CAUSE NO. 22-7811

In The
Supreme Court of The United States

TRENT STEVEN GRIFFIN, SR.
Petitioner,

v.

AMERICAN ZURICH INSURANCE COMPANY, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Pro se

QUESTION(S) PRESENTED

1. Pursuant to the Full Faith and Credit, whether an unauthenticated judgment have *res judicata* affects as an affirmative defense provided in memoranda or otherwise not presented in an answer or proved.
2. If so, whether a "plea to the jurisdiction" affirms that *res judicata* effects on a second appeal, that was presented for the first time on appeal, specifically when the plea is unauthenticated or not proved or presented in a brief in opposition.
3. Whether a court of appeals may grant a motion to dismiss as frivolous under its local rule, specifically when the standard of review is abuse of discretion for denial of a 60(b) motion.
4. Whether a 60(b) motion that was denied in the district court for lack of jurisdiction, and not incorporated in the first appeal, prohibit a subsequent 60(b) motion in the district court, and a second appeal, particularly when Respondents did not file an objection in the lower court prior to the second appeal or Fifth Circuit failure to incorporate Petitioner's 60(b) motion in the first appeal.
5. Whether any State governmental instrumentality that collects child support, have the power to garnish SSA or VA benefits or otherwise employment wages of an individual citizen or person within the jurisdiction of the United States without a State contempt or valid court order, that was noticed to of all parties.
6. Whether that power extends to other governmental instrumentalities of another Sate or private individuals.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner here and below is Trent Steven Griffin, Sr.

Respondents here and below are American Zurich Insurance Company; Walgreens Company; Greg Wasson, as Chief Executive Officer; Jim Reilly, Sr., as Director Human Resources; Chester Stevens, as District Manager; Januari Lewis, as Pharmacy Supervisor; Jerry Padilla, as Pharmacy Supervisor; Felicia Felton, as Store Manager; Jerline Shuntae Washington, as Pharmacy Manager; Vanessa Strong, as Store Manager; Miranda Martinez, as Pharmacy Technician; Daravanh Khanmanivanh, as Pharmacy Technician; Nicole Bush, as Market Scheduler; Texas Department of Insurance, Division of Workers' Compensation; Rod Bordelon, in his individual capacity; Cassie Brown, Division of Workers' Compensation's Commissioner; Andrew Cole, as Designated Doctor; Thomas Hight, as Hearing Officer; Valerie Rivera, as Ombudsman; Greg Abbott, Governor of the State of Texas; Jaime Masters, Commissioner of DFPS; Stephen McKenna, Child Support Officer; Mary F. Iverson, Authorized Agent; Warren Kenneth Paxton, Jr., as Texas Attorney General; Ryann Brannan, as Workers' Compensation Commissioner; Texas Department of Family and Protective Services.

CORPORATE DISCLOSURE STATEMENT

Petitioner does not have a parent corporation and no publicly held company owns 10% or more of any petitioner's stock.

CASES DIRECTLY RELATED

- 33rd Judicial Circuit Court of Alabama, Dale County proceeding under cause no. DR-1992-350-M.
- 303rd Judicial District Court of Texas, Dallas County proceeding under cause no. DF-05-17315.
- 256th Judicial District Court of Texas, Dallas County proceeding under cause no. DF-14-02490.
- 256th Judicial District Court of Texas, Dallas County proceeding unde cause no. DF15-16148.
- 255th Judicial District Court of Texas, Dallas County proceeding under cause no. DF-16-11042.
- Fifth Judicial District Court of Appeals Dallas, Texas proceeding under cause no. 05-19-00782-CV (DF-05-17315).

- Supreme Court of Texas proceeding under cause no. 19-0608 (05-19-00782-CV)
- 256th Judicial District Court of Texas, Dallas County proceeding under cause no. DF-06-11846-Z.
- City of New Orleans Municipal Court proceeding under cause no. S-127569, Division B.
- City of New Orleans Municipal Court proceeding under cause no. S-488875, Division C.
- U.S. District Court for the Eastern District of Louisiana proceeding under cause no. 2:14-CV-0559.
- Fifth Circuit Court of Appeals proceeding under cause no. 15-30563 (2:14-CV-0559).
- Supreme Court of the United States prohibited by clerk of court alleged as untimely, for cause no. 15-30563 above.
- U.S. District Court for the Northern District of Texas proceeding under cause no. 3:14-CV-02470P/K.
- Fifth Circuit Court of Appeals proceeding under cause no.16-10695 (3:14-CV-02470P).
- Supreme Court of the United States proceeding under cause no. 19-6387 (16-10695).
- Justice Court Precinct 4 Place 1 Dallas County proceeding under cause no. JE-15-010448-G.
- Justice Court Precinct 4 Place 2 Dallas County proceeding under cause no. JE-15-01346-L.
- U.S. District Court for the Northern District of Texas, Dallas proceeding under cause no. 3:15-CV-1990D (JE-15-01346-L).
- U.S. District Court for the Northern District of Texas, Dallas proceeding under cause no. 3:15-CV-1667M (JE-15-010448-G).
- County Court at Law No. 2 Dallas County, Texas proceeding under cause no. CC-15-03986-B (JE-15-0136-L).
- Fifth Judicial District Court of Appeals Dallas County, Texas proceeding under cause no. 05-15-01081-CV (CC-15-03986-B).
- 101st Judicial District Court of Texas, Dallas proceeding under cause no. DC-13-05893.
- 95th Judicial District Court of Texas, Dallas proceeding under cause no. DC-16-02833.
- Fifth Judicial District Court of Appeals Dallas County, Texas proceeding under

cause no. 05-14-01510-CV (DC-13-05893).

- Fifth Judicial District Court of Appeals Dallas County, Texas proceeding under cause no. 05-18-01516-CV.
- Supreme Court of Texas proceeding under cause no. 16-0852 (05-14-01510-CV).
- Fifth Judicial District Court of Appeals Dallas County, Texas proceeding under cause no. 05-15-00630-CV (DC-13-05893).
- Supreme Court of Texas proceeding under cause no. 21-0466 (05-19-00630-CV).
- Fifth Judicial District Court of Appeals Dallas County, Texas proceeding under cause no. 05-22-00238-CV (DC-13-05893).
- Supreme Court of Texas proceeding under cause no. 22-0390 (05-22-00238-CV).
- Supreme Court of Texas proceeding under cause no. 22-0270 (05-22-00238-CV).
- U.S. District Court for the Northern District of Texas, Dallas proceeding under cause no. 3:14-CV-02470K.
- Fifth Circuit Court of Appeals proceeding under cause no. 22-10304 (3:14-CV-02470k).
- Fifth Circuit Court of Appeals proceeding under cause no. 22-10507 (3:14-CV-02470K).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The judgment of the court of appeals that dismissed the petitioner's appeal as frivolous is unreported without an opinion. The district court's judgment denying petitioner's motion for relief from a final judgment in an electronic order is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 27, 2022. On September 27, 2022. Justice Alito extended the time within which to file a petition for a writ of certiorari to and including November 25, 2022. Deputy clerk of court returned petition for improper format on December 22, 2022, an additional 60 days from the date of clerk's written correspondence are provided by Rule, wherein petition is due February 20, 2023 which is a holiday, therefore petition is due February 21, 2023 .The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY PROVISIONS AND RULES INVOLVED.

APPENDIX A

- **U.S. Constitution**
- **State of Texas Constitution**

Bill of Rights, Article 1:

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12 C.F.R. §§ 229.2(11) and 229.10.

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28 U.S.C. § 463; 28 U.S.C. § 1254; 28 U.S.C. § 1291; 28 U.S.C. § 1292; 28 U.S.C. § 1294;

28 U.S.C. § 1296; 28 U.S.C. § 1331; 28 U.S.C. § 1332; 28 U.S.C. § 1343; 28 U.S.C. § 1348;

28 U.S.C. § 1367; 28 U.S.C. § 1391; 28 U.S.C. § 1441; 28 U.S.C. § 1445; 28 U.S.C. § 1738

28 U.S.C. § 1738A; 28 U.S.C. § 1738B; 28 U.S.C. § 1746; 28 U.S.C. § 2107(a);

28 U.S.C. §§ 1367(a), 1441, 1658(a), 1738(A), (B); 2072, 2074, 2107(a), 2201 and 2202;

29 U.S.C. §§ 201 et seq., 621, 623, 631 (ADEA), 794, 2601 Chapter 28 (FMLA), 2611 et seq.,

2615 et seq.

