

NOV 01 2022

OFFICE OF THE CLERK

No. 22-6239

IN THE
SUPREME COURT OF THE UNITED STATES

NICHOLAS STEWART HIWES — PETITIONER
(Your Name)

vs.

DENNY KREMINGK, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

US COURT OF APPEALS FOR THE EIGHTH CIRCUIT *22-1852
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

NICHOLAS STEWART HIWES
(Your Name)

410 WALNUT, STE 104
(Address)

YANKTON SD 57078
(City, State, Zip Code)

- NA -
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. IS A PRISONERS' RIGHT TO ACCESS A COUNTY COURT HOUSE AND PUBLIC RECORDS UNDER THE FIRST AND FOURTEENTH AMENDMENTS DIFFERENT THAN A REGULAR CITIZEN?
2. CAN A YANKTON COUNTY JUDGES' ISSUE A "POLICY" OR "ADVISEMENT" TO THE YANKTON COUNTY CLERK OF COURTS, TO ONLY COMMUNICATE WITH A PRISONERS' LAWYER AND NEVER THE PRISONER, WITHOUT VIOLATING A PRISONERS' RIGHT TO ACCESS THE COURTS, RIGHT TO ACCESS JUDICIAL DOCUMENTS, RIGHT TO DUE PROCESS, AND RIGHT TO EQUAL PROTECTION OF LAW UNDER THE FIRST AND FOURTEETH AMENDMENTS?
3. DID THE YANKTON COUNTY CLERK OF COURT VIOLATE THE PETITIONER'S DUE PROCESS RIGHTS AND SDCL 23A-31-1 (FED. R. CRIM. P. 35(a)) OR SDCL 23A-31-2 (FED. R. CRIM. P. 36) WHEN SHE CHANGED THE PETITIONER'S \$9,999,999.99 RESTITUTION; 8 MONTHS AFTER THE PETITIONER WAS SENTENCED, DURING HIS DIRECT APPEAL, WITHOUT NOTICE AND WITHOUT ANY JUDICIAL INVOLVEMENT?
4. DID THE PETITIONER'S DEPRIVATION OF HIS RIGHT TO ACCESS PUBLIC RECORDS UNDER THE FIRST AND FOURTEENTH AMENDMENTS, BY THE YANKTON COUNTY CLERK OF COURTS AND DOE(S) ESTABLISH §1983 LIABILITY UNDER U.S. V. LANIER, 520 U.S. 259, 271 (1997) BECAUSE THE RIGHT IS "WELL ESTABLISHED"?

QUESTION(S) PRESENTED

5. DOES SDCL 24-11-45 AUTHORIZE YANKTON COUNTY TO CHARGE THE PETITIONER FOR PRE-SENTENCE CONFINEMENT WITHOUT NOTICE OR JUDICIAL INVOLVEMENT, OR DOES THIS PRACTICE VIOLATE THE PETITIONER'S DUE PROCESS RIGHTS UNDER HUDSON V. PALMER, 468 U.S. 517, 533 (1984)
6. DID S.D.D.O.C. POLICY 1.1.B.2. AUTHORIZE S.D.D.O.C. TO SEIZE THE PETITIONER'S CARES ACT STIMULUS CHECK, OR WERE THE PETITIONER'S DUE PROCESS RIGHTS VIOLATED UNDER HUDSON V. PALMER, 468 U.S. 517, 533 (1984).
7. DID YANKTON COUNTY VIOLATE THE PETITIONER'S DUE PROCESS RIGHTS UNDER HUDSON V. PALMER, 468 U.S. 517, 533 (1984) WHEN THEY "RETALIATED" AGAINST THE PETITIONER BY CHARGING HIM AN ADDITIONAL \$4090⁰⁰ IN CONFINEMENT FEES; PURSUANT TO SDCL 24-11-45, WITHOUT NOTICE, WITHOUT JUDICIAL INVOLVEMENT, AND FOR A TIME PERIOD THE PETITIONER WAS UNEQUIVOCALLY NOT IN YANKTON COUNTY CUSTODY? DID THIS VIOLATE?
8. UNDER WHAT LEGAL STANDARD SHOULD COURTS REVIEW 'RECONSIDERATION MOTIONS' FILED IN A CIVIL CASE?
9. SHOULD THE DISTRICT COURT HAVE ISSUED SANCTIONS UNDER FED. R. CIV. P. 16 TO THE RESPONDENT AND/OR HER ATTORNEY FOR FAILING TO FOLLOW THE DISTRICT COURT'S RULE 16 SCHEDULING ORDER AND CONDUCT DURING SUMMARY JUDGMENT?

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:

DENNY KAEMINGK, SECRETARY OF CORRECTIONS; DARIN YOUNG, WARDEN, S.D.O.C.; CODY HANSEN, UNIT/CASE MANAGER, SDSP; MELISSA MATURAN, ADMIN. REMEDY COORDINATOR, SDSP; TODD BRANDT, YANKTON COUNTY POLICE DETECTIVE; YANKTON COUNTY; JODY JOHNSON, YANKTON COUNTY CLERK OF COURTS; BRANDON LABRIE, UNIT/CASE MANAGER AND UNIT COORDINATOR, SDSP; JANE OR JOHN DOE(S); ALL PARTIES SUED IN BOTH INDIVIDUAL AND OFFICIAL CAPACITIES.

RELATED CASES

- 1.) HINES V. KAEMINGK et al #4:19-CV-04108-LLP SOUTHERN DISTRICT COURT OF SOUTH DAKOTA
- 2.) HINES V. KAEMINGK (#21-1673), 2021 U.S. APP. LEXIS 22397; (reh. denied) HINES V. KAEMINGK, 2021 U.S. APP. LEXIS 22322
- 3.) HINES V. REISCH (#21-5190) 2021 U.S. LEXIS 4554; (reh denied) HINES V. REISCH, 2022 U.S. LEXIS 804.
- 4.) HINES V. KAEMINGK (#21-2294), 2021 U.S. APP. LEXIS 28549
- 5.) HINES V. REISCH (#21-5695), 2021 U.S. LEXIS 5733; *REHEARING IS PENDING.
- 6.) HINES V. KAEMINGK (#22-1852), 2022 U.S. APP. LEXIS 24934; (reh. denied) HINES V. DENNY KAEMINGK, SECY OF CORR., 2022 U.S. APP. LEXIS 28648

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Castro v. U.S., 540 U.S. 37 S. Ct. (2003)

Hudson v. Palmer, 468 U.S. 517, 533 (1984)

County of Sacramento v. Lewis, 523 U.S. 833, 847 (1998)

Ashcroft v. Iqbal, 566 U.S. 662 (2009)

Lewis v. Casey, 518 U.S., 343,350,116 S. Ct. 2174 (1996)

Christopher v. Harbury, 536 U.S. 403, 415,122 S. Ct. 2179 (2002)

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BY YANKTON COUNTY DOES IN RETALIATION (FROM DOC. 101)
* ALL DOCUMENTS ARE FROM THE DISTRICT
COURT RECORD 4:19-CV-04108-LLP

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. KAEMINGK, 2022 U.S. App. LEXIS 24934; 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, 2022 U.S. Dist. LEXIS 42635; 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 _____ to the petition and is

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

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

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

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was SEPTEMBER 6, 2022.

☐ 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: OCTOBER 14, 2022, and a copy of the order denying rehearing appears at Appendix C.

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

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

☐ For cases from state courts:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIRST AMENDMENT OF THE U.S. CONSTITUTION: RIGHT TO PETITION THE GOVERNMENT FOR THE REDRESS OF GRIEVANCES.

EIGHTH AMENDMENT OF THE U.S. CONSTITUTION: EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED.

FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION: NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF LAWS.

FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION: NO STATE SHALL DEPRIVE ANY PERSON OF LIFE LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW.

CARES ACT, PUB. L. 116-136 (MARCH 27, 2020)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FEDERAL RULE OF CIVIL PROCEDURE 15. AMENDED AND SUPPLEMENTAL PLEADINGS:

RULE 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 PARTY PLEAD TO THE SUPPLEMENTAL PLEADING WITHIN A SPECIFIED TIME.

FEDERAL RULE OF CIVIL PROCEDURE 16. PRETRIAL CONFERENCES; MANAGEMENT; SCHEDULING:

RULE 16 (b) (3) (A) REQUIRED CONTENTS.

THE SCHEDULING ORDER MUST LIMIT THE TIME TO JOIN PARTIES, AMEND THE PLEADINGS, COMPLETE DISCOVERY AND FILE MOTIONS.

RULE 16 (f) (1) (C) SANCTIONS.

ON MOTION OR ON ITS OWN, THE COURT MAY ISSUE ANY JUST ORDERS, INCLUDING THOSE AUTHORIZED BY RULE 37 (b) (2) (A) (ii) - (vii), IF A PARTY OR ITS ATTORNEY: (C) FAILS TO OBEY A SCHEDULING OR OTHER PRETRIAL ORDER.

FEDERAL RULE OF CRIMINAL PROCEDURE 35. CORRECTING OR REDUCING A SENTENCE:

RULE 35 (a) CORRECTING A CLEAR ERROR.

WITHIN 14 DAYS AFTER SENTENCING, THE COURT MAY CORRECT A SENTENCE THAT RESULTED FROM ARITHMETICAL, TECHNICAL, OR OTHER CLEAR ERROR.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FEDERAL RULE OF CRIMINAL P. RULE 36. CLERICAL ERROR:

RULE 36. AFTER GIVING NOTICE IT CONSIDERS APPROPRIATE, THE COURT MAY AT ANY TIME CORRECT A CLERICAL ERROR IN A JUDGMENT, ORDER, OR OTHER PART OF THE RECORD, OR CORRECT AN ERROR ARISING FROM OVERSIGHT OR OMISSION.

S.D.C.L. 23A-27-25.2 COSTS AND RESTITUTION AS PUNISHMENT:
IN ANY CASE IN WHICH THEY ARE IMPOSED, COSTS AND RESTITUTION ARE A PORTION OF THE PUNISHMENT.

S.D.C.L. 23A-31-1 (RULE 35) SENTENCE - TIME LIMITS - POST-CONVICTION REMEDIES:

A COURT MAY CORRECT AN ILLEGAL SENTENCE AT ANY TIME AND MAY CORRECT A SENTENCE IMPOSED IN AN ILLEGAL MANNER WITHIN THE TIME PROVIDED IN THIS SECTION FOR THE REDUCTION OF A SENTENCE.
A COURT MAY REDUCE A SENTENCE:

- (1) WITHIN TWO YEARS AFTER THE SENTENCE IS IMPOSED;
- (2) WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIPT BY THE COURT OF A REMITTITUR ISSUED UPON AFFIRMANCE OF THE JUDGMENT OR DISMISSAL OF THE APPEAL; OR
- (3) WITHIN ONE HUNDRED TWENTY DAYS AFTER ENTRY OF ANY ORDER OF THE SUPREME COURT DENYING REVIEW OF, OR HAVING THE EFFECT OF UPHOLDING, A JUDGMENT OF CONVICTION; WHICHEVER IS LATER. A COURT MAY ALSO REDUCE A SENTENCE UPON REVOCATION OF PROBATION OR

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SUSPENSION OF SENTENCE AS PROVIDED BY LAW. THE REMEDIES PROVIDED BY THIS SECTION ARE NOT A SUBSTITUTE FOR NOR DO THEY AFFECT ANY REMEDIES INCIDENT TO POST-CONVICTION PROCEEDINGS.

S.D.C.L. 23A-31-2 (RULE 36) CLERICAL MISTAKES:

CLERICAL MISTAKES IN JUDGMENTS, ORDERS OR OTHER PARTS OF THE RECORD AND ERRORS IN A RECORD ARISING FROM OVERSIGHT OR OMISSION MAY BE CORRECTED BY A COURT AT ANY TIME AND AFTER SUCH NOTICE, IF ANY, AS THE COURT ORDERS.

S.D.C.L. 24-11-45 PRISONER LIABLE FOR COSTS OF CONFINEMENT - -

DEFERRED PAYMENT PLAN OR WAIVER:

A PRISONER CONFINED TO ANY JAIL WHILE SERVING A SENTENCE IS LIABLE FOR THE COST OF THE PRISONER'S CONFINEMENT INCLUDING ROOM AND BOARD CHARGES; MEDICAL, DENTAL, OPTOMETRIC, AND PSYCHIATRIC SERVICES CHARGES; VOCATIONAL EDUCATION TRAINING; CHEMICAL DEPENDENCY TREATMENT CHARGES; AND TRANSPORTATION COSTS AS SET FORTH IN SUBDIVISION 7-12-18(4), WHERE TRANSPORTING THE PRISONER IS REQUIRED. IF, AFTER CONSIDERING THE PRISONER'S NET INCOME, NET WORTH, NUMBER OF DEPENDENTS AND ANY EXISTING OBLIGATIONS, THE JUDGE WHO SENTENCED THE PRISONER TO JAIL DETERMINES THAT THE PRISONER IS UNABLE TO PAY THE FULL AMOUNT AT ONE TIME, THE JUDGE MAY ALLOW THE PRISONER TO SET UP A DEFERRED PAYMENT PLAN FOR PAYMENT FOR THE COSTS OF THE INMATE'S CONFINEMENT OR WAIVE ALL OR PART OF THE PAYMENT IF THE PRISONER IS UNABLE OR DEMONSTRATES AN INABILITY TO PAY.

