

20-7384

No. \_\_\_\_\_

ORIGINIAL

Supreme Court, U.S.
FILED
FEB 20 2021
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IN THE  
SUPREME COURT OF THE UNITED STATES

Samuel Toliver — PETITIONER  
(Your Name)

vs.

Andr State of New York — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals of the Second Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Samuel R. Toliver 09B2037  
(Your Name)

Wyoming Correctional Facility PO Box 501  
(Address)

Attica N.Y. 14011-0501  
(City, State, Zip Code)

N/A

(Phone Number)

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SUPREME COURT, U.S.

## **LIST OF PARTIES**

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

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

K. ADNER, Mail Postál Carrier. BRABART, DSP.  
CADWELL , DSS. BUCLEY, Ltd.  
MCAULIFF, Supt.,

## **RELATED CASES**

Bell v. Napoli, 2018 WL 6505072 (NDNY 12/11/18);  
Rodriguez v. Reppert, 2016 WL 6993383, at \*2 (WDNY 11/30/16).  
Williams v. Priatno, 829 F.3d 118 (2d Cir. 2016).  
Röss v. Black, 136 Sup. Ct. 1850 (Supreme Court 2016)  
Hayes v. Dahlke, 976 F.3d. 259 (2nd.Cir. 2020).

**QUESTION(S) PRESENTED**

Was the treatment of the Petitioner on 5/30/17, being forced into Solitary Confinement for asserting his U.S.C.A. Const. First Amendment Unconstitutional? By Respondents.

Was the Petitioner U.S.C.A. Const. Fourth Amendment not honored or defend by the Court of Appeals/Lower Federal Courts?

Was Both courts decisions erroneous are in conflict with other appellant courts directly related to exhaustion of remedies trial cases?

## TABLE OF AUTHORITIES CITED

CASES :	PAGE NUMBER
<u>Bell v. Napoli</u> , (NDNY 12/11/18)	
<u>Rodriguez v. Reppert</u> , (WDNY 11/30/16)	2 of 3
<u>Williams v. Piatno</u> , (2nd.Cir. 2016).	of Pro Se
<u>Ross v. Black</u> , (Supreme Court 2016).	attached... pg. 1
 <u>Hayes v. Dahlke</u> , (2nd.Cir. 2020)	1 of 14 case
	attached...

## STATUTES AND RULES

In Pro Se Vol. 29 No. 1 February 2019 attached after pg.. 5  
Hayes v. Dahlke, .... attached case after Pro-Se ... pg. 5

## OTHER

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**APPENDIX A** Decisions of NYS Court of Appeals 2d. Cir. & Rehearing.

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Stipulations Motion.

**APPENDIX D** Charges/SHU Confinement/Appeal CORC Albany/gov.  
COUMO on Reconsideration.

**APPENDIX E** Filed grievance/letter to Albany of no responds/IGRC  
Returning grievance refuse to file (twice)!

**APPENDIX F** Two formal confidential complaints sealed mailed  
legal mail taken out of VIA Mailbox and never mailed to both  
government agents, regarding all Respondents.

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 A to the petition and is

reported at 19-2437-Pr; 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 B to the petition and is

reported at 9:18-CV-1420; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

For cases from **state courts**: NO STATE COURT ENVOLED CIVIL SUIT 1983

The opinion of the highest state court to review the merits 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 \_\_\_\_\_ 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 2/8/21.

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: 2/8/21, and a copy of the order denying rehearing appears at Appendix A.

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 \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

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

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S.C.A. Const. First Amendment.

U.S.C.A. Const. Fourth Amendment.

§ 1997e(a) Prison Litigation Reform Act (PLRA).

7 N.Y.C.R.R. 701.6(g). DOCCS grievance procedures.

## STATEMENT OF THE CASE

On 5/30/17, petitioner was put in solitary confinement for asserting his U.S.C.A. Const. First Amendment rights against the Respondent(s). by way of sealed legal mail, under the mailbox rule", a pleading is considered filed by a prisoner on the date it was given to a prison official for mailing. Houston v. Lack, 108 S.Ct. 237 (1988).

In the context of the First Amendment and prison mail "censorship" means altering or withholding "delivery of particular letter. McWright v. Gerald, 2004 WL 768641. Prison officials violates this First Amendment right, when they refuse to deliver personel legal mail because it was in a languge of a formal complaint against the defendants. Stone v. Chesney, WL 527987

This claim was DENIED, by both courts in APPENDIX (A) and (B).

