No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOSÉ YEYILLE —PETITIONER

vs.

MIAMI-DADE COUNTY PUBLIC SCHOOLS; *et al*—RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

José Yeyille

5505 SW 135th Court

Miami, Florida 33175

786-201-6142

QUESTIONS PRESENTED

1. Whether the district court appropriately resolved genuine issues of disputed facts; correctly applied legal conclusions; and provided any statement explaining its dismissal of the Complaint that would facilitate any remotely ""intelligent appellate review"". ***Denton v. Hernandez*, 504 U.S. 25, 34 (1992).**

2. Whether the summary disposition by the Eleventh Circuit Court of Appeals of Petitioner's Permission to Appeal In Forma Pauperis and Fed. R. App. P. 24(a)(5) Motion to Proceed In Forma Pauperis was justified under ***Coppedge v. United States*, 369 U.S. 438 (1962)** and ***Cruz v. Hauck*, 404 U.S. 59 (1971).**

LIST OF PARTIES

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:

Armandina Acosta Leon

Lisa Robertson

Asuncion Valdes

Egna Rivas

Alberto Carvalho

The School Board of Miami-Dade County, Florida
(Miami-Dade County Public Schools)

RELATED CASES

José Yeyille v. Miami-Dade County Public Schools, *et al.*,
19-14895 (2020) (Without opinion)

José Yeyille v. Miami-Dade County Public Schools, *et al.*,
14-24624-CIV (2019)

José Yeyille v. Miami-Dade County Public Schools, *et al.*,
14-24624-CIV (2019) (Paperless Order ***without opinion*** regarding Judge Altonaga's recusal, and the Court of Appeals for the Eleventh Circuit's mandate, Plaintiff's Motion for reconsideration is DENIED AS MOOT)

José Yeyille v. Miami-Dade County Public Schools, *et al.*,
15-15548 (2016), 654 Appx. 394 (11th Cir. 2016)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix **A** to the petition and is [X] unpublished. [This Case, February 7, 2020]

The opinion of the United States court of appeals appears at Appendix **D** to the petition and is reported at 654 Appx. 394 (11th Cir. 2016) [First Appeal]

The opinion of the United States district court appears at Appendix **B** to the petition and is [X] unpublished. [December 16, 2019]

The opinion of the United States district court appears at Appendix **C** to the petition and is [X] unpublished. [December 2, 2019]

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 7, 2020.

[X] No petition for rehearing was timely filed.

The date on which the United States Court of Appeals decided my first appeal was May 31th, 2016.

[X] No petition for rehearing was timely filed.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V. "[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, Amendment VII. "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

STATEMENT OF THE CASE

In December 8, 2014,[1] Petitioner brought a lawsuit to recover **$46,431 of federal funds in unpaid salary**, and for compensatory and treble damages against The School Board of Miami-Dade County, Florida, ALBERTO CARVALHO, Lisa Robertson, Armandina Acosta-Leon, Asuncion-Valdes, and Egna Rivas in their individual and official capacities for their violation of Plaintiff's civil rights—discrimination, retaliation, and harassment—and extortion, forced labor, and human trafficking. Defendants were represented by The School Board of Miami-Dade County, Florida's attorney, WALTER HARVEY. [Hereinafter "Motion/Petitions"][**Motion/Petitions**, page 3].

At all relevant times George Mencio Jr. was CECILIA ALTONAGA's husband. At all relevant times George Mencio Jr. was employed by the law firm of **Holland & Knight, LLP**. [**Motion/Petitions**, page 3].

CECILIA ALTONAGA offered to WALTER HARVEY and ALBERTO CARVALHO to dismiss Petitioner's lawsuit with prejudice in exchange for their promise to hire, and to give Petitioner's money to, the law firm of **Holland & Knight, LLP** to represent The School Board of Miami-Dade County, Florida.

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[1] The Motion and Petitions erroneously state the date as December 4, 2014.