SDCL 24-11-45.1 COUNTY LIEN FOR COST OF CONFINEMENT:

IF ANY COUNTY PAYS FOR THE COSTS OF CONFINING A PRISONER SERVING A SENTENCE IN A COUNTY JAIL, THE COUNTY SHALL HAVE A LIEN PURSUANT TO CHAPTER 28-14.

STATEMENT OF THE CASE

* ALL "DOC. #" CITED ARE WITHIN THE DISTRICT COURT RECORD
4:19-CV-04108-LLP

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Hines pleaded guilty to manslaughter and was sentenced to 200 yrs in prison with 100 yrs. suspended. The trial court's oral sentence included restitution and the judgement required Hines to "Pay restitution through the Yankton County Clerk of Courts Pursuant to the Restitution sheet on file." No amount was stated in Court or in the judgement. DOC. 40 at 4-5, DOC. 40-1.

Upon receiving a monthly account statement at SDDOC in 2012, Hines discovered that his Court Ordered obligations were over \$10,000,000.00 DOC 27 at 21. In 2012, during Hines direct appeal he wrote the Yankton County Clerk of Courts and both of his appellate attorneys inquiring about the amount of Restitution he owed. DOC. 4-1 at 28-30, 33, 39, DOC. 27at 21, DOC. 92 at 64.

In 2013 Hines was sued for wrongful death. During the suit Hines' attorney physically discovered an administrative document showing a debt of \$10,000,000.00 located within his criminal file. Hines's attorney did not disclose this to him during the lawsuit. DOC.4-1. A judgement of \$600,000.00 plus interest was entered against Hines. DOC. 27 at 22.

Despite years of efforts, Hines was unable to discover any information regarding his restitution. DOC.27 at 22-23, DOC.6 at 9-14. In June 2017, Hines was told that according to SDDOC System his financial obligations were correct. DOC.27at 23. Later that month a SDDOC case manager showed Hines a document showing that he owed \$9,999,999.99 in restitution. DOC.27 at 23 Hines' then habeas attorney made repeated attempts to locate Hines's restitution sheet but was unsuccessful. DOC.27 at 23, 27, DOC. 6 at 9-14.

On May 2, 2018, Hines received a SDDOC account statement indicating that his financial obligations had been reduced by \$10,000,000.00 DOC.27 at 23, DOC.6 at 16. SDDOC told Hines that an individual from Yankton County had called SDDOC and requested that his financial obligations be changed. DOC.27 at 23, DOC.6 at 16, 31-32.

Hines filed a grievance related to the changes in his financial obligations without notice. DOC.27 at 23-24. After SDDOC called the Yankton County Clerk of Courts Hines received a response to his grievance stating it was "not a DOC issue" and that he would have to have his Attorney contact the Yankton County Clerk of Courts regarding any requests for his paperwork.' DOC.6 at 17, Hines then exhausted his remedies, DOC.27 at 24-25, DOC.6 at 15-46.

Hines sent notarized letters to the Appellees on July 30, 2018, August 27, 2018, and March 8, 2019 requesting documentation supporting the changes that were made to his Judgement of Conviction. Hines received no response from these letters to the Appellees DOC.27 at 25-26, DOC.6 at 2-8.

Additionally, over the years Yankton County Detective Todd Brandt contracted SDDOC staff and Hines regarding various evidence within his underlying criminal case. Detective Brandt did this while Hines' Appellate actions were pending and without notifying Hines' Attorney of Record. DOC.27 at 29- 30, DOC. 4 at 4.

On August 10, 2020 Hines filed his Amended Complaint DOC.27. About a week or 2 prior to Hines filing his Amended Complaint, his Habeas Attorney started to provide him with documents from his criminal case

and habeas litigations. The dates Hines received many of these documents are verified by his habeas attorney's cover letters. DOC. 34 at 24, DOC. 34-1 at 2-41.

On September 3, 2020 the District Court entered its 1915A screening order dismissing most of Hines' defendants and claims. DOC. 32.

On October 1, 2020 Hines filed a Rule 59(e) reconsideration motion with the District Court and disputed the defendants and claims it had dismissed within its screening order DOC.34. In support of DOC.27 and DOC.34, Hines provided the District Court with the "New Evidence" he had acquired from his Habeas Attorney, just prior to and after, he had filed his amended complaint. DOC. 34 at 24, DOC. 34-1 at 2-41.

On December 7, 2020 Appellee Johnson filed an answer to Hines' Amended Complaint. DOC.39. The Appellee asserted that Hines never owed any Restitution, and the \$9,999,999.99 restitution entered the day of Hines' sentencing in June of 2012 went "unknown." DOC. 39 at 3-4. Appellee Johnson stated that to a system change "On February 28, 2013, the 9's originally entered as place holder figures in the records were converted, and the restitution less certain costs actually imposed was modified effective March 1, 2013." DOC. 39 at 4, DOC.39-1

On December 28, 2020 Hines objected to Appellee Johnson's answer. DOC.40. Hines submitted his June 7, 2012 sentencing transcripts and judgement, and various documents showing the \$9,999,999.99 in Restitution had been implemented upon him DOC.40-1 at 1-21. Hines stated the "Defendants assertions would allow for non-finalized judgements to be issued with non-specific amounts of obligations to be set at any time and without notice or documentation of such to anyone affected by such. Judgements have an inherent need for finality. "DOC.40 at 5.

On February 17, 2021 the District Court entered its Rule 16 scheduling order which states that the parties had "until March 19, 2021 to move to join additional parties and to amend the pleadings." DOC. 42 at 1.

On February 18, 2021 under Rule 60(b), the District Court denied Hines' reconsideration motion of its screening order in its entirety, including Hines "new evidence." The District Court stated Hines' "evidence" could have been reasonably discovered before Hines had filed his Amended Complaint." DOC.43 at 2.

On February 25, 2021, Pursuant to the District Courts scheduling order Hines moved to have the District Court consider his reconsideration motion on its merits as a "newly presented" motion and consider it as "supplemental" or "Amended" pleadings DOC.44 at 1.

In DOC. 44 Hines also moved to supplement his pleading due to a subsequent stimulus payment seizure by SDDOC and his discovery of a \$4,090.00 confinement fee that had been entered against him by the 'Yankton County Defendants' without notice and pursuant to statutes that did not apply to him. DOC. 44 at 1-8

On March 8, 2021 Hines filed a motion for an expert 'to assist the parties and Court by performing an Audit' of his financial entries by Appellee Johnson. DOC.56 at 1-2. Appellee Johnson answered Hines motion by positioning herself as the proposed expert and dictated what would and would not be answered. DOC. 57 at 1-2.

On March 18, 2021 Appellee Johnson filed an affidavit supporting her actions and financial entries 'in support of the forth coming summary judgement.' DOC.58 at 1.

On May 3, 2021 the District Court denied Hines motion for supplemental pleadings. DOC.44, an expert DOC.56 and all Hines other Pre-trial motions. DOC.66.

On May 11, 2021 Hines filed DOC.67, his 'specific objections' to Appellee Johnsons affidavit 'In support of forthcoming summary judgement.' DOC.58 at 1.

On July 1, 2021 Hines requested a hearing from the District Court due to the Appellees excessively late interrogatories and discovery. DOC.84 preceding this request, Hines had received an extrinsic letter from the appellees attorney threatening Hines if he did not agree to 'an indefinite extension of time to respond to discovery' DOC.73.

On July 14, 2021 the Appellees provided Hines with interrogatory answers and documentation 106 days after it was requested. And 2 days later, on July 16, 2021 the Appellees filed for summary judgement DOC. 85.

On July 26, 2021 Hines requested a hearing due to the Appellees lack of adherence to the District Courts Rule 16 scheduling order, and intentional withholding of discovery so the Appellees could finish documents and file for summary judgement. DOC.88.

On August 3, 2021, Hines filed his 'Answer to Summary Judgement' and 'Response to Undisputed Facts', however, the District Court filed **both** documents as DOC.92.

On August 13, 2021 the Appellees find DOC.94 and DOC.95 in reply to Hines' answer to their summary judgement. The Appellees filed a 'new financial document' with DOC. 95 which was not dated, had no discernable origin and it did not match the totals on any UJS document previously submitted, including the 'transaction detail' the Appellees provided in discovery just weeks before. DOC.95-1.

On August 19, 2021 Hines filed DOC.96 which objected to the Appellees reply and 'new financial document' DOC. 95-1.

On February 1, 2022 Hines filed a Rule 60(b) motion with the District Court because subsequent developments of Fact and Law made prior rulings of the District Court unjust. DOC. 101.

On March 10, 2022 the District Court granted the Appellees summary judgement and denied all of Hines pending motions, DOC.103.

On March 21, 2022 Hines 'mailed' the District Court a post-judgement Affidavit "regarding fraud and non-filing of documents" DOC.105. Hines filed this affidavit because he noticed **two** things within the case record;

One, that the District Court may not have filed Hines "Response to Defendant's Undisputed Material Facts" DOC.105 at 1, which he had submitted to the District Court with his reply motion DOC.105, DOC.105-2.

Two, that Appellee Johnson's Affidavit DOC.95 and attached DOC. 95-1 were fraudulent and were presented to influence the District Court, thereby committing extrinsic fraud or fraud upon the court. Simply, within the documents Appellee Johnson provided in discovery, on October 30, 2014 a "Restitution Check" "CHK 22846" "\$112.50" had been paid to an unknown person by Appellee Johnson DOC.105.

Hines asks this court to take ultra-careful notice of DOC. 105-1 at 8,14 as it is a documented indisputable Fact, provided by the Appellees themselves, that he has paid "\$112.50" in restitution on October 30, 2014

"Restitution Check" "CHK 22846". This Fact undermines the Appellees entire defense and summary judgement documents. DOC.58, DOC.85, DOC.94, DOC.95.

March 25, 2022 Hines received the information that he requested from the District Court in DOC.105-2. Within the documentation the District Court provided, Hines saw that the District Court filed his answer to the Defendants Motion for Summary Judgement and the Plaintiffs Disputed Material facts together, as one document DOC.92, Hines 'Answer and exhibits' is at DOC.92 thru DOC.92-1 at 28, and his 'Disputed Material Facts' is at DOC.92-1 at 29-70.

*Prior to commencing review Hines asks this Court take notice of the Fraud and UJS Document facts in DOC.105. The information within DOC.105 will give this court absolute factual clarity preceding its review of the issues.

*When reviewing Hines claims of actual injury, he asks this Court take notice of; The states July 23, 2020 return to Writ of Habeas Corpus DOC.34-1 at 3-4, DOC.92-1 at 22-23, Hines' May 4, 2021 Second Amended Petition of Habeas Corpus DOC.92-1 at 5-20 and the Habeas Courts June 29, 2021 Order Granting Habeas Corpus DOC.92-1 at 3-4, filed within Hines v. Young 66C1V13-000262 Yankton County, South Dakota.

* PETITIONER ASKS THIS COURT 'TAKE NOTICE' OF THE FACT THAT EACH ANY EVERY CLAIM THE PETITIONER PRESENTED TO THE DISTRICT COURT AFTER THE PETITIONER FILED HIS AMENDED COMPLAINT DOC.27 ALL HAD TO DO WITH UNCONSTITUTIONAL ACTIVITIES INVOLVING HIS FINANCES BY THE ORIGINALLY NAMED DEFENDANTS/RESPONDENTS.

AGAIN, ALL CLAIMS SUBSEQUENT TO THE FILING OF THE PETITIONERS COMPLAINT INVOLVE UNCONSTITUTIONAL ACTIVITIES REGARDING HIS FINANCES BY THE ORIGINALLY NAMED DEFENDANTS IN DOC.27, (FED. R. CIV. P. 15(d))

REASONS FOR GRANTING THE PETITION

THE PETITIONER HAS PETITIONED THIS COURT FOR RELIEF INVOLVING INTERLOCUTORY APPEALS 21-5190 AND 21-5695.

THE PETITIONER IS, AND HAS BEEN SO DESPERATE FOR RELIEF THAT HE PETITIONED THE APPELLATE COURTS JUST ON THE CHANCE THEY WOULD INTERVENE IN THE DISTRICT COURTS OPPRESSIVE DISMISSAL OF CLAIMS AFFECTING THE PETITIONER AND OTHER PRISONERS.

