

No. 23-6438

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

DEC 14 2023

OFFICE OF THE CLERK

JEAN JOCELYN MERLIEU — PETITIONER
(Your Name)

VS.

WARDEN "TSP" AND GRANTSON — RESPONDENT(S) *et. al.,*

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JEAN JOCELYN MERLIEU, 1048466
(Your Name)

TELFIRE STATE PRISON
(Address) P.O. BOX 549

HELENA, GEORGIA 31037
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did the ELEVENTH circuit err in reading of Prose Plaintiff's Rule 60(b) (4) and Rule 60(b) (6) motion to REOPEN case by concluding that Appellant's Arguments fall under Rule 60(b)(2) and that he failed to showed due diligence exercise in contacting the state court clerk for evidence and information to proof District court his "state inmate civil action complaint and its Request to proceed on informal pauper's were timely filed in state court after exhaustion of administrative remedies ended in reading KAMP V. United States.
2. Did the eleventh circuit err in concluding that Appellant's Rule 60(b)(2) filed in District court within 69 days after Judgment entered was untimely for failed to showed he had exercised due diligence in obtained evidence from state court's clerk while the the clerk evidence sufficiently proof Appellant was correct his complaint was filed after exhausted administrative Remedies and Rule 60(b)(2) limitation show it one year was not expired when he file the motion to Reopen under Rule 60 (b)(4) and (6), which has no time Limit Under BUCK V. DAVIS, 137 S. Ct. 759 (2017)
3. If Rule 60(b)(6) catch all provisions and any other Reasons Justify Relief are not fall under newly evidence when a party Receive the evidence after trial then why called catch all provisions that were already past since 60(b)(6) has no time limit and not fall under one year statute limitation which plaintiff was correctly seeking Relief.
4. Did the ELEVENTH circuit err in failing to concludes that when Defendants agreed to Removed the Prose state inmate civil action tort and 42 U.S.C. § 1983 suit from state court with acknowledged (Doc. 1 at 1) that the case was filed in state court on 8/25/2017, which was 13 days after exhaustion ended were timely filed when moved to federal court with knowledge "If you and complaint mailed to prison official on 8/14/2017 after Notarized.

QUESTION PRESENTED CONTINUE

5. whether rule 60(b)(6) authorizes relief on ground newly evidence ~~after~~ on exercise due diligence and show extraordinary circumstances.
6. whether District court erred in failing to considered granting Appellant's Notice of Appeal on Informa Pauper's (IFP) AS indigent based on Prior order granting IFP" state court (Superior court of JOHNSON COUNTY state of Georgia granting Informa Appellants to proceed, his prose action on 8/22/2017 (see order regarding filing action entered on 8/22, 23/2017 Attached hereto AS Appendix G, 1 of 2 pages DOC-181-2 at pages 3-4) see O.C.G. AS 9-15-2 (d)
7. whether Eleventh circuit erred in failing to grant Prose Appellant IFP" Appeal based on previously State court order granting IFP" to proceed this action on State court (see Appendix G, 1 of 2 at pages 3-4)

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

JEAN JOCELYN MERILIEU, Appellant, Prose
VS

WARDEN ANTOINE CALDWELL, AND
ANNETT GRANISON JOHNSON State Prison Kitchen
Manager, Appellees.

RELATED CASES

42 U.S.C. § 1983 AND STATE OF GEORGIA TORTS LAWS;
PROCEEDING BELOW:

* MERILIEU V. HURST, et al., ~~NO. 21-12415~~ NO. 21-12415
(11th cir. September 11, 2023) (Opinion Affirming denying
of Rule 60 (b) (6) motion for Relief from final Judg-
ment in the 42 U.S.C. § 1983 proceeding) (see Appendix A)

MERILIEU V. CALDWELL, NO. 3:18-cv-0056 (S.D. GA. MACH
05, 2021) (Order denying Rule 60 (b) (4) and (6) motion
for Relief from final judgment on the 42 U.S.C. § 1997e (2)
issues. (see Appendix B))

MERILIEU V. CALDWELL NO. 3:18-cv-0056 (S.D. GA. AHR. 17,
2020) (R & R, Magistrate Judge recommends to
GRANTED defendants motion for summary judg-
ment (DOC. 162) see Appendix D" attached
hereby. AND APPENDIX "E" order adopted R & R (DOC. 165)
entered on 09/28/2020.

MERILIEU V. CALDWELL, NO. 3:18-cv-0056 (S.D. GA. -

RELATED CASE CONTINUE.

FEB. 13, 2019 (Doc. 120) ORDER (RER) to Dismiss Plaintiff's Claims against some defendants. see Appendix 'f' attached hereto.

MERILLEN V. Warden No. 21-12415, 11th Cir. NOV. 01, 2023, DENYING Rehearing motion (Appendix 'e', attached hereto.

MERILLEN V. Sergeant Hurst, No. 2017 cv- 75
(ORDER REGARDING FILING OF ACTION IFPP APPROVAL
by Judge of Superior Court of Johnson County on
8-23-2017) (see Appendix G, 10 of 2 pages) (Doc. 181-2a & 3-4)

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APPENDIX E , ORDER DISTRICT COURT AND ADOPTED R & R (DOC. 166) ON 9/28/2020.
APPENDIX F , MAGISTRATE JUDGE REPORT & RECOMMENDATION (R&R) DOC. 120 entered on 02/13/2019
APPENDIX G, JOHNSON COUNTY SUPERIOR COURT'S ORDER REGARDING FILING ACTION ON INBAMA PASSPORTS ("IFP") ENTERED ON 8/22, 23/2017 (see DOC. 181-2 at 3-4).

TABLE OF AUTHORITIES CITED

CASES

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.
OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix *"A"* to the petition and is

☒ reported at *21-12415 DOC. 41-1 9/11/23 at 1-5*; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix *"B"* to the petition and is

☐ reported at *DENYING Rule 60(b)(6) (DOC. 184)*; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished. *(see attachment 1, Appendix continue)*

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

(see attachment 1, Appendix continue)

OPINIONS BELOW CONTINUE

APPENDIX C, IS THE DENIAL OF MOTION FOR REHEARING the ELEVENTH CIRCUIT COURT OF APPEALS entered ON 11/01/2023 DOC. 46-2

II. JURISDICTION

THE ELEVENTH CIRCUIT entered its order opinion judgment ON September 11, 20 Affirmed the District Court's decision denying Rule 60 (b)(6) AS 60(b)(2) SEE appendix 'A'.