Aware that CECILIA ALTONAGA's husband is employed by the law firm of **Holland & Knight, LLP**, WALTER HARVEY and ALBERTO CARVALHO accepted her offer and promised her to hire the law firm of **Holland & Knight, LLP** immediately; but CECILIA ALTONAGA advised them that as a precaution, and for the sake of appearances, that they should wait until after she dismissed Petitioner's lawsuit with prejudice. WALTER HARVEY and ALBERTO CARVALHO agreed with CECILIA ALTONAGA's concerns and promised her to hire, and to give Petitioner's money to, the law firm of **Holland & Knight, LLP** as soon as possible after she dismissed Petitioner's lawsuit with prejudice. [**Motion/Petitions**, page 3 and 4].

In June 15th, 2015[2] judge CECILIA ALTONAGA dismissed Plaintiff's lawsuit with prejudice. (*Yeyille v. Miami-Dade County Public Schools, et al.*, U.S. District Court Case No. 14-24624-CIV ALTONAGA/O'Sullivan (S.D. Fla. 2015) [**Motion/Petitions**, page 4].

In July, 2015, WALTER HARVEY, the School Board Attorney, "***requested*** proposals from qualified law firms to provide...legal services" for The School Board of Miami-Dade County, Florida. **(G-5: Authorization for the School Board**

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[2] The Motion and Petitions erroneously state the date as May 15, 2014.

Attorney to Retain Public Private Partnership Legal Counsel)("*Emphasis*").

WALTER HARVEY and Superintendent ALBERTO CARVALHO "**agreed** that the most qualified law firms were Greenberg Traurig, PA, and **Holland & Knight, LLP**." (Ibid) (**Emphasis**)[**Motion/Petitions**, pages 4 and 5].

In November 6th, 2015 HARVEY and CARVALHO made a request to The School Board "to retain Greenberg Traurig and Holland & Knight to provide legal assistance and to represent the School Board in developing public private partnerships and to be compensated at a blended rate of $425 per hour to partners and associates."(Ibid) [**Motion/Petitions**, page 5].

In November 16th, 2015 CARVALHO informed the Honorable Chair and Members of The School Board of Miami-Dade County, Florida that: "At the request of Mr. Walter J. Harvey, School Board Attorney, the attached **Agenda Item G-5** is being withdrawn from the November 18, 2015 Agenda for further consideration." **(WITHDRAWN—11-16-15 G-5)** [**Motion/Petitions**, page 5].

In November 20th, 2015 HARVEY and CARVALHO "***recommended*** the selection of the law firm **Holland & Knight, LL.P**. The proposed compensation is a blended rate of $394 per hour for both partners and associates. Another very qualified firm, Greenberg Traurig, already has an existing agreement with the Board at the same rates. Authorization is therefore **requested to retain Holland**

& Knight, LL.P." (G-2 Revised: Authorization for the School Board Attorney to Retain Public Private Partnership Legal Counsel)(Emphasis) [Motion/ Petitions, page 5].

In December 2nd, 2015 the School Board authorized HARVEY "to retain **Holland & Knight LL.P** to provide legal assistance and to represent the School Board in developing public private partnerships and to be compensated at a blended rate of $394 per hour for partners and associates." **(Excerpts from Unofficial Minutes of December 2, 2015 School Board Meeting)**.

WALTER HARVEY retained **Holland & Knight LL.P** to provide legal assistance and to represent the School Board in developing public private partnerships and to be compensated at a blended rate of $394 per hour for partners and associates. **Since then** HARVEY and CARVALHO have continuously compensated **Holland & Knight LLP** in an amount **higher than $10,000** and threaten to continue to do so. [**Motion/ Petitions,** page 6].

In October, 2019 Plaintiff learned about the facts and occurrences in **paragraphs 6 and 14** (*svpra.*) [**Motion/ Petitions,** page 6].

In December 4, 2015 Petitioner submitted a Motion pursuant to Fed.R.Civ.P. 60(b)(6) demanding the retroactive disqualification and recusal of judge ALTONAGA pursuant to 28 U.S.C. 455(a) and Relief of her Order dismissing

Petitioner's Third Amended Complaint with prejudice. In December 4, 2015 judge ALTONAGA denied Petitioner's Motion; whereupon Petitioner appealed. [**Motion/Petitions,** page 6].

