

No 23-7487

IN THE
SUPREME COURT OF THE
UNITED STATES

RKB

BASIL UZOMA ONYIDO *Petitioners,*
v.
US ATTORNEY GENERAL *Respondents.*



BASIL UZOMA ONYIDO *Petitioners,*
v.
MERRICK .B. GARLAND *Respondents.*

*On Petition for Writ of Certiorari to the
Supreme Court of Washington.*

PETITION FOR REHEARING

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CORPORATE DISCLOSURE

The Corporate disclosure statement in the Petition remains unchanged.

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PETITION FOR REHEARING

Petitioner Onyido Petition for rehearing of this Court's October 7, 2024 Order denying his Petition for Writ of Certiorari

REASONS FOR GRANTING REHEARING

1. This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial and significant effect" The United States Court of Appeals for the 5th Circuit issued the opinion in **WILLIAM V. NEW ORLEANS Pub Serv. Inc.** 728 F.2d 730-733 (5th Cir.1984). The Fifth Circuit's intervening decision significantly and substantially confirms Onyido's fundamental question and previous filing in this Court.

The 5th Circuit Court held that an Order is void if the Court that rendered it lacked the jurisdiction of the Subject-matter or the parties or that it acted in a manner that is inconsistent with due-process of the law. This Court has already stated that a void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgment because it is entitled to no respect whatsoever on the basis that it does not affect impair or create legal rights. *Ex Parte Seidel*, 39 S. W 3d 221, 22 (Texas Crim. App (2001).

Onyido has clearly established in his Writ of Certiorari and his Supplemental Brief that his Equal Protection and Due-Process Rights under the 5th & 14th Amendment were critically violated by Garland's action of using a void judgment of Intent to defraud under IC: 35:43:5-4(10) by Hamilton County Superior Court 1, State of Indiana to issue an Order to show Cause against him which is contrarily to the provision of the Immigration & Nationality Act under 28 USC section1251(a)(2)(iii) & 8 CFR section 242(a)(1997) &(8 CFR section 241(a)(2)(iii) and also the Board of Immigration Appeals action under Interim Decision 3379 where they assumed the subject-matter jurisdiction to deviate from the subject-matter on appeal in addition unlawfully assumed authority to interpret the State of Indiana Criminal State under Indiana Code: 35:43:5-4(10) in their conclusion in Interim Decision 3379 that the same offense might have involved a lesser included offense of Attempt or Conspiracy to fraud Indiana Code 35:41:5-1 thereby sustaining deportability under INA section 101(a)(43)(u) which was not in the OSC against him.

The foregoing substantive claims which has not for once rebutted since all this years represented a fragrant abuse of his Equal-Protection and Due-Process Right under the 14th Amendment that this Court have a substantial interests to ameliorate by the dictate of the United States Constitution.

This Court should consider the very important constitutional question and its controlling precedent that a void judgment is a nullity from the beginning and is entitled to no respect because it does not affect impair or create a legal right in applying a rigid and strict scrutiny of the actions of the lower Courts and the Respondents which systematically, selectively and arbitrarily disobeyed and disregarded the Stare Decisis of the Court on void judgment. Also the lower Courts actions and the dismissal of his properly filed motion to vacate and set aside the void which was clearly established as ultra vires clearly disregarded and disobeyed the Stare Decisis on the doctrine of Sua Sponte of this Court which empowered the lower Court to have vacated and set aside the order when he filed motion. Rehearing is very necessary and warranted.

Onyido's Petition in this case clearly and uniformly established a deep and clear non-compliance of the lower courts on the principal and fundamental dictate of this Court that a judgment by a Trial Court without the subject-matter jurisdiction is a nullity that is entitled to no respect and such that cannot affect, impair or create a legal right, hence his deportation to Nigeria on the noted invalid judgment is a grave constitutional error.

This Court has in Murphy v. Smith 138 S.Ct 784, 787 clearly determined that the word "shall" creates a mandate to set aside the agency's decision that is unlawful and also in Lexicon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 US 26, 35 (1988) ruled that the word shall normally create an obligation that is impervious to judicial discretion (quoting 28 U.S.C. section 1407(a)). Also this Court in DHS v Regents Univ of Cal 140 S Ct 891 (2020) (Held that DHS's rescission of the childhood arrivals program must be vacated due to the agency's violation of the APA).

The Board of Immigration Appeal's determination in Interim Decision 3379 fundamentally is ultra vires and invalid because they lacked both the subject-matter jurisdiction to deviate from the subject-matter on Appeal and also did not have the authority to interpret the State of Indiana Criminal Statute, hence unconstitutional and critically violated Onyido's Equal-Protection

Rights as guaranteed under the 14th Amendment. Rehearing is very necessary and warranted.

