

JUN 25 2021

OFFICE OF THE CLERK

No. 21-5190

IN THE  
SUPREME COURT OF THE UNITED STATES

NICHOLAS STEWART HINBS — PETITIONER  
(Your Name)

vs.  
JoDy JOHNSON, YANKTON COUNTY CLERK  
OF COURTS, JANE OR JOHN DOE, BORN — RESPONDENT(S)  
IN THEIR INDIVIDUAL AND OFFICIAL  
CAPACITIES.

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS for the EIGHT CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

NICHOLAS STEWART HINBS  
(Your Name)

1412 Wood ST  
(Address)

SPRINGFIELD SD 57062  
(City, State, Zip Code)

- NA -  
(Phone Number)

**ORIGINAL**

## QUESTION(S) PRESENTED

- 1.) WHETHER JURISTS OF REASON WOULD FIND THAT THE APPELLATE COURT ERRED, WHEN IT DISMISSED THE PETITIONER'S APPEAL FOR A LACK OF JURISDICTION.
- 2.) WHETHER JURISTS OF REASON WOULD FIND THAT THE APPELLATE COURT ERRED, WHEN CONTRARY TO THE APPELLATE COURT'S OWN PRESIDENT, THE APPELLATE COURT DID NOT REVIEW THE DISTRICT COURT'S ERRONEOUS APPLICATION OF RULE 60(b) TO THE PETITIONER'S RULE 59(e) MOTION FOR RECONSIDERATION.
- 3.) WHETHER JURISTS OF REASON WOULD FIND THAT THE APPELLATE COURT ERRED, WHEN IT FOUND THE PETITIONER'S PETITION FOR A REHEARING WAS 'UNTIMELY'.
- 4.) WHEN THE DISTRICT COURT DENIED THE PETITIONER'S RULE 59(e) MOTION, WAS THE DISTRICT COURT'S SCREENING ORDER FINAL, AND COULD THE APPELLATE COURT HAVE REVIEWED THE DENIAL
- 5.) COULD THE PETITIONER FILE A RULE 59(e) MOTION WITH THE DISTRICT COURT TO ADDRESS THE CLAIMS AND DEFENDANTS THE DISTRICT COURT DISMISSED IN IT'S 1915A SCREENING ORDER
- 6.) WAS THE DISTRICT COURT'S DENIAL OF THE PETITIONER'S RULE 59(e) MOTION APPEALABLE UNDER 28 USC § 1291 AS A 'COLLATERAL' ORDER

[ THESE QUESTIONS ARE RAISED WITHIN THE PETITIONER'S BRIEF (SEE APPENDIX E.) ]

## **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 underlying 42 USC § 1983 action was originally entitled 'Hines v. Kaemingk et al', but the following defendants/respondents were dismissed by the district court in its 1915A screening: Dennis Kaemingk, Secretary of Corrections; Darin Young, Warden; Cody Hanson, Unit/Case Manager; Melissa Maturan, Administrative Remedy Coordinator; Todd Brandt, Yankton Police Detective; Yankton County; Brandon LaBrie, Unit/Case Manager & Unit Coordinator; All sued in both individual and official capacities.

## **RELATED CASES**

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28 USC § 1915A	p. 3, 4, 5, 64, 67
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### OTHER

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 NA; 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 HINES v. JOHNSON, 2021 U.S. DIST. LEXIS 58631; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

NA  For cases from **state courts**:

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

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

The opinion of the NA court appears at Appendix NA to the petition and is

- reported at NA; 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 APRIL 22, 2021.

- 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: NA, and a copy of the order denying rehearing appears at Appendix NA.
- An extension of time to file the petition for a writ of certiorari was granted to and including NA (date) on NA (date) in Application No. NA A NA.

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

### NA For cases from state courts:

The date on which the highest state court decided my case was NA. A copy of that decision appears at Appendix NA.

- A timely petition for rehearing was thereafter denied on the following date: NA, and a copy of the order denying rehearing appears at Appendix NA.
- An extension of time to file the petition for a writ of certiorari was granted to and including NA (date) on NA (date) in Application No. NA A NA.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**Fed.R.Civ.P. 59 (e) Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

**Fed.R.Civ.P. 60 (b) Grounds for Relief from a final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment or order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; (6) any other reason that justifies relief.

**28 USC § 1291 Final Decisions of District Courts.** The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, except where a direct review may be had in the Supreme Court.

**28 USC § 1915A. Screening.** (a) The court shall review a complaint in a civil action in which a prisoner seeks redress from a governmental entity, officer or employee. (b) On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint.

**42 USC § 1983. Civil Rights Action.** Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the District of Columbia, subjects, any citizen of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

## STATEMENT OF THE CASE

The Petitioner was convicted of manslaughter and sentenced on June 7, 2012 in Yankton County. The trial court's oral pronunciation of sentence and judgment indicated that the Petitioner owed 'restitution', but no amount was indicated. However, the Petitioner's S.D.D.O.C. account statements showed the Petitioner owed \$10,000,000.00+ for 'court-ordered obligations'.

