

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Annamalai Annamalai — PETITIONER  
(Your Name)

vs.

Paravthi Sivanadiyan — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeals (United States Court of Appeals )  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

( Case No: 17-20282 )  
PETITION FOR WRIT OF CERTIORARI

Annamalai Annamalai  
(Your Name)

USP-MARION: P.O.Box-1000  
(Address)

Marion, Illinois-62959  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

QUESTION(S) PRESENTED FOR REVIEW

1. Whether a district court can dismiss a complaint filed under 9 U.S.C.4 as frivolous and can dismiss with prejudice, " after " the " mailing " of an "unconditional" "offer & Acceptance of Judgement", purusant to Federal Rule of Civil Procedure 68 to the District Court?
  
2. Whether a Federal prisoner is entitled to prison mailbox rule and his mailings to the Court(s) is deemed filed, when the same is deposited in the Prison's mailbox system?

UNITED STATES SUPREME COURT

Annamalai Annamalai,  
Petitioner,

VS.

Parvathi Sivanadiyan  
Respondent.

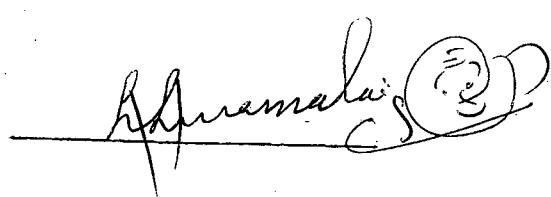
Docket No. \_\_\_\_\_

CERTIFICATE OF INTERESTED PERSONS  
CORPORATE DISCLOSURE STATEMENT

It is certified that the following may have an interest in the outcome  
of this appeal:

Fifth Circuit Court of Appeals  
Annamalai Annamalai  
Parvathi Sivanadiyan  
Hon Judge Sims lake  
Clerk of Court, Southern District of Texas  
Kalyani Annamalai  
Ashok Annamalai  
Vishal Kalyani  
INDIAN HANDICRAFTS DEVELOPMENT CORPORATION  
SIDDHAR PEEDAM  
MAVLES YOGA AND SPIRITUALHEALING CENTER  
HINDU TEMPLE & COMMUNITY CENTER OF HIGH DESERT INC  
CHETTINAD  
Steven D.Grimberg  
John Andrew Horn  
Kathleen M.Kenny  
David G.Peake  
Hayden Kepner  
J.Robert Williamson  
Lloyd T Whitaker  
Stephen Linen  
Montgomery County Treasurer  
CITY OF DAYTON, OHIO  
Lawrence R.Sommerfeld  
MOON CREDIT CORPORATION

Respectfully Submitted this day of 18th May 2018.



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Statement of the basis for jurisdiction

This court has jurisdiction pursuant to 28 U.S.C. 1254, to review the decisions of the United States Court of Appeals, inclusive of Fifth Circuit court of Appeals. The date of the Judgement or order sought to be reviewed was entered by the fifth circuit court of appeals on or about 03/06/2018. ( See Index No. ). The petition is being filed with this court under this court's Rule 10(a) and or 13. The Statues provision believed to confer on this court's jurisdiction to review on a Writ of Certiorari the Judgement is pursuant to 28 U.S.C.1254 et Seq.,

CONCISE STATEMENT OF THE CASE

Annamalai Annamalai and Parvathi Sivanadiyan entered into a binding contract with an arbitration agreement. Sivanadiyan failed to honor the contract. Annamalai filed his complaint to 'only compel' Ms. Sivanadiyan to come forward to the Arbitration. Ms. Sivanadiyan also executed another contract within the jurisdiction of State of Indiana, and Annamalai has filed another complaint, 'before' the Houston (District Court) complaint. On or about 02/14/2017, Annamalai mailed his Notice of Withdrawal to the Indiana court in the case no. 1:16-cv-3415-WTL-DKL, and as per prison mail box rule, Annamalai's notice is deemed filed on 02/14/2018.

At the same time, when the Houston complaint filed, Annamalai has filed his "WRIT OF Praecept" with the Clerk, to request the CLERK TO "WAIVE" the Filing fees in "Full", since in other occasions the same clerk has "fully" waived the filing fees for Annamalai. The district court has dismissed the entire action as malicious and frivolous, "AFTER" a valid Fed.R.Civi.P. 68's offer -acceptance of judgement in place, without the district court's "Subject matter jurisdiction", since the offer-acceptance of judgement entered in the court docket has mooted the claims, and no controversy at that point and the district court lost its Article III standing.

The parties moved on the appeal. Annamalai and Ms. Sivanadiyan filed their separate appeal brief(s) timely. Both Annamalai and Ms. Sivanadiyan argued as such the district court's sua sponte dismissal is void, since the order of the district court was entered without Article III standing, and their procedural due process were violated etc., since the district court has 'relied' on a 'non existing' pleading of IFP petition/motion filed by Annamalai, and the district court's sua sponte dismissal did not give a reasonable notice and opportunity to respond to both Annamalai and Ms. Sivanadiyan.

The Appellate Panel, also took a wrong turn, and did not even understand that, Annamalai ever filed at any time an IFP petition in the Houston Court at any time in his life at all. Also did not understand that, the OFFER-ACCEPTANCE of Judgement entered

