

Docket No. 22-5725

ORIGINAL

SUPREME COURT

OF THE

UNITED STATES

Marty Banghart, Petitioner, Pro se.

Supreme Court U.S.  
FILED

SEP 14 2022

OFFICE OF THE CLERK

V

Doug Clark, Acting Warden, South Dakota State  
Penitentiary; Attorney General of the State  
of South Dakota, Respondent's

"On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Eighth  
Circuit"

"Petition for Writ of Certiorari"

Circuit Court of Appeals for the Eighth Circuit No. 22-1633

District Court of South Dakota No. 4:21-CV-04066-KES

Marty Banghart, Pro se, 1412 Wood St, Springfield

South Dakota, 57062

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## Question Presented for Review.

Is a Respondent in a Writ of Habeas Corpus 28:2254 action required to attach all pertinent state court records, including any trial transcripts to its answer/response and serve such on the petitioner?

As the United States Court of Appeals for the Eighth Circuit denied Banghart's Motion for Certificate of Appealability on:  
Issue #4, "District Courts Failure to address Respondents/Appeller's Motion as incomplete as no transcripts were attached to Banghart's served copy of Respondents/Appellee's response and District Court denied Banghart's Motions to Compel improperly" was in conflict with the Fourth, Fifth and Eleventh Circuit Courts of Appeal and an abuse of discretion.

## List of all known Parties

Marty Joe Banghart, Petitioner

VS

Doug Clark, Acting Warden and The Attorney General  
of the State of South Dakota, Respondent's

Attorney of Record for Respondents:

Jennifer M. Jorgenson, 1302 E. Highway 14,  
Suite 1, Pierre S.D 57501

List of all Proceedings

"Case for Certiorari Review"

United States Court of Appeals

For the Eighth Circuit

|                                                                                     |                               |
|-------------------------------------------------------------------------------------|-------------------------------|
| Marty Joe Banghart,<br>Petitioner/Appellant                                         | No. 22-1633                   |
| V                                                                                   | Appeal from U.S. District     |
| Doug Clark, Acting Warden, South                                                    | Court for The District of     |
| Dakota State Penitentiary;                                                          | South Dakota - Southern       |
| Attorney General of the State of                                                    | "Certificate of Appealability |
|  | Denied"                       |
| South Dakota                                                                        | Date of Judgment:             |
| Respondents/Appellee's                                                              | July 07, 2022                 |

# United States District Court

## District of South Dakota - Southern Division

|                                                      |                                                                         |
|------------------------------------------------------|-------------------------------------------------------------------------|
| Marty Joe Banghart,<br>Petitioner                    | No. 4:21-cv-04066-KES                                                   |
| VS                                                   | 2022 U.S. Dist. Lexis 31662                                             |
| Doug Clark, Acting Warden<br>and Attorney General of | Order adopting Report and<br>Recommendation and<br>Dismissing Petition. |
| the State of South Dakota<br>Respondent's            | Date of Judgment:<br>February 23, 2022.                                 |

## United States Court of Appeals

### For the Eighth Circuit

|                                                                                                                                              |                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| Marty Joe Banghart<br>Petitioner/Appellant                                                                                                   | No. 22-1200                                                                              |
| V                                                                                                                                            | Dismissing Interlocutory<br>Appeal from District Court                                   |
| Doug Clark, Acting Warden, South<br>Dakota State Penitentiary;<br>Attorney General of the State<br>of South Dakota<br>Respondents/Appellee's | (D.C. Docket #23) case #<br>4:21-cv-04066-KES<br>Date of Judgment:<br>February 01, 2022. |

IN the Supreme Court of

The State of South Dakota

Marty Banghart,  
Petitioner

# 29405

VS

Order denying "Motion For  
Certificate of Probable Cause"

Darin Young, Warden

Date of Judgment:

South Dakota State

26<sup>th</sup> Day of February, 2021

Penitentiary

Respondent

State of South Dakota

IN Circuit Court

County of Lincoln

Second Judicial Circuit.

