22-755
No. _____

In The
Supreme Court of the United States

GANIYU AYINLA JAIYEOLA,

Petitioner,

v.

THOMAS L. DORWIN,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Question 1 presented is:

Whether the Supreme Court order that Federal Courts of Appeals are obligated to sua sponte review subject-matter jurisdiction issues regardless of the circumstances. *Gonzalez v. Thaler*, 565 U.S. 134 (2012).

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, **the clerk must enter the party's default**." Fed. R. Civ. P. 55(a). "The rules at issue here are the Federal Rules of Civil Procedure, which have the same force of law that any statute does." *In re Nat'l Prescription Opiate Litig.*, No. 20-3075 (6th Cir. 2020). Plaintiff filed a Motion (TWO times) per Rule 55(a) for Dorwin (the Clerk of the District Court) to enter a default against Defendant Brundage in an Unauthorized Practice of Law lawsuit. (*Jaiyeola v. Brundage*, No. 1:21-cv-01053 (W.D. Mich. 2021)). Dorwin did not consider the two Motions and Dorwin did not respond to the two Motions. A Clerk is required to respond to Motions directed to the Clerk. Dorwin violated Plaintiffs' "constitutional right to due process and equal protection,"[1] violated Plaintiff's "first amendment"[2] rights, and denied Plaintiff due

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[1] Futernick.

[2] Filipas.

QUESTIONS PRESENTED – Continued

process. "All government officials must respect all constitutional rights." *Ermold et al. v. Davis et al.*, Nos. 17-6119/6120/6233/6226 (6th Cir. 2019). "A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U. S. 385, 234 U. S. 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545 (1965). The denial of due process implied that the District Court "was without jurisdiction to render a final and binding decree." *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

Question 2 presented is:

> Whether a District Court Clerk's repeated violations of Plaintiff's constitutional rights, first amendment rights, and denial of due process required the District Court's decision to be reversed by the Sixth Circuit Court of Appeals.

A court "generally may not rule on the merits of a case without first determining that it has jurisdiction over the category of claim in the suit (subject-matter jurisdiction). . . ." *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430-31 (2007). In *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982), the Supreme Court noted that subject-matter jurisdiction, then, is an Art. III as well as a statutory requirement; it functions as a

QUESTIONS PRESENTED – Continued

restriction on federal power, and contributes to the characterization of the federal sovereign. . . . and a party does not waive the requirement by failing to challenge jurisdiction early in the proceedings. *See* also *Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006). All courts have an "independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (citing *Ruhgras AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999)). The general trend in all appeal courts is that subject-matter jurisdiction is not waivable or forfeitable. *Levin v. ARDC*, 74 F.3d 763, 766 (7th Cir. 1996) ("Subject-matter jurisdiction cannot be waived and may be contested by a party or raised sua sponte at any point in the proceedings."). *Detabali v. St. Luke's Hosp.*, 482 F.3d 1199, 1202 (9th Cir. 2007) (citing *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982); *Galvez v. Kuhn*, 933 F.2d 773, 775 n. 4 (9th Cir. 1991)) ("Defects in subject matter jurisdiction are nonwaivable and may be raised at any time, including on appeal."). "Although jurists often use the words interchangeably, "forfeiture is the failure to make the timely assertion of a right[;] waiver is the 'intentional relinquishment or abandonment of a known right.' *United States v. Olano*, 507 U.S. 725, 733 (1993) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938))."" Brief for United States as Amicus Curiae 7, n. 5. "(*Kontrick v. Ryan*, 540 U.S. 443 (2004)). In this lawsuit, the Sixth Circuit panel concluded that subject-matter jurisdiction can

QUESTIONS PRESENTED – Continued

be forfeited if a litigant fails to raise the issue of subject-matter jurisdiction "early in the proceedings". "When a requirement goes to subject-matter jurisdiction, courts are obligated to consider sua sponte issues that the parties have disclaimed or have not presented. *See United States v. Cotton*, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002).

PARTIES

The petitioner is Ganiyu Ayinla Jaiyeola. The respondent is Thomas L. Dorwin (Clerk of Court), United States District Court for the Western District of Michigan.

