

Supreme Court, U.S.  
FILED

AUG 24 2021

OFFICE OF THE CLERK

ORIGINAL

No. 21-5695

IN THE

SUPREME COURT OF THE UNITED STATES

NICHOLAS STEWART HINES — PETITIONER  
(Your Name)

JODY JOHNSON, YANKTON COUNTY CLERK OF  
COURTS; JANE OR JOHN DOE, IN THEIR — RESPONDENT(S)  
INDIVIDUAL AND OFFICIAL CAPACITIES.  
ON PETITION FOR A WRIT OF CERTIORARI TO

EIGHTH CIRCUIT COURT OF APPEALS  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

NICHOLAS STEWART HINES  
(Your Name)

1412 WOOD ST.

(Address)

SPRINGFIELD SD, 57062

(City, State, Zip Code)

- NA -

(Phone Number)

## **QUESTION(S) PRESENTED**

WHETHER STATES SEIZURE OF PRISONERS' STIMULUS PAYMENTS VIOLATE THE FEDERAL EXEMPTION STATUTES WITHIN THE CARES ACT AND THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION

WHETHER THE COURTS ERRED IN DENYING THE PETITIONER'S RULE 15(d) SUPPLEMENTAL CLAIM REGARDING THE SEIZURE OF HIS STIMULUS PAYMENT (Doc. 44)

WHETHER THE COURTS ERRED IN DENYING THE PETITIONER'S RULE 15(d) SUPPLEMENTAL CLAIM REGARDING THE UNLAWFUL ASSIGNMENT OF DEBT (Doc. 44)

WHETHER THE COURTS SHOULD HAVE ASSIGNED THE PETITIONER COUNSEL (Doc. 46)

WHETHER THE COURTS ERRED IN DENYING THE PETITIONER'S REQUEST FOR A EMERGENCY PRELIMINARY INJUNCTION (Doc. 52)

WHETHER THE COURTS ERRED IN DENYING THE PETITIONER'S REQUEST FOR A 'EXPERT' TO PERFORM AN AUDIT AND REPORT FOR THE COURT AND PARTIES (Doc. 56)

WHETHER THE APPELLATE COURT HAD JURISDICTION TO REVIEW THE PETITIONER'S 'COLLATERAL' APPEAL UNDER 28 USC § 1291

## **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', however, 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 County Police Detective; Yankton County; Brandon LaBrie, Unit/Case Manager & Unit Coordinator; All sued in both individual and official capacities.

In the current issue before this Court, the Petition sought to 'readd' the above defendants/respondents, in addition to 'adding'; Mike Leidholt, Secretary of Corrections; Jennifer Drieske, Deputy Warden; Jane or John Doe(s) employed by SDDOC; all sued in both individual and official capacities.

## **RELATED CASES**

**Lamar v. Hutchinson, 2021 U.S. Dist. LEXIS 149513 (Dist. Ark. 2021)**

Decided August 10, 2021

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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 A to the petition and is

reported at HINES V. KAEMMEL, 2021 U.S. App. LEXIS 22322; 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 84271; 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 -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 JUNE 24, 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: JULY 27, 2021, 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 - 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).

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

Right to Due Process under Fourteenth Amendment of the United States Constitution; No state shall deprive persons of life, liberty or property without due process.

Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; No state shall deny persons equal protection of laws.

Excessive Fines Clause of the Eighth Amendment; Limits the government's power to extract payments, whether cash or in kind as punishment for some offense.

Supremacy Clause of the United States Constitution; State law is pre-empted to the extent that it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.

Fed.R.Civ.P. 15(d) Supplemental Pleadings; On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The Court may order that the opposing party plead to the supplemental pleading within a specified time.

28 USC § 1915(e)(1); The court may request attorney to represent any person unable to afford counsel.

42 USC § 1983; a party may recover damages for the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the Untied States caused by any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory.

Corona Aid, Relief, and Economic Security Act, 2020 Enacted H.R. 748, 116 Enacted H.R. 748; Section 1. Short Title. This Act may be cited as the "Coronavirus Aid, Relief, and Economic Security Act" or the "CARES Act".

