

In the
Supreme Court of the United States

DASHON HINES

Petitioner,

v.

TOPSHELF MANAGEMENT, et. al.,

Respondents.

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

=====

REBUTTAL BRIEF

=====

Dashon M. Hines

In Propria Persona

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Buffalo, NY 14207

(716) 553-2006

dashonhines@gmail.com

Acting Pro-Se.

=====

REBUTTAL ANSWER TO COUNTERSTATEMENT

ON QUESTION PRESENTED

Petitioner has presented compelling reasons to grant the Petition. The Petitioner exhausted available remedies from his immediate supervisor at TopShelf Management to this Court. The issue presented by this Petition is within this Court's jurisdiction. This Court held that before filing a 42 U.S.C. § 1983 complaint, a prisoner must first fully, properly and timely exhaust his administrative remedies. Specifically, as here, failure to properly exhaust remedies below may not later be cured by claiming that no other remedies remain available. **See: Supreme Court Holds Administrative Remedies Must Be Properly Exhausted Under the PLRA** Loaded on SEPT. 15, 2006 by John Dannenberg published in Prison Legal News September, 2006, page 40 Filed under: PLRA, Administrative Exhaustion (PLRA). Location: California. Share: [Share on Twitter](#) [Share on Facebook](#) [Share on G+](#) [Share with email](#) by John E. Dannenberg

**PARTIED TO THE PROCEEDINGS,
CORPORATE DISCLOSURE STATEMENT,
AND RELATED CASES**

There are no parties to the proceeding other than those listed in the caption. Petitioner Dashon Hines (“Hines”) is Plaintiff in the district court and appellant in the court of appeals. Respondent Topshelf Management (“Topshelf”) is defendant in the district court and appellee in the court of appeals.

Pursuant to Rule 29.6 of the Supreme Court Rules, Topshelf states there is no parent or publicly held company owning 10% or more of the corporation’s stock.

A list of all proceedings in other courts that directly relate to the case in this Court are as follows:

- Dashon Hines v. Topshelf Management, No. 5:20-cv-505, Northern District of New York. Judgement entered May 6, 2020.
- Dashon Hines v. New York State Office of Temporary and Disability Assistance, No. 1:20-cv-506, Northern District of New York. Judgment entered May 12, 2020.
- Dashon Hines v. Erie County Department of Social Services, No. 1:20-cv-536, Northern District of New York. Judgment entered May 15, 2020.
- Dashon Hines v. New York State Department of Labor Staff, No. 1:20-cv-517, Northern District of New York. Judgment entered June 5, 2020.
- Dashon Hines v. Lt. Rose J. Dell, Lt. New York Haven Police Department, No. 5:20-cv-638, Northern District of New York. Judgment entered August 5, 2020.
- Dashon Hines v. TopShelf Management, No. 20-1609, U.S. Court of Appeals for the Second Circuit. Judgment entered Oct. 22, 2020.
- Dashon Hines v. New York State Office of Temporary and Disability Assistance, No. 20-1627, U.S. Court of Appeals for the Second Circuit. Judgment entered Oct. 22, 2020.

- Dashon Hines v. Erie County Department of Social Services, No. 20-1656, U.S.

Court of Appeals for the Second Circuit. Judgment entered Oct. 22, 2020.

- Dashon Hines v. New York State Department of Labor Staff, No. 20-1885, U.S.

Court of Appeals for the Second Circuit. Judgment entered Oct. 22, 2020.

- Dashon Hines v. Lt. Rose J. Dell, Lt. New York Haven Police Department, No. 20-

2728, U.S. Court of Appeals for the Second Circuit. Judgment entered Oct. 22,

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REBUTTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

In his pro-se Petition, Hines seeks permission to appeal to this Court to “redress grievances without fear of punishment or reprisals.” The Petition raise valid legal grounds that warrant consideration by this Court. Procedural determinations was made by the lower district courts.