'before' the sua sponte dismissal 'stripped' the 'subject matter jurisdiction' of the district court, and the district court has maliciously interfered with the 'ministerial duty of the clerk of court'. Ms.Sivanadiyan being the defendant, and an alleged injured party, in case, if the complaint was maliciously filed against her, she herself expressly and repeatedly argued in the appellee's brief, as such ANNAMALAI DID NOT file the complaint in a malicious manner to Ms.Sivanadiyan per se. The panel simply neglected the arguments of Ms.Sivanadiyan, the Appellee, and rubber stamped the Houston court's order, which are antiethical and against the scores of case precedents of this circuit and U.S.Supreme court concerning, the Article III standing, procedural due process, Prison mailbox rule, Fed.R.Civi.P.68, due process and equal protection clause of fifth and fourteenth amendments of U.S.constitution per se. Now the parties are moving for panel rehaering and Ms.sivanadiyan separately moved for En banc determination, to correct the manifest of errors caused by the panel and the district court and the same was also also denied without any explanation by the Fifth Circuit circuit court of Appeals. To stand up for justice, truth, law of the nation, inclusive of protected procedural due process of the parties to the action, Mr.Annamalai and Ms.Sivanadiyan, are now 'jointly' filing the merits brief to this court, to order to vacate the erroneous decision by the Fifth Circuit court of Appeals entered on or about March. 06th 2018. ( 03/06/2018 )( The Copy of that order is attached herewith as Index Number-1. The petition for rehearing and petition for En Banc determination, ' as usual' simply not even considered by the clerk of the court; as if the 'time for filing such a pleadings were expired'. See: Appendix No. ( Just for the record, as usual the fifth circuit did not consider the prison mail box rule to the pleadings concerning petitions for En banc Determination and Panel rehearing, although they were mailed within 14 days. ( The decison was entered denying appeal remedy was 03/06/2018. The Petitions to panel rehearing and En Banc determination were "MAILED" on or about 03/12/2018. By simply neglecting such pleadings, the Appellant and appellee assaulted with patent injustice and prejudiced ).

DIRECT & CONCISE ARGUMENT

Fifth Circuit's decision entered, on or about 03.06.2018 conflicts with a decisions of the United States Supreme Court and also of the same court's several case precedents, concerning the Federal Rule of Civil procedure 68 Judgements and procedural due process rights about the litigants, and the well established case precedents in this Court concerning prison mailbox rule.

The proceeding also involves one or more exceptional importance, which is not decided by any circuit courts of the United States, inclusive of the United States Supreme court, about, 'whether a district court can dismiss a complaint with prejudice, once it lost its subject matter jurisdiction, 'after' the express filings of "offer - acceptance of Judgement" by the Plaintiff and defendant to the action?' There is not even a single case law anywhere in the nation in the circuit courts as such, an unconditional offer of judgement given by the defendant to the Plaintiff, which is fully accepted 'as is' by the plaintiff, latter constitutes a "frivolous complaint" by the plaintiff, simply based on a theory, the Plaintiff sued the defendant in other jurisdictions with other contract ( breach of contract ) entered totally in a different jurisdiction. In this action, even at this court's appellate level, Ms.sivanadiyan ( appelle ) was NOT in adversarial position towards Annamalai, and Ms.sivanadiyan's brief for some unexplained reasons simply neglected by the panel of Fifth Circuit and the court dismissed the appeal as "FRTVOLQUS" and sua sponte ordered a \$500.00 fine, appears to be under Fed.R.App.P.38. In this petition, the Appellant and appellee have decided to file a ' combined petition' to this court to correct the obvious errors committed by the panel, since the Petitioner and the Respondent does not have 'adversarial interest' in this action.

## ARGUMENTS

I. Whether a district court can dismiss a complaint, filed under 9 U.S.C.4 as malicious and frivolous and can dismiss with prejudice, "after" the filing of an unconditional offer & Acceptance of Judgement under Federal Rule of Civil Procedure 68?

## P R E F A C E

The Petitioner and the Respondent respectfully state that, the Fifth Circuit Court of Appeals has entered a decision in the case no. 17-20282 ( Annamalai V.Sivanadiyan ), in conflict with the decison of almost every one of the United States Court of Appeals, and also in conflict with THIS court's precedent(s), and this court's review is a foremost necessary, to correct so far departed from the accepted and usual course of judicial proceedings, and to call for an exercise of THIS court's supervisory power to correct it now.

A. The Fifth Circuit Court of Appeals has entered decison concerning the Federal Rule of Civil Procedure 68, in direct conflict with the decision of every one of the United States Court of Appeals and this court.

As per the decision entered by the Fifth Circuit court of Appeals, the Fifth circuit simply eschewed the simple and plain english Rule ( Fed.R.Civi.P.68 ) and thereby entered a decision to assault the spirit of Binding Arbitration, Federal Rule of Civil Procedure 68, unconditional offer and acceptance of judgement and prison mail box rule per se. The Fifth Circuit ( hereinafter 'Panel' ) has expressly stated in its decison as follows:-

"On appeal, Annamalai contends that the district court was required to enter final judgement pursuant to Federal Rule of civil procedure 68..... However we do not reach his substantive argument : Because Annamalai appeared IFP in the district court, the district court was obligated to 'dismiss the case at any time' if it determined that the action or appeal was "frivolous or malicious" In Pitman V. Moore.....we held that a district court may dismiss a lawsuit as " malicious" if the suit " duplicates " of another pending federal lawsuit by the same Plaintiff " Id ( page 2 and 3 of the Panel's Order ).

The above finding literally inopposite and a clear error and not supported by the facts and law to the action per se. Now let the Prtitioners' jointly, demonstrate, why the court has made obvious errors, by affirming the district court's action and why this case shall be reinstated and why a Fed.R.Civ.P.68

judgement shall be ordered to be entered as follows.

(1). How any one with a 'normal mind' would agree that, a Case is Frivolous and or malicious, when the defendant was the one, " OFFERED" a Judgement to the Plaintiff in Full? In this action the Appellee Sivanadiyan was the one, who has offered a "Offer of Judgement" under Fed.R.Civi.P.68. 'without any coersion or black mail, and or 'keeping the gun or her head'!!

(2). The court's reliance of Annamalai has maintained another same kind of action in Indiana Court ( district court ) and therefore under the Case Precedent of circuit as per Pittman V.Moore, the case needs to be dismissed and the District court is "Obligated" to dismiss the case as Malicious is highly misplaced. The Appellant Annamalai and Appellee Sivanadiyan respectfully challange the panel to illustrate and or show, where in the records before this court about the following.

(a). The alleged IFP ( in forma pauperis petition ) allegedly filed by Annamalai.

