24-5631

No. ----------

IN THE

Supreme Court of the United States

TAREK YOUSSEF HASSAN SALEH

Petitioner

v.

US Attorney General Merrick Garland, Attorney General, U.S. Department of Justice, Christopher A. Wray, Director, Federal Bureau of Investigation, Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, Ur M. Jaddou, Director, U.S. Citizenship and Immigration Services, District Director Thomas M. Cioppa, District Director, USCIS New York District Office, Susan Quintana, USCIS New York City Field Office Director, Gina Pastore, Brooklyn Field Office Director, Defendants-Appellees.

Respondents

On Petition For Writ Of Certiorari

To The United States court of Appeals, For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the district court has exclusive jurisdiction in cases filed pursuant to 8 U.S.C. § 1421(c) (understandable from Ninth Circuit opinion) or concurrent jurisdiction with USCIS (Second Circuit opinion) after USCIS issues the final denial of N-400 application.
2. Whether the cases filed pursuant to 8 U.S.C. § 1421(c) divest the federal court to remand the naturalization petition to the agency to decide it after its final denial. (understandable from Ninth Circuit opinion, contradicts Second Circuit)
3. Whether the later agency's approval for naturalization petition after its intentional illegal final denial of the Naturalization petition in the cases filed pursuant to 8 U.S.C. § 1421(c) is void, null and invalid.
4. If the agency's approval of a naturalization petition after it's intentional unwarranted final denial is void, null and invalid in cases filed pursuant to 8 U.S.C. § 1421(c) and in the case of petitioner received his certificate of citizenship, Whether the trial court should issue summary judgment sua sponte to approve the naturalization petition, and order USCIS to issue the naturalization certificate nun pro tunc in the date the petitioner took the naturalization Oath.
5. Whether the naturalization certificate should be issued nunc pro tunc on the date of the naturalization petition's approval in the cases filed pursuant to 1421(c) if the agency changed the date of the first intentional unwarranted denial to be a date of the naturalization petition's approval.
6. Whether the petitioner's intention to run for Congress is enough reason for the court to

grant Saleh's sought an order to USCIS to issue his naturalization certificate nunc pro tunc, or backdating, after USCIS admitted its mistake when USCIS changed its previous intentional illegal denial to approval backdating 8\31\20 or issue the certificate of citizenship backdating 6 months from the date of his applying for naturalization on 5\18\2018.

7. When the USCIS is committing intentional illegal denial of naturalization petition because of the Illegal policy (CARRP) and admitting that by changing the denial date to be an approval date, whether issuing a backdating certificate of citizenship should be an available remedy as an equitable remedy.
8. If the USCIS naturalization petition's Approval is void after filing a case pursuant to 1421(c), because of no jurisdiction , whether the naturalization petition before the trial court should not be dismissed for mootness.
9. If the CARRP is illegal and unconstitutional, and the CARRP disclosed that a USCIS's officer may delay then deny any petition of any relative (wife, sibling) to any person on the security watching list and subjected to CARRP. Whether his seeking injunctive and declaratory relief to enjoin CARRP is considered as a fact or as speculative.
10. When the USCIS is committing intentional illegal denial of naturalization petition because of the Illegal policy (CARRP) and agency admitting that by changing the denial date to be an approval date, Whether the apology should be an available remedy if no other remedy is available to make good, the wrong done.
11. The US Supreme Court in Bivens explained that "where legal rights have been invaded ..

. . federal courts may use any available remedy to make good the wrong done." Which remedy is available, the federal courts may use to make good the wrong done if the legal rights of naturalization's petitioner or seeker permanent residence have been invaded intentionally because of CARRP, and his green card or his naturalization or both was delayed for many years, then denied, if no any remedy is available, neither monetary damages, nor backdated, nor apology.

12. Whether BIVENS or monetary damages should be an available remedy if USCIS made an intentional unwarranted denial because of CARRP, by delaying the interview then denying N-400 then 3 years later changing the denial date to approval date before the trial.

13. Whether the court erred when denied to extend BIVENS in violation of petitioner's constitutional rights of the Fifth Amendment to the United States Constitution through applying the infamous CARRP.

14. Whether the plaintiff's first notice of appeal should be enough without needing to amend his first notice of appeal if the court denied the motion for reconsideration and affirmed the first denial, especially if the clerk of the trial court never sent a letter to the pro se appellant to amend his first notice of appeal with the denial of the motion for reconsideration.

15. Whether the petitioner should be considered a prevailing party, after the USCIS issued the N-400 approval, immediately before the trial and 6 months after the trial court denied defendnats' motion to dismiss in all Immigration Law and constitutional issues.

16. Whether the petitioner should be considered the prevailing party, deserved to be compensated, fees, costs and expenses, as the first district court's order denied all of his prayers including fees, costs and expenses although his notice of appeal appealed the whole order in every aspect including fees and cost.

