

Appeal No. 18 -

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IN THE  
SUPREME COURT OF THE UNITED STATES

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JOHN AYANBADEJO,

*PETITIONER,*

VS.

JEFFERSON B. SESSIONS, III, ATTORNEY GENERAL, ET. AL.

*RESPONDENT*

On Application for Extension of Time to File a Petition For A Writ Of Certiorari

To The United States Court Of Appeals

For The Fifth Circuit

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PETITIONER'S APPLICATION TO EXTEND TIME TO  
FILE A PETITION FOR A WRIT OF CERTIORARI

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## PARTIES TO THE PROCEEDING

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:

1. John Ayanbadejo, Petitioner - Appellant.
2. Mark Siegl, Field Office Director, United States Citizenship and Immigration Services Texas District Office.
3. Evelyn M. Upchurch.
4. Sharon A. Hudson.
5. L. Francis Cissna, Director, United States Citizenship and Immigration Services.
6. Kirstjen M. Nielsen, Secretary, U.S. Department Of Homeland Security.
7. Jefferson B. Sessions, III, U. S. Attorney General.
8. John Does.
9. Sandy Heathman.

There are no non-governmental parties requiring a disclosure statement under Supreme Court Rule 29.6.

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To the Honorable Samuel A. Alito, Jr. as Circuit Justice for the United States Court of Appeals for the Fifth Circuit.

Petitioner John Ayanbadejo, respectfully, requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for thirty days to and

including August 6, 2018. The Court of Appeals issued its original opinion on March 2, 2018 (*see, Appendix C and D, infra*). On April 2, 2018, the Court of Appeals issued an order (*see, Appendix A and B, infra*) in which it, *sua sponte*, considered a Petition for Rehearing as a Motion for Reconsideration and denied Petitioner's Motion to Recall the Court's Mandate with said Application for Rehearing / Reconsideration *per curiam*. Absent an extension of time, the Petition would therefore be due on July 2, 2018. Petitioner is filing this Application at least ten days before that date. *See, S. Ct. R. 13.5.* This Court will have jurisdiction over the judgment by virtue of Section 1254(1) of the Judicial Code (28 U.S.C. § 1254(1)).

## BACKGROUND

The United States Citizenship and Immigration Services (USCIS) has several longstanding rules and regulations concerning an Application for Naturalization under the Violence Against Women Act (VAWA). Petitioner, Mr. Ayanbadejo, after being granted in prior litigation, his Legal Permanent Resident Card under VAWA (contrary to the District Court's erroneous Opinion, *infra*) and strictly following longstanding rules and regulations of the USCIS that were obtained from USCIS website at that time, submitted an Application to reopen his previously submitted Naturalization Application. The central regulation at issue in this litigation is a regulation 8 C.F.R. § 204.2(h)(2), which allows in pertinent part:

an abused spouse for whom an I-130 marriage petition was previously filed, recapture or transfer priority dates from the I-130 petition to their new self-petitions “without regard to the current validity” of the

previous petition or even if the old petition was eventually withdrawn or denied. Memo, Aleinikoff, Exec. Assoc. Comm., Programs HQ 204-P (Apr. 16, 1996).

The foregoing provision allows Mr. Ayanbadejo to be immediately eligible for Naturalization, provided he submits an application to USCIS requesting USCIS to transfer priority dates from his I-130 petition, to his Legal Permanent Resident priority date in accordance with USCIS procedure, thus making Mr. Ayanbadejo immediately eligible for Naturalization. Mr. Ayanbadejo followed the longstanding regulations of the USCIS, but his application was denied by the USCIS.

28 U.S.C. § 2201 allows:

an action to be brought in District Court seeking a declaration of citizenship or review of the denial of citizenship by any U.S. Department or Agency by initiating an action for Naturalization.