(b). Any evidence to show that, Annamalai DID NOT dismiss his Indiana district court action, 'before' the district court's erroneous dismissal of the action as if Annamalai's complaint was Frivolous and malicious "

Anyone will patently fail in finding such a 'non existing facts' allegedly found out by the District court. Now Ms.sivanadiyan directs this court attention to Index No.1 the first page of the "notice of withdrawal of the Indiana Court action against Ms.Sivanadiyan. The Index No.2 is the 'miniature copies' of the Notice of withdrawal of the Indiana District court action by Annamalai. The Index No.3 is "expressly" stated matters about how, where, and when the notice of withdrawal was handled by the Federal Bureau of Prison's staff Ms.E.Keller. Ms.Sivanadiyan specifically directs this court's attention to the expressed "INMATE REQUEST TO STAFF" form in which Annamalai has expressly requested the FBOP employee as :<sup>1</sup>

1. Every one of the Index(s) as noticed in this brief. all were submitted to the district court and also to the Fifth Circuit court of Appeals.

Dear Madam.

As we spoke, kindly confirm, on what date, the enclosed mail to the court was mailed by YOU to the court?

The FBOP employee Ms.E.Keller has expressly informed Annamalai on 03/23/2017 as:

" The above referenced document was submitted during mail call on February 14, 2017. The correspondence was placed in the outgoing mail to the post office on Feb 17. 2017.

E.Keller

- Bolded to emphasize. and not in the original Text.

The direct evidence now, will clearly demonstrate that, Annamalai in 'good faith' has 'withdrawn' his complaint against Ms.Sivanadiyan, in the District court action at Indiana, which was on or about 14th February 2017. very well before the 'malicious finding by the district court'.

The above demonstrated facts were simply disregarded by the Fifth Circuit and thereby violated the spirits of "federal rule of Civil procedure" and lead to an injury and prejudice to the parties to the action in THIS court.

B. The Respondent Parvathi Sivanadiyan and the Petitioner Annamalai were collectively prejudiced by the district court and also by the Fifth Circuit Court of Appeals, who does not have discretionary authority to dismiss the case. "AFTER" the unconditional and binding Offer- Acceptance of Judgement under Fed.R.Civi.P.68 was/is in place.

The district court and the Fifth Circuit court of Appeals were acted in violation of the law, and assaulted the Federal rule of civil Procedure 68, which in fact was enacted by the U.S.Congress.The Federal Rule of Civil Procedure 68 expressly states as follows.

Rule 68. Offer of Judgment

(a) **Making an Offer; Judgment on an Accepted Offer.** At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

(b) **Unaccepted Offer.** An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) **Offer After Liability Is Determined.** When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time-but at least 14 days-before the date set for a hearing to determine the extent of liability.

(d) **Paying Costs After an Unaccepted Offer.** If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

(Amended March 19, 1948; July 1, 1966; Aug. 1, 1987; Dec. 1, 2007; Dec. 1, 2009.)

*The Meaning of the Offer of Judgment*

"Offers of judgment pursuant to Fed. R. Civ. P. 68 are construed according to ordinary contract principles. See *Whitaker v. Associated Credit Servs., Inc.*, 946 F.2d 1222, 1226 (6th Cir. 1991); *Erdman v. Cochise County, Ariz.*, 926 F.2d 877, 880 (9th Cir. 1991); *Radecki v. Amoco Oil Co.*, 858 F.2d 397, 400 (8th Cir. 1988); *Johnson v. University College of the Univ. of Ala.*, 706 F.2d 1205, 1209 (11th Cir.), *cert. denied*, 464 U.S. 994, 78 L. Ed. 2d 684, 104 S. Ct. 489 (1983); *Boorstein v. City of New York*, 107 F.R.D. 31, 33-34 (S.D.N.Y. 1985); cf. *SEC v. Levine*, 881 F.2d 1165, 1178-79 (2d Cir. 1989) (consent judgment should be construed as contract) (collecting cases). Accordingly, several contract principles are relevant here."

"If a writing, or the term in question, appears to be plain and unambiguous on its face, its meaning must be determined from the four corners of the instrument without resort to extrinsic evidence of any nature." *John D. Calamari & Joseph M. Perillo, Contracts* 166-67 (3d ed. 1987); see also *Hunt Ltd. v. Lifschultz Fast Freight, Inc.*, 889 F.2d 1274, 1277-78 (2d Cir. 1989) (collecting cases). On the other hand, "if the term in question does not have a plain meaning it follows that the term is ambiguous." *Calamari & Perillo* at 167. "Contract language is ambiguous if it is reasonably susceptible of more than one interpretation, and a court makes this determination by reference to the contract alone." *Burger King Corp. v. Horn & Hardart Co.*, 893 F.2d 525, 527 (2d Cir. 1990)

"Rule 68 permits defendants in an action to present an offer of judgment to the plaintiffs at any time more than 1 days before trial; the plaintiff has 14 days in which to unconditionally accept the offer. 2 FED. R. CIV. P. 68. Generally, a Rule 68 offer is considered irrevocable during that 14 day period. 12 WRIGHT & MILLER, FED. PRAC. & PROC. § 3005 (2d ed. 1997). A party must reserve its right to appeal prejudgment rulings in the offer of judgment, otherwise no appeals from judgment will be allowed. See, e.g., *Shores v. Sklar*, 885 F.2d 760 (11th Cir. 1989) (holding that plaintiff's consent to offer of judgment without reserving right of appeal waives plaintiff's right to appeal denial of class certification).

If the plaintiff accepts the offer, either party may file the offer and acceptance with the clerk of the court, who shall then enter judgment. FED. R. CIV. P. 68. The court generally has no discretion whether or not to enter the judgment. A Rule 68 Offer of Judgment is usually considered self-executing. See generally *Mallory v. Eyrich*, 922 F.2d 1273, 1279 (6th Cir. 1991) ("By directing that the clerk shall enter judgment after proof of offer and acceptance have been filed, the explicit language of the rule signifies that the district court possesses no discretion to alter or modify the parties' agreement"); *Webb v. James*, 147 F.3d 617, 621 (7th Cir. 1998) ("Rule 68 operates automatically, requiring that the clerk 'shall enter judgment' upon the filing of an offer, notice of acceptance and proof of service. This language removes discretion from the clerk or the trial court as to whether to enter judgment upon the filing of the accepted offer"); {390 F.3d 371} *Perkins v. U.S. West Communs.*, 138 F.3d 336, 338 (8th Cir. 1998) ("Rule 68 leaves no discretion in the district court to do anything other than enter judgment once an offer of judgment has been accepted."); *Goodheart Clothing Co. v. Laura Goodman Enterprises, Inc.*, 962 F.2d 268, 275 (2nd Cir. 1992)