A TIMELY PETITION FOR REHEARING WAS denied ON NOVEMBER 01, 2023. A COPY OF THE ORDER denying Appeal at APPENDIX C.

THIS COURT HAS JURISDICTION ~~under~~ under 28 U.S.C. § 1254(1)

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THIS CASE INVOLVES THE RELATIONSHIP BETWEEN 42 U.S.C. § 1983 AND STATE OF GEORGIA TORTS LAWS by an State Prisoner, Generally asserting claims under the first and eighth Amendments for alleged denial Veterans meals due to Retaliations by Previously filing Grievances and lawsuit and for Racial discrimination of nationality Haitian NATIONAL, Religions or Accent mean language. failed to exhaust Administrative exhaustion under the PLRA, 42 U.S.C. § 1997e(2), which Appellate provided newly evidence from state court clerk that proof that He did not fact filed his original complaint with it in state court timely After exhaustion of administrative Ended to his motion Rule 60 (b)(6) for Relief.

on the ground Newly Evidence (see doc. 181-1).
Fed. R. Civ. P. 60(b)(4) and (5), see Appendix B.

RULES OF PROCEDURE INVOLVED

Federal Rules of Civil Procedure 59(e) provides:
MOTION to alter or amend a judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Federal Rule of Civil Procedure 60 provides, relevant part:

(b) Grounds for Relief from a final judgment, order, or proceeding. On motion and ~~terms just~~ terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
 - (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
 - (3) ~~fraud discovered~~ (whether previously called ~~intrinsic or~~ intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
 - (4) The judgment is void;
 - (5) the judgment has been satisfied, released, or discharged; it is based on an early judgment that has been reversed or vacated; applying it prospectively is no longer equitable; or
 - (6) any other reason that justifies relief.
- (c) TIMING AND EFFECT OF THE MOTION.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time - and for reasons (1), (2), and (3) no more than a year after judgment entry or the judgment or order on the date of the proceeding.

(2) effect on finality. The motion does not effect's finality or suspend its operation.

STATEMENT OF THE CASE

STATEMENT OF THE CASE

APPELLANT JEAN JOCELYN MERILLIEN, inmate IN the Georgia Department of Corrections, sued APPELLEES [ANTOINETTE CALDWELL and ANNETTE GRANISON], asserting claims under 42 U.S.C. § 1983 for alleged violations of the first and eighth Amendments, and under the Religious Land Use and Institutionalized Persons Act. The district court granted Summary Judgment and dismissed Merllien's claims because he failed to exhaust his administrative remedies before bringing suit, as required by the Prison Litigation Reform Act. Merllien filed motions to vacate the Judgment under Fed. R. Civ. P. 60(b)(6), submitting newly discovered evidence (Handwritten notes letter from state court's clerk, and Informa SAPRUS (tpp) notarized 3 days after exhaustion ended, on 8-14-2017 that were attached with state inmate civil action form "complaint" and handed to prison official mailroom for delivery to Johnson county superior court on same date 8/14/2017 which the clerk of state court admits that she received them on 8/25/2017 and filed them on 8/27/2017 which show that Appellant's original complaint filed in state court 13 days after exhaustion administrative remedy was fully exhausted after ended on 8/11/2017, pursuant to prisoner mailbox rule and under state law.

The District court denied Appellant's motions. Appellant appeals the denial of his second motion to vacate the Judgment.

A. FACTUAL BACKGROUND

Appellant Jean Jocelyn Merllien, is an inmate prose Georgia Department of Corrections, who filed suit in the Superior Court Johnson County, under 42 U.S.C. § 1983 and state torts claims, generally asserting claims under the first and eighth Amendments against named five defendants: MR. Hurst, cert sergeant; MS. Smith, CERT officer

; MR. Scott, CERT officer; SHAWN EMMONS, warden; and MS. GRAVISON, Kitchen manager - all defendants are employees of JOHNSON STATE PRISON ("JSP") in WRIGHTSVILLE, Georgia.

ON JUNE 28, 2018, Plaintiff filed a ^{3rd} ~~2nd~~ Amended complaint. IN the ~~3rd~~ Amended complaint, Plaintiff sought to add new claims against new defendant CALDWELL ANTOINE, warden of JOHNSON STATE PRISON (JSP). Plaintiff as prose mailed the 6th Amended complaint to prior counsel that was represented all defendants, she was assistant Attorney General to her office. she never response to Plaintiff's 3rd Amended complaint. However, on JUNE 22, 2018, Plaintiff filed another 4th Amended complaint adding 4 new defendants - 69 serving the same assistant attorney General that was represented the first 5 defendants.

Defendants' new counsel waited until August 9, 2018 to remove the case to federal court while untimely response to Plaintiff's 3rd Amended complaint against CALDWELL.

ON AUGUST 20, 2018, Plaintiff filed a timely motion to Remand (DOC. No. 3) and on September 10, 2018, He filed motion to Dismiss Removal for lack of jurisdiction (DOC. 12), for which the District court denied both motions, and ordered Plaintiff with instruction to file an Amended complaint with District court. (see DOC. 29 at 10-15) and to serve all defendants.

B. PLAINTIFF'S AMENDED COMPLAINT
(DOC. 41) FILED IN THE DISTRICT COURT ON 11-05-2018
PLAINTIFF'S CLAIMS: (DOC. 41 at 7-19)

Plaintiff alleges that "ON 3/21/2017, while He was transferred from Hays State Prison to (JSP) JOHNSON STATE PRISON, several other inmates from Hays State Prison (HSP) asked ("HSP'S) officials if they could give him some stove good, because He did not have any foods for him to eat. They officers agreed, so they inmates gave Him over \$75.00 stove goods and Hygens, also the Hays State Prison's

