No. _____

In The

# Supreme Court of the United States

JOHN AYANBADEJO,

*Petitioner,*

vs.

JEFFERSON B. SESSIONS, III,
ATTORNEY GENERAL, et al.,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether the Lower Appellate Court departed from the accepted and usual course of judicial proceedings, and/or sanctioned such a departure by the U.S. District Court in instant case?

## 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, Respondent-Appellee.
3. Evelyn M. Upchurch, Respondent-Appellee.
4. Sharon A. Hudson, Respondent-Appellee.
5. L. Francis Cissna, Director, United States Citizenship and Immigration Services, Respondent-Appellee.
6. Kirstjen M. Nielsen, Secretary, U.S. Department of Homeland Security, Respondent-Appellee.
7. Jefferson B. Sessions, III, U.S. Attorney General, Respondent-Appellee.
8. John Does, Respondents-Appellees.
9. Sandy Heathman, Respondent-Appellee.

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

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## CITATIONS OF OPINION AND ORDERS IN CASE

The decision of the United States Court of Appeals for the Fifth Circuit denying Petitioner, John Ayanbadejo's Petition for Rehearing considered as a Motion for Reconsideration, *sua sponte*, by the lower Court, *John Ayanbadejo v. Jefferson B. Sessions, III, U.S. Attorney General, et al.*, No. 17-20693 (5th Cir. April 2, 2018), appears at **App. A and accompanying letter App. B**, *infra* to the Petition and is unpublished.

The Order of the United States Court of Appeals for the Fifth Circuit denying Petitioner's Motions, *John Ayanbadejo v. Jefferson B. Sessions, III, U.S. Attorney General, et al.*, No. 17-20693 (5th Cir. March 2, 2018), appears at **App. C and accompanying letter App. D**, *infra* to the Petition and is unpublished.

The decision of the United States District Court Southern District of Texas dismissing Petitioner's Verified Petition, *John Ayanbadejo v. Jefferson B. Sessions, III, U.S. Attorney General, et al.*, No. 4:16-CV-01673 (USDC. SD. TX. April 5, 2017), appears at **App. G** to the Petition and is unpublished.

The decision of the United States District Court Southern District of Texas staying Petitioner's Discovery, Request for Admissions, *John Ayanbadejo v. Jefferson B. Sessions, III, U.S. Attorney General, et al.*, No. 4:16-CV-01673 (USDC. SD. TX. March 16, 2017), appears at **App. H** to the Petition and is unpublished.

## JURISDICTION

The Order of the United States Court of Appeals for the Fifth Circuit was entered on March 2, 2018 for the first Appeal (reprinted as **App. C and accompanying letter App. D**, *infra*). On or about March 9, 2018, Petitioner filed a Petition for Rehearing on the Fifth Circuit's decision entered on March 2, 2018. The Court below, *sua sponte*, treating the Petition for Rehearing as a Motion for Panel Reconsideration entered an Order denying the Petition for Rehearing on April 2, 2018 (reprinted as **App. A and accompanying letter App. B**, *infra*).

On May 4, 2018, this Court, granted an extension of time to file a Writ of Certiorari in instant case to August 6, 2018.

This Petition is filed before the August 6, 2018 due date, so that this Court has jurisdiction to review the Order of the Fifth Circuit on Petition for Certiorari, which rests by virtue of Section 1254(1) of the Judicial Code (28 U.S.C. § 1254(1)).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The present appeal arises from decision of the United States Court of Appeals for the Fifth Circuit denying Petitioner's Petition for Rehearing considered as a Motion for Reconsideration, *sua sponte*, in Appeal of Orders of the United States District Court No. 4:16-CV-01673. The appeal involves questions related to

Petitioner's Statutory Rights to Naturalize; Due Process and Equal Protection Rights under the Fifth and Fourteenth Amendment to the U.S. Constitution; and denial of his Motion for Relief from Judgment pursuant to Federal Rules of Appellate Procedure.

Art. III, Section 2, of the United States Constitution provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this constitution, the Laws of the United States and Treaties made, or which shall be made, under their Authority. . . .

8 C.F.R. § 204.2(h)(2), allows in relevant part:

> an abused spouse for whom an I-130 marriage petition was previously filed may 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).

8 C.F.R. § 335.3(a), provides:

> If the applicant complies with the Naturalization requirements, USCIS ***shall*** grant the application and may not exercise its discretion to deny Naturalization. Under the same regulation, if Respondents have no discretion, it is reasonable to conclude that neither does the Court have discretion to deny Naturalization.

Art. I, § 8, cl. 4 of the United States Constitution, empowers:

> Congress to establish foregoing uniform Rule of Naturalization, which Mr. Ayanbadejo relied on in addition to information on USCIS website in submitting his instant Naturalization application.

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.

Title VI of the Civil Rights Act of 1964, provides:

> that no person in the United States may, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Title VI imposes on Respondents and all Federal Officials a duty to refrain from participating in discriminatory practices and an affirmative duty to prevent discriminatory practices by protecting Petitioner's Due Process and Equal Protection Rights that includes, but not limited, to ensuring that Petitioner is expeditiously granted any Relief he is entitled and is expeditiously, publicly, administered the Oath of Allegiance, the final step to Naturalization. Respondents are subject to provisions of foregoing Acts either because they receive federal financial

assistance or are Federal Officials as defined by the Act.