(dissent) ("Indeed, the district court had no alternative but to enter the judgment exactly as offered and accepted, in view of the 'self-executing' nature of Rule 68 judgments"); Harris v. City of New York, 2004 U.S. Dist. LEXIS 12879, at \*2 (S.D.N.Y. 2004) ("the entry of final judgment pursuant to Rule 68 is a ministerial act that does not require the action of the judge"). There are certain limited circumstances under which courts retain authority to review an offer of judgment: in a class action, pursuant to Rule 23, a court is charged with the authority to accept a settlement; and in a case seeking injunctive relief, a court is vested with the ultimate power to enter an injunction. 12 WRIGHT & MILLER, FED. PRAC. & PROC. § 3005 (2d ed. 1997). Outside of those limited circumstances, a court must enter a judgment accepted by the parties. Id."

There the court held that the judgement entered by the district court was invalid as a matter of law, pursuant to Rule 68, the district court lacked authority to do anything other than to accept the offer of judgement presented by the parties. The court vacated the judgement entered by the district court and remanded the case for further proceedings with regard to the parties offer of judgement. Ramming V. Natural Gas Pipeline Co, 390 F.3d 366 ( 5th Cir. 2004 ). "If a plaintiff chooses to accept an offer of judgement, "either party may file the offer and acceptance with the clerk of court, who shall then enter judgement." Ramming V. Natural Gas Pipeline Co of America, 390 F.3d 366, 370 ( 5th Cir. 2004 ).

"In this case, the district court, simply eschewed the mandatory character associated with the Fed.R.civi.P.68 , which in its plain english states as" CLERK SHALL than enter judgement". "Mandatory language analogues to 'SHALL' which we must ordinarily regard as inconsistent with judicially created exceptions". See Lexecom Inc., V. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 35, 118 S.Ct. 956, 140 L.Ed.2d 62 ( 1998 )(explaining that 'mandatory' language such as "SHALL (...normally creates an obligation impervious to judicial discretion)")

Hewitt V.Helms, 459 U.S.460, 471, 103 S.Ct.864, 74 L.Ed 2d 675 ( 1983 )(referring to "SHALL", "WILL", and "MUST" as "language of an unmistakably mandatory character")

Sandin V.Conner 515 U.S. 472, 115 S.Ct 2793, 132 L.Ed 2d 418 ( 1995 ).

"Rule 68 is in plain english, we can easily apply it here" Maguire V.Federal crops Ins.corp, 9 F.R.d.240 ( 5th Cir 1949 ). "The language of the Rule 68 is mandatory, where the rule operates, it leaves no room for district court's discretion". Johnson V.Perrod Drilling Co, 803 F.2d 867 ( 5th Cir 1986 ).

"By operation of Fed.R.Civ.P.68, if an offer is accepted all claims are settled and the case is concluded" Gardner V. Catering by Henry Smith Inc., 205 F.Supp 2d 49 ( 2nd Cir 2002 )."

"To reiterate, Rule 68 offers of judgement are interpreted using the same principles and rules applicable to contract interpretation" Bash, 336 F.3d at 453 ( citing Radecki V.Amoco Oil Co, 858 F.2d 397, 400 ( 8th Cir 1988 ); Johnson, 705 F.2d at 1209. See also Wilson V. Boliver ent., ( 5th cir 2016 )."the operation of Rule 68

" In the fifth circuit, fairness requires that a litigant have the opportunity to be heard before a claim is dismissed, except where the claim is patently frivolous" Century Sur.Co., V. Belvins (5th Cir. 2015) See also: Jacquez V. Procunier, 801 F.2d 789, 792(5th cir 1986). "This circuit recently considered whether a sua sponte dismissal was fair in Davoodi V. Austin Indipendant School District, 755 F.3d 307 (5th cir 2014). This circuit reversed, holding that a district court may dismiss a claim sua sponte 'as long as the procedure employed is fair, and that fairness requires both notice of the court's intention and opportunity to respond' id (quoting Lazano V. Ocwen Fed. Bank, FSB, 489 F.3d 636, 642-43 (5th Cir 2007). See also Carroll V. Fort James Corp, 470 F.3d 1175, 1177 (5th cir 2006). Thus the district court's sua sponte dismissal without notice or an opportunity to respond was unfair and necessitates a remand for further proceedings" Centuray Sur.Co., V. Belvins. (5th cir.2013)."

"Federal Rule of civil procedure 68 provides procedure for a party wishing to submit an offer of judgement. Notably, the purpose of rule 68 comports with Appellee's goal of settlement" See Marek V. Chesny, 473 U.S. 1, 5, 105 S.Ct 3012, 3014, 87 L.Ed 2d 1 ( 1985)(The Plain purpose of Rule 68 is to encourage settlement and avoid litigation) See also: Zinni V. E.R solutions, 692 F.3d 1162 (5th Cir 2012).

Here the Appellee did not have any clue and or fair warning and or notice directed to her, before the case was sua sponte dismissed, 'after' the parties Rule 68 offer and acceptance were in place and thereby the district court caused to violate the protected procedural due process and substantive due process of the Appellee. "The Fifth Amendment provides that no person shall be deprived of life, liberty, or property without due process of law, U.S. Const. amend V. Due process encompasses the concept of notice and fair warning. At its the principle is that, no man shall be held responsible for conduct, which he could not be reasonably understood to be Prescribed" United States V. Johnson, 106 U.S. Appx LEXIS 20643 (11th cir 2016)."

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner" "due process, unlike some rules, is NOT a technical conception with fixed content unrelated to time, place and circumstances; due process is flexible and call for such procedural protections as the particular situation demands" See: Armstrong V. Monza, 380 US 545, 552, 14 L.Ed.2d 62, 85 S.Ct 1187 ( 1965 ) See Grannis V. Ordean 234 US 385, 394 58 L.Ed 1363, 34 S.Ct 779 ( 1917 )."