Then, without notice, on May 2, 2018 the Petitioner noticed his S.D.D.O.C. account statement showed that the Petitioner's 'court-ordered obligations' had been REDUCED by \$10,000,000.00. S.D.D.O.C. Respondent Hansen told the Petitioner that an unknown Yankton County Respondent had contacted him and requested the \$10,000,000.00 financial obligation be changed, which he did without any documentation.

The Petitioner exhausted his S.D.D.O.C. grievances, and also, received no response from the notarized letters that he sent to the Yankton County Respondents.

Another claim involved Respondent Todd Brandt, a Yankton County Detective, who sent the Petitioner letters requesting 'releases' of evidence, and he had S.D.D.O.C. staff asking the petitioner questions on his behalf, relating to 'evidence' in the Petitioner's underlying criminal conviction.

All of these activities occurred while the Petitioner had attorneys of record, pending appellate proceedings and while the Petitioner was being civilly sued for \$5,000,000.00 related to wrongful death.

The Petitioner filed a § 1983 Amended Complaint, the district court conducted a § 1915A screening of the Petitioner's Amended Complaint and dismissed most of the claims and Respondents.

The Petitioner filed a Reconsideration Motion under Fed.R.Civ.P. 59(e), in which, the Petitioner addressed errors law and fact within the district court's screening, and additionally supplied the district court with supportive documentation the Petitioner had received since his Amended Complaint was filed.

Despite the district court's prior granting of nearly identical motion, the district court stated, "Here, [Petitioner] is not moving to alter or amend a judgment, but rather this Court's screening order. . Rule 59(e) is not the proper avenue for [Petitioner's] motion. The Eighth Circuit has traditionally instructed courts to consider such motions under either Rule 59 or Rule 60(b)". The district court denied the Petitioner's Rule 59(e) motion under the legal standard of Rule 60(b).

The Petitioner appealed the denial to the Eighth Circuit Court of Appeals. Asserting that Rule 59(e) and not Rule 60(b) applied cannot be 'mixed', citing this Courts holdings in *Banister v. Davis*, 140 S. Ct. 1698 (2020) define Rule 59(e)'s function. The Eighth Circuit, in a summary disposition, 'dismissed for lack of jurisdiction.'

Petitioner's Writ of Certiorari raises issues related to 1915A screening, application of Rule 59(e) and appellate jurisdiction.

## REASONS FOR GRANTING THE PETITION

This Court's review can greatly benefit inmates and the courts in 42 USC § 1983 litigation.

Under the PRLA, to bring Constitutional claims under 42 USC § 1983 an inmate must exhaust available remedies and their complaint must undergo 1915A screening by a district court.

This Court has held that civil rights and pro se complaints MUST BE liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007). A complaint "does not need detailed factual allegations . . . [but] requires more than labels and conclusions, and a formulaic recitation of the elements of the cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), a complaint's factual allegations must be "enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true." *Id.* at 555.

Differences in legal understanding exist between inmates and district courts. An inmate can describe a valid constitutional violation to the best of their ability, and it is highly probable that a district court can misunderstand and dismiss the claim.

If a inmate cannot state their valid claim to the district court any more clearly, and an amended complaint and subsequent 1915A screening would end in another dismissal of the claim; what post 1915A screening remedy should the inmate utilize to cure the possible deficiency in the district court's dismissal??

Post 1915A screening, Rule 59(e) makes obvious sense. "Rule 59(e) allows a litigant to file a "motion to alter or amend a judgment." . . . The Rule gives a district court the chance "to rectify its own mistakes in the period immediately following" its decision. *White v. New Hampshire Dep't of Employment Sec.*, 455 U.S. 445, 450, 102 S. Ct. 1162, 71 L. Ed. 2d 325 (1982)." *Bansiter v. Davis*, 140 S. Ct. 1698 (2020) at 1703.

Therefore, if a constitutional claim still exists, post 1915A screening, Rule 59(e) allows a inmate and a district court the opportunity to economically cure a possible deficiency in the 1915A screening by amending the judgment. This saves judicial resources, allows for faster and better overall adjudication of cases, to the benefit of the courts and parties, and any deficiency in the 1915A screening process has a higher chance of being resolved without involving the appellate courts.

The Petitioner's case could be a brightline ruling for this Court on the above stated issue, and it involves well documented and extremely oppressive constitutional violations by multiple individuals from different branches of government, concealing and altering documents and information related to the Petitioner's criminal conviction. (See Appendix C.)

Despite stated constitution violations, the Petitioner won his state appellate action. (See Appendix F.) Constitutional violations of rights by local government are a societal interest, 42 USC § 1982. The district and appellate courts rulings have prevented these claims from being brought. Petitioner's claims cannot be litigated without interaction from this Court.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Nicholas Stewart Hines

Date: JUNE 24, 2021