38 U.S.C. § 5301(a).

42 U.S.C. §§ 1981, 1982, 1983, 1985(3), 1986, 1988.

42 U.S.C. § 12101 et seq.; 42 U.S.C. § 12111 et seq.; 42 U.S.C. § 12131 et seq.;

42 U.S.C. § 12202; 42 U.S.C. § 2000d; 42 U.S.C. § 2000D-7; 42 U.S.C. § 2000e-2.

Federal Rules of Appellate Procedure:

Federal Rule of Appellate Procedure 4(a)(1)(A)

Federal Rule of Appellate Procedure 31(a)(1)

Federal Rule of Appellate Procedure 38 provides

Federal Rules of Civil Procedure:

Federal Rule of Civil procedure 4(c)(1)

Federal Rule of Civil Procedure 8(a)(2)

Federal Rule of Civil Procedure 8(c)(1)

Federal Rule of Civil Procedure 12(a)(1)(A)(i)

Federal Rule of Civil Procedure 15(c)(1)(C)(ii)

Federal Rule of Civil Procedure 15(a)(3)

Federal Rule of Civil Procedure 55(a)

Federal Rule of Civil Procedure 55(b)(1)

Federal Rule of Civil Procedure 56(a), (b)

Federal Rule of Civil Procedure 60(b)

Federal Rule of Civil Procedure 60(c

Federal Rule of Civil Procedure (d)

Federal Rule of Civil Procedure 62.1

STATEMENT

Petitioner does not waive any objections, responses or otherwise any part of these proceedings within the district court, Fifth Circuit or this Court. It would be impractical to address the voluminous of issues in connection with this case but will request that this Court review the entire case and exercise its supervisory power, provided a writ of certiorari is granted.

However, Petitioner will address or highlight several issues that are inconsistent with due process as provided below, ergo is a direct violation of equal protection of the law that renders the District Court's judgment on the merits in this case void or subsequent proceedings in the Fifth Circuit void, specifically because the courts have abridged

Petitioner's substantive right. *See Shady Grove Orthopedics Assocs. v. Allstate Ins.*, 559 U.S. 393, 406-07 (2010) (plurality op.).

Every relevant consideration weigh in favor of a grant of certiorari. As in the Fifth Circuit, other Circuits and this Court, on these issues that involve Federal Rules of Civil Procedure (1938) and Federal Rules of Appellate Procedure (1975). The District Court and Fifth Circuit acted in a way that is inconsistent with due process in favor of the other parties and against Petitioner, by denying all actions afforded the Petitioner in a civil proceeding and granting without the authority or capacity to act on Respondents actions or inactions as prescribed by Rules of Civil or Appellate Procedure in direct conflict with Congress intent under the Rules Enabling Act. *See* 28 U.S.C. §§ (2071 - 2077); *More v. DaimlerChrysler Ag*, 565 F.3d 20, 25 (1st Cir. 2009) (internal quotation omitted).

Respondents have been afforded every opportunity to answer or otherwise defend. *See Nelson v. Adams USA, Inc.*, 529 U.S. 460, 469 (2000). In a unanimous decision, this Court distinguished between jurisdictional and mandatory claim-processing. Moreover, the Court went further to distinguish between "forfeiture" and "waiver." In *Hamer*, the Court provide "[F]orfeiture is the failure to make a timely assertion of a right[;] waiver is the intentional relinquishment or abandonment of a known right. *See Hamer v. Neighborhood Housing Services of Chicago,* 583 U.S. ___(2017). Respondents waived their rights in the district court. *Id.* Respondents in this case have not only forfeited, but also waived against their misconduct. However, because Petitioner is pro se, Afrian American, Black, male, impaired or disabled, his Constitutional and lawful rights are abrogated by the judicial process that is believed to protect those rights, and to provide relief that is just, specifically the requested debt amount provided in a declaration and affidavit, that has

not been paid. 28 U.S.C. §§ 1746, 2108.

The record in this case will show their intentional or willful acts not to answer the summons and complaint or amended complaints. Fed. R. Civ. P. 55(a); *see VLM Food Trading Int'l v. Illinois Trading Co.*, 811 F.3d 247, 255 (7th Cir. 2016); *see also Craddock v. Sunshine Bus Line*, 133 S.W.2d 124, 126, 134 Tex. 388 (1939). Further, it will show the Respondents presented dilatory tactics, that were in direct conflict with Federal Rules of Civil Procedure [*Charlton L. Davis & Co., P.C. v. Fedder Data Center*, 556 F.2d 308 (1977)] and failed to present an informed defense, filed untimely motions, or otherwise did not make an appearance in the case before the district court for the specific purpose of Rule 55(b). *See Rogers v. Hartford Life & Acc. Ins.*, 167 F.3d 933, 938 (5th Cir. 1999). Respondents were provided more than four apples for digestion, rather than four bites at an apple that provided their substantive rights were enlarged. *Id.*

On July 10, 2014, Petitioner filed his lawsuit. Afterwards, he had Respondents served with a summons and complaint personally. In *Beller & Keller v. Tyler*, 120 F.3d 21, 25-26 (2d Cir. 1997), the same or similar situation arose, and the Second Circuit held that "a defendant must file an answer within the time prescribed Rule 12(a)." Fifth Circuit affirmed the district court's judgment, specifically when there is no answer or responsive pleading on file or otherwise an appearance. This infirmity was brought to the attention of the district court and Fifth Circuit on appeal in a, Rule 59, 60(b) and 60(d).

Petitioner amended his original complaint that added new Respondents and served the newly added Respondents with a summons and the amended complaint. *Id.* In this case the same situation arose *in Krupski v. Costa Crociere S.p.A*, 560 U.S. 538, 548 (2010), and unanimously this Court held that, "relation back under Rule 15(c)(1)(C) depended on what

the party added knew or should have known, not on the amending party's knowledge or its timeliness in seeking to amend the pleading."

Additionally, Petitioner served the amended complaint on the attorneys for all other Respondents that were previously served a summons and an original complaint. The district court struck Petitioner's amended complaint that was served within the time prescribed by Rule 4(m) that met the 120-day (now 90-day) requirements of Rule 15(c)(1)(B). Fed. R. Civ. P. 4(m); Fed. R. Civ. P. 12(a); Fed. R. Civ. P. 15(a)(3); Fed. R. Civ. P. 15(c)(1)(C).

In *Kaiser Aluminum and Chem. Sales Inc. v. Avondale Shipyards,* 677 F.2d 1045, 1057 (5th Cir. 1982), the decision implies that a pleading may have defenses stricken from it, in an answer. In *Kaiser,* Fifth Circuit held that striking antitrust counterclaim that was barred by statute of limitation because "defense" is insufficient as a matter of law." In contrast, the district court struck Petitioner's amended pleading that was served with a summons and amended complaint that was in direct conflict with this Court's, other Circuits and its own case precedent. *Krupski v. Costa Crociere S.p.A,* 560 U.S. 538, 548 (2010); *see Silbaugh v. Chao,* 942 F.3d 911, 913 (9th Cir. 2019); *see also Lee v. Airgas-Mid S., Inc.,* 793 F.3d 894, 898 (8th Cir. 2015).

However, Respondents did not file an answer that was responsive to Petitioner's pleadings in this case. The same situation arose i*n Sun Bank of Ocala v. Pelican Homestead and Savings Assoc.*, 874 F.2d 274, 276 (5th Cir. 1989), and the Fifth Circuit held, "[a]ppearances 'include a variety of informal acts on defendant's part which are responsive to plaintiff's formal action in court, * * * a clear indication of defendant's intention to contest the claim." *See Key Bank v. Tablecloth Textile Co.*, 74 F.3d 349, 353

(1st Cir. 1996).

Further, Fifth Circuit held that what constitute what is an "appearance" is not "confined to physical appearances in court or the actual filing of a document in the record." *See CRST Van Expedited, Inc v. Werner Enters.*, 479 F.3d 1099, 1104 n.3 (9th Cir. 2007); *Intra Corp. v. Henderson,* 428 F.3d 605, 612 (6th Cir. 2005); *Johnson v. City of Shelby*, 574 U.S. 10 (2014)*; Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

The district court issued in this case four orders and a final judgment under the Court's predecessor, in total disregard of the Federal Rule of Civil Procedure 12(a), 15(a)(3), 15(c)(1)(C), 26, 55, and 56, that's in conflict with statutory law and the constitution. Accordingly, reply briefs or post-trial motions were properly presented in the district court, that reiterated the infirmities of the district court complete disregard in this case or unsurmountable legal errors. Fed. R. Civ. P. 60(b)(1). In *Kemp*, this Court held that the term "mistake include judge's errors in law." *See Kemp v. United States*, 592 U.S. __ (2022).

For example, Petitioner provided infirmities such as American Zurich Insurance Company's motion to dismiss that presented (1) exclusive jurisdiction of TDI-DWC under 12(b)(1); (2) Texas Law does not recognize "Bad Faith" in Handling Workers' Compensation Benefits; (3) seeks collateral attack of State court judgment under 12(b)(1); (4) claims 42 U.S.C. §§ 1985(3), 1986 should be dismissed under 12(b)(6); (5) fails to properly state a claim under Thirteenth Amendment.

In the instant matter, Zurich was provided four apples to digest, specifically, a summons and original complaint, and three amended complaints, all of which did not address any state court judgment on the face of the complaint. *See Continental Collieries,*

Kc. v. Shober (1942, CA3 Pa.) 130 F.2d 631; *Fernandez v. Clean House, LLC,* 883 F.3d 1296, 1299 (10th Cir. 2018); *Global Tech. & Trading , Inc. v. Tech Mahindra Ltd.*, 789 F.3d 730, 731 (7th Cir. 2015); *cf Best v. City of Portland*, 554 F.3d 1, 15 (1st Cir. 2003).