In April, 2016, the United States Court of Appeals for the Eleventh Circuit issued an Order, signed by Circuit Court Judge Frank Hull, **denying** Plaintiff's Request to Correct or Modify the Record with the exhibit containing facts alleged in **paragraphs 12 and 13** (*svpra.*). Affirming judge ALTONAGA's refusal to recuse and vacate her judgment, the panel of the Court of Appeals composed of Circuit Judges Wilson, Martin, and Jill Pryor **denied** Petitioner's **motion to supplement the record on appeal** [pages 2-3—footnote 2—, and page 5) [APPENDIX A] [**Motion/Petitions,** pages 12 and 13]:

> On appeal, Yeyille also moved to supplement the record with a school board memorandum and meeting minutes. We may allow a party to supplement the record on appeal if this would "aid [in] making an informed decision." Schwartz v. Millon Air, Inc., 341 F.3d 1220, 1225 n.4 (11th Cir. 2003).
>
> Neither of these documents would aid in making our decisions. The memorandum is a slightly revised version of one Yeyille included in his Rule 60(b) motion, and none of the revisions are relevant to Yeyille's recusal claim. The meeting minutes show that the law firm of Holland & Knight was ultimately retained by the school board, but this fact does not aid in considering Yeyille's recusal claim." (pages 2-3)..... Yeyille's motion to supplement the record on appeal is DENIED. (page 5).***Yeyille v. Miami-Dade County Public Schools*, No.15-155548 (5-31-2016).**

In November 27, 2019, Petitioner submitted a Fed. R. Civ. P. 60(b)(6) **Motion** for Retroactive Disqualification and Recusal of judge ALTONAGA pursuant to 28 U.S.C. §455(a)[3] and 28 U.S.C. §455(b)(1)(4)(5)(iii); and **Petitions** for her retroactive disqualification and recusal, and for relief of her Order, and the U.S. Eleventh Circuit Court's judgment, dismissing Petitioner's Third Amended Complaint with prejudice pursuant to Fed.R.Civ.P. Rule 60(b)(6), 60(d)(1)[4], and 60(d)(3)[5]. [**Motion/Petitions**, pages 6-7-8-9][6].

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[3] ***Liljeberg v. Health and Services Acquisition Corp.*, 486 U.S. 847, 861-4 (1988).**

[4] ***Bankers Mortgage Company v. United States*, 423 F.2d 73, 77-78 (5th Cir. 1970)**

[5] ***Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978).**

[6] Petitioner's **Fed. R. Civ. P. 60(b)(6)** ***Motion*** sought retroactively to disqualify and recuse judge Altonaga and assign Plaintiff's case to another judge (***Liljeberg v. Health and Services Acquisition Corp.*, 486 U.S. 847, 863-4 (1988)**).

Petitioner's ***Petitions*** requested that the District Court, and the U.S. Eleventh Circuit Court of Appeals exercise their *supervisory power over its judgment* pursuant to **Fed. R. Civ. P. 60(d)(1)** "to entertain an independent action to relieve a party from a judgment, order, or proceeding." ***Bankers Mortgage Company v. United States*, 423 F.2d 73, 77-78 (5th Cir. 1970)**; and **Fed. R. Civ. P. 60(d)(3)** to "set aside" the Circuit Court of Appeals' "judgment for fraud on the court" retroactively to disqualify and recuse judge Altonaga and assign Plaintiff's case to another judge, and reopen his case. ***Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1337-1338 (5th Cir. 1978).**

In addition to the factual allegations in **paragraphs 12 and 13** (*svpra.*)—which the Circuit Court rejected and ignored—, Petitioner's **Motion/Petitions** include factual allegations of criminal activity between judge ALTONAGA, HARVEY, and CARVALHO in **paragraphs 6 and 14** (*svpra.*) **unknown to Plaintiff before October, 2019**, to-wit: bribery, obstruction of justice, money laundering, engaging in monetary transaction derived from them, and conspiracy to accomplish them. [**Motion/Petitions**, page 13].

The District Court judge does not need appellate leave to reopen a case which has been reviewed on appeal. ***Standard Oil Co. of California v. United States*, 429 U.S. 17, 18 (1976)**. The court takes as true the movant's factual assertions for the purpose of evaluating a Rule 60(b) motion. ***Kerwit Med. Products v.N & H Instruments*, 616 F.2d 833, 836 (5th Cir.1980)**[**Motion/Petitions**, page 8].