Officials gave him "Prisoner's Inventory" and Property sheets
 Receipts listed every item over 20 inmates gave him, when
 Plaintiff arrived at Johnson State Prison with other
 inmates, (John (4) defendants [Mr. Hurst
 Ms. Smith, Mr. Scott and one unknown named officer
 took them to the Gym for orientation for inventory, most
 of the inmates had lots of goods just like him, when
 they cent officials saw men like looks different and
 had big accent, they asked him what island you fucking
 from, Mr. Menlie told them from Haiti, they separated
 him from other 16 inmates and asked him to provide them
 with receipt for the stone goods he had. Mr. Menlie gave
 them the receipts that Hays State Prison officials gave
 him when left (HSP) as property sheets, which was signed
 and executed by two (HSP) officials - (separate intent),
 Defendants Hurst, Smith and Scott told Menlie "fucking
 inmate Property sheet are not a receipt and that had
 fucking stole the goods he have with him, and made him
 go back in forth, while all other inmates watching them.
 Finally they gave Mr. Menlie all damaging goods and they
 took for themselves, neither wrote him a receipt for what they
 took from him. When Plaintiff trying to explain them
 how he get these goods from other inmates from (HSP) they
 made fun of him saying you fucking Haitian speak no
 english get the fuck out here before I worse
 you a disciplinary Report (DR) for stolen goods and put
 you in the insulation holding cell, further defendant
 Ms. Smith threatening Plaintiff by pointing her fucking goods and
 to spite him and told him not to touch her fucking goods and
 that she will lock him up. Defendants Hurst, Smith and Scott
 did not treating the other U.S. citizen American prisoners like
 they did Mr. Menlie, even when most other inmates did not
 even had receipt and inmate properly sheet they let them takes
 their goods with them, without any problem. Defendant insulted
 and harassed the Plaintiff when made fun of him you fucking
 Haitian speak no english I illegal immigrant Trump will deport
 you from our country and send you back to your over country
 Haiti, when they asked him for his religious, he told them
 (Christian Catholic) they told him, you no fucking Christian
 Catholic, you do Voodoo in Haiti, which made all
 other inmates to laugh at Mr. Menlie.

Defendant [GRANISON, Kitchen manager of Johnson State Prison (JSP)] had intentionally denied the Plaintiff his diet "vegetarian meals trays" for no meat, and no fish and no eggs for over 13 days, from 3/27/2017 through 4/8/2017 even though when other officers at the kitchen had instructed her to provide Merilien with his vegetarian meal, because he does not eat any meat, fish and eggs. which resulted plaintiff to be starved without food for 13 days., Defendant Granison insulted and Harassed the plaintiff every times he came for food, she used profanity words to curse him by saying "you fucking Haitian poor country had no foods to eat but now you in America, you can't fucking eat meat. finally on 4/9/2017, the captain was in the kitchen with the sergeant - that overseeing the kitchen, the sergeant explained the Captain about her Ms. Granison's action, then the captain called the warden Mr. Emmons on Radio. when the warden came to the kitchen He told her her action against Merilien were wrong and instructed her to provide Mr. Merilien with his meal trays without meat, eggs and no fish because Plaintiff is vegetarian.

After warden emmons instructed her to provided MR. Merilien with his vegetarian meals on 4/19/2017. After the warden left the kitchen she swear she would never gives Merilien only other vegetarian trays unless the medical order her to do so.

4/5/18 Defendant [Caldwell Antoine] warden of Johnson State Prison, deprived Plaintiff's equal due process clause on 4/5/18, when Plaintiff was transfered to Johnson State Prison as detainee for court date 4/10/2018, at Johnson County Superior court for this case against Granison. Caldwell saw him and told him that is good you back here, for all grievances and lawsuit you filed against my officers and warden Caldwell told him I will punish you (Haitian), warden Caldwell instructed both his officers to place Merilien on holding insulation cell for 21 days with other gang members called the Blood, a man whom ~~just~~ had just stabbed other inmates as a way to hurt Merilien, they gave him no blanket, sheet, no pillow case and no pillow, just a dirty mat to sleep, and no changing clothes to wear. further Caldwell order

and instructed his Kitchen Manager MS. GRANISON not to provide Plaintiff with any vegetarian trays without meat, fish and no eggs. Some time 3 or 4 days no shower and the Hold is unsanitary because bathroom overflowing every week. Plaintiff suffered starvation 2 days at ("JSP") because defendants I Caldwell and Granison's misconduct intentionally failed to provide him with his vegetarian meals as a punishment for writing grievances and filing this suit.

As result of all defendants "acted" maliciously and sadistically to causing unnecessary harms and injuries to Plaintiff. Plaintiff Merilien suffered starvation, humiliations, serious harms, (a) sustained multiple/several physical injuries and irreparable harms (b) "migrain headaches, Stomach hurts for 13 days first violation and 2 days second violations for failed to provide him foods (c), dizziness, extreme emotional distress from the incidents and suffered mental anguish; (d) Retaliation transfer from Johnson State Prison to Wilcox State Prison on 5/15/2017 by Defendant warden Emmons, (e) GDC and warden failed to properly trained its officers, which caused pattern of events demonstrating intentional retaliation against plaintiff. I defend ants warden Emmons, could had have prevented these misconduct of his officers by reviewing JSP's video tapes after plaintiff had informed him these officers Hurst, Smith and Scott's misconducts at the orientation on 3/21/2017. Although He instructed Granison on 4/9/2017 to provide plaintiff with his vegetarian meals but after he lefted the kitchen she swear she would never provide Merilien with any substitute meal again and Emmons knew that as plaintiff mentioned on his grievances.

Plaintiff suffered racial discriminatory animus by the misconduct of defendants Hurst, Smith and Scott on orientation 3/21/2017 by these defendants because of his nationality, (Haitian) religious and languages, looks and accent, because these officers did not treat other U.S. citizen prisoners as they had mistreated him. further, He suffered racial discrimination animus by defendant and Retaliation

treatment by the misconduct of defendant GRANISON ~~in refusing~~ for refusing to provide him with his vegetarian meals for 13 days first time and second violation 21 days due his nationality "Haitian" religious, language, looks, accents and because of the grievances and suit filed against JSP's officers these defendants. (See doc. 41 at 1-19).

C. DEFENDANTS SHAWN EMMONS, TARA JACKSON, ANNETTE GRANISON, ANTOINE CALDWELL, M.S. SMITH, SERGEANT HURST AND SCOTT'S FILED MOTIONS TO DISMISS (DOC-83)

D. MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION FILED ON 02/13/2019 PAGE 10 OF 38

ON 02/13/2019, The magistrate Judge entered a Report and Recommendation and recommends Plaintiff's claims against defendants JACKSON, SMITH, HURST, SCOTT, EMMONS and MARTIN be dismissed for failure to state a claim upon which relief may be granted, and defendants JACKSON, SMITH, HURST, SCOTT, EMMONS, and MARTIN be dismissed from this case. (see doc. 120 at 2, 2-38)

Also before the court is defendants EMMONS, JACKSON, GRANISON, CALDWELL, and MARTIN's motion to dismiss, (doc. no. 83), which should be denied as moot as to defendants EMMONS, JACKSON, and MARTIN in light of the court's screening of the amended complaint and granted in part and denied in part as to defendants CALDWELL and GRANISON. IN a companion order, the court allows to proceed Plaintiff's first Amendment Retaliation and Eighth Amendment condition of confinement claims against CALDWELL, warden and Plaintiff's first Amendment free exercise, Religious Land Use and Institutionalized Persons Act ("RLUIPA"), and Eighth Amendment condition of confinement claims against

Defendant GRANISON. (see Doc. 120 at 2.).