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.

**SDCL § 23A-27-25.2 COSTS AND RESTITUTION AS PUNISHMENT. IN ANY CASE THEY ARE IMPOSED IS A PART OF THE PUNISHMENT.**

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.

## STATEMENT OF THE CASE

On June 26, 2019, the Petitioner filed a 42 USC § 1983 civil rights action against Yankton County and various SDDOC and Yankton County defendants, due to the proactive concealment and alteration of evidence and the Petitioner's court-ordered obligations, specifically, a \$10,000,000.00 restitution order, changed without notice and 6 years after it was entered. Said issues or events all occurred while the Petitioner was in the middle of his state appellate proceedings.

The district court's 1915A screening dismissed all of the Petitioner's claims and defendants, except for due process and access to judicial documents claims against the Yankton County Clerk of Courts, Jody Johnson, in only her individual capacity.

The Petitioner filed a Rule 59(e) motion with the district court to reconsider the Petitioner's dismissed claims and defendants, the district court denied the motion.

The Petitioner appealed the denial of his above stated reconsideration motion to the Eighth Circuit Court of Appeals, Case # 21-1673, which it denied in a summary disposition; an appeal of that decision is currently docketed with this Court, Case # 21-5190.

After the district court's 1915A screening order, SDDOC altered their policy, whose authority comes from state statutes, to seize prisoners' stimulus payments. The Petitioner had \$960.00 of his \$1200.00 CARES Act stimulus payment seized by SDDOC. SDDOC kept \$480.00 and sent another \$480.00 to Yankton County.  
(See. Appendix C., Doc. 44, Exhibit 2)

After the above transactions occurred, and \$480.00 payment was sent to Yankton County, the Petitioner's court-ordered obligation total increased. Again, a situation existed where SDDOC and Yankton County were intertwined in unclear actions involving the Petitioner's court-ordered obligations.  
(See. Appendix C., Doc. 44),

Since the Yankton County Clerk of Court was a defendant, the Petitioner wrote the Yankton County Auditors Office and requested a financial printout of any debt that he owed Yankton County.  
(See. Appendix C., Doc. 44., Exhibit 3)

When the Petitioner received the requested printout, he discovered a \$4090.00 'confinement fee' had been assigned to him the day he was sentenced, June 7, 2012. This debt was not disclosed to the Petitioner, nor ordered by the trial court.  
(Appendix C., Doc. 44, Exhibit 3)

## STATEMENT OF THE CASE

After the Petitioner requested the \$4090.00 debt be dismissed, the Yankton County Auditors Office sent the Petitioner another document that was not signed, notarized, had a printed statute crossed off, and another statute handwritten on it; also included in the mailing was a printout of state statutes, meant to infer authority for the \$4090.00 debt. There was no indication who the Petitioner had been interacting with.

(See. Appendix C., Doc. 44, Exhibit 3)

When the district court issued its Rule 16 Scheduling Order, in accordance with that Scheduling Order, the Petitioner filed a motion to rule on a pending motion and to add supplemental claims and defendants related to the above stated stimulus payment seizure and unlawful assignment of the \$4090.00 debt.

(See. Appendix C., Doc. 44 and Exhibit 2, 3)

In addition to the Petitioner's Motion for Supplemental Pleadings (Doc. 44), the Petitioner also filed a Motion for Counsel (Doc. 46), Motion for Intervention (Emergency Preliminary Injunction) because as the Yankton County Clerk of Courts, the respondent was actively filing papers and facilitating the Petitioner's state habeas action, involving the some of the same information at issue in the underlying 42 USC § 1983 action (Doc. 52), and a motion for an Expert to perform an audit of financial entries made by the Respondent within the IJIS (Doc. 56).

(See. Appendix C., Doc. 44, 46, 52, 56)

The district court issued an order denying all of the Petitioner's pre-trial motions, including all subparts.

(See. Appendix B.)