It is black letter law that a Federal Court has power to decide a compensatory damages claim even if a plaintiff's claim for prospective relief has become moot in the interim. Congress allows for the recovery of reasonable attorney's fees and other expenses including expert witness fees and the cost of any study, analysis, report, or test. 28 U.S.C. § 2412(d)(2)(A). The absence of a live claim for prospective relief is irrelevant to a Court's power to decide a claim for damages.

In the decision below, the Appeal panel rejected foregoing judicially binding widely held consensus. The Court in effect held that Federal Courts lack power to decide a Petitioner's damages claim when his claims for prospective relief become allegedly moot.

The decision warrants review. The division it creates among the Courts of Appeals, including inconsistent Orders from the Fifth Circuit can only be settled by this Court. There are compelling reasons for doing so now, particularly in a climate where the constitutional protections afforded immigrants are being whittled down. This Court felt the need to reaffirm that constitutional protections are afforded immigrants in the recently decided case of *Sessions v. Dimiya*, 584 U.S. ___ (2018).

The question involves bedrock principles of Federal jurisdiction, and however resolved, affects the behavior of countless individuals and governments.

The Fifth Circuit, other than granting Respondents' Motion to Dismiss for lack of jurisdiction for untimely filing, which, from Petitioner John Ayanbadejo's arguments, is inapplicable to the U.S. District Court's decision that is void, *ab initio*, gave no other reasons for jettisoning the prevailing rule, but whatever their reasons are, the Court's reasons do not withstand scrutiny. *See Brumfield v. State Bd. Of Educ.*, 806 F.3d 289 (5th Cir. 2015) (Court dissolved the injunction because the Order concerning Louisiana's school voucher program was beyond the scope of the District Court's continuing jurisdiction in the case and was therefore void for lack of subject matter jurisdiction).

Unlike declaratory judgments, which announce relative rights and responsibilities of the parties going forward, damages are retrospective; they address past violations of individual rights.

Only the prevailing rule is faithful to this Court's precedent and the historic practice of common law courts. The rule as espoused by judicial precedent of the Courts respects the right of individual litigants to choose the relief they wish to pursue. This Court should grant certiorari, reaffirm the longstanding rules, and reject the Fifth Circuit's unwarranted departure by immediately admitting Mr. John Ayanbadejo into Naturalization and awarding damages in the process.

## STATEMENT OF THE CASE

Mr. Ayanbadejo is VAWA Self-Petitioner and Petitioner; Respondents are Mark Siegl, Field Office Director, United States Citizenship and Immigration Services (USCIS), Texas District Office; Evelyn M. Upchurch; Sharon A. Hudson; L. Francis Cissna, Director, United States Citizenship and Immigration Services (USCIS); Kirstjen M. Nielsen, Secretary, U.S. Department of Homeland Security; Jefferson B. Sessions, III, U.S. Attorney General; John Does; Sandy Heathman.

VAWA Self-Petitioner and Petitioner, John Ayanbadejo, pro se, sued Respondents for Mandamus and Declaratory Judgment Pursuant to 28 U.S.C. § 1361, 8 U.S.C. § 1329, 28 U.S.C. § 1331, 28 U.S.C. § 2201, 5 U.S.C. §§ 555(B) and 702 of the Administrative Procedure Act, Title VI of the Civil Rights Act of 1964, VAWA 2005 § 825(B) (Amending VAWA 2000 § 1506(C)(2)), Fifth and Fourteenth Amendment to the U.S. Constitution. **Pet'r's V. Compl.; USDC. SD. TX. ECF No. 1.**

An action may 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 under 28 U.S.C. § 2201. **Pet'r's First Am. V. Compl. 1-2; USDC. SD. TX. ECF No. 16.**

On or about February 20, 2013, USCIS approved his VAWA I-360 Petition as an abused spouse of a United States Citizen (USC) after litigation and a Request for Evidence. **Pet'r's First Am. V. Compl. 24 at ¶ 47; USDC. SD. TX. ECF No. 16.**

After approval of his I-360 VAWA application, Mr. Ayanbadejo, sought immediate non-discretionary adjustment of status based on his priority date of March 3, 1997, however he encountered unconstitutionally vague and ambiguous responses from USCIS. **Pet'r's First Am. V. Compl. 24 at ¶¶ 48-51; USDC. SD. TX. ECF No. 16.**

On December 29, 2014, USCIS, Houston Field Office, by Notice dated December 29, 2014, scheduled an N-336 Request for a Hearing on a Naturalization Decision for Wednesday, January 7, 2015.

On January 7, 2015, Mr. Ayanbadejo, promptly attended said hearing and after the hearing he was interviewed for his Naturalization. At the hearing, Mr. Yergo asked questions that had been asked and answered in the approval of his Form I-360. Mr. Yergo, issued Mr. Ayanbadejo, Form N-652 showing that he passed the Naturalization interview. **Pet'r's First Am. V. Compl. 24 at ¶¶ 59-60; USDC. SD. TX. ECF No. 16.**

On or about April 29, 2015, Respondents in USCIS Houston District Office, issued a decision reaffirming an earlier denial of Mr. Ayanbadejo's Naturalization Application, because at the time when the initial decision was rendered, although Mr. Ayanbadejo was an approved VAWA applicant, Mr. Ayanbadejo did not have his Legal Permanent Resident (LPR) card, due solely to delay from Respondents. The foregoing initial decision was wrong, because it clearly stated on USCIS website that an approved applicant, under Violence

Against Women Act (VAWA) is eligible, under an exception also granted to members of the military, for Naturalization, without a Legal Permanent Resident Card, which was the basis of Petitioner's argument.