ON 03/20/19, The District court order adopted the
MAGISTRATE JUDGE'S (R & R) (DOCS. 120, 125.) (see Doc. 125).

E. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (DOC. 145.)

ON 12/19/2019, Defendants CALDWELL and GRANISON
filed their motion for SUMMARY JUDGMENT arguing
that Plaintiff's complaint should be dismissed for
to exhaust his administrative remedies that ended
ON 8/11/2017 AND that The original complaint signed
ON 7/29/17 that WAS the date considered filed.
While defendants' counsel fully aware the original
complaint state inmate civil action form were attached
together with Inmate Request to Proceed Inmate
PAUPERIS (IFP) Notarized ON 8/14/2017 and handed
to prison officials for mailing same date after
Notarized Plaintiff mistakenly dated wrong date on
unnotarized civil action form and mail them together
which was three (3) days after exhaustion ended
but defendant's counsel misleading the court to believe
lies. And the letter from state court's clerk confirm
that she received the prose inmate civil action
form together with Inmate Request to proceed on
Inmate pauperis on the same envelope ON 8/25/2017
and filed them ON 8/27/2017. (see Doc. 181-1, EX. A, and
181-3 at page 3 "IFP" Notarized and sealed ON 8/14/2017) pur-
suant to prisoner mailbox Rule and state law, Plaintiff's
complaint timely filed ON 8/14/2017 and 8/25/2017
When the clerk admitted she received them.

F. MAGISTRATE JUDGE'S REPORT AND RECOM- MENDATION (DOC. 162) FILED ON 08/17/2020

ON 08/17/2020, the magistrate judge entered a Report
AND Recommendation AND Recommends Plaintiff's

Motion for Summary Judgment be DENIED, (DOC. no. 139), and Defendants' motion for Summary Judgment be GRANTED, (doc. no. 145), a final Judgment be entered in favor of Defendants, and this civil action be DENIED. (See doc. no. 162 at 1)

The Magistrate Judge finds that "for his claims against GRANISON, Meritien filed Grievance No. 240984 at Johnson State Prison on April 6, 2017. ECF No. 145-3 at 6-7, 46-58. After investigation, the Grievance was denied on April 28, 2017, because the allegations were found to be unsupported by the investigation. Id. Meritien filed appeal on May 3, 2017. Id. The Appeal was denied on October 12, 2017. Id.

Disputes, the Ruling were contrary to Grievance investigation's documents at doc. no. 145-3 page 52, Document mailed to GRANISON on 4/17/17 but the message dated 4/11/2017 at 11:19 A.M. Section Good Morning:

I know that we do not honor a no meat diet, but I have received a request from inmate Jean J. Meritien GDC # 1048466 who has been given a no meat diet from HAYS State Prison. (see GRANISON's Affidavit dated 4/17/17 at doc. 145-3 at page 51) violation of the Plaintiff's first and eighth Amendments. see HICKS V. FERRERO, 241 F. App'x 595, 598-99 (11th Cir. 2007) in Wildberger v. Bracknell, 869 F.2d-

-
1. Contrary Ruling on Grievance investigation because GRANISON admits on her statements that she was instructed by the warden to provide Meritien with NO meat trays on 4/05/17 per the warden. (because she had been refused to provide him his vegetarian meals). And she confessed that inmate Meritien does not have a meat allegy per medical therefore inmate Meritien will not receive a substitute on his tray. (see GRANISON Affidavit at doc. 145-3 page 51). Although the Head warden instructed her to provide Meritien with substitute tray on 4/5/17 she confessed on 4/17/17 she would not follow the Head warden's order doc. 145-3 at 51 her Affidavit proof her violation.

1467, 1468 (11th cir. 1989) (holding actions taken in retaliation for filing grievance and lawsuits constitutes actionable conduct). The constitutional necessity of providing adequate food, clothing, and safety measures to prisoners is also clearly established by precedent. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

DOC. AS40 CALDWELL, Meritien filed Grievance 266025 at Wilcox State Prison on April 26, 2018, DOC. 145 at 7, 59-70. The grievance was rejected by the Grievance Coordinator on May 15, 2018, on the basis that the grievance addressed more than one issue, which is not permitted under the grievance procedure. *Id.* Meritien filed an appeal of the grievance rejection on May 29, 2018. *Id.* The appeal was denied on September 11, 2018.

The Magistrate Judge recommended that Defendants' motion for Summary Judgment be granted DOC. 162. Under the PLRA, in order to properly exhaust his claims. The Magistrate Judge held that Meritien "brought" suit for the purpose of the PLRA when he signed the original complaint on July 29, 2017,

("The Magistrate Judge failed to verify if the the attachment notarized Inbrma pauper's attached with the original complaint which showed these documents notarized on 8/14/2017, 3 days after exhaustion administrative remedies ended and same date hand delivered to prison mail officials for delivery to state court on 8/14/2017, and the letter from the state court clerk she acknowledged that she received them on 8/25/2017 and filed them in state court on 8/27/2017 see DOC. 181-1 at Ex. A. and DOC. 181-3 at page 3") under Prison Mailbox Rule, plaintiff's complaint timely filed on 8/14/2017 when notarized (If) and mailbox both (complaint and If) and mail them when handed to prison authorities and timely under state inmate civil action law when the clerk receive them on 8/25/2017 and filed them on 8/27/2017, showed Magistrate Judge erred on its recommendation.

Id. at 14-15. In making that determination, the Magistrate Judge applied the Prison Mailbox Rule, under which a prisoner's complaint is deemed filed when it is delivered to the prison authorities for mailing, and the signature date is assumed to be the day of delivery to prison officials, absent of evidence to the contrary. see Daker v. Comm'r, G2. Dep't of Corr., 820 F.3d 1278, 1286 (11th Cir. 2016), citing Williams v. McNeil, 557 F.3d 1287, 1290 n.2 (11th Cir. 2009) and Washington v. United States, 243 F.3d 1299, 1301 (11th Cir. 2001). Here, Merilien's original complaint handed to prison authority for mailing together his Informa Parperis request to proceed in state court as indigent on 8/14/2017 "IFP" was notarized on 8/14/2017. The clerk of state court acknowledged that she received them on 8/25/2017 and filed them original complaint and his request to proceed on Informa Parperis on 8/27/2017, see DOC. 181-1 at ex. A, and DOC. 181-3 at page 3. Notarized seal and date executed as evidence the Magistrate Judge's conclusion on this issues was wrong and required reversal of the entry of summary judgment.