THE PETITIONER HAS SPENT THOUSANDS OF DOLLARS AND HOURS TO GET TO THIS POINT. THE PETITIONER BELIEVES WHOLE-HEARTEDLY THESE ISSUES WILL AFFECT PRISONERS RIGHTS REGARDING PRISONERS NATIONALLY, AND END MULTIPLE OPPRESSIVE UNCONSTITUTIONAL PRACTICES WITHIN HIS COUNTY, THEREBY HELPING MANY OTHER SIMILARLY SITUATED INDIVIDUALS FROM THIS MOMENT FORWARD.

PLEASE BE DILIGENT IN YOUR REVIEW SO MANY CONTRADICTIONS OF U.S. S. CT. LAW HAVE BEEN APPLIED BY THE DISTRICT COURT WITHIN THE UNDERLYING §1983 ACTION.

I PRAY FOR RELIEF FROM THIS COURT.

* DISTRICT COURT CASE DOCUMENTS
4:19 - CV - 04108 - LLP

RELEVANT DOCUMENTS FOR THE COURTS REVIEW

DOC.4	June 26, 2019	Affidavit-exhibits	Plaintiff
DOC.6	June 26, 2019	Supplement-Documentation/PLRA exhaustion	Plaintiff
DOC.27	August 10, 2020	Amended complaint-exhibits	Plaintiff
*DOC.32	September 3, 2020	1915A screening order	District Court
DOC.34	October 1, 2020	Reconsideration motion -exhibits	Plaintiff
DOC.39	December 7, 2020	Answer to amended complaint- exhibits	Defendant
DOC.40	December 28, 2020	Objections - exhibits	Plaintiff
DOC.42	February 17, 2021	Rule 16 scheduling order	District Court
*DOC.43	February 18, 2021	Order denying reconsideration	District Court
DOC.44	February 25, 2021	Motion for supplemental pleadings-exhibits	Plaintiff
DOC.54	March 2, 2021	Response to <u>DOC.44</u> -exhibits	Defendant
DOC.56	March 8, 2021	Motion for expert	Plaintiff
DOC.57	March 18, 2021	Response to <u>DOC.56</u>	Defendant
DOC.58	March 18, 2021	Affidavit-exhibits(summary judgement DOC)	Defendant
*DOC.66	May 3, 2021	Order denying miscellaneous motions	District Court
DOC.67	May 11, 2021	Special objections to <u>DOC.58</u> (summary judgement DOC)	Plaintiff
DOC.73	June 1, 2021	Letter- exhibits	Plaintiff
DOC.84	July 1, 2021	Request for hearing(Discovery issues)-exhibits	Plaintiff
DOC.85-87	July 16, 2021	Summary judgement documents	Defendant
DOC.88	July 26, 2021	Request for hearing(summary judgement)-exhibits	Plaintiff
DOC.92	August 3, 2021	Response to summary judgement- exhibits	Plaintiff
(*NOTE: court filed 'reply' and 'disputed facts' together in <u>DOC.92</u>)			
DOC.94-95	August 13, 2021	Reply and affidavit exhibit	Defendant
DOC.96	August 19, 2021	Objections to <u>DOC.94</u> and <u>DOC.95</u>	Plaintiff
DOC.101	February 1, 2022	Rule 60(b) motion-exhibits	Plaintiff
*DOC.103	March 10, 2022	Order granting summary judgement and denying miscellaneous motion	District Court
DOC.105	March 24, 2022	Post-judgement affidavit regarding fraud and non-filing of document- exhibits	Plaintiff

APPEALED DISTRICT COURT ORDERS

* <u>DOC.32</u>	September 3, 2020	1915 A Screening Order
* <u>DOC.43</u>	February 18, 2021	Order Denying Reconsideration
* <u>DOC.66</u>	May 3, 2021	Order Denying Misc. Motions
* <u>DOC.103</u>	March 10, 2022	Order Granting summary judgement and Denying Misc. Motions

* PETITIONER PRAYS THIS COURT 'TAKE NOTICE' OF THESE ABOVE- REFERENCED DOCUMENTS WITHIN THE DISTRICT COURT RECORD CASE # 4:19 - CV - 04108 AS THE PETITIONER IS PRO SE (RULE 24 (C) OF THE FED.R. APP.P.).

REASONS FOR GRANTING THE PETITION

THE EIGHTH CIRCUIT COURT OF APPEALS DID NOT MEANINGFULLY REVIEW THE PETITIONER'S CASE. AFTER THE PETITIONER 'SHEPARDIZED' "PRO SE" WITHIN THE EIGHTH CIRCUIT COURT OF APPEALS, THE PETITIONER FOUND THAT "PRO SE" PRISONER CASES ARE SUMMARILY "AFFIRMED" WITHOUT REVIEW AT AN ALARMINGLY HIGH RATE. THIS COURT OF "LAST REVIEW" HAS BECOME THE "ONLY COURT OF REVIEW" FOR THE PETITIONER. THEREFORE, THE PETITIONER HAS INCORPORATED HIS APPELLANTS BRIEF FROM THE EIGHTH CIRCUIT FOR DE NOVO REVIEW.

THESE WERE THE ISSUES THE PETITIONER RAISED TO THE EIGHTH CIRCUIT COURT OF APPEALS.

STANDARD FOR REVIEW

Appellate Courts must uphold a District Courts Factual findings unless they are "clearly erroneous" meaning "The reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." U.S. v. U.S. Gypsum Co., 333 U.S. 364, 395, 68 S. Ct. 525 (1948) ANDERSON v. CITY OF BESSEMER, NORTH CAROLINA, 470 U.S. 546, 573, 105 S. Ct. 1504 (1985)

Due to the District Court 'clearly erroneous errors of fact and law within the existing record, this court can review under the 'Abuse of Discretion' standard set forth in U.S. v. TAYLOR, 487 U.S. 326, 335-37, 108 S. Ct. 2413 (1988)

This Court can consider "Matters of Public Record of the case, and Exhibits attached to the complaint" POROUS MEDIA CORP. v. PALL CORP., 186 F3d 1077, 1079 (8th CIR. 1999)

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- Issue 1. That the District Court erred when it dismissed some claims and Defendants in its 1915A screening Order Doc. 32. °

Pursuant to a civil rights manual, and to avoid possible procedural dismissal of claims, DOC.27. Requested declaratory and injunctive relief, compensatory and punitive damages and sued all Defendants in official and individual capacities.

The legal standard for claims is in DOC.27 at 29-33.

Many of the Constitutional injuries suffered by Hines occurred while the SDDOC and Yankton County Appellees were acting in conjunction with one another and in clear violation of State Law or Policy, it is indisputably self-evident that these actions are 'discretionary.' DOC.27 at 7-8, 18, 21-33, DOC.6 at 1-46.

Official and Individual Capacity Claims

A. First Amendment/Due Process

A.1. SDDOC Appellees i.

As the PRLA requires exhaustion as a prerequisite for suit, Hines Verified Amended Complaint is intrinsically interdependent with SDDOC grievances and kites. DOC.27 at 21-33, DOC.6 at 9-46, DOC.4 at 2,4.

In DOC.32 at 7 The District Court States,

"Hines claims that the defendants impeded his efforts on appeal but he also assures that the SDDOC defendants actually tried to aid in his retrieval of the information he was asking Yankton County for, thus his access to courts claims against the SDDOC Defendants is dismissed"

In DOC.32 at 10 The District Court States,

"Hines does not assert facts to support that Brandt and SDDOC Defendants were personally involved in denying him access to Judicial Records, thus, this claim against them is dismissed."

The actions/in-actions of DOC are substantially contradictory to the District Courts assertions. Within Hines' SDDOC grievances he cites DOC Policy(s) 1-1-E-(1, 3, 5-6), 1-1-B-2 and applies multiple State and Federal laws to his issues. DOC.27 AT 21-33, DOC.6 AT 16, 19-24.

A. 2. Appellee Johnson and Brandt and Municipal Liability ii.

All of Appellee Johnson and Brandt's actions were discretionary

In DOC.27 at 21P7 Hines States,

"During the Plaintiffs first year at SDSP and while the Plaintiff's direct appeal was pending, the Plaintiff made written inquiries to the Yankton County Clerk of Court's requesting CR-216 case information and as to what the Plaintiff owed in 'Restitution.'" DOC.4 at 28-30, 33, 39.

Defendant Johnson violated proper procedures and State Law DOC.27 at 29-33.

Defendant Brandt has acted contrary to his training and proper police procedures and State Law. DOC.27 at 29-33, DOC.4 at 2, 4, *DOC.34 at 24, *DOC.34-1 exhibits 1-2, 4.

Defendant Brandt and Johnson have a 'practice' or 'custom' of bypassing Hines and his attorneys of record by repeatedly instructing DOC Officials to act as their agents and change his records or to vicariously obtain information from him in the middle of his Appellate litigation. DOC.27 at 29-33, DOC.4 at 2, 4, *DOC.34 at 24, *DOC.34-1 Exhibits 1-2, 4

Dismissal of Yankton County is inappropriate because 'the 8th Circuit Rejects holding that a municipal employee must be held individually liable for municipal liability.' Speer v. City of Wynne, 276 F. 3d 980 (8th Cir. 2002).

Even prior to becoming a defendant, Appellee Johnson repetitiously asserted that Hines 'has to go through his attorney for any issues requesting his paperwork' this maybe a continuation of an advisement that

Defendant Johnson received from Judge Eng, a 'policy maker'. This is official capacity municipal liability. DOC.27 at 21-29, DOC.4 at 28, 30, 33, DOC.6 at 1-8, 17.

In DOC.27 at 26, ¶44 Hines Stated,
"Yankton County Clerk of Courts never responded to any of the Plaintiff's Notarized letters. Plaintiff requests this court take notice of these letters as they exhibit the Pattern Structural to the Plaintiff's treatment and concealment claims against the Yankton County Defendants. (See. Page ID# 128-134)"
See also DOC.27 at 21, ¶7, 24, ¶28-30, 25-33, DOC.6 at 1-8, 17, DOC.4 at 28-30, 33, 39.

In DOC.32 at 8 The District Court States,
"Hines claims that his direct appeal and post-conviction collateral review have been impeded. ID at 29. Hines does not allege sufficient facts to show how a non-frivolous legal claim has been impeded and also that he is not changing the amount of restitution. " But see DOC.27 at 21, ¶7-8, 23, ¶21, 25-33, DOC.6 at 1-8, 13-14, 16-17, 19-24, 41, DOC.4 at 28-30, 33, 39.

Hines' Amended Complaint DOC.27 unequivocally shows (1) that he has been seeking information regarding his judgement and restitution since 2012 and (2) That he did so during his direct and collateral Appellate proceedings (3) and that issues within his direct and collateral Appellate and wrongful death actions were impeded. DOC.27 at 21-33, *DOC.34-1 at 3, 13.

• B. Due Process

B. 1. Appellee Brandt i.

Claims involving appellee Brandt within the verified Amended complaint and as stated herein this issue above violated due process DOC.27 at 30-33, *DOC.34 at 24, *DOC.34-1 exhibit 1-2, 4.

As stated above, Appellee Brandt has acted contrary to his training, proper police procedures and State Law. This has impeded Hines' direct and collateral appellate litigation causing 'actual injury.' DOC.4 at 2, 4, DOC.27 at 30-33, *DOC.34 at 24, *DOC.34-1 exhibits 1-2, 4.

B. 2. SDDOC Appellees ii.

The Verified Amended Complaint, SDDOC grievances and kites, indisputably show that SDDOC policy has not been followed regarding; Changes to the Hines' court ordered obligations, lack of notice of said changes and in difference to his request for his case file documents. These actions occurred over a period of years and involved numerous individuals. All of these actions were discretionary and violate due process. DOC.27 at 18, 21-33, DOC.6 at 2-46.

• C. Eighth Amendment

In DOC.27 at 32-33 Hines stated his Eighth Amendment claim against the Appellees. DOC.6 at 10-14, 16, 31-32.

● D. Equal Protection

In DOC.27 at 32-33 Hines cites case law and states that his "Rights to due process and equal protection of law has been repeatedly violated or denied by the Defendants." DOC.27 at 33. This right is also stated in DOC.6 at 41.

The issues raised in DOC.27 at 18, 21-33 and herein this issue above establish violations of Hines' right to due process and equal protection of the law by the Defendants. Hines cannot imagine a defense by the Appellants asserting that they routinely deal with other inmates in a similar manner.

● Issue 2. That the District Court erred when it denied Hines' Motion for Reconsideration in DOC.43

Hines Reconsideration Motion DOC.34 asked the District Court to reinstate the claims and Defendants that it had dismissed in its screening DOC.32.

***NOTE: The dates that inmates receive, and file court documents is always days later due to prison mail.**

See, Kohlbeck v. Wyndam Vacation Resorts, Inc., 7 F. 4th 729 (8th Cir.2021) at FN2. "The motion was also directed at the non-final order, as explained below. Thus, it was not a motion under rule 59 (e), which has a 28-day time limit and is reserved for final judgments. See id; Fed. R. CIV. P 59 (e). We therefore construe the motion as one under Rule 60(b). See Williams V. York, 891 F. 3d 701, 706 (8th Cir. 2018) ("this court construes motions for reconsideration of non-final orders as motions under rule 60(b).")

