No. 23-5433

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# In The
# Supreme Court of the United States

Supreme Court, U.S.
FILED
AUG 21 2023
OFFICE OF THE CLERK

Kingsley Azubuike Ononuju
**(Petitioner)**

v.

Virginia Housing Development Authority
**(Respondent)**

**On petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit**

## PETITION FOR WRIT OF CERTIORARI

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## I. QUESTIONS PRESENTED

**A.** Did the Fourth Circuit err in affirming the ruling of the district Court in which granted "Rule 12(b)(6) motion" of the Respondent against TILA claim by finding the Respondent *exempt* under inconsistent agency regulation, when the federal statute upon which such regulation implements is "unambiguous" and never at all exempts the Respondent from TILA obligations owed to Petitioner?

**B.** Did the Fourth Circuit err in affirming the ruling of the district Court in which denied "Rule 60(b)(4) motion" of the Petitioner on ground that federal Courts (apart from this Court) are without power to vacate or review a void state judgment, all characterizing as inconsistent with the holding of the Fifth Circuit?

**C.** Did the Fourth Circuit err in affirming the ruling of the district Court in which denied "motion for leave to amend Complaint" to add the "42 U.S.C §1983 claim", on futility and unfair prejudice grounds, even where claim is showing that a writ of eviction was issued outside the statutory period without any notice or hearing, and also showing that the possession judgment for which the writ was enforcing had expired, all leading to entry of Petitioner's private home and destruction of all his personal belongings by Respondent and deputy sheriff, implicating the Fourth and Fourteenth Amendments to U.S Constitutions?

## II. TABLE OF CONTENTS

## III. TABLE OF AUTHORITIES

**Cases;**

**Constitutional Provisions;**

**Statutes;**



**Rules;**



**Regulations;**



**Other;**

## IV. PETITION FOR WRIT OF CERTIORARI

Petitioner Kingsley Ononuju, 54 and appearing *pro se*, respectfully petitions this Honorable Court for a writ of certiorari to review the Opinion and Order of United States Court of Appeals for the Fourth Circuit ("Fourth Circuit"), in which affirmed the ruling of United States District Court of Eastern District of Virginia of Norfolk Division ("district Court").

## V. OPINIONS BELOW

The Fourth Circuit's decision in affirming the district Court`s ruling (and denying a rehearing), is found in "**Ononuju v. Va. Hous. Dev. Auth., No. 22-1388. 32023 U.S App. LEXIS 9804, at 1 (4th Cir. April 24, 2023)**" (unpublished). Its contents are hereof located at "Appendix 1" and "Appendix 2".

The district Court`s ruling is found in "**Ononuju v. Va. Hous. Dev. Auth., No. 2:20-cv-00205-RCY-RJK (E.D Va. Mar. 15, 2022)**" (published). Its contents are hereof located at "Appendix 3".

## VI. JURISDICTION

Because the Fourth Circuit denied "petitions for rehearing and rehearing *en banc*", on May 30, 2023, and because Petitioner filed this petition for a writ of certiorari within ninety days of denial of the rehearing petitions, the "appellate jurisdiction" of this Court is as a matter of law invoked pursuant to 28 U.S.C §1254.

## VII. STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves failure of the district Court and the Fourth Circuit to apply or defer to an unambiguous federal consumer statute "15 U.S.C §1638(f)" enacted under Truth In Lending Act "TILA" by Congress. It also involves "Fed. R. Civ. P. 60(b)(4)", as there was a request to vacate or at least review a "void" state judgment in federal Courts below. And it further involves the privacy and due process rights of Petitioner under Fourth and Fourteenth Amendments to U.S Constitutions as grounds for "42 U.S.C §1983" cause of action.

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## VIII. STATEMENT OF THE CASE

This is a civil case. It was extinguished at the beginning stage of the proceeding when Respondent, a state quasi-governmental agency, had not filed an Answer yet. [A]nd hereof, Petitioner, who had chosen jury trial on all 'jury-triable' issues, is appealing some of the reversible errors in light of the undermined approach to "stare decisis".

The doctrine of "stare decisis" has been in existence since eighteenth century. It is a popular legal doctrine in American jurisprudence that requires the Courts to adhere to binding or persuasive precedents in making their decisions. And its purpose is premised on promoting consistency and public confidence in our judicial system. However, when Courts are within the confines of binding precedents, this doctrine "compels" Courts to render decisions in line with such binding precedents.