17. Whether Second Circuit erred when denied petitioner's request to amend his notice of appeal to have the jurisdiction on the district court's order in denial of the motion to reconsideration if the pro se petitioner requested to amend it within 6 months.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at (Appendix A) to the petition is published on 4/23/24. The district court's two orders appear at (Appendix. B and C) is published on 5/11/23. The district court's Memorandum & order appear at (Appendix D) is published on 7/26/23. The district court's order appears at (Appendix E) is published on 3/29/23. The district court's Memorandum & order appear at (Appendix F) is published on 9/28/22.

JURISDICTION

The Second Circuit entered judgment on April 23, 2024. Appendix A. The Supreme Court extended this petition's filing date to Sep. 20, 2024, No. 24A44. The Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

INTRODUCTION AND STATEMENTS OF THE CASE

On October 28, 2021, Saleh commenced his suit pursuant to 8 U.S.C. § 1421(c), seeking de novo review of his N-400 application denial. Saleh sought declarations that his N-400 application was reviewed with unreasonable delay and that CARRP violates the INA, APA, Naturalization Clause of the United States Constitution, and Fifth Amendment to the United States Constitution. Saleh also sought a declaration that MAP—a policy that considers multiple absences from the U.S. of less than six months as potentially breaking an applicant's continuous residence—violates the INA and APA. Finally, Saleh sought injunctions prohibiting USCIS from enforcing both CARRP and MAP. On 2/2/22 the court order permitted Saleh to file cross-motion for summary judgment, the court order vacating that order on 2/3/22. On February 25, 2022, Defendants filed a motion to dismiss all of Saleh's claims. On 6/17/ 22 the court reviewed the parties' letter regarding the effect of Donnelly v. CARRP, issued an order to urge defendants to consider Saleh's request to appear at his N-336 hearing by reopening it, but defendants declined. By Memorandum & Order, on September 28, 2022, the Court dismissed Saleh's APA claims, but allowed Saleh's challenges to the N-400 denial, CARRP, and MAP to proceed under § 1421(c) and the Naturalization Clause. Saleh v. Garland, 21-CV-5998 (PKC), 2022 WL 4539475, at *6–7 (E.D.N.Y. Sept. 28, 2022). App.

Saleh re-request to file summary judgment and filed it which did not comply with the Rule 56.1, so the court on 10/11/22 issued an order to permit him to refile it on 10/25/22 but the defendants opposed it which court agreed with defendants and granted their letter motion for discovery on 10/13/22.

On February 10, 2023, the parties requested to stay discovery while "settlement discussions [took] place[.]" On March 7, 2023, Defendants requested a settlement conference with a Magistrate Judge, and the Court referred the matter to the Honorable Lois Bloom the following

day. On March 21, 2023, Magistrate Judge Bloom reported that the parties were unable to settle the case after three telephone conferences. Just three days after the final settlement conference, Defendants notified the Court that USCIS intended to reopen and further adjudicate Saleh's N-400 application. Saleh objected to Defendants' motion, arguing that the Court had exclusive jurisdiction over his N-400 application and therefore USCIS could not reopen its adjudication. Saleh vowed to "challenge [] CARRP to the end" after it had "destroyed [his] life . . . for more than 20 years." On 3/29/23 The Court agreed with Saleh that it had exclusive jurisdiction over his N-400 application but "nevertheless, in the interest of expeditiously providing Saleh with his requested relief[,] . . . permit[ted] USCIS to reopen the application and grant it." App. aa. Few hours later after the court order, USCIS sent an email to the petitioner to come to take the oath on April 4, 23, but it was adjourned to 4/7/23, Saleh became a naturalized citizen on April 7, 2023. On April 16, 2023, Saleh reiterated his belief that USCIS had no jurisdiction over his N-400 application and requested that the Court find his citizenship certificate "[n]ull and [v]oid." Saleh alternatively asked the Court to "order the defendants to re-issue [his] certificate of naturalization Nunc Pro Tunc [on] the same day [as] the USCIS final denial . . . [on] 8/31/20" because his lack of citizenship between August 2020 and April 2023 had delayed his eligibility to run for Congress, or at least on the same day he took the oath 4/7/23. Saleh also alleged that Defendants' delays and denials have harmed his prospects of securing visas for six siblings and a potential "overseas" bride. Saleh sought "an official apology" from Defendants for making him "suffer for more than 20 years," explaining that Saleh will have received nothing to compensate him for Defendants "mak[ing] his life [] Hell" if he receives neither nunc pro tunc relief nor an official apology. Saleh further requested to add a Bivens claim against government officials. On April 20, 2023, Defendants moved to dismiss Saleh's remaining claims, which challenged