Petitioner has presented compelling reasons to grant the Petition. The Petitioner exhausted available remedies from his **immediate supervisor** at TopShelf Management to this Court. On Monday, June 3, 2019, this Court issued a decision in **Fort Bend County v. Davis**, unanimously finding that **Title VII’s administrative exhaustion requirement is not jurisdictional and that employers may forfeit the right to challenge Title VII claims on the basis of the employee’s failure to exhaust administrative remedies, if such challenges are not raised in a timely fashion. See: June 4, 2019 Supreme Court Rules that Employers Must Timely Raise Failure to Exhaust Administrative Remedies in Title VII Cases or Risk Forfeiting Right to Challenge by the Labor and Employment Group. (website link:**

<https://www.ballardspahr.com/alertspublications/legalalerts/2019-06-04-supreme-ct-rules-that-employers-must-raise-failure-to-exhaust-admin-remedies>) The issue presented by this Petition is within this Court’s jurisdiction. This Court held that before filing a 42 U.S.C. § 1983 complaint, a prisoner must first fully, properly and timely exhaust his administrative remedies. Specifically, as here, failure to properly exhaust remedies below may not later be cured by claiming that no other remedies remain available. **See: Supreme Court Holds Administrative Remedies Must Be Properly Exhausted Under the PLRA Loaded on SEPT. 15, 2006 by John Dannenberg published in Prison Legal News September, 2006, page 40 Filed under: PLRA,**

Administrative Exhaustion (PLRA). Location: California. Share: Share on Twitter Share on Facebook Share on G+ Share with email by John E. Dannenberg

Given that the issue determined below does not present any novel legal issues to be considered by this Court, Hines' Petition for a Writ of Certiorari should be granted.

STATEMENT OF THE CASE

I. BACKGROUND AND FACTS OF THE CASE

Only a brief statement of facts is necessary given the procedural posture of this case. This litigation is in the earliest stages and Topshelf has yet to file a responsive pleading. Hines is a former employee of Topshelf. Hines was terminated in mid-March 2020 as a direct result of the COVID-19 pandemic. Hines was notified he was being terminated, along with many other employees, in mid-March 2020.

ALL RELIEF DUE TO HINES UNDER THE CARES ACT WAS DENIED!

Hines was notified he was being terminated, along with many other employees, in mid-March 2020. Hines was informed by his employer that remedies under the termination of employment would be provided through the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act”.

See Counsel-in-Opposition Brief, page 2, paragraph 2.

"STATEMENT OF THE CASE

I. BACKGROUND AND FACTS OF THE CASE

Hines is a former employee of Topshelf. Hines was terminated in mid-March 2020 as a direct result of the COVID-19 pandemic. Hines was notified he was being terminated, along with many other employees, in mid-March 2020. "

Hines was informed by his employer that remedies under the termination of employment would be provided through the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act”. **HOWEVER, COVID-19 RELIEF WAS NOT PROVIDED AT ALL.**

ALL RELIEF DUE TO HINES UNDER THE CARES ACT WAS DENIED!

COMPANY EMAIL ON COVID-19 TO ALL EMPLOYEES:

TopShelf Company Email informed Hines of the following:

"Hospitality Changes

Inbox

Fierle, Erin <Erin.Fierle@psentertainment.com>

Thu, Mar 19, 2020, 5:01 PM

to Dominic, Christie, Amanda

On Behalf of Dominic Verni, VP of Hospitality:

We would prefer to communicate this message to you in person, but unfortunately due to government bans on mass gatherings we are unable to do so. This was the best way to ensure everyone received the same communication at the same time.

Due to the unforeseeable Coronavirus pandemic and state mandates we are not able to sustain our business levels which is impacting our ability to continue operating.

We have made the difficult decision to lay-off all our hourly team members effective 3/3/2020. This decision was not made lightly.

Every impacted employee will be receiving a termination letter along with a record of employment for unemployment filing via email and USPS mail.

Below are some additional resources that may be available to you regarding extra aid/assistance. Please note this is not an inclusive list as this is a fluid situation.