In DOC.43 at 2-4 the District Court completely rejected Hines' assertions and held that his "new evidence" "could have been reasonably discovered before Hines had filed his Amended Complaint." DOC.43 at 2 and FN2.

The "new evidence" Hines provided to the District Court DOC.34-1 at 1-41 was indisputably obtained or originated during and after the filing of his Amended Complaint. Dates on letters from Hines' habeas attorney clearly show this. DOC.34-1, 5,7, 9.

Further, the gravamen of Hines' claims in his Amended Complaint DOC.27 which survived the District Courts 1915A screening order DOC.32, were constitutional violation by the Yankton County Clerk of Courts involving his complete lack of access to Judicial Records DOC.32.

The record shows Hines proactively sought information related to his case, and specifically his judgement since 2012. DOC.27 at 21-33, DOC.6 at 2-41, DOC.4 at 2-4, DOC.4-1 at 2, 7, 28-30,33, 39.

Appellee Johnson, who is the Yankton County Clerk of Courts, admitted ignoring Hines' 3 letters and requests for his unknown judgement information due to a supposed "policy" by "judges in our circuit to only communicate with prisoners through their lawyers if they have counsel." DOC.58 at 1, DOC.86 at 3, DOC.87 at 4, 9, DOC.103 at 4, 13-15. The District Court granted Appellee Johnson summary judgement based on this "policy" DOC.103 at 4, 13-15.

Estoppel should apply to the District Courts duplicitous positions involving Hines supposed lack of diligence in obtaining documentation, followed by a subsequent grant of summary judgement to Appellee Johnson who followed a "policy" in which she intentionally refused to communicate with Hines or provide him any access to documents, even when he did not have counsel. DOC.103 at 4, 13-15.

See New Hampshire v. Maine, 532 U.S. 742 (2001) at 749-50 applying the principles of Collateral and Judicial Estoppel within the same litigation.

• Issue 3. That the District Court erred when it denied Hines' Miscellaneous Motion in DOC.66 (Doc.44 and DOC.56)

Hines followed the District Courts Rule 16 Scheduling Order DOC.42 and filed a Motion for Supplemental Pleadings DOC.44, a Motion for an Expert DOC.56 and 2 other motions. The District Court denied all Hines' pre-trial motions DOC.66.

• A. Motion for supplemental pleadings DOC.44

On February 17, 2021 the District Court entered its Rule 16 Scheduling Order which stated the parties and "until March 19, 2021 to move to join additional parties and to amend the pleadings." DOC.42.

And "Rule 15(d) of the Federal Rules of Civil Procedure provides that the trial court may permit a plaintiff to supplement its complaint with a cause of action arising after the original complaint. The rule is permissive for the parties and discretionary for the court." Id. at 886." Lindquist v. Rice Mem. Hospital, 238 F.3d 975 (8th Cir. 2001) at 977.

DOC.44 sought to "move to join additional parties and to amend the pleadings" via a review of DOC.34 "as it is intrinsically such a motion" DOC.44 at 1. DOC.44 also sought to supplement Hines' pleadings via "Rule 15(c, d)" based upon events and discoveries that had occurred after he had filed his amended complaint DOC.27.

* DOC.44 has 3 subparts or requests to amend/supplement pleadings within it.

A.I. Request 1. Court's review of pending Reconsideration Motion and current Motion

In DOC.66 at 1 The District Court States,

"This court screened Hine's Amended Complaint. DOC.32. This court analyzed his motion under Federal Rules of Civil Procedure 59(e) and 60(b). DOC.43"

"First, Hines asks that this court rule on his motion for reconsideration DOC.34 DOC.44 at 1. This court has already denied his motion for reconsideration. Thus, this court denies this portion as moot." Id.

When the District Court denied Hines' reconsideration motion DOC.34, it did so by analyzing under "Rule 59(e) and Rule 60(b)." DOC.43. id. In DOC.43 the District Court stated, "Rule 60(b) motions cannot be used to tender new legal theories" or to re argue "on the merits" DOC.43 at 3.

However, in DOC.44 at 1 Hines asked the District Court to review the Appellants "Reconsideration motion de novo or as if it was a newly presented motion." Hines asked the court to consider the motion as amended pleadings as his appellants reconsideration motion "is intrinsically such a motion" "and directly relevant to the courts current scheduling order." DOC.44 at 1.

"Federal Courts sometimes will ignore the legal label that a prose Litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category. (numerous cases cited) They may do so in order to avoid an unnecessary dismissal, c.g., id. At 692-693, to avoid inappropriately stringent application of formal labeling requirements, see Hines v. Kerner, 404 U.S. 519, 520, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972) (Per curium) or to create a letter correspondence between the substance of a Prose Motions claim and its under lying legal bases. See Hugh v. Rowe, 449 U.S. 5, 10, 66 L. Ed. 2d 163,

101 S. Ct. 173 (1980) per- curium); Andrews v. United States, 373 U.S. 334, 10 L. Ed. 2d 383, 83 S. Ct. 1236 (1963).” Castro v. United States, 540 U.S. 37 S. Ct. (2003) at 381-82.

Hines’ request in DOC.44 at 1 was that the District Court review his motion “as a newly presented motion” or on its merits, this is an intrinsically different standard of review than one under either Rule 59(e) or Rule 60(b).

Hines motion DOC.34 sought with greater detail to have the District Court reconsider the exact same claims and defendants it dismissed when it screened his amended complaint. It is self-evident DOC.34 sought to functionally “Amend” Hines’ Amended Complaint. DOC.27, Rule 16.

Hines motion DOC.34 also presented “new evidence” involving the exact same parties and claims within his amended complaint DOC.27, functionally supplementing it. Rule 15(d).

Therefore, the District Court erred when it refused to review any aspect of DOC.34 under any standard of legal review. Hines requests in DOC.44 at 1 allowed the District Court to consider all of his evidence claims and legal arguments in DOC.34, on the Merits, as either amended or supplemental pleadings DOC.44 at 1.

All. Request 2. Supplemental claim/pleading (stimulus payment seizure)

Hines asks this Court take notice of this claim within DOC.44 at 1-5 and applicable exhibits.
(Page ID# 681-85, 692-743)

In this claim to the District Court Hines clearly articulated the facts, applicable law, requested defendants, requested relief, provided ample evidence, and explained how the claim had an interrelationship to his financial claims within his Amended Complaint DOC.27 and Reconsideration Motion DOC.34.

The District Court makes a significant error of law in DOC.66 at 3 when it states, “if there is an adequate postdeprivation remedy, then there is no due process violation for even the intentional deprivation of a prisoner’s property. Hudson v. Palmer, 468 U.S. 517, 533 (1984). Because state law provided the prisoner in Hudson with an adequate state remedy after the deprivation of his property. The court that held that no due process violation occurred in that case. Id at 535.”

The District Courts application of Hudson Id. and assertions there from are incorrectly applied to the issue.

Hudson v. Palmer, 468 U.S. 517, 533 (1984) at 532,

“Two terms ago we reaffirmed our holding in Parratt in Logan v. Zimmerman Brush Co., 455 U.S. 422(1982), in the course of holding that post deprivation 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.”

Proposed “DOC Defendants” ‘deprivation’ was done pursuant to an ‘established state procedure,’ DOC Policy 1.1.B.2 DOC.44, page ID# 692-725, 726-43.

Further, the Eighth Circuit Court of Arkansas allowed a prisoner plaintiff to proceed with an almost identical claim Lamar v. Hutchinson, 2021 WL 3518625 (E.D. Ark. , 2021) then granted a preliminary injunction Lamar v. Hutchinson, 2021 WL4047158 at #16(E.D. Ark.2021) and finally granted a permanent injunction after granting class action Hayes v. Graves, 2022 U.S. Dist. Lexis 47001 (Dist. Ark. 2022).

A. III. Request 3. Supplemental claim/pleading (unlawful assignment of \$4,090.00 confinement fee)

Hines asks this court take notice of the claim within DOC.44 at 6-8 and applicable exhibits (page ID# 686-88, 744-55).

Again, in this claim to the District Court Hines clearly articulated the facts, applicable law, requested defendants, requested relief, provided ample evidence, tried to resolve the issue, and explained how the claim was interrelated to his claims within his amended complaint DOC. 27 and reconsideration motion DOC.34. Hines did not have prior notice of \$4,090.00 confinement fee. DOC. 44 at 6-8.

Again, in this issue the District Court erroneously found no due process violation existed.

"As stated above, Hines has an adequate postdeprivation remedy making his due process claim against Yankton County Defendants futile." DOC. 66 at 5.

In DOC. 44 at 6-8 Hines adequately established his lack of notice, identified a 'custom' 'practice' or 'procedure', that the confinement fee was not ordered by a court and that the supposed state statutes authorizing the \$4,090.00 confinement fee clearly do not apply.

A procedural due process violation under Hudson v. Palmer, 468 U.S. 517, 533 (1984) at 532 unequivocally exists, further the Appellees conduct rises to a violation of substantive due process as it is "conscience shocking" County of Sacramento v. Lewis, 523 U.S. 833, 847 (1998).

The district also found that Hines' confinement fee did not violate the Eighth Amendment.

"The confinement fee is not a punishment for his state conviction, but rather a fee he owes for his pre-trial confinement. Because the confinement fee is not a punishment for his criminal conviction Hines' claims do not raise a plausible Eighth Amendment violation. Thus, Hines's excessive fines claim against Yankton County Defendants is futile." DOC.66 at 5.

In DOC.44 at 7 Hines states that the supposed authorizing statute uses the word "sentenced."

"SDCL 24-11-45 Prisoners Liable for Costs of Confinement only applies to inmates sentenced to jail. The Plaintiff was sentenced to prison on June 7, 2012 and has transferred to S.D.D.O.C. on the same day."

Yankton County Defendants' actions "violated the Plaintiffs U.S. Constitutional Rights under the Eighth Amendments Excessive Fines Clause because they entered a debt and lien against the plaintiff that is not within CR 11-216's judgement of conviction. 23A-27-25.2 Costs and Restitution as Punishment, is also supportive here." DOC.44 at 7.

Additionally, the 'Yankton County Notice of Confinement fee' document in DOC.44 on page ID#754, lists Hines' Criminal Case CR#11-216, was entered the same day as his judgement of conviction and states "you were sentenced to 409 days at the Yankton County Jail..."

In DOC.44 at 7 Hines also claims, "The statement above herein this document and the claims made in the Plaintiff's Original Amended Complaint [DOC.27] and undecided reconsideration motion [DOC.34 at 17-19] are supportive of the Plaintiffs 'Class of One' Equal Protection claim under the Fourteenth Amendment by the S.D.D.O.C. and Yankton County Defendants."

"The Plaintiff cannot imagine a defense by the defendants' asserting they treat other individuals within the Plaintiffs' suspect class in a similar manner." Id.

In DOC.66 the District Court completely omits or ignores Hines 'Class of One' Equal Protection claim.

*Lastly, directly relevant to this claim, Hines asks the Court take notice of DOC.101 at 8-10, exhibits, which show that a few days after Hines corresponded with the Appellees and disputed the \$4,090.00 confinement fee they retaliated by entering another **additional** \$4,090.00 confinement fee against him. This is 10 years after Hines was sentenced and sent to prison. DOC.101 at 8-10, exhibits.

DOC.101 at 8-10, exhibits also show that the Appellees changed Hines's prison mailing address to his old home address of 11 years prior to prevent him from having any notice of the additional \$4,090.00 confinement fee.

● B. Motion for an Expert DOC.56

As stated above "Federal Courts sometimes will ignore the legal label that a pro se litigant attaches to a motion in order to place it within a different legal category" "to create a better correspondence between the substance of a pro se motion's claim and its underlying legal basis." Castro v. U.S., 540 U.S. 37 S. Ct. (2003) at 381-82.

Hines' requests for counsel in DOC.46 and motion for an expert DOC.56 are intrinsically interrelated to his attempts to conduct meaningful discovery against the Appellees who have access to systems with information that he does not.

In DOC.57 at 1 Appellee Johnson States, "[This] affidavit was prepared to support a forthcoming motion for summary judgement, but his affidavit response to all the significant questions raised by Hines in DOC.56" and in DOC.57 at 3 Appellee Johnson states, "The affidavit of Jody Johnson explains everything here that Hines seeks to have explained. Whether he chooses to understand it or consider it is another matter."

DOC.56 asked the District Court to order a "non-based UJS Authority" or "an expert to perform an audit related to UJS entries at issue in the above entered actions essential to all parties and for the court's guidance."

DOC.56 requested to 'streamline the case to the benefit or detriment' of Hines and the material facts that were at issue between Hines and Appellees were related to technical aspects of UJS entries, of which the Appellees are experienced 'experts' with obvious bias DOC.56, DOC.57, DOC.58.