The APA under the 5 U.S.C section 706(2)(A) provides in pertinent part that the “reviewing Court shall hold unlawful and set aside Agency actions, findings, conclusion found to be arbitrary, capricious, abuse of discretion or and otherwise not in accordance to the law. 5 U.S.C. section 706(2)(A) id 551(13).

This Court readily agrees that fundamentally and in respect to the United States Constitution and the Immigration & Nationality Act provision 8 USC 1252 the Board of Immigration Appeals as an administrative Agency are not empowered with the authority to interpret the State/Federal Criminal Statutes, hence their action in Interim Decision 3379 in which they unlawfully deviated from the subject-matter on appeal to interpret the State of Indiana code 35:43:5-4(10) an offense of Intent to Defraud concluding that the same offense might have involved a lesser included offense of Attempt or Conspiracy to Fraud Indiana Code 35:41:5-1 thereby sustaining deportability under INA section 101(a)(43)(u) which was not charged in the Order to Show cause against him is ultra vires and a grave Constitutional error that should not be tolerated by this Court. Ex Parte Spaulding 6875 W. 2d at 745 (Teague J. Concurring). Rehearing is warranted.

This Court has diligently over the last 156 years crafted conclusions from examination of contemporary Court decisions, commentaries and set precedents that a judgment by a Court without the subject-matter jurisdiction is invalid and have no respect whatsoever because it does not affect impair or create legal rights so inadvertently that same judgment cannot be used to effect the deportation of a Lawful Permanent Alien.

The precedent of this Court clearly indicated that a Void judgment is in effect no judgment at all. By it no rights are divested, from it no rights can be obtained. Being worthless in itself all proceedings founded upon it are necessarily equally worthless and have no effect whatsoever upon the parties or matters in question. A void judgment neither binds nor bars any one. All acts performed under it and all claims flowing out of it are absolutely void The parties attempting to enforce it are trespassers. See. Kiugh v. US 620 F. Supp 892. D. S. C. (1985)

The Court has through the precedents in Long v. Shorebank Development Corp. 182. F.3d 548 (C.A. 7 111. 1999) clearly concluded that a void judgment which includes judgment entered by a Court which lacks the jurisdiction over the parties or Subject-Matter or lacks the inherent power to enter the particular judgment or and order procured by fraud can be attacked in any court at any time both collaterally and directly and furthermore in Asher v. Brunt, S.D. NY 1994, 158 F. R. D 278, the Court ascertained that judgment entered where Court lacks either the subject-matter or personal jurisdiction or that were otherwise entered in violation if due-process of law must be set aside. See. H& H Tire Co v. US. Dept of Transp 471 f.2d 350, 355-56 (7th Cir. 1972)(When an administrative decision is made without consideration of the relevant factors it must be set aside. Empire Health Found Ex Rel Valley Hospital. Med Ctr v. Azar, 958 F. 3d 873, 886 (9th Cir. 2020)(When the reviewing Court determines that Agency regulations are unlawful the ordinary result is that the rules are vacated).

Therefore the fundamental question before the United States Supreme Court is would they also ignore and disregard to Review and Correct the lower Court's grave Constitutional Error of dismissing Onyido's Petition for Review and motion to vacate and set aside the clearly established void judgment. Rehearing is essentially important and warranted.

Onyido has clearly and abundantly established that his deportation on a void judgment by the Respondents as detailed thereof caused him significant injury which is redressable by this Court's Order. See. Lujon, 504 US at 560-561.

Onyido has also in his Writ and Supplemental brief clearly validated that the Respondents exercised coercive power over his liberty by the foregoing actions to wit which inadvertently infringed upon his fundamental rights that Courts are called upon to protect. The rate at which the lower and the Agency's disobey and disregard the regulatory instructions by the United States Congress is gravely alarming and extra ordinary. Therefore this Court cannot afford to look the other way because it will gravely impinge on the trust character and integrity of the Justices to effectively interpret the Constitution of the United States Rehearing is warranted and essentially important

This Court has the responsibility to correct a void the invalid judgment and the statute of limitations does not apply to a suit in equity to vacate a void

judgment. See. Cadennasso v. Bank of Italy P. 569; Estate of Pussey, 180 Cal. 368, 374 [] 81. P 648.

Resolution of the issues raised in Onyido's Petition cannot wait not just for his livelihood but because of millions of other Permanent Resident Aliens of his class and race who may be further victims of such selective and systematic prosecution that hang in the balance. Rehearing is urgently warranted

- (ii). This Court should invoke 8 USC section 1257 (a) which authorizes only the United States Supreme Court with the authority to void and set aside judgments of the State Courts.