DIRECTLY RELATED CASES

Jaiyeola v. Dorwin, No. 22-1424, United States Court of Appeals for the Sixth Circuit, judgment entered October 5, 2022

Jaiyeola v. Dorwin, No. 1:22-cv-129, United States District Court for the Western District of Michigan, judgment entered April 26, 2022

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

Petitioner Ganiyu Ayinla Jaiyeola respectfully pray that this Court grant a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered on October 5, 2022.

OPINIONS BELOW

The October 5, 2022, opinion of the court of appeals is set out at App. 1-5 of the Appendix. The April 26, 2022, decision of the district court is set out at App. 6-10 of the Appendix. The November 7, 2022, order denying rehearing en banc is set out at App. 11 of the Appendix. The opinion and orders are not reported.

JURISDICTION

The decision of the court of appeals was entered on October 5, 2022. A timely petition for rehearing en banc was denied on November 7, 2022. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The district court had jurisdiction pursuant to 28 U.S.C. § 1331.

STATUTORY PROVISION INVOLVED

No federal statute explicitly grants qualified immunity. Judicial immunity is a judicial precedent established by the Supreme Court.

STATEMENT OF THE CASE

Background

Plaintiff initiated this action against Defendant Thomas L. Dorwin, the Clerk of the United States District Court for the Western District of Michigan, alleging claims pursuant to 42 U.S.C. § 1983.

This case came out of a motor vehicle product liability case (*Jaiyeola v. Toyota Motor N. Am., Inc.*, No. 1:17-cv-00562 (W.D. Mich. 2017)) in which pro se Plaintiff Ganiyu Jaiyeola asserted claims for injuries and other damages against Toyota Motor Corporation and Aisan Industry Co., Ltd. (both indicated as "Toyota") arising out of Plaintiff's 1996 Toyota Camry LE ("Camry") sudden unintended acceleration ("SUA")[3] car accident that occurred on November 25, 2013. Plaintiff is a disable because of the SUA car accident. Jaiyeola is married with three (3) children (15, 12, and 9 years). The facts on Plaintiff's Camry, the Camry accident of November 25, 2013, Plaintiffs' injuries (including Brain (Subdural Hematoma), Spinal Cord (Cervical Stenosis with Myelopathy), and Fractured Left Eye Socket), brain surgery, pending spinal cord surgery, and health prognosis are stated in Plaintiff's affidavit. (Plaintiff's Affidavit, R.[4] 243-2, Page ID #5500-5510 in *Jaiyeola v.*

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[3] "SUA" refers to sudden unintended acceleration of the Camry.

[4] "R." refers to the record entry number in the District Court Docket. "R'." refers to the record entry number in a Sixth Circuit Docket.

Toyota Motor N. Am., Inc., No. 1:17-cv-00562 (W.D. Mich. 2017)).

Defendant Dorwin is the Clerk at the U.S. District Court for the Western District of Michigan, Grand Rapids, Michigan. Plaintiff filed **TWO** Motions (January 25, 2022[5] and February 4, 2022[6]) directed to Defendant Dorwin to enter default against Defendant Brundage (*Jaiyeola v. Brundage*, No. 1:21-cv-01053 (W.D. Mich. 2021)) as per Fed. R. Civ. P. 55(a). Dorwin did not consider the TWO Motions and Dorwin did not respond to Plaintiff. A motion not considered is a motion denied. *Marks v. Shell Oil Co.*, 830 F.2d 68 (6th Cir. 1987). Plaintiff filed a Complaint against Dorwin.

The Magistrate Judge sua sponte filed a Report and Recommendation ("RR") to dismiss Plaintiff's Complaint. Plaintiff timely filed Objections to the RR. In an Order dated February 8, 2022, the District Court denied Plaintiff's objections (App. 10) and dismissed Plaintiff's complaint. On May 9, 2022, Plaintiff timely filed a Notice of Appeal to the Sixth Circuit Court of Appeals. *See* Fed. R. App. P. 4.

Proceedings Below
District Court

" "It is well-established that judges enjoy judicial immunity from suits arising out of the performance of

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[5] *Jaiyeola v. Brundage*, No. 1:21-cv-01053, R.22-1, Page ID #775-807 (W.D. Mich. 2022).