"The substantive component of the due process clause protects those rights are fundamental, that is rights that are 'implicit' in the concept of ordered liberty" Palko V. Connecticut, 302 US 319, 325, 58 149, 152. 82 L.Ed 288 ( 1937 )

entry of judgement is mandatory and does not permit court's discretion." Fierros V.Texas Dept of Health, 2005 WL 357668 at \*3 ( W.D.Tex, Feb 3, 2005 ) ( citing Johnson V.Penrol Drilling Co, 803 F.2d 867, 869 (5th Cir 1986)); 12 Wright, Miller & Marcus, Federal Practice & Procedure; Civil § 3006 at 120 ( 2nd ed 1993; see De la cruz V.State farm ., ( 5th cir 2002 )

"Entry of rule 68 Judgement is generally "ministerial" rather than "discretionary". Webb V.James, 147 F.3d 617, 621 ( 7th Cir 1998 ).

Pursuant to plain language of Rule 68 which MANDATES that the Clerk SHALL enter Judgement. In ~~the~~ case on hand, the district court did not have discretion to refuse and or interfere with the 'ministerial duty of the clerk of court, as a matter of law. Wherefore this case shall be remanded to the trial court, with a clear instruction to the CLERK OF COURT to enter Fed.R.Civ.P.68 Judgement as per the appellant and Appellee's "offer-Acceptance of Judgement".

"We acknowledge that Rule 68 requires the Clerk of the District Court to enter the parties agreed-upon judgements in a ministerial fashion. see Fed.R.Civ.P.68 (providing that 'the Clerk Shall enter Judgements according to the terms of a timely accepted offer'). Ducharme V.Rhode Island. 30 F.3d 126 ( 1st Cir. 1996 ).

"If within 14 days, the opposing party accepts the offer in writing either side may file the offer and notice of acceptance, and the Clerk of court must then enter Judgement. Steiner V.Lewmar Inc., 816 F.3d 26 ( 2nd Cir 2015 ). See also: Weitzner V.Sanofi Pasteur Inc., 819 F.3d 61 ( 3rd cir 2015 ); Simmons V.United Mortg. & Loan Inv.LLC, 634 F.3d 754 ( 4th Cir 2010 ); Ramming V.Natural Gas Pipeline Co., ( 5th Cir 2014 ); Mey V. North Am.Bankcard, LLC 655 Fed.Appx 336 ( 6th Cir 2016 ); Webb V.James, 147 F.3d 617( 7th Cir. 1998 ); Perkins V. U.S.West Commons, 138 F.3d 336 ( 8th Cir 1998 ); Beauu Champ V.Anahiem Union Hihj Sch.Dis., 816 F.3d 1216 ( 9th Cir 2015 ); Scottsdale Ins.Co V. Tolliver, 636 F.3d 1273 ( 10th Cir 2011 ); Kewis V.Haskell Slaughter Young ( 11th cir 2014 )."

The district court has misapplied the law, and a federal court that decides the merits of the case without the Article III standing and overstepping the authority of the clerk of Court runs afoul of the prohibition of advisory opinions and the standing precedents of this circuit with respect to Fed.R.civil.P.68 judgements. Dismissing the entire case with prejudice with prejudice, 'after' Rule 68 offer-acceptance and no justiciable controversy existed at that point, appears to be neither statutory nor case law precedent for it, would be 'antiethical' to the purpose of Rule 68, and such ABUSES have the 'potential chilling effect' or discouraging the use of Fed.R.Civi.P.68 per se."

The "operation of Rule 68 entry of Judgement is mandatory and does not permit court discretion" Fierros V.Texas Dep'y of Health 2005 WL 357668 at \*3 ( W.D.Tex Feb.3, 2005 )."It is also clear that a Plaintiff need not proceed to a "full litigation of the issues" to be a prevailing party" Maher V.George, 448 U.S. 122,129, 100 S.Ct 2570, 2575, 65 L.Ed 2d 653 ( 1980 )."vindication through a consent decree"

( Hanrahan V. Hampton, 446 U.S. 754, 757, 100 S.Ct 1987, 67 L.Ed 2d 670 ( 1980 ) or a Rule 68 offer of Judgement ( Delta Airlines V. August, 450 U.S. 346, 352, 101 S.Ct 1146, 67 L.ed 2d 287 ( 1981 ). See also Joiner V. City of Columbus, Dis.ct.Missi. 2016.

The District court failed to determine whether the plaintiff and defendant action, after the offer-acceptance of Rule 68 self-executing judgement presents a 'justiciable controversy'. The district court's failure to conduct the mandated analysis on the record when it determination that, the complaint was malicious, the district court clearly abused its discretion per se.

"a controversy, to be justiciable, must be such, that it can presently be litigated and decided and not hypothetical, conjectual, conditional or based upon the possibility of a factual situation that may never develop" Brown & Rust Inc., V. Big Rock corp, 383 F.2d 662 ( 5th Cir 1964 ).

"The fifth circuit has held that a Federal Rule of Civil procedure 68 offer of Judgement that includes full damages and costs will render a plaintiff's claim Moot." ( case law omitted ).

"procedural due process considers not the justice of deprivation, but, only, the means by which the deprivation was effected" Caine, 943 F.2d at 1411. Thus, the inquiry that stems from a denial of due process is not the liberty or property that was taken from the plaintiff, but the fact that it was taken without sufficient process. See Nasierowski Bros Inv. Co V. City of Sterling Heights, 949 F.2d 890, 894 ( 6th Cir 1991 ) stating that [c]onceptually, in the case of a procedural due process claim, 'the allegedly infirm process is an injury itself' ( quoting Hammond V. Baldwin, 866 F.2d 172, 176 ( 6th Cir 1989 ) ); Burns V. Pa. Dep't of Corrections, 544 F.3d 279, 284 ( 3d Cir 2008 ) If "Accordingly, a procedural due process violation is complete at the moment an individual is deprived of a liberty or property interest without being afforded the requisite process ). Consequently, " no later hearing and no damages aversed can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred" Fuentes, 407 US at 82; Bowlby V. City of Aberdeen, 681 F.3d 215 ( 5th Cir 2012 ) "due process is flexible and calls for such procedural protections as the particular situation demanded. The provision of adequate due process not only helps to prevent unwanted deprivations, but also serves the purpose of making an individual feel that 'the government has dealt with her fairly'". case law omitted )

C. The district court's judgement is Void and any and all orders of the District court on or after 02/09/2017, shall be vacated by this court's authority.