The laws and the precedent of this Court are clear that any judgment from the Trial Court without the subject-matter jurisdiction is invalid.

Onyido has clearly established in his Petition that Hamilton Superior Court 1, State of Indiana lacked the subject-matter in the Conviction of Intent to defraud under Indiana Code 35:43:5-1(4) against him also upon which the Respondent's Order to Show Cause was predicated in clear violation to the United States Congress under 28 U.S.C. section 1251(a)(2)(iii). The allegation by Harvey in the probable cause affidavit which claimed that he saw him sat down on the floor and claimed that he was injured represented a cause and effect liability matter that is best treated in a Civil Court pursuant to the provision of Article 1 paragraph 13 of State of Indiana Constitution/ United States Constitution.

The Hamilton County Superior Court 1 alleged in the indictment that the offense of Feb 3, 1993 was allegedly committed in Hamilton County whereas the supporting probable cause affidavit stated that the offense was allegedly committed in Lebanon Boone County which presented 2 fundamental Constitutional issues to wit:

1. That the indictment was obtained by fraud and by the dictate of both the State of Indiana Constitution under Article 1 paragraph 13 & US Constitution the judgment is invalid
2. Pursuant to Article 1 paragraph 13 of the State of Indiana/laws the Trial Court was without the required Jurisdiction of the Particular case to obtain a valid judgment when a timely objection is secured and the record

clearly affirmed that Onyido timely objected to the Trial Court's jurisdiction of the Particular Case which preserved his right to the invalid judgment.

The Respondent's clearly disregarded the Congress enacted statutory provision under 28 U.S.C. section 1251(a)(2)(iii)(1994) which requires only a valid judgment in the Order to Show Cause and equally disobeyed the Congress enacted statutory provision under 8 CFR section 241(a)(2)(iii) which prohibited them from instituting a deportation proceedings when the conviction has not attained a finality when there was significant evidence that both his collateral and direct appeal to void the judgment was still pending before State of Indiana Courts when the Order to Show cause was instituted against him. Even in the heat of the Respondents detention Onyido filed a Habeas Corpus to the US Federal District Court of Northern Indiana challenging his detention which was dismissed after the Court acknowledged that he still has both direct and collateral appeals available to him in Indiana Courts.

The foregoing represented a characterized systematic prosecution that has not been addressed even for the first time since this number of years. Onyido further content that because even if the allegation in Harvey's probable cause affidavit was true would have resulted.

Onyido heretofore seeks this Court to invoke 8 USC section 1257 (a) which authorizes only the United States Supreme Court with the authority to void and set aside judgments that the Trial Court lacked the subject-matter jurisdiction or the parties or and was obtained in a manner that was inconsistent with due-process of law.

The 5th Circuit Court of Appeals decision under **WILLIAM V. NEW ORLEANS Pub Serv. Inc.** 728 F.2d 730-733 (5th Cir.1984) clearly set the determinative standard regarding judgments where the Trial Court lacked the subject-matter and is readily joined by the numerous other Circuits to confirm this Court's precedent that a Void judgment should be set aside and vacated. See Sinochem Inter'l Ltd v. Malaysia Inter'l shipping Corp, 549 US 431(2007) (Without Jurisdiction the Court cannot proceed at all in any case). MacDonald (1917) 243 (US) 90, 37 S.Ct 343, 61 Led 608 18 wall 457, 211 Ed 897; Windoor v. Mcveigh (1876) 93 US 274, 23 Led 914 (If a Court grants relief which under the circumstances it hasn't the authority to grant it's judgment is to that extent void). In Jordan v. Gilligan, 500 F. 2d 701-710 (6th Cir. 1974) A void judgment is no judgment at all and

it is without legal effect. Lubben v. Selective Service System local Bd No. 27 453 F.2d 645 (1st Cir. 1972) The Court must set aside and vacate any judgment that is entered in excess of its jurisdiction

(iii) Onyido references the Court o his supplemental brief which was supposedly filed on September 27, 2024 but did not reflect on the Court's docket in which he addressed the fundamental issues of the United States obligations on International Charters, Conventions and Conferences on Human Rights violations and subsequently further established the Respondent's unlawful actions in executing his deportation to Nigeria in-spite of a valid stay of deportation that was granted by the Federal District Court of Western District of Texas as well as a stay granted by the US Immigration Pursuant to the Immigration & Nationality Act under section 241(b)(3).