Wielding binding United States Eleventh Circuit's precedent[7], and this Court's commands[8], Petitioner providently contended that the new Motion/Petitions were

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[7] ***Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1238 (11th Cir. 1999)**. ***In re Piper Aircraft Corp.* 244 F.3d 1289, 1295 (11th Cir. 2001)** (res•ivdicata).

***Blohm v. Comm'r of Internal Revenue*, 994 F.2d 1542, 1553 (11th Cir. 1993)**(collateral estoppel).

[8] ***Brown v. Felsen*, 442 US 127, 132 (1979)**:

not barred either by res•ivdicata and/or collateral estoppel.

U.S. District Court judge Altonaga has committed, and is committing, fraud upon the court, consisting in, but not limited to, the "egregious misconduct" of "bribery of a judge." ***Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978)**. Judge Altonaga had, and has, a **"direct, personal, substantial, pecuniary interest in reaching a conclusion against"** Plaintiff. ***Turmey v. Ohio*, 273 U.S. 510, 523 (1927)** [**Motion/Petitions**, page 15].

In November 27, 20019 judge ALTONAGA duly recused and "refe[r]red the matter to the Clerk of Court for reassignment in accordance with 28 U.S.C. section 455 for permanent reassignment to another judge..." [Document 59].

In November 27, 20019 judge ALTONAGA duly recused and "refe[r]red the matter to the Clerk of Court for reassignment in accordance with 28 U.S.C. section

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> ***Because res judicata may govern grounds and defenses not previously litigated, however, it blockades unexplored paths that may lead to truth. For the sake of repose, res judicata shields the fraud and the cheat as well as the honest person. It therefore is to be invoked only after careful inquiry.***

***Whole Woman's Health v. Hellerstedt*, 136 S.Ct. 2292, 2305-2306 (2016)** (res•ivdicata).

***Harris v. Washington, et al.*, 404 U.S. 55, 56 (1971). *Blonder-Tongue v. University Foundation*, 402 U.S. 313, 329 (1971)** (collateral estoppel).

455 for permanent reassignment to another judge..." [Document 59].

In December 2, 2019 judge Williams issued a paperless Order **(which was never mailed to Petitioner)** "denying as moot...Motion for Recusal; denying as moot...Motion for Reconsideration. In light of Judge Altonaga's recusal...and the Court of Appeals for the Eleventh Circuit's mandate...Plaintiff's motion is DENIED AS MOOT." [APPENDIX C]

In December 9, 2019 Petitioner filed a Notice of Appeal including a Motion for Leave to Appeal in Forma Pauperis.

In December 16, 2019 judge Williams issued an Order denying Petitioner's Motion for Leave to Proceed in Forma Pauperis because "[u]pon review of the motion and the record, the Court finds that Plaintiff's appeal is indisputably meritless...Plaintiff's appeal is not taken in good faith as required by 28 U.S.C. §1915(a)(3)." [APPENDIX B]

In December 17, 2019 Petitioner submitted a **Motion to Proceed in Forma Pauperis pursuant to Fed.R.App.P. 24(a)(5)**, including an **Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis** to the United States Eleventh Circuit Court of Appeals, wherein Petitioner requested permission to submit a brief. [Hereinafter **"Motion/Permission**].

In February 7, 2020 judge Luck, citing ***Napier v. Preslicka*, 314 F.3d 528, 531**

(**11th Cir. 2002**), denied Petitioner's Motion for Leave to Proceed on Appeal In Forma Pauperis "because the appeal is frivolous." [APPENDIX A]. Petitioner received this Order without opinion on March 2, 2020.

REASONS FOR GRANTING THE PETITION

The United States Eleventh Circuit Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court. **Sup. Ct. Rule 10(c) Rule 10(c) (2019).**

I. THE UNITED STATES DISTRICT COURT AND THE UNITED STATES ELEVENTH CIRCUIT COURT IGNORED THIS COURT'S COMMAND IN *DENTON v. HERNANDEZ*, 504 U.S. 25, 34 (1992).

STANDARD OF REVIEW

"[A] [28 U.S.C. §]1915(d)[9] dismissal is properly reviewed for an abuse of discretion." ***Denton v. Hernandez*, 504 U.S. 25, 33 (1992)**(emphasis).