Unemployment Claim Filing Instructions

<https://www.labor.ny.gov/ui/pdfs/Unemployment-Filing-Instructions.pdf>

Waive of 7-day hold on Unemployment claims

National Bartender Relief Fund <https://www.usbgfoundation.org/beap>

Spectrum Internet Options - <https://www.spectrum.com/browse/content/spectrum-internet-assist>

FreshFix – Local produce delivery aid - <https://www.freshfix.com/>

Need info? Follow a local news station on twitter and you will get up to date info regarding state and federal Corona virus updates to your phone!

EAP(Employee Assistance Program) through eviCore, providing stress management through a difficult time, www.palladianeap.com

As a valuable asset to our hospitality family when business returns to normalcy, we encourage you to come back and apply for an open position. You will be amongst the first considered to re-join our teams.

We appreciate all of your current and future efforts to support our organization during this pandemic and we will continue to support each one of you the best we can during these tough times.

Feel free to reach out with any questions you may have.

Stay healthy and safe.

Pegula Sports + Entertainment

Erin Fierle - SPHR, SHRM-SCP | Senior HR Manager // Human Resources

PEGULA SPORTS + ENTERTAINMENT

79 Perry St., STE 300 Buffalo, NY 14203

O: 716-855-4030"

Under the **Cares' Act**, "one form of relief" was immediate application and grantment of unemployment benefits. **However, Hines and his co-workers request for unemployment benefits was denied!**

See: Dashon Hines v. New York State Department of Labor Staff, No. 1:20-cv-517,
Northern District of New York. Judgment entered June 5, 2020.

In Hines v. New York State Department of Labor Staff,

Hines Held:

"OBJECTIONS

Dashon Hines, herein after: "Petitioner", **OBJECTS** to the Report and Recommendation in its entirety. **"The ENTIRE Report and Recommendation" see: Dashon Hines v. New York State Department of Labor Staff, 1:20-cv-517 (DNH/ATB)(citing: Roldan v. Roacette, 984 F.2d 85, 89 (2d Cir. 1993)(citing: Small v. Secretary of Health and Human Services, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. section 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72.) at pages 9 and 10 of Report and Recommendation.**

OBJECTIONS:

IFP APPLICATION

Petitioner hereby objects to the order rendering the **IFP Application** applicable to the portion of these proceedings which cover brief discussion of the objections and a specific order by

the Court. The IFP Application was sufficient on its face! Further, inquiry by this Court (**Federal Review**) determined that the Petitioner's financial means is "unemployed and he is receiving public assistance benefits. The IFP Application should be granted in **all respects!**

Petitioner **objected** to the order rendering the Complaint be dismissed for failure to state a claim pursuant to **28 U.S.C. section 1915(e)(2)(B)(iii).**

The lower district court determined that **venue was proper!** see **page 8 of Report and Recommendation.** The Court analysis of **David v. Commissioner of Labor, No. 91 Civ. 7987, 1992 WL 25200 (S.D.N.Y. Jan. 31, 1992)** in contrast to the current case at hand is not "on all fours."

In **David**, the court determined that dismissal was proper due that Petitioner being "**heard by an administrative proceeding, his challenge was to the result of the proceedings, rather than the procedure employed, and his complaint to disclose any 'unreasonable delay' in the procedure. Id.**" In the instant case, the Petitioner has presented a complaint and direct evidence that he is **not** being heard by an administrative proceeding even after **request!** The "**procedure employed**" caused "**unreasonable delay.**" **The Petitioner's complaint disclosed "unreasonable delay" in procedure with direct evidence.** Petitioner's complaint explains initiation of these proceedings due to the "**delay," "procedures," and "disclosed unreasonable delay in the procedure."** **David, supra.**

The relief requested by the Petitioner is well within this Court's jurisdiction given **David, supra.** The procedure from initiation of an unemployment claim until issue of benefits has a due process component. The unreasonable delay argument by the Petitioner is sufficient on its face! Petitioner argues unreasonable delay in procedure to process his unemployment claim resulting issuance of benefits. The claim is for March 20, 2020. The Respondent has not issued benefits as indicated as of May 21, 2020. **Over sixty days!** The Petitioner's request for action before an administrative proceeding has been **denied!**

In **David**, this Court identified a **reasonable** time table for steps in the claim process. The reasonable time in procedure have been violated in the instant case before the Court. The Petitioner requested the Court enter an order granting his benefits. This Court has the authority to rule on the merits of unreasonable delay arguments as determined in **David**.