On or about August 28, 2015, Mr. Ayanbadejo, timely, filed suit in US District Court, Southern District of Texas, Houston Division, challenging the denial of his Naturalization Application. After filing said suit, Respondents, to forestall foregoing argument regarding the VAWA exception, approved and sent Mr. Ayanbadejo's Legal Permanent Resident (LPR) Card. **Pet'r's First Am. V. Compl. 24 at ¶¶ 67-68; USDC. SD. TX. ECF No. 16.**

Upon receiving his LPR Card, Mr. Ayanbadejo, in the *spirit of candor* and in settlement, agreed, upon Respondents' request, to withdraw the suit, *without prejudice*. Subsequently, Mr. Ayanbadejo, relying again on information obtained on USCIS website, applied, within two (2) weeks of receipt of his LPR card, to have the priority date on his LPR card changed to an earlier date in accordance with USCIS regulations also found on USCIS website, thus, making Mr. Ayanbadejo immediately eligible for Naturalization. **Pet'r's First Am. V. Compl. 24 at ¶¶ 69-72; USDC. SD. TX. ECF No. 16.** The said application was denied by Respondents.

Respectfully on USCIS website,

> **"an abused spouse for whom an I-130 marriage petition was previously filed may 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. 8 C.F.R. § 204.2(h)(2);** Memo, Aleinikoff, Exec. Assoc. Comm., Programs HQ 204-P (Apr. 16, 1996)." (Emphasis mine).

Mr. Ayanbadejo's previous attorney, also submitted, a letter to the USCIS Houston office to reopen his Naturalization application submitting evidence of his LPR card in the process. Additionally, Mr. Ayanbadejo, submitted an amended application to the Board of Immigration Appeals (BIA) to reopen his application and remand in light of new evidence, including the approval of his VAWA I-360 and LPR Card. Both applications were denied. **Pet'r's First Am. V. Compl. ¶¶ 23-34 at 13-20; USDC. SD. TX. ECF No. 16.**

On June 13, 2016, Mr. Ayanbadejo, filed his Complaint against Respondents. Mr. Ayanbadejo, brought the foregoing action in the form of a Verified Petition, written in plain English, with subheadings, similar to instant Petition for Writ of Certiorari, but 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. Mr. Ayanbadejo, took the foregoing extra precautionary steps, due to the reputation that he 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. **Pet'r's V. Compl. USDC. SD. TX. ECF Nos. 1, 2, and 16.**

On September 2, 2016, Respondents, predictably, filed their Motion to Dismiss Petitioner's Complaint. On September 9, 2016, Mr. Ayanbadejo, requested for an extension of time to Respond. On September 14, 2016, said Motion for Extension was denied by the District Court. Mr. Ayanbadejo, nonetheless, timely, filed his Opposition to Respondents' Motion to Dismiss on September 19, 2016. On the same date, Mr. Ayanbadejo also filed, an amended Complaint, in response to Respondents' answer and Motion to Dismiss. **USDC. SD. TX. ECF Nos. 13-16.**

In Mr. Ayanbadejo's foregoing, First Amended Petition, filed on September 19, 2016, Mr. Ayanbadejo, addressed all issues relevant and raised in Respondents' and the Board of Immigration Appeals' Administrative Decisions leading to the approval of his Legal Permanent Residency and application to reopen his Naturalization Application for, including the constitutionality of the said Decisions, citing, verbatim, in some parts, Judicial Precedent of lower Appellate Courts and this Court, including statutes and regulations binding on Judge Lynn Hughes. **App. I-L**, *infra*. ***See*** **Pet'r's First Am. V. Compl. ¶¶ 11-25 at 9-14, ¶¶ 30-33 at 16-20; USDC. SD. TX. ECF No. 16.**

Mr. Ayanbadejo, correctly, distinguished cases as cited by the Board of Immigration and Respondents in support of their Decisions, as irrelevant and

inapplicable to his case, citing Judicial Precedent from this Court, statutes, and regulations in support, which is what a reasonable attorney will do in similar circumstances. ***See* Pet'r's First Am. V. Compl. ¶¶ 26-27 at 9-14, ¶¶ 30-33 at 16-20; USDC. SD. TX. ECF No. 16.**

Mr. Ayanbadejo, in the remainder of his complaint, under different subheadings showed that by a preponderance of the evidence presented with said Verified Petition, that he is immediately eligible to be publicly, administered the Oath of Allegiance and entitled to damages in the form of past attorney fees and costs as allowed under law. ***See* Pet'r's First Am. V. Compl. ¶¶ 46-103 at 23-36, and ¶¶ 104-109 at 36-37 respectively; USDC. SD. TX. ECF No. 16.** *See* 8 C.F.R. § 316(2)(b); *U.S. v. Hovsepian*, 359 F.3d 1144, 1168 (9th Cir. 2004) (*en banc*); *Nesari v. Taylor*, 806 F. Supp. 2d 848, 867 (E.D. Va. 2011).

