No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

HAIDER SALAH ABDULRAZZAK — PETITIONER
(Your Name)

vs.

SD. BD. of PARDONS & PAROLES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SOUTH DAKOTA STATE SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Haider Salah Abdulrazzak
(Your Name)

Mike Durfee State Prison; 1412 Wood St.
(Address)

Springfield, South Dakota 57062
(City, State, Zip Code)

/
(Phone Number)

QUESTION(S) PRESENTED

1. Whether under the Supremacy Clause, the First and Fourteenth Amendment rights, states are permitted to dissociate themselves from Federal regulations and statutes that protect inmates' timely filing in court. Fed. R. App. P. 4(c)(1)

2. Whether State statutes which permit a non-inmates filing in state's courts on the day of its mailing should be applied equally to incarcerated inmates filing in state courts.

3. Whether state statures which permit a non-inmate filing in state court after the dead-line due to state court's oversight should equally applied to incarcerated inmates.

4. Whether state statutes or regulations pursuant to sub paragraphs 1, 2 and 3 constitute adequate grounds to deny Petitioner other Federal relieves.

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:

RELATED CASES

- Abdulrazzk v. SD. Bd. of Pardons & Paroles, Civ. No. 17-1519, State of South Dakota trial Court Judgment, entered and filed on June 28, 2018.

- Abdulrazzak v. SD. Bd. of Pardons & Paroles, No. 28685, South Dakota Supreme Court, Judgment entered, March 4th 2020, rehearing denied March 31, 2020.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

TABLE OF AUTHORITIES CITED

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[ ] is unpublished.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.

[X] For cases from **state courts:**

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

[X] reported at 2020 SD 10, 2020 WL 1056826 (S.D. 2020); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ 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.

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 March 4, 2020. A copy of that decision appears at Appendix ___A___.

[✓] A timely petition for rehearing was thereafter denied on the following date: March 31, 2020, and a copy of the order denying rehearing appears at Appendix ___B___.

[ ] 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- The Supremacy Clause of the Constitution. U.S. Const. art. VI, cl. 2., Fourteenth Amendment right to due process and Equal Protection, First and Fourteenth Amendments related to inmates right to access to courts.
- (Fed R. App. P. 4 (a) (1)),(Fed. R. App. P. 4(c)), (Fed. R. App. P. 5), (Fed. R. App. P. 6 (d)), (Fed. R. App. P. 25 (a)(2)(A)(iii)).
- South Dakota Codified Laws ("SDCL"): SDCL§ 1-26-31, SDCL§ 15-6-5(b), SDCL§ 15-6-6(a), SDCL§ 15-6-6(e).

STATEMENT OF THE CASE

On June 30, 2011, a state jury convicted Petitioner Haider Salah Abdulrazzak ("Abdulrazzak") with possession of 14 counts of child pornography in violation to SDCL§ 22-24A-3(3) and the state court sentenced petition to 21 years with 13 years suspended on counts I - VII but no sentence imposed on counts VII- XIV. Petitioner was eventually released on parole on June 25, 2014.

On October 27, 2016, a parole violation was submitted and Petitioner was re-incarcerated on that day. On March 13, 2017, a final parole revocation hearing was held in front of South Dakota Board of Pardons and Paroles (the "Board") and the Board revoked Petitioner parole on that date. However, because the Board missed a transaction, it amended its decision on April 21, 2017 to include that transaction and Petitioner was served a copy (Appendix A)

Petitioner pursuant to SDCL§ 1-26-31 had 30 days to file his administrative appeal in the state circuit court (May 23, 2017 since May 22, 2017 was a Sunday). South Dakota statutes also permit 3 days to be added to the computed 30 days pursuant to SDCL§ 15-6-6(e)[1].

On May 10, 2017, Petitioner delivered his Notice to Appeal to his unit staff to be mailed to the state court. However, the clerk of the court did not stamp it *Filed* until May 25, 2017.