Marty Banghart,  
Petitioner

CIV 17-100

V

Order Denying "Motion For  
Certificate of Probable  
Cause"

Darin Young, Warden,

South Dakota State

Date of Judgment:

Penitentiary

Respondent

19<sup>th</sup> Day of August, 2020

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|                                                   |                                                             |
|---------------------------------------------------|-------------------------------------------------------------|
| State of South Dakota                             | IN Circuit Court                                            |
| County of Lincoln                                 | Second Judicial Circuit                                     |
| Marty Banghart,<br>Petitioner                     | 41 CIV 17-100                                               |
| Vs                                                | Order of Dismissal for "Writ<br>of Habeas Corpus Petition". |
| Darin Young, Warden                               | Date of Judgment:                                           |
| South Dakota State<br>Penitentiary,<br>Respondent | 21st Day of July, 2020                                      |

In the Supreme Court of  
the State of South Dakota

|                                              |                                                          |
|----------------------------------------------|----------------------------------------------------------|
| State of South Dakota,<br>Plaintiff/Appellee | # 27757                                                  |
| Vs                                           | Order Dismissing Appeal                                  |
| Marty Banghart,<br>Defendant/Appellant       | Date of Judgment:<br>11 <sup>th</sup> Day of August 2016 |

State of South Dakota

In Circuit Court

County of Lincoln

Second Judicial Circuit

State of South Dakota,  
Plaintiff

41 CRI 14-000648

VS

## Judgment and Sentence

Marty J. Banghart  
Defendant

Date of Judgment:

28<sup>th</sup> Day of January, 2016

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## Table of Authorities

1.) Fla. Dep't of Corre. v. Rodriguez, 2015 U.S.

LEXIS 679, 574 U.S. 1122, 135 S.Ct. 1170, 190

La. Ed. 2d 913, 83 U.S. L.W. 3608 (U.S. January

20, 2015)

Petition for writ of certiorari to the United States

Court of Appeals for the Eleventh Circuit denied

2.) Rodriguez v. Fla. Dep't of Corre., 748 F.3d 1073,

2014 U.S. App. LEXIS 6327, 24 Fla. L. Weekly

Fed. C 1189, 2014 WL 1344466 (11th Cir. Fla.

April 7, 2014)

3.) Sixta v. Thaler, 615 F.3d 569, 2010 U.S. App.

LEXIS 17272 (5th Cir. Tex. August 19, 2010)

4.) Thompson v. Greene, 427 F.3d 263, 2005 U.S.

App. LEXIS 23002 (4th Cir. Md. October 25,

2005)

## Citations of Official Reports

1.) Banghart v. Young, 2021 U.S. Dist. LEXIS

72935 (D.S.D. April 15, 2021)

2.) Banghart v. Clark, 2021 U.S. Dist. LEXIS

253900, 2021 WL 7449486 (D.S.D. December 13,  
2021)

3.) Banghart v. Clark, 2022 U.S. Dist. LEXIS

31662, 2022 WL 538813 (D.S.D. February 23,  
2022)

## Basis for Jurisdiction

On July 07, 2022, The United States Court of Appeals for the Eighth Circuit entered its final Judgment on Case No. 22-1633, to deny Banghart's Application for a Certificate of Appealability and dismissed Appeal.

This Petition For Writ of Certiorari is filed under This Courts Rule 10(a): (App 2F/TOCP 118) "a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter;

### Statutory Provision:

USCS Supreme Ct. R 10, Confers this Court Jurisdiction to review on Writ of Certiorari under Rule 10(a): a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; (App 2 I /TOL p 118)

The Judgment in Question was entered on July 07, 2022 from the United States Court of Appeals for the Eighth Circuit and is the Final Judgment on Case No. 22-1633 which Denied Bangharts Application For a Certificate of Appealability and dismissed Appeals

## Constitutional Provision and Statutory Rules

1.) USCS Const. Amend. 14, Part 1 of 15

Sec. 1 (nor deny to any person within its jurisdiction the equal protection of the laws.)

