Coastal State Prison, it can actually take months to get legal documents notarized, due to ridiculous hoop-jumping rules and staff that are either deliberately indifferent or (one named key staff member in particular) just connivingly malicious toward inmates. (Petitioner described exactly how this happened to him there when he tried and tried to get a "Power Of Attorney" Form notarized, since his father had passed away. So it's important that this Honorable Court read and consider this "Supplement" too.)

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17.

On 7/26/2018, Petitioner is transferred to his current prison (Baldwin S.P.). So the next day (7/27/2018) he sends the Georgia Supreme Court his new address, and he asks the clerk when they might rule on his habeas appeal, since he's been waiting 13 months. (See this letter at Appendix F.)

18.

On 8/02/2018, after more than 13 months of inordinate delay, the Georgia Supreme Court denied Petitioner's habeas appeal, with no explanation, without ruling on the merits of the case. (See Appendix A.) And they sent it to his old address, even though the clerk should have received Petitioner's new address by now. Coastal S.P. received this on August 7 or 8 and wrongfully stamped it "Return To Sender". Then they maliciously held it 1½ months before hand-forwarding it to Baldwin S.P., where Petitioner finally received it on 9/25/2018 -- 54 days after the court sent it. (For the proof of all this, see a photocopy of the envelope on page 4 of Appendix B, this one on the left, and the denial copy's envelope (sent on 8/07/2018) on the right.)

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19.

On 8/07/2018, the clerk finally acts on Petitioner's change-of-address letter by sending him a copy of the court's denial, which he received on Friday, 8/10/2018. (See Appendix B.)

20.

Petitioner then immediately wrote a one-page "Motion For Reconsideration" (with a "Certificate Of Service") and put it in the prison's U.S. Mailbox that evening (8/10/2018). He could not possibly have filed it any earlier.

21.

On 9/10/2018, the Georgia Supreme Court denied this Motion For Reconsideration, saying it was "Filed late", so "dismissed as untimely". (See Appendix D.) Even though Georgia Supreme Court Rules 27 and 13(2) state it was timely.

22.

On 9/14/2018, Petitioner filed a second "Motion For Reconsideration" because he felt the court's dismissal of the first one was highly unfair and incorrect since Petitioner has no control over when he is transferred to other prisons and he did immediately notify the court

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of his new address. (See Appendix F.)

23.

On 10/09/2018, the Georgia Supreme Court ordered that this second Motion For Reconsideration "is not allowed Filed". (See Appendix E.) Even though Georgia Supreme Court Rule 27 says they could File and accept it under such circumstances as the above. So the Georgia Supreme Court let this petition languish in court without a response for over 13 months before refusing to rule on it, despite two subsequent motions For Reconsideration that clearly spelled out the constitutional need for consideration and judgment on these important issues.

24.

Petitioner now appeals this case to the U.S. Supreme Court by Filing this "Petition For Writ Of Certiorari", since (to Petitioner's pro se understanding) the U.S. Supreme Court is the only court authorized to rule on the constitutionality of issues regarding the U.S. Constitution, which Petitioner's current habeas requires.

25.

As indicated in point "12" above, the arguments for all three of the
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Questions now being presented to the U.S. Supreme Court were raised in the original habeas court (in Petitioner's 11/30/2016 second counter-brief to the SAAG's second brief in his Motion To Dismiss), therefore all three issues were timely and properly raised. But neither that superior court nor the Georgia Supreme Court ruled on the merits of these issues. Both courts simply abdicated their jurisdiction and authority on these issues by not considering them or ruling on them. Therefore, this Honorable Court now has jurisdiction to review these three ripe and vital issues on a writ of certiorari.

REASONS FOR GRANTING THE PETITION

26.

Countless prisoners across the country unfairly unjustly and unconstitutionally suffer denied meaningful access to the courts for one or more of the reasons in the three Questions presented herein. Thousands of prisoners, who are either innocent of their charges or were unconstitutionally convicted or were egregiously sentenced far far far longer than is just and constitutes a violation of their Eighth Amendment Right to be protected from Cruel And Unusual Punishment and their Fourteenth Amendment Right to Due Process and Equal Protection Of The Law, are in grave need of this Honorable Court's wisdom and justice. And they are all largely suffering in silence, since they either don't know how to raise these issues properly in a court of law or they are unable to find judges who are willing to listen and consider the merits of their case. Even the clearest of wrongful convictions and sentences are easily "swept under the rug" via these three means. So all three of the Questions presented herein are of grave importance to countless prisoners across the country, and not just to Petitioner. But, even more important, the latter two Questions will likely affect every citizen of this nation if they are not favorably

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addressed here, since the current legal status quo endangers us all by giving Congress and all state legislatures the power and authority (by precedent) to limit and/or take away every Constitutional Right that we, as Americans, have. So, Petitioner respectfully submits, it is imperative that this Honorable Court takes the time to carefully examine and consider and rule on these extremely important issues for the good of our nation, as expressed in the arguments herein.