On June 5, 2017 the Board filed a motion to dismiss the notice of appeal as untimely, arguing that "According to Abdulrazzak's Certificate of Service, the notice of appeal was mailed to the Board on May 10, 2016 meaning it was timely served. See SDCL 15-6-5(b). However, the notice of appeal was not filed until May 25, 12017". Abdulrazzak filed a motion in opposing on

---

[1] SDCL 15-6-6(e) provide that: Whenever a party has the right or is requires to do some act ... after the service of a notice or other paper upon him ... and the notice or paper is served by mail, three days shall be added to the prescribed period.

June 15, 2017 through his new appointed attorney, asserting that he is entitled that his notice to be timely filed as he had no control over the proceeding after he delivered the notice to his unit staff for mailing as it was determined by this Court. See *Houston v. Lack*, 487 U.S. 266, 270-276, 101 L. Ed. 2d 245, 108 S. Ct. 2379 (1988), together with a notarized affidavit under the penalty of perjury that he delivered his notice to appeal for his unit staff for mailing on May 10, 2017.

Petitioner on January 29, 2018, amended his motion in opposing by attaching a motion filed by the State Attorney General office (filed in different proceeding) that Abdulrazzak did delivered his notice to appeal for mailing on May 10, 2017 but it was the state court who did not filed it until May 25, 2017.

An evidentiary hearing was held on June 4, 2018 at which petitioner asserted again he is entitled the benefit of the [Prison Mailbox Rule] as determined by this Court in *Houston* and he should not be held responsible for the state court a in processing his Appeal. However the state court entered oral judgment granting the Board motion to dismiss as untimely filed.

Petitioner prior to the court entering final written judgment filed a motion asking the state court to add the three days to the calculated time pursuant to SDCL§ 15-6-6(e) making his notice to appeal timely on May 25,2017 which was rejected by the court when its entered its final written Judgment on June 28, 2018. (Appendix B).

Abdulrazzak proceeding pro se filed a notice to appeal to the State of South Dakota Supreme Court on July 3, 2018 arguing the same grounds rose in the lower court proceeding, that he should not hold responsible for the state court inaction on his appeal.

Petitioner later on submitted a motion for the State Supreme Court asking the Court to take a judicial notice on its own proceeding in previous opinion, which hold that notice to appeal filed within state circuit courts considered filed timely upon mailing to the state court and not the

day which stamped filed by the clerk pursuant to SDCL 15-6-6(b) (same statute argued by the Board in its motion to dismiss). See generally *Bison TWP. V. Perkins County*, 2002 SD 22, 640 N.W. 2d 503, [*P11 -*P12] (SD 2002).

Nonetheless, the State Supreme Court entered written opinion on March 4, 2020 affirming the lower court judgment dismissing Petitioner's Notice to appeal as untimely. However, the Court was divided on the application of SDCL§ 15-6-6(e) which add three days to the dead-line for filing. The minority argued that Petitioner was entitled to complete 30 days for filing prior to adding the three days under clearly established federal rules (Appendix C)

Petitioner thereafter filed a timely Petition for rehearing as the court overlooked his arguments that the State Supreme Court in previous opinions held that Appellant is not responsible for the clerk of the court over-sight. See generally *Wayraynen v. Class*, 586 N.W. 2d 499 (SD 1998), and the Court overlooked as well his motion for judicial notice that his notice to appeal should be timely upon mailing pursuant to state laws as determined by the State Supreme Court.

The State Supreme Court denied Abdulrazzak Petition for rehearing on March 31, 2020 (Appendix D), and this Petition for a Writ of Certiorari is followed.

REASONS FOR GRANTING THE WRIT

1. WHETHER UNDER THE CUPREMACY CLAUSE, THE FIRST AND FOURTEENTH AMENDMENTS RIGHTS STATES ARE PERMITTED TO DISSOCIATE THEMSELVES FROM FEDERAL REGULATIONS AND STATUTES THAT PROTECTS INMATES' FILING IN COURTS. Fed. R. App. P. 4(c)(1)

1. A. Initially, Abdulrazzak would submit that South Dakota have long-history of mistreating incarcerated inmates filing in its courts by delaying of stamping their petitions as filed until the expiration of the dead-line for filing. See e.g. *Readd v. Dooley*, 2015 U.S. Dist. LEXIS 179439, *2 (D.S.D. 2015); *Whitecalf v. Young*, 2015 U.S. Dist. LEXIS 118757, 2015 WL 5177966 at *2 and *6 (D.S.D. 2015); *Burritt v. Young*, 2015 U.S. Dist. LEXIS 123272, 2015 WL 4249403 at * 10-11 (D.S.D. 2015); *Joyner v. Dooley*, 2011 U.S. Dist. LEXIS 155615, 2011 WL 8194280 at *5-10 (D.S.D. 2011) (describing instances at which South Dakota state Courts do not file habeas petitions until the judge sign the petition).