The Respondents have GRANTED the Petitioner's claim for unemployment benefits and alleged: "Release Date" of benefits. However, the Petitioner benefits have not been issued to the bank of his choice. His current bank account balance is \$0. (Zero Dollars) even after the Respondents have indicated on a Public Government Website. Dashon Hines v. New York State Department of Labor Staff, 1:20-cv-517 (DNH/ATB).

Disbursement of Unemployment Benefits is administrative. The Petitioner's argument that the benefits contain a "**Release Date**" of such benefit but Petitioner has not received the benefit is **administrative.** Further, the Petitioner's request for action before an administrative body and reasonable occurrence has been denied and is a violation of his due process rights as outlined in **David** as an unreasonable delay."

In **Dashon Hines v. Lt. Rose J. Dell, Lt. New York Haven Police Department, No. 20-**

2728, U.S. Court of Appeals for the Second Circuit. Judgment entered Oct. 22,
2020,

Hines Held:

"28 U.S.C. section 1391(b)

28 U.S.C. section 1391(b)

Under **28 U.S.C. section 1391(b)(2)**, venue is proper when "omissions giving rise to the claim occurred."

B. Application

Venue is proper:

Investigation into pleadings submitted in **Hines v. TopShelf Management**, Docket Number: **20-1609 (United States Court of Appeals for the Second Circuit)(May 21, 2021)** and **Hines v. Bryant Stratton College**, Docket Number: **20-1622 (United States Court of Appeals for the Second Circuit)(May 21, 2021)** lead to the contact of Patricia King, Corporation Counsel, Office of the Corporation Counsel, City of New Haven, 165 Church Street-4th Floor, New Haven, CT 06510, Tel: 203-946-7951, Cell: 203-668-9282, Fax: 203-946-7942.
pkings@newhavenct.gov

Mrs. King was cooperative when contacted on June 2, 2021 at 4:15pm; However, Mrs. King refuse to cooperate on June 4, 2021 at 9:29AM.

In my capacity as a pro se petitioner before the United States District Court for the Northern District of New York, I demand that you notify your supervisor of my wish to file a complaint against you regarding your previous response. see link:
<https://www1.nyc.gov/site/ccrb/complaints/file-online.page>

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK DASHON
HINES, PETITIONER, OBJECTIONS vs. CASE NUMBER 1:20-CV-517 (DNH/ATB) NEW
YORK STATE DEPARTMENT OF LABOR STAFF. DEFENDANTS.

In the event, I do not hear from your supervisor, I will assume you did nothing concerning request to speak with your supervisor and submit formal complaints against you for misconduct. see link: https://en.wikipedia.org/wiki/Police_misconduct

EVIDENCE

In Forrest v. Parry, (No. 16-4351) (3d Cir. 2019):

“The Third Circuit ruled that the lower court erred in refusing to consider parts of the evidence put forth by Forrest for the second and third categories of his lawsuit.”

On June 2 2021 at 4:15PM: Mrs. King made the following statement:

"Dear Mr. Hines:

I am responding to numerous emails that you have sent to me regarding your complaint about the deposit of your unemployment benefits to Bank Mobile Vibe Bank at 115 Munson Street., New Haven. I understand that you have made a complaint to the New Haven Police Department. If you have done so, I assume you have a case number and contact information for the officer who took your complaint. Please direct all your emails to the officer in charge of your case. As Corporation Counsel it is not my job to investigate criminal complaints; that is done by the New Haven Police Department.