On September 30, 2016, Respondents, predictably, filed their Motion for Summary Judgment etc. On October 7, 2016, Mr. Ayanbadejo, filed his Opposition to Respondents' Motion to Summary Judgment etc. and later filed an amended proposed Order to the said Motion on October 30, 2016. **USDC. SD. TX. ECF Nos. 18-19.**

On February 21, 2017, due to Respondents' failure and/or refusal to respond to Petitioner's Freedom of Information Act (FOIA) Request, Petitioner in accordance with Federal Rules of Civil Procedure and judicial precedent, served Respondents with a Discovery Request; Request for Admissions. On March 14, 2017,

Respondents, filed an opposed Motion to Stay Discovery. On March 16, 2017, Judge Lynn Hughes, ordered an indefinite Stay of Discovery without supporting judicial precedent. **App. H**, *infra*.

The said application to reopen Mr. Ayanbadejo's Naturalization Application was denied by March 22, 2017, letter and subsequent decision of Mr. Siegl's dated September 22, 2017.

On March 29, 2017, Judge Lynn Hughes, in contempt of his own March 16, 2017, order of an indefinite Stay of Discovery, without supporting judicial precedent, ordered Mr. Ayanbadejo to produce a document that is irrelevant to the issues in this case and that neither Respondents nor Petitioner, Mr. Ayanbadejo requested produced. **USDC. SD. TX. ECF Nos. 23 and 28.** *See Williams v. Pennsylvania*, ___ U.S. ___, 136 S. Ct. 1899, 1905-07 (2016); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 872, 876 (2009); *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242-43 (1980).

On April 4, 2017, after an initial conference, where Judge Lynn Hughes, unconstitutionally, acting as an advocate in his own Court, and more or less in conformance with what Petitioner had read on the internet, after orally and derogatorily referring to Mr. Ayanbadejo's Verified Petition as "gibberish", "unintelligible", among other derogatory words used, and accusing Mr. Ayanbadejo, an attorney, he expressly admits, is licensed to practice before his Court, of the unauthorized practice of law without any evidence presented to Mr. Ayanbadejo or revealing his sources of

information to challenge it, an issue not before his Court, 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* App. F, *infra*).

"Gibberish", according to Oxford, Cambridge, and Merriam Webster Dictionaries means, "Unintelligible or meaningless speech or writing; nonsense." **USDC. SD. TX. ECF No. 28-30; *see* App. G-H**, *infra*. *See* 28 U.S.C. § 144/§ 455(b)(1); *Sao Paolo State of Federative Republic of Braz. v. Am. Tobacco Co.*, 535 U.S. 229, 232-33 (2002); *Gilbert v. City of Little Rock, Ark.*, 722 F.2d 1390, 1398-99 (8th Cir. 1983).

The main issue before Judge Lynn Hughes'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 under VAWA. Pet'r's First Am. Verified Pet. 24 at ¶¶ 67-68; USDC. SD. TX. ECF No. 16.** *See* 28 U.S.C. § 144; *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966) and 28 U.S.C. § 455; *Liteky v. United States*, 510 U.S. 540, 554 (1994); *United States v. Alvirez-Reyes*, 160 F.3d 258, 259 (5th Cir. 1998).

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 re-submit 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 re-submitted 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 re-submitted 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; App. F.**

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 Appellate Court of the lack of service. After receipt of a copy of Respondents' said application to dismiss, Mr. Ayanbadejo, 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* **App. 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* **App. C and accompanying letter App. 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 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* **App. A and accompanying letter App. B**, *infra*).

Petitioner, John Ayanbadejo, filed his Petition for Writ of Certiorari before instant Court as soon as he became aware of the need to do so.

## REASONS FOR GRANTING THE PETITION

### I. The Lower Appellate Court departed from the accepted and usual course of judicial proceedings, and/or sanctioned such a departure by the U.S. District Court in granting Respondents' Opposed Motion to Dismiss Appeal for Lack of Jurisdiction.

U.S. District Judge, Lynn Hughes, cannot validly issue a decision in a case he asserts he has no jurisdiction over as such decision is void. *See Carter v. Fenner*, 136 F.3d 1000, 1006 (5th Cir. 1998) and *Jackson v. FIE Corp.*, 302 F.3d 515, 522 (5th Cir. 2002). **USDC. SD. TX. ECF No. 29 and 30.**

If Judgment is void, the Court has no discretion and must Grant Relief. *Carimi v. Royal Carribean Cruise Line, Inc.*, 959 F.2d 1344, 1345 (5th Cir. 1992) (citing *Recreational Props., Inc. v. Southwest Mortg. Serv., Inc.*, 804 F.2d 311, 314 (5th Cir. 1986) for proposition that "under rule 60(b)(4), the district court has no discretion").

Foregoing settled case is binding on the lower Appellate panel, and so it follows that the lower Appellate panel has no discretion under Art. III, Section 2, of the United States Constitution, but to grant Mr. Ayanbadejo's relief.

When Judgment is void, a moving party need not show meritorious claim or defense. *See, e.g.*, *Bludworth Bond Shipyard, Inc. v. M/V Caribbean Wind*, 841 F.2d 646, 649 (5th Cir. 1988) (district court must set void judgment aside, "regardless of whether the movant has a meritorious defense").

The mere fact that a significant amount of time has passed since a void judgment was rendered cannot "cure" its fatal infirmity. *Bludworth Bond Shipyard v. M/V Caribbean Wind*, 841 F.2d 646, 649 & n.6 (5th Cir. 1988) (citing **Moore's** for proposition that laches "cannot cure a void judgment"). For foregoing reasons a Motion seeking Relief from a void Judgment may be made at any time. *Carter v. Fenner*, 136 F.3d 1000, 1006 (5th Cir. 1998) (there is no time limit on attack on judgment that is void).

