

No. 21-8077

IN THE
SUPREME COURT OF THE UNITED STATES

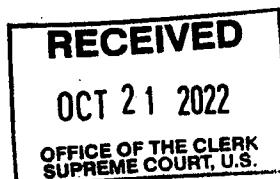
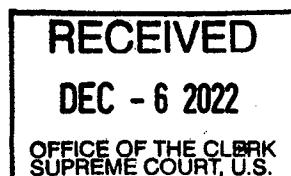
DUANE YATES -- PETITIONER

VS.

STATE OF IOWA – RESPONDENT

PETITION FOR REHEARING

Duane Yates
Pro Sé Litigant
P.O. Box 218
Newton, IA. 50208



The Petitioner, Duane Yates asks this Court for a rehearing on the merits of his case as it contains issues that pertain to the guarantees of the United States Constitution's Fourteenth Amendment pertaining to state laws that were not being followed by the Iowa District Courts upon sentencing in a criminal conviction.

The petition presented focused on the issues of the Iowa Courts and their inability to follow clearly established laws as enacted by the Iowa Legislators pertaining to restitution and the new law changes and the ability for all inmates, currently incarcerated to address the restitution orders that had previously not been heard in the courts for the content and charges being applied in these orders.

The inability to pay this restitution on court appointed counsel and the court costs was never addressed in this Petitioner's restitution plan that was unlawfully admitted months after the deadline was to be met by Iowa Code 910.7. This law said and the Iowa Rules of Criminal Procedure clearly state that any restitution amounts must be given to the court within 30 days of the sentencing if they are not available at or before sentencing. This Petitioner got his first notice of any restitution in February 2003. His sentencing was done in October 2002. This is well past the 30 days to file for any restitution in the State of Iowa as it pertains to a criminal sentence according to Iowa law. This is all explained in the writ.

The district court, 20 years later when the Petitioner filed for restitution hearing under the new laws and the Governor's Executive Order as presented in the Iowa Supreme Court dated 7/7/20 and is titled; "In Re the Matter of Interim Procedures Governing Ability to Pay Determinations and Conversions of Restitution Orders, Iowa Supreme Court order dated 7/7/20." See attached exhibit on the notice that was given out to all inmates on this new procedure to have their restitution addressed correctly.

The issues that this Petitioner has is that after a hearing as shown in the documents filed, the court did not make a determination of if he had the ability to pay restitution, but said in the order that because they had collected approximately \$3,000.00 in 20 years, the Petitioner could pay the restitution.

The application as presented clearly showed that this Petitioner was over 125% below the national poverty level as defined in the sanctioned court forms as provided by the Iowa Supreme Court, see the exhibit attached on this matter.

The Petitioner makes notice that most of his prison inmate account funds has been from gift money given to him by outside sources, mainly his family members at holidays and birthdays. As the Iowa courts have said an inmate's money in prison accounts is protected property under the Fourteenth Amendment of the U.S. Constitution. The issues that violate clearly established state law is that the Petitioner never had any hearing as provided by the due process of law on any of this at his initial sentencing and then almost 20 years later, he gets to have a hearing only to have the prosecutor and the court make a determination that because he has paid a little over \$3,000.00 in 20 years, he is able to pay this restitution. The Petitioner's restitution amounts that were charges in court in 2003 was about \$4,200.00. This makes the \$3,000.00 collected to be approximately, \$150.00 per year for 20 years. This shows that the Petitioner is clearly well below the 125% mark as it applies to his poverty level, and having to use all of his prison income money to buy hygiene, letter and mailing expenses, cop costs to address his legal issues with the court, this leaves nothing left and at times he has no money left at the end of each monthly pay period to do anything with.

Then the Iowa Courts do not make a proper determination by Iowa law and case law precedent on the procedures of being able to take restitution from his gift money. This was supposed to be done by in a deprivation hearing of which the prison was supposed to make notification of in the Iowa Department of Corrections (IDOC), policy AD-FM-06 and see also AD-FM-06 F-1, this policy clearly states that a "Pre-deprivation Notice" is to be given to the inmate prior to any deductions from his prison inmate account. The IDOC cannot produce any written documentation from this Petitioner's prison file or records to show that this was adhered to and makes the taking of any restitution and illegal and unlawful act done by a Iowa State agency and this illegal conduct is being supported by the Iowa Courts by not following the Iowa Codes pertaining to this action and the federal mandates as addressed in Yate's petition to this Court for redress of the illegal activity that is being allowed by the IDOC and the Iowa Courts.