However, district court granted in favor of Zurich its motion to dismiss under Rule 8(c), *res judicata* which is an affirmative defense that must be raised in an answer. Fed. R. Civ. P. 8(c); *See Holmberg v. Hanaford* (1939, DC Ohio) 28 F. Supp. 216; *Jones v. Miller* (1942, DC Pa.) 2 FRD 479; *Consolidated Freightways, Inc. v. Railroad Com. of California* (1941, DC Cal.) 36 F. Supp. 269; *see also Sproul v. Gambone* (1940, DC Pa.) 34 F. Supp. 441. Zurich failed to answer the summons and complaint and three amendments. *See Snyder v. Pascack Valley Hosp.*, 303 F.3d 271, 276 (3d Cir. 2002).

State never made an appearance in the case, after being served a summons and complaint, three amendments or otherwise failed to answer or otherwise defend. Fed. R. Civ. P. 12(a)(1)(A)(i); Fed. R. Civ. P. 55(a), (b); *Beller & Keller v. Tyler*, 120 F.3d 21, 25-26 (2d Cir. 1997); *see Cement & Concrete Workers Dist. Council Welfare Fund v. Metro Found, Contractors Inc.*, 699 F.3d 230, 234 (2d Cir. 2012).

Walgreens Company and Walgreens employees have the same faith as State and Zurich defendants. *Id.* Nevertheless, district court failed to apply the *McDonnell Douglas framework.* However, Petitioner served and noticed a motion for summary judgment that provided direct evidence of its misconduct in direct violation of, inter alia, 42 U.S.C § 1981 and Title VII of the Civil rights Act of 1964. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002).

Wells Fargo Bank, N.A. have the same faith as its co-conspirators. For example, the Bank misconduct violated the Texas Constitution Art. 16 § 50(a) and Texas Property Code

41.001 et seq., when it sold Petitioner's homestead without authority. Additionally, the Bank paid itself with VA Benefits that were directly deposited in an account in the Petitioner's name for nearly two years, wherein its conduct was in direct violation of 38 U.S.C. § 5301. Further, it failed to provide notice of garnishment of VA benefits pursuant a void court order, there's no contempt order or no such arrearages existed, but for the specific purpose to force back to work a severely injured worker in connection with State and Walgreens defendants. *See Adickes v. S.H. Kress & Co.*, 398 U.S, 144 (1970).

The district court dismissed Petitioner's third amended complaint, struck his first amended complaint that was filed and served with a summons, that is a substantive and substantial error in direct conflict with the spirit of the Rules of Civil Procedure. Fed. R. Civ. P 12(a), 15(a)(3), 15(c)(1)(C), thus is a direct due process violation that abridged Petitioner's substantive right.

Subsequently, Petitioner timely appealed the decision to the Fifth Circuit. The Fifth Circuit affirmed the district court's abuse of discretion and its inconsistencies with due process that involve the Federal Rules of Civil Procedure

While on appeal, a motion for relief from a judgment under Rule 60(b)(1)-(6), was presented to the district court. In the Fifth Circuit, Petitioner requested the Court to remand to the district court for a ruling on his motion. The Court denied remand or did not incorporate the motion within its appellate jurisdiction. In *Good v. Ohio Edison Co.*,149 F.3d at 417, the same or similar situation arose, wherein the Sixth Circuit held that "[a]n appeal from denial of a 60(b) motion can be merged with the appeal on the merits, that implies a second notice of appeal must be filed, but In *Stone v. INS.*, 514 U.S. at 386, this Court held that "[w]here an original appeal is already pending, an appellate

court can consolidate the proceedings." Further, it held that " [i]f a post-trial motion * * * and if filed afterwards, it divests appellate court of jurisdiction" *Id. at 387.*

The district court was divested and lacked jurisdiction, ergo the motion was denied. In *Dominguez v. Gulf Coast Mar. & Asscs.*, 607 F.3d 1066, 1074-75 (5th Cir. 2010), the same or similarly situation arose, and the Fifth Circuit held that "where the litigant has timely initiated procedure for relief, he should not be penalized for choice of the wrong procedure."

In lieu of the decisions of Fifth Circuit, other Circuits and this Court, Fifth Circuit affirmed the judgment of the district court's total disregard of the Federal Rules of Civil Procedure or without consideration of Petitioner's 60(b) motion that was denied before any judgment in the Court, in direct conflict with its own statutory law, or other Circuit Courts, or this Court's decisions.

For example, Fifth Circuit provided for a foreclosure claim, required a plaintiff to plead the elements for a wrongful foreclosure in the State of Texas, specifically when the Federal Rules of Civil Procedure provides otherwise, particularly when Fifth Circuit required a heightened pleading standard in direct conflict with this Court or other Circuits. In *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002), a unanimous Court provided "imposing a heightened pleading * * * conflicts with Federal Rule of Civil procedure 8(a)(2). *See Conley v. Gibson*, 355 U.S. 41, 47 (1957).

Petitioner timely sought a petition for a writ of certiorari in this Court. Subsequently, the Court denied a petition for a writ of certiorari and motion for rehearing after the Respondents provided a waiver to file a brief in opposition, or others did not file a waiver or brief filed in opposition as provided by Rule 15, that is considered a waiver of rights in

this case. Respondents' actions or inactions have been consistent in direct conflict with the prescribed manner in which to proceed in a District Court or Court of Appeals.

The district court in this case was assigned to a different judge. Petitioner sought reconsideration of the final judgment pursuant Rule 60(b) and 60(d). The district court issued an electronic order in this case, which denied Petitioner's second motion for relief from a judgment under Rule 60(b)(4)-(6) and (d)(1), (3) of the Federal Rules of Civil Procedure. Respondents did not present any responses or objection within the district court. Petitioner timely appealed the electronic order of the district court. The same situation arose *in First National Bank of Commerce v. Lamaze*, 7 F.3d 1227, 1229 n.9 (5th Cir. 1993), and the Fifth Circuit held that "issues may be raised for the first time in post-judgment motions."

However, Respondents waived any objections in the district court after three months, but two of the four groups of parties, Respondents, presented issue(s) for the first time on appeal in a motion to dismiss on the ground of frivolous under the Fifth Circuit's local rule 42.2. A similar situation arose *in Nelson v. Adams USA, Inc.*, 529 U.S. 460, 469 (2000), and this Court in a unanimous held that, " [i]ssues must be raised in lower courts in order to be preserved as potential grounds of decision in higher courts." Fed. R. Civ. P. 46; *see The Office of the Attorney General of Texas v. Anthony Burton,* 369 S.W.3d 173.

Petitioner filed and served his principal brief as required by Federal Rules of Appellate Procedure and by electronic means, Petitioner served his principal brief on Respondents.

Subsequently, two of the four groups of Respondents noticed and served a motion to dismiss without the filing of a response brief in opposition. The other Respondents failed to otherwise notice and serve Petitioner a motion to dismiss on the Petitioner that would

provide an opportunity to respond to their motion. Fed. R. App. P. 27(a)(3)(A). A similar situation arose *in Nelson v. Adams USA, Inc.*, 529 U.S. 460, 469 (2000), this Court held in a unanimous court that, " [T]he Federal Rules of Civil Procedure are designed to further the due process of law that the Constitution guarantees." The Court's reasoning has the same implication in the Federal Rules of Appellate Procedure. *See First National Bank of Commerce v. Lamaze*, 7 F.3d 1227, 1229 n.9 (5th Cir. 1993).

A Respondent that served a motion to dismiss, and its grounds were based on *res judicata* that failed as a matter of law in the first appeal and in the second appeal it presented to the Fifth Circuit a "plea to the jurisdiction" for the first time on appeal and failed to present it in the district court. *Id.*

However, a "plea to the jurisdiction" must fail as a matter of law because "*res judicata*" does not apply when the initial tribunal lacked subject-matter jurisdiction. There's a similar situation that arose *in Saleh W. Igal v. Brightstar Information Technology Group, Inc.*, 250 S.W.3d 78 (Tex. 2008). The Supreme Court of Texas held that, "[R]es judicata does not apply when the initial tribunal lacks subject-matter jurisdiction over the claim." Fifth Circuit decision in granting a motion to dismiss in favor of the Respondent is in direct conflict with other Circuit Courts, this Court, and state Courts which include the Supreme Court of Texas, a state court of last resort. *Id.*

Fifth Circuit dismissed Petitioner's appeal as frivolous under Fifth Circuit's local rule 42.2. Accordingly, the local rule is required, but does not uniformly correspond to the Federal Rules of Appellate Procedure in direct conflict with the Judicial Conference of the United States. Fed. R. App. P. 47(a)(1), (b).