"Discussions"

THE words of "brought" suit mean when the first commencement filing the complaint under the PLRA NOT continue filing on amend complaint, 42 U.S.C. § 1997e(2)

The Magistrate Judge error concluding that the court "grant" Caldwell's motion for summary judgment because Plaintiff first sought to add Caldwell as a new defendant when he filed his third amended complaint in state court, which he signed on April 30, 2018. Id. at 15. Merilien filed grievance 266050 for his claims against Caldwell, but Merilien "brought" suit before he received a grievance response, which occurred on May 15, 2018, and before he received a response to his appeal on September 11, 2018. Accordingly, the Magistrate Judge held that Merilien failed to exhaust his administrative remedies for his claims against Caldwell.

The district court adopted the Magistrate Judge's Report and recommendation over Merilien's objections.

see Doc. 166 at 1-4. The District court clarified that the Prison mailbox Rule does not apply in state court of Georgia, so it cannot be used to determine when the complaint was "brought" in this case (which originated in Georgia state court). Id. Regardless, the District held that under the PLRA, a civil action is "brought" by prisoner when he signs his complaint.

IN THE present case, Plaintiff disagreed with Doc. 166 at 1-4. District court erred adopted Report and Recommendation on these issues suit "brought" when Plaintiff signed the original complaint. As the evidence showed Plaintiff's original complaint and ("Ifp") notarized on 8/14/2017 was delivered to prison authority on 8/14/2017 (see Doc. 181-1 at 181-3 at page 3) testimony of the state court clerk significant in the determining time lines, because the clerk admits that she received the ~~state~~ inmate civil action form and inmate request to proceed in forma pauperis on 8/25/2017 and filed them under state law on 8/27/2017. Therefore Plaintiff complaint timely filed on 8/25/2017 when she received them since Prison mailbox rule does not apply in state court of Georgia.

Further, a timely filing petition or complaint by an state prisoner does not apply to PLRA 42 U.S.C. § 1997e(2) and Prison mailbox Rule. These Rules only apply for determined if the inmate's petition or complaint timely when he mail it to prison authorities for delivery to court. As showed above Plaintiff's original complaint is not untimely filed on state court. the clerk admitted that she received them 13 days after exhaustion of administrative remedy ended on 8/11/2017. she received them on 8/25/2017, 13 days after exhaustion ended.

Additionally, when Defendants moving the case to federal court (Doc. 1) defendants admitted and acknowledged that Plaintiff original complaint filed on 8/25/2017 in state court, and defendants agreed to moved the state court case with condition that plaintiff

's complaint is timely filed. NOW they cannot argue about a timely filing complaint. Additionally, The state court did not yet rule on Plaintiff's motion for leave to file a third amended complaint ~~and~~ adding Caldwell on the original complaint. Since the state court NEVER decide both second and third and 4th ~~and~~ motions for leave to add these parties as new defendants and responses to these motions for leave were not timely filed prior removing this case the removal to federal court was not properly removed to federal court under § 1442. A removal is proper when a party has been properly accepted as a party. IN the present case Caldwell, Bryant, Branson and some other new parties was not a parties legally because the state court judge has not yet made any rule on motions for leave to add them as new defendants - prior to remove this case from state court into federal court.

Under 60(b)(6), Appellant filed a motion to vacate the Judgment. (Doc. 168) Meritien argued that because his in forma pauperis request "IFP" to proceed in state court was notarized on August 14, 2017 and delivered to prison authorities on same date with his original state inmate civil action complaint form by mailing to the Johnson County superior court his complaint is timely filed when the clerk received and on 8/25/2017 and filed on 8/27/2017, 13 days after exhaustion ended. NOT the date original complaint mistakenly signed. see (Doc. 168-1 at page 3, IFP, notarized sealed)

The District court denied the Appellant's Rule 60(b)(6) has held that Doc. 171. "because signing the in forma pauperis motion does not refute the finding regarding date the complaint was signed, it is irrelevant." Id. at 3. The District erred concluding that "it is entirely consistent, and somewhat typical, that these documents are signed and submitted on different dates by plaintiff." (see Doc. 171 at 3). The state court clerk acknowledged "IFP" pauperis request and complaint was received together

in the same envelope on 8/28/2017 and filed them in state court on 8/29/2017. The factual evidence showed that District court's conclusion that "IFP" was received or filed in state court on a different date was in error. Revelable see DOC. 181-2 at Ex. A, Note of the clerk and (DOC. 181-3 at 3). First motion to vacate was filed 38 days after judgment was entered (see DOC. 171 at 1) order. Plaintiff filed a notice of Appeal DOC. 172, that Appeal was dismissed for want of prosecution, because He did not \$555.00 to pay the cost of filing notice of Appeal, (see DOC. 179).

To prove District court, its conclusion was wrong on issues ~~of~~ "IFP" was not mailed to the state court on a different date (see DOC. 171 at 3). Plaintiff moved due diligence on (December 15, 2020 and wrote Ms. Patricia Glover, state court Johnson County clerk a letter states as follows:

TO: Honorable Patricia Glover, clerk
OF SUPERIOR COURT OF JOHNSON COUNTY

Date 12/15/2020

RE: MERILEEN V. HUNT et al., NO 2017-CV-075.

(Letter was filed on 12/28/2020 which was filed in state court 18 days after Judgment dated 12/10/20 see DOC. 171 at 1-3 date filed.) Showing due diligence to contact the clerk 5 day 12/15/2020 for information and documentation. (see DOC. 181 at Ex. A, DOC. 181-1)

IN REQUEST FOR INFORMATION ABOUT STATE RECEIVERS (IFP) and complaint AND COPY OF ENVELOPE FOR THE DISTRICT COURT USE (DOC. 181-2).

Dear MS. PATRICIA GLOVER:

I have a big problem in this case in District court, The resolution are in your hands.

Please explain or inform U.S. did you received original complaint separate date with (IFP). Because I knew both were mailed to your office together on 8/14/2017, There is no evidence

IN this court I sent (IFP) request after mailing original complaint. further, there is no order from this court asked me to send the court (IFP). Both were mailed together to your office. I need your helps for resolution in this matter. To proof District court my complaint were mailed to your office on 8/14/2017.