**A. Deference to federal agency regulation is "improper" where the federal statute upon which it implements is "unambiguous". It is a reversible error hereof because the federal statute upon which it implements, never exempts the Respondent from TILA obligations owed to Petitioner.**

In a nonjudicial auction sale where no buyer attended, Petitioner lost his only home. He lost home because Respondent "discontinued" supplying him with periodic statements or coupon books, in sheer violation of his federal rights pursuant to "15 U.S.C §1638(f)" of Truth In Lending Act ("TILA"), with which would have enabled him track his "interest, escrow and principal" balances, as to knowing how much he would borrow from his family and local church to saving his only home. And even on direct request, Respondent never disclosed to him the actual amount needed to save his home.

And around April 23, 2020, Petitioner brought TILA claim under aforesaid federal statute in the district Court. And in ruling, the district Court and the Fourth Circuit avoided the aforesaid statute referenced in Complaint and deferred to federal agency regulation "12 C.F.R §1026.41(e)(4)" not referenced in Complaint, even where it is so clear that aforesaid statute is unambiguous and renders TILA claim "viable", and even when Petitioner had furnished a "binding precedent" of this Court on same.

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i. Mr. Todd Oliff, an agent of Respondent hereof, would have been a co-Respondent at appellate echelon. He was a co-party when instant case was originally filed in the district Court but was removed when Petitioner elected not to proceed with a claim with supplemental jurisdiction.

15 U.S.C §1638(f)(1) of TILA pertinently states that;

> "The creditor, assignee or servicer with respect to any residential mortgage, loan shall transmit to the obligor, for each billing cycle, a statement setting forth each of the following items *[located under subsection 1(A) thereof]*.. in a conspicuous and prominent manner".

The text of aforesaid statute leaves no room for discretion. It uses the word "shall" as opposed to "may", and therefore requires all home mortgage servicers to supply periodic statement or coupon book to their mortgage consumers, to keep them abreast of up-to-date information on their loan instalment payments. But the aforesaid agency regulation ignored this statute and exempted "finance housing agencies" and "small servicers" from aforesaid supplies. Relying upon this agency regulation, the district Court finds that the Respondent falls under finance housing agency and thus "exempt" from TILA obligation hereof. It then granted Respondent`s "Rule 12(b)(6) motion" against TILA claim.

Exempting some certain servicers showcasing in aforesaid agency regulation is not only in conflict with aforesaid statute, but also in conflict with Equal Protection clause of Fourteenth Amendment to U.S constitution, as homeowners whose mortgages are serviced by "exempt servicers" would not receive same supplies afforded to and enjoyed by other homeowners to whom "non-exempt servicers" apply.

However, the district Court never asserted or even intimated that aforesaid statute is ambiguous, but rather manifested that it deferred to agency regulation because it is the "implementing regulation" of TILA. ***See,*** **(Appendix 3 at p.14 ft.nt.).**

On appeal, Petitioner reminded the Fourth Circuit that agency cannot be deferred to when the statute upon which it implements is "unambiguous". In support of his arguments, he analogized to "**Kingdomware Techs., Inc. v. United States, 136 S. Ct. 1969, 1979 (2016)**" involving a "rule of two" analysis where agency regulation was deferred to over the unambiguous statute upon which it implements.

He analogized that Plaintiff in ***Kingdomware*** brought a lawsuit against a federal agency in federal Court, seeking declaratory and injunctive relief based on unambiguous statutory provision and elucidation. ***Id.*** That the Court of federal Claims sided with the agency regulation over the unambiguous statute, as here, and Plaintiff appealed. And that on appeal thereof, the appellate Court, as here, affirmed the holding of lower Court but this Court reversed, holding that 'we do not defer to agency when the statute is unambiguous'. ***Id.***

**B. Because a void judgment is a "total nullity" and the Petitioner presented the state judgment entered against him as a "void judgment" as opposed to a "voidable judgment", it can be collaterally attacked and vacated or at least reviewed through any means both in state and federal Courts. It is a reversible error hereof because it is the premise of the district Court's decision in denying "Rule 60(b)(4) motion".**

Later, pursuant to "Fed. R. Civ. P. 60(b)(4)" and during pendency of this case, Petitioner moved the district Court to review and relieve him from a "void" state judgment relating to his federal rights and involving same parties in this case. He reminded the district Court that, the district Court is without power only where the state judgment is "voidable",

as litigants have to follow the state appellate Court ladder and finally to U.S Supreme Court if "federal question" is present. But not when Petitioner is alleging that the state judgment to which was rendered against him is "void" ab initio.