[6] *Jaiyeola v. Brundage*, No. 1:21-cv-01053, R.23-1, PageID #824-829 (W.D. Mich. 2022).

their judicial functions." *Brookings v. Clunk*, 389 F.3d 614, 617 (6th Cir. 2004). Judicial immunity may be extended to judicial staff, such as the Clerk of Court, when the staff member is acting in a quasi-judicial capacity. *See Bradley v. United States*, 84 F. App'x 492, 493 (6th Cir. 2003). . . ."[7] Dorwin was "in a quasi-judicial capacity" (as the Clerk of the U.S. District Court) when pro se Plaintiff made his TWO requests (January 25, 2022 and February 4, 2022) to Dorwin to enter default against Defendant Brundage as per Fed. R. Civ. P. 55(a). "Judicial immunity is overcome only if the actions taken are not within the judge's judicial capacity or if the actions, "though judicial in nature, [are] taken in the complete absence of all jurisdiction." *Mireles v. Waco*, 502 U.S. 9, 11 (1991). . . ."[8] "Plaintiffs argue that Judge . . . is not entitled to judicial immunity because, . . . Judge . . . acted in the absence of all jurisdiction."[9] "Usurpation of judicial power occurs when courts act beyond their jurisdiction or fail to act when they have a duty to do so. *Will v. United States*, 389 U.S. 90, 95 (1967)." (*In re: Greg Abbott, et al.*, No. 20-50264 (5th Cir. April 7, 2020)).

By failing to enter default against Defendant Brundage as properly requested by Plaintiff on January 25, 2022 and February 4, 2022, Defendant Dorwin engaged in the following violations (among others):

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[7] *Hopson v. Hunt*, No. 2:20-cv-04751, Doc#: 2 (S.D. Ohio 2020).

[8] *Hopson*.

[9] *Joshua Ward, et al. v. City of Norwalk, et al.*, No. 15-3018 (6th Cir. 2016).

A.) Violated the following Court Rules that are about service of process by Plaintiff Jaiyeola and entry of default by the Clerk of Court when requested by Plaintiff Jaiyeola: MCR 2.105(A)(2), MCR 2.104(B), MCL 600.1910(3), MSA 27A.1910(3), MCR 2.105(J)(3) and Fed. R. Civ. P. 55(a); **B.)** Violated Plaintiff's First Amendment Rights; and **C.)** Violated Plaintiff's constitutional right to procedural due process, including notice and an opportunity to be heard. "Next, we turn to qualified immunity, which shields a government official from a lawsuit against her in her individual capacity if (1) she didn't violate any of the plaintiff's constitutional rights or (2) the rights, if violated, weren't "clearly established" at the time of the alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). Put differently, the doctrine protects "all but the plainly incompetent or those who knowingly violate the law." *White v. Pauly*, 137 S. Ct. 548, 551 (2017)." *Ermold et al. v. Davis et al.*, Nos. 17-6119/6120/6233/6226 (6th Cir. 2019).

Defendant Dorwin also engaged in "Usurpation of judicial power" because he failed "to act when [he had] a duty to do so" regarding the default request that pro se Plaintiff made against Defendant Brundage on January 25, 2022 and February 4, 2022. Defendant Dorwin had no judicial immunity to cover his actions because he "acted in the absence of all jurisdiction" by not entering default against Defendant Brundage and pro se Plaintiff made the request TWO times (January 25, 2022 and February 4, 2022). Defendant Dorwin acted with deliberate indifference with regard to his actions

and/or omissions because he made no attempt to notice pro se Plaintiff even though pro se Plaintiff made the default request TWO times. "the Supreme Court has authorized the issuance of a writ of mandamus to rectify either a judicial usurpation of power or a clear abuse of judicial discretion."[10] Dorwins' actions were "a clear abuse of judicial discretion." "An abuse of discretion occurs when a judicial determination is arbitrary, capricious or whimsical. It is not merely an error of law or judgment, but an overriding of the law by the exercise of manifestly unreasonable judgment or the result of impartiality, prejudice, bias or ill-will as shown by evidence or the record of proceedings."[11]

Plaintiff requested for default from Dorwin against Defendant Brundage TWO times (*Jaiyeola v. Brundage*, No. 1:21-cv-01053, ECF No. 22-1, PageID.775-791 (W.D. Mich. 2022) and *Jaiyeola v. Brundage*, No. 1:21-cv-01053, ECF No. 23-1, PageID.824-829 (W.D. Mich. 2022)).