THE Clerk's RESPONSE as follows:

* 1-26-2021

Attached is a copy of the inmate form for civil action. + the request to proceed in forma pauperis filed on 8/27/2017 along with a copy of the envelope they were received in. clerk's signature. (see DOC. 181-2 at ex. A. And Doc. 181-3 at 3)

After Received these documents from the state court clerk on 2/3/2021, Prose Plaintiff moved and filed a second motion to vacate under newly evidence Rule 60(b)(4)(6) (see Doc. 181 at 4-5) and point the District his newly evidence and notes of the clerk could makes a better decision and conclusion on following

Grounds: Plaintiff argues that his Rule 60(b)(4)(6) on 2/9/21, (1) The District court Judgments orders Docs. 162,

166, 171, 176 are void because petitioner met Rule Prisoner mailbox Rule and Fed (4) (E), 28 USC § 1746, that is original complaint and inmate request to proceed in forma pauperis (IFP) were mailed on 8/14/2017 when he delivered to Prison Authority mailroom for mailing to Johnson county Superior court, which State court clerk acknowledged she received them together on the envelope attached hereto listed as exhibit 2, and filed on 8/27/2017. As the clerk noted at exhibit A, (see Doc. 181-1) (Please see Doc. 181 at 1-5) and the questions were presented on the said motion which District court erred disregarded his serious question present when mailing the original complaint and IFP.

Appellant showed that he could not mailed original complaint on 7/29/17 while IFP, enclosed to it notarized on 8/14/2017 at the clerk acknowledged on his notes (see Doc. 181-1) and (Doc. 181-3 at 3).

THE District court denied the Plaintiff's motion to vacate under Rule 60(b)(4)(6) on the conclusion
-17.

Merilien appeals the District Court's order

Id. see U.S. Supreme Court Rule 39 c.

discretion denied plaintiff's notice of appeal on the complaint. But District Court entered order as action filed in state court on 8/22, 23/2017 to file

(see doc. 181-2 and doc. 181-2 at 3-4) order regarding filing had previously granted (ITP) to proceed in state court

continually, to proceed with ITF, since the state court

by present as imminent danger notice of appeal

on March 5, 2021, see doc. 186 at 1. Notarized on 03/10/2021. The notice of appeal was filed by BNF and date

on March 10, 2021 to appeal District Court order entered

Appellant filed a timely notice of appeal

60 days after judgment was entered.

claims and argument on Rule 60(b)(5) filed on 02/09/2021

newly evidence the clerk had note writing to proof his

court to prevent those plaintiff from presenting his

on one eveloy on 8/23/2017. It was error for District

acknowledgment she received ITF and complaint together

the District Court disregarded the state court clerk notes

Motion to vacate was an abuse of discretion because

Plaintiff showed that District Court order denied

(Doc. 181) is denied on 5th day of March 2021. (see doc. 184)

Plaintiff Merilien's present motion to vacate judgment

findings was based will not be vacated. Upon the foregoing

remains undisturbed, and the order upon which this

argument prior to exhaustion his administrative remedies

Accordingly, the conclusion that he signed the compl-

unrefuted signature on the complaint on July 29, 2017.

filing of any paper in state court are irrelevant to refute

the date he signed his in Anna Lawrence papers, and date

ant-July 20, 2017. The date he mailed the complaint

nothing relevant to refute the date he signed the compl-

Simply refreshes arguments previously made and after

the complaint. IN a his current motion to vacate, Plaintiff

that a plaintiff brought a civil action when he signed

Denying his motion to vacate, under Rule 60 (b)(4)(6).

C. STANDARD OF REVIEW

The denial of a Rule 60(b) motion is reviewed for an abuse of discretion. *Waddell v. Hendry Cnty. Sheriff's Office*, 329 F.3d 1300, 1309 (11th Cir. 2003).

THE ELEVENTH CIRCUIT COURT OF APPEALS
CASE NO. 21-12415 DOC. 41-1 dated 09/11/2023 page 1 of 5
a NON-ARGUMENT calendar. OPINION

held that (" Here, as an initial matter, Merlien's issues not raised before the district court are forfeited. Argument he only raised in his reply brief are likewise forfeited. Merlien's issues are not so extraordinary as to justify excusing his ~~forfeited~~ forfeiture, so we not consider the forfeited arguments.

We construe Merlien's argument under Rule 60(b)(2) because he asserts that the state court clerk correspondence is newly discovered evidence. Although he claims that his argument falls under Rule 60(b)(4) and 60(b)(6), those rules do not correspond to the substance of his argument. Even if his argument were ~~correct~~ correct, it would not show a lack of jurisdiction or denial of due process, so Rule 60(b)(4) is inappropriate. Further, because Rule 60(b)(2) captures the argument's substance, Rule 60(b)(6) is inapposite.

(DOC. 41-1 at 5) the Eleventh Circuit ruled that " under Rule 60(b)(2), Merlien did not exercise due diligence in discovering the state court clerk's evidence because the clerk would have known when his filings were received at the time defendants raised the exhaustion issue in the motion for summary judgment, but Merlien did not seek the clerk's evidence until after summary judgment was granted and his first motion to vacate was denied. Because Merlien did not exercise due diligence, the district

Court did not abuse its discretion in denying his motion. While the district court did not base its denial on failure to exercise due diligence, we may affirm on any ground supported by the records.
Affirmed.

APPELLANT filed a timely petition for rehearing EN BANC, ON ISSUES to be reconsidered AND BASIS therefore for as following issues:

The Appellant respectfully submits that this court has found facts regarding the lack of justification that are not supported by the records and erred as a matter of law in depriving the appellant his constitutional right to present a justification defense and presented witness evidence to support a defense based on Federal R. Civ. P. 60(b)(2), (4), (6).

Evidence of Johnson County Superior Court's Clerk "note" under is letter to the clerk and including the clerk signature on 1/26/2021, see (Doc. 181-1, Doc. 181-3 at page 3). Acts must be included on district court's decision denial Appellant's motion to vacate judgment under Rule 60(b)(4) and (6), (see Doc. 184 at 1-2). Unless Appellant first makes a prima facie showing of justification by showing sufficient reliable evidence under Rule 60(b). Newly discovery evidence which the state clerk admit and acknowledged that "on 1/26/21 attached is a copy of inmate form for civil action + the request to proceed in forma pauperis filed on 8/27/2017 along with copy of the envelope the were received in, were sufficient for district court to grant Appellant's motion to vacate judgment under Rule 60(b).