Still, the district Court denied motion, portraying that the district Court is without power to vacate or even review both "void" and "voidable" judgments entered in state Court. ***See,*** **(Appendix 3 at p.11)**. The district Court relied upon unpublished appellate holding on "Rooker-Feldman doctrine" addressed by the Tenth Circuit in "**Burnett v. Amrein, 234 Fed. App`x 393, 395 (10th Cir. 2007)**".

On appeal, the Petitioner reminded the Fourth Circuit that "voidable" judgment is appealable, not "void" judgment to which can be collaterally attacked through any means. He distinctly argued that ***Burnett*** cited and relied upon by the district Court is misplaced here because it is only circumscribed to "voidable" state judgment, not posited "void" state judgment at bar. To support argument, Petitioner cited a published holding in ***Burciaga*** by Fifth Circuit on same. ***See,*** **"Burciaga v. Deutsche Bank Nat`l Tr. Co. 871 F.3d 380, 385 (5th Cir. 2017)".**

The Fifth Circuit in ***Burciaga*** holds that federal Courts across this country can at least review a void state judgment amidst "Rooker-Feldman doctrine". Petitioner also cited "**Gruppo Formstar LLC v. FM Forrest, Inc., 587 B.R 891, 931-2 (Bankr. S. D Tex. 2018)**" where a federal Court fully reviewed an alleged "void" state judgment brought through "Fed. R. Civ. P. 60(b)(4) motion" by virtue of the clear-cut precedents set forth by the Fifth Circuit on same.

Importantly, the issue at bar is not about bringing a "Rule 60(b)(4) motion" as a lawsuit in the district Court, but bringing it during a proceeding of a case already before the district Court involving same parties, as reflected in ***Gruppo***.

**C. §1983 claim cannot be "futile" where it (i) shows that Petitioner was never accorded any notice or hearing before a writ of eviction was issued beyond the 180-day period mandated by state statute, (ii) and shows that the judgment on which writ was enforcing had already expired and no longer binding on the Petitioner, (iii) and shows that Petitioner was never accorded "meaningful time" for preparation and for discoveries when he filed "emergency motion" to vacate writ, (iv.) and shows that Respondent is state actor and worked with state actor in evicting Petitioner and destroying his belongings in a house he was being charged rents. Also, amending complaint to add §1983 claim cannot be "unfairly prejudicial" to Respondent when trial is afar.**

This case also arises and hinges upon improper eviction of Petitioner (and his family), leading to forced entry to his private home and destruction of all his personal belongings by Respondent and the deputy sheriff acting concertedly, in violation of his privacy and due process rights under Fourth and Fourteenth Amendments to United States constitution— all happening during pendency of this case and after Petitioner had filed a Second Amended Complaint ("2nd Complaint").

Respondent, knowing fully well that its possession judgment and right would be expiring after 180 days, never filed a motion to stay them from running or running out, but rather waited until they expired before enforcing them. A possession judgment and right to real property in Virginia now have short life-span under the new Virginia law (VA Code § 8.01-470). This is [because] Virginia lawmakers reasonably envisioned that many things

could happen after the 180-day possession judgment had expired, and thus utterly favored instituting another unlawful detainer action where another jury would look into the matter again, as to deciding whether granting another possession judgment to evicting someone comports with equity and never abridges their rights. This applies here, because Petitioner is still attacking the impropriety of foreclosure of his home in federal tribunal. He believes he would have saved his only home with no ensued injuries had Respondent not violated his federal rights.

Respondent is very cognizant of this new state law but absolutely did nothing to stay its possession judgment and right in the 21-day window of Rule 1:1 of Supreme Court of Virginia, during which the state Court could stay them from running. Respondent had also failed to provide any "emergency" or "exigency" by which could excuse its conduct in executing a writ to an expired possession judgment, as opposed to waiting to get another possession judgment pursuant to this new state law.

42 U.S.C §1983 provides in pertinent part that;

> "Every person who, under color of any statute,..or usage, of any State or Territory.. subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.."