The Petitioner appealed the district court's denial of all his pre-trial motions to the Eighth Circuit Court of Appeals, Case # 21-2294. In a summary disposition, the appellate court affirmed the district court's denial of the Petitioner's motions for Appointment of Counsel (Doc. 46) and for Preliminary Injunction (Doc. 52), the appellate court 'otherwise dismissed for lack of jurisdiction.'

(See. Appendix A.)

## REASONS FOR GRANTING THE PETITION

### JURISDICTION

The Eighth Circuit Court of Appeals should have reviewed the Petitioner's 'Collateral Appeal' under 28 USC § 1291.

"This Court, however, "has long given" § 1291 a "practical rather than a technical construction." Cohen, 337 U.S., at 546, 69 S. Ct. 1221, 93 L. Ed. 1528. As we held in Cohen, the statute encompasses not only judgments that "terminate an action." but also a "small class" of collateral rulings that, although they do not end the litigation, are appropriately deemed "final". Id., at 545-546, 69 S. Ct. 1221, 93 L. Ed. 1528. "That small category includes only decisions that are conclusive, that resolve important questions separate from the merits, and are effectively unreviewable an appeal from the judgment in the underlying action." Swint, 514 U.S., at 42, 115 S. Ct. 1203, 131 L. Ed. 2d 60." Mohawk Indus. v. Carpenter, 558 U.S. 100 S. Ct. (2009) at 106; see also Jensen v. Minn. Dep't of Servs., 897 F.3d 908 (8th Cir. 2018) at 912 (same).

This Court should exercise its jurisdiction under Rule 10;

-because under Rule 10(a) the Eighth Circuit "has so far departed from accepted and usual course of judicial proceedings," and "sanctioned a such a departure by a lower court, as to call for an exercise of this Court's supervisory power;" and;

-under Rule 10(c) Eighth Circuit "court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court," and "has decided an important federal question in a way that conflicts with relevant decisions of this Court."

### 'STIMULUS SEIZURE' (Appendix B.; Appendix C., Doc. 44)

This issue is important because it involves Congressional intent and the federal exemption statutes within the CARES Act;

-Prisons with state and federal jurisdictions are establishing laws and procedures which authorize them to seize prisoners' stimulus payments; and

-Courts in multiple jurisdictions are making decisions which are affirmative of the state and federal prisons' seizures of prisoners' stimulus payments on daily basis.

Until this Court makes a ruling on the application of federal exemption statutes within the CARES Act, these illegal actions, policy and legislation will continue to progress.

## REASONS FOR GRANTING THE PETITION

In *Schooll v. Mnuchin*, 2020 U.S. Dist. LEXIS 176870 (9th Cir. 2020) the district court granted a permanent injunction in favor of the plaintiffs that granted benefits to individuals "whom benefits have thus far been withheld, intercepted, or returned on the sole basis of their incarcerated status."

In *Schooll v. Mnuchin*, 2020 U.S. App. LEXIS 33554 (2020) the 9th Circuit Court of Appeals denied the appellants/defendants request for a stay pending appeal of the district court's grant of the injunction, because "the appellants have not demonstrated a sufficient likelihood of success on appeal to warrant a stay."

Therefore, it was established that prisoners could receive economic stimulus payments. However, stimulus payments began to be seized by the state and federal courts and prisons.

In *Bennet v. Arkansas*, 485 U.S. 395 S. Ct. (1988) this Court held that prison officials violated the Supremacy Clause of the United States Constitution because they administratively 'offset', the prisoner's VA payments which were 'Exempt' from being 'offset' under the federal exemption statutes.

Similarly, "By its terms the CARES Act, Pub. L. 116-136 (Mar. 27, 2020), expressly provides that the "economic impact payment" of up to \$1200.00 per person cannot be offset against the debts expressly identified in Section 2201(d)(1) to (d)(3) of the Act." *Tallant v. Chfs*, 2020 U.S. Dist. LEXIS 233262 (6th Cir. 2020)

Thus, the applicable question posed to this Court involving the Petitioner, but also applicable to other state and federal prisoners is; whether SDDOC's seizure of the Petitioner's stimulus payment, per policy, whose authority comes from state law statutes, violates the federal exemption statutes within the CARES Act, and the Supremacy Clause of the United States Constitution.