This is not the first time that Dorwin would violate Plaintiffs' due process rights and other constitutional rights. Defendant Dorwin was unfair (Rule 1 violation by Dorwin) to Plaintiff previously as follows: A.) Plaintiff filed a complaint against Dorwin when Dorwin did not file some of Plaintiffs' pleadings. Dorwin also delayed sending rejected pleadings to Plaintiff until after the Magistrate Judge had filed a Report and

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[10] *In re: Donald J. Trump*, No. 18-2486 (4th Cir. 2020).

[11] *U.S. v. Wright*, Nos. 84-1088, 84-1133 and 84-1134 (10th Cir. 1987).

Recommendation recommending Summary Judgment (*See Jaiyeola v. Toyota Motor N. Am., Inc.*, Case No.: 1:17-cv-0562, ECF No. 291, PageID.6566 (W.D. Mich. 2018)) and B.) Dorwin did not reply a letter from Plaintiff to him but he replied the Defendants letter that discussed Plaintiff's letter (*See Jaiyeola v. Toyota Motor N. Am., Inc.*, Case No.: 1:17-cv-0562, ECF No. 377, 378, and 379 (W.D. Mich. 2021)). Therefore, Dorwin had a history of denying Plaintiff due process and constitutional rights.

As indicated in *Sparkman v. McFarlin*, 552 F.2d 172 (7th Cir. 1977), "the doctrine of judicial immunity is inapplicable to this case." because, as stated above, Dorwin had other preexisting violations against Plaintiff and he repeatedly denied Plaintiffs' requests to enter a default against Defendant Brundage. Indeed, Dorwin was not "clothed with absolute judicial immunity"[12]. In *Stump v. Sparkman*, 435 U.S. 349 (1978), the Supreme Court in a 5-3 decision reversed *Sparkman*. However, that reversal would not have occurred if there had been evidence of previous and repeated violations by the Defendant against the Plaintiff. In this case, there is evidence of repeated violations of Plaintiff's constitutional rights, First Amendment Rights, and denial of due process to Plaintiff by Dorwin.

The District Court decided that it had no subject-matter jurisdiction and dismissed Plaintiff's complaint. But the District had subject-matter jurisdiction

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[12] *Sparkman v. McFarlin*, 552 F.2d 172 (7th Cir. 1977).

because Dorwin had no qualified immunity under 42 U.S.C. § 1983.

Court of Appeals

The court of appeals affirmed the decision of the District Court.

The panel held that Plaintiff "forfeited appellate review" and therefore forfeited subject-matter jurisdiction under § 1983: "By limiting his appellate brief to those issues, Jaiyeola has forfeited appellate review of the district court's alternative determination that Dorwin is not subject to suit under § 1983, *see Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 318 (6th Cir. 2005), which is wholly dispositive of his challenge to the district court's dismissal." (App. 4). Plaintiff's petition for rehearing en banc was denied by the panel.

REASONS FOR GRANTING THE WRIT

I. COURTS OF APPEALS ARE REQUIRED TO FOLLOW THE DECISIONS OF THE SUPREME COURT THAT SUBJECT-MATTER JURISDICTION CANNOT BE WAIVED OR FORFEITED

"When a requirement goes to subject-matter jurisdiction, courts are obligated to consider sua sponte issues that the parties have disclaimed or have not presented. *See United States v. Cotton*, 535 U.S. 625,

630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002). Subject-matter jurisdiction can never be waived or forfeited. The objections may be resurrected at any point in the litigation, and a valid objection may lead a court mid-way through briefing to dismiss a complaint in its entirety. "[M]any months of work on the part of the attorneys and the court may be wasted." *Henderson*, 562 U.S., at ___, 131 S.Ct., at 1202. Courts, we have said, should not lightly attach those "drastic" consequences to limits Congress has enacted. . . ." *Gonzalez v. Thaler*, 565 U.S. 134 (2012).

The Sixth Circuit panel held as follows: "By limiting his appellate brief to those issues, Jaiyeola has forfeited appellate review of the district court's alternative determination that Dorwin is not subject to suit under § 1983, *see Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 318 (6th Cir. 2005), which is wholly dispositive of his challenge to the district court's dismissal." (App. 4). This holding is contrary to the Supreme Court guidance that subject-matter jurisdiction on issues cannot be waived or forfeited even when it is not raised or even when it is disclaimed.