The prejudice Hines has experienced due to the District Court denying counsel DOC.46 and/or an expert DOC.56 is obvious.

The Appellees did not provide any of the UJS financial printouts within the actions record. Hines did DOC.4 at 2, 60, DOC.27, DOC.34-1 at 13, DOC.105-1 at 6-18. Hines had to seek and pay for documentation from and thru external sources and attorneys because the Appellees have completely shut him out of court. DOC.4 at 28, 30,33, DOC.6 at 1-8,17, DOC.27, DOC.34, DOC.58, DOC.67, DOC.87, DOC.92, DOC.103.

In DOC.57 at 2, ¶3g.-h., Appellee Johnson indicates that the entries in the UJS "can be corrected or amended, so they probably could be deleted." at 3g. and "we do not know whether any "deleted entries" from the plaintiffs file exists." at 3h. and "no effort will be made to "look for or locate" deleted entries" id. DOC.56 at ¶3 g.-h, DOC.57 at 2, ¶3g.-h.

Cutting the issue of prejudice extremely short; Appellee Johnson has admitted to adjusting totals involving Hines' court ordered obligations over years without notice, withheld discovery for 106 days including financial printouts, filed for summary judgement 2 days after providing discovery, documents DOC.88, DOC.92, and then submitted a newly manifested and fraudulent document in her 'final reply' during summary judgement DOC.95, DOC.96, DOC.105.

Without outside assistance Hines would have never been able to provide the critical fact that he did pay \$112.50 restitution on October 30, 2014 "Restitution check, CHK #22846" DOC.105.

See. Parham v. Johnson, 126 f.rd 454 (3rd Cir. 1997) finding nearly identical contradictory rulings 'troublesome', particularly considering that the 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."

● Issue 4. That the District Court erred when it failed to "legally" determine whether Hines' judgement and financial obligations were finalized in CR11-216 SEE. FINANCIAL DOCUMENTS IN APPENDIX D

Hines' judgement in CR11-216 has been vacated DOC.92-1 at 3, DOC.103 at 16. The District Court never legally determined the finality of Hines' judgement and financial obligations.

Starting with this suit 'Cause of Action' in SDDOC DOC.6 at 16 thru summary judgement DOC.92. Hines has repeatedly asserted that his criminal judgement in CR 11-216 was finalized including his \$10,000,000.00 restitution order.

Hines has repeatedly stated that his oral sentence and written judgement of conviction and financial entries all "harmonize" DOC.40, DOC.67, Doc.92 at 11.

Hines has repeatedly asserted that SDCL 23A-31-1/Fed.R.Crim. P.35 and SDCL 23A-31-2/ Fed.R.Crim. P.36 applied to the finality of his court ordered obligations, and that, absent an order from this court, no one had discretion to alter the \$9,999,999.99 financial entry at a later date DOC.6 at 16, DOC.67 at 4, DOC.92 at 10-11, 19, DOC.92-1 at 8-9, 35-36, 46-47.

In DOC.39 at 4, DOC.58 at 2-3, DOC.86 at 2, 4, 7, Appellee Johnson stated that she followed JAS manual DOC.58-2 and entered "9s" due to Hines's restitution amount being unknown. In DOC.67 'Specific objections to DOC.58, Hines asserted that DOC.58-2 was altered due to over lapping '9s' DOC.103 at 3.

If DOC.58-2 was altered due to overlapping '9s' and the amount to be entered was \$999,999.99 rather than \$9,999,999.99, it drastically alters the 'legally' final judgement and its implemented financial obligations.

In DOC.92 at 19 Hines states "One defense made by the defendant fixates on what 'amount' of restitution was ordered and the existence of a 'restitution sheet' stated within the Plaintiff's judgement, and not, what legal implications the entries entered the day of the Plaintiff's sentencing and later changes to them may have had."

In DOC.92-1 at 36 ¶31, 48 ¶17 Hines asks the Appellee about "a payment of \$112.50 towards restitution on October 30, 2014 (see page Id #620,621)." In DOC 92-1 at 47-48 the Appellees answer was, "...payments made were applied toward the unknown restitution initially. Once it was determined there would be no restitution, payments of \$112.50 previously being held was paid out to the Yankton County Clerk of Courts to be reapplied towards fines, costs, and attorney fees- which was done."

Hines was sentenced June 7, 2012. "Determinations" regarding Hines' restitution were still occurring over two years later DOC.92-1 at 47-48 without any court involvement.

In DOC.92-1 at 46-47 Appellee Johnson does not address SDCL 23A-31-1 or SDCL 23A-31-2 but states "My lawyer advises me that the Federal Rules of Criminal Procedure, including 35a" and 36 "do not apply to State Court criminal proceedings."

Volumous financial documents from SDDOC, various Attorneys and the Appellees exist within APPENDIX D the suits record and show that;

- (1) A \$9,999,999.99 restitution order was entered against Hines the day he was sentenced, June 7, 2012 DOC.4-1 at 60, DOC.27, DOC.34-1 at 13, DOC.39-1 at 1, DOC.40-1 at 7-9 DOC.92-1 at 53-57, DOC.105-1 at 6-18;
- (2) That the Appellees applied a total of \$112.50 towards Hines \$9,999,999.99 restitution order until it was changed on or about March 1, 2013, DOC.39-1 at 1, DOC.40-1 at 7, DOC.92-1 at 53, DOC.105-1 at 7, 13;
- (3) That SDDOC implemented the \$9,999,999.99 restitution order against Hines from 2012-2018 DOC.4-1 at 2, DOC.6 at 31-32, DOC.40-1 at 3-5.
- (4) That after changes were made to Hines \$9,999,999.99 restitution on March 1, 2013, he still owed \$112.50 in restitution DOC.34-1 at 13, DOC.40-1 at 8, DOC.105-1 at 18.
- (5) That on October 30, 2014, Hines paid \$112.50 in restitution, via "Restitution check #22846", disbursed by the Appellees to an unknown person. DOC.92-1 at 54, DOC.105-1 at 8, 14.
- (6) Hines has paid \$112.50 in restitution DOC.105-1 at 18.

Additionally, SDCL 23A-28-2 and SDCL 22-1-2(53) defines who is a victim under State Law and that they are given a 'priority of claim.' Therefore, regardless of the existence of a "restitution sheet", restitution was ordered by the court, a restitution amount was entered, restitution was collected on the amount entered and Hines has victims.

The District Court failed to address Hines's assertions in DOC.92 at 10-11, 19, DOC.92-1 at 30-31, 33, 35-36, 38 and the finality of his judgement and financial obligations as a 'Matter of Law.'

- Issue 5. That the District Court erred when it granted the Appellees Motion for Summary judgement and denied Hines' hearing requests and Rule 60(b) motion DOC.103.

- 1. District Court denial of Hines' Rule 60(b) Motion DOC.101.

1.a. Request to Rule on Hines Rule 59(e) reconsideration motion DOC.34.

Hines addressed the District Courts refusal to review any aspect of DOC.34 under any standard of review in Issue 2. and Issue 3. Herein this document above.

Hines erred in asserting that Rule 59(e) applied to the District Courts initial review of DOC.34, because Rule 60(b) did Kohlbeck v. Wyndham Vacation Resorts, Inc., 7 F. 4th 729 2021 at FN 2. However, this request was again made to the District Court in an attempt to have the District Court review any of DOC.34 and its constitutional claims a document under any standard. DOC.101 at 6.

1.b. Request to supplement pleadings DOC.44

In Issue 3, herein the document above the Appellant has shown this Court that the District Court made errors of law and of fact contrary to clear evidence when it denied DOC.44 within DOC.66.

The District Courts denial of these claims occurs in DOC.103 at 8-10, in which, the District Court asserts facts that are indisputably contrary to the existing record.

Hines filed DOC.101 under Rule 60(b) because subsequent developments of fact and law made the prior rulings of the District Court unjust.

I. b. I. Stimulus Seizure

In DOC.101 at 6-7 Hines clearly showed that the District Court erred as a matter of Law in DOC.66 due to subsequent decisions from the Eighth Circuit contradicting the District Courts dismissal of his stimulus seizure claim in DOC.44. However, despite the District Court's acknowledgment of its error, it denied the claim DOC.103 at 9. See Also DOC.105 at 7.

I. b. II. Confinement Fee

In DOC.101 at 8-10 Hines clearly asked the District Court to take notice of his claim and supporting documentation within DOC.44, pageID#685-91, 744-57.

In DOC.103 at 10, The District Court States,

"Hines refused to sign a Yankton County Notice of Confinement Costs Form acknowledging his confinement fee, indicating that he did have notice of the fee and cannot state a due process claim for lack of notice. DOC.44-1 at 64. Although he alleges the form was deficient because of a handwritten edit and because the statues provided on the form do not apply to him, this does not implicate due process. See DOC.44 at 7-8. Further, while Hines alleges that the form was deficient, he does not allege that he was not provided with this form. See id."

First, this is a materially false statement of fact by the District Court. In DOC.44 at 7-8, DOC.44-1 at Page id# 744-55, and DOC.101 at 8 Hines clearly articulated that he had no notice of the \$4,090.00 debt and document in DOC.44-1 at 64.

Further, DOC.44-1 at Page ID#744-55 contains the documentation associated with Hines' actual exchange with the Yankton County Auditor's Office seeking documentation support this newly discovered confinement fee. Also, if Hines was previously provided the form in DOC.44-1 at 64, why would he be seeking information related to his confinement fee within his interrogatories to Appellee Johnson in DOC.92-1 at 43-44, 49.

Lastly, in DOC.101 at 9, 16-17 Hines alerted the District Court to the fact that when the Appellees "retaliated" by entering an additional \$4,090.00 confinement fee against him, they also changed the billing address to his home address of 11 years prior preventing him from obtaining notice of the additional fee.

In DOC.103 at 10 the District Court States,

"Hines's claim that he has been charged a second confinement fee for a non-existent Yankton County Jail incarceration fails because this deprivation, as alleged, was not pursuant to an established state procedure."

DOC.101 at 8-10 is intrinsically an extension of the claim in DOC.44 at 7-8.

In DOC.101 at 8 Hines states "again here under Hudson a due process violation exists because the deprivation was done "pursuant to an established state procedure, rather than random and unauthorized action," Hudson id at 532" and in DOC.101 at 9 Hines states "the plaintiff owes a total of \$8,180.00 due to an illegally assigned confinement fee; assigned without notice and pursuant to inapplicable state statutes. This violation due process under Hudson."

In DOC.103 at 9 the District Court states,
"Here, Hines does not claim that the Yankton County Jail has an established procedure for assessing confinement fees in violation of his due process rights. See DOC.101 at 9. Instead, he alleges that the Yankton County Jail mistakenly assessed a confinement fee that should not have been assessed."

However, in DOC.101 at 9 Hines stated, "After the plaintiff's last letter to the Auditor's office on January 25, 2021 see DOC.44-page id #748 unknown dismissed defendants retaliated by adding an additional \$4,090.00 debt on February 5, 2021 mere days after receiving the plaintiff's letter (attached exhibit1)"

District Courts must take all of the factual allegations in the complaint as true Ashcroft v. Iqbal., 566 U.S. 662 (2009) at 878.

The District Courts assertions of fact, citations of Hines and application of law are indisputably erroneous and totally inequitable.

In addition to a violation of procedural due process, the assignment of an additional confinement fee arises to a violation of substantive due process as it is "conscience shocking" County of Sacramento v. Lewis, 523 U.S. 833, 847 (1988).

1.c. Motion to appoint counsel and motion for a preliminary injunction.

The District Courts denial of these 2 claims appears in DOC.103 at 10-11. In response Hines ask this Court take notice of DOC.101 at 10-14, DOC.105 and the issues raised herein this document above to determine if the District Court erred in denying these requests.

2. Johnson's Motion for Summary Judgement

*** Important:** Prior to the Courts review of this issue Hines asks this Court take careful notice of the fact that the District Court filed his 'Answer' to the Appellees motion for summary judgement and his 'Disputed Material Facts' together within DOC.92. Again, the District Court filed both of Hines' separate documents together as DOC.92.

Hines 'Answer' is at DOC.92 at 1 thru DOC.92-1 at 28 (page id# 989-1039), and his 'Disputed Facts' is at DOC.92-1 at 29-70 (page Id # 1040-1081).

Hines was entitled to having all reasonable inferences resolved in his favor and genuine issues for trial Atkinson v. City of Mountain View, 709 F. 3d 1201, 1207 (8th Cir. 2013) and he repeatedly presented "sufficient probative evidence" capable of supporting a finding in his favor. DOC.27, DOC.34, DOC.40, DOC.67, DOC.92, DOC.96, DOC.101, DOC.105.

Hines can also show: (1) the facts, viewed in his light most favorable to him demonstrate deprivations of his Constitutional or Statutory Rights' and (2) the right is clearly established the time of the deprivation. Howard v. Kan. City Police Dept., 570 F. 3d 984, 988 (8th Cir. 2009) and that, the Appellees were acting in a discretionary manner and had time to deliberate and then choose. County of Sacramento v. Lewis, 883, 847 S. Ct. (1998).