STANDARD OF FRIVOLITY

"[A] Complaint, containing as it does, both factual and legal allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." ***Denton*** at 31, quoting from ***Neitzke v. Williams*, 490 U.S. 319, 325 (1989)**.

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[9] Petitioner notices that current 28 U.S.C. §1915(d) states:

THE ARGUMENT

In November 27, 20019 judge ALTONAGA duly recused and "refe[r]red the matter to the Clerk of Court for reassignment in accordance with 28 U.S.C. section 455 for permanent reassignment to another judge..." [Document 59].

In December 2, 2019 judge Williams issued a paperless Order (which was never mailed to Petitioner) "denying as moot...Motion for Recusal; denying as moot...Motion for Reconsideration. ***In light of Judge Altonaga's recusal...and the Court of Appeals for the Eleventh Circuit's mandate***...Plaintiff's motion is DENIED AS MOOT." [APPENDIX C] [***Emphasis***]

Petitioner contends here that the District Court erred in rendering his **Motion/ Petitions**—particularly his demands to reconsider and reopen the case[10]—, moot on account of judge ALTONAGA's recusal. As Petitioner stated in his **Motion/**

"The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases." [Source: Legal Information Institute, Cornell Law School, 2020].

In current context, ***Denton*** appears to refer to 28 U.S.C. §1915(a)(3) and 28 U.S.C. §1915(e)(2)(B), **not** 28 U.S.C. §1915(d).

[10] In addition to Plaintiff's **Fed. R. Civ. P. 60(b)(6)** Motion retroactively to disqualify and recuse judge Altonaga and assign Plaintiff's case to another judge (***Liljeberg v. Health and Services Acquisition Corp.,* 486 U.S. 847,**

Petitions, District Court judges do not need appellate leave to reopen a case which has been reviewed on appeal. ***Standard Oil of California v. United States*, 429 U.S. 17, 18 (1976)(Motion/Petitions**, page 8).

The District Court's paperless Order did **not** appropriately resolve either genuine issues of disputed facts or **any facts**; it erroneously applied legal conclusions; and did not bother to provide any statement explaining its dismissal of the Complaint that would facilitate any remotely ""intelligent appellate review"". (***Denton*** at 34). Thus, it ran afoul of the command issued by this Court in ***Denton v. Hernandez*, 504 U.S. 25, 33 (1992)**.

The District Court's subsequent Order did not improve upon its mysterious paperless Order[11].

863-4 (1988)), Plaintiff petitions this Court, and the U.S. Eleventh Circuit Court of Appeals, to exercise their *supervisory power over its judgment* pursuant to **Fed. R. Civ. P. 60(d)(1)** "to entertain an independent action to relieve a party from a judgment, order, or proceeding." ***Bankers Mortgage Company v. United States*, 423 F.2d 73, 77-78 (5th Cir. 1970)**; and **Fed. R. Civ. P. 60(d)(3)** to "set aside" the Circuit Court of Appeals' "judgment for fraud on the court" retroactively to disqualify and recuse judge Altonaga and assign Plaintiff's case to another judge, and reopen his case. ***Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1337-1338 (5th Cir. 1978)**. [**Motion/Petitions**, pages 8 and 9].

[11] Hitherto Petitioner did not know that Paperless Orders existed.

In December 16, 2019 the District Court issued an Order denying Petitioner's Motion for Leave to Proceed in Forma Pauperis because ***"[u]pon review of the motion and the record, the Court finds that Plaintiff's appeal is indisputably meritless...Plaintiff's appeal is not taken in good faith as required by 28 U.S.C. §1915(a)(3)."*** [APPENDIX B](Order, page 2) [***Emphasis***].

As Petitioner noted in his Motion/Permission to the United States Circuit **Court of Appeals**, the District Court's certificate denying Plaintiff's leave to Proceed in•forma•pavperis is arbitrary and abusive, and definitively not conclusive[12]. It is also carelessly written and poorly supported; and an example of circvlvm•in•probando: ***"An issue is frivolous when it appears the legal theories are ""undisputably meritless""""***...[Order, Document 64, 12/16/2019, page 1]... ***Upon review of the motion and the record, the Court finds that Plaintiff's appeal is indisputably meritless."*** [Order, Document 64, 12/16/2019, page 2] [APPENDIX B].