CARRP under the INA and Naturalization Clause. On May 11, 2023, the Court rejected Saleh's requests for nunc pro tunc relief, an official apology, and the addition of the Bivens claim. The Court subsequently dismissed the case, finding that Saleh lacked proof of any present or future personal injury to sustain his CARRP claims because he is naturalized and therefore no longer subject to the policy. App. aa On May 12, 23 Saleh filed notice of appeal. On May 15, 2023, Saleh filed a letter that the Court liberally construed as two motions: (1) a motion for reconsideration; and (2) a motion for costs, fees, and expenses. First, Saleh seeks reconsideration of the Court's determination that USCIS had the authority to re-adjudicate Saleh's N-400 application, citing the Court's reference to its exclusive jurisdiction over the application in the March 29, 2023, Second, Saleh argues that the Court failed to rule on his claims concerning MAP in the May 11, 2023 Order and therefore must reconsider them now. ("The [C]ourt overlooked in the order, dated on 5/1[1]/23[,] whether the USCIS regulation of multiple absence[s] outside the USA of the [naturalization] applicant[] . . . is legal or illegal[.]"); Third, in his motion for costs, fees, and expenses, Saleh seeks "about $10,000[.]" The clerk considered Saleh on May 16, 2023, Saleh filed a notice of appeal. On May 30, 2023, Defendants submitted their opposition to Saleh's motions. On June 3, 2023, Saleh replied to Defendant's opposition, further explaining, inter alia, that the $10,000 figure encompasses everything Saleh has incurred after USCIS's denial of his N-400 application on August 31, 2020, including his $402 filing fee in this Court and his $505 fee on appeal. On 6/27/23 the court denied motion for reconsideration and motion for fee and costs. On 8/29/23 Saleh submitted his Brief with Appendix, on 9/1/23 Defendants submitted motion to strike part of the Brief, Saleh opposed it, on 9/11/23 defendant's Reply opposition, on 11/27/23 Defendants submitted Brief, on 11/29/23 Saleh submitted motion to amend notice of appeal, Defendants opposed it on 12/11/23, Saleh

submitted motion order on 12/11/23 submitted reply brief on 12/12/23, Defendants' letter submitted on 12/13/23, Saleh reply to opposition on 12/13/23, on 12/28/23 letter from defendants, on 3/21/24 defendant's letter, on 3/25/24 motion order denying motion to amend notice of appeal, and motion order to grant motion to strike, on 4/3/24 Saleh submitted Amended brief and Amended reply, on 4/17/24 the Second circuit held Hearing oral argument, Second Circuit issued Summary judgment and order on 4/23/24 affirmed the dismissal, on 7/24/24 Supreme court granting petitioner's extension time to file writ of certiorari to 09/20/24.

STATEMENTS OF THE FACTS

1. Petitioner, Tarek Saleh, "Saleh" 61 years old, Single, native Egyptian, American citizen since April 7, 23, was lawful permanent resident "LPR" of the United States since Aug. 15, 2013 by decision of Immigration Court in NYC. He is a renowned national and international Egyptian Imam and religious Muslim scholar. He has taught Islamic law as an assistant professor at the Islamic Studies College at Moftah University in Nigeria and served as Secretary General and head religious Imam of the Grand Council for Islamic Affairs in Nigeria. He has lectured on Islamic jurisprudence in Muslim communities throughout the United States. His lectures are widely spread on the youtube. He is the voulnteer general spiritual leader of Almahdyyeen foundation.
2. Petitioner moved to the United States in 1998 as a Religious worker with Visa R1 after his first visitor Visa in 1997 before his returning with R1 Visa in 1998. He used to work as an Imam with many organizations and last was Almahdyyeen Foundation Inc. as an Imam for Oulel Albab Mosque in Brooklyn, New York then in Ambridge, PA, between 2000 and 2016 but after that he is not an employee. He is the general volunteer spiritual leader for Almahadyyeen foundation Inc. in NY, NJ, PA.

3. As an Imam, Petitioner was the religious leader of the Mosque, he had delivered the sermons and led the prayers at the Mosque and provided religious advice and instruction to his congregants. Also, he had played an active role in the community and is a figure others turn to for counsel and guidance in counseling and providing guidance of community in their day-to-day lives until the Mosque was closed for refusal of landlord to renew rent lease.
4. Soon after Sept. 11, 2001, on 9/24/2001, four FBI agents visited Saleh in his Mosque. They spent over 4 hours talking. He advised them on how the U.S. should deal with Al-Qaeda. He told them about his distant relative, probably the third top leader of Al-Qaeda, Mustafa Abu Alyazeed known as Saeed al-Masri (was killed in Pakistan in 2010), whom he had no connection whatsoever since 1990; he told them about his previous relationship with Muslim brotherhood and his illegal arrest in Egypt in 1981 under Emergency Law. (that FBI meeting's report was submitted from USCIS in Immigration court)
5. In 2004 -most likely- two agents of the FBI visited Saleh in his Mosque in Brooklyn and asked him: if he sent money overseas to any people who have ties with Al-Qaeda. He told them that: he has never done this and once again he told them: his history with Muslim brotherhood, his illegal arrest in 1981 and his distant relative of Al-Qaeda, and he also told them again about his opinion on how to deal with Al-Qaeda.
6. Petitioner applied as an Imam of the Mosque for adjustment of status I-485 Application, on March 25 2003. He waited for a long period of time till the processing period of his application elapsed (60 days). When he did not get any response, he went to Immigration office several times, inquires the status of his application. In 2006 around April, he was asked by the immigration office to talk to Homeland Security Investigation Agent Mr. Peter Silvestri, formerly part of the Joint Terrorism Task Force ("JTTF"). He was interviewed twice by Mr.