Petitioner, Mr. Ayanbadejo, filed his Notice of Appeal to this Court as soon as he became aware of the need to do so. In filing his Notice of Appeal, nowhere in his Appeal did Petitioner, Mr. Ayanbadejo state or assert that he was bringing it under Fed. R. 4(a)(1) as Respondents allege, which was brought in the interest of justice, for good cause shown, and under the inherent powers of the lower Appellate Court to hear Motions for Relief of Judgment under Fed. R. App. P. 60, and All Writs Act.[1] **USDC. SD. TX. ECF No. 31.**

A Party may seek relief from a judgment if the judgment is void. *United Student Aid Funds, Inc. v.*

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[1] 28 U.S.C.A. § 1651

*Espinoza*, 559 U.S. 260, 269-70 (2010). There is no time limit in seeking relief from a void judgment. *Carter v. Fenner*, 136 F.3d 1000, 1006 (5th Cir. 1998) (there is no time limit on attack on judgment that is void). A void judgment can be challenged at any time. *New York Life Ins. v. Brown*, 84 F.3d 137, 142-43 (5th Cir. 1996). Because a void judgment can be challenged at any time, the reasonable-time limitation usually does not apply. *See Norris v. Causey*, 869 F.3d 360, 365 (5th Cir. 2017).

Although, Petitioner, Mr. Ayanbadejo, as moving party, in his Motion to Remand need not show a meritorious claim or defense. However, Mr. Ayanbadejo to save resources shows a meritorious claim to establish that he is eligible to be immediately admitted to Naturalization in both his Motion to Remand filed before the lower Appellate Court and in his Verified Petition filed before the U.S. District Court. **Pet'r's First Am. V. Compl.; USDC. SD. TX. ECF No. 16.**

The mere fact that Respondents argue under Fed. R. 4(a)(1) that a significant amount of time has passed since Judge Lynn Hughes' void Judgment was rendered cannot "cure" its fatal infirmity. *Bludworth Bond Shipyard v. M/V Caribbean Wind*, 841 F.2d 646, 649 & n.6 (5th Cir. 1988) (citing **Moore's** for proposition that laches "cannot cure a void judgment").

Therefore, Petitioner, Mr. Ayanbadejo's Notice of Appeal and Motion seeking Relief from Judge Lynn Hughes' void Judgment may be made at any time. *Carter v. Fenner*, 136 F.3d 1000, 1006 (5th Cir. 1998) (there is no time limit on attack on judgment that is

void). In *Mata v. Lynch*, 135 S. Ct. 2150, 2155-56 (2015), this Supreme Court held that lower Courts have jurisdiction to consider untimely motions to reopen.

As Judge Lynn Hughes' Judgment is void, the lower Appellate Court has no discretion and must Grant Petitioner, John Ayanbadejo's Relief as asserted in his Motions including Motion to Remand to Different Court with Jurisdiction to immediately admit Petitioner, John Ayanbadejo for Naturalization. *Carimi v. Royal Caribbean Cruise Line, Inc.*, 959 F.2d 1344, 1345 (5th Cir. 1992) (citing *Recreational Props., Inc. v. Southwest Mortg. Serv., Inc.*, 804 F.2d 311, 314 (5th Cir. 1986) for proposition that "under rule 60(b)(4), the district court has no discretion").

Even if Mr. Ayanbadejo brought his Appeal under Fed. R. 4(a)(1), the lower Appellate Court in *Clark v. Davis*, 850 F.3d 770, 780 (5th Cir. 2017), discussed the "reasonable time" "deadline time" deadline to file a Motion for Relief and held the timeliness of the Motion is measured from when the party seeking relief has grounds to make the Motion, regardless of the amount of time that has passed since the entry of judgment. In instant case, it is submitted that according to Judge Lynn Hughes' Judgment, Mr. Ayanbadejo, had not exhausted administrative remedies in part of his case, therefore, Mr. Ayanbadejo had grounds for Appeal, only after expending more resources by proving he had exhausted his remedies, by hiring an attorney to resubmit his FOIA application, which was not granted by Respondents until more than five months after resubmission; well past the statutory mandated time of

thirty (30) days. Thus, Mr. Ayanbadejo only had grounds to file his Notice of Appeal and Motion for Relief after he had proved that he did exhaust his administrative remedies, which was more than five months after his attorney re-submitted his FOIA application.

Further, this Court in *Hamer v. Neighborhood Hous. Servs of Chi.*, ___ U.S. ___ (2017) (No. 16-658; 11-8-17), held that the extension period under FRAP 4(a)(5)(c) is a non-jurisdictional claim processing rule because it is not a time limit prescribed by congress, and thus objections to the timeliness of an extension can be waived. Here, this Court granted Mr. Ayanbadejo an unopposed extension of the timeliness of his Appeal, thus, objections to the timeliness of Mr. Ayanbadejo's applications before this Court, has been waived, according to foregoing precedent of this Court.