This improper eviction impelled Petitioner (who is a bona-fide U.S citizen) to file motion for leave of Court to amend his Complaint in same district Court pursuant to "Fed. R. Civ. P. 15(a)(2)", to enable him add §1983 claim to the case already before the district

Court involving same parties, as opposed to lodging another lawsuit. It was filed when case had not even entered the discoveries phase, and thus trial was afar. He included a proposed Third Amended Complaint ("3rd Complaint") showing §1983 claim.

§1983 claim presents that a writ of eviction was issued to enforce a possession judgment (and right) to which had "expired" and no longer binding on the parties, as the new state statute (VA Code §8.01-470) requires them all to expire after 180 days from date of judgment as aforesaid, and therefore requires Respondent to bring another unlawful detainer action to get another possession judgment upon such expiration.

§1983 claim also shows that the writ of eviction was issued by state Court beyond the 180 days mandated for its issuance by another new state statute (VA Code §8.01-471) under same judgment.

§1983 claim further delineates that no hearing or notice was afforded to Petitioner before such writ was issued, and shows that Respondent is governmental actor for §1983 claim, as it is a state quasi-governmental agency. Claim alleges that Respondent colluded with state Judge and deputy sheriff in the issuance and execution of aforesaid writ of eviction, and that such collusion is another presence of state actor for §1983 claim.

§1983 claim also points out that after the writ was issued by a state judge at the request of Respondent, the deputy sheriff came to Petitioner`s home and placed writ on

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ii. The Second Circuit (and even this Court) has reminded that "we construe pro se appellate briefs and submissions liberally and interpret them to raise the strongest arguments they suggest" **Wright v. C.I.R, 381 F.3d 41, 44 (2nd Cir. 2004)** (*acc`d* **Boag v. MacDougall, 454 U.S. 364 (1982).**

Petitioner`s main door with a note commanding Petitioner to move out within 72 hours, all happening during Covid-19 era. ***Ibid.***

§1983 claim augments that when the writ was issued with no hearing or notice to Petitioner, Petitioner filed an "emergency motion" to set aside or at least stay the writ, but motion was denied by the same state Judge (that granted possession judgment) within the aforesaid 72-hour window. It was denied with no meaningful time afforded for discoveries and preparations. Claim also shows that about eight hours later, the Respondent and deputy sheriff concertedly broke the door and entered Petitioner`s private home and destroyed all his personal belongings.

In spite of the foregoing showing in §1983 claim, the district Court denied motion to add the §1983 claim on ground that §1983 claim is "futile" and "unfairly prejudicial" to Respondent, but furnished no iota of explanation as to how claim is futile and unfairly prejudicial to Respondent. ***See*, (Appendix 3 at p.22)**.

On appeal, Petitioner reminded the Fourth Circuit that a *prima facie* claim for §1983 implication only requires a showing of "a federal right violation and a state actor", and argued that these two elements are clearly present in 3rd Complaint, and thus §1983 claim is not futile. He cited "**Soldal v. Cook County, Illinois, 506 U.S 56 (1999)**" where this Court answered in the affirmative that §1983 claim predicated upon improper eviction is a "viable claim" because such eviction (including where it leads to entry to a person`s home and destruction of his belongings) involving a deputy sheriff, as here, does constitute a "search" and a "seizure" within the meaning of Fourth Amendment safeguard. This very

safeguard applies to the states through the due process clause of Fourteenth Amendment to U.S constitution. ***Id. at 57.***

This Court in ***Soldal*** unveils that the aforesaid "search" occurs when an expectation of privacy that society is prepared to consider reasonable is infringed, and the aforesaid seizure of property occurs where there is some meaningful interference with an individual possessory interest in that property. ***Id.*** **at 63.** This Court also points out in **'United States v. Place, 462 U.S 696 (1983)"** that property within the meaning of Fourth Amendment extends to "personal property" in someone's home, and includes luggage.

Petitioner contended to Fourth Circuit that issuing a writ of eviction to enforce an expired possession judgment and right, all leading to eviction of a person from his home and destruction of all his belongings therein, is a textbook meaning of "unreasonableness" for Fourth Amendment contravention. Still, deciding whether and to what extent this is unreasonable, is for the jury to decide.