This Court "has appellate jurisdiction over final judgments by highest court where validity of state statute is drawn in question on grounds it is repugnant to constitution and in favor of its validity". *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 178, 108 S. Ct. 1704, 100 L. Ed. Ed 158 (1988). See also *Japan Line Ltd., County of Los Angeles*, 441 U.S. 434, 441, 99 S. Ct. 1813, 60 L. Ed. 2d 336 (1979) (Court has jurisdiction when state court holds state statute applicable to particular set of facts against contention that such application is invalid on federal grounds); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415, 44 S. Ct. 149, 68 L. Ed. 2d 362 (1923) (only Supreme Court can review state Supreme Court judgment concerning constitutionality of state law).

This Court in *Mut. Pharm. Co. v. Bartlett*[2] submitted that:

---

[2] 570 U.S. 472, 479, 133 S. Ct. 2466, 186 L. Ed. 2d 607 (2013)

"The Supremacy Clause provides that laws and treaties of the United States shall be the supreme law of the land, and anything in the constitution or laws of state to the contrary not withstanding. U.S. Const. art. VI, cl.2. Accordingly, it has long settled that state laws that conflict with federal law are without effect". *id*

Furthermore, this Court submitted that "the phrase "Laws of the United States" in the Supremacy Clause, the Supreme Court has held encompasses both federal statutes and statutorily authorized federal regulation". *City of New York v. FCC*, 486 U.S. 57, 63, 100 L. Ed 2d 48, 108 S. Ct. 1637 (1988). See also *Capitol Cities Cable Inc., v. Crisp*, 467 U.S. 691, 699-700, 81 L. Ed. 2d 580, 104 S. Ct. 2694 (1984) (Federal regulations have no less pre-emptive effect that federal statutes.).

As discussed above, petitioner placed his notice to appeal in the prison mail system on May 10, 2017 (14 days prior to the dead-line of May 23, 2017) pursuant to SDCL§ 1-26-31. South Dakota District Court "took judicial notice that interstate mail usually reaches its destination within one or two business days". *Burritt v. Young*, 2015 U.S. Dist. LEXIS 123272, *25 (D.S.D. 2015) and Abdulrazzak therefore have no reason to believe that it would take two weeks to deliver his mail from the prison to the state court within the same state.

It as also well settled that "prisoners have fundamental constitutional right to adequate, effective and meaningful access to courts to challenge violations of constitutional rights". *Bound v. Smith*, 430 U.S. 817, 827, 97 S. Ct. 1491, 52 L. Ed. 2d. 72 (1977), overruled in part by Lewis v. Casey, 518 U.S. 343, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996). See also *Johnson v. Avery*, 393 U.S. 483, 485, 89 S. Ct. 747, 21 L. Ed. 2d 718 (1969) (prisoners' right of access to courts may not be denied or obstructed) and "inmates retain a constitutional right to reasonable access to both federal and state courts". *Ex Parte Hull*, 312 U.S. 546, 85 L. Ed. 1034, 61 S. Ct. 640 (1941).

In *Houston*, this Court recognized the hurdle that incarcerated inmates facing when they facing a dead-line for filing in courts as they lack any control to follow up on their legal mail upon delivering it to his unit staff for mailing. This Court noted that: "Unlike other litigants, pro se prisoners cannot personally travel to the courthouse to see that the notice is stamped "filed" or to establish the date on which the court received the notice" Houston, 487 U.S. at 270.