Petitioner filed and served his notice of appeal as provided by Federal Rules of

Appellate Procedure. Fed. R. App. P. 4(a)(A)(vi). Subsequently, Petitioner filed and served a petition for a writ of mandamus and/or prohibition on all Respondents in aid of the Fifth Circuit's appellate jurisdiction in connection with his filed and served principal brief. Fed. R. App. P. 21.

In that connection, Fifth Circuit's clerk has not submitted the petition after the fee was paid. Fed. R. App. P. 21(a)(3). But for the actions of the clerks or others within the Fifth Circuit, the Court dismissed Petitioner's appeal as frivolous in direct conflict with the constitution and laws of the United States, by not providing due process and equal protection of the laws.

Petitioner filed and served a motion requesting court to take judicial notice of adjudicative facts that was submitted to the Clerk of Court as provided by the clerk of court to file by email. However, Petitioner has not received any confirmation of his filings, since his advisory to the Fifth Circuit.

Every relevant consideration weigh in favor of a grant of certiorari. As in the other Circuits, Supreme Court of Texas, and this Court, or otherwise the Fifth Circuit is in direct conflict with other courts and its own decisions.

Now, Petitioner seeks a second petition for a writ of certiorari in this Court, specifically because he has not received any relief in this case or any other case, specifically when Respondents have forfeited and waived their rights to a number for damages contained in an Affidavit. *Hamer v. Neighborhood Housing Services of Chicago,* 583 U.S. ___ (2017).

REASONS FOR GRANTING THE PETITION

For more than thirty years, as it relates to Petitioner, he has been consistently

deprived of his rights, privileges, immunities, life, liberty, or property because of his age, color, national origin, race, sex, impairments or disabilities.

There are more than thirty cases numbers that include a pattern or practice that involve void orders, defaults, default judgments, repeated appeals, petitions for review or otherwise judicial inconsistencies with due process and equal protection of the laws that involve attorneys and judicial officers, in direct conflict with, *inter alia*, the First, Fourth, Fifth, Seventh, Thirteenth and Fourteenth Amendments of the United States Constitution that are guaranteed and secured by the United States' Constitution, in connection with private and public entities, their agents, employees, officers, or officials that use the force of their instrumentalities to deprive a citizen of the United States and resident of the State of Texas. Petitioner is on the end of defending his rights, as opposed to vindication of his rights in this case. An amount was provided in an affidavit in this Court, but Respondents have not met their obligation.

Respondents have not made an appearance in the entire case and has waived their rights more than once in the district court, court of appeals and this Court, because Respondents have no response or defense against their constitutional and statutory misconduct that arose in a conspiracy, that initially involved Petitioner's employer, Walgreens Company and its employees, managers, supervisors and others that directly violated a consent decree *in Tucker v. Walgreens*, that resulted in a severe work related injury and continued, thereafter.

Subsequently, Respondents American Zurich Insurance Company (insurer) in connection with Walgreens Company (employer) and Walgreens employees and others in connection with State actors and their instrumentalities, in connection with Wells Fargo

Bank, N.A.(individual bank), conspired to deprive Petitioner of his civil right to equal protection of the laws, and equal immunities and privileges under the laws, that gave rise to more than thirty claims that included, *inter alia,* misconduct under banking laws, 42 U.S.C. §§ 1981, 1981a, 1982, 1983, 1985(3), 1986, 1988, 38 U.S.C. 5301, Titles I and II of the ADA, section 504 of the Rehabilitation Act, Title VI and VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act of 1967 (ADEA), Family Medical Leave Act of 1993 (FMLA), First, Fourth, Fifth, Seventh, Thirteenth, and Fourteenth Amendments.

The Fifth Circuit's further deepens an entrenched longstanding of *pro se* procedural due process or the opportunity to be heard in connection with the total disregard of the Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure, that conflicts with this Court's, other Circuits, its own, other state courts of appeals or the highest State court's precedent cases that have answered the questions of Rules of Civil Procedure or civil litigation.

In the instant matter, this is a second petition for a writ of certiorari to this Court, wherein Petitioner has not received any other relief in any other court as noted in his lists of directly related cases, specifically because the cases are "void" on the bases of jurisdiction, "no authority" or "capacity to act", or "inconsistencies with due process", or "otherwise an abuse of discretion, not in accordance with law, made through unlawful procedures, or clearly unwarranted exercise of discretion. *"See Jones v. Bock,* 549 U.S. 199, 212-13 (2007). Petitioner does not find that Rule 1 of the Federal Rules or Texas Rules of Civil Procedure provide for delay, more expenses, a waste of judicial economy or resources. Tex. R. Civ. P. 1; Fed. R. Civ. P. 1; s*ee In re Prudential Ins. Co. of America,* 148 S.W.3d 124, 136-137 (Tex. 2004); *see also Celotex Corp. v. Catrett,* 477 U.S. 317, 327 (1986).

Conflict with this Court's Decisions:

1. In *Adickes,* this Court held that, "[I]volvement of a state official in such a conspiracy would plainly provide the state action necessary for a § 1983." *Adickes v. S.H. Kress & Co.,* 398 U.S. 144 (1970). In the instant matter, Petitioner was not required to plead a heightened standard pleading imposed by the Fifth Circuit, particularly when it provided that there is no substantive right provided under § 1985 and a separate violation is needed to support the conspiracy claim, particularly when a motion for summary judgment was sought by Petitioner for § 1981 against Respondents. This is a clearly substantial legal error of law by the Fifth Circuit when it affirmed the district court's motion to dismiss that abridged a substantive right. 28 U.S.C. § 1343, *Runyon v. McCrary,* 427 U.S. 160, 96 S. Ct. 2586, 49 L. Ed. 2d 415 (1976); *General Bldg. Contractor Ass'n, Inc. v. Pensyvannia,* 458 U.S. 375, 102 S. Ct. 3141, 73; *see Hope, Inc. v. Dupage County, Ill.,* 738 F.2d 797 (7th Cir. 1984); *see also Lytle v. Household Mfg., Inc.* 494 U.S. 545, 110 S. Ct. 1331, 108 L. Ed. 2d 504, 16 Fed. R. Serv. 3d 1 (1990); *Laskaris v. Thornburgh,* 733 F.2d 260, 38 Fed. R. Serv. 2d 1467 (3rd Cir. 1984); *Cf Runs After v. U.S.,* 766 F.2d 347 (8th Cir. 1985); *Dickerson v. City Bank & Trust Co.,* (1983, D.C. Kan.) 575 F. Supp. 872, 34 BNA FEP Cas 1662; *Witten v. A.H. Smith & Co.,* (1983, D.C. Md.) 567 F.Supp. 1063, 32 BNA FEP Cas 614, 33 CCH EPD 34254.

2. In *Exxon Mobile, Corp.,* this Court in a unanimous decision, held that "*Rooker-Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrine allowing federal courts to stay or dismiss proceedings in deference to state-court actions." *Exxon Mobile Corp. et al. v. Saudi Basic Industries Corp.,* 544 U.S. 280 (2005).

The district court and Fifth Circuit failed to recognize that Petitioner did not plead any facts as it related to any state court judgment, nor did Zurich motion to dismiss presented an affirmative defense of *res judicata,* however it did present *collateral attack* it failed to prove on both accounts. In the instant matter, first, the district court dismissed Petitioner's complaint, specifically when there's no answer plead by Respondent with an affirmative defense of *res judicata.* Second, on the face of the complaint, there was no reference to any state court judgment. Fifth Circuit and the district court decisions are contrary to the rule of law. Thus, there decisions are in direct conflict with other Circuits and this Court that abridged a substantive right. *Id.*

3. In *Hamer,* this Court in a unanimous decision provided that "[a] mandatory claim-processing rule subject to forfeiture, if not properly raised by appellee" [*Kontrick v. Ryan*, 540 U.S. 443, 456 (2004)]. However, "if properly invoked, mandatory-claim processing rules [must] be enforced, but they may be waived of forfeited." Fed. R. Civ. P. 12(a)(1)(A)(i); *Hamer v. Neighborhood Housing Services Chicago*, 538 U.S. ___ (2017). Here, Petitioner in this case, reiterated over and over, again and again, in briefs, motions, memoranda or other papers in the district court and Fifth Circuit, Respondent's dilatory tactics and their failure to answer the four complaints. Their actions or inactions were intentional, as the record showed there is absolutely no answer or responsive pleading in this case." In contrast, Respondents filed motions to dismiss pursuant a Local Rule 42.2 of the Fifth Circuit, that does not correspond to Federal Rules of Appellate Procedure, particularly when all respondents waived their rights to object in the district court, regardless of the court's denial of Petitioner's Rule 60(b) or (d) motion. *See* 28 U.S.C. § 2072; Fed. R. App. P. 47; *U.S. v. Beggerly*, 524 U.S. 38, 46 (1998);

4. In *Horne*, this Court reasoned that, a Court of Appeals improperly substituted its own policy judgments for those of the state and local officials entrusted with the decisions. In this case, Fifth Circuit provided a similar action when it dismissed Petitioner's appeal as frivolous under its court made rule and provided a policy judgment. Petitioner sought an appeal from denial of a 60(b) or (d) motion, Fifth Circuit refused to include a prior motion for reconsideration on appeal or motion to take judicial notice of adjudicative facts or otherwise refusal of all requests without any regard to Petitioner's substantive rights (constitutional and statutory). Thus, Petitioner sought a second motion for reconsideration based on an earlier judgment that was reversed and remanded under Rule 60(b)(5). Fed. R. Civ. P. 60(b)(5). *Horne v. Flores,* 557 U.S. 433, 453 (2009).