- (a). Onyido's reference is made with the opinion that the clerk of the Court should have docketed and made available his supplemental brief to the Court which was supposedly filed on September 27, 2024.
- (b). Onyido further make reference that the Order and Judgment of this Court of the denial of his Writ of Certiorari on Oct 7, 2024 has not been sent to him which is fundamentally contrary to the rules of this Court and seriously wonder if it was what the Office of the Solicitor General meant when they said they were working towards squashing his case. Therefore rehearing is warranted to enable the Justices to fairly look in his entire record and make an objective decision in light of the veracity of the foregoing deprivations.
- (c). That Onyido's Supplemental brief contained and addressed fundamental issues of the United States obligations on International Human Rights Charter, Conventions and Conferences in respect to his unlawful detention in contravention of his 5th, 8th and 14th Amendments and equally the Agency's unlawful and illegal execution of his deportation to Nigeria in-spite of a valid stay granted by the Federal District Court of Western District of Texas and the 30 days stay granted by the Immigration & Nationality Act under section 241(b)(3). If the Supplemental Brief was made available to the Court many more Justices would have voted to grant his writ of Certiorari. Therefore rehearing is warranted.

Onyido clearly detailed in his supplemental brief the Agency's action of executing his deportation to Nigeria while there was a valid stay of deportation granted by

the Federal District Court of Western District of Texas action which also contravened the Immigration Service 30 stay of deportation pursuant by the Agency pursuant to the provision of Immigration & Nationality Act section 241(b)(b) Deportation to Torture may deprive a refugee of the right, liberty, security and perhaps life protected by the Human Rights Charter which the US is a principal and controlling signatory.

The US views Torture as being inconsistent to the notion of fundamental Justice and its rejection of Torture is reflected in the International Conventions and Charter which they ratified since 1967 and even went further when Congress enacted the US Torture Convention in 1998 and under the Immigration & Nationality Act section 241(b)(3) uniformly granted everyone who had established a *prima fascia* of Torture.

It is the Agency's action to arbitrarily, capriciously and selectively execute his deportation to Nigeria on June 24, 1999 in clear disobedience and violation of the valid stay of deportation as stated in the supplemental brief that he now urge this Court to ameliorate.

Upon a proper review of the document in Onyido's Writ of Certiorari and the Supplemental brief it is very likely that more Justices will vote to grant his Writ of Certiorari. Rehearing is warranted and expedient.

IV. This is an appropriate case for rehearing.

Onyido has been embroiled in litigation for over 20 years and with Court's denial of his Writ of Certiorari, he is now faced with a widened exposure to torture and dehumanization in Nigeria all because someone who disliked his race and appearance made an affidavit that he saw him sat on the floor and claimed to be injured which mostly is a civil liability matter that fell under the jurisdiction of a Civil Court. Onyido who had domiciled in the United States for over 2 decades without any criminal conviction could be exposed to such dehumanization to the extent of removing him in contravention to the Immigration & Nationality Act provision under 28 section 1251(a)(2)(iii) and also upon a void judgment that if no resolution and correction is enshrined it will open a significant floodgate to future 14th amendment deprivation against Permanent Resident Aliens in the US

This case is very necessary to avoid Erroneous Judicial violation of litigant's constitutional and statutory laws. This Court should promulgate Rules of Procedure for all the United States Courts and Litigants to follow when a fact of Error, Mistakes, or oversight has been by the Appellate Court.

This case presents this Court with an opportunity to set a standard in the face of judicial actions that violate the 14th Amendment Due-Process and Equal-Protection rights of the litigants. Absent intervention by this Court the Appellate Courts will critically and selectively work to undermine the carefully crafted procedural rights of litigants that this Court has spent 156 solid years upholding.

CONCLUSION:

For the foregoing reasons and those stated in the Petition for a Writ of Certiorari, the supplemental brief, the Court should grant rehearing grant Petition for Writ of Certiorari

Respectfully Submitted:



Bzsil Uzoma Onyido.

CERTIFICATE OF COUNSEL

As a Petitioner representing pro-se, I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and equally restricted to the grounds as specified in Rule 44.2

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "B.U. Onyido".

Basil Uzoma Onyido

No.23-7487

**IN THE
SUPREME COURT OF THE UNITED STATES**

PETITIONER

Basil Uzoma Onyido, Pro-se

VS

RESPONDENT

US Solicitor General

PROOF OF SERVICE

I, Basil Uzoma Onyido pro-se, do swear or declare that on this date 31st Day of October, 2024, as required by Supreme Court Rule 29 I have served the enclosed Petition for Rehearing on the party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to the third party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

1. The office of the Solicitor General of United State of America Room 5614
950 Pennsylvania Ave NW Washington DC 20530-0001

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

Executed on 31ST October, 2024