As well demonstrated in the foregoing claims, Ms.Sivanadiyan well demonstrated that the district court and the panel's reliance on a 'non existing' IFP of Mr.Annamalai, and the complaint of Annamalai as malicious, all are misplaced arguments and or finding of 'non existing facts. Its several case precedents of this appeals court is that, the district court shall have subject matter jurisdiction, first to rule on an adversarial matters. In this respect the district court has overstepped and by entering several 'malicious orders' without even subject matter jurisdiction, since Ms.sivanadiyan's offer of Judgement and acceptance of Judgement by Mr.Annamalai ends the controversy at that point itself per se. Now this court shall step in to correct the 'overstepping' of the district court in the interest of justice and to correct manifest of error and law etc.",

" A lack of Subject matter jurisdiction may be raised at any time, and we can examine the lack of subject matter jurisdiction for the first time on appeal: In Re: McCoy 296, F.3d 370, 373 ( 5th Cir 2002 ). " An order is VOID if the court that rendered it lacked jurisdiction of the subject matter or of the powers, or it acted in a manner inconsistent with the due process of law". Williams V. New Orleans Pub.Ser.Inc., 728 F.2d 730, 735 (5th Cir 1984).

Here, for case on Rehearing and or En banc Determination is the best example for the above cited case precedents of this circuit. The district court has not only lost its article III standing, since the Parties offer-Acceptance of Judgement stripped the subject matter Jurisdiction of the district court, whereas, the district court acted in a manner inconsistent with due process, and dismissed the entire case as malicious, interestingly, even 'without' subject matter Jurisdiction.

" We find most applicable to several rule that the judgement made by the district court without subject matter jurisdiction are VOID. See: e.g. Brumfield V. la State Bd of Edu., 806 F.3d 289, 298 ( 5th Cir 2015 ). ( " An order is void if that rendered it lacked jurisdiction of the subject matter jurisdiction or of the parties.. ... ( quoting Williams V. New Orleans Pub.Ser.Inc. 728 F.2d 730, 735 ( 5th Cir 1987 ). ( A judgement is void on jurisdictional ground, if the (district) court lacked jurisdiction over the subject matter jurisdiction ) See also:- United States Aid Funds Inc., V. Espinosa, 559 U.S. 260, 270, 130 S.Ct 1367, 176 L.Ed 2d 158 ( 2010 ). " A void Judgement is legal nullity"

In the case of Sivanadiyan, the district court lacked statutory or constitutional powers to adjudicate, since Ms.sivanadiyan's Offer of Judgement MOOTED entire case and controversy, and the district court had no role to play, 'after' the parties

Rule 68 Judgement was filed with the court for the clerk of Court to enter it.

The Rule 68 Judgement in fact are 'self-executing' in nature. Here when the parties are in consent they binds the court ( MAXIM ).

" By operation of Fed.R.Civi.P.68, if an offer is accepted all claims are settled and the case is concluded" Gardner V.Catering by Henry Smith Inc., 205 F.Supp.2d 49 ( 2nd Cir 2002 ).

"In this case on hand the district court has lost its subject matter jurisdiction on the sivanadiyan's case and this court's reliance on some orders entered by the district court, after' parties offer-acceptance of judgement in place, running foul against several circuit's prcedents".

Wherefore by considering that, the order to dismiss the action at the district court was without any debate was enterd, 'after' parties offer-acceptance of Judgement was in place, and there by the district has lost its subject matter jurisdiction, and any and all orders are void, and this court shall exercise its supervisory authority to vacate any and all orders entered by the district court, 'after' Ms.sivanadiyan's offer of judgement was docketed with the district court clerk. See: Index Numbers 8, 9, 10 attached hereto. ( See Appendix )

II. Whether a Federal Prisoner is entitled to prison mailbox Rule and his mailings to the Court(s) is deemed filed, when the same is deposited in the prison mailbox system?

Prison mailbox Rule plays a key part in this merits brief. Both the district court and the Fifth circuit court of appeals made clear errors and simply failed to notice that Annamalai is a prisoner, and all his mailings to any courts of the United States are deemed filed, at the moment they are deposited in the prison mailbox system. In this respect, the district court has relied on a "NON-EXISTING" and never filed "IFP-Petition ( In forma pauperis Petition ), however, simply failed to notice that, the case at the southern district of Indiana on a 'different contracts' executed between Annamalai and Respondent Sivanadiyan, were dismissed 'before' the sua sponte dismissal of the district court action which is subject to this Writ now.

As well explained with the direct evidences, elsewhere in this brief, Annamalai has done everything as a prisoner, within his powers to mail the 'dismissal of the Indiana court ( district court ) action, 'before' the sua sponte dismissal of this action by the district court and affirmation by the Fifth Circuit court of Appeals. The Index No. 3, explicitly shows with its 'certificate of service' as that particular mail was mailed on February, 14th 2017, Combined with the evidence -Index No. 5 a communication with the prison staff Ms. Keller, 'before' the sua sponte dismissal by the district court's wrong reliance about an IFP petition. which has really harmed and injured Annamalai and Sivanadiyan to an irreparable harm, with even to the worst scenerio. Annamalai even was repeatedly sanctioned by the district court. when Annamalai pointed out the obvious errors and 'above the law man' standard maintained by the district court judge of the Southeren district of Texas, which shall be condemeded by this court to show that no one is above the law.

"PRISON MAILBOX RULE" controls the subject matter on hand. As per prison mail box rule Annamalai's pleading to the Indian court is 'deemed filed' at the moment he has hand delivered the same to Ms. E. Keller, which was on or about 02/14/2017. Its not the duty of Annamalai to docket the same in the court docket promptly, and of course, Annamalai does not have any control over the Indian District court's judge and its Clerk of Court. The parties to this appeal fully and expressly restate that Annamalai did not even filed the complaint against Ms. Sivanadiyan in a malicious manner, since Ms. Sivanadiyan, in fact even tendered an offer of Judgment to Annamalai in Indiana Court action too. The parties humbly request this court to take mandatory judicial notice of the above stated records at the Indiana District court - Terre haute division, under Fed.R.Evide.201(c)(2).