The Policies And Actions Of Prison Officials
Delayed The Filing Of This Habeas Petition

27.

Georgia Statute O.C.G.A. § 9-14-42(c)(3) provides that the state's four-year felony time-limit for filing a habeas petition may also run from:

"the date on which the right asserted was initially recognized by the Supreme Court of the United States or the Supreme Court of Georgia, if that right was newly recognized by said courts and made retroactively applicable to cases on collateral review."

28.

The ground-breaking case Lafayette v Cooper, 132 S.Ct. 1376, on which the instant petition is based, was decided on 21 March 2012; therefore, O.C.G.A. § 9-14-42(c)(3) makes habeas filings based on this case timely.

if filed on or before 21 March 2016, which is four years after. But a habeas petition must be notarized before sending it to the courts. And therein the problem lay.

29.

The policies and procedures at the numerous prisons in Georgia definitely vary. Petitioner knows this fact well, because in the past 29 years he's been at fourteen different Georgia prisons.

30.

Take, for example, the policy and procedures for notarizing a prisoner's legal documents. The prison "notary public" is usually the prison librarian, ~~not~~ and/or the prison law librarian, but occasionally is (or includes) some other staff member at the prison. Some Georgia prisons allow notaries to be made Monday through Friday, others on Monday through Thursday (being closed on Friday), some on only two days a week (like Wheeler S.P., where Petitioner was when he filed this current habeas, Tuesdays and Thursdays only), and some on only one day a week (like Washington S.P., where Petitioner's habeas was transferred to, Wednesdays only). And some (like Washington S.P.) don't allow "walk-ins," so you must request in writing in a ledger in the library a week in advance

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(and you must request to go to the library to do that a week in advance), so a request to get something notarized at Washington S.P. could take two weeks in advance to get it done. And Washington S.P. routinely keeps all of its interior gates locked, it only opens them once per hour, and you must have a printed "call-out slip" to get through the gates and get into the library. (So you can't just "stop by" anytime you want to.) And most of the staff has no sympathy for an inmate who "just needs one minute" in the library to fill out a request form or sign that "Notary Request" ledger. So the rules at different prisons definitely vary a lot, which can cause grave differences in the ability of a prisoner to file something "on time", depending on which prison he happens to be currently at.

3/.

Had Petitioner not been in prison, he could have filled out the habeas form immediately (having immediate access to the data he needed to do so), he could have driven straight to a notary public to get it notarized, and he could have driven to the courthouse to personally watch the clerk stamp it "Filed" on time, on Thursday, March 10, 2016. But Petitioner couldn't actually do that, because he was in prison... But which prison

he was currently at, could make a wide difference...

32.

IF Petitioner had been at a prison that allowed notarizations Monday through Friday, then he could have gotten a pass from his dorm officer to go there, gotten it notarized, and put it in the prison mailbox that same Friday, to be taken to the U.S. Post Office on Monday morning, and reach the court clerk on Tuesday morning, March 15, 2016, to be timely stamped "Filed" on that date.

33.

IF Petitioner had worked as an aide in the above library or law library (which in the past he has), then he could have gotten the librarian to notarize his documents as soon as he got to work at 7:30 AM Friday morning, and put them immediately in the prison mailbox to be picked up by the prison "maillady" at 8:00 AM, and then be taken to the Post Office that same morning. So the court clerk would receive it and stamp it timely "Filed" on Monday, March 14, 2016.

34.

IF Petitioner had been at a prison that only notarized on Monday through Thursday, he'd have to wait until Monday to get it notarized,

mail it that day, the Post Office would get it Tuesday morning, and the court clerk would get it and "File" it Wednesday, March 16, 2016.

35.

IF Petitioner had been at a prison that only notarized two days a week (e.g., Tuesday and Thursday), then he'd have to notarize it and mail it Tuesday, and the clerk would get it and "File" it on Thursday, March 17, 2016.

36.

IF Petitioner had been at a prison that only notarizes one day a week (e.g., Wednesdays only), then he'd notarize it and mail it on Wednesday, and the clerk would get it and "File" it on Friday, March 18, 2016.