Silvestri, once alone around April 2006 and once with another agent around Sep. 2006. In his interview with Mr. Silvestri, he explained all of history and his relationship with Muslim Brotherhood in Egypt and how and why the relationship ended in 1985. He also informed Mr. Silvestri of his Illegal arrest in 1981 in Egypt even he disclosed his relationship with his distant relative the third leader of Al-Qaeda in Afghanistan, Mustafa Abual Yazeed as he previously disclosed all of that with FBI agents who visited the mosque less than two weeks later after Sept. 11, 2001. Mr. Silvestri took note of all his statements. Mr. Silvestri appreciated his voluntary disclosure of all information.

7. Before April 4, 2007, Mr. Silvestri called Saleh requesting him to come to his office at 26 Federal Plaza, they agreed for time and the day. Mr. Silvestri interviewed him with two other agents of the FBI (the same man and lady who visited him around 2004 to ask about sending money to Al-Qaeda ties before.. He told them again his history including his former relationship with Muslim Brotherhood and his illegal arrest in 1981 in Egypt for which he was awarded damages by the court against the government of Egypt. Again he disclosed his relationship with his distant relative the third leader of Al-Qaeda in Afghanistan, Mustafa Abual Yazeed. The FBI agents on that day asked exactly this: if we may connect or link you with him, may you work with us in Afghanistan to arrest him? A proposal which he politely declined as it is not his job to do this and he condemns Al-Qaeda's terrorist and inhumane activities.
8. After that meeting on April 4, 2007, one of the informants of the FBI, Mr. Mahmoud Elrammal, whom Saleh knew him as an informant since first time he came to Oulel Albab Mosque sometime in 2006 in Muslim Holy Month of fasting, Ramadan, but Saleh did not tell him, he became very close friend of SAleh as Saleh wanted him to tell the FBI the truth about what he is

watching, as he has nothing to hide, Mr. Elrammal started to be away from Saleh little by little after Saleh declined to be an informant.

9. It seems that ever since the FBI has decided to make his life hell. There was a lady who staged an assault in the Mosque in Aug. of 2007, she ripped off her underwear and threatened that she would file rape charges if Saleh does not write an apology to her boyfriend whom Saleh had criticized his bad behaviour with women in an article of a local Arabic newspaper. She also broke two laptops of the Mosque. The lady's actions in the Mosque that day were published in the Arabic newspapers. The Police were looking for her after Saleh reported this blackmailing, she fled to Egypt. The lady was dispatched by the FBI.

10. On October 17, 2007 he had his interview of I-485 application, which was run by two Immigration officers, not one as familiar and was recorded by Camera on the hard drive of the computer not by voice recorder only as known (MARSHA TERRY, DISTRICT ADJUDICATION OFFICER, CAROL KALINOWSKI, DISTRICT ADJUDICATION OFFICER). They asked him many questions including his former relationship with Muslim Brotherhood. He informed them that he was a member of Muslim Brotherhood in the past, even one of the officers wrote a notation on the application "membership of Muslim brotherhood". Again he disclosed the relationship with his distant relative the third leader of Al-Qaeda in Afghanistan, Mustafa Abual Yazeed. The full disclosure was made at or before the adjudication interview.

11. The FBI informant, Mr. Elrammal, started persuading Mr. Yasser Shalaby, one of the active members of Oulel Albab Mosque, to stay away from the Saleh, scaring him, telling him bad information about Saleh to spoil his reputation and telling him not to get involved in any activities of the Mosque, but his tactics did not work on Mr. Shalaby.

12. Elrammal told Saleh twice in the end of 2007 that he may suffer with cancer in his chest and he plans to join Al-Qaeda in Afghanistan and to become a martyr in a suicide operation against American troops. He was expecting to trap an innocent person (Saleh) as a suspected terrorist.
13. With the end of December 2007, the lady who staged an assault in the Mosque turned back from Egypt or was brought back to New York. She filed in January 2008 a lawsuit against Saleh, the Mosque and some Arabic newspapers, alleging that they tarnished her reputation. The New York Post published a slanderous story against Saleh putting him in the public eye as he tarnished her reputation because she had left him to go with another boyfriend.
14. At the end of January 2008, the father of Mr. Shalaby in Egypt received a call from some body claiming to be from the Egyptian foreign affairs ministry. This caller said to him that if he wants his son to get a green card, he must stay away from Sheikh/ Tarek Saleh and stop contributing to his Mosque. Mr. Shalaby's I-485 application for adjustment of status had been pending since 2003!!!!!!, his interview was in 2018!!! Finally in 2021 he got his green card.
15. By the first day of Feb. 2008, the FBI informant, Mr. Elrammal contacted Mr. Shalaby. He took Mr. Shalaby to his Apartment In order to convince without doubt that he was the FBI's representative, Mr. Elrammal showed Mr. Shalaby the DVD of Saleh completed an interview on Oct. 17, 2007 with Immigration officers, showing him sitting with his attorney in Immigration office. It depicted all the examination and intermittent remarks of his attorney as well. Mr. Elrammal told Mr. Shalaby that the FBI wants to make Saleh disappear in the USA either by killing him or putting him in Guantanamo or delivering him to his home country Egypt. In addition to that, Mr. Elrammal told Mr. Shalaby that Saleh transfers money which contributed to the Mosque to Egypt to make him think badly of his Imam.