Legal Standard for Access to Courts and Due Process

'Hines has a constitutionally protected right of access to the courts.' See Lewis v. Casey, 518 U.S. 343, 350, 116 S. Ct. 2174 135 L. Ed. 2d 606(1996) (citing Bonds v. Smith, 430 U.S. 817, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977))

The right of Access to Courts is generally afforded by the First, Fifth, and Fourteenth Amendments, the Due Process Clause, and the Equal Protection Clause. See Christopher v. Harbury, 536 U.S. 403, 415, 122 S. Ct. 2179, 153 L. Ed. 2d 413 & n. 12(2002) (collecting cases that demonstrate the "unsettled... basis of the constitutional right of access to courts").

Hines right of access to court encompasses a reasonable opportunity to file non frivolous legal claims their convictions. Lewis, 518 U.S. at 351.

Hines right of access to courts is "ancillary to the underlying claim, without which a plaintiff cannot have suffered injury by being shut out of court." Harbuy, 536 U.S. at 415.

Hines has abundantly shown an "'actual injury' - that is, 'actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a deadline or to present a claim.'" "Lewis, 518 U.S. at 349-51.

In DOC.27 at 30-33 and DOC.92 at 7, 10-11 Hines cited case law in support of his right to access courts and judicial records and due process. In DOC.103 at 12, 15 and DOC.32 the District Court cites case law in support of these rights.

"[In] an obvious case, [general] standards can 'clearly establish '[a right]... even without a body of relevant case law.'" Brousseau v. Haugen, 543 U.S. 194, 198, 125, S.Ct.596(2004).DOC.92at 18.

In Geitz v. Overall, 62 Fed. Appx. 744(8th Cir. 2003) at 929-30 "where court intentionally failed to file the plaintiff's submissions, failed to notify the plaintiff of court orders, and failed to respond to the plaintiff's inquiries which were arguably "ministerial" acts- and where the plaintiff did not allege that the court clerks were acting pursuant to court rules or judicial instructions. The plaintiff stated a § 1983 claim.

Subsequently, in Geitz v. Overall, 137 Fed. Appx. 927 (8th Cir. 2005) This Court affirmed the denial of the defendant's summary judgement as "there was a genuine issue of fact as to whether Barnes intentionally interfered with Geitz mail."

In DOC.92 at 2 Hines asked the District Court to "take notice" of "events, facts, law and assertions" within his Verified Amended Complaint.

"Because Ward verified her second amended complaint under penalty of perjury, it is the equivalent of an affidavit and can serve as her response to the defendants' summary judgement motion under Fed.R.Civ.P. 56(e). See. Spear v. Daytons, 733 F. 2d 554, 555-56 (8th Cir. 1984) " Ward v. Moore, 414 F. 3d 968 (8th Cir. 2005) at 970.

Hines also filed DOC.67 "Specific Objections to the Affidavit of Jody Johnson (DOC.58)"

In DOC.92 at 16-19 Hines shows that Appellee Johnson is not entitled to qualified immunity as a 'matter of law.'

In DOC.103 at 12-16 the District Court makes its determination that Appellee Johnson and Doe's did not violate Hines' First and Fourteenth Amendment Rights to judicial records and due process and grants qualified immunity.

• A. Access to Judicial Records

As stated, in factual detail in Issue3. (b) herein this document above, "The Appellees did not provide any of the UJS financial printouts within the actions record, Hines did DOC.4 at 2, 60, DOC.27, DOC.34-1 at 13, DOC.105-1 at 6-18..."

In DOC.103 at 13 the District Court States,

"Johnson further argues that Hines right to access public records was not violated because one of his attorneys was able to obtain a document showing Hine's financial assessments as of March 4, 2019. Id. This document showed that he owed \$6,874.90 Id."

The above stated March 4, 2019, document: was obtained from attorney James McCulloch, who was not representing Hines in any case when he provided him the stated March 4, 2019, financial document. DOC.4 at 3-4, DOC.4 at 57-60, DOC.27 at 25-26, DOC.92 at 8, 19.

Additionally, the Appellees contest the March 4, 2019, financial assessments of \$6,874.90, via a fraudulent document DOC.95, DOC.95-1, DOC.105.

Specifically, the Appellees fraudulent document at DOC.95-1 and supporting affidavit DOC.95 omit the crucial \$112.50 restitution payment made on October 30, 2014, DOC.4-1 at 60, DOC.34-1at 13 DOC.40-1 at 8-9, DOC.92-1 at 54, DOC.101 at 23, DOC.105-1 at 1-18.

In DOC.103 at 12-13 the District Court, and DOC.87 at 9 Appellee Johnson, both cite Supreme Court and Eighth Circuit cases supporting a judge's discretion to 'seal or unseal' documents additionally "permits courts in Yankton County to issue a policy of only communicating with a prisoner's lawyers, rather that the prisoner." DOC.103 at 13.

Stated Yankton County policy is a complete bar of Hines' right to access the courts under the First and Fourteenth Amendments and clearly violates the right itself.

Judges cannot issue the above policy as "administrative decisions, even though they may be essential to the very functioning of the courts, have not similarly been regarded as Judicial Acts." Forester v. White, 484 U.S. 219 (1988) at 228.

Hines has repeatedly asserted that the stated "policy" implicates 'municipal liability' DOC.67 at 2-3, DOC.92 at 17, 19 DOC.92-1 at 31-32, 37 for which there is no immunity defense. See also DOC.34 at 5-9.

In DOC.4-1 at 28-30, 33, 39, DOC.6 at 1-46, DOC.27 at 21-28, DOC.92 at 4-5, 11, 17, 19, DOC.92-1 at 8, 32, 34-35, 64 it is shown that since 2012 Hines has been seeking information regarding his restitution from the Appellees, SDDOC and various attorneys. Hines has also sought information from Appellee Johnson regarding his restitution when he had no counsel or pending legal actions DOC.103 at 14.

Therefore, Appellee Johnson has in no way or at any time followed this "Yankton County" policy DOC.103 at 13.

Further, Appellee Johnson denies that any of Hines' attorneys have ever contacted her requesting any information regarding his financial obligations. DOC.86 at 19, DOC.87 at 4, DOC.92-1 at 35, 45-46.

However, the above assertion is contrary to Hines' claims in DOC.27, DOC.34, and contrary to factual documentation DOC.40-1 at 16, 18, DOC.92 at 4-5, 11, DOC.92-1, 8, 10, 12.

In Appellee Johnson's interrogatories she admits "Clerk of Courts are not required to keep all correspondence." "I do not keep or archive emails" DOC.92 at 20, DOC.92-1 at 32, 50.

In DOC.103 at 13-14 the District Court States,

"Johnson did not fail to send Hines public records because the requested record did not exist. She failed to send an explanation as to why the public records did not match his expectations."

In DOC.103 at 14 the District Court States,
"Further, regardless of whether Hines was represented by counsel at the time that he wrote the three letters to Johnson, Johnson believed that he had counsel and followed the advice of judges not to communicate with prisoners who had counsel. DOC.58, PP, 4-5."

"At most, Johnson failed to respond to their letters, at the advice of judges in her circuit, asking for an explanation regarding a complicated mistake involving multiple parties and moving parts." Id.

The suits 'Cause of Action' is that someone from Yankton County **proactively contacted** SDDOC and requested that changes be made to Hines' restitution. DOC.6 at 2, 7-8, 17, 34-36, DOC.27 at 23-24.

Appellee Johnson does not deny the stated contact with SDDOC DOC.92-1 at 43, 45, 48. Alternatively, Appellee Johnson in no way answers nor explains why she did not contact Hines or his attorney regarding changes to his restitution DOC.92-1 at 45, 48.

Further, in DOC.92-1 at 48-49 P20, Appellee Johnson states,

"...it has always been my understanding that South Dakota DOC had access to view the new Odyssey System after it was implemented and converted on March 1, 2013, and that, therefore, our office would have no need to continue to send inmate financial responsibility forms to update cases."

Appellee Johnson's above statement is contradictory to what occurred in the suits 'Cause of Action', and that, the Appellees decision to **proactively contact** SDDOC 5 years later was entirely discretionary.

Lastly, in DOC.92 at 19 Hines states an indisputable fact, that prior to Appellee Johnson becoming defendant in a § 1983 action, no one including the District Court could have derived that a restitution sheet did or did not exist or why totals changed, even with UJS access.

The District Court did not review any of Hines' 'actual injuries' and 'impeded claims' in DOC.92 at 8-9 when it determined that his First Amendment Rights were not violated.

The District Court failed to 'legally' determine when Hines' judgement and financial obligations were finalized. See Issue 4. herein this document above.

• B. Due Process

Hines First Amendment argument above intrinsically supports a violation of due process. In DOC.103 the District Court used identical reasoning to find that Appellee Johnson did not additionally violate Hines' due process rights.

The District Court asserted that "at most, Johnson failed to respond to letters on the advice of the judges in her court." DOC.103 at 14-15 a "Yankton County" "policy" DOC.103 at 13.

The District Court asserts that Hines' "direct appeal" "could not have been impeded" because Appellee Johnsons "alleged concealment occurred in 2018 and 2019 and well after Hines's appeal." DOC.103 at 15.

However, as above it is an indisputable fact that Hines has been seeking information from the Appellees, with and without counsel since 2012. DOC.4 at 28-30, 33, 39, DOC.6 at 1-46, DOC.27 at 21-28, DOC.92 at 4-5, 11, 17, 19, 92-1 at 8, 32, 34-35, 64.

It is beyond obvious that Hines suffered an 'actual injury' in his direct appeal DOC.92 at 8, DOC.92-1 at 22, as the "states attorney argues that a due process claim regarding restitution should have been brought in direct appeal, not a habeas corpus petition." DOC.103 at 15, DOC.92-1 at 22.

The stated 'actual injury' Hines suffered in his direct appeal caused a subsequent 'actual injury' in his State habeas Litigation, as "a due process claim regarding restitution should have been brought in a direct appeal, not a Habeas Corpus Petition." DOC.103 at 15, DOC.92-1 at 22.

In DOC.103 at 16 the District Court States,

"Further, Hines alleges that he has succeeded in his habeas efforts regarding his judgement, so that claim has not been impeded"

The District Courts above assertion is not supported by fact or by law. Habeas relief was a 'stipulation' between the parties DOC.92-1 at 3-4, based upon ineffective assistance of counsel claims, an entirely different legal issue and standard of review than a direct appellate constitutional review of due process regarding Hines' restitution. DOC.92-1 at 18, 20.

In DOC.103 at 16 the District Court States,

"Hines cannot explain how his restitution would have provided a defense in his wrongful death suit. Had he owed \$9,999,999.99 in restitution, any civil judgement against him would have been offset up to that amount under SDCL § 23A-28-9, but this is not a defense to be raised."

In DOC.92 at 8-9, Hines asserted that he suffered an 'actual injury' in a wrongful death suit due "to double recovery for the same loss through both a restitution order and civil judgement." U.S. v. Ruff, 420 F. 3d 722 (8th Cir. 2005) DOC.92 at 9.

As stated in Issue 4, above, the District Court failed to 'legally' determine when Hines' judgement and financial obligations become finalized. Especially relevant here is that any 'legally' finalized restitution amount is paid to victims defined under SDCL23A-28-2 and SDCL 22-1-2(53) or the estate. Therefore, as here, if the finalized restitution amount was \$10 million, payments would be offset against a subsequent civil judgement.

In DOC.92 at 19 at length and with supporting exhibits, Hines makes the indisputable and factually supported assertion that,

"This court, the plaintiff, various attorneys, and the habeas court, had UJS documents and the SDDOC statement to review..." and "had access to the UJS."

"Prior to the defendant becoming a party in this action and providing additional information herein this suit, everyone above would not know how or why the plaintiff's obligations changed." Id.

Hines also cited the District Court 1915A screening order DOC.32 to reaffirm this point DOC.92 at 19.

In DOC.103 at 11-16 the District Courts makes no findings regarding the multitudes of 'discretionary' due process and accounting errors Hines raised in his Answer, DOC.92 at 5-6, 12-13 and his Disputed Facts, DOC.92-1 at 29-41, 43-60 and as raised in Issue 4 herein this document above, it was not legally determined when Hines's judgement and financial obligations were finalized, which due process requires, clearly, disputed facts and law remain between the parties.

3. Claims against the Yankton County Doe Defendants

As summary judgement is inappropriate for Appellee Johnson as a matter of fact and law, neither is summary judgement appropriate for Appellee Doe's who may have assisted or participated in the violations of Hines Constitutional Rights.

4. Request for Hearings Discovery failure/Misconduct

In DOC.84 and DOC.88 Hines asked the District Court for hearings related to the Appellees misconduct and extremely late discovery DOC.84; and for summary judgement DOC.88 due to the Appellees serving Hines with discovery after 102 days, and then filing for summary judgement 2 days later.