In February 7, 2020 United States Eleventh Circuit Court of Appeal judge Luck denied Petitioner's Motion for Leave to Proceed on Appeal In Forma Pauperis "**because the appeal is frivolous**" citing ***Napier v. Preslicka***, 314 F.3d 528, 531

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[12] ***Coppedge v. United States*, 369 U.S. 438, 446 (1962)**

(11th Cir. 2002) which refers to **28 U.S.C. §1915(e)(2)(B)(i)** in particular. [APPENDIX A]. Petitioner received this Order without opinion on March 2, 2020.

Napier purports to obey this Court's command in ***Denton***,[13] but in its Order denying Petitioner's Motion for Leave to Proceed on Appeal In Forma Pauperis circuit judge Luck flouted its command.

In deciding that Petitioner's Motion for Leave to Proceed on Appeal In Forma Pauperis was frivolous, judge Luck declined to decide, as is his judicial duty commanded by ***Denton v. Hernandez*, 504 U.S. 25, 34 (1992)**, that the district court failed to resolve ***any*** "genuine issues of disputed fact"; that the district court "applied erroneous legal conclusions" (i.e. "Plaintiff'sappeal is indisputably meritless")(Svpra.) regarding Petitioner's Motion/Petitions; and that the district court did not bother to provide any statement explaining its dismissal of the Complaint that would facilitate **any** remotely ""intelligent appellate review"".

Petitioner notices that the district court's Order referred ***only*** to frivolity regarding "**legal theories**", not factual allegations. And the summary disposition of Petitioner's F. R. App. P. 24(a)(5) Motion/Permission including Affidavit

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[13] ***Bilial v. Driver, 251 F.3d 1346, 1348* (11th Cir. 2001).**

Accompanying Motion for Permission to Appeal In Forma Pauperis to the United States Eleventh Circuit Court of Appeals **is silent regarding either one**. [**APPENDIX A**].

Petitioner's Seventh Amendment's right to a jury trial: Although the district court neither specifically nor impliedly referred to the **factual allegations** (it considered **only "it appears the legal theories are ""undisputably meritless""**, Order pages 1 and 2) in Petitioner's Motion/ Petitions regarding whether it considered them equally meritless or frivolous, Petitioner, in an abundance of caution, contends that judge Williams[14] would have violated Petitioner's **Seventh Amendment right to a trial by jury** if she had based her Order upon disbelief of the factual allegations in Petitioner's Motion/Petitions[15].

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[14] "When performing federal judicial duties, a federal judge performs the **""functions of government itself""** *Jefferson County v. Acker*, 92 F.3d 1561, 1572 (11th Cir. 1996), *en banc*, quoting from *United States v. New Mexico*, 455 U.S. 720, 735, 102 S.Ct. 1373, 1383 (1982). (Emphasis). Thus, **the judge *is* the government**.

[15] ***Neitzke v. Williams*, 490 U.S. 319, 327 (1989)**: "What Rule 12(b)(6) does not countenance are dismissals based on a **judge's disbelief of a complaint's factual allegations**. District court judges looking to dismiss claims on such grounds must look elsewhere for legal support." (**emphasis**).

Petitioner's rights under the Fifth Amendment Due Process Clause (Equal Protection): Congress enacted the in forma pauperis statute to assure **"equality of consideration for all litigants."** ***Nietzke v. Williams*, 490 U.S. 319, 329 (1989)**. The district court[16] by arbitrarily dismissing Plaintiff's motion for leave to proceed in•forma•pavperis, **treated Plaintiff differently from paying Plaintiffs[17] submitting the same Motion/ Petitions, violated his fundamental right of access to the courts *Romer v. Evans, 517 U.S. 620, 633 (1996)*, and *arbitrarily deprived him of "the considerable benefits of the adversary proceedings contemplated by the Federal Rules [of Civil Procedure]."* *Nietzke* at 330. (emphasis)**.

II. THE UNITED STATES ELEVENTH CIRCUIT COURT IGNORED THIS COURT'S COMMAND IN *COPPEDGE v. UNITED STATES*, 369 U.S. 438 (1962) AND *CRUZ v. HAUCK*, 404 U.S. 59 (1971).