To worsen the position of Yates, the court refused to follow the case law precedent of **State v. Hiatt** 939 N.W.2d 648 (Iowa App. 2019) of which non-wager assets in a prisoner's account are accorded a pre-deprivation hearing due to process protections; protections above and beyond

what the Iowa Code provides in regard to prison wages. Any funds seized without a pre-deprivation hearing must be returned.

The IDOC is to follow these steps; (1.) The prisoner is to be notified of the proposed amendment to their restitution plan including deductions from prison wages and where appropriate assessments against "outside sources" of non-wage assets, (2.) Time must be permitted for the inmates' objection to the proposed amendment and, (3.) The IDOC is to consider the objections in formulating an individualized plan for the future, **Hiatt** 939 N.W.2d 648 at Ft. Nt. 2 on signing a waiver under threats and duress the Iowa Supreme Court said they found no case law to support this act so they could not verify the right to this action. Yates has never had any pre-deprivation hearing and now to allow for the IDOC to backtrack and do a pre-deprivation hearing just to say one was done is not consistent with the Due Process of Law under the Fourteenth Amendment. Noting that there never has been any type of pre-deprivation hearing done with Yates at the prison. As the taking of any restitution money from outside sources as stated in IDOC policy AD-FM-06 and the notice form AD-FM-06 F-1 I (attached exhibits) is being done unlawfully and the Petitioner Yates asks that this court correct this injustice and unlawful action as a proper restitution hearing is needed that comports to the findings in **State v. Alspach** 554 N.W.2d 882, 884 (Iowa 1996). Where the Alspach court found that once a defendant gives back charges, corrects a sentence or other matters where the State lost, those charges are dismissed against the defendant. Yates as the Defendant has never had his restitution corrected for all of these sentencing errors and wrongful acts by the State as he had his sentence corrected for an illegal sentence in a Postconviction Action titled **Yates v. State**, PCCV144681 in the Iowa Court on 9/6/12. This PCR action was not appealed and was set for a resentencing hearing in **State v. Yates** FECR050208 of which this resentencing was appealed and Petitioner Yates won more relief in **State v. Yates** 852 N.W.2d 522 (Iowa App. 2014). Even at this stage of the proceedings the Iowa District Court failed to follow the Iowa law and the case law precedent of **Alspach** 554 N.W.2d at 884, correct the restitution or make a judicial notice of the reduction of sentence and that the restitution needed to be corrected as well. The reviewing court has an obligation to follow their own *Stare Decisis* as well.

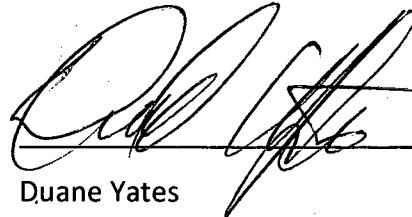
Because this Petitioner has never had a proper review of his ability to pay restitution and the facts that support his financial inability is that he had court appointed counsel at his criminal trial,

has had court appointed counsel at all his postconviction actions associated with this conviction, court appointed counsel for all appeals with this conviction and postconviction proceedings as provided by Iowa Code 815 and all the court files will show he has requested in forma pauperis status at all filings or applications for judicial review.

The unconstitutionality of the Iowa Courts in applying clearly established constitutional guarantees when it comes to having deprivation hearings before taking and inmate's funds from his prison account and the Iowa prosecutors overwhelming desire to do the same act upon inmates after the Iowa Governor and the Iowa Supreme Court have determined and address this matter was not being followed and the laws were amended needs to be addressed by this Court for adherency to the Iowa laws and the guarantees of the federal constitution that is provided to this Petitioner to have his restitution corrected under the Iowa Codes as written and amended needs this Courts discretionary review.

The Petitioner Yates is entitled to relief from these egregious actions of the Iowa Courts and he asks that this be addressed by this Court for the unconstitutional actions of the Iowa Courts in not adhering to the laws of Iowa.