The lower Appellate Court recognizes, in binding precedent, that Mr. Ayanbadejo, is not required to relitigate the validity of his Naturalization applications before Respondents, USCIS or any Court. *See Amrollah v. Napolitano*, 710 F.3d 568, 571-72 (5th Cir. 2013) [government's thorough cross-examination of Respondent during asylum claim on material support barred asserting material support during AOS]. The government's thorough cross-examination of Mr. Ayanbadejo during his application for VAWA relief, where Mr. Ayanbadejo established bona fides of his claim barred the government from asserting same during his Naturalization Application.

## II. The Lower Appellate court departed from the accepted and usual course of judicial proceedings, and/or sanctioned such a departure by the U.S. District Court in failing to vacate the District Court's Decision and in failing to grant Petitioner's remedies.

Although summary judgment is proper in a case in which there is no genuine dispute of material fact, this not a case in which the lower Court should have granted summary judgment. *Tolan v. Cotton*, ___ U.S. ___, 134 S. Ct. 1861, 1866 (2014); *see* Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

Under Federal Rule of Civil Procedure 8(a), a pleading for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.* at Fed. R. Civ. P. 8(a)(2). Further, "the pleading standard Rule 8 announces does not require 'detailed factual allegations,'. . . ." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Additionally, "[f]actual allegations must be enough to raise a right to relief above the speculative level. . . ." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-236 (3d ed.2004)). Moreover, "[s]pecific facts are not necessary; the statement need [sic] only 'give the Respondent fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Bell Atl. Corp.*, 550 U.S. at 555).

Therefore, a petition need not give a detailed explanation of the facts. Rather, it need only provide a short and plain statement of the claims, enough to raise a right to relief above a speculative level. In the present case, the factual allegations in Petitioner's Motion for Remand and Petition (**Pet'r's First Am. V. Compl.; USDC. SD. TX. ECF No. 16**), are well-pleaded, along with authoritative references to support the claims. A Petitioner could, potentially, over plead himself or herself out of Court, this is not such a case.

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*, ___ U.S. at ___, 134 S. Ct. at 1866; *Cooper Tire & Rubber Co. v. Farese*, 423 F.3d 446, 455-56 (5th Cir. 2005).

"[I]n reviewing a summary judgment motion, the Court must 'refrain from making credibility determinations or weighing the evidence' and must view the facts in the light most favorable to the non-moving party and draw all reasonable inferences in its favor." *Devon Enters., L.L.C. v. Arlington Indep. Sch. Dist.*, 541 F. App'x 439, 441 (5th Cir. 2013) (reversing summary judgment) (quoting *EEOC v. WC&M Enters.*, 496 F.3d 393, 398 (5th Cir. 2007)); *see also*, *Starnes v. Wallace*, 849 F.3d 627, 630 n.1 (5th Cir. 2017) (reversing summary judgment) ("Because of the summary judgment stance, this recitation takes facts in the light most favorable to [the non-movant]."); *Cannon v. Jacobs Field Serv's N. Am., Inc.*, 813 F.3d 586 n.1 (5th Cir. 2016) (reversing summary judgment ("Given the summary

judgment posture this section construes the evidence in the light most favorable to [the non-movant].").

Petitioner was forced to plead more detailed facts, organized under relevant subheadings with inserted judicial precedent and evidence in the form of a verified Petition, due to the reputation of some Judges of the United States District Court of the Southern District of Texas, to dismiss cases brought by immigrants and minorities, which Mr. Ayanbadejo read on the internet and from prior experience in employment litigation cases before the Court.

Upon his decision that the District Court does not have jurisdiction to change those decisions, the remedy as orally asserted and requested in Mr. Ayanbadejo's Petition before the U.S. District Court, **Pet'r's First Am. V. Compl., ¶ 107 at 36-37; USDC. SD. TX. ECF No. 16**, was for the Court to transfer the Case to the proper Court or Governmental entity that has jurisdiction over the case, so that Mr. Ayanbadejo's prayers for relief could be granted in accordance with the Judicial Precedent of this Court. *See In re LimitNone, LLC*, 551 F.3d 572, 576 (7th Cir. 2008); *Public Employees' Ret. Sys. v. Stanley*, 605 F. Supp. 2d 1073, 1075 (C.D. Cal. 2009); *Atlantic Mar. Constr. Co. v. U.S. Dist. Ct. for the W. Dist. of Tex.*, ___ U.S. ___, 134 S. Ct. 568 at 579 (2013). 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].

USCIS and Judge Lynn Hughes' Court seeks to impose standards of marriage that this Court has resoundingly ruled unconstitutional and an infringement of individual rights under the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendment to the United States Constitution for which a cause of action exists. *See U.S. v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675, 2693-96 (2013) and *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2604-05 (2015).

If the U.S. Citizen refuses to consummate the marriage, fraud on behalf of the immigrant is not implicated. *See Matter of M*, 7 I. & N. Dec. 601 (BIA Nov. 1957).

Besides, under 8 C.F.R. § 204.2(h)(2), even if Judge Lynn Hughes' unconstitutional advocacy in his own Court that Petitioners in his Court have to prove that his or her marriage is a "United States, standard marriage", whatever that means, were true and correct, Mr. Ayanbadejo may still recapture or transfer priority dates from his I-130 petition to his new self-petitions "without regard to the current validity" of the previous petition or even if the old petition was eventually withdrawn or denied. Congress, in promulgating the Violence Against Women Act, had foreseen such scenario as played out in instant case occur and enacted 8 C.F.R. § 204.2(h)(2) to counter any such measures by Respondents or Judge Hughes' Court to delay or deny immediate Naturalization of VAWA approved cases.