This Court recognized that:

"A pro se prisoner has no choice but to entrust the forwarding of his notice of appeal to the prison authorities, he can never sure that it will ultimately get stamped "filed" ... for his confinement prevents him from monitoring the process sufficiently to distinguish delay on the part or prison authorities from slaw mail service or the clerk failure to stamp the notice on the date received. Unskilled in law ... his control over the processing of his notice over the only public officials ... and the only information he will likely have is the date he delivered the notice to the prison authorities and the date ultimately stamped on his notice"

Houston, 487 U.S. at 270-71.

This regulation later on has codified as Fed. R. App. P. 4(c)(1) and commonly known as [The Prison Mailbox Rule] which was classified by the Eighth Circuit Court of Appeal as a matter of constitutional right. See *Brown v. Norris*, 112 Fed. Appx. 549 [HN1] (8th Cir. 2004)

The Houston case, this Court was discussing a statute under which an inmate has 30 days to file his notice to appeal pursuant to Fed. R. App. P. 4(a)(1). *Houston*, 487 U.S. at 272. South Dakota have similar statute language that control filing of notice to appeal in a state court SDCL§ 1-26-31.

Compare Fed. R. App. P. 4(c)(1):

"In a civil case in which an appeal is permitted by law ... from a district court to a court of appeals the notice of appeal required ... shall be filed with the clerk of the district court within 30 days after the day of entry of the judgment or order appeal from". *Houston*, 487 U.S. at 272.

With SDCL§ 1-26-31:

"An appeal shall be taken by serving a copy of a notice of appeal upon the adverse party ... and by filing the original with proof of such service in the office of the clerk of courts ... within thirty days after the agency served notice of the final decision ..."*id.*

In South Dakota, pursuant to SDCL§ 1-26-32.1, the rules of SDCL chapter 15 would apply to Appellant proceeding taken under SDCL chapter 1-26.

SDCL§ 15-6-5(b) which determined that service by mail is completed upon mailing, contained a language that is similar to that in the Prison Mailbox Rule. Furthermore, SDCL§ 15-6-5(e) which defined Filing with the court as "the filing of pleading and other papers with the court as required by this chapter shall be maid by filing them with the clerk of the court, ...", a language similar that used in federal proceeding. See *Houston*, 487 U.S. at 272 (Rule 3(a) and 4(a)(1) specify that the notice should be filed with the clerk of the district court", both as well, have similar language.

It is also well settled that "when judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its judicial interpretations as well". *Rowe v. N.H. Motor Transp. Ass'n,* 552 U.S. 364, 370, 128 S. Ct. 989, 16 L. Ed. 2d 933 (2008). It is also well settled that "All state officials owe duty to the national government to enact, enforce, and interpret state law in such fashion as not to obstruct the operation of federal law, and all state action constituting such abstraction, even legislative acts, are ipso facto invalid". *Printz v. United States*, 521 898, 913 117 S. Ct. 2365, 138 L. Ed. 2d 914 (1997). It is therefore, unreasonable to the state court to adopt different interpretation of similar language of statutes in a way that obstruct petitioner's access to the state court. See *Lockhart v. Fretwell*, 506 U.S. 364, 376, 113 S. Ct. 838, 122 L. Ed. 2d 180 (1993) (A state trial court is bound by this Court's ... interpretation of federal law".

This Court ruling on a case constitutes a federal a federal law, as determined by the Supreme Court of the United States. See *Williams v. Taylor*, 529 U.S. 362, 391, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000) (it's past question that the rule set forth in *Strickland*[3] qualified as clearly established federal law, as determined by the Supreme Court of the United States).

South Dakota statutes, the subject of this petition, are similar to those used in federal laws and they are dependant of the federal laws. *Foster v. Chatman*, 136 S. Ct. 1737, 1747 n.4, 195 L. Ed. 2d 1 (2016) (Whether a state law determination is characterized as "entirely dependent and South Dakota courts pursuant to the Supremacy Clause, are "bound by this Court's interpretation of federal law". *Lockhart* 506 U.S. at, 376.

South Dakota interpretation to SDCL§§15-6-31 and 15-6-5(b) are contradict with this Court interpretation to the meaning of filing for incarcerated inmates as determined by this Court in *Houston,* and would deny Abdulrazzak's constitutional right of access to courts. See *Perez v. Campbell*, 402 U.S. 637, 652, 91 S. Ct. 1704, 1712, 29 L. Ed. 2d 233 (1971) (any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause), and compliance with both state and federal rules of filing by incarcerated inmates are impossible "A state law actually conflicts with federal law if compliance with both is impossible". See *Florida Lime & Avocado Growers, Inc., v. Paul*, 373 U.S. 132, 142-43, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963).