Respectfully submitted,



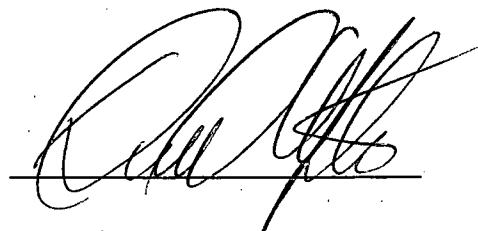
Duane Yates
P.O. Box 218
Newton, IA. 50208

CERTIFICATE OF SERVICE

I hereby state that on this 12th day of October 2022, I did serve one copy of the foregoing instrument on the Clerk of the United States Supreme Court, by first class mail, postage prepaid to the following address;

United States Supreme Court
1 First St. N.E.
Washington, D.C. 20543

Signed:



Duane Yates

IN THE SUPREME COURT OF THE UNITED STATES

DUANE YATES, Petitioner, vs. STATE OF IOWA, Respondent.

CASE NO; 21-8077

Petitioner, Duane Yates, Pro Se and for his Statement for Rehearing does state

Vs. STATE OF IOWA,

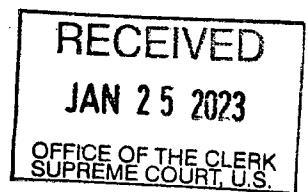
Respondent.

CERTIFICATE OF STATEMENT PER
RULE 44.2

COMES NOW, the Petitioner, Duane Yates, Pro Se and for his Statement for Rehearing does state that the grounds presented are limited to the intervening circumstances of the initial petition. The controlling factors are that Iowa Code 910 was violated on the restitution proceedings at trial and at the review phase that was authorized by the Iowa Supreme Court and the Iowa Governor's Office per the attached documents with this rehearing request. The Petitioner also makes judicial notice that his Petition involves constitutional matters of due process of law under the Fourteenth Amendment as it applies to the state's laws. These are the substantial and controlling factors of this rehearing as the Iowa Courts fail to follow the legislative intent along with the Governor of Iowa's directives to do so in the documents provided in the Appendix with this Rehearing Request and also in the original Petition.

The Petitioner makes this statement to the court in good faith and has no way acted in a manner to delay this Petition from being heard for any reason.

The Petitioner asks that this Court review this Petition for the errors of law that the Iowa District Courts and the Iowa Court Supreme Court has made in their rulings as provided.



IN THE SUPREME COURT OF THE UNITED STATES

DUANE YATES,

CASE NO; 21-8077

Applicant,

Vs.

STATE OF IOWA,

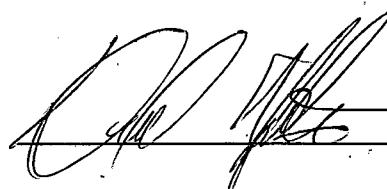
DESIGNATION OF APPENDIX

Respondent.

COMES NOW, the Applicant, Duane Yates, Pro Sé and cites the following documents for the Appendix to the Motion For Rehearing.

DOCUMENT	PAGE
1. A letter to the Appellate Defender's Office	1
2. Iowa Department of Corrections Policy AD-FM-06	3
3. Iowa Department of Corrections Form AD-FM-06 F-1	9

Respectfully submitted,



Duane Yates

CERTIFICATE OF SERVICE

I hereby state that on this 25th day of November, 2022, I did serve one copy of the foregoing instrument on the Clerk of the United States Supreme Court, by first class mail, postage prepaid, to the following address below;

United States Supreme Court
1 First St. N.E.
Washington, D.C. 20543-0001

Signed;



TO: Current clients of the Appellate Defender Office
RE: Changes in restitution law.
DATE: August 2020

On June 25, 2020, a new law made significant changes to criminal restitution requirements. This memo is intended to help you understand those changes.

Under the new law, there are three different types of restitution:

Pecuniary Damages: monetary damages to victims

Category A restitution: fines, penalties, or surcharges

Category B restitution: court-appointed attorney's fees, court costs, and crime victim assistance reimbursements

Whether or not a defendant can afford it, they must pay Pecuniary Damages and Category A restitution if it is ordered. But Category B restitution does not have to be paid if a defendant does not have the reasonable ability to pay it.

Under the new law, jail fees will now be treated as civil judgments and are no longer part of criminal restitution and subject to a reasonable-ability-to-pay analysis.