16. Saleh filed on or about Feb. 28, 2008, an E- Complaint to FBI headquarters in DC and FBI Office in NY. He went to the FBI office in NY to inquire what actions were being taken in reference to his e-complaint against FBI informant, Mr. Elrammal who on behalf of the FBI threatened with his life.

17. On March 13, 2008, he had a meeting with FBI agents, one of them is Mr. Philip A. Swabsin. One of the agents told Saleh in that meeting that if he wants a Green Card "LPR" then he has to work with the FBI. Once again, Saleh politely declined the request.

18. In his second meeting on March 18, 2008, with Mr. Swabsin and another FBI agent, the officers told him that his Green Card application I-485 will be denied. They again tried to persuade him to work for the FBI in order to receive approval for the Green Card (LPR). Mr. Swabsin told him at the end of the meeting, "your relative is a terrorist, will you help America to arrest him?." When Saleh said he could not involve himself in such matters being an Imam, he said to him: I want a Yes or No as an answer. Saleh told him it seems, you are trying to find a reason to deny the I-485 application (green card) unjustifiably, Saleh told him: if that is the matter, take it, my answer is No. In that meeting Mr. Philip described Saleh as a paranoid saying Saleh imagined FBI informant, Mr. Elrammal showed Mr. Shalaby the interview video with the Immigration officers saying: Saleh imagined Elrammal having threatened with his life and he added Mr. Elrammal may now be watching Saleh during that meeting through a close video circuit. Mr. Philip started to defend the lady who assaulted in the Mosque and inquired as to why you tarnished her reputation in Arabic newspapers. Clearly the FBI are behind that lady and encourage her to file a lawsuit against Saleh and publish in NYPOST to damage his reputation. Her lawsuit was dismissed in 2009 and the Counterclaim which Saleh filed against the lady was

granted and Kings County Supreme Court issued a default judgment against her to pay Saleh $1.5M for damages but she does not have money to pay.

19. According to Mr. Shalaby, around March or April 2008, Mr. Swabsin, FBI agent, had an interview with Mr. Shalaby with other agents at 26 Federal Plaza, NY, NY. Mr. Swabsin maintained to Mr. Shalaby that Elrammal had not shown him any DVD about Saleh interview with immigration officers, even asked him if he is ready to be tested by Polygraph, he answered him, "he is ready right now". When Mr. Swabsin asked Mr. Shalaby about Elrammal's saying to see Saleh disappear from America, he told him: Elrammal told him: "take it from A to Z" to give Saleh a massage to threaten Saleh's life.

20. In May 2008, Mr. Swabsin, agent of FBI contacted Mr. Fares Albasir, president of the board of Oulel Mosque to come to meet him to talk about Saleh complaint against Mr. Elrammal, an FBI informant. Mr. Albasir told Saleh that Mr. Swabsin asked him to convince Saleh to work for the FBI if he wants to get a Green Card "LPR" better go to Afghanistan. Alternatively, he further said, if Saleh does not want to go there, he could stay here and work in America for the FBI. Again Mr. Swabsin told Mr. Albasir, they tested the hard drive of Elrammal's Computer, it showed that Elrammal never showed Mr. Shalaby the DVD of Saleh's interview with the Immigration officers.

21. By the end of June 2008, two FBI agents, Saleh does not know their names, visited him at the Mosque. They heard his story and asked him what he wanted from that lady who had assaulted him in his Oulel Albab Mosque in Brooklyn. Saleh told them what she should do. It was a clear sign they are using the lady to make his life Hell, since Saleh declined to go to Afghanistan or work for the FBI in the USA.

22. Mr. Shalaby was arrested which never happened before all of his life, twice later in 2008 in 3 weeks for false reason under claim of driver license violation as punishment for his telling Saleh what he watched and the message which he got from Mr. Elrammal, FBI's informant, who threatened Salehf's life and the DVD of his interview.

23. later after (USCIS) in 2008 adopted in 2008 -was completely unknown for public or even for immigration attorneys- Controlled Application Review and Resolution Program (CARRP), on February 1, 2009 Saleh received a letter from USCIS denying his request for I-485 application "LPR" on false pretexts as directed by FBI that he failed to disclose his relationship with Muslim brotherhood and failed to disclose his arrest in Egypt, Oct. 1981, claiming that information was given only to FBI after the interview held on Oct. 17, 2007. Although he disclosed the relationship with Muslim Brotherhood in many meetings before that interview, in addition it was also given in his interview with USCIS officers, on Oct. 17 2007 and the officer wrote a Notation by her red pen on the side about Saleh's membership with Muslim brotherhood on his application I-485. The Immigration Judge was the first who observed that Notation and she mentioned it in her decision of granting Saleh's I-485 application on Aug. 15, 2013.