Hines states his issues and prejudice related to the Appellees misconduct, discovery issues and failure to follow the District Courts Rule 16 Scheduling Order DOC.42 ; DOC.73, DOC.84, DOC.88, DOC.92 at 1, 3, 12, DOC.92-1 at 33, 38, DOC.96 at 2, DOC.101 at 11, DOC.105 at 2.

Hines asks the court to take notice of the above stated documents.

"District Judge[s]... must issue a scheduling order," which "must limit the time to join other parties, amend the pleadings, complete discovery, and file Motions." Fed.R.Civ.P. 16(b)(1), (3) (a). This schedule may be modified only for good cause and with the judge's consent." Fed.R.Civ.P.16 (b)(4) (emphasis added). In addition, Rule16(a) states that a pretrial order "controls the course of the action unless the court modifies it." id at 715 Hartis v. CHI Title Ins. Co, 694 F. 3d 935(8th Cir. 2012) at 948.

The Appellees did not motion or request that the District Court modify its Rule 16 Scheduling Order DOC.42. The Appellees did follow the District Courts Rule 16 Scheduling Order DOC.42 which greatly prejudiced Hines during summary judgement.

At no point does the District Court mention or acknowledge any of the Appellees' misconduct or withholding of discovery. The District Court clearly erred in denying Hines' request for hearings DOC.84, DOC.88. Hines ask the Court take notice of this subsequent affidavit DOC.105.

CONCLUSION

Therefore,

In the issues above, Hines has shown clear violations of his Civil Rights that have occurred over a number of years. Hines has shown that the District Court has made numerous errors of clear fact and law and only exercised its discretion in a manner that is prejudicial towards Hines and highly deferential towards any potential defendant and the Appellees.

The District Courts current rulings as they stand are a miscarriage of justice and set supporting precedent for future constitutional violations and the establishment of unconstitutional policies.

REASONS FOR GRANTING THE PETITION

SCOTUS

RULE 10 CONSIDERATIONS GOVERNING THIS COURT'S DECISION WHETHER TO GRANT PETITIONER HINES' WRIT OF CERTIORARI.

THE PETITIONERS CERT. ISSUES ARE AFFECTING THE RIGHTS OF OTHERS SIMILARLY SITUATED TO THE PETITIONER, AND WHO HAVE NO LEGAL ABILITY OR KNOWLEDGE TO DEFEND THEMSELVES IN THE MANNER THE PETITIONER IS.

THE CURRENT DECISIONS OF THE DISTRICT COURT AND AFFIRMANCES BY THE EIGHTH CIRCUIT COURT OF APPEALS NOW EXPLICITLY AUTHORIZE, NOT ONLY UNCONSTITUTIONAL PRACTICES WHEN DEALING WITH PRISONERS IN YANKTON COUNTY, BUT THAT OTHER COUNTIES MAY ALSO IMPLEMENT OPPRESSIVE AND UNCONSTITUTIONAL PRACTICES AGAINST PRISONERS WITHOUT CONCERN OF § 1983 LIABILITY OR A PRISONERS' RIGHTS.

ALL OF THE PETITIONERS ISSUES AND CONCERNS CAN BE SUMMARIZED INTO THE FOLLOWING GENERAL SUBJECTS.

- FIRST AND FOURTEENTH AMENDMENTS' RIGHT •

1. ACCESS TO COURTS

THE PETITIONER WAS IN PRISON AND THEN WON HIS STATE HABEAS ACTION. AS A RESULT, THE PETITIONER HAS BEEN RETURNED TO YANKTON COUNTY TO BE RESENTENCED IN HIS CRIMINAL CASE.

REASONS FOR GRANTING THE PETITION

THE YANKTON COUNTY CLERK OF COURTS WILL NOT ACCEPT ANY LETTER TO A JUDGE FROM A PRISONER UNLESS IT IS SENT THROUGH 'YOUR ATTORNEY'. SOME OF THE PETITIONER'S FELLOW YANKTON COUNTY JAIL INMATES HAVE NO CONTACT WITH THEIR COURT-APPOINTED LAWYERS IN MONTHS, NO MATTER WHAT THEIR ISSUE MAY BE. WHEN THE PETITIONER HAS ATTEMPTED TO ASSIST HIS FELLOW YANKTON COUNTY JAIL INMATES FILE A MOTION FOR APPOINTMENT REPLACEMENT COUNSEL THE YANKTON COUNTY CLERK OF COURTS DIRECTS JAIL STAFF TO INFORM THE INMATE THAT THEY MUST FILE THEIR REQUEST (FOR REPLACEMENT COUNSEL) THROUGH THEIR (EXISTING) COUNSEL.

THE YANKTON COUNTY CLERK OF COURTS IS NOT ONLY REFUSING INMATES ACCESS TO COURT RECORDS, BUT ALSO REFUSING INMATES FAMILY MEMBERS REQUESTS FOR DOCUMENTS FILED IN A CRIMINAL CASE. THE FAMILY MEMBERS ARE TOLD THAT THE INMATE NEEDS TO REQUEST THOSE DOCUMENTS FROM THEIR ATTORNEY. THIS PRACTICE NOT ONLY VIOLATES AN INMATES ACCESS TO COURTS BUT ALSO THE RIGHTS OF THEIR FAMILY MEMBERS ACCESS TO COURTS.

THE PETITIONER'S 'CAUSE OF ACTION' WAS THAT THE YANKTON COUNTY CLERK OF COURTS PROACTIVELY CONTACTED S.D.D.O.C., AND NOT THE PETITIONER (OR HIS NON-EXISTANT ATTORNEY), REQUESTING THAT S.D.D.O.C. STAFF CHANGE THE PETITIONER'S COURT-ORDERED OBLIGATIONS BY \$10,000,000⁰⁰, SIX YEARS AFTER THE PETITIONER WAS SENTENCED, WITHOUT REASON, AND THEN IGNORED THE PETITIONER'S NOTARIZED LETTERS ASKING HOW / WHY THIS OCCURRED. APPENDIX D. CONTAINS THESE LETTERS AND FINANCIAL DOCUMENTS.

REASONS FOR GRANTING THE PETITION

AS THIS COURT WILL SEE FROM THE PETITIONER'S NOTARIZED LETTERS TO THE RESPONDENT, THE YANKTON COUNTY CLERK OF COURTS IN APPENDIX D, THE INFORMATION THE PETITIONER SOUGHT WAS RELEVANT TO HIS CRIMINAL APPEALS, WRONGFUL DEATH ACTION SUIT, AND THIS VERY § 1983 ACTION.

"

IT IS THE ROLE OF THE COURTS TO PROVIDE RELIEF TO CLAIMANTS, INDIVIDUALLY OR CLASS ACTIONS, WHO HAVE SUFFERED, OR WILL SUFFER, ACTUAL HARM..." LEWIS V. CASEY 518 U.S. 343, 350, 116 S. Ct. 2174 (1996) at 349 (EMPHASIS ADDED). THE RESPONDENT, AS YANKTON COUNTY CLERK OF COURT WAS PERSONALLY OR INDIVIDUALLY AWARE OF THE PETITIONER'S CRIMINAL CASE, DIRECT APPEAL, HABEAS, AND ALSO THE WRONGFUL DEATH ACTION AGAINST THE PETITIONER AS SHE WAS THE ONE WHO DIRECTLY STAMPED AND FILED ALL THE DOCUMENTS IN THESE CASES. IT IS FACIALLY OBVIOUS THAT A CHANGE OF THE PETITIONER'S CRIMINAL RESTITUTION BY \$10 MILLION COULD AFFECT OTHER LITIGATION.

WITHIN THE PETITIONER'S AMENDED COMPLAINT DOC. 27 AND SUMMARY JUDGMENT DOC. 92 THE PETITIONER CITED SPECIFIC FACTS, PROVIDED DOCUMENTATION AND CLAIMED THAT HIS DIRECT AND COLLATERAL APPELLATE AND WRONGFUL DEATH SUIT LITIGATION(S) WERE "FRUSTRATED OR IMPEDED" CHRISTOPHER V. HARBURY, 536 U.S. 403, 415-16, 122 S. Ct. 2179 (2002). IN DOC. 34 AND IN DOC. 92 THE PETITIONER PROVIDED THE DISTRICT COURT WITH PORTIONS OF HIS HABEAS PETITION AND EXPERT, MAKING ARGUMENTS REGARDING THE PETITIONER'S \$10 MILLION RESTITUTION OBLIGATION; CLEARLY THE PETITIONER'S "IMPEDED" LITIGATION

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CLAIM WAS "DESCRIBED WELL ENOUGH TO APPLY THE 'NONFRIVOLOUS' TEST AND TO SHOW THAT THE 'ARGUABLE' NATURE OF THE UNDERLYING CLAIM IS MORE THAN HOPE." 536 U.S. at 416. "A FRIVOLOUS CLAIM IS ONE THAT LACKS AN ARGUABLE BASIS EITHER IN LAW OR IN FACT." NEITZKE V. WILLIAMS, 490 U.S. 319, 325, 109 S.Ct. 1827 (1987).

IN THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT DOC. 103, APPENDIX B., THE DISTRICT COURT REJECTS THE PETITIONER'S CLAIMS THAT HIS APPELLATE LITIGATIONS WERE IMPEDED AND THAT THE PETITIONER'S CLAIM THAT HIS WRONGFUL DEATH SUIT LITIGATION WAS IMPEDED DUE TO THE PETITIONER NOT KNOWING HE OWED \$10 MILLION IN RESTITUTION TO THE VICTIMS / PLAINTIFFS IN THE WRONGFUL DEATH SUIT "IS NOT A DEFENSE TO BE RAISED". DOC. 103 at 15-16.

THE DISTRICT COURT GRANTED THE RESPONDENT SUMMARY JUDGMENT ON THE PETITIONER'S ACCESS TO COURTS CLAIM BECAUSE, "JOHNSON ARGUES THAT THIS DEFERENCE [A COURT TO MANAGE ITS OWN RECORDS] PERMITS COURTS IN YANKTON COUNTY TO ISSUE A POLICY OF ONLY COMMUNICATING WITH A PRISONER'S LAWYERS, RATHER THAN WITH THE PRISONER", "FURTHER, REGARDLESS OF WHETHER HINES WAS REPRESENTED BY COUNSEL AT THE TIME HE WROTE THE THREE LETTERS TO JOHNSON, JOHNSON BELIEVED THAT HE HAD COUNSEL AND FOLLOWED THE ADVICE OF JUDGES TO NOT COMMUNICATE WITH PRISONERS WHO HAD COUNSEL. Doc. 5894-5 AT MOST, JOHNSON FAILED TO RESPOND TO THREE LETTERS, AT THE ADVICE OF JUDGES IN HER CIRCUIT, ASKING FOR AN EXPLANATION REGARDING A COMPLICATED MISTAKE INVOLVING MULTIPLE PARTIES AND MOVING PARTS. THIS DOES NOT GIVE RISE TO A CONSTITUTIONAL

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VIOLATION." DOC. 103 at 13-14. YANKTON JUDGES COULD NOT ISSUE "SUCH A
"POLICY" AS "ADMINISTRATIVE DECISIONS, EVEN THOUGH THEY MAY BE ESSENTIAL TO THE
VERY FUNCTIONING OF THE COURTS, HAVE NOT SIMILARLY BEEN REGARDED AS JUDICIAL
ACTS." FORESTER V. WHITE, 484 U.S. 219 (1988). SEE COLLINS V. LIPPMAN,
2005 U.S. DIST. LEXIS 11116 (2ND CIR. 2005) at (OVERVIEW),

" PURSUANT TO 42 USC § 1983, PLAINTIFF SUED DEFENDANTS, A CITY JUDGE, A
CRIMINAL COURT CLERK, AND THREE UNIDENTIFIED JUSTICES OF A COUNTY CRIMINAL
COURT, ALLEGING THAT THE DEFENDANTS VIOLATED HIS RIGHTS UNDER THE FIRST, FIFTH, AND
FOURTEENTH AMENDMENTS BY DENYING HIM ACCESS TO COURT DOCKET SHEETS AND
OTHER COURT RECORDS IN A CRIMINAL CASE. DOE JUDGES WERE NOT ENTITLED
TO JUDICIAL IMMUNITY AS TO CLAIMS FOR DECLARATORY RELIEF. THE CITY
JUDGE WAS ALSO NOT ENTITLED TO JUDICIAL IMMUNITY FOR HIS ALLEGED FAILURE
TO DIRECT THE CLERK TO PROVIDE THE REQUESTED DOCUMENTS BECAUSE THIS
WAS AN ADMINISTRATIVE FUNCTION. SIMILARLY, THE CLAIM THAT THE CLERK
SEALED THE DOCUMENTS WITHOUT A COURT ORDER WAS NOT BARRED BY JUDICIAL
IMMUNITY BECAUSE THE INMATE ALLEGED A ABSENCE OF JURISDICTION. ADDITIONALLY,
THE INMATE ALLEGED THE CITY JUDGE WAS PERSONALLY INVOLVED IN THE CLERK'S
FAILURE TO PROVIDE THE REQUESTED DOCUMENTS, WHICH WAS SUFFICIENT UNDER § 1983."