Before the law change, a defendant in a criminal case did not have to request a hearing on the reasonable ability to pay criminal restitution.

Under the new law, a defendant **must request** a hearing with the district court within **30 days** of entry of a restitution order. If the defendant does not, he or she gives up any claim that the defendant has no reasonable ability to pay. The defendant must file a completed financial affidavit as part of the request. At the hearing, the defendant has the burden to prove he or she cannot pay, otherwise the court will assume he or she can pay.

A defendant can ask the court to determine his or her reasonable ability to pay Category B restitution at or before sentencing. A restitution order entered at the time of sentencing is part of the final judgment and may be considered in an appeal.

The new law also no longer recognizes temporary or supplemental restitution orders – orders the district court may have issued before the full amount of restitution was known. Under the new law, even an incomplete restitution order is now considered a permanent restitution order. This means the order must be challenged within **30 days** if a defendant wants to claim he or she has no reasonable ability to pay.

All temporary and supplemental restitution orders that existed before June 25, 2020, in any case, are now transformed into permanent orders. If the restitution order contains language that indicates the judge was awaiting the determination of your ability to pay,

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See:

the State must file a motion to have the contingency language removed. The judge would then enter a new permanent restitution order. To have the court determine the defendant's reasonable ability to pay the Category B restitution, a defendant must request a hearing with the district court within **30 days** of entry of the new permanent restitution order or by **August 7, 2020** whichever date is later.

If a defendant does not request a hearing within **30 days** of the entry of an order, a defendant can only challenge the restitution order through a Section 910.7 petition at any time during the period of probation, parole, or incarceration. If the defendant is not on probation, parole or incarcerated for the case in which the restitution order was converted, the defendant must challenge the conversion through a Section 910.7 petition brought no later than **June 25, 2021**.

Enclosed is a **Financial Affidavit and Request for Determination of Ability to Pay**. If you want the district court determine your reasonable ability to pay the restitution orders that have now been converted, likely without consideration of your reasonable ability to pay, you must use these forms approved by the Supreme Court. Also enclosed is an application for court-appointed counsel.

If you have a restitution order as described above and are within the time period to seek a determination of your reasonable ability to pay, mail the completed forms as soon as possible to the district court in the county where you were convicted.

The State Appellate Defender Office does not represent clients in the district court or in Section 910.7 hearings.

Governor Reynolds Order on 7/7/20

See; In the Matter of Interim Procedures
Governing Ability to Pay Determinations
and Conversions of Restitution Orders

Iowa Sp. Ct. Order 7/7/20

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STATE OF IOWA DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURES		Policy Number AD-FM-06	Applicability <input checked="" type="checkbox"/> DOC <input type="checkbox"/> CBC
		Policy Code Public Access	Iowa Code Reference 904, 910 321.482
Chapter 1	Sub Chapter	Related DOC Policies	Administrative Code Reference
ADMINISTRATION & MANAGEMENT	FISCAL MANAGEMENT	N/A	201-20.11
Subject	ACA Standards	Responsibility	
RESTITUTION	4-4461-1	Brad Hier	
	Effective Date June 2014	Authority <i>John Baldwin</i>	

I. PURPOSE

To provide the Iowa Department of Corrections (IDOC) with guidance regarding cases in which the offender has fines or assessed court costs pending.

II. POLICY

It is the policy of the IDOC to ensure that offender court ordered restitution, including fines or court costs is collected within the scope of applicable state statutes and regulations.

CONTENTS

- A. Application
- B. Admission at Reception Center
- C. Community Supervision
- D. Restitution Payment Plan