Under Art. 1 § 8, cl. 4 of the United States Constitution, 8 C.F.R. § 204.2(h)(2), is a uniform Rule of Naturalization. *Arizona v. U.S.*, 567 U.S. ___, 132 S. Ct. 2492, 2498 (2012) [authority to regulate immigration rests "in part, on the National Government's constitutional power to establish a Uniform Rule of Naturalization"]. The uniformity rule has been interpreted as referring to "geography only," in that rules of Naturalization must apply uniformly to all of the States. *Kharaiti Ram Samras v. U.S.*, 125 F.2d 879 (9th Cir. 1945). *See also*, *Nehme v. INS*, 252 F.3d 415, 427-29 (5th Cir. 2001) [discussing history of the uniformity requirement in the Naturalization clause], *Nemetz v. INS*, 647 F.2d 432 (4th Cir. 1981) [government's reliance on state law prohibiting consensual sodomy as bar to Naturalization found improper as "overlook[ing] the constitutional mandate of uniformity in the area of Naturalization"].

Mr. Ayanbadejo's Naturalization application, under 8 C.F.R. § 335.3(a), complies with the Naturalization requirements, thus Respondents and the Courts have no discretion, but to publicly administer the Oath of Allegiance on Mr. Ayanbadejo, the last step to Naturalization. **Pet'r's First Am. V. Compl. ¶¶ 23-34 at 13-20; USDC. SD. TX. ECF No. 16.**

When this Court follows foregoing settled Judicially binding precedential cases and regulations, considers all evidence in the light most favorable to Petitioner as the non-movant, the Court will conclude that Plaintiff-Petitioner has satisfied all procedural requirements for stating a claim requesting mandamus

relief and for stating a claim requesting damages in accordance with law. **Pet'r's First Am. V. Compl. 36-37 at ¶¶ 104-108; USDC. SD. TX. ECF No. 16.**

## III. The Lower Appellate Court departed from the accepted and usual course of judicial proceedings, and/or sanctioned such a departure by the U.S. District Court in deciding that Petitioner's claim was moot.

The burden of establishing mootness rests on party raising the issue,[2] and that burden is a heavy one.[3]

In present case, Respondents, in a defective Motion, filed at the lower appellate Court (Respondents never attempted to confer with Petitioner nor serve him with Notice of Appearance before filing their Motion to Dismiss) that was not served on Petitioner until February 12, 2018, in an email conference with Respondents' counsel, raises doctrine of laches that is

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[2] **Party raising mootness has burden of proof.** *See, NEC Corp. v. United States*, 151 F.3d 1361, 1369 (Fed. Cir. 1998) (rejecting defendant's mootness argument)

[3] **Burden of proof is heavy.** *County of Los Angeles v. Davis*, 440 U.S. 625, 631, 99 S. Ct. 1379, 59 L. Ed. 2d 642 (1979) (burden of establishing mootness is heavy); *United States v. W. T. Grant Co.*, 345 U.S. 629, 633, 73 S. Ct. 894, 97 L. Ed. 1303 (1953); *see, e.g.*, *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 66, 108 S. Ct. 376, 98 L. Ed. 2d 306 (1987) (litigant must show that it is *absolutely* clear that alleged wrongdoing could not reasonably be expected to recur under capable of repetition exception). *Also see, Motor & Equip. Mfrs. Ass'n v. Nichols*, 142 F.3d 449, 458-459.

inapplicable to a void judgment. *See, Pereira v. Sessions*, 585 U.S. ___ (2018). The mere fact that a significant amount of time has passed since Judge Lynn Hughes' void judgment was rendered cannot "cure" its fatal infirmity. *Bludworth Bond Shipyard v. M/V Caribbean Wind*, 841 F.2d 646, 649 & n.6 (5th Cir. 1988) (citing **Moore's** for proposition that laches "cannot cure a void judgment"). For foregoing reasons a Motion seeking Relief from a void Judgment may be made at any time. *Carter v. Fenner*, 136 F.3d 1000, 1006 (5th Cir. 1998) (there is no time limit on attack on judgment that is void).

A party may seek relief from judgment if intervening acts justify vacating the Judgment. USCIS grant of Mr. Ayanbadejo's I-360 application and grant of Mr. Ayanbadejo's Legal Permanent Residency constitutes intervening acts that justify vacating any earlier judgment contrary to the foregoing. From foregoing facts, judicial precedent and evidence submitted by Mr. Ayanbadejo in his Mandamus Petition, applying prior judgment prospectively is no longer equitable. *In re Racing Servs., Inc.*, 571 F.3d 729, 733-34 (8th Cir. 2009).

Respondents, lulled Petitioner, Mr. Ayanbadejo into thinking that if he allegedly complies with Respondents purported procedure on FOIA, Respondents will judiciously and expeditiously grant Mr. Ayanbadejo's FOIA application, which Mr. Ayanbadejo wanted to utilize in his case before the U.S. District Court to establish that he is immediately eligible to be admitted into Naturalization. Mr. Ayanbadejo, at great expense to him,

hired an attorney solely for the purpose of re-submitting his FOIA application and to advise on the said documents to be in compliance with Respondents' assertions before the U.S. District Court that Mr. Ayanbadejo had allegedly not exhausted his administrative remedies. **Initial Conf. Tr. 29 at ¶ ¶ 4-13; USDC. SD. TX. ECF No. 37.** Respondents did not grant Mr. Ayanbadejo's re-submitted FOIA application until approximately after more than five (5) months had passed or sometime in late September 2017. Respondents' misconduct justified Petitioner, John Ayanbadejo's delay in filing his Notice of Appeal. *See, e.g.*, *United States v. Baus*, 834 F.2d 1114, 1123 (1st Cir. 1987) ("The government especially should not be allowed by words and inaction to lull a party into a false sense of security and then by an abrupt volte-face strip the party of its defenses without hearing").