Due Process Clause: (App. 2 F/TOC p 120)

2.) USCS Fed Rules Civ Proc R 1

(App. 2A/TOC p 104)

3.) USCS Fed Rules Civ Proc R 81

(App. 2B/TOC p 105 to 107)

4.) USCS Sec. 2254 Cases R 5

(App. 2C/TOC p 108, 109)

5.) USCS Sec. 2254 Cases R 6

(App. 2D/TOC p 110)

6.) USCS Sec. 2254 Cases R 12

(App. 2E/TOC p 111)

7.) USCS Fed Rules Civ Proc R 5

(App. 2F/TOC p 112 to 115)



8.) USCS Fed Rules Civ Proc R 7

(App. 2G/TOC p 116)

9.) USCS Fed Rules Civ Proc R 10

(App. 2H/TOC p 117)

10.) USCS Supreme Ct R 10

(App. 2I/TOC p 118, 119)

## Facts Material to Consideration

26 February 2021; Supreme Court of the State of South Dakota entered final Judgment denying Banghart's "Motion for Certificate of Probable Cause" (LOP/TOC p. 6) which exhausted all state court remedies and transfers jurisdiction to the Federal District Courts.

15 April 2021; Banghart filed Petition for Writ of Habeas Corpus pursuant to 28: 2254 with the United States District Court of South Dakota - Southern No. The petition survived initial review and Magistrate Duffy issued Order (App. 1A/TOC p. 43, 44) requiring "Respondent to file a response within 30 days, with all pertinent State Court Records, including any trial transcripts." Judge Duffy's order was transmitted to "15" state employee's, including Respondent, that were listed on the State of South Dakota's Electronic Filing Record.

19 July 2021; Respondent filed a response / Answer

95 days after service of Judge DUFFY's Order.

Respondent did not attach "any transcripts" to Banghart's served copy of the response / answer.

28 July 2021; Banghart filed "Motion to Compel" Discovery

of the transcripts that Respondent identified to the

Court as relevant for Judicial Notice Request and

stated in "Memorandum in Support of Motion to Dismiss"

(Case 4:21-cv-04066-KES, Doc ID filed 07/19/21, page 3 of

35 Page ID #:79.) This Judicial Notice Request to the

Court left Banghart the only party in this action

without a copy of the State Records encompassing

this action.

28 July 2021; Magistrate Judge DUFFY promptly denied

Banghart's "Motion to Compel" with the statement "Mr

Banghart's reliance on Rule 5(c) of the Rules Governing

2254 Habeas Petitions does not apply here. The

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Respondent has not filed an "answer" as required to trigger the requirements of Rule 5(c), but rather has filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12e<sup>1)</sup>

12 August 2021; Banghart filed response to Respondents "Motion to Dismiss." Banghart's response clearly outlines that Banghart's response cannot be an informed response without copies of the transcripts that the Respondent has referenced in his Motion to Dismiss and Memorandum in Support of Motion to Dismiss.

Banghart also clearly stated that not having the transcripts severely prejudiced his response.

31 December 2021; Magistrate Judge Duffy filed her Proposed Report and Recommendation.

05 January 2022; Banghart filed Motion to Renew Denied: Motion to Compel Discovery (Doc 13)

07 January 2022; United States District Judge Karen E.

Schreier promptly denied Motion stating: "under Rule 6(a) good cause has to be shown before discovery will be authorized" I would have to believe that "Rule 5(c) of the Rules Governing Section 2254 Cases as authority for his request" as stated in Order denying Motion to Compel would offer a clear cut Rule 6(a) good Cause.

21 January 2022, Banghart filed "Notice of Interlocutory Appeal" to the United States Court of Appeals for the Eighth Circuit, No. 22-1200 for order denying "Motion to Compel" Dated 01/07/22. Court of Appeals promptly denied this Appeal based on "lack of Jurisdiction because District Court has not yet issued a final ruling". This leaves the question why? When an Interlocutory Appeal is based on an order issued while the case is still active and the clear outcome was, I would not be able to remedy the

Issue after the District Court entered final ruling.  
Banghart promptly filed objections to Magistrate DUFFY's  
Report and Recommendations. Again outlining Banghart  
had no way to offer any informed response.

23 February 2022; United States District Judge  
Karen E. Schreier issues Order Adopting Report and  
Recommendation and Dismissing Petition and  
denying Certificate of Appealability.