In the Petitioner's Rule 15(d) supplemental claim to the district court (Doc. 44), the Petitioner claimed that SDDOC's seizure of his stimulus payment, per SDDOC policy, violated the federal exemption statutes in the CARES Act and the Supremacy Clause; thereby violating the Petitioner's due process rights under the Fourteenth Amendment, and the Excessive Fines Clause of the Eighth Amendment of the United States Constitution.

In the district court's denial of the claim (Appendix B.), the district court completely ignored the federal exemption statutes cited by the Petitioner and asserted, that under this Court's holding in *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) that 'If there is an adequate postdeprivation remedy, then there is no due process violation for even the intentional deprivation of a prisoner's property.'

## REASONS FOR GRANTING THE PETITION

The district court stated the Petitioner's due process claim was "futile" because a adequate postdeprivation remedy existed in state court. However, Hudson at 532, states,

"Two terms ago, we reaffirmed our holding in *Logan v. Zimmerman Brush Co.*, 455 U.S. 517, 533 (1982), in the course of holding that postdeprivation remedies DO NOT satisfy due process where a deprivation of property is caused by conduct pursuant to an established state procedure, rather than random and unauthorized action."

Other courts review plaintiff's complaints regarding stimulus payment seizures, including the 8th circuit. In *Lamar v. Hutchinson*, 2021 U.S. Dist. LEXIS 149513, the district court in Arkansas allowed the prisoner Plaintiff to raise the constitutional claims that the South Dakota district court denied the Petitioner from bringing. The Eighth Circuit has 'implicitly affirmed' by refusing to utilize its jurisdiction to review and dismissing the Petitioner's appeal.

Additionally, Lamar id. raised the issue that the defendants were "acting pursuant Arkansas Act of 1110 of 2021, [to] unlawfully take stimulus money from inmates." This claim made in Lamar id. has a similar parallel to the state of Arkansas' conduct in *Bennet v. Arkansas*, 485 U.S. 395 S. Ct. (1988).

\*This Court should also be aware that the federal courts are filing to seize stimulus payments from federal prisoners under the Mandatory Victims Restitution Act, however, the federal exemption statutes within the CARES Act should be determinative of whether the Bureau of Prisons can specifically seize prisoners' CARES Act stimulus payments, and not the Mandatory Victims Restitution Act. Cases are being published on a daily basis in a number to excessive to cite here.

### CONCLUSION

The Petitioner has established cause under Rule 10 for this Court to exercise its jurisdiction and review. This issue is currently affecting state and federal inmates, and it will continue to happen until this Court exercises its absolute jurisdiction over the all the lower courts.

## REASONS FOR GRANTING THE PETITION

### 'YANKTON COUNTY'S UNLAWFUL ASSIGNMENT OF DEBT' (Appendix B.; Appendix C., Doc. 44)

This issue is related to a \$4090.00 'Confinement Fee' that was assigned to Petitioner, without his knowledge. The document supposedly supporting the \$4090.00 'Confinement Fee' is not signed by the Petitioner, not notarized, and has one printed statute on it and another handwritten statute sloppily written on it, none of which apply to the Petitioner. Also, this debt was unequivocally not ordered by the trial court and was entered the same day as the Petitioner's criminal judgment.

This issue is adequately broken down in Appendix B. and Appendix C., Doc. 44.

First, the Petitioner raised a 'class of one' Equal Protection claim under the Fourteenth Amendment, the district court completely ignored this claim and did not review it.

Second, the Petitioner adequately established a clear due process issue, again here the district court found no due process issue here because under this Court's holding in *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) 'no due process exists because the Petitioner has a adequate postdeprivation remedy'. Clearly, here a due process violation exists here.