5. In *Howell, not applicable.* Petitioner was not married at the time Petitioners' VA benefits were levied, seized or garnished pursuant any valid court order for child support or any other support, such as alimony. This Court may need to settle what a state can or cannot do pursuant Veterans' Benefits, particularly when there is no valid court order or contempt of court. *Howell v. Howell* 581 U.S. ___ (2017); ***Cf.*** *Rose v. Rose,* 481 U.S. 619, 630 - 34 (1987).

6. In *Johnson*, This Court provided that, "[F]ederal pleading rules call for ' a short and plain statement showing that the pleader is entitled to relief,' Fed. R. Civ. P. 8(a)(2); they do not contemplate dismissal for imperfect statement of the legal theory asserted." The district court as well as the Fifth Circuit, required a heightened pleading standard on each of his claims. Both courts decisions were in direct conflict with the Federal Rule of Procedure 8(a)(2), particularly when Fifth Circuit asserted Petitioner did no plead the elements of a claim. *Johnson v. City of Shelby*, 574 U.S. 10 (2014).

7. In *Jones,* this Court in a unanimous decision, provide that "[C]ourts should not generally depart from the Federal Rules usual practice based on perceived policy concerns." *e.g. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U.S. 163. Again, this Court reiterated, Rule 8(a), as it related to Sixth Circuit heightened pleading standard. *Jones v. Bock, Warden, et al.,* 549 U.S. 199, 212 - 13 (2007).

Further, provided that "Rule 8(c) identifies an non-exhaustive list of affirmative defenses that must be plead in response." Moreover, this Court reversed the Sixth Circuit decision for a heightened pleading standard imposed against a § 1983 suit. Accordingly, Fifth Circuit and the district court imposed a heightened pleading standard against Petitioner, particularly when no one had made an appearance in the case. *Id.; see Fernandez v. Clean House, LLC,* 883 F.3d 1296, 1299 (10th Cir. 2018); *Global Tech. & Trading, Inc. v. Tech Mahindra Ltd.,* 789 F.3d 730, 731 (7th Cir. 2015); *see also Swierkiewicz v. Sorema N.A.* 534 U.S. 506 (2002); .

8. In *Krupski,* this Court addressed Rule 15(c)(1)(C). This court reasoned that the Rule mandates relation back once its requirements are satisfied; "it does not leave that decision to the district court's equitable discretion." The Court determined unanimously; the lower courts erred in denying relation back. The district court and Fifth Circuit made the same error as provided in *Krupski.* The district court recognized, and Fifth Circuit mistaken that Petitioner amended complaint and service of a summons was untimely, specifically when the record shows otherwise. *Krupski v. Coasta Crociere S.p.A.* 560 U.S. 538, 548 (2010).

9. In *Kemp,* this Court reasoned, that "mistake" under Rule 60(b)(1) included a judge's errors or mistakes of law. Further, it provided that, Rule 60(b) motions must be

made "within a reasonable time." *Kemp v. United States*, 592 U.S. ____ (2022).

Initially, Petitioner filed a motion 60(b)(1)-(6) in the district court while this case was on appeal. However, Fifth Circuit refused to remand the case to the district court or alternatively, failed to include denial of the motion on appeal. Nevertheless, Petitioner sought a motion requesting the Fifth Circuit to take judicial notice of *res judicata*, and that it was a substantial legal error, specifically because of a decision within the State court of appeals that dismissed the case for want of jurisdiction, because there was no prior final judgment in a court of competent jurisdiction.

However, in this case on its second appeal, Respondents provided in a motion to dismiss pursuant, Fifth Circuit's local rule 42.2 and presented to the Court a "plea to the jurisdiction" for the first time on appeal that establishes, the lack of subject-matter jurisdiction is not a decision on the merits, thus Fifth Circuit decision to grant a motion to dismiss as frivolous based on Rule 12(b)(1) of the Federal Rules is nonsensical, particularly when the district court rejected that argument when it granted its motion to dismiss based on an affirmative defense of *res judicata*, that was not presented in a answer or responsive pleading or the face of the complaint did not reference any state court judgment. Fifth Circuit has clearly made substantial legal errors that have abridged the substantive rights of the Petitioner.

10. In *Kremer*, this Court addressed Section 1738, and provided that "[S]ection 1738 does not allow federal courts to employ their own rules of *res judicata* in determining the effect of state judgments, but rather goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken." *Kremer v. Chemical Contr. Corp.*, 456 U.S. 461, 468 (1982).

In contrast, Petitioner filed an initial complaint with Texas Workforce Commission Civil Rights Division (TWCCRD) that refused to acknowledge Petitioner's employment allegation, and provided it sent the complaint to EEOC. However, it never made it to the EEOC, but Petitioner did obtain a "Right to Sue" letter from the EEOC after an extended delay that was intentional by TWCCRD.

Nevertheless, Petitioner timely sought exhaustion of his administrative procedures, but filed his suit to toll the time for the claims that required exhaustion. On the other hand, Petitioner was not required to exhaust under §§ 1981,1982, 1983,1985, 1986, 1988 or otherwise claims that did not require exhaustion, such as Constitutional misconduct.

Respondent Walgreens may have provided, Petitioner did not exhaust his administrative procedures, but it did not provide with particularity what procedures Petitioner did not exhaust, particularly when a Right to Sue letter was presented in the district court.

However, even that being said, Respondent Walgreens never answered the complaints or filed a timely motion 12(b) in this case. Thus any arguments presented fail simply because "all" Respondents in the case failed to answer the summons and complaint, and three amended complaints that were "all" served and noticed to the Respondents, specifically when it's their prerogative to respond or risk default and default judgment. Respondents chose not to respond, which is a waiver, that establishes their intentional dilatory tactics and refusal to litigate in the district court. Fifth Circuit and the district court, both were informed of these infirmities and refused to perform an obligation, that is mandated and has led to delay and unnecessary cost to the Petitioner, specifically when the Respondents know their liability. *Beller & Keller v. Tyler,* 120 F.3d 21, 25 - 26 (2d Cir.

1997); *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); *Hamer v. Neighborhood Housing Services Chicago*, 538 U.S. ___ (2017).

11. In *Maresse*, this Court further addressed the issue of Section 1738, and held that "[T]he Court of Appeals had jurisdiction to review the District Court's denial of the motion to dismiss. This pendency of the appeal from the contempt order did not prevent the District Court from certifying such denial for immediate appeal; further, the Court went on a held, the courts below erred in not considering Illinois law in determining the preclusive effect of the state judgments." *Marese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985).

Fifth Circuit and the district court may have cited a prior judgment, but this argument should have failed simply because the Petitioner's complaints on the face did not provide any reference to a state court judgment and Respondents did not file an affirmative defense in an answer, thus the decision to dismiss based on *res judicata* must fail. Again, these infirmities were presented in both courts below in the first appeal. However, in the second appeal, a "plea to the jurisdiction" must fail because it does not have *res judicata* application in this case, nor does it render *res judicata* affects in this case.

Fifth Circuit decisions are purely based on substantial and substantive legal errors of laws. Though the Federal Rules of Procedure are not statutory, but they have the same force as provide by Congress under 28 U.S.C. §§ (2071-2077); *Stern v. U.S. Dist. Ct. for the Dist. of Mass.*, 214 F.3d 4, 13 (1st Cir. 2005); *Morel v. DaimlerChrysler AG,* 565 F.3d 20, 25 (1st Cir. 2009).

12. In *Matsushita Electric Industrial Co., LTD.*, this Court answered the question, whether a federal court may withhold full faith and credit from state-court judgment

approving a class-action settlement simply because the settlement releases claims within the exclusive jurisdiction of the federal courts. "The answer is no." *Matsushita Electric Industrial Co. LTD., et al. v. Epstein, et al,* 516 U.S. 367 (1996).

In this case, Respondent Walgreens reached a settlement in a federal court. However, the settlement was included in the Petitioner's complaint, specifically when the consent decree was for five years from the date of approval which was on or about March 8, 2008. Thus, district court substantially legally erred when it dismissed Petitioner's claims against Respondent Walgreens, specifically when the consent decree was prima facie evidence and it was part of the pleading. Nevertheless, as in all other Respondents position, Walgreens never made an appearance in this case. Again, it was their prerogative to answer or don't answer, and it chose the latter of the two. Thus, due process was met for all Respondents, and all failed to answer or otherwise defend. *Cement & Concrete Workers Dist. Council Welfare Fund v. Metro Found. Contractors Inc.,* 699 F.3d 230, 234 (2d Cir. 2012).