Mr. Ayanbadejo, citing foregoing provisions as well as others including, but not limited to Title VI of the Civil Rights Act of 1964 brought an action under the Fifth and Fourteenth Amendment to the United States Constitution for declaratory relief with a request to transfer the case to a Court of appropriate Jurisdiction should the Court hold that it had no jurisdiction to grant such relief and an action for damages under the Equal Access to Justice Act. This Court, in *Atlantic Mar. Constr. Co. v. U.S. Dist. Ct. for the W. Dist. Of Tex.*, \_\_\_ U.S. \_\_\_, 134 S.Ct. 568 at 579 (2013) ordered District Courts to transfer cases in which they hold that they do not have jurisdiction to grant the remedy requested to the Appropriate Court that

does have jurisdiction to grant the remedy. Other jurisdictions follow foregoing judicially binding precedent. *See, In re LimitNone, LLC*, 551 F.3d 572, 576 (7<sup>th</sup> Cir. 2008); *Public Employees' Ret. Sys. v. Stanley*, 605 F.Supp. 2d 1073, 1075 (C.D. Cal. 2009). A Court may transfer a case to another Court even if the Court has no jurisdiction. *Ruiz v. Mukasey*, 552 F. 3d 269 (2d Cir 2009) [I-130 denial was not final order and could not be reviewed in Circuit Court but was properly transferred to District Court].

Mr. Ayanbadejo, brought the foregoing action in the form of a verified Petition written in plain English similar to instant application to extend time, with attached evidence. The foregoing Petition cited binding judicial authorities of this Court, the lower Court, and other judicial authorities; quoting verbatim, in some parts, a decision of an Appellate Court and judicial authorities relevant to the Relief sought. USDC. SD. TX. ECF No. 1, 2, and 16. Petitioner took the foregoing extra precautionary steps due to the reputation that Petitioner had read on the internet of some Judges of the U.S. District Court for the Southern District of Texas and from prior experience in other cases before the Court.

Respondents, predictably, brought a Motion to Dismiss Mr. Ayanbadejo's complaint for failure to state a claim and/or for summary judgment.

Binding settled judicial precedent from this Court and the lower Court states in pertinent part, "In determining whether there is a genuine dispute of material fact that prevents summary judgment, a Court must consider all evidence in the light most favorable to Petitioner as the non-movant." *Tolan v. Cotton*, \_\_ U.S. at \_\_, 134

S. Ct. at 1866 (2014); *Cooper Tire & Rubber Co. v. Farese*, 423 F.3d 446, 455-56 (5<sup>th</sup> Cir. 2005).

The District Court, more or less in conformance with what Petitioner had read on the internet, after orally and derogatorily referring to Mr. Ayanbadejo's Petition as "gibberish", "unintelligible", among other derogatory words used, dismissed Mr. Ayanbadejo's Petition because:

"Citizenship and Immigration Services exercised its discretion within constitutional limits when it declined to adjust John Ayanbadejo's status and denied his naturalization application. The Court does not have jurisdiction to change those decisions.

Because Ayanbadejo did not exhaust the administrative remedies for his request under the Freedom of Information Act, the Court does not have jurisdiction over his claims.

This case will be dismissed for want of jurisdiction. Even if the Court did have jurisdiction, Ayanbadejo has not stated a claim on which relief may be granted." (*see, Appendix F, infra*).

"Gibberish" according to Oxford, Cambridge, and Merriam Webster Dictionaries means, "Unintelligible or meaningless speech or writing; nonsense."

Following foregoing judgment, Mr. Ayanbadejo, within thirty days, administratively, submitted an appeal of the foregoing decision and hired a lawyer at extra costs and expense to resubmit his FOIA application to prove that he had exhausted his administrative remedies for his request under the Freedom of

Information Act, when he filed his initial Petition. In discharge of that proof, the Citizenship and Immigration Services did not grant Mr. Ayanbadejo's resubmitted FOIA request, which Mr. Ayanbadejo wanted to utilize in his Petition before the District Court, until more than five months had passed after his lawyer resubmitted his request – a period that far exceeded the statutorily mandated time for the Citizenship and Immigration Service to respond to FOIA requests.