"Under the prison mail box rule" a pro se prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing. See Houston V. Lack, 487 U.S. 266, 276, 108 S.Ct 2379, 2385, 101 L.Ed 2d 245 ( 1988 ). See also Fed. R.App.P. 4(c)(1) if an inmate in an institution files a notice of Appeal in either civil or a criminal case, the notice is timely, if it is deposited in the institutions internal mail system on or before the last day for filing. United States V. Akel, (11th Cir 2015 ).

" petition is deemed to have been filed on the date he placed it in the prison mail box sysytem. See e.g. Stoot V. Cain, 570 F.3d 669, 671 ( 5th Cir 2009 ) ( per curium ). Hernandez V. Thaler, 630 F.3d 420 ( 5th Cir 2011 ).

" The Prison mail box Rule applies to prisoners who are proceeding pro se " Brown V. Taylor, 829 F.3d 365 ( 5th Cir 2016 ). Here Annamalai is functionally a prisoner for the purpose of the maibox rule per se.

" Pursuant to the prison mail box rule that the pleading was timely deposited in the prison mail system." See e.g. United States V. Young, 966 F.2d 164, 165 ( 5th Cir 1992 ) ; Badid V. Lynch, 607 Fed.Appx 273 ( 5th Cir 2015 ). Cooper V. Brrokshire 70 F.3d 377,379, -80 ( 5th Cir 1995 ) ; Juraez V. Andesrson, 598 Fed.Appx 297 ( 5th Cir 2015 ) ;

" The prsion mail box rules applies to prisoners who are proceeding pro se. See: Stoot V. Cain, 570 F.3d 669, 671 ( 5th Cir 2000 ) ; Spotville V. Cain, 149 F.3d 374, 375 ( 5th Cir 1998 )

" A pro se litigant is given the benefit of the prisoner mailbox rule if by tendering a pleading for mailing he ' has completed everything within his control to deliver the actual petition to the court." Hernandez V. Thaler, 630 F.3d 420 (5th Cir 2011 ).

As noted in the 5th circuit's case PITTMAN V. MOORE, Annamalai did not OBTAIN EVEN ONE BITE OF THE APPEAL ( Annamalai has voluntarily dismissed the Indiana Court Case, well before the dismissal of the instant district court case, which is on appeal. AS A NUTSHELL Annamalai and Ms S ivanadiyan were prejudiced by the sua sponte dismissal by the district court per se and imprinted on their procedural due proces rights

Now, its an obvious error by the court, which has failed to note and or consider Annamalai being a prisoner, his notice of withdrawl was 'deemed filed' with the Indian Court of Appeals by 02/14/2017, well before the dismissal of the case by the district court, concerning the case on hand now from Southern District of Texas, Next the reliance of the case Pittman V. Moore is completely misplaced and misguided one to the subject matter of this action. In this action:-

1. Annamalai DID NOT sue the Federal actor in two different court at the same time.
2. Pittman proceeded as a pauper, however there is NOTHING before this court and or the district court that, Annamalai ever filed a petition to proceed as a pauper concerning the subject matter of the district court's litigation.
3. Mr.Pttman was not offered with "Offer of Judgement" by his advesary Mr.Moore at all.However, in this action, the offer of Judgement by Ms.Sivanadiyan and acceptance of the same 'before' the dismissal of the district court action, completely mooted the parties claims, and the District court judge has lost its 'subject matter jurisdiction' since at the time of filing for Fed.R.Civi.P.68 judgement, there was no controversy, between paraties per se. and every one of the orders entered by the district court after parties offer-acceptance of judgement in place are VOID, since without any more debate the district court has lost its subject matter jurisdiction per se.
4. More notably the same case relied by the panel Pittman V.Moore, and Fifth Circuit in fact, ordered to dismiss Mr.Pittman's complaint "WITHOUT PREJUDICE" and however, how this court can substantiate a theory, that Annamalai's complaint dismissed by the district court with Prejudice, that too, 'after' a valid Fed.R.Civi.P.68 's self -executing ' judgement was in place.?Ms.sivanadiyan has enclosed herewith the opinion of Pittman V.Moore as Evidence No.4 herein ( in the Appendix ) (The court on appeal 'modified the order of the district court in PITTMAN's case to be dismissed 'without prejudice' )

" Pursuant to the prison mail box Rule a prisoner's pleading is deemed to have been filed on the date that the pro se prisoner submit the pleading to prison authorities for mailing. Causey V. Cain 450 F.3d 601, 604 ( 5th Cir 2006 ); Myers V. Swindle, 454 Fed.Appx 322 ( 5th Cir 2011 ) Chacon V. York, 434 Fed.Appx 330 ( 5th Cir 2011 ) Oginachi Ogemdi Exike V. Holder, 383 Fed.Appx 470 ( 5th Cir 2010 )

"The court recognized that the Texas Supreme court has applied the prison mail box rule in civil cases. id at 343. The court went on to explain that it likewise would not " penalize a pro se inmate who timely delivers a document to the prison mailbox " and held " that the pleading of a pro se inmate shall be deemed filed at the time they are delivered to prison authorities for forwarding to the court clerk. id at 344. Richards V. Thaler, 710 F.3d 573 ( 5th Cir 2013 ).

" The United States Supreme Court has established a brightline rule for prisoner pro se filings in Houston V. Lack" S487 U.S. 266, 276, 108 S.Ct 2379, 2385, 101 L.Ed 2d, 245 ( 1988 ).

Absent evidence to the contrary there is a presumption that a prisoner delivered his pleading to prison officials on the day he signed it " Washington V. United States, 243 F.3d 1299, 1301 ( 11th Cir 2001 ).