In addition, this debt was assigned by an unknown Yankton County individual who assigned the debt because of the 'authorizing statutes'. The district court ignores the Petitioner's claim regarding the irrelevant and non-applicable statutes involved.

Again, the district court erroneously stated the Petitioner's due process claim was "futile" because a adequate postdeprivation remedy existed in state court. However, *Hudson* at 532, states,

"Two terms ago, we reaffirmed our holding in *Parrat v. Zimmerman Brush Co.*, 455 U.S. 517, 533 (1982), in the course of holding that postdeprivation remedies DO NOT satisfy due process where a deprivation of property is caused by conduct pursuant to an established state procedure, rather than random and unauthorized action."

Third, the Petitioner raised an Eighth Amendment because this debt and lien was unequivocally part of the Petitioner's criminal punishment. The document supposedly authorizing this debt and lien has the Petitioner's criminal case number listed at the top of it, and is dated and entered the same day the Petitioner was sentenced, June 7, 2012.

Further, the South Dakota statute 'SDCL § 23A-27-25.2 Costs and Restitution as Punishment' supports the Petitioner's position.

The district court states "the confinement fee is not considered a fine for the purposes of the Eighth Amendment," and "the confinement fee is not a punishment for his state conviction".

## REASONS FOR GRANTING THE PETITION

Lastly, the unknown Yankton County individuals involved in assigning the above debt were without any authority to do so and would have required a COURT to be involved.

The district court found this claim "futile". The respondent defended the 'Confinement Fee' by citing Simon and Garfunkel lyrics and stating 'that the statutes are what they are whether the Petitioner wishes to believe that is up to him.'

### CONCLUSION

This Claim again shows that Yankton County and Yankton County employees had a complete disregard for the constitutional rights of those they interact with and exceed the authority they possess. In addition, the district court complete shows a proactive disregard for any constitutional right of the Petitioner. The Eighth Circuit has sanctioned these activities and 'implicitly affirmed' by refusing to exercise its jurisdiction to review under 28 USC § 1291 and dismissing the Petitioner's appeal.

The Petitioner believes there is cause for this Court to review under Rule 10 because of the oppressive nature of abuses by Yankton County and its employees widespread constitutional violations, against citizens under its jurisdiction, which are being proactively supported by the courts. Further, the district court is utilizing this Court's holdings in, such as in Hudson, to dismiss multiple constitutional violations throughout this suit.

'REQUEST FOR INTERVENTION (EMERGENCY PRELIMINARY INJUNCTION)' (Appendix B.; Appendix C., Doc. 56)

This was a simple request prevent the respondent, [the defendant] the Yankton County Clerk of Courts, from filing papers in the Petitioner's active litigation within Yankton County.

This request would have been incredibly effortless to facilitate by Yankton County Clerk of Courts Office. The Petitioner had unequivocally faced hardship and was in a position to be further harmed. Clearly, it is the respondent's admitted actions/filings (concealing, and changing a \$10,000,000.00 restitution entry and obligation without notice, months after it was entered), as the Yankton County Clerk of Courts, which survived 1915A screening and are at issue in this 42 USC § 1983 action.

"Whether a preliminary injunction should issue involves consideration of (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that the movant will succeed on the merits; and (4) the public interest." Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109, 113 (8th Cir. 1981) (en banc).

The Petitioner is experiencing further harm, for instance, the above injunction request the respondent cease filing documents in the Petitioner's state habeas action CIV13-262. The Petitioner won his appeal in CIV13-262, and his criminal judgment in CR 11-216 therefore vacated on June 28, 2021. The Petitioner was to be immediately remanded to the custody of Yankton County jail. (SEE. APPENDIX D.)

## REASONS FOR GRANTING THE PETITION

The Petitioner is experiencing further harm, for instance, the above injunction request the respondent cease filing documents in the Petitioner's state habeas action CIV13-262. The Petitioner won his appeal in CIV13-262, and his criminal judgment in CR 11-216 therefore vacated on June 28, 2021. The Petitioner was to be immediately remanded to the custody of Yankton County jail.