Respondents must show in their Motion to Dismiss that it is *absolutely* clear that alleged wrong doing could not reasonably be expected to recur under capable of repetition exception. *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 66, 108 S. Ct. 376, 98 L. Ed. 2d 306 (1987) (litigant must show that it is *absolutely* clear that alleged wrongdoing could not reasonably be expected to recur under capable of repetition exception). Here, Respondents, in their Motion to Dismiss, failed to discharge their heavy burden of proof. Mr. Ayanbadejo, has not been publicly, administered the Oath of Allegiance, the last step to Naturalization, and there is no evidence that Respondents will not keep raising the same issues that have

been addressed in his VAWA application, which, has so far, conservatively, put Mr. Ayanbadejo in heavy debt. From research of damages awarded in similar Naturalization cases, an average of $375,000 and above has been awarded as damages.

Even if Respondents did discharge their heavy burden of proof, which, from facts of present case, shows clearly they did not, if a plaintiff as here interposes a request for several forms of relief, the fact that some of the claims have been rendered moot will not divest this Court of jurisdiction to entertain any residual claims that may be viable and on which effective judicial relief may still be granted. This type of situation usually presents itself, when, as here, a plaintiff interposes a request for declaratory or mandamus relief, and includes a claim for monetary damages arising from the plaintiff's past exposure to the illegal conduct. **Pet'r's First Am. V. Compl. 36-37 at ¶¶ 104-108; ECF No. 16.** In these circumstances the mere fact that an intervening event or a change in circumstances may have alleviated the need for declaration or mandamus relief will not automatically moot the plaintiff's residual request for compensatory or punitive damages. *Wilson v. Birnberg*, 667 F.3d 591, 595 (5th Cir. 2012) (mootness analyzed separately with respect to claims for money damages and claims for equitable relief); *Henschen v. City of Houston*, 959 F.2d 584, 588 (5th Cir. 1992) (request to void denial of parade permit in connection with an economic summit rendered moot once summit ended; however, simultaneous dismissal of plaintiff's damages claim was improper because

they had a right to attempt to prove that they suffered a real injury).

These foregoing authoritative sources are clearly applicable to the case at bar; therefore, Mr. Ayanbadejo's claims cannot be held moot and the court reversibly erred when it held his claims so.

In summary, Mr. Ayanbadejo, in his Verified Petition filed before the Judge Lynn Hughes' Court, proved by a preponderance of the evidence presented with said Verified Petition, that he is immediately eligible to be publicly, administered the Oath of Allegiance. ***See* Pet'r's V. Compl. USDC. SD. TX. ECF No. 1, 2, and 16; particularly, Pet'r's First Am. V. Compl. ¶¶ 46-103 at 23-36; USDC. SD. TX. ECF No. 16.**

Mr. Ayanbadejo, in foregoing Verified Petition filed before the Judge Lynn Hughes' Court, also proved by a preponderance of the evidence presented with said Verified Petition, that he is entitled to damages in the form of past attorney fees and costs as allowed under law. ***See* Pet'r's V. Compl. USDC. SD. TX. ECF No. 1, 2, and 16; particularly, Pet'r's First Am. V. Compl. ¶¶ 104-109 at 36-37; USDC. SD. TX. ECF No. 16.** 8 C.F.R. § 316(2)(b); *U.S. v. Hovsepian*, 359 F.3d 1144, 1168 (9th Cir. 2004) (*en banc*); *Nesari v. Taylor*, 806 F. Supp. 2d 848, 867 (E.D. Va. 2011).

Therefore, a Motion for Relief from Judgment is available to prevent injustice in foregoing case.

Further, as Mr. Ayanbadejo has complied with the provisions under 8 C.F.R. § 335.3(a), as evidenced in

**Pet'r's V. Compl. USDC. SD. TX. ECF No. 1, 2, and 16; particularly, Pet'r's First Am. V. Compl. ¶¶ 23-34 at 13-20; USDC. SD. TX. ECF No. 16**, and as orally admitted by respondents, the Court has no discretion, but to immediately, publicly, administer the Oath of Allegiance on Mr. Ayanbadejo, the final step to Naturalization or remand to appropriate body to publicly administer the Oath.

Mr. Ayanbadejo's Petition for a Writ of Certiorari is made as soon as he became aware of the need to do so and is made in good faith.

## CONCLUSION

For these foregoing reasons, Petitioner, Mr. Ayanbadejo, humbly and respectfully, asks that a Petition for a Writ of Certiorari be granted and that he be immediately, publicly, administered the Oath of Allegiance, the final step to Naturalization in this Case or the Case be Remanded to the appropriate Court or body under 8 C.F.R. § 335.3(a) for the Court or body to immediately, publicly, administer the Oath of Allegiance to him. Further, Petitioner asks the Court to

award damages in the amount $375,000 and above, as allowed by Congress.

Respectfully submitted,

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