37.

In all Five of the above circumstances, Petitioner's habeas would have been received on time by the clerk (on or before March 21, 2016). But the following is what actually occurred: (see points "6" and "7", above.)

38.

IF Petitioner had been at any other prison at that time (or IF that week-long mass "shakedown" at Wheeler S.P. had not occurred at that time), then (as in the above examples in points "32", "33", "34", "35", and "36") his habeas would have been received by the court clerk sometime from

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March 14 to 18, and been deemed "timely". And his "Pauper's" Form would have been timely received a day later. So Petitioner would not now be facing possible dismissal for being "late", (even without a "Mailbox Rule"). Therefore, the policies and actions of prison officials at Wheeler S.P. were the primary cause of Petitioner's habeas being filed "late".

39.

The habeas court erred in ruling this habeas as "untimely filed" also because of the above reasons in this section. And the Georgia Supreme Court erred the same way for the same reasons. Because if it weren't for Wheeler S.P.'s "Tuesday-Thursday-only" policy for notarizations, then Petitioner would have gotten his documents notarized and mailed on Friday, March 11, 2016, they would have been taken to the Post Office, Monday morning, and the court clerk would have received the habeas on Tuesday, March 15, and the "Pauper's" Form the day after; so Petitioner's habeas would have been timely stamped "Filed" on Wednesday, March 16, 2016... Or, if Wheeler S.P. simply hadn't ordered a mass "shakedown" that week (or if they would have allowed Petitioner and the notary to get together on Tuesday for just ten minutes), then Petitioner would have gotten his documents notarized and mailed on

Tuesday, March 15, 2016, they would have been taken to the Post Office, Wednesday morning, and the court clerk would have received the habeas on Thursday, March 17, and the "Pauperis" Form the day after, so Petitioner's habeas would have been timely stamped "Filed" on Friday, March 18, 2016. ... So, in either case, were it not for the policies and actions of prison officials at Wheeler S.P., both Petitioner's habeas and his "Pauperis" Form would have been timely received by the court clerk -- even without a "Mailbox Rule". Therefore, Petitioner respectfully submits that his habeas and "Pauperis" Form both be deemed "timely Filed", because they were delayed and caused to be late only by the policies and actions of prison officials, which Petitioner, as a prisoner/inmate, has no choice but to submit to.

Putting Time Limits On The Filing Of Federal And State Habeas Petitions Is Unconstitutional

40.

28 U.S.C. § 2244(d)

Petitioner respectfully submits that the 1996 "Anti-Terrorist and Effective Death Penalty Act" (a.k.a. "AEDPA") (which actually affects all prisoners in this nation, not just "terrorists" and "serial killers") is unconstitutional because it prohibits the filing of Federal habeas

petitions after a certain date, thereby automatically denying any and all habeas relief to the Petitioner after that date. This is in direct contradiction to the United States Constitution, Art. I, Sec. 9, Para. 2, which specifically restricts Congressional law-making authority by clearly stating "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

Period. It does not have any "exceptions" such as "unless the petitioner doesn't file for it within a year (or 10 years, or 100 years) of his conviction becoming final." No, it does not. Because having such an "exception" effectively would suspend the writ of habeas corpus for all petitions filed after that date. Therefore, the 1996 "AEDPA" law is unconstitutional for exactly that reason, because it does suspend the writ of habeas corpus for all petitioners one year (plus tolled time for a state habeas petition) after their conviction becomes final.

41.

For the same reason, Petitioner also respectfully submits that Georgia's statute "O.C.G.A. § 9-14-42(c)" (which limits the filing of state habeas petitions to within one year of a misdemeanor conviction, or within

Four years of a felony conviction, becoming Final) is also unconstitutional because it prohibits the filing of state habeas petitions after a certain date, thereby automatically denying any and all habeas relief to the petitioner after that date. This is in direct contradiction to the United States Constitution (as quoted above in point "40") and the Georgia Constitution of 1983, Art. I, Sec. I, Para. XV, which specifically restricts the Georgia General Assembly's law-making authority by clearly stating "The writ of habeas corpus shall not be suspended unless, in case of rebellion or invasion, the public safety requires it."

Period. Without any "time limit exceptions" or any other kind of "exceptions". Because having such an "exception" effectively would suspend the writ of habeas corpus for all prisoners after that date. Therefore, the "O.C.G.A. §9-14-42(c)" statute is unconstitutional ^{under} by both constitutions for exactly that reason, because it does suspend the writ of habeas corpus for all prisoners (no matter how wrongful their conviction or sentence may be) one year (or four years) after their conviction becomes Final.