Petitioner's 8 year long appeal has ended with him sitting in prison with a vacated judgment. (SEE, APPENDIX D.)

Additionally, since the Petitioner won his appeal, the respondent is filing documents in the criminal case again, the same EXACT legal action in which the respondents admitted alterations and concealment thereof occurred. The Petitioner has filed an Affidavit with documentation support his assertions above.

(See. APPENDIX D.)

### CONCLUSION

The has established cause under Rule 10 for this Court to review because the Eighth Circuit "Court of Appeals has decided an question of federal law that has not been, but should be, settled by this Court", thereby establish precedent among the circuits regarding preliminary injunctions.

Additionally, given the severely oppressive an immediate situation the Petitioner is experiencing from the respondent, county, district court, and affirmances by the Eighth Circuit, disregarding it own holdings to sanction the stated violations, thereby establish cause under Rule 10 for "far depart[ing] from the accepted and usual course of judicial proceedings, [and] sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power".

REASONS FOR GRANTING THE PETITION

REQUEST FOR APPOINTMENT OF COUNSEL / MOTION FOR EXPART  
(APPENDIX B.; APPENDIX C., Doc. 46, 56).

IN ITS DENIAL ORDER THE DISTRICT COURT STATES,

11. HINNS FILED A THIRD MOTION FOR THE APPOINTMENT OF COUNSEL. Doc. 46. HE ASSERTS THAT HIS ALLEGATIONS ARE TRUE, THAT HE HAS MULTIPLE TRANSFERS COMING UP AND IS CONCERNED THAT HIS LEGAL MAIL COULD BE LOST.

(SEE APPENDIX B.)

THE PETITIONER HAS HAD 10 TOTAL TRANSFERS SINCE FILING HIS 42 USC § 1983 ACTION. 9 WERE FOR MEDICAL TRIPS, THE IMMEDIATE ONE (10TH TRANSFER) IS TO YANKTON COUNTY JAIL BECAUSE THE PETITIONER WAS GRANTED STATE HABEAS RELIEF. THIS LAST TRANSFER HAS CAUSED THE PETITIONER TO HAVE TO FINISH THIS 'CERT' FORM IN HANDWRITING RATHER THAN TYPED OUT.

THE PETITIONER WAS ON A MEDICAL TRIP FROM APRIL 22, 2021 THRU MAY 26, 2021. DURING THAT TIME THE PETITIONER'S LEGAL MAIL WAS 'LOST'. MULTIPLE RULINGS HAD OCCURRED DURING THAT TIME PERIOD. THE EIGHTH CIRCUIT COURT OF APPEALS DISMISSED THE PETITIONER'S APPEAL # 21-1673 ON APRIL 22, 2021 AND THE DISTRICT COURT ISSUED ITS DENIAL ORDER AT ISSUE HERE ON MAY 3, 2021. THE PLAINTIFF RECEIVED A STACK OF LEGAL MAIL ON MAY 26, 2021. THE PETITIONER SENT THE COURTS THESE LETTERS ENVELOPES SHOWING HE HAD RECEIVED THEM ON MAY 26, 2021. THE EIGHTH CIRCUIT COURT OF APPEALS RETURNED THEM UNFILED AND FOUND THE PETITIONER'S REQUEST FOR A REHEARING 'UNTIMELY'.

### REASONS FOR GRANTING THE PETITION

THE PETITIONER'S REQUESTS/MOTIONS FOR APPOINTMENT OF COUNSEL AND FOR AN EXPERT WERE AN ATTEMPT TO CONDUCT MEANINGFUL DISCOVERY IN SYSTEMS, SUCH AS THE UJS, WHICH THE PETITIONER DOES NOT HAVE ACCESS TO, BUT THE RESPONDENT, AS YANKTON COUNTY CLERK OF COURTS, CLEARLY DOES.