Furthermore, Abdulrazzak's filing in state courts is no different to filing in federal courts as both are not foreign to each other. See *Haywood v. Drown*, 556 U.S. 729, 731, 735, 129 S. Ct. 2108, 173 L. Ed. 2d 920 (2009) (Federal and state law together form one system of jurisprudence, which constitute the law of the land for the state, and the courts of the two

---

[3] *Strickland v. Washington*, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052(1984)

jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country ...).

While SDCL§ 15-6-5(b) permit filing on the other party complete upon mailing, it deny such when Petitioner file the same in state courts although both mailed in same time and therefore would deny Petitioner's his right to Equal Protection and Due Process Clauses of the Fourteenth Amendment. See *Evitts v. Lucey*, 469 U.S. 387, 393, 83 L. Ed. 2d 821, 105 S. Ct. 830 (19850 (it is well settled that although the constitution does not require a state to provide a right of appeal from a criminal conviction, once a state grants such a right, the procedure for taking appeals must comport with the demands of Due Process and Equal Protection Clauses".

Petitioner also would submit that enforcing the Prison Mailbox Rules upon states would protect inmates filing in state court where it was not his fault from becoming his claims as procedurally barred and needless presentation of cause and prejudice in federal courts and for judicial economy as it would force states to develop the factual finding instead of using unconstitutional methods to escape its duties of processing inmates' claims. See *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 9, 112 S. Ct. 1715, 118 L. Ed. 2d 318 (1992):

"By insuring that full factual development takes place in earlier, state-court proceeding, the cause-and-prejudice standards service the interest of judicial economy. It is hardly a good use of scarcest to duplicate fact finding in federal court merely because a petitioner has negligently failed to take advantage of opportunities in state-court proceeding".

Abdulrazzak would ask this Court to grant him this petition to resolve the issue of application of Prison Mailbox Rule [Fed. R. App. P. 4(c)(1)] to inmates who filing in state courts. See e.g. *Adams v. Lemaster*, 223 F.3d 1177, 1183 (10th Cir. 2000) (noting that state courts are split in applying the Prison Mailbox Rule); *Fernandez v. Artuz*, 402 F.3d 111, 113-115 (2nd Cir. 2005):

(discussing that circuit courts are divided in applying Prison Mailbox Rule to filing in state court and noting that the Ninth Circuit [have] squarely held that the mailbox rule apply with equal force to the filing of state as well as federal petitions, because at both times, the conditions that led to the adoption of the mailbox rule are present; the prisoner is powerless and unable to control the time of delivery of documents to the court).

See also *United States v. Moore,* 34 F.3d 624, 625 (4th Cir. 1994) ("*Houston* itself was premised upon fairness" and "stands for the principle that it is unfair to permit a prisoner's freedom to ultimately hinge on either the diligence or the good faith of his custodians

Petitioner pries to this Court to grant him his petition to resolve the matter of the fairness of the proceeding of inmates filing to state court and to protect him from state courts arbitrary and discriminatory acts.

1. B. Petitioner would submit that South Dakota laws recognize Fed R. App. P. 6(d) which add three days to the mailing time when service made by mail as SDCL§ 15-6-6(e).

Compare USCS Fed. R. Civ. P.6(d) which provides:

"when a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C)(mail) ... , 3 days are added after the period would be otherwise expire under Rule 6(a)"

With SDCL§15-6-6(e) which provides:
"Whenever a party has the right or is required to do some act ... within a prescribed period after service of notice ... and the notice or paper is served by mail, three days shall be added to the prescribed period".

South Dakota Statutes also have similar language to computing the days that take for mailing which excluded the holidays, Saturdays and Sundays. *Compare* Fed. R. Civ. P. 6(a)(1)(C) which " included the last day of the period, but if the last day is Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday" *with* SDCL§ 15-6-6(a) which provided in part:

"In computing any period of time prescribed ... from which the designated period of time began to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, or when the act to be done is filing of paper in

court ..., in which event the period run until the end of the next day which is not one of the aforementioned days ..."