24. On Saleh's request to reopen the case and reconsider it on March 5, 2009, He explained to USCIS details of his full disclosure at or before the adjudication interview. Despite all the facts, his request to reopen and reconsider his application was denied as indicated by FBI agents applying policy of ("CARRP").

25. Saleh filed a new I-485 application in April 2009 for FOIA to get a copy of his file specially his application I-485 and copy of his DVD interview with Immigration held on Oct. 17 2007. Even though on April 2009, he approached New York district director of USCIS to get a copy of his DVD of the interview and copy of I-485 application, after NY USCIS field office promised

Saleh to give him a copy of the DVD's interview, not I-485 copy, they changed their mind later and all of his pleas went in vain. FOIA answer was delayed saying to Saleh: NY USCIS froze his file in NY.

26. Finally, on his immigration related Court date of Sep. 30, 2009, the authorities gave Saleh a copy of his I-485 application. In it, was clearly shown that, the officer was directed by FBI through policy "CARRP" to invent a reason to deny Saleh's I-485 application, so she wrote the word "None" by herself as answer for question part 3 c, claiming that Saleh wrote it to deny his I-485 application by purportedly charging him that he failed to disclose his relationship with Muslim Brotherhood and that was defined a fraud or misrepresentation. The fraud was actually committed by the USCIS officers as they were directed by the FBI to deny his "LPR" or Green Card according to the policy "CARRP". Copy of Saleh's I-485 application proved that he disclosed his previous relationship with Muslim Brotherhood during the interview as one of the officers of USCIS in the interview held on Oct. 17 2007, wrote in front of the question part# 3 No# 4, Notation by her red pen "member of Muslim Brotherhood". Saleh has renewed the I-485 application before the immigration judge.

27. Because of the Policy ``CARRP", the government has shown extraordinary interest to advocate against requested relief by bringing three government attorneys as opposed to one counsel. Furthermore, because of "CARRP " government agents asked the Immigration court for six monthly extensions to do discovery fishing to accumulate possible negative material. This is being done upon the FBI and USCIS clearly applying the new policy "CARRP". Moreover, they tried to adjourn the case in Immigration court under false excuses and even they made spoliation of the evidence of the original hard drive of the computer which was used to record the I-485 application interview to be examined by Saleh video audio expert.

28. On or about Oct. 23, 2009, Saleh was invited to a meeting for Muslim Community leaders of NY with assistant director of FBI in NY Mr. JOSEPH M. DEMAREST at that time. Saleh explained to him in front of the Muslim community leaders what his agents and informants did with Saleh. Mr. Demarest listened very well to Saleh's story, and said: if what he said is true, it should not happen. He promised to open an investigation, but Saleh never heard anything from him after that.

29. On or about Feb. 17, 2010, Saleh met with district director of NY USCIS, Mrs. ANDREA QUARANTILLO at that time. He told her in front of the Muslim community leaders about what officers of Immigration did with him and how they gave the Informant of FBI Mr. Elrammal the DVD of his confidential interview to show it in his Apt. to Mr. Shalaby, who was present with Saleh in that meeting as a witness. Saleh showed how they claimed Saleh failed to disclose his relationship with Muslim Brotherhood while her officer wrote in her own hand about him on his application during the interview, Notation "member of Muslim brotherhood". She however threatened to seem, in the court as the best place, Saleh chooses to solve his problem. She told Aramica newspaper's (Arabic-English newspaper) reporter who interviewed her after what happened with Saleh in that meeting, she told her frankly: he (Saleh) will never get a Green Card (LPR) in his life, as she knows what in the policy "CARRP" which no body knows about it at that time, even Immigration attorneys.

30. The end of March, 2010, Saleh received a copy of his DVD interview with Immigration officers held on Oct. 17, 2007. Saleh found nothing about Al-Qaeda or Muslim Brotherhood in it. Surprisingly, he found some stuff in it which he does not recall having said. So Saleh sent the DVD of his interview to a famous nationally known expert who tested the DVD, and he found it having been doctored, manipulated and/or edited. Known expert Mr. Stuart Allen requested -in

his reports and during his testimony in Immigration Court- the original hard drive of the computer which USCIS used to record the interview with Saleh on Oct. 17, 2007. The government's Attorney agreed to bring the original hard drive but she said: USCIS was still looking for the hard drive after more than 6 months without bringing it.

31. Finally, on May, 31, 2012 government's attorney alleged the original hard drive was erased and no longer available. Intentionally, the Government has made spoliation of the evidence to cover their fraud and their crime conspired with disqualified hired an expert to say what the government desired that DVD is not edited after their allegation that the original hard drive was erased and no longer available. All of that because of the unknown policy at that time "CARRP".

32. By or about May 15, 2010 Mr. Shalaby told Saleh that he met with Mr. Yousof Alshoaiby, manager of one of the Store in the area of his Mosque who Saleh sued them for defamation, Mr. Alshoaiby told Mr. Shalaby That Mr. Elrammal, FBI informant went to him with Mrs. Cherine Allaithy who attacked Saleh in his Mosque, they took him in Elrammal's car and they tried to convince him to write a complaint against Saleh but he declined, according to him. It is clear what happened to Saleh from that lady and the NY Post publication was a conspiracy from the FBI to spoil his reputation since he refused to work for them.