21 March 2022; Notice of Appeal filed with the United  
States Court of Appeals for the Eighth Circuit, No. 22-1633.  
Notice of Appeal was a "Motion for: Certificate of Appealability  
and Certificate of Service," which included Issue #4 which  
encompasses the question for review on Petition for  
Writ of Certiorari, to the Supreme Court of the  
United States.

07 July 2022; U.S. Court of Appeals for the Eighth Circuit,  
No. 22-1633, Certificate of Appealability denied, Appeal Dismissed.

## Argument

Banghart argues that Respondent must attach all relevant transcripts to its answer / response that is served on Petitioner. Banghart's argument encompasses, Statutory Rules, Due Process Clause of the United States Constitution and Case Authorities.

Banghart presented a Motion for Certificate of Appealability (App 3C / TOC p. 129 to 148) to the United States Court of Appeals for the Eighth Circuit (COA) on 21 March 2022 to which it included:

Issue # 4, (Pages 16 to 20 of Motion for Certificate of Appealability) (App 3C / TOC p. 144 to 148) "District Courts Failure to address

Foot Note 1 - Abbreviations: United States Court of Appeals for the Eighth Circuit (COA), Table of Authorities (TOA)

Table of Contents (TOC), Appendix (App), United States District Court of South Dakota-Southern (DC).

Respondent's / Appellee's Motion to dismiss as  
incomplete as no transcripts were attached to Bangharts  
Copy of Respondents/Appellee's Response and District  
Court denied Bangharts Motions to Compel improperly."

The Statutory Rules that will be referenced  
throughout this argument will include:

USCS Fed. Rules Civ Proc R1 (App 2A/TOC p104)

USCS Fed. Rules Civ Proc R81 (App 2B/TOC p105 to 107)

USCS Sec 2254 Cases R5 (App 2C/TOC p 108, 109)

USCS Sec 2254 Cases R6 (App 2D/TOC p 110)

USCS Sec 2254 Cases R12 (App 2E/TOC p 111)

USCS Fed Rules Civ Proc R5 (App 2F/TOC p 112 to 115)

USCS Fed Rules Civ Proc R7 (App 2G/TOC p 116)

USCS Fed Rules Civ Proc R10 (App 2H/TOC p 117)

USCS Supreme Ct R10 (App 2I/TOC p 118, 119)

Due Process Clause/USCS Const. Amends 14 Part 1 of 15

(App 2J/TOC p 120)

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All of which are set out in verbatim in the Appendix as so noted.

The Cases referenced will include:

Fla. Dept of Corre V. Rodriguez (TOA 1/TOC p 12)

Rodriguez V Fla. Dept of Corre (Rodriguez) (TOA 2/TOC p 12)

Sixta V Thaler (Sixta) (TOA 3/TOC p 12)

Thompson V. Greene (Thompson) (TOA 4/TOC p 12)

Banghart contends that the 8th COA failed to properly review and grant a Certificate of Appealability on the contention that the 8th COA is in "Conflict" with three sister Circuit Courts of Appeal on almost identical issues that the 4th COA, 5th COA and the 11th COA have clearly addressed as follows;

The 4th COA in Thompson (TOA 4/TOC p 12) limited its discussion and opinion to reliance on Habeas Rule 5, (App 2C/TOC p 108, 109) and Civil Rule's 5(a) (App 2F/

TOCP 112 ) and 10(c) (App 2H/TOCP 117) to conclude

in Opinion at:

111(A)(3) Last Sentence;

"In ruling as we do today, we join these courts and commentators and conclude that the Attorney General is required to serve his answer, including Exhibits, on Thompson."

Conflict: Banphart thoroughly outlined Habeas Rule 5(c) (App 2C/TOCP 108) in his Motions to Compel, District Court Doc 13 (App 3A/TOCP 121-124) and Doc 22 (App 3B/TOCP 125 to 128) and clearly outlined to the 8th COA in Motion For Certificate of Appealability, page 16 of 20 (App 3C/TOCP 144). The Courts in Thompson, Sixta and Rodriguez all conclude that Civil Rule 5 (App 2F/TOCP 112 to 115) and Civil Rule 10 (App 2H/TOCP 117) all support the Habeas Rule 5 (App 2C/TOCP 108, 109) requirements to serve answer and all attachments/relevant transcripts on

Petitioner.