Fifth Circuit and the district court were noticed of this infirmity, but failed the claim-processing procedure, that mandate enforcement when it was properly invoked by the Petitioner in this case more than once in reply briefs, motions, or other papers. *Hamer v. Neighborhood Housing Services Chicago,* 583 U.S. ___ (2017).

Thus, this is a total disregard of the usual course of judicial proceedings, that sanctioned the lower courts departure. At this point in the litigation in this case, Petitioner had to appeal, petition, file motions to reconsider twice on issue(s) presented the first time on appeal and petition, is a clear waste of judicial resources when the Respondents know their liability, specifically when they intentionally failed to answer the

complaints four times and the district court's and Fifth Circuit's absolute disregard of the Federal Rules of Civil Procedure that establishes inconsistencies with due process afforded the Petitioner, in direct conflict of the 14th Amendment. Another basis for granting the petition.

13. In *Mullane*, this Court held that " the fundamental requisite of due process of law is the opportunity to be heard." In this case, Respondents were afforded four chances or opportunities to answer a summons and complaint, three amended complaints, partial summary judgments after they were served with actual and constructive notices. On the contrary, Petitioner was not afforded the mandatory claim-processing procedures of the Federal Rules of Civil Procedure or otherwise in dircet conflict with Fourteenth Amendment due process and equal protection clauses that are guaranteed and secured under the U.S. Constitution and laws. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

14. In *Nelson*, in a unanimous court, this Court addressed Rule 12 and 15 on how they relate to due process. *Nelson v. Adams USA, Inc et al.*, 529 U.S. 400 (2000).

In contrast, Respondents' were afforded the opportunity to respond to the claims against them, but were granted motions to dismiss that were untimely, or judgment on the pleadings when there was only one dilatory answer in the case, that did not present any affirmative or 12(b) defenses, just simply admittance of denials or otherwise not in accordance with Federal Rule of Civil Procedure 8(b)(2). Fed. R. Civ. P. 8; Fed. R. Civ. P. 12(c); *Perez v. Wells Fargo,* 774 F.3d 1329, 1336 (11th Cir. 2014).

Respondent Wells Fargo Bank, N.A., answer was not compliant with Federal Rules of Civil Procedures, or it failed to establish it should be dismissed based on the pleadings

as a matter of law, specifically when it is directly connected to Respondent State, that failed to plead or otherwise defend against a summons and complaint and three amended complaints in this case. *Beller & Keller v. Tyler*, 120 F.3d 21, 25 - 26 (2d Cir. 1997); *see Hemispherx Biopharma, Inc. v. Johannesburg Consol. Invs.*, 553 F.3d 1351, 1360 (11th Cir. 2006); *Perez v. Wells Fargo*, 774 F.3d 1329, 1336 (11th Cir. 2014).

Respondent Walgreens, in this case asserted no official capacity, for practical purpose, this was decided by the district court and unaddressed by the Fifth Circuit. However, a similar situation existed when Petitioner sued Walgreens supervisors, managers, and executive officers, that were sued in there official and individual capacities. In *Nelson*, he was a part of a private company, and he was sued in his individual capacity, specifically because he was the sole shareholder in the company. This implies that there is official and individual liability. Nevertheless, again this was brought to the attention of the district court. However, that example was for practical purposes, because the most important matter is that Respondent Walgreens or co-conspirators waived their right to file an answer or responsive pleading four times. Fed. R. Civ. P. 12; Fed. R. Civ. P. 15; *Nelson v. Adams USA, Inc., et al.*, 529 U.S. 460 (2000); *Sun Bank of Ocala v. Pelican Homestead and Saving Assoc.*, 874 F.2d 274, 276 (5th Cir. 1989).

15. In *Rose*, this Court determined that a state court may hold in contempt a Veteran who has violated a child support enforcement order, to levy, seize or garnish his benefits that are protected under 38 U.S.C. § 5301. *Rose v. Rose*, 481 U.S. 619, 630 - 34 (1987).

A similar situation arose in this case. In contrast, Petitioner never received a notice that he was in default or in the arrearages, and a contempt order was never obtained

against the Petitioner, specifically because the child support agreement order is void because it was never approved by the State court, that resulted in parental rights deprivation, levying or garnishment of wages, garnishment of VA and SSA benefits, that are provided to the Petitioner and his daughter.

State of Texas disregards its own Constitution and rule of law, thus the same applies in this case, particularly after a notice and demand was provided to discontinue its illegal and unconstitutional efforts for garnishing SSA or VA benefits. Nevertheless, because of the continued misconduct, Petitioner sought redress in State court, and discovered there were intentional fraud committed in that court. Thus, sought to vacate a void order that is not discretionary. The 303rd refused to vacate, the Petitioner sought mandamus in the state court of appeals and the petitioned the Supreme Court of Texas that denied the petition. Again, no relief, but this court may on its own determine its jurisdiction in all the void cases, particularly when the case is subject to review by this Court.

Fifth Circuit and district court, both sanctioned the idea of immunity for Respondents in this case, specifically when pleading immunity is required by law. *Gomez v. Toledo*, 446 U.S. 635, 100 S. Ct. 1920, 64 L. Ed. 2d 572 (1980). This Court decided that qualified immunity is defeated when "(1) a reasonable official would have understood that what he or she was doing violated that right; (2) must be raised as an affirmative defense in an answer; and (3) a defendant asserting absolute immunity bears that same burden of proof in an action under § 1983." In the instant matter, State Respondents failed to answer or otherwise defend against a summons and complaint and three amended complaints. This qualified or absolute immunity failed as a matter of law. 42 U.S.C. § 1983; *Antoine v.*

Byers & Anderson, Inc., 508 U.S. 429, 113 S. Ct. 2167, 124 L. Ed. 2d 391 (1993); *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).

16. In *Stone*, reasoned that a post-trial motion under 60(b) give rise to one appeal if it is filed after a notice of appeal has been affected. *Stone v. INS*, 514 U.S. 386 (1995).

In the instant matter, Petitioner established his due diligence when he served and filed his motion 60(b)(1)-(6), during the first appeal. Thus, another vehicle used to acquire the substantive rights afforded him. Accordingly, notice was provided to the district court in briefs, motions, pleadings or other papers the failure of Respondents to answer and default of a State employee that did not require further service or otherwise created its own policy rule to dismiss for failure to state a claim and sanctioned by the Fifth Circuit.

17. In *Swierkiewicz*, for practical purpose, held in relevant part: "[a] plaintiff must plead a prima facie case of discrimination even though discovery might uncover such direct evidence. It seems incongruous to require a plaintiff, in order to survive a motion to dismiss, to plead more facts than he may ultimately need to prove to succeed on the merits if direct evidence of discrimination is discovered." However, in this case the received notice it did not apply the *McDonnel Douglas* framework. *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506 (2002).

Nevertheless, Petitioner moved for a Federal Rule of Civil Procedure 56, summary judgment that provided direct evidential proof that was uncontested by Walgreens Company. *Scott v. Harris,* 550 U.S. 372, 380 - 81 (2007). Yet again, after notice to the district court and Fifth Circuit of these infirmities, both courts disregarded the claim-processing mandated when properly invoked by the Petitioner. Thus, his substantive rights have been abridged or abrogated in direct conflict with the laws and Constitutions

of the State of Texas and United States. *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506 (2002).

18. In *Wood,* a similar situation arose in this case. This Court held that "[C]ourts of appeals, like district courts have the authority---though not the obligation, to raise a forfeited timeliness defense on their own initiative in exceptional cases." Further, the Court provided "Ordinarily in civil litigation, a statutory time limitation is forfeited, if not raised in a defendant's answer or an amendment thereto." Citing *Day v. McDonough,* 547 U.S. 198, 202. An affirmative defense, once forfeited, is excluded from the case and, as a rule, cannot be asserted on appeal." *Wood v. Milyard, Warden, et al.*, 566 U.S. ___ (2012).

In the instant matter, Respondent Zurich presented a "plea to the jurisdiction" in an exhibit to a motion to dismiss as frivolous on appeal, specifically when it failed to address that issue in the district court. *Saleh W. Igal v. Brightstar Information Technologiy Group, Inc.*, 250 S.W.3d 78 (Tex. 2008). Nevertheless, Petitioner, provided in his principal brief, oral argument was not necessary because the Respondents failed to object in the district court. *Wood v. Milyard, Warden, et al.*, 566 U.S. ___ (2012). Thus, record excerpts were not necessary because the Fifth Circuit use the record excerpts for the specific purpose of oral argument. 5th Cir. R. 30; *see* Fed. R. App. P. 47(a)(1). Here, Fifth Circuit has denied Petitioner his right to appeal a district court's denial of a motion 60(b) or (d) that is reviewed for abuse of discretion, specifically when it granted the motions, when Respondents did not object in the district court.