Within thirty days of foregoing facts, Mr. Ayanbadejo submitted his carefully drafted Notice of Appeal to the Fifth Circuit. USDC. SD. TX. ECF No. 31.

The Citizenship and Immigration Service, predictably, once again brought a Motion to Dismiss the Appeal for Lack of Jurisdiction due to alleged untimely filing of the Appeal and failed to serve Mr. Ayanbadejo a copy of the said Motion until the Court of Appeals, in a letter to the Citizenship and Immigration attorney of record, copied to Petitioner, mentioned a correction made to said application. Mr. Ayanbadejo, immediately, contacted the said attorney of record via email and requested for a copy of the said application to Dismiss. Mr. Ayanbadejo also notified the Court of the lack of service. After receipt of a copy of Respondents' said application to dismiss, Petitioner, within ten days, submitted opposition to said Motion to Dismiss. The Court of Appeals, via letter dated February 27, 2018, informed Mr. Ayanbadejo that his Response was out of time and took no action on the document. (*see, Appendix E, infra*)

The Court of Appeals, on or about March 2, 2018, granted Appellees' said opposed Motion to Dismiss Appeal for Lack of Jurisdiction and copied the Southern

District of Texas of the foregoing with the judgment issued as the mandate on the same date. (*see, Appendix C and D, infra*).

On or about March 8, 2018, Mr. Ayanbadejo submitted an application to recall the lower Court's Mandate and a Petition for Rehearing.

On or about April 2, 2018, the Court, *sua sponte*, considering Mr. Ayanbadejo's Petition for Rehearing as a Motion for Reconsideration denied Mr. Ayanbadejo's Application and Application to Recall the Court's Mandate, *per curiam*. (*see, Appendix A and B, infra*).

#### **REASONS FOR GRANTING AN EXTENSION OF TIME**

The time to file a Petition for a Writ of Certiorari should be extended for thirty days for these reasons:

1. John Ayanbadejo made a decision after two weeks to file a Petition for Certiorari and called this Court requesting for a copy of the Court's Rules and Procedure, which Mr. Ayanbadejo only recently received and is still perusing the rules. Seeking this Court's review in any case is a serious decision, and Mr. Ayanbadejo is carefully researching the rules as well as the law before proceeding cautiously. This case is uniquely important and very complex. Mr. Ayanbadejo due to circumstances beyond his control is forced to proceed, *pro se*, a decision, though frowned upon by this Court, is necessary due to the long history of the case with various attorneys that Petitioner paid out of pocket, with associated fees, and costs of the case, which has financially put Petitioner into heavy debt.

2. This case presents extraordinarily important issues warranting a carefully prepared Petition. The decision marks an unwarranted departure of longstanding rules, procedure, and regulations in recently affirmed decisions of this Court and in the Fifth Circuit. *E.g., see, Sessions v. Dimiyya*, 584 U.S. \_\_\_\_ (2018). Petitioner in his Writ will urge this Court to reject the Fifth Circuit's panel's unwarranted departure of the Judicial Precedent of this Court's, settled Judicial Precedent of the Fifth Circuit and majority of other Circuit Courts.
3. Under black letter law of this Court, the Fifth Circuit, and practically every circuit, "In determining whether there is a genuine dispute of material fact that prevents summary judgment, a Court must consider all evidence in the light most favorable to Petitioner as the non-movant." *Tolan v. Cotton*, \_\_ U.S. at \_\_, 134 S. Ct. at 1866 (2014); *Cooper Tire & Rubber Co. v. Farese*, 423 F.3d 446, 455-56 (5<sup>th</sup> Cir. 2005). It is clearly obvious in instant case, not only from the Court's oral statements, but from the Judgment, that the District Court did not consider the evidence in the light most favorable to Petitioner as the non-movant, otherwise it will not have asserted in its judgment that, "Citizenship and Immigration Services exercised its discretion within constitutional limits when it declined to adjust John Ayanbadejo's status and denied his naturalization application. The Court does not have jurisdiction to change those decisions." The main issue before Judge Lynn's Court, in Mr. Ayanbadejo's Naturalization Petition was eligibility of Mr.