Petitioner advanced that, because he was never served any notice before the writ was issued outside the time within which it was mandated by state law, the state Court thus lacked personal jurisdiction to issue such order to bind him. He also argued that, because the judgment (the subject matter) for which the writ was enforcing had expired when writ was issued, the state Court also lost subject matter jurisdiction to issue anything germane to such judgment. Petitioner pointed out that all these do favor a showing that the writ of

iii. Petitioner also cited; **Thomas v. Cohen, 304 F.3d 563, 570 (6th Cir. 2002)** (holding that a participation of a police officer in improper eviction constitutes a seizure in violation of the Fourth Amendment).

eviction hereof is as a matter of law "void" for want of personal and/or subject matter jurisdictions. He cited; **Old Wayne Mut. Life Ass'n v. McDonough, 204 U.S 8, 15 (1907)** (signifying that if defendant had no such actual legal notice, then the Court was without jurisdiction); **Wendy v. Leonard, 431 F.3d 410,412 (4th Cir. 2005)** (upholding that a Court ruling is totally void when the Court that entered it had no subject matter jurisdiction from which the order arose).

In the same vein, Petitioner presented to the Fourth Circuit that Respondent is a "state actor" hereof for §1983 claim because it carried out instant eviction, as in ***Soldal***, under color of state or under state law. He argued that even the Respondent itself is a state actor because it was created and its manager and governing board are all appointed by the Virginia state government pursuant to Virginia Housing Development Authority Act§§ 36-55.27; 36-55.28. He cited; **White Coat Waste Pro. v. Greater Richmond Transit Co., Record No. 20-1710, 20-1740 (4th Cir. 2022)** (finding that all the government-created and controlled entities are part of the government).

Petitioner further argued that, even if Respondent itself is not construed as state actor, it is still a state actor for the §1983 claim, as it colluded (as alleged in instant 3rd Complaint) with state judge and deputy sheriff in issuing and executing the writ, when they all know that the judgment for which the writ was enforcing had expired.

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iv. Petitioner also argued to Fourth Circuit that, because Respondent itself is a state actor, its violation of TILA claim alone acts as another federal violation ground for §1983 claim hereof.

Petitioner cited; **Lebron v. Nat`l R.R Passenger Corp., 513 U.S 374, 397 (1995)** (approving that a private entity is a state governmental actor for constitutional purposes if the entity is operated and controlled by people appointed by the state).

Petitioner further argued to Fourth Circuit that, if any, his "emergency motion" in which he filed after writ of eviction was placed on door of his home, does not cure the foregoing violations, because he was never afforded meaningful time for a hearing and for discoveries and preparations before motion was denied, citing "**Amstrong v. Manzo, 380 U.S 545, 552 (1965)**"(holding that meaningful time should be afforded on a motion).

And on second reason for denial motion, Petitioner contended and pointed out to Fourth Circuit that granting motion for leave to amend or accept the 3rd Complaint cannot be unfairly prejudicial to Respondent because motion was filed at beginning stage of the proceeding before the discoveries phase, and thus trial was faraway. He cited; **Laber v. Harvey, 438 F.3d 404, 427 (4th Cir. 2006)** (opining that amendment of Complaint cannot be unfairly prejudicial when trial is afar).

After demonstration of all the foregoing on the three questions presented hereof, a three-judge panel of the Fourth Court affirmed ruling of the district Court in its entirety (even upon filing petition for rehearing), but provided no hint or explanation for its decision nor addressed any of the authorities cited by Petitioner.

This petition ensued.

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v. "Fed. R. Civ. P. 15(d)" espouses supplementation or amendment of Complaint to add a new claim on incident that happened during pendency of a case involving same parties, as here.

## IX. REASONS FOR GRANTING THE WRIT

The supreme intervention of this Court is awoken hereof because, affirming the ruling of the district Court by the Fourth Circuit hereof is another step further in the circulation of inconsistencies hovering among the Circuits as to when and whether the federal Courts have or lack the power to vacate or at least review a void state judgment amidst all the preclusive doctrines.

Nonetheless, this case is of national importance because it involves an eviction that is daily encountered by millions of ordinary Americans across this country, and it possesses extreme likelihood of recurrence in several other states, where a writ of eviction was not only issued with no notice or hearing but issued at the time judgment for which it was enforcing had expired, to oust people (and destroy their belongings) from their private homes in which they were being charged rents.