E. Collection

III. DEFINITIONS – As used in this document:

- A. Criminal Activity – Any act determined by a court of proper jurisdiction to result in a plea of guilty, verdict of guilty, or special verdict upon which judgment of conviction is rendered, on or after July 1, 1982. However, criminal activities do not include simple misdemeanors under Code of Iowa Section 321.482.
- B. Fines, Penalties, Surcharges – Any financial assessment ordered by the court as a result of a criminal conviction.
- C. Pecuniary Damages – All damages to an extent not paid by an insurer which the victim could recover against an offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, pecuniary damages include damages for wrongful death.
- D. Restitution – Payment of pecuniary damages to a victim in an amount provided by the court ordered plan of restitution. Restitution shall also include fines, penalties and surcharges, the payment of crime victim assistance reimbursements, court costs, court-appointed attorney's fees, the expense of a public defender or the performance of a public service by an offender in an amount set by the court when no victim has suffered financial damages not paid by insurance and the offender cannot reasonably pay all or part of the court costs, court-appointment attorney's fees, or the expense of a public defender.
- E. Restitution Payment Plan – The schedule of payments IDOC has developed to comply with the court ordered restitution plan.
- F. Restitution Plan – The amount of restitution as set forth by the court.
- G. Victim – A person who has suffered physical, emotional, or financial harm as the result of a public offense or a delinquent act committed in this state. Victim may also include the immediate family members of a victim, members of a victim's household, and/or witnesses.
- H. Pre-deprivation Notice – A written notice to the offender of intent to deduct restitution from all account credits, and an opportunity to object.
- I. See IDOC Policy **AD-GA-16** for additional Definitions.

IV. PROCEDURES

A. Application

1. Under Code of Iowa Chapter 910 offenders with an offense date on or after July 1, 1982, shall make restitution as ordered by the sentencing court. IDOC shall ensure that a restitution payment plan is developed within a reasonable time following admission. **(4-4461-1)**
2. Through all levels of commitment, the restitution payment plan must follow the offender until all restitution obligations are paid in full. The restitution payment plan may be modified through each level of commitment, (including Pre-institutional Services, Institutional Services, and Post-institutional Services).
3. When an offender is serving more than one sentence which causes more than one restitution payment plan to be ordered by the court, IDOC shall develop a restitution payment plan for each case as ordered by the court. All payments shall be forwarded to the clerk of court in the county of conviction for distribution.

B. Admission at Reception Center

1. At the time of admission to the Iowa Medical & Classification Center (IMCC), each offender shall be provided a Pre-deprivation Notice, using **AD-FM-06 F-1** Notice of Intent to Deduct Restitution.
2. Offenders shall be given five calendar days to return the Pre-deprivation Notice. Failure to return the Pre-deprivation Notice within five calendar days shall constitute a no response by the offender and the outside source collections shall begin.
3. Following return of the Pre-deprivation Notice, IDOC shall review all the offender objections to restitution deductions and indicate if the objections are acceptable or not acceptable.
4. Restitution collections from outside sources shall not begin until IDOC reviews the Pre-deprivation Notice and the court information is reviewed for accuracy.

C. Community Supervision

The Iowa Court Information System shall be utilized to determine outstanding restitution balances when offenders are revoked from community supervision

(probation, parole, work release) or released to community supervision from the institution.

D. Restitution Payment Plan

1. The restitution payment plan, using **AD-FM-06 F-2**, Restitution Plan shall be prepared as soon as possible with copies sent to the offender, the offender master file, and the appropriate clerk of court.
2. The restitution payment plan shall consider the present circumstances of an offender's financial resources, physical and mental health, education, employment, family circumstances, and other legal/financial obligations. The payment plan amount may be reduced to less than the standard 20% to comply with court ordered child support or other legal financial obligations.
3. All financial resources/assets shall be considered in the payment process.
4. IDOC or designee shall oversee the restitution payment process and ensure the institution's compliance.
5. Restitution plans may be modified at any time subject to new information provided by the sentencing court or changes in the court's electronic information system.
6. A copy of each restitution payment plan, new or modified, must be sent to the clerk of court in the county of conviction.

Initially offender objections regarding the restitution payment plan must be addressed using **AD-FM-06 F-1**, Notice of Intent to Deduct Restitution, and shall be sent to the Iowa State Penitentiary, PO Box 316, Fort Madison, IA 52627-0316. Subsequent offender complaints regarding the restitution plan may be addressed through the institution offender grievance process.

E. Collection

1. Restitution collections are not limited to those cases/offenses for which the offender is currently incarcerated. If an offender discharges a sentence while incarcerated and continues confinement under another case, restitution collections shall continue. IDOC may re-implement a restitution plan for any previously established plan that still carries an outstanding balance.