Petitioner Fourth Amendment Claim the right to be secure in thier papers, and effect against unreasonable searches, seizures shall not be violated. It has been interpreted to protect this right, which is one of the most sigificant protections of human freedom and dignity found in Bill of Rights. In the event of conflict between Federal and State law, Supremacy Clause preempts operation of State law, U.S.C.A. Const. Art. 6, cl.2. GRANTED, by Hon. David N. Hurd (APPENDIX B).

## REASONS FOR GRANTING THE PETITION

Fourth Amendment claim was GRANTED, under its laws in support of petitioners APPENDIXS (D), (F), and retaliation under cases of Bell Atl. Corp v. Twombly, 550 U.S. 544, 570 (2007). A claim that stated enough "facts" and plausible on its face" and shows factual content that defendant is liable for misconduct alleged, Ashcroft v. lqbal, 556 U.S. 622, 678 (2007), most favorable to the defendant "a claim should not be DENIED"! see petitioners (D)(F) Appendixs and Hon. Naurd APPENDIX (B).

Hon. Baxter, was erroneous on its claim of exhaustion of remedies under state rules of directive 4040 grievance program in compleate conflict with APPENDIX (E), and see Hayes v. Dahlke, 976 F.3d. 259 10/5/20. And Pro Se Vol.29 No.1 2019 attached next page. Of Exhaust of Administrative, in conflict with all Federal cases, Bell v. Napoli, 2018 WL 6505072 (N.D.N.Y. 12/11/18); Rodriguez v. Reppert, 2016 WL 6993383 at \*2 (WDNY 11/30/16); Williams v. Priatno, 829 F.3d. 118 (2nd.Cir. 2016); Ross v. Blake, 136 Sup. Ct. 1850 (2016 Sup.Court); Kemp v. Jones, 42 Fed. Appx. 744, 2002 U.S. App. Lexis 16058. And Dahlke, is a Second Circuit case. Which the petitioner fell under all cited cases and both courts showed conflict between Federal law and State law. It is impossible for a law which violates the Constitution to be valid. This is succinctly stated as follows "All laws which are repugnat to the Constitution are null and void" Marbury v. Madision, 5 US (2 cranch) 137, 174, 176 (1803).

Petitioner in (APPENDIX (E), filed his grievance and it was return not filed, petitioner refiled and redated same complaint not filed and return, petitioner moved to another facility and and grievance was return once more petitioner then sent grievance to Albany CORC, and still has not had a responds, petitioner has indeed exhausted his remedies supported by (APPENDIX (E), and all cited cases in all Federal Courts.

Petitioner Fourth Amendment was violated and confirmed by APPENDIXS (B). Hon. Nurd. and APPENDIX (E)(F), of petitioner both courts decisions erroneous are in conflict with decisions of other appellant courts "directly related same trial § 1983 civil cases regarding exhausted administrative remedies., in favor of petitioner. Petitioner U.S.C.A. Const. Amends, was DENIED, not defend after confirmation of violation. Civil claim was DENIED, because of state rules, laws, over the Constitution of exhausted remedies.

Petitioner seeks full REVERSAL and GANTED, \$ 900,000 dollars or what this court seem just and fair SUBMITTED BACK TO BOTH COURTS for the violations of petitioner U.S.C.A. Const. Fourth Amendment for arbitration or trial by jury.

Petitioner have the First Amend. right to free speech, right to redress government, Fourth Amend. to be scure in papers, person, and unreasonable searches, seizures, and equal protection ensured by Eight Amend., that petitioner will not be subjected to cruel/unusual punishment. U.S.C.A. Const. 1,8,14. Which petitioner was on 5/30/17, by NYS and DOCCS responent(s). APPENDIX (D). A petitioner who seeks damages for violation of Constitutional or statutory right only by the showing that those rights were clearly established at the time of the conduct at issue! Davis v. Scherer, 468 U.S. 103 (1984); see West v. Atkins, 108 S.Ct. 2250 (1988) and APPENDIX (D); and see, Kemp v. Jones, Fed Appx. 744 (2002).

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Samuel A. Gollie

Date: 2/20/21