Conflict with Other Court of Appeals Decisions:

1. In *Beller & Keller,* a similar situation presented in this case, specifically Respondents received a summons and complaint, failed to file an answer to the complaint

within twenty-one days after receipt of the summons and complaint. The majority of the services were affected personally, and a few were mailed to the other parties. The Second Circuit held, "under the plain terms of Federal Rules of Civil Procedure 12(a) a defendant has twenty days from receipt of the summons to file an answer unless federal statute provides otherwise. This is so even if, as permitted by Federal Rule of Procedure 4(e), the defendant is served pursuant to a state law method of service and the state law provides a longer time to which to answer." *Beller & Keller v. Tyler*, 120 F.3d 21, 25-26 (2d Cir. 1997).

However, each Respondent received actual and constructive notice of the suit, that provided them with due process. Fed. R. Civ. P. 12; *Beller & Keller v. Tyler*, 120 F.3d 21, 25-26 (2d Cir. 1997); Fed. R. Civ. P. 15; *Snyder v. Pascack Valley Hosp.*, 303 F.3d 271, 276 (3d Cir. 2002). In this case, this is a representation of Fifth Circuit's departure from the accepted and usual course of judicial proceedings and sanctioned such a departure by the lower court, that is inconsistent with Petitioner's due process or a conflict with another Circuit Court of Appeals. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

In the instant matter, Petitioner performed as required under the Federal Rules of Civil Procedure, but all of the Respondents waived their prerogative to file an answer or otherwise defend. Fed. R. Civ. P. 12(a); 55(b). Nevertheless, the Bank filed a timely answer that was part of a combined document that was a memorandum brief, and not in the form of a motion that was in direct conflict with Federal Rules of Civil Procedure and NDTX local Rules. Fed. R. Civ. P. 7; NDTX L.R. 7.1.

2. In *Charlton,* a similar situation arose in this case, Fifth Circuit provided "[I]f the plaintiff felt Financial was guilty of dilatory tactics, and had no real defense, then notice

under Rule 55 would have properly resolved the matter." In contrast, Petitioner put the Respondents on notice he was not going to file a default after he filed his third amended complaint that was dismissed by the district court, specifically because of the dilatory nature of the Respondents and after a request was made more than once in the district court in accordance with Rule 55(a), (b)(1) or (b)(2), the Court and clerk refused to perform a ministerial act under the Federal Rules Civil Procedure, for default, then default judgment. *Charlton L. Davis & Co., P.C. v. Fedder Data Center,* 556 F.2d 308 (1977).

In the instant matter, this may be considered inconsistency with due process or Fifth Circuit's failed to follow its own precedent.

3. In *O'Brien,* the Seventh Circuit, held that "failure to file answer within time allowed by Fed. R. Civ. P. 12 may result in defendant's default; further, it cited Fed. R. Civ. P. 15(a)(3) that provided, response to amended pleading must be made within time remaining to respond to original pleading or within 14 days after service of amended pleading, whichever is later, unless court orders otherwise." *See O'Brien v. R.J. O'Brien & Assocs., Inc.*, 998 F.2d 1394, 1397 (7th Cir. 1993).

Here, Respondents failed to file an answer after service of a summons and complaint and after service of three amended complaints. Respondents are currently in default, and the district court orders are void, specifically when there's not responsive pleading on the record, and the district court's failure to follow the claim-processing mandate once the Petitioner properly invoked the Rule 12(a) infirmity more than once and the Respondent waived to file an answer after nearly two years since the service of a summons and complaint or three amendments. *Hamer v. Neighborhood Housing Services Chicago,* 583 U.S. ___ (2017).

4. In *Silva,* The Seventh Circuit reiterated the necessity of service to be effected, for a responsive pleading and once the parties have been made subject to the jurisdiction for the federal courts, an answer must be made. *See Silva v. Madison,* 69 F.3d 1368, 1376 (7th Cir. 1995).

In the instant matter, Respondents failed to present a motion or other paper to challenge service of process, though most of the Respondents were handed the summons and complaint personally by someone that is at least 18 years of age and not a party to the suit. Respondents failed to object, specifically because motions were untimely, no answer for an affirmative defense of *res judicata* or otherwise a waived right in the entire case.

For example, Zurich motion referred to collateral attack of a state court judgment, particularly when the face of the complaint does not reference any state court judgment and *Rooker-Feldman* did not apply. Further, the district court manufactured its own rule to apply *res judicata,* specifically when Zurich had no answer on file, that is required in order to plead an affirmative defense. Fifth Circuit sanctioned such a departure from the Federal Rules of Civil Procedure, specifically when it was noticed of all the same infirmities presented to the district court, namely Ruel 12(a) that initiate the litigation process, in which all Respondents waived their prerogative to answer.

Conflict with Fifth Circuit Decisions:

1. In *Anderson,* the Fifth Circuit held that " the United States defendant had answered timely because time runs from date of service. *See Anderson v. United States,* 754 F.2d 1270, 1272 n.4 (5th Cir. 1985).

In contrast, Petitioner served his April 24, 2015, amended complaint on the Respondents. However, Fifth Circuit affirmed based on petitioner's refiling of his amended

complaint. Even if that was the case, Petitioner filed his numbering corrected amended complaint attached to a motion to withdraw and replace on April 27, 2015. Thus, service of the corrected amended complaint was effected on April 24, 2015, as the record showed, and the district court recognized the untimeliness as provided in an order dismissing claims against the Bank. Moreover, this Court amended Federal Rule of Civil Procedure 6, that did not take effect until December 1, 2016. Even so, with the three days added to specific types of service, had no adverse effect on this case, because on April 27, 2015 would have established the untimeliness of a motion 12(b) or an answer. The district court manufactured its own rule, by granting defendants' motions to dismiss, specifically when they were in default or failed to file an answer. Respondents failure to file within 21-days of the filing of an amended complaint, strips a district court of the capacity to grant a dismissal outside of the restricted constraints imposed by Rule. Fed. R. Civ. P. 12(a)(1)(A)(i); Fed. R. Civ. P. 15(a)(3); Fed. R. Civ. P. 55; *Snyder v. Pascack Valley Hosp.*, 303 F.3d 271, 276 (3d Cir. 2002).

2. In *Dominguez*, Fifth Circuit held, "[w]here the litigants has timely initiated procedure for relief, he should not be penalized for choice of the 'wrong' procedure". *See Dominguez v. Gulf Coast Mar. & Assocs.*, 607 F.3d 1066, 1074 - 75 (5th Cir. 2010).

However, in this case, Fifth Circuit refused to remand the case, and the trial court denied the first 60(b) motion because it was divested of jurisdiction, the Court did not include the 60(b) motion on the first appeal or otherwise on the second appeal to the Fifth Circuit for a second 60(b) motion that was denied without findings or facts of laws, that further denies Petitioner his substantive rights, particularly when Fifth Circuit has denied a pro se African American, Black, Negro male with impairments and disabilities

more than once his rights, immunities, privileges, life, liberty or property that implies a practice and pattern within the Federal and State Judicial Systems, that appears to protect criminal or civil litigants' misconduct under the color of law in direct violation of the rule of law, that is allegedly provided to persons or individuals the same or equal rights secured and guaranteed by the Constitutions and laws of the United States and State of Texas without having to file more than one lawsuit.

3. In *First National Bank of Commerce*, the Fifth Circuit held that "issues may be raised for the first time in post-judgment motions." Certainly, Petitioner raised every infirmity in pre-trial motions, post-judgment motions, reply to briefs or otherwise Petitioner did not waive any of his claim-processing rights that are mandated once Petitioner properly invoked that right. *First National Bank of Commerce v. Lamaze*, 7 F.3d 1227, 1229 n.9 (5th Cir. 1993).

For example, in a reply brief, Petitioner noticed the district court of the failure to file an answer and the untimeliness of the motions to dismiss. Subsequently, in a motion for new trial, again the district court was noticed of the infirmities that abridged Petitioner's substantive rights. Petitioner timely noticed his first appeal. While on appeal, a motion for reconsideration was noticed to the district court. Subsequently, a request was made to Fifth Circuit to remand the case. Fifth Circuit refused to remand, and the district court denied the motion because it was divested of jurisdiction. Fed. R. Civ. P. 59; Fed. R. Civ. P. 60; 28 U.S.C. 1291.

In the instant matter, a second motion for reconsideration was filed within the district court after a state court of appeals reversed and remanded the state court proceedings as it related to Zurich's *res judicata* defense that was not pleaded in an answer. However,

prior to the reversal, Petitioner motion for reconsideration established there was no prior valid judgment that would render *res judicata* affects in this case. Fed. R. Civ. P. 60(b)(5); *Scurlock Oil Co. v. Smithwick*, 724 S.W.2d 1, 6 (Tex. 1996). *Pinebrook Properties v. Brookhave Lake*, 77 S.W.3d 487, 497 (Tex. App.---Texarkana 2002, pet. denied); *Bullock v. Cordova Corp.*, 697 S.W.2d 432, 437 (Tex. App.---Austin 1985, writ ref'd n.r.e.); *see also Mower v. Boyer*, 811 S.W.2d 560, 562 (Tex. 1991).