Petitioner asserted to the state courts that he is entitled to add the three days period to the end of correctly computed 30 days for filing under SDCL§ 1-26-31 , which should be Monday May 22, 2017 (since the last day was Sunday May 21, 2017), making his filing timely on May 25, 2017. However, the majority of the State Supreme Court rejected that notion arguing that:

"As the dissent recognizes, the federal rule was specifically amended to require that the three days after calculating the period rule under R. 6(a). Our statute, in contrast, has not been amended"

Abdulrazzak v. SD. Bd. Of Pardons & Paroles, 2020 SD 10, 2020 WL 1056886 (SD 2020) at [*P 23 n. 4]

Although both State and federal statues contain similar language, South Dakota application the state rules are contradict with the application of the federal rules and therefore are unconstitutional to deny Petitioner relief of correct calculating of the prescribed period of time in violating to the Supremacy Clause and Petitioner Right under the due process and Equal Protection of the Fourteenth Amendment and Petitioner right of access to courts. See *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248, 104 S. Ct. 615, 78 L. Ed. 2d 443 (1984) (Federal law preempts not only state laws that expressly prohibited the very act of federal law allows, but those "that stand as an obstacle to the accomplishment of the full purposes and objectives of federal law". See also *Howlett v. Rose*, 496 U.S. 356, 371, 110 S. Ct. 2430, 110 L. Ed. 2d 332 (1990):

(An excuse that is inconsistent with or violates federal law is not a valid excuse: the Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or refusal to recognize the superior authority of its source. A suggestion that an act of Congress is not in harmony with the policy of a state, and therefore that the courts of a state are free to decline jurisdiction, is quite inadmissible ...)

This Court reasoned that:

"Federal law in a state as much as laws passed by state legislature. A state court cannot refuse to enforce a right arising from the law of the United States because of conceptions of impolicy or want of wisdom on the part of Congress in having called into play its lawful powers".

Howlett, 496 U.S. at 380.

It is therefore enforcing the state statute as applied to petitioner is unconstitutional and petitioner pry to this Court to grant him this Writ to discuss this matter.

2. WETHER STATE STATUES WHICH PERMIT A NON-INMATE FILING IN STATE'S COURT ON THE DAY OF ITS MAILING SHOULD BE EQUALLY APPLIED TO INCARCERATED INMATES FILING IN STATE COURTS.

Petitioner submitted to the State Supreme Court that his filing in the state circuit court should be timely considered pursuant to SDCL§ 15-6-5(b) (as discussed above) and [considering the fact that the Board is not in dispute that the statute above controlled the filing] where the State Supreme Court determined for *Bison TWP* filing in state court in the same day of mailing to the court, where the clerk of the state court received it late one day filing on the day of its mailing, should nonetheless applied to his filing in state court considering the fact that Abdulrazzak mailed his notice to appeal on May 10, 2017, citing *Bison TWP. V. Parkins County*, 2002 SD 22, 640 N.W. 2d 503 (SD 2002) at [*P 11- *P12].

However, the State Supreme Court refused to treat Abdulrazzak's filing similarly and did not state any rational reason for failure to apply the statute equally to inmates as well non-inmates.

Petitioner submits that he is entitled to the equal protection of the law and the state failure to equally apply the law violated his constitutional right under the Fourteenth Amendment. See *Fisher v. Univ. of Tex.*, 136 S. Ct. 2198, 2207, 195 L. Ed. 2d 511 (2016) (U.S. Const. amend. 14,

§1 provides that no state shall deny to any person within its jurisdiction the Equal Protection of the laws).

3. WHETHER STATE STATUTES WHICH PERMIT A NON-INMATE FILING IN STATE COURTS AFTER THE FILING DEAD-LINE DUE TO CLERK'S OVERLOOKS, SHOULD EQUALLY APPLIED TO INCARCERATED INMATES

Abdulrazzak submitted to the state courts that he mailed the complete notice to appeal to the state court on May 10, 2017, and there no whatsoever evidence in the records may suggest to the contrary, as discussed above "within one or two business days". *Burritt*, 2015 U.S. Dist. LEXIS 123272, at *25, and therefore he should not be held responsible for the state court administration mishandling his notice to appeal.