THE PETITIONER'S REQUEST FOR AN EXPERT (Doc. 56) WAS FOR "AN EXPERT, TO PERFORM AN AUDIT RELATED TO THE UJS ENTRIES AT ISSUE IN THE ABOVE ENTITLED ACTION ESSENTIAL TO ALL PARTIES AND FOR THIS COURT'S GUIDANCE." (SEE APPENDIX C., Doc. 56)

THE RESPONDENT'S ENTRIES WITHIN THE UJS ARE THE MAIN ISSUE WITHIN THE PETITIONER'S 42 USC § 1983 ACTION.

THE COURT IN PARHAM V. JOHNSON, 126 F. 3d 454 (3RD CR. 1997) DESCRIBES THE CURRENT SITUATION WELL, FINDING NEARLY IDENTICAL RULINGS "TROUBLING", PARTICULARLY CONSIDERING THAT THIS COURT "COULD USE THE LACK OF EXPERT TESTIMONY AS A SHIELD TO PROTECT ITS DENIAL MOTION FOR COUNSEL AND THEN AS A SWORD TO SLAY THE INDIGENT PLAINTIFF'S CASE."

THE DISTRICT COURT HAS DENIED EACH AND EVERY MOTION AND REQUEST THE PETITIONER HAS MADE IN THE UNDERLYING 42 USC § 1983 ACTION, INCLUDING ALL SUBPARTS. THE ONLY EXCEPTION BEING TWO CLAIMS AND IFP STATUS FOR THE 42 USC § 1983 ACTION AND EIGHTH CIRCUIT COURT OF APPEALS ACTIONS.

## REASONS FOR GRANTING THE PETITION

UPON CAREFUL CONSIDERATION THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING APPOINTED COUNSEL. SEE PHILLIPS V. JASPER CNTY. JAIL, 437 F.3d 791, 794 (8TH CIR. 2006) (STANDARD OF REVIEW AND RELEVANT FACTORS). WHEN RULING ON A MOTION FOR APPOINTED COUNSEL, A COURT MUST EXERCISE "A REASONED AND WELL-INFORMED DISCRETION" AND SHOULD "SERIOUSLY CONSIDER" APPOINTING COUNSEL WHEN AN INDIGENT PLAINTIFF STATES A COLORABLE CLAIM AND THE NATURE OF THE CASE IS SUCH THAT A COURT WOULD BENEFIT FROM THE ASSISTANCE OF COUNSEL. SEE. BROWN V. FREY, 806 F.2d 801, 804 (8TH C.R. 1986)"  
TROTTER V. LAWSON, 636 F.3d. Appx. 371 (8TH C.R. 2016) (PER CURIAM)

## CONCLUSION

THE PETITIONER IS PRO SE. CITING SPECIFIC CASE LAW AND FACTS RESULT IN AGGRESSIVE OBFUSCATION OF FACTS AND MISAPPLICATION OF CASE LAW. THE PETITIONER HAS MORE DOCUMENTATION THAN MOST LITIGANTS COULD EVER HOPE TO HAVE DUE TO THE FACT THAT THE PETITIONER'S CASEFILE WAS BRIBLY AT THE PETITIONER'S FATHER'S HOME, AND THAT A FRIEND OF THE FAMILY HAS PROVIDED THE PETITIONER PRINTOUTS FROM HIS LAW OFFICE.

THE PETITIONER'S HABEAS ATTORNEY HAS ALSO PROVIDED THE PETITIONER REQUESTED DOCUMENTS WHEN POSSIBLE. DESPITE THE ISSUES RAISED AGAINST THE RESPONDENT, WHICH ARE RELATED TO ACTIONS WHICH IMPROVED VALID STATE HABEAS CLAIMS; THE PETITIONER STILL WON HIS HABEAS IN A VERY CONSERVATIVE STATE.

THE DISTRICT COURT REJECTS THE PETITIONER'S CLAIMS RELATED TO HIS DOCUMENTS, AND THE EIGHTH CIRCUIT NEVER REVIEWS CASES IN THE SOUTH DAKOTA PRISON SYSTEM, THE PETITIONER'S ONLY CHANCE FOR A FAIR RULING RESTS WITH THIS COURT.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Nicholas Hines

Date: AUGUST 23, 2021