STANDARD OF REVIEW

"The District Court's certificate [denying Petitioner's Leave to Appeal

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[16] Footnote 14, Svpra. **The judge *is* the government**.

[17] ***Coppedge v. United States*, 369 U.S. 438, 446 (1962).**

> In Forma Pauperis] is not conclusive, although it is, of course, entitled to weight...Nevertheless, if from the face of the papers he has filed, it is **apparent** that the applicant will present issues for review not clearly frivolous, the Court of Appeals should then grant leave to appeal *in forma pauperis*...and proceed to consideration of the appeal on the merits in the same manner that it considers paid appeals." (***Coppedge*** at 446). [**emphasis**].

ARGUMENT

In February 7, 2020 United States Eleventh Circuit Court of Appeal judge Luck denied Petitioner's Motion for Leave to Proceed on Appeal In Forma Pauperis "because the appeal is frivolous" citing ***Napier v. Preslicka***, 314 F.3d 528, 531 (11th Cir. 2002) which refers to **28 U.S.C. §1915(e)(B)(i)** in particular. [APPENDIX A]. Petitioner received this Order without opinion in March 2, 2020.

For the reasons stated in this Petition for Writ of Certiorari, Petitioner contends that the Eleventh Circuit Court of Appeals did not assure equality of consideration to Petitioner that it affords paying litigants. ***Coppedge*** at 447.

The United States Eleventh Circuit Court of Appeals summarily disposed of the December 17th, 2019 Petitioner's **Motion to Proceed in Forma Pauperis pursuant to Fed.R.App.P. 24(a)(5)**, including an **Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis wherein Petitioner requested permission to submit a brief** [**Motion/Permission**] without allowing

Petitioner to submit a brief. ***Coppedge*** at 453. ***Farley v. United States***, 354 U.S. 521, 523 (1957).

Because Petitioner's Motion/Petitions are submitted **against the government**[18] (disqualification and recusal of a federal judge on account of her criminal conduct), **they are analogous to a criminal case where a prisoner sues the government and/or government actors**. Therefore,

> [It] is not the burden of the petitioner to show that his appeal has merit, in the sense that he is bound, or even likely, to prevail ultimately. He is to be heard, as is any appellant in a criminal case, if he makes a rational argument on the law or facts. It is the burden of the Government, in opposing an attempted criminal appeal *in forma pauperis*, to show that the appeal is lacking in merit, indeed, that it is so lacking in merit that the court would dismiss the case on motion of the Government, had the case been docketed and a record been filed by an appellant able to afford the expense of complying with those requirements. ***Coppedge*** at 448.

Circuit court judge Luck denied Petitioner's Motion for Leave to Proceed on Appeal In Forma Pauperis without an opinion thereby arbitrarily and deliberately denying Petitioner's "**rights of equal access to judicial machinery**." ***Cruz v. Hauck*, 404 U.S. 59, 61 (1971)**[19].

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[18] Footnote 14, svpra. **The judge *is* the government**.

[19] ***Cruz v. Hauck*, 404 U.S. 59 (1971)**. "Our holdings have steadily chipped away at the proposition that appeals of the poor can be disposed of **solely on summary and abbreviated inquiries into frivolity rather than upon the plenary consideration granted paying appellants**. (*Id.* at 62).

JUSTICE SOTOMAYOR was recently concerned by the bad faith exhibited by the judges of the Fifth Circuit Court of Appeal who "summarily rejected pro se filings" "without so much as a glance."[20] This lamentable conduct is widespread[21]. As circuit court judge Luck has demonstrated in Petitioner's case, it is also practiced by at least this judge in the Eleventh Circuit Court of Appeals. Circuit court Judge Luck deliberately avoided elaborating about what factual,

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""**[T]he civil courts of the United States and each of the States belong to the people of this country and that no person can be denied <u>access to those courts, either for a trial or an appeal, because he cannot pay a fee</u>...**"" (*Id.* at 64) (**<u>emphasis</u>**). "It is apparent that this disparate treatment has the effect of classifying appellants according to **<u>wealth</u>**, which, like race, is a **<u>suspect classification</u>**."(*Id.* at 65)(**<u>emphasis</u>**).