The 5th COA in Sixta (TOA3/TOCP12) goes more in depth in its discussion of the rules used in their decision.

Opinion:

### III. Discussion

Paragraph 2; Fed R Civ P 1 (App 2A/TOCP104) "These rules govern procedure in all civil actions and proceedings in the United States District Courts."

When they conflict the Habeas Rules Control, see

Habeas Rule 12 (App 2E/TOCP111) ("the Federal Rules of Civil Procedure, to the extent that they are not

inconsistent with any Statutory Provisions or these Rules, may be applied to a proceeding under these

rules") Fed R Civ P 81(a)(4)(A), (App 2B/TOCP 105)

("These rules apply to proceedings for Habeas Corpus

... to the extent that the practice in these

proceedings... is not specified in a Federal Statute, the Rules Governing Section 2254 Cases or the Rules Governing Section 2255 Cases").

Conflict: Banghart clearly outlined Fed R Civ P 1 (App 2A/TOC p 104) and 81 (App 2B/TOC p 105 to 107) in his Motion for Certificate of Appealability to the 8th COA, page 18 of 20 (App 3C/TOC p 146)

Paragraph 3; "Habeas Rule 5(c)" (App 2C/TOC p 108)

"Requires that the answer indicate what transcripts... are available, when they can be furnished and what proceedings have been recorded but not transcribed. Finally, also under Habeas Rule 5(c), the Respondent must attach to the answer parts of the transcript that the respondent considers relevant."

Conflict: Banghart thoroughly outlines "Habeas Rule 5(c)" (App 2C/TOC p 108) in District Court Doc 13,

(App 3A/TOCP 121 to 124 ) Doc 22 (App 3B/TOCP 125 to 128 ) and Motion for Certificate of Appealability to the 8th COA page 16 to 19. (App 3C/TOCP 144 to 147 )

Paragraph 4; "When the respondent does, in fact, attach exhibits to the answer, there can be little dispute that those exhibits must be served together with the answer itself on the habeas petitioner." Civil Rule 5 (a) (App 2F/TOCP 112 ) provides that "a pleading filed after the original complaint" "Must be served on every party." In turn Civil Rule 7 (App 2G/TOCP 116 ) lists "an answer to a complaint" as a "pleading" and Civil Rule 10 (c) (App 2H/TOCP 117 ) provides that "a copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." Considered together, the rules plainly require that the Respondent serve both the answer and any exhibits attached thereto on the habeas petitioner."

Conflict: Civil Rule 5(a), (App 2F/TOCP 112 ) 7  
(App 26/TOCP 116 ) and 10 (c) (App 24/TOCP 117) as  
stated provide the requirement that District Court  
in "District Court Doc 14" (App 3D/TOCP 149) "denying  
(Doc 13) Motion to Compel" (App 3A/TOCP 121 to 124) has  
a clear and defined Conflict outlined in Motion  
for Certificate of Appealability to the 8th COA,  
where Magistrate Judge DUFFY clearly states  
"Banghart's reliance on 5(c) of the rules governing  
2254 Habeas petitions does not apply here" page 17  
OF 20 (App 3C/TOCP 145) "The respondent has not filed  
an "Answer" as required to trigger the requirements of  
Rule 5(c) but rather has filed a Motion to Dismiss  
Pursuant to Fed R Civ P 12" (Page 18 OF 20 (App 3C/TOCP  
146). Even though Banghart rejects that response,  
Judge DUFFY would still be required under The Fed.  
R. Civ. P. Rule 5(a) (App 2F/TOCP 112 ) and 7 (App 26

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/TOCP116) and 10(C) (App 24/TOCP117) to require all documents referenced in Respondents Motion to Dismiss and Memorandum in Support, be attached and served on Banghart, which would include all relevant /referenced transcripts.

Paragraph 5; "We thus agree with the Fourth Circuits decision in Thompson v Greene, 427 F.3d 263 (4th Cir 2005) (TOA 4/TOCP12) which also reached this conclusion."