CLEARLY, YANKTON COUNTY JUDGES ABOVE STATED "POLICY" CREATES MUNICIPAL
§ 1983 LIABILITY, AND RESPONDENT JOHNSON AND DOE(S) SHOULD NOT HAVE
BEEN GRANTED SUMMARY JUDGMENT AS GEITZ V. OVERALL, 62 FED APPX 744 (2D
(8TH CIR. 2003). ALSO ESTABLISHES § 1983 LIABILITY FOR RESPONDENT JOHNSON
AND DOES CONDUCT.

ADDITIONALLY, A PRISONER'S SIXTH AMENDMENT RIGHT TO COUNSEL ONLY EXISTS DURING

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DIRECT CRIMINAL AND APPELLATE PROCEEDINGS, AND A PRISONER LIKE ANY OTHER CITIZEN, HAS NO CONSTITUTIONAL RIGHT TO COUNSEL WHATSOEVER IN ANY KIND OF CIVIL LITIGATION. THE PRESENCE OF COUNSEL CANNOT SUBSTITUTE A PRISONER OR CITIZEN'S RIGHT TO ACCESS THE COURTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS. AND OTHER CIRCUITS AGREE. SEE ORTIZ V. DOWNEY, 561 F.3d 664, 671 (7TH CIR. 2009)^{APP} "ASSISTANCE OF COUNSEL IN A CRIMINAL CASE DID NOT DIMINISH [PLAINTIFFS] RIGHT TO ADEQUATE LEGAL RESOURCES FOR THE PURPOSE OF PURSUING HIS CIVIL SUIT"; GREEN V. FERREL, 801 F.2d 765, 772 (5TH CIR. 1986) NOTING THAT THE AVAILABILITY OF DEFENSE TRIAL COUNSEL WAS IRRELEVANT TO NEED FOR COURT ACCESS FOR POST-CONVICTION RELIEF; MAWEN V. SMITH 796 F.2d 79, 83-84 (5TH CIR. 1986) HOLDING THAT ACCESS TO A COURT-APPOINTED DEFENSE LAWYER WHO REFUSED TO PURSUE A CIVIL RIGHTS CLAIM DID NOT SATISFY ACCESS REQUIREMENT. THEREFORE, FOR THE PETITIONERS INDEPENDENT CASE AND FOR ALL THOSE SIMILARLY SITUATED THE PETITIONER ASKED THIS COURT; DOES A REGULAR CITIZEN HAVE A DIFFERENT RIGHT TO ACCESS THE COURTS UNDER THE FIRST AND FOURTEENTH AMENDMENT; COULD YANKTON COUNTY JUDGES ISSUE A 'POLICY' OR 'ADVISEMENT' TO THE YANKTON COUNTY CLERK OF COURTS TO ONLY COMMUNICATE WITH A PRISONERS' LAWYER AND NEVER THE PRISONER; AND WAS THE PETITIONERS DEPRIVATION OF HIS RIGHT TO ACCESS PUBLIC RECORDS, BY THE YANKTON COUNTY CLERK OF COURTS AND DOE(S) ESTABLISH § 1983 LIABILITY UNDER U.S. V. LANIER, 520 U.S. 259, 271 (1997) BECAUSE THE RIGHT IS "WELL ESTABLISHED".

FOURTEENTH AMENDMENT RIGHT TO

2. DUE PROCESS

IN 'ISSUE 4.' HEREIN THIS PETITION ON PAGES 22.-23. THE PETITIONER ADDRESSES THE DISTRICT COURT'S FAILURE TO DETERMINE WHETHER THE PETITIONERS \$9,999,999.99 WAS FINAL AND WHETHER RESPONDENTS COULD HAVE CHANGED IT U.S.: FED. R. CRIM. P. 35 AND 36, AND SDCL 23A-31-1 (RULE 35) AND SDCL 23A-31-2 (RULE 36).

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ALL REQUIRE JUDICIAL INVOLVEMENT AND DUE PROCESS. THE PETITIONER'S ORAL AND WRITTEN JUDGMENT AND FINANCIAL ENTRIES ENTERED IN THE PETITIONER'S CRIMINAL CASE CR-11-216 ON JUNE 7, 2012 ALL 'HARMONIZE' SEE DOCUMENTS IN DOC. 40, DOC. 67, DOC. 92 at 11. RESPONDENT JOHNSON STATED THAT "FEDERAL RULES OF CRIMINAL PROCEDURE, INCLUDING 35(a) AND 36 DO NOT APPLY TO STATE COURT CRIMINAL PROCEEDINGS" DOC. 92-1 at 46-47, HOWEVER, RESPONDENT JOHNSON IGNORES, DOES NOT ADDRESS 23A-31-1 (RULE 35) OR 23A-31-2 (RULE 36) AND NEITHER DOES THE DISTRICT COURT. IN DOC. 92-1 at 47-48 RESPONDENT JOHNSON STATES "ONCE IT WAS DETERMINED THERE WOULD BE NO RESTITUTION, PAYMENTS OF \$112.50 PREVIOUSLY BEING HELD WAS PAID OUT." ON OCTOBER 30, 2014. STATED "DETERMINATIONS" OVER TWO YEARS AFTER THE PETITIONER WAS SENTENCED, NUMEROUS ACCOUNTING ISSUES (SEE DOC 92) AND ACTIONS OF CONCEALMENT WERE "DISCRETIONARY" MINISTERIAL ACTS. THE DISTRICT COURT FAILED TO "LEGALLY" DETERMINE IF PETITIONER'S \$10 MILLION IN RESTITUTION WAS FINAL FOR THE PURPOSES OF DUE PROCESS AND THE PETITIONER'S CLAIMS OF "ACTUAL INJURY" AND "IMPEDED CLAIMS."

FURTHER, THE PETITIONER'S SENTENCE HAS BEEN VACATED AND "IN ORDER TO RECOVER DAMAGES FOR ALLEGEDLY UNCONSTITUTIONAL CONVICTION OR IMPRISONMENT, OR FOR OTHER HARM CAUSED BY ACTIONS WHOSE UNLAWFULNESS WOULD RENDER A CONVICTION OR SENTENCE INVALID, A § 1983 PLAINTIFF MUST PROVE THAT THE CONVICTION OR SENTENCE HAS BEEN REVERSED." HECK V. HUMPHREY, 512 U.S. 477, 486-87, 114 S. Ct. 2364 (1994).

RESPONDENT JOHNSON'S ACTIONS WITHOUT JUDICIAL INVOLVEMENT AND CONCEALMENT OF VIOLATE DUE PROCESS AND SHOULD NOT HAVE OCCURRED IN THE PETITIONER'S

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CASE NOR SHOULD IT OCCUR IN ANYONE SIMILARLY SITUATED TO THE PETITIONER. AS A REMINDER, EVEN WITH UTS ACCESS; NO ATTORNEY, HABERS COURT OR THE DISTRICT COURT COULD UNDERSTAND WHAT HAD OCCURRED REGARDING THE PETITIONERS \$10 MILLION RESTITUTION OBLIGATION PRIOR TO RESPONDENT JOHNSON BEING MADE A "DEFENDANT" IN THE PETITIONERS UNDERLYING \$11983 ACTION.

3. DUE PROCESS RIGHTS AND SDCL 24-11-45 YANKTON COUNTY'S ILLEGAL CONFINEMENT FEES (EST. COUNTY COLLECTS \$250,000⁰⁰ - 300,000 PER YEAR)

FIRST, APPENDIX DE, ATTACHED HERETO CONTAIN THE DOCUMENTED EXCHANGE REGARDING THE PETITIONERS DISCOVERY AND CHALLENGE TO YANKTON COUNTY'S ASSIGNMENT OF CONFINEMENT FEES AND LIENS ENTERED AGAINST HIM PURSUANT TO SDCL 24-11-45 AND WITHOUT AN ORDER OF THE COURT. APPENDIX DE.

DOCUMENTS ARE FILED WITHIN THE DISTRICT COURT RECORD IN DOC. 44 AND DOC. 101.

ARGUMENTS AGAINST THESE ILLEGAL CONFINEMENT FEES ARE WITHIN THE DISTRICT COURT RECORD IN DOC. 44 AND DOC. 101, AND HEREIN THIS PETITION IN 'ISSUE 5' ON PAGES 24-25. THESE ARGUMENTS ARE WELL MADE.

NO COURT HAS EVER ORDERED THE PETITIONER TO PAY THE FIRST \$4,090⁰⁰ CONFINEMENT FEE, WHICH WAS ENTERED THE DAY THE PETITIONER WAS SENTENCED IN CR 11-216, AND CERTAINLY NO COURT WAS INVOLVED WHEN RESPONDENT DOERS) ENTERED ANOTHER DUPLICATE \$4,090⁰⁰ CONFINEMENT FEE AND LIEN AGAINST HIM ON FEBRUARY 5, 2021, ALMOST 9 YEARS AFTER CR 11-216'S JUDGMENT WAS ENTERED AND FOR A PERIOD OF TIME THE PETITIONER WAS NOT IN YANKTON COUNTY CUSTODY. THIS TOTALS \$8180⁰⁰ IN CONFINEMENT FEES AND LIENS AGAINST THE INDIGENT PETITIONER. WORSE YET, THE PETITIONER WAS REMANDED BACK TO YANKTON COUNTY JAIL CUSTODY IN

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AUGUST OF 2021 BY THE STATE HABEAS COURT FOR RESENTENCING IN THE PETITIONER'S CRIMINAL CASE, CR 11-216. THIS MEANS THAT YANKTON COUNTY WILL ENTER IN MORE CONFINEMENT FEES AND LIENS AGAINST THE PETITIONER IN ADDITION TO THE \$8180.00 HE CURRENTLY OWES, ALL WITHOUT ANY COURT INVOLVEMENT. FURTHER, THE LIENS ENTERED AGAINST THE PETITIONER PURSUANT TO SDCL 24-11-45.1 CAN BE ENFORCED BY SENDING THE PETITIONER TO JAIL OR EXECUTING SEIZURES OF THE PETITIONER'S PROPERTY. NO OTHER COUNTY ENTERS IN CONFINEMENT FEES TO ITS PRISONERS AS YANKTON COUNTY DOES. YANKTON COUNTY'S ASSIGNMENT OF THESE FEES PURSUANT TO AN INAPPLICABLE STATUTE AND WITHOUT COURT INVOLVEMENT CLEARLY VIOLATE THE PETITIONER'S DUE PROCESS RIGHTS AND OTHER YANKTON COUNTY PRISONERS UNDER HUDSON V. PALMER, 468 U.S. 517, 533 (1984) AND THE EIGHTH AMENDMENTS EXCESSIVE FINES CLAUSE, BECAUSE THESE COSTS ARE PUNISHMENT UNDER SDCL 23A-27-25.2. ADDITIONALLY, THE RETALIATORY \$4,090.00 VIOLATED THE PETITIONER'S EQUAL PROTECTION RIGHTS UNDER THE FOURTEENTH AMENDMENT. SEE DOC. 44, DOC. 101, APPENDIX D E.

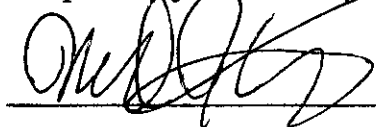
4. DUE PROCESS RIGHTS AND (EST. \$1,000,000.00 TAKEN) S.D.O.C.'S ILLEGAL STIMULUS SEIZURE

THE PETITIONER'S CLAIMS AND ARGUMENTS REGARDING S.D.O.C. CARES ACT STIMULUS SEIZURE PURSUANT TO S.D.O.C. Policy 1.1.B.1 AND DOCUMENTS ARE WITHIN DOC. 44 AND DOC. 101. THE DISTRICT COURT DENIED DUE PROCESS CLAIM UNDER HUDSON. IN DOC. 101 THE PETITIONER SHOWED THE DISTRICT COURT THAT IN LAMAR V. HUTCHINSON, 2021 WL 3518625 (E.D. ARK. 2021) AN INMATE IN ARKANSAS FILED AN ALMOST IDENTICAL CLAIM AND THE ARKANSAS COURT FOUND A DUE PROCESS VIOLATION EXISTED AND ISSUED AN INJUNCTION. IN DOC. 103 at 9, APPENDIX B, at 9 THE DISTRICT COURT ACKNOWLEDGED THE ARKANSAS CASE, AND IT'S ERROR IN APPLICATION OF HUDSON. HOWEVER, THE DISTRICT COURT AGAIN, OPPRESSIVELY DENIED THIS CLAIM WHICH AFFECTED THE PETITIONER AND AROUND 1,000 PRISONERS WHO ALSO HAD THEIR STIMULUS CHECKS SEIZED.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: NOVEMBER 1, 2022