### A. The Court should take this case to protect the doctrine of stare decisis and to protect public confidence in our judiciary, following a clear conflict between the holdings of this Court and the Courts below involving same matters.

It is clear that the statute "15 U.S.C §1638(f)" under which the TILA claim is premised, is "unambiguous". Instant Complaint never mentioned agency regulation as basis for lodging and advancing TILA claim. It is also clear that aforesaid statute requires all mortgage servicers to either supply periodic statement pursuant to "Title 15 U.S.C §1638(f)(1)" or supply coupon book pursuant to "Title 15 U.S.C §1638(f)(3)". It is thus the **"either or"** statute. In other words, had Courts below deferred to this **"either or"** statute,

the "Rule 12(b)(6) motion" would not have been granted against TILA claim, as it never exempts Respondent from aforesaid supplies.

By deferring to agency regulation (that accorded exemption to Respondent) over the unambiguous "**either or**" statute hereof, the district Court and the Fourth Circuit are not at all following the ***Kingdomware*** binding precedent of this Court on similar issue. ***See,*** **Kingdomware Techs., Inc., 136 S. Ct. at 1979.**

***See also,*** **Am. Hosp. Ass'n v.Becerra, 142 S. Ct. 1896, 1906 (2022)** (abstaining from deferring to agency regulatory interpretation in which is inconsistent with the clear provision of the statute upon which it implements).

This Court in ***Kingdomware*** has made it abundantly clear that "we do not defer to agency when the statute is unambiguous". ***Id.*** **at 1979.** This squarely means that the ruling rendered and the ruling affirmed by the Courts below on TILA claim hereof are all in direct conflict with ***Kingdomware*** binding precedent. ***Id.*** If these rulings below are "undisturbed" hereof, it will reasonably undermine the relevancy of uniformity in appellate opinions on similar matters, and will affect public confidence in our judiciary, as it is grossly unfair for some litigants to receive favorable rulings different from other litigants on similar matters just because of the forum from which their cases are decided.

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vi. Petitioner did not only appeal the underlying ruling of the district Court, but he also filed a Rule 60(b) "motion for reconsideration" in April 2022, imploring the district Court to reconsider and vacate ruling. Motion was recently denied, and Petitioner appealed. The appeal of denial of motion is currently pending in the Fourth Circuit.

**B. The Court should take this case to resolve conflicts among federal Circuits, especially the Fourth and Fifth Circuits, in relation to whether the federal Courts can vacate or at least review a void state judgment through Rule 60(b)(4) motion during pendency of a case involving same parties. Some Circuits show lack of clarity on same.**

The district Court did not even review the Petitioner`s "Rule 60(b)(4) motion". It shows it has no power to even touch it as to determining whether it is void. It did deny motion in its entirety, notwithstanding the fact that motion were brought during pendency of underlying case involving same parties. Leaving this matter unattended would mean that neither the district Court nor the federal Circuits can vacate or even review an alleged void state judgment by reason of Rooker-Feldman doctrine or other preclusive doctrines.

Put it another way--- it would mean that a void state judgment affecting a federal right cannot be "collaterally attacked" through the "Rule 60(b)(4) motion" brought during pendency of case involving same parties. This is in conflict with the holdings of the Fifth Circuit. ***See,*** **Burciaga v. Deutsche Bank Nat`l Tr. Co. 871 F.3d 380, 385 (5th Cir. 2017)** (holding that an alleged void state judgment can be reviewed in the federal Courts through Federal Rules of Civil Procedure).

In **"Gruppo Formstar LLC v. FM Forrest, Inc., 587 B.R 891, 931-2 (Bankr. S. D Tex. 2018)",** Plaintiff brought a "Rule 60(b)(4) motion" seeking relief from an alleged void state judgment. The federal Court thereof did not deny motion for want of power to review motion, unlike here, but rather fully reviewed motion because it relied upon the precedents set forth by the Fifth Circuit on same.

The Fifth Circuit is following the text of Rule 60(b)(4), because nothing in the text supports a finding or innuendo that it is limited to alleged void judgment rendered in federal Courts. ***Id.***

As in TILA claim, leaving the rulings of Courts below "undisturbed" hereof would advance circulation of the inconsistencies hovering among the Circuits as to whether the federal Courts can as a matter of law vacate or even review an alleged void state judgment through Rule 60(b)(4) route. It is not, on the other hand, unreasonable that many litigants who have pending cases in the district Courts across this Country will encounter same uncertainty presenting here if not clearly resolved hereof.