2. Upon full payment of a restitution plan, records shall be maintained in ICON in the offender's master file.
3. All payments shall be forwarded to the clerk of court in the county of conviction.
4. Offenders may not substitute community service work for restitution payment while incarcerated unless specifically required by the sentencing court.
5. IDOC shall deduct restitution payments from all credits to an offender's account. The following shall be exempt for deductions from credits to an offender's account from an outside source:
 - a. An amount determined by IDOC or designee specifically for medical costs. The same percent as established in the restitution plan shall be deducted from any amount over the total amount assessed. If the medical procedures are not performed or carried out, the money shall be returned to the sender at the offender's expense.
 - b. An amount determined by IDOC or designee specifically for funeral trip costs. Any amount over the total amount assessed shall either be returned to the sender or placed on the offender's account with the same percent as established in the restitution plan deducted.
 - c. An amount as determined by the appropriate authority specifically for transportation fees as a result of work release/OWI violations or compact transfers. The same percent as established in the restitution plan shall be deducted from any amount over the total amount assessed.
 - d. Refunds from outside vendors or credits from institution commissaries.
 - e. Property tort claims.
 - f. Veterans Administration benefits as long as the VA benefit check is deposited with the IDOC.

- g. Amounts directed to be deposited in the offender telephone fund in Iowa Code 904.508A, sent to the offender from a source other than the IDOC.
- h. Any other exception, such as monies designated for approved educational expenses, shall be approved by IDOC or designee.

6. Restitution Plans may deduct up to 50% of any credit to an offender's account.
7. A percent greater than specified in the restitution payment plan may be deducted from an outside source by written authorization from the offender, or by court order.
8. IDOC or designee may authorize a greater percent than established in the restitution payment plan from a credit by an outside source not to exceed 50% after a Pre-deprivation Notice is provided.
9. When the IDOC has knowledge of other income or assets which are not deposited in an institution-controlled account, IDOC shall supply, in writing, any and all information to the clerk of court of the sentencing county.
10. All deductions shall occur prior to each posting. These deductions shall accumulate during each quarter of the year.
11. At the end of each quarter, the Iowa State Penitentiary shall submit to each county one lump sum payment with a list of all offenders and the amount of each offender's payment.
12. The Business Office at the Iowa State Penitentiary shall maintain up-to-date and accurate financial records of all offender deductions and payments.

PRE-DEPRIVATION NOTICE

NOTICE OF INTENT TO DEDUCT
RESTITUTION FROM ALL ACCOUNT
CREDITS AND NOTICE OF
OPPORTUNITY TO RESPOND

Institution: _____ Date: _____

Offender
Name: _____ Offender
Number: _____

Restitution Cause #(s): _____

Respective County(s): _____

You are hereby notified of the Iowa Department of Corrections (IDOC) intent to deduct the percent established in your current or future restitution plan(s) (including current or future legal obligation debts) from all credits to your offender account. These deductions will include monies received from outside sources. The only exceptions will be those provided in Iowa Administrative Code 201-20.11 and IDOC Policy **AD-FM-06** Restitution.

If you have objections to this procedure, you must state your reasons in writing and provide to your counselor within five calendar days of receiving this notice. If not returned within five calendar days, the IDOC will assume that you have no objections.

If this notice is being provided in accordance with IDOC Policy **AD-FM-06** Restitution, Sections IV-B and IV-E, enter the percent of deduction: _____ %

Offender Signature _____ Date _____

Witness _____ Date _____

WARDEN'S/SUPERINTENDENT'S REVIEW

Offender's Objections Accepted Not Accepted No Response

Warden/Superintendent _____ Date _____

IDOC Review

IDOC Representative _____ Date _____

Replaces: AD-CR-03 F-1
Origination: June 2013. Reviewed: Feb. 2014. Revised: Dec. 2014.

AD-FM-06 F-1

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IN THE SUPREME COURT OF THE UNITED STATES

DUANE YATES,

CASE NO; 21-8077

Applicant,

Vs.

MOTION TO PROCEED IN FORMA
PAUPERIS

STATE OF IOWA,

Respondent.

COMES NOW, the Applicant, Duane Yates, Pro Sé and for his motion does move the court to grant him in forma pauperis status as he has been granted in forma pauperis for this action on initial filing and on other federal court actions bearing his name. His indigent status has not changes as the Applicant is still currently in prison at the Newton Correctional Facility in Newton, Iowa.

The Applicant moves for in forma pauperis status pursuant to Rule 39 and the directive of Rule 44(1) on a person in prison asking for this relief for the accompanying Motion for Rehearing.