Courts of Appeals are required to keep to the Supreme Court guideline that subject-matter jurisdiction cannot be waived or forfeited.

"Because a district court has no discretion not to abide by governing law, an erroneous legal conclusion deserves no deference on appeal. *See Koon v. United*

States, 518 U.S. 81, 100 (1996). . . ."[13] The Sixth Circuit Court of Appeals should not have given "deference on appeal" to the District Court decision that ignored the District Court subject-matter jurisdiction.

II. WHEN THE CLERK OF A DISTRICT COURT REPEATEDLY DENIED PLAINTIFF CONSTITUTIONAL RIGHTS, FIRST AMENDMENT RIGHTS, AND DUE PROCESS; THE DECISION OF THE COURT MUST BE REVERSED

Plaintiff filed **TWO** Motions (January 25, 2022[14] and February 4, 2022[15]) directed to Defendant Dorwin to enter default against Defendant Brundage (*Jaiyeola v. Brundage*, No. 1:21-cv-01053 (W.D. Mich. 2021)) as per Fed. R. Civ. P. 55(a). Dorwin did not consider the TWO Motions and Dorwin did not respond to Plaintiff. Rule 55(a) states as follows: "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, **the clerk must enter the party's default**." Note the use of "**must**" in Rule 55(a). "Must means a legal obligation. You must do something."[16] Dorwin did nothing: Dorwin did not

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[13] *United States v. LaDeau*, No. 12-6611 (6th Cir. 2013).

[14] *Jaiyeola v. Brundage*, No. 1:21-cv-01053, R.22-1, Page ID #775-807 (W.D. Mich. 2022).

[15] *Jaiyeola v. Brundage*, No. 1:21-cv-01053, R.23-1, PageID #824-829 (W.D. Mich. 2022).

[16] https://www.law.cornell.edu/cfr/text/49/375.103.

enter a default against Brundage and Dorwin did not respond to Plaintiff's TWO Motions for a default.

The denial of due process to Plaintiff by Dorwin rendered the decision of the District Court null and void. A void Order or Judgment is not a valid Order or Judgment. " . . . a departure from established modes of procedure [can] render the judgment void," [*Windsor v. McVeigh*, 93 U.S. 274, 282, 23 L.Ed. 914 (1876)], *supra*, 93 U.S. at 283, where the procedural defects are of sufficient magnitude to constitute a violation of due process, or, as sometimes more circularly put, where the defects are "so unfair as to deprive the . . . proceedings of vitality," *Eagles v. U.S.*, 329 U.S. 304, 314, 67 S.Ct. 313, 319, 91 L.Ed. 308 (1946), or where the procedural irregularities are serious enough to be deemed "jurisdictional," *Yale v. National Indemnity Co.*, 602 F.2d 642, 644 (4th Cir. 1979); Recent Cases, 62 Harv. L. Rev. 1400, 1401 (1949). *See* generally Restatement of the Law of Judgments § 8 (1942)." *Fehlhaber v. Fehlhaber*, 681 F.2d 1015, 1027 (5th Cir. 1982). The District Court lacked jurisdiction and its decision is void because Dorwin denied Plaintiff constitutional rights, First Amendment rights, and due process.

The doctrine of qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *White v. Pauly*, 137 S. Ct. 548, 551 (2017). Dorwin "knowingly violate the law" by willfully ignoring Plaintiff's TWO motions for a default against Brundage. To overcome a defendant's assertion of qualified immunity, a plaintiff must show both (1) that the defendant violated a constitutional right, and (2) that

the right was clearly established at the time of the violation. *See Pearson v. Callahan*, 555 U.S. 223, 231-32 (2009). As shown in the arguments above, Plaintiff complied with *Pearson*.

In this lawsuit, Plaintiff was denied a hearing at the District Court and at the Sixth Circuit Court of Appeals; a denial of due process. The lack of a hearing distinguishes this case from *Wantou v. Wal-Mart Stores Texas, L.L.C.*, No. 20-40284 (S.Ct. January 23, 2023), cert. denied. In *Wantou*, the District Court used the wrong legal test, the Fifth Circuit affirmed, and the Supreme Court denied the cert petition; however Wantou had a hearing at the District Court and at the Fifth Circuit Court of Appeals.

CONCLUSION

For the above reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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