More importantly, district court and Fifth Circuit disregarded any legal process Petitioner sought, which is a clear violation of a known substantive right, that include inter alia, due process and equal protection or full and equal benefit of all laws and proceedings for the security of persons and property as enjoyed by white citizens. *See* U.S. Const. First , Fifth, Fourteenth Amends. 42 U.S.C. §§ 1981, 1983.

Conflict with the Texas Supreme Court Decisions:

1. In *Craddock,* The Texas Supreme Court held that " to set aside a default judgment, if a defendant failed to answer or appear at trial was not (1) intentional or the result of conscious indifference, (2) the failure was due to mistake or accident, (3) a meritorious defense and (4) whether there's delay or otherwise prejudicial harm to plaintiff. Similarly, Federal Rule of Civil Procedure 55(c) provide that "[T]he court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b). Respondent Zurich sought to set aside default and without an answer or motion 12(b)(2) - (5), that were specifically forfeited or waived. Nevertheless, Zurich did not present a meritorious defense in an answer. *Craddock v. Sunshine Bus Line,* 134 Tex. 388, 133 S.W.2d 124 (Tex. 1939); *see First National Bank of Commerce v. Lamaze*, 7 F.3d 1227, 1229 n.9 (5th Cir. 1993); *see alson Sun Bank of Ocala v. Pelican Homestead and*

Saving Assoc., 874 F.2d 274, 276 (5th Cir. 1989); *United States v. McCoy*, 954 F.2d 1000, 1003 (5th Cir. 1992).

This was a false representation on the court, and it knew that the representation was false and material in this case, particularly when a complainant is *pro se* and has suffered a severe work-related injury it refused to pay the policy in connection with State under the color of state law. *See* 28 U.S.C. § 1343; 42 U.S.C. §§ 1983, 1981, 1985.

However, the district court set aside the default and the clerk refused to enter default judgment under Rule 55(b)(1) for a sum certain proved by affidavit. Subsequently, the district court refused to enter default judgment under 55(b)(2), specifically when Zurich did not provide a meritorious defense, it failure to answer was intentional, and there delay clearly has prejudiced Petitioner, because he is currently suffering from the denied benefits for a work related injury. Fed. R. Civ. P. 12(a)(1)(A)(i); Fed. R. Civ. P. 15(a)(3); Fed. R. Civ. P. 55; *Conley v. Gibson,* 355 U.S. 41, 45 - 46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957); *see Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007).

2. In *Lehmann*, Supreme Court of Texas held, " that a judgment is final for purpose of appeal "if and only if . . . actually disposes of all claims and parties then before the court, regardless of its language, or it states with unmistakable clarity that it is a final judgment as to all claims and all parties." In this case. Zurich presented two orders that were in direct conflict with § 1738 and it was not attached to a motion or presented in an answer. In the instant matter, Fifth Circuit and the district court made substantial and substantive mistakes in law. *See Lehmann v. Har-Con Corp.,* 39 S.W.3d 191, 205 - 206 (Tex. 2001); *see also* 28 U.S.C. § 1738; *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 481 -482 (1982); *Allen v. McCurry*, 449 U.S. 90, 96 (1980).

The District Court's Decisions Are Incorrect:

1. For Respondent American Zurich Insurance Company, specifically because Zurich waived its rights to answer a summons and complaint or three amended complaints. Thus, Respondent is in default. Other district court errors that were affirmed by the Fifth Circuit included, setting aside a default and not granting default judgment, particularly because Respondent did not have a meritorious defense and it acted intentionally or with conscious indifference to Petitioner's substantive rights. *Craddock v. Sunshine Bus line,* 134 (Tex.) 388, 124 (1939). Further, Zurich did not file an answer to present an affirmative defense of *res judicata.* Furthermore, Zurich presented two state court orders that were in direct conflict of with 28 U.S.C. § 1738. Moreover, Respondent did not plead *res judicata* affirmative defense, but the district court determined a collateral attack as *res judicata* in a motion to dismiss in direct conflict with the rule of law. *See Morgan Guar. Trust Co. v. Blum,* 649 F.2d 342, 345 (5th Cir. 1981). The Courts overlooked Zurich's connection to Walgreens Company and State Respondents. State action was established under the color of state, specifically when it conspired to deprive a citizen and person of his substantive rights to a policy as an insured individual. 42 U.S.C. § 1983, 1985.

2. For Respondents Walgreens Company and Walgreens Employees, specifically because it waived its rights to file an answer to a summons and complaint or three amended complaints. It was their prerogative to intentionally, with conscious indifference to Petitioner's substantive rights to act inconsistent with others by using dilatory tactics. Even so, a prima facie case was presented in *Tucker.* A Rule 56 was never contested, specifically when probative evidence established a 42 U.S.C. § 1981 cause of action for discrimination. *See Celotex Corp. v. Catrett,* 477 U.S. 317, 327 (1986). The establishment of

the § 1981, established other claims, inter alia, such as § 1985(3), 1986, and Title VII. 28 U.S.C. § 1343; 42 U.S.C. § 1981, 1982, 1983, 1985, 1986. *See John Tucker et at. v. Walgreens Company,* 3:05-cv-0040 (October 5, 2007); *see also Runyon v. McCrary,* 427 U.S. 160, 96 S. Ct. 2586, 49 L. Ed. 2d 415 (1976); *General Bldg. Contractors Ass'n, Inc. v. Pennsylvania,* 458 U.S. 375, 102 S. Ct. 3141, 73; *Adickes v. S.H. Kress & Co..* 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970).

3. For Respondent Wells Fargo Bank, N.A., specifically because it never responded to a summons and complaint or three amended complaints. There actions were in keeping with its co-conspirators. Respondents filed an answer, but it did not respond to the substance of the complaints. In an attempt, the Bank violated the Federal Rules of Civil Procedure and district court order to file an answer or 12(b) motion within 21-days of the amended complaint. Respondent prerogative entailed filing an answer that lacked any 12(b) defenses and it admitted that the Bank violated Petitioner's substantive rights, and then it filed an untimely 12(b) motion. Clearly, grant of judgment on the pleadings under Rule 12(c) was in direct conflict with the Federal Rules of Civil Procedure, specifically because the pleadings did not close, and its co-conspirators never filed an answer to the complaints. *Perez v. Wells Fargo,* 774 F.3d 1329, 1336 (11th Cir. 2014); see *Hamer v. Neighborhood Housing Services of Chicago et al.,* 583 U.S. ___(2017).

The Bank's connection with the State Respondents is the same as the other Respondents, wherein all are subject to 42 U.S.C. § 1983, because each acted under the color of state law, that provide state action in this case. Though this Court held that a Section 1983 statute is not required to be cited, this implies the same for a 42 U.S.C. § 1982 based on Rule 8(a)(2). The Federal Rules of Civil Procedure in simple terms does not

require specific facts, only a short and plain statement. Even so, the claims under 38 U.S.C. § 5301(a) was dismissed based on a substantial error of law, specifically because at the time of garnishment, the Petitioner was in a surplus and there is no law that provided garnishment to pre-pay child support. Fed. R. Civ. P. 8; *Ascroft v. Iqbal*, 556 U.S. 662, 678-79 (2009); 42 U.S.C. §§ 1983, 1981, 1982, 1985; 38 U.S.C. § 5301.

Moreover, it was later discovered that the suit affecting parent-child relationship was void, and the only valid order is the default judgment entered against the other parent that conspired with others to vanquish an order, the other parent intentionally failed to appear for pre-trial hearing, specifically when she appeared more than once and was served notice and complaint in the State of Texas. In the instant matter, the default judgment was never vacated that mandate §§ 1738A and 1738B. The actions that involved conspiracy to interfere with Petitioner's parental rights involved attorneys, judges, military personnel or others that are directly involved.

4. For Respondent State defendants, specifically because it never made an appearance in the district court. Respondents waived their rights, specifically when their prerogative was the same as their co-conspirators.

Respondents intentionally chose not to answer after service of the summons and complaint, a second summons and amended complaint, and three amended complaints. Thus, Respondents received five apples to digest, but chose not to take a bite. Thus, they are in default, specifically because the district court made legal errors that dismissed the State defendants, when each waived their prerogative to answer the complaint or otherwise defend. It's clear, there is no answer or timely motion 12(b) or affirmative defenses legally before the court, particularly when qualified and absolute immunity must

be raised in an answer. Thus, the motion to dismiss is a nullity and the final judgment is void.

The Court of Appeals Decisions Are Incorrect:

The Court of Appeals Decisions are Incorrect, specifically because Fifth Circuit affirmed the actions of the district court, particularly when it received notice of the same infirmities presented in the lower court. Fifth Circuit failed to mandate reversal based on the claim-processing mandate, specifically when Petitioner properly invoked the Respondents waiver of Federal Rules of Procedure for Rules 12(a); 15(c)(1)(C); 15(a)(3); (26) - (37)---no discovery; 55(a), (b); 56; 65 ; 84; and other statutes in this case.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that his petition for a writ of certiorari be granted.

Respectfully submitted,

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