The applicant has already filed the necessary documents to ascertain what is in his prison account along with the writ and the appendix to this writ. Due to the Thanksgiving holiday the prison's offices are closed and most of the administration took vacation days. For the Applicant to be timely in returning this Motion for Rehearing to the court, he had to get it copied at the library which did remain open over the holiday weekend as it is primarily staffed by inmates and put it in the mail as he did not receive it in the mail until Tuesday, 11/22/22. The Applicant asks that the court take this into consideration when determining his in forma pauperis status.

The Applicant moves the court to grant him in forma pauperis status for the accompanying motion.

WHEREFORE, the Applicant prays to the court to grant this motion in its entirety and any other relief deemed necessary and just.

Respectfully submitted,

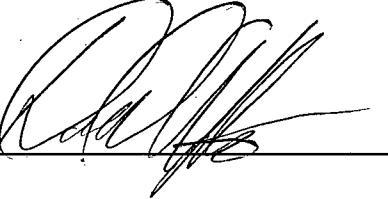


Duane Yates, Pro Sé Litigant
P.O. Box 218
Newton, IA. 50208

CERTIFICATE OF SERVICE

I hereby state that on this 25th day of November, 2022, I did serve one copy of the foregoing instrument on the Clerk of the United States Supreme Court, by first class mail, postage prepaid, to the following address below;

United States Supreme Court
1 First St. N.E.
Washington, D.C. 20543-0001

Signed; 

IN THE
SUPREME COURT OF THE UNITED STATES

DUANE YATES -- PETITIONER

VS.

STATE OF IOWA -- RESPONDENT(S)

PROOF OF SERVICE

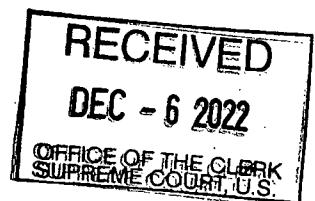
I, Duane Yates, do swear or declare that on this date, November 25, 2022, as required by the Supreme Court Rule 29, I have served the enclosed MOTION FOR REHEARING AND ACCOMPANYING APPENDIX on The Clerk of the United States Supreme Court by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows;

Clerk of the United States Supreme Court
1 First Ave. N.E.
Washington, D.C. 20543-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 25, 2022



Duane Yates

IN THE SUPREME COURT OF THE UNITED STATES

DUANE YATES,

CASE NO; 21-8077

Petitioner,

Vs.

JUDICIAL NOTICE OF MAILING

STATE OF IOWA,

Respondent.

COMES NOW, the Petitioner, Duane Yates, Pro Sé and for his Notice of Mailing does state to the court that he received the return Rehearing Petition with the Clerk of Court's letter dated 12/19/22 in it on 12/27/22 when the mail was passed out at the prison.

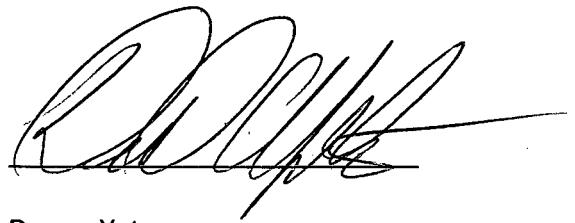
This mailing is timely filed as the Petitioner is putting it in the prison mail and pursuant to 28 U.S.C. 1746 the Mailbox Rule and **Houston v. Lack** 487 U.S. 266, 275, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988).

The Petitioner states that the mail in Iowa was delayed due to a huge snow storm and the Christmas holidays when the IDOC staff took from Thursday 12/22/22 to 12/26/22 off for the holidays. The first mail handed out was on 12/27/22.

The Petitioner has worked on the errors and corrections throughout the evening of 12/27 and the morning of 12/28 to get these corrections in the mail in a timely manner.

The Petitioner asks that the Court take this into consideration when receiving this parcel of mail.

Respectfully submitted,



Duane Yates
Pro Sé Litigant
P.O. Box 218
Newton, IA. 50208

CERTIFICATE OF SERVICE

I hereby state that on this 28th day of December 2022, I did serve one copy of the foregoing instrument on the Clerk of the United States Supreme Court, by first class mail, postage prepaid to the following address;

United States Supreme Court
1 First St. N.E.
Washington, D.C. 20543

Signed: 

Duane Yates