" The situation of prisoners seeking to appeal without the aid of counsel is unique. Such prisoners cannot take the steps other litigants can take to monitor the processing of their notices of appeal and to ensure that the court clerk receives and stamps their notices of appeal before the 30-day deadline. Unlike other litigants, pro se prisoners cannot personally travel to the courthouse to see that the notice is stamped "filed" or to establish the date on which the court received the notice. Other litigants may choose to entrust their appeals to the vagaries of the mail and the clerk's process for stamping incoming papers, but only the pro se prisoner is forced to do so by his situation. And if other litigants do choose to use the mail, they can at least place the notice directly into the hands of the United States Postal Service (or a private express carrier); and they can follow its progress by calling the court to determine whether the notice has been received and stamped, knowing that if the mail goes awry they can personally deliver notice at the last moment or that their monitoring will provide them with evidence to demonstrate either excusable neglect or that the notice was not stamped on the date the court received it. Pro se prisoners cannot take any of these precautions; nor, by definition, do they have lawyers who can take these precautions for them. Worse, the pro se prisoner has no choice but to entrust the forwarding of his notice of appeal to prison authorities whom he cannot control or supervise and who may have every incentive to delay. No matter how far in advance the pro se prisoner delivers his notice to the prison authorities, he can never be sure that it will ultimately get stamped filed on time. And if there is a delay the prisoner suspects is attributable to the prison authorities, he is unlikely to have any means of proving it, for his confinement prevents him from monitoring the process sufficiently to distinguish delay on the part of prison authorities from slow mail service or the court clerk's failure to stamp the notice on the date received. Unskilled in law, unaided by counsel, and unable to leave the prison, his control over the processing of his notice necessarily ceases as soon as he hands it over to the only public officials to whom he has access the prison authorities-and the only information he will likely have is the date he delivered the notice to those prison authorities and the date ultimately stamped on his notice. *Id.* at 270-72. We extended this rule, the "prison mailbox rule," to other submissions of pro se inmates. See, e.g., *Spotville v. Cain*, 149 F.3d 374, 378 (5th Cir. 1998) "

Further, the court's findings as such Annamalai has filed for his IFP is highly misplaced. In fact Annamalai expressly filed his "WRIT OF PRAECIPE" ( Doc # 1 of the Trial Court ), and in which Annamalai has specifically and expressly stated as follows. ( See: Evidence No.5 & 6 ) ..

" The Petitioner is filing this pleading and request to waive the fees N O T as a pauper or in forma pauperis at all....."

See: paragraph 2 line No(s) 1 and 2

Again in the second page of the same Writ of Praecipe " Annamalai again restated as such he is NOT proceeding as a pauper at all. id. Ms.Sivanadiyan, would respectfully state that, several courts has waived the 'filing fees ' for Mr.Annamalai based on the same kind of 'WRIT OF PRAECIPE" filed by Mr.Annamalai. See: e.g. Annamalai V.Commissioner,

Case No. 22317-16L ( U.S.Tax Court- washington ); Annamalai V.Jacqueline H.Reynolds Case No.1:16 cv-1373 ( transferred case from S.Dist Texas );

"Further Sivanadiyan was the one who voluntarily gave the "Offer of Judgement" towards Annamalai, and Sivanadiyan is extremely confused, how come her voluntarily given offer of judgement, and after that event, the district court can dismiss the complaint as MALICIOUS and FRIVOLOUS. Again Ms.Sivanadiyan EXPRESSLY STATE ON RECORD THAT, ANNAMALAI THE APPELLANT DID NOT FILE THE DISTRICT COURT COMPLAINT IN A MAITCTOUS AND OR IN A FRIVOLIIS MANNER AT ALL"

"As well demonstrated in the foregoing, Annamalai in fact filed a "WRIT OF PRAECIPE, and NOT the petition for to proceed as a pauper at all. Even the trial court's records, explicitly proves that fact, in which Annamalai "expressly" stated to the district court as such Annamalai is NOT proceeding as a pauper. The simple expressly made statements in english language by a foreigner like Annamalai was "comfortably" "used" by the district court to prejudice the parties. Here, its NOT Annamalai was not only prejudiced, wheras Ms.sivanadiyan was the one who was prejudiced and every one of her procedural due process, equal protection, the Fed.R.Civi.P.68, Private contract of the parties subject to arbitration all were simply impinged and Ms.sivanadiyan was injured and harmed and all leads to an injury in fact for Ms.sivanadiyan, NOT by the Plaintiff Annamalai, wheras by the District court, and now the same is continued by this panel of this court of this appeal, who clearly DID NOT understand, what exactly going on, and appears to be simply disregarded every one of the Arguments of Appellee Ms.sivanadiyan, and appears to be since Ms.sivanadiyan is an immigrat, of different race, ethinicity, color, religion etc."

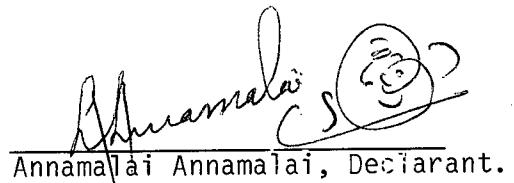
Respectfully Submitted on May 18<sup>th</sup>, 2018.

  
Annamalai Annamalai  
C/O USP-Marion  
P.O.Box-1000  
Marion, Illinois-62959

Verification/ Declaration pursuant to 28 U.S.C. 1746

I, Annamalai Annamalai verify and Declare under penalty of perjury that the foregoing are True and correct.

Executed on: May 18<sup>th</sup>, 2018.

  
Annamalai Annamalai, Declarant.

Certificate of service

Annamalai Annamalai certify that, this document is caused to be mailed to the court and also to the Respondent Ms.Parvathi Sivanadiyan via First class mail, postage being prepaid.

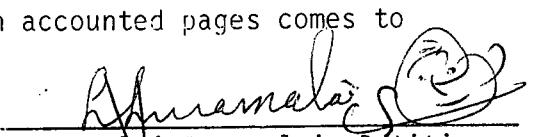
Respectfully Submitted this day of 18<sup>th</sup>, May 2018.

  
Annamalai Annamalai  
P.O.Box-1000, Marion, IL-62959

Certificate of Compliance

Annamalai Annamalai certify that, this document is fully in compliance with Court's Rule 33(2), and the pages excluding the non accounted pages comes to 21 ( twenty one pages ).

05-18-2018

  
Annamalai Annamalai, Petitioner  
P.O.Box-1000, IL-62959