33. On May 9, 2010 Saleh sent by overnight express mail a complaint to the U.S. Attorney General, Secretary of Department of Homeland Security and FBI director, mentioning his damages and Sum certain amount of money for that damage and he gave them until May 30, 2010 as his complaint well known for them and as he sent administrative claim E-complaint in Feb. 28, 2008, but without mention Sum certain, Saleh told them if he does not receive an answer, he will amend his complaint 09 Civ. 9066. When Saleh received nothing before May 31, 2010, he amended his Complaint against the defendants in their Officials and individuals capacities.

34. On June 1, 2010 Saleh received a denial letter from FBI for his Administration Claims and on June 21, 2010 Saleh received a letter from Homeland Security to tell him his complaint was sent to the Office of Internal Audit and the Office of Professional responsibility without hearing anything from that office or Office of U.S. Attorney General.

35. Later, Saleh's Complaints were dismissed by Southern District Court and U.S. The Second Circuit affirmed the dismissal.

36. After four years in long battle before Immigration Court, finally the Honorable Immigration Judge -with lengthy decision 21 pages- granted Saleh's renewal application I-485 application for adjustment of Status and lawful permanent resident (LPR) on **Aug. 15, 2013** but denied his request to get his "LPR" **nunc pro tunc** to be "LPR" since 2009 the date of denial first application or applied for new application which Saleh requested to give him an opportunity to apply right away for naturalization, as he applied for LPR since March, 2003.

37. Saleh appealed the denial of request **nunc pro tunc** before the Board of Immigration which denied the request, then he appealed the decision before the U.S. Court of Appeals, Second Circuit which also denied the request. The government never appealed the decision of the Immigration Court to avoid knowing and discussing the "CARRP" policy before the Board of Immigration and Second Circuit, as the "CARRP" policy caused the DVD's interview doctored and the denial of his first I-485 application by fabricated reasons.

38. Saleh applied for an online I-400 application for naturalization on May 18, 2018 and he was fingerprinted on July 20, 2018.

39. Saleh resided continuously in the United States for at least five years preceding the date of filing his application for naturalization, and have resided continuously within the United States from the date of filing his application until the present.

40. Saleh has never been convicted of any crime.

41. Saleh saw online his case being delayed since May 2019 as not normal and saying: he should not do anything for the delay until USCIS asks him.

42. Saleh called USCIS customer service many times asking for a naturalization interview but in vain and he complained in writing online by email on Oct. 29, 2019, USCIS answered him on Nov. 1, 2019, **his N-400 application is currently delayed because the required security checks are still pending.**

43. Saleh checks online processing time which is Sep. 8, 2018 while he applied on May 18, 2018 and the cases in Brooklyn field office were adjudicated between 10.5 months and 15.5 months while Saleh waited for more than 19 months even without scheduling for his N-400 application's interview.

44. Saleh called USCIS on Nov. 25, 2019 and talked to immigration officer then his supervisor, they told him: nothing, USCIS can do to schedule his interview until USCIS receives the security checks clearance.

45. Upon information and belief, Saleh's N-400 application is subjected to "CARRP" and every successor program or President's Executive Orders, after USCIS adopted "CARRP" in 2008, as what happened in his I-485 application for adjustment of status because FBI and USCIS already knows the Saleh very well, personal, thoughts and all of his former relationships or connections with all the organizations as He has a long history with the FBI and USCIS as described above, Although all of that, USCIS alleged that security check's name was still pending, and could be pending for decades except after the Saleh filed his mandamus complaint!!!!.

46. Upon information and belief, Saleh is on the Selectee List or Secondary Security Screening Selection and therefore is included in the TSDB, as indicated by the "SSSS" code that appears on

his boarding pass when he travels and by his consistent travel difficulties like preventing him to check in online or by airline electronic kiosks at the airport or get his boarding pass by airline officers without needing to call TSC to give permission to fly after issue boarding pass with "SSSS" or -without his consent or Court Warrant search or reasonable suspicion- get a copy of all the papers he carries and downloading whatever in his electronic devices when he turns back from abroad and detaining him for hours for interrogation. USCIS, therefore, considers him KST "national security concerns."

47. In the last two return from Morocco, when Saleh told the federal CBP officer in JFK, who interrogated him: he applied for naturalization and waiting for interview, the federal CBP officer replied him: **do you think, you will get the citizenship?!!!!!!!!!!!**

48. Upon information and belief, USCIS also may consider him non-KST "national security concerns" because he is a Muslim Scholar and he had before distant relative who was third leader of Al-Qaeda before his killing, although Saleh always condemns Al-Qaeda and ISIS. Please watch his speech to condemn the Muslim terrorists after Paris attack. That speech was a part of his Friday speech which was translated to all life languages, (https://www.memri.org/tv/brooklyn-imam-tareq-yousef-al-masri-paris-terror-attacks-we-muslims-must-admit-we-are-time-bombs)

49. Upon information and belief, prior to 2008, USCIS's adjudication of Saleh's I-485 application was delayed after he applied on March 25 2003, the interview was on Oct. 17, 2007, at least in part, due to the FBI Name Check backlog in processing immigration applications. Once "CARRP" was adopted in 2008, Saleh's I-485 application became subject to "CARRP" then denied on Feb. 3, 2009, by fabricated reasons then denial -quickly- of his motion of Reopen and

Reconsider on April 1, 2009, but after he renewed the I-485 application before Immigration Judge, she granted his new I-485 application on Aug. 15, 2013.