[20] ***Louie M. Schexnayder, Jr. v. Darrel Vannoy Warden*, 589 U.S. _____ (2019)**, No.18-8341 [Dec. 9, 2019] (The petition for a writ of certiorari is denied).

[21] ***Posner: Most judges regard pro se litigants as 'kind of trash not worth the time.'*** ABA Journal, by Debra Cassens Weiss. September 11, 2017, 11:57 AM.

> "Judge cites...rebuffed efforts to aid pro se litigants in a new interview explaining his decision to suddenly retire from the Chicago-based 7th U.S. Circuit Court of Appeals....In the 7th Circuit, staff lawyers review appeals from pro se litigants, and their recommendations are generally rubber-stamped by judges...Posner wanted to give the pro se litigants a better shake by reviewing all of the staff attorney memos before they went to the panel of judges. Posner had approval from the director of the staff attorney program. ""But the judges, my colleagues, all 11 of them, turned it down and refused to give me any significant role. I was very frustrated by that."" **Richard Posner, Seventh Cir. Judge, retired**.

and legal allegations, in Petitioner's Complaint and Fed. R. Civ. P. 60(b)(6) Motion/Petitions, he deemed to be frivolous in denying Petitioner's Motion for Leave to Proceed on Appeal In Forma Pauperis **with the intention of evading this Court's review**.[22] This Court should not allow it.

In ***Coppedge v. United States*, 369 U.S. 438, 446 (1962)** "the only cognizable issue is whether a **summary survey** (as opposed to **plenary deliberation**) suggests **that a substantial argument could be presented**." ***Cruz v. Hauck*, 404 U.S. 59, 62 (1971)**. (**emphasis**).

III. THE UNITED STATES ELEVENTH CIRCUIT COURT IGNORED THIS COURT'S COMMAND IN UNITED STATES v. BEGGERLY, 524 U.S. 38, 46 (1998). THE DISTRICT COURT AND THE CIRCUIT COURT SHOULD HAVE GRANTED PETITIONER'S FED. R. CIV. P. 60(b)(6) MOTION AND PETITIONS PURSUANT TO FED. R. CIV. P. (60)(d)(1) AND FED. R. CIV. P. (60)(d)(3).

Petitioner's Motion/Petitions are not barred by res judicata[23]; but, even if they were, judge **Altonaga's criminal conduct** (***Svpra.*** pgs 3-6) constitutes

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[22] ***Retirement Plans Committee of IBM, et al. v. Larry W. Jander, et al.*, 589 U.S. ____ (2019)**, No.18-1165 [January 14, 2020], page 3. ***F. Hofpmann-La Roche, Ltd. V. Empagran, S.A.*, 542 U.S. 155, 175 (2004)**. ***Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)**.

[23] ***Whole Woman's Health v. Hellerstedt*, 136 S.Ct. 2292, 2305-2306 (2016)** (res•ivdicata). ***Harris v. Washington, et al.*, 404 U.S. 55, 56 (1971)**. ***Blonder-Tongue v. University Foundation*, 402 U.S. 313, 329 (1971)** (collateral estoppel).

""instances...sufficiently gross to demand a departure"" from rigid adherence to the doctrine of res judicata." ***Hazel-Atlas Glass Co., v. Hartford-Empire.*, 322 U.S. 238, 244 (1944).** ***United States v. Beggerly*, 524 U.S. 38, 46 (1998).**

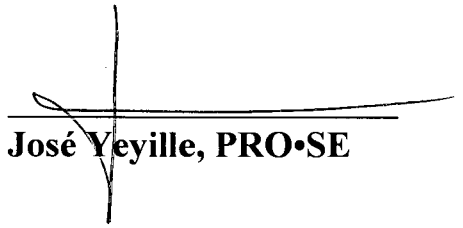
RELIEF SOUGHT

Petitioner respectfully requests that this Court grant Petioner's motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari, vacate the judgment of the Eleventh Circuit Court of Appeals, and remand it there for consideration of his appeal "on the merits in the same manner that it considers paid appeals" ***Coppedge***, 446; and to consider "arguable claims...made by petitioner to support his application for leave to appeal...[wherein] those mentioned would alone have warranted the allowance of an appeal *in forma pauperis*." [emphasis]. ***Coppedge*** 454.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



José Yeyille, PRO•SE

Date: April 7, 2020