Ayanbadejo to immediately Naturalize under 8 C.F.R. § 204.2(h)(2) as the Citizenship and Immigration Services had already adjusted Mr. Ayanbadejo's status to that of Legal Permanent Resident. Pet'r's First Am. Verified Pet. 24 at ¶¶ 67 – 68; USDC. SD. TX. ECF No. 16. Petitioner in accordance with this Court's precedent in *Atlantic Mar. Constr. Co. v. U.S. Dist. Ct. for the W. Dist. Of Tex.*, \_\_\_ U.S. \_\_\_, 134 S.Ct. 568 at 579 (2013) requested a transfer should the Court rule it had no Jurisdiction. *See*, Pet'r's First Am. Verified Pet., ¶ 107 at 36 - 37; USDC. SD. TX. ECF No. 16.

4. If a District Court asserts it has no Jurisdiction that opinion or judgment is void, *ab initio*, which Mr. Ayanbadejo, asserted in his applications before the Fifth Circuit in his Application for Relief. *See, Carter v. Fenner*, 136 F.3d 1000, 1006 (5<sup>th</sup> Cir. 1998) (there is no time limit on attack on judgment that is void) and *Jackson v. FIE Corp.*, 302 F.3d 515, 522 (5<sup>th</sup> Cir. 2002). The lower Appellate Court has no power, nor can, arguably, this Court or any Court legitimize or validate a Judgment that is void, *ab initio*, without an amendment to the U.S. Constitution and upending the jurisprudence of this Court. The proper procedure according to settled Judicial Precedent of this Court and the lower Court is to mandatorily vacate the Judgment of Judge Lynn Hughes and grant relief sought by Petitioner. Mr. Ayanbadejo in his Verified Petition clearly stated a claim on which relief may be granted and the remedy was transfer in accordance to this Court's judicial precedent and

not dismissal of a Petition that the Court obviously had not considered, thus rendering the whole judgment void, not just a portion of it.

5. From foregoing, there is at minimum, a substantial prospect that this Court will grant certiorari and, indeed, a substantial prospect of reversal. In addition to involving extraordinarily important issues, the decision of the Court of Appeals panel is in conflict with this Court's settled, reaffirmed Judicial Precedent, *Tolan v. Cotton*, \_\_ U.S. at \_\_, 134 S. Ct. at 1866 (2014) and others, majority of other federal Courts of Appeals and with many State Courts of last resort. The decision also conflicts squarely with the Fifth Circuit's own settled decisions, *Cooper Tire & Rubber Co. v. Farese*, 423 F.3d 446, 455-56 (5<sup>th</sup> Cir. 2005), *Carter v. Fenner*, 136 F.3d 1000, 1006 (5<sup>th</sup> Cir. 1998) (there is no time limit on attack on judgment that is void) and, *Jackson v. FIE Corp.*, 302 F.3d 515, 522 (5<sup>th</sup> Cir. 2002), thereby subjecting the Circuit to conflicting Judgments on the constitutionality of important actions of government agencies such as the Citizenship and Immigration Services.
6. No meaningful prejudice will arise from the extension, as this Court may issue its opinion in the October 2018 Term regardless of whether an extension is granted.

#### CONCLUSION

For these foregoing reasons, Petitioner Mr. Ayanbadejo humbly and respectfully asks that the time to file a Petition for a Writ of Certiorari be extended for thirty days to and including August 2, 2018.

Respectfully Submitted,

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Date: April 30, 2018