Kindly direct all your emails, past and future, to the appropriate person at the Police Department so that they can maintain communication with you regarding any developments in your matter.

Thank you very much for your anticipated cooperation.

Pat King

Patricia King

Corporation Counsel

Office of the Corporation Counsel

City of New Haven

165 Church Street-4th

On June 4 2021 at 9:29AM: Mrs. King made the following statement:

"Dear Mr. Hines:

Please stop sending me these emails. To repeat my email of yesterday, if you have reported a crime to the New Haven Police Department, you should be corresponding directly with someone there. I am the Corporation Counsel, and my office is not a law enforcement department.

Please resend your messages to whoever at the Police Department is assigned to your case. I will not forward them. I understand that your matter is important to you, and you can work most efficiently by dealing directly with the Police Department.

Thank you for your cooperation.

Pat King

Patricia King

Corporation Counsel

Office of the Corporation Counsel

City of New Haven

165 Church Street-4th Floor

New Haven, CT 06510

Tel: 203-946-7951

Cell: 203-668-9282

Fax: 203-946-7942

pking@newhavenct.gov "

On June 4, 2020, at 1:06pm, Lt. Rose J. Dell made the following statement:

"Mr. Hines,

Please do not contact Patricia King of Corporation Counsel regarding the incident you want investigated by the Police Department. You need to speak with the investigating Officer. Please call either the non-emergency number at 203-946-6316 or 203-946-6255 to speak with the Front Desk Sergeant.

Thank you,

Lieutenant Rose J. Dell

New Haven Police Department

Officer-in-Charge

Records Unit

1 Union Avenue

New Haven, CT

203-507-3107"

On June 4, 2020, at 7:39pm, The Plaintiff: Dashon Hines

responded to Lt. Rose J. Dell's statement:

"In my capacity as a pro se petitioner before the United States District Court for the Northern District of New York, I demand that you notify your supervisor of my wish to file a complaint against you regarding your previous response. see link:

<https://www1.nyc.gov/site/ccrb/complaints/file-online.page>

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK DASHON HINES, PETITIONER, OBJECTIONS vs. CASE NUMBER 1:20-CV-517 (DNH/ATB) NEW YORK STATE DEPARTMENT OF LABOR STAFF. DEFENDANTS.

In the event, I do not hear from your supervisor, I will assume you did nothing concerning request to speak with your supervisor and submit formal complaints against you for misconduct. see link: https://en.wikipedia.org/wiki/Police_misconduct"

See page 2 (two) of Report and Recommendation by The Hon. Andrew T. Baxter in Dashon Hines v. Lt. Rose J. Dell, Lt. New Haven Police Department.

Four business days later, the Plaintiff did not hear from Lt. Dell supervisor and/or any other member of the New Haven Police Department surrounding his request to speak with Lt. Dell supervisor.

In Forrest v. Parry, (No. 16-4351) (3d Cir. 2019):

"The Third Circuit ruled that the lower court erred in refusing to consider parts of the evidence put forth by Forrest for the second and third categories of his lawsuit. The court ruled that, **"We conclude that aspects of all three theories should survive when the evidence ... is considered in its entirety."** On the dismissal of the general failure to supervise category, the court stated, **"The evidence presented by Forrest may convince a reasonable jury that Camden's failure to supervise and discipline its officers amounted to deliberate indifference to the rights of individuals with whom those officers would come into contact."** The court observed that, **"The record would support a finding that Camden's policymakers knew that their officers would require supervision, that there was a history of officer supervision being mishandled, and that, in the absence of such supervision, constitutional violations were likely to result."**

THE COVID-19 PANDEMIC

- I. The COVID-19 PANDEMIC has resulted in deaths of over 500,000 Americans.
See link:**

https://www.youtube.com/watch?v=gC2ZHFh_Y_E&list=RDCMUceY0bbntWzzVIaj2z3QigXg;

The Petition should be granted!