42.

Petitioner respectfully submits that Georgia statute "O.C.G.A. §9-14-42(c)"

is also a violation of the Fourteenth Amendment of the United States Constitution, "... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ...", because O.C.G.A. § 9-14-42(c) does abridge the right to habeas corpus by prohibiting its use after a certain date (i.e., one year after a misdemeanor conviction becomes final, or four years after a felony conviction becomes final).

43.

Pro se prisoners definitely need more than just one year (or even four years) to do all of the difficult research and prepare the filing of their cases. Unlike his "adversaries" in the Attorney General's Office, the pro se prisoner does not have years of legal training, or years of professional legal experience, or far-more-advanced legal-research computer systems, or unlimited hours to spend doing that legal research, or numerous professional legal aides to competently assist him in doing that legal research, or competent fellow attorneys who let him know whenever new precedent-setting case law gets decided in the higher courts, or even a quiet office in which to concentrate and work in. No, the pro se prisoner has none of that.

Even worse, the pro se prisoner has even less actual use of the prison law library than one would think, given the unbending rules of his situation. Because the "two hours per week" that he is limited to, there, actually, totals far less than 100 hours per year, since he often misses some weeks due to occasion lost (by staff) "call-out slips", or simultaneously-scheduled (by staff) "medical" call-outs (which always take priority), or delays in feeding everyone, or prison "lock-downs" for a "mass shakedown" or for an "emergency court" or, ^{because of,} ~~for~~ a bloody gang fight; and "make-up days" rarely occur. On top of that, prison law libraries often "overbook", so that there may be ^{way} more inmates needing to use the law-research computers than there are computers. So, some or all of them will only get 30 or 40 minutes instead of two hours. So the actual "research time" in the prison law library that even a "diligently trying" inmate gets is closer to only 50 hours per year. And that isn't really much, when you consider that most inmates aren't very competent at using them, there are countless thousands of cases to search through, limited time to read them, and even less time to hand-copy parts of them (assuming that you find something good) because no prison in Georgia (that I'm aware of)

lets you print off cases or make copies of anything, so you have to (slowly) copy anything you want by hand. Even worse than that, the key cases (like Lafley v Cooper, supra) that set new precedents that can finally correct a prisoner's long-standing wrongful conviction or sentence are never automatically made known to him by the courts or anyone else, so he must (only through diligent perseverance and sheer luck) "stumble across it", because it's literally like "Finding a needle in a haystack" when you have to painstakingly search through so many cases until you find that one where you gasp and say, "Oh, my God, that happened to me", and you pray to God that you are still allowed to use it, instead of being barred by being "out of time" or "successive" or some other technicality that prevents you from finally obtaining justice. So, pro se prisoners definitely need all the time they can get in order to be able to meaningfully use their right to (pro se) habeas corpus. So anything that may cut that time short is definitely an "infringement" and an "impairment" of that constitutional right.

44.11.

Pro se prisoners, by definition, are not trained lawyers (in virtually all

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cases, unless a judge, D.A., or other attorney gets locked up). Therefore, they are often completely ignorant of most laws and legal procedures (which take a great deal of time to learn), and they have no way to become aware of important new legal precedents in caselaw and statutes except by ongoing persistent research and sheer luck in "stumbling across it." It is precisely for these reasons that prisoners (especially prose prisoners) should not have time limits placed on them for filing state or federal habeas petitions. And this is likely one of the main reasons why the U.S. Constitution states that the writ of habeas corpus is never to be suspended (short of rebellion or invasion): because an unaware prisoner who has been unconstitutionally convicted or sentenced, who years later stumbles across (new or old) facts or caselaw or statutes that would have gotten him relief earlier, had he known of it, should not be barred from filing on that at a later date, because ^{if} he could have been granted relief ~~by~~ such unrepresented new or old facts, caselaw, and/or statutes, then how is it "justice" to deny him that relief years later? Because if a "lazy" prisoner chooses to wait years to present a winning habeas petition, then he is only hurting himself by losing those extra years

behind bars. But for the "diligently trying" prose prisoner who unluckily just doesn't "stumble across" those winning facts, caselaws, and/or statutes until years later, how is it "justice" to deny him the relief then that he could have had years before, had he only been aware of it, years earlier? Why must injustice in America (when it occasionally happens) be unchangeable, and carved in stone forever by such unconstitutional laws and statutes like "AEDPA" and "OCGA § 9-14-42(c)"?

45.