Abdulrazzak cited *Wayraynen v. Class*, 1998 SD 111, 586 N.W. 2d 499, 501 (SD 1998) which contained circumstances that the state attorney office deliver application for certificate of Appealbility to a state lower court and due to the clerk oversight it was filed beyond the 30 days. The State Supreme Court held that "A filing oversight by the clerk of courts is insufficient to deprive a court of jurisdiction to hear an appeal" *Wayraynen,* 586 N.W. 2d at 501.

The State Supreme Court reasoned that:

""Although such requirements are necessary for the efficient functioning for the appellate court, the failure of the clerk or secretary to perform his duty does not affect the jurisdiction of the court); "The appellant's failure to follow up his appeal ... while it may be ground for dismissal, does not defeat the jurisdiction of the court or affect the computation of the period within which the appeal must be perfected; nor does the failure of the clerk to do acts required of him in connection with the appeal". *Id* quoting 4A C.J.S. Appeal and Error §454"

Wayraynen, 586 N.W. 2d at 501. (Citing *State ex rel. Aurora County v. Circuit Court*, 268 N.W. 2d 607, 611 (SD 1978)).

The State Supreme Court refused to apply the same reasons for Abdulrazzak's Notice to Appeal, and made no comments about the issue.

Abdulrazzak similarly to section 2 of this Petition would submit that the state Court violated his constitutional right under the Equal Protection without rational bases. See *Evitts*, 469 U.S. at 393(... the procedure for taking appeals must comport with the demands of Due Process and Equal Protection Clauses).

It is therefore Petitioner pry to this Court to grant him his Petition to address the issue of dissimilarity in application of the same state statutes or rules to inmates and non-inmates.

4. WHETHER STATE STATUTES OR REGULATIONS PURSUANT TO SUB-PARAGRAPHS 1, 2 AND 3 CONSTITUTE ADEQUATE GROUNDS TO DENY PETITIONR OTHER FEDERAL RELIEVES.

In *Lee v. Kemna*[4], this Court determined"

"The Supreme Court applies the independent and adequate state ground doctrine on direct review from state courts ... The adequacy of state procedural bars to assertion of federal questions, "we recognized, is not within the state prerogative finally to decide, rather, adequacy "is itself a federal question" *Lee*, 534 U.S. at 375.

Petitioner as discussed above, as inmate, has constitutional rights to the Equal Protection and the Due Process Clause of the Fourteenth Amendment ad a right of access to courts that any statute statutes to the contrary is invalid. See *Doan v. Brigano*, 237 F.3d 722, 727-28 (6th Cir. 2001) (A state law cannot serve as an "adequate basis for the state ground doctrine" where the basis violates the United States Constitution), *overrule on other grounds* by *Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527, 156 L. Ed. 2d 471 (2003). See also *Haywood,* 556 U.S. at 741 "A state authority to organize its courts, while considerable, remain subject to the strictures of the constitution. A state invocation of jurisdiction is never trump the ends of the Supremacy inquiry"

Petitioner would submit that he should not be punished by barring his future federal claims under the procedural default standard due to fault of not his own and west judicial funds

---

[4] 534 U.S. 362, 375, 122 S. Ct. 877, 151 L. Ed. 2d 820 (2002)

by litigating cause and prejudice arguments because a petitioner has not "negligently failed to take advantage of opportunities in state-court proceeding". *Keeney v.* 504 U.S. at, 9.

CONCLUSION

Based on the forgoing reasons and legal authorities, and for the fairness of incarcerated inmates access to state courts, Petitioner pry to this Court to grant him his Petitioner For Writ of Certiorari and to appoint him an attorney pursuant USCS Supreme Ct. R. 39(7) as he is indigent and speak English as a second language. and reverse the State Court judgment.

Respectfully submitted,

Dated this 8th day of May, 2020.

Haider Salah Abdulrazzak, # 04373
Mike Durfee State Prison
1412 Wood Street,
Springfield, SD 57062-2238

Petitioner/Pro Se