The eleventh circuit court of appeals however, "Denied" Appellant's Petition for REHEARING EN BANC ON NOVEMBER 01, 2023 (see Doc. 46-2, 2022 page) as follows:

The Petition for REHEARING EN BANC is DENIED, no judge in regular active service on the

Court having requested that the court be Polled on Rehearing en banc. FRAP 35. The Petition for Rehearing EN BANC is also treated as a Petition for Rehearing before the Panel and is DENIED. FRAP 35, IOP 2.

"Arguments"

The eleventh circuit erred on its decision that Appellant did not showed due diligence obtaining the the state clerk court's evidence "note" Handwritten letter (Doc. 181-1 at EX. A) to proof his state inmate civil Action Complaint and "IFP" were timely filed 30 days After his administrative exhaustion ended. The District court order were entered on 12/10/2020 see Doc. 171 at 3. District court said that "IFP" notarized on 8/14/2017 these documents are signed and submitted on different dates by Plaintiff (see Doc. 171 at 3.) 5 days after Plaintiff received the order on 12/15/2020 He then wrote the clerk a letter reference the order 12/10/2020 (Doc. 171 at 3) for the clerk to explain if she had received these documents on different dates see Doc. 181-1, the clerk received the letter on 12/28/2020 and filed same date, but responded to the letter on 1/26/2021. In a notes "she wrote at the foot of Plaintiff's letter and signed, she acknowledged that she received these documents "IFP" and complaint same date in one envelope on 8/27/2017 and filed them which showed District court conclusion was wrong on that issues see Doc. 171 at 3 and compares them to the state court clerk's notes (Doc. 181-1).

From the time District court entered contrary decision Doc. 171 at 3, through the time the clerk's respond to Plaintiff's Request for information and documents were 46 days, and moved on 2/09/2021 filing his fed R. Civ. pr 60(b)(6) which was total 13 days after received the clerk's letter and evidence. total 59 days to filed his motion to vacate (Doc. 181-2). Although plaintiff filed his motion to vacate as Rule 60(b)(6), The eleventh circuit said its Rule 60(b)(2), plaintiff acting pro se showed due diligence to obtained the clerk letter and information to proof District court's conclusion was erred within 46 days because the clerk herself waited more than 30 days to respond to his letter. Rule 60(b)(2) statute limitation its one year and plaintiff filed in 59 days showed due diligence, specifically the clerk letter showed facts and evidence his complaint were timely received and filed in state court. District intentionally disregarded the clerk's evidence.

REASONS FOR GRANTING THE PETITION

For the last fifty years, the courts of Appeals have been openly divided on whether Rule 60(b)(2)(4)(6) authorizes relief from judgments based on exercises due diligence obtaining newly evidence on extraordinary circumstances. That intractable conflict means that the balance between finality and equity varies based solely on geography. This case provides many opportunity to bring relief about Rule 60(b)(2)(4) and (6) uniformity. And majority view-permitting Rule 60(b)(2)(4) and (6) relief based on newly evidence ~~obtained~~ discovered after exercises due diligence and extraordinary circumstance within one year or before one year limitation ended - is contrary to the text of that rule, its relationship to related Rules of Procedure, and this court's rule 60(b) precedents. The court should grant certiorari.

I. The circuits HAVE BEEN DIVIDED FOR THE LAST FIFTY YEARS

This court's intervention is necessary to resolve a conflict among the circuits regarding the circumstances under which, a *Gonzalez, Byck v. Davis* and *Kemp v. United States* contemplate a procedural default in the integrity of an initial judgment proceeding can warrant later reopening the judgment in that action on equitable grounds newly evidence under Fed. R. Civ. P. 60(b) beyond the Eleventh circuit's substantive misleading of Rule 60(b)(6) or 60(b)(2) of *Kemp v. United States* its ~~the~~ having denied Appeals on this issue of failed to exercised due diligence 69 days after final judgment entered reflects yet another failure by that court to properly apply one year limitation to Rule 60(b)(2) or Rule 60(b)(6), on a case that involve state prose prisoner. specifically the evidence presented by the state court clerk showed the district court's ruling was an abuse of discretion or failure to exhaust administrative exhaustion.

IN THE CIRCUMSTANCES IN THIS CASE, the District Court abused its discretion in denying meridian's Rule 60(b)(6) And the Eleventh Circuit affirmed its decision on issue failure to exercise due diligence to obtain new evidence discovered 69 days after final judgment entered. see *Beck v. Davis*, - U.S. - 137 S.Ct. 759 (2017)

Further, other circumstances in this case Appellant demonstrated he had exercised due diligence by contacted state court's clerk within 5 days after district court entered an order (Doc. 171 at 2-3), indicated that "IFF" was filed on a different date from the original complaint, while the clerk took more than 30 days to respond to plaintiff's letter and her statement showed contrary evidence to what district court concluded (see Doc. 181-2 at Ex. A). The state court clerk acknowledged and testify that "IFF" notarized on 8/14/2017 was received together with original inmate civil action form. (see Doc. 181-3 at page 3). See *Gonzalez*, 545 U.S., at 535, 125 S.Ct. 2641 (Litjeborg v. Health service Acquisition Corp., 486 U.S. 847, 863-864, 108 S.Ct. 2194, 100 L.Ed. 2d 855 (1988))

HERE, The District court departure from basic Principle was exacerbated because it's concerned claims of racial discrimination on basis Plaintiff's nationalities "Haitian National", Religions, languages and look and accents, Retaliation for writing grievances and filing suit to treat him differently than other U.S. citizen prisoners Refusing to provide him with his vegetarian meals for more than 21 days, which caused serious starvation and lost weights (see Docs. 205 at exhibit A, 10f3 is Mr. Washington's affidavit, eye witness testimonies fully supporting these claims). further, ~~and~~ odious in all aspects, is especially pernicious in the administration of Justice. "*Rose v. Mitchell*, 443 U.S. 545, 555, 99 S.Ct. 2993, 61 L.Ed. 2d 739 (1979), Relying on race to impose a criminal sanction "poisons public confidence" in the judicial process, *Davis v. Ayala*, 576 U.S. -, 135 S.Ct. 2187, 2208, 192 L.Ed. 2d 323 (2015). It thus injures not just the defendant, but "the law as an institution, ... the community at large, and courts." *Rose*, 443 U.S., at 556, 99 S.Ct. 2993