As a prime example, I have now been incarcerated for 29 years and I have been diligently searching for the legal means to overcome the many injustices in my case; and only in March of 2016 did I find the Laffer case on the prison law library computer that can finally allow me to return home to my family and resume my formerly productive law-abiding life. I wish I had known of the Laffer case six years ago (or other caselaw that could have gotten me relief many years earlier than that). But I did not. So I have already lost the opportunity to be home with my family six years ago (before my father died (age 85) two years ago), and years before that (when I could have been home before my mother died (age 73))

twelve years ago) (or when my brother died (age 39) sixteen years ago). But do I also have to lose the chance now, of obtaining relief and going home to redeem myself by resuming a productive law-abiding life before my sister (age 58) dies of accident, cancer, or old age, and can no longer enjoy seeing me do it?

46.

Even more importantly... If Congress (or state legislatures) were actually allowed to put time limits on the constitutional right to habeas corpus, then they would be free at some future date to put any time limits they choose, such as "habeas petitions must be filed within 30 days of the petitioner's conviction becoming final," or "... within 30 minutes...", or "... within 30 seconds...", or "... within 30 milli-seconds...". Because, if Congress (or state legislatures) actually were allowed to put such "ridiculous" time limits on the constitutional right to habeas corpus, then they could, with ease this way, effectively nullify that right for everyone.

47.

And, if this were truly allowed, why stop there? Congress (or state legislatures), at some dark day in the near future, could effectively

take all of our constitutional rights away this way. Because, just as "AEDPA" basically says, "Your right to File for habeas corpus may only be exercised within one year of your conviction becoming final, and not thereafter", they could easily pass other laws that effectively say, "Your right to Freedom of Speech may only be exercised within one year of your birth, and not thereafter", or "Your right to Freedom of Religion may only be exercised within one year of your birth, and not thereafter", or "Your right to a jury trial may only be exercised within one year of your birth, and not thereafter", or "Your right to protection from cruel and unusual punishment may only be exercised within one year of your birth, and not thereafter". Et cetera, et cetera, et cetera... Sound "chilling"? ... Well, it definitely can happen, unless the United States Supreme Court (and the Georgia Supreme Court and all other state supreme courts) strikes down all laws like "AEDPA" and "O.C.G.A. § 9-14-42(c)", and states loud and clear that Congress and state legislatures may not pass any such laws that try to "limit" or "effectively nullify" any of our clearly stated (in the U.S. Constitution or the state constitutions) constitutional rights as citizens of this country,

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and that any such laws that do get passed are automatically

"Null and Void and have no effect."

48.

The habeas court erred in not ruling at all on this important point only because it lacks the authority of the Georgia Supreme Court to do so. But the Georgia Supreme Court erred in not ruling at all on this very important point, even though it does have the authority to do so. So Petitioner now respectfully submits ~~that~~ to the United States Supreme Court that, for all of the above reasons, both "AEDPA" and "O.C.G.A. § 9-14-42(c)" are unconstitutional and should be struck down as soon as possible, for the good of ~~the~~ people of this state, and for the good of the people of this nation.

CONCLUSION

For all of the reasons articulated above, all "time limits" on constitutional rights like "AEDPA" and Georgia statute "O.C.G.A. 89-14-42(c)" should be immediately struck down and declared "unconstitutional", and Congress and the state legislatures should be forever barred from putting "time limits" or any other limits on any of our clearly stated constitutional rights; otherwise, we may soon find many or all of these rights diminished or effectively nullified at some dark time in our near future.

And for all of the above reasons (especially the ones in the first section (points "27" through "39")), Petitioner respectfully submits that his current state habeas petition should be deemed "timely filed" and "not successive", and that his case be reversed and remanded back to the same county court and judge (Judge Reeves in Washington County), with a full evidentiary hearing where Petitioner may finally introduce and explain all of his evidence and caselaw, so that his case may finally be judged fully and fairly on the merits of his case.

WHEREFORE, Petitioner prays this Honorable Court grants
this Petition For A writ OF Certiorari and/or relief as
this Honorable Court deems appropriate.

This day the 23rd of October, 2018.

Respectfully Submitted,

Donald F. Hug II

Donald F. Hug II, pro se, GDC-0000674676
Baldwin S.P., Bldg M-2
P.O. Box 218
Hardwick, GA 31034

Per 28 U.S.C. §1746, I declare under penalty of perjury that
the foregoing is true and correct.

Executed this 23rd day of October, 2018.

Donald F. Hug II
Donald F. Hug II, pro se

Iwan Johnson
Notary Public

6-3-22
my Commission Expires