**C. The Court should take this case, because it also arises out of an "improper eviction" premised upon enforcement of an expired possession judgment. It is a national matter, as it concerns and has cogent possibility of impacting millions of ordinary and struggling Americans against whom rents are being charged in places they stay and call home.**

Eviction of people to whom rents are being charged in places they stay, is usually executed through judicial issuance of writ of eviction, but such writ is "not on its own" but rather enforcing a possession judgment to which were obtained from an unlawful detainer action. Eviction of people in their business places also fall within this purview. Almost every state does follow this very practice, thus this matter affects the entire country.

The wrongfulness of this type of eviction is "common sense", because if a possession judgment is expired, it means there were no judgment for writ of eviction to enforce in the first [place], and thus issuing writ at the time such judgment has expired is

inapposite and unfair to the person against whom such writ would be enforcing. In today`s world, when something is expired, it is at best renewed, not enforced.

Allowing the ruling of the district Court, as affirmed by the Fourth Circuit, to survive undisturbed hereof, would mean that "it is okay" in this country to issue a writ of eviction to enforce an "expired" possession judgment. Eviction generally does not only have very high recurrence rate, it concerns millions of struggling Americans and routinely exposes them to victims of such unbecoming encroachment and displacement.

The problem with aforesaid eviction ruling and practice, is not only predicated upon the expired judgment upon which the writ was enforcing, but also predicated upon the fact that no notice whatsoever was given to the Petitioner (after Respondent`s 180-day period had passed) by either Respondent or state Court to at least keep him abreast on the arrangements being made to issue writ amidst an expired judgment.

Because people generally do not at all expect an expired judgment to be enforced, giving them "timely notice" becomes indispensable, to say the least. Besides, some homes are resided and occupied by people in perilous conditions across this country. Some have minor children in their fragile age, some have pregnant wives in their delivery days, some have disabled and/or elderly people in their devastating stage, and some have victims with terminable illness in their sick bed. All these are possible occupants in homes in which rents are being charged. Because of these impuissant circumstances, people would need more than the "72-hour" sheriff window given hereof to safely move out. In short, every home does need adequate notice and time amidst an expired possession judgment.

The due process clause of Fourteenth Amendment to U.S Constitution, though a source of an array of constitutional rights, is assembled under one word "fairness". Giving at least some meaningful timely notice to someone whose right or interest is impacted, after expiration of a possession judgment, is called "fairness" to such person. Doing the contrary is not just unlawful and detrimental but inherently wrong in all reasonableness. In short, any writ issued to enforce such expired judgment is "void" as a matter of law. This Court, in ***Simon***, agrees, stressing that "judgment obtained in a suit of which a defendant had no notice, was a nullity and a party against whom it was obtained is entitled to relief" **Simon v. Southern Ry. Co., 236 U.S. 115, 122 (1915).**

All in all, rulings of Courts are very contagious. They metastasize. Hereof, the state Judge and Court that issued this illicit writ of eviction amidst an expired possession judgment upon request of the Respondent, would surely repeat same against thousands of Virginians whose eviction threats portray nexus with expired possession judgments. This practice will gradually metastasize to other states and jurisdictions, impacting struggling Americans across this entire country. History has showed that things in which begin from a small beginning or tiny region can spread to other regions of this Country. For example, the "issue of slavery" started in this country from English colony of Jamestown in Virginia around seventeenth century, but because it was never timely stopped, it metastasized to other regions across this country, and became a national praxis. A stitch in time saves nine.

## X. CONCLUSION AND PRAYER

For all the foregoing reasons, this petition should please be granted.

Respectfully submitted; _____

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## XI. COMPLIANCE CERTIFICATE

The undersigned certifies that the applicable page-count of this petition is **20**, and the applicable word-count of this Petition is **5,236**.

_____
Kingsley A. Ononuju

***Mailed and Submitted on August 21, 2023.***

## XI. INDEX OF APPENDICES

# Appendix 1

Ruling of the Fourth Circuit denying "Petition for Rehearing".
(1 page)

# Appendix 2

Ruling of the Fourth Circuit affirming the ruling of the district Court.
(2 pages)

# Appendix 3

Opinion of the district Court dismissing instant case with prejudice.
(23 pages)