Paragraph 7; Last Sentence:

"We thus leave open the possibility that the respondent was procedurally or Constitutionally required to attach some portions of the State Court Records as exhibits to the answer, and then to serve those exhibits together with the answer pursuant to the applicable procedural rules."

Conflict: This in itself doesn't present a direct conflict

but leaves an important issue unresolved and open to Abuse of Discretion as in Banghart's case.

The United States Court of Appeals for the Eleventh Circuit covers this "Question being Reviewed" with a high level of entirety and with detailed and clear rulings for the 11th Circuit District Courts to Apply.

Rodriguez v. Fla. Dep't of Corr., 748 F.3d 1073, 2014 U.S. App. LEXIS 6327, 24 Fla. L. Weekly Fed. C 1189, 2014 WL 13444 66 (11th Cir. Fla. April 7, 2014). (TOA 2/TOC p 12)

Opinion:

Section 11:

Paragraph 3: "After careful consideration, we conclude that a state is required to serve a petitioner with its answer to a § 2254 petition. Most important to this case, we also conclude that any exhibits



or documents that are referenced in the answer and filed with the court are part of the answer, whether the filings are made together or at different times."

Conflict: Banghart thoroughly outlined in 8th COA's Motion for Certificate of Appealability (App 3C/TOCP 129 to 148 ) through Civil Rules and Habeas Rules that Respondent should have provided or been compelled to provide relevant transcripts to Banghart.

Section A: "We are mindful at the outset that there are two sources of procedural rules in § 2254 proceedings. The primary source is the Rules Governing Section 2254 Cases in the United States District Courts ("Habeas Rules"). However if the Habeas Rules do not fully delineate the proper procedure, or if requirements under these Rules are not clear, Courts may turn

to the Federal Rules of Civil Procedure ("Civil Rules") to fill in any procedural gaps and resolve lingering ambiguities, see Rules governing § 2254 cases, R12 (App 2E/TOC p111) ("The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any Statutory Provisions or these rules, may be applied to a proceeding under these rules"); Fed. R. Civ. P. 81(a)(4) (App 2B/TOC p. 105) ("These rules apply to proceedings for habeas corpus... to the extent that the practice in those proceedings... is not specified in a federal statute, the Rules Governing Section 2254 cases, or the Rules Governing Section 2255 cases..."). Because the Civil Rules relevant to the resolution of this case are not inconsistent with the Habeas Rules or any other Statutory Provision, we draw on both sources in making our decision, just as our sister Circuits that have

Considered this question have also done. See *Sixta v. Thaler*, 615 F.3d 569, 572 (5th Cir. 2010) (TOA 3/TOC p 12) ("relying on Civil Rules 5(a), (App 2 F/TOC p 112) 7, (App 2 G/TOC p 116) and 10(c) (App 2 H/TOC p 117) to conclude that "the rules plainly require that the respondent serve both the answer and any exhibits attached thereto on the habeas petitioner"); *Thompson v. Greene*, 427 F.3d 263, 268-269 (4th Cir. 2005) (relying on Civil Rules 5(a) (App 2 F/TOC p 112) and 10(c) (App 2 H/TOC p 117) to reach the same conclusion.)

### Section B:

Paragraph 3: "We next ask whether documents filed separately from the answer, but referred to in it, are considered part of the answer and are therefore also subject to the service requirement. The Answer to this question under Civil Rules is clearly yes. The Civil Rules provide that any "written instrument

that is an exhibit to a pleading is a part of the pleading for all purposes." Fed. R. Civ. P. 10(c), (App 2H/TOCp117). Because the Civil Rules require service of all pleadings, it follows that the exhibits to the pleading must also be served, regardless of whether they were filed at the same time. None of the Habeas Rules are inconsistent with this Civil Rule Service requirements. What is more, we can conceive of no reason that these requirements, which cement "an elementary step in litigation in our judicial system"; see Thompson, 427 F.3d at 268, (TOA 4/TOCp 12) should not apply with equal force in the habeas context. see Rules Governing § 2254 Cases, R 12; (App 2E/TOCp 111) see also Sixta, 615 F.3d at 572 (TOA 3/TOCp 12) ("considered together, the rules plainly require that the respondent serve both the answer and any

exhibits attached thereto on the habeas petitioner").