(internal quotation marks omitted). Such concerns are precisely among those we have identified as supporting relief under Rule 60(b)(6). see *Liljeberg*, 486 U.S., at 864, 108 S.Ct. 2194

The ELEVENTH circuit's decision in this case is contrary this court decision on *Kemp v. United States*, 596 U.S. — (2022), and further conflicted to the second circuit's decision on *United States v. CIRAMIS*, *supra*, found, that such "constructive disappearance" of counsel constitute extraordinary circumstances for the purposes of vacating a prior order of Eastern District court that granted summary judgment by default. IN *CIRAMIS*, the second circuit was hearing his second Rule 60(b)(6) motion, having affirmed the District court's denial of the first motion and grants relief on second Rule 60(b)(6) by defendant produced letters and Affidavit from former attorney. see *CIRAMIS*, 563 F.2d at 30, 32. (2nd circuit)

APPELLANT MERILION Satisfactorily and demonstrate that He maintains a meritorious claims and that ~~he~~ said claims is brought within prior to one year as reasonable time by the due diligence when He wrote the state court clerk asked for information and documents to prove District court that He had exhausted administrative remedy before filing his state inmate civil torts and § 1883 suit in state court prior removing his case to federal court. Also show that an extraordinary circumstances required the granting his Rule 60(b)(4) and (6). The newly evidence of the state court clerk and eyewitness inmate Washington Affidavit were significant to required granting Rule 60(b) to reopen this case. (see DOCS-205 at ex. 1 at 1-3 and DOC. 181-7 at ex. A).

II. THE QUESTIONS PRESENTED IS RECURRING AND IMPORTANT

Resolving a fifty-year old circuit split alone warrants review. But the question presented is also recurring and important. The many appellate decisions cited above demonstrate that the question has recurred for the last five decades. It will continue to do so if this court does not resolve these issues

The ELEVENTH CIRCUIT erred in failing to follow this court's precedent on PATSY V. BOARD OF REGENTS. The supreme court clarified its position by holding that section 1983 plaintiffs are not required to exhaust state administrative remedies before bringing suit in federal court see PATSY V. BOARD OF REGENTS.

As in the case at bar, Plaintiff's inmate civil action from with REQUEST to proceed in forma pauperis WAS filed on state court after approved to proceed on IFP by state court judge See (DOC. 1 at 1-5) (DOC. 181-3-5, 181-1-5). prior Removal to federal court therefore, plaintiff's state inmate civil action WAS timely filed and WAS not required to exhaust such prior exhaustion of his administrative remedy. Under the ruling of this court PATSY, 457 U.S. 496 (1982)

III DISTRICT COURT ERRED ABUSING ITS DISCRETION ON RER DOC. 120 at 9 RECOMMENDED PROSE PLAINTIFF TO RETURN TO STATE COURT TO FILE FOR STATE CLAIMS

See DOC. 120 at page 9. Erred concluding that Plaintiff's request to Remand is procedurally improper, further, to the extent plaintiff seeks to bring state law claims based on these allegations, the court should decline to exercise supplemental jurisdiction over the state law claims if these defendants are dismissed from this lawsuit, as the court recommends herein. Accordingly, plaintiff may, if he chooses, pursue any state law remedies based on the allegation deprivation of property in state court.

That said Recommendation ON RER (DOCS. 120 at 9, and DOC. 125) WAS a gross abuse of discretion because these claims of state laws were already been properly filed on state court against these defendants prior one year before Removal. The proper Recommendation by the magistrate judge should have been a partial Remand state laws back to state court of Johnson county superior court. The district court were fully aware plaintiff is prose and proceed on ("IFP") in state court would not be able to Refile same state law claim in state court that is why state court dismissed his Refiling as moot.

IN MERILLEN V. EMMONS NO. 1:10-CV-03232 (N.D. GA. JANUARY 23, 2014) The District court granted Merillon's Motion to Vacate/Void Judgment (DOC. 85) on the same situation Rule 60(b)(6) because newly evidence from Mitchell Superior court county showed Appellant's state habeas corpus was timely filed before statute of limitations one year expired and the case was reopened. (See DOC. 88, District court Adopted (R & R) DOC. 85 ON 02/18/2014.)

HERE in the present case, Appellant provided newly evidence attached to his Rule 60(b)(4)(6) From the state court clerk to prove that his state inmate civil action and infractions were notarized on 8/14/2017 3 days after administrative exhaustion ended 8/11/2017, and showed same date 8/14/2017 Handed to prison officials for mailing to state court Johnson county superior court where the clerk acknowledged she received them on 8/25/2017 and filed them on 8/27/2017 (see DOC. 181-2, 181-3 at 3-5) But District court abused its broad discretion by made a contrary decision to the Northern District court on Merillon V. EMMONS, 1:10-CV-03232 (N.D. GA. JANUARY 23, 2014) (DOC. 85), when error disregarded the clerk's Notes that proof Appellant's claims was exhausted after exhaustion ended. (DOC. 184) is void. Denied Appellant's rights to presented evidence to Rule 60(b)(6).

Based on the Records before this court under the "right for any reason" doctrine, this court may correct District court finding and Remand partial or all state laws and federal claims back to the state court's Jurisdiction of JOHNSON county superior court. Specifically the dispute of failure to exhaust was not found in state court as true resolution in this case as the records support. Lucas v. W.W. Grainger, INC., 257 F.3d 1249, 1256 (11th Cir. 2001).

A. THIS COURT MAY SOON CONSIDER another petition RAISING the same issues PRESENTED here. If it grants review there, it should hold this petition pending its decision.

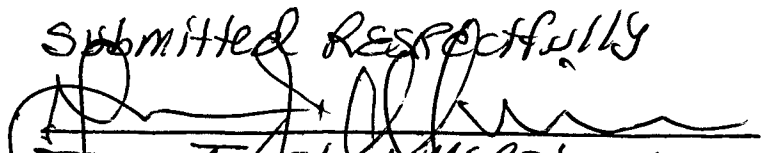
IV. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, THIS COURT should grant certiorari to review the Eleventh circuit's judgment refusing to grant appeal under Fed. Rule 60(b)(6) @s. on that issue, Petitioner's motion. Summarily reverse the decision below. hold this case as if considers the scope of BUCK V. DAVIS AND KEMP V. United States and other case Gonzalez, or grant such other relief as Justice requires.

This 7th day of December, 2023

I certify that the above foregoing is true and correct under penalty of perjury.

12/7/2023

Submitted Respectfully

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