Conflict: Banghart outlined this in D.C. Doc 13 and

Doc 22 and Motion for Certificate of Appealability

to the 8th COA, (App 3A, B, C / TOC p129 to 148 ) where

Respondent requested by Verbal Motion to the Court

to take Judicial Notice of the entire state records

to satisfy Respondents filing requirement of the

transcripts to the Court. This alone is filing at a

separate time, the transcripts with the Court and

which shows that the 8th COA is in conflict with

this ruling in Rodriguez (TOA 2 / TOC p12) by denying

Bangharts Motion for Certificate of Appealability (App 3C /

TOC p129 to 148).

Paragraph 5; "The District Court, in a single order, dismissed

Mr Thompsons (TOA 4 / TOC p12) habeas claims and denied

his Motion to Compel production of the States exhibits.

Id. The Fourth Circuit found this to be not only

repugnant to the Habeas and Civil Rules, but also inconsistent with the Due Process Clause of the United States Constitution (App 25/TOC p120) as well as the basic tenants of our adversarial system.<sup>11</sup> Id. at 268-269 and N.7.

Conflict: The 8th COA is in conflict with this ruling by denying Banghart's Motion for Certificate of Appealability, which clearly outlined that Banghart had attempted from the start of this action to compel the Respondent to produce the relevant transcripts as required.

Paragraph 6; The reasoning in Thompson (TOA 4/TOC p12) persuaded our colleagues on the Fifth Circuit who decided Sexta (TOA 3/TOC p12). It persuades us, too. So today we join our sister Circuits in recognizing that, even in the § 2254 context, a party referencing filed exhibits in a pleading must provide copies of

these exhibits to the other Parties. This bedrock principle promotes both efficiency and fairness in Civil litigation."

Conflict: The 8th COA is in Conflict with 3 Circuit Courts of Appeal as identified and this is in Conflict with the Bedrock Principle of Promoting both efficiency and FAIRNESS in Civil Litigation.

### Conclusion

Upon Fla. Dep't of Corr. (TOA1/TOCP12) receiving the adverse decision in Rodriguez v Fla. Dep't of Corr. (TOA2/TOCP12) they submitted a petition for Writ of Certiorari to the Supreme Court of the United States, to try and overturn the most clear and concise opinion on the Habeas and Civil Rules equivalent to the "Basic Tenants of our Adversarial System" and the "Due Process Clause

of the United States Constitution," in any Appeals Court to date. The Supreme Court denied the Petition which does not mean it "affirmed" the 11th COA's decision but it can be construed by most as a silent affirmation.

So with Banghart's Petition for Writ of Certiorari, he respectfully requests This Court to remain silent no longer and implement the "Specific Guidance" needed to ensure all citizens of The United States have fair and equal treatment in all Federal Courts, which is a tenant of the United States Constitution, not just in the 4th, 5th and 11th Circuit Courts of Appeal Circuits.

I also respectfully request if this Court entertains my Petition and finds in my favor that This Court grant me leave to proceed with my case in any other Circuit but the 8th Circuit.



This being due to an in-grained Bias as both the District Court and Appeals Court of the 8th Circuit have ruled that they have "Fully" reviewed the entire record and ruled adversely. With the adverse rulings they have implied I have nothing from the record that I could submit that would change the outcome they have already decided. I Strongly Disagree with that inference but this in itself severely prejudices me in this action as each Court has prior exparte Knowledge of the case which compromises the fair and impartial standard of the Court to look at each case only with the knowledge received during the action being reviewed. Each Court has ruled improperly without any informed response from me.

If any document is referenced and not included by inadvertent omission, in this Petition, all documents

Date and Signature Page

are a part of the permanent record of the  
U.S. District Court or the Court of Appeals  
for the Eighth Circuit.

*Marty Banghart*

Marty Banghart, Pro se

1412 Wood St

Springfield, South Dakota 57062

Date: 13<sup>th</sup> Day of September, 2022

*Tiffany Voigt*

Subscribed and sworn to me this  
13 day of September, 2022

My Commission Expires Apr. 4, 2024