50. Upon information and belief, Saleh's N-400 application is subjected to "CARRP", which causes the delay of his naturalization's interview and in the adjudication of his N-400 application, then denial of his application as what happened with his I-485 application without legal ground for denial.

51. Saleh filed a mandamus complaint before the southern district on 12/26/19 under # 19 civ. 11799, so the USCIS immediately scheduled his interview on Feb. 18, 20. Then after a very lengthy tough interview -almost three and half hours- USCIS requested from the court to extend the time to answer his complaint for 120 days as the law allows USCIS to adjudicate the N-400 Application within 120 days from the day of the interview.

52. The southern district court granted the request although opposition from the Saleh as he knows very well, all of that are tactics from USCIS to delay the adjudication a result of the "CARRP", then after 120 days elapsed, USCIS does not adjudicate the N-400 application but USCIS requested second extension in the last day of the first extension on Jun. 17, 20, another 75 days, alleged USCIS will send Saleh Notice for additional information within 15 days, 30 days for the Saleh, and 30 days for USCIS to adjudicate the application. Although opposition from the Saleh and his filing a motion for hearing requesting from the court to adjudicate his N-400 application as the court has the Jurisdiction to adjudicate the N-400 application for naturalization after 120 days from the examination elapsed, but the court granted USCIS's request for the second extension with appointing pretrial conference on Sep. 11, 2020 !!, then later denied Saleh's motion for hearing considered Saleh's motion for hearing is premature and agreeing with government who opposed the Saleh's motion for hearing. USCIS sent on July 2, 20 not a Notice

for additional information but it was Notice for intent to deny, alleging the Saleh broke his continuous residence by staying in Morocco a long time in 2016, 2017 and 2018 about 903 days, moreover Saleh did not file a tax return for 2017 and 2018 as he has no income and he did not demonstrate he is not required to file a tax return although he traveled too much, USCIS is not convinced, how he supports himself while he has no income, so USCIS considered the Saleh has lack good moral characters. Although Saleh crushed those allegations with ample evidence, reply of 25 pages, supported with more than 500 pages of the documents to support his reply, USCIS denied Saleh's N-400 application, claiming, all of those documents do not convince the USCIS, why the Saleh needed to be in Morocco all of these time, 902 days, although all of his trips were less than 180 days and under summons of the judicial system of Morocco to present very serious criminal case against gang of fraud who committed a fraud against American Nonprofit organization (Ross For God) which the Saleh is the president of the organization, USCIS issued on Aug. 31, 20 as Saleh expected a denial of his application and fabricated a new reason for lack good moral character, Saleh did not file or pay a tax for his receiving a compensation for accident.

53. Saleh on Sep. 1, 20 filed a N-336 application to request a hearing before USCIS, which the law gave USCIS 180 days to schedule a hearing for Saleh.

54. The Southern District court on April 27, 2021 dismissed Saleh mandamus' complaint as moot after USCIS denied the N-400 Application. The Saleh appealed it before the second circuit, the case No. 21-1073- CV

55. While the appeal before the second circuit was pending, the USCIS denied Saleh's administrative hearing N-336 application on June 24, 2021 after the USCIS canceled its first denial on Aug. 30, 2020 and denied the application on another ground for lack good moral

character, allegedly, the applicant did not inform the Immigration officer with correct information about his last contact with a late distant relative who was the third leader of Al Qaeda and directed the Saleh in the Notice of final denial to file petition for review of his N-400 application de novo in the Eastern district court.

56. The second circuit affirmed the first degree decision on Oct. 27. 21.

57. Immediately, on the second day 10/28/21, Saleh filed his new case in the Eastern district which denied government motion to dismiss in part on 9/28/22, then dismissing the case as moot on 5/11/23 after the petitioner received his naturalization certificate as explained above, and petitioner submitted letter for reconsideration, which affirmed the first order of dismissal on 7/26/23, he appealed before the second circuit which affirmed the dismissal on 4/23/24.

REASON FOR GRANTING THE PETITION

1) THE FEDERAL COURTS OF APPEALS ARE DIVIDED ON HAVING EXCLUSIVE JURISDICTION OR CONCURRENT JURISDICTION IN CASES FILED PURSUANT TO 1421(C)

There is an exclusive jurisdiction as understood from Ninth circuit opinion ("[T]he starting point for interpreting a statute is the language of a statute itself." Hallstrom v. Tillamook County, 493 U.S. 20, 25 (1989) (quoting Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980)). Section 1421(c) is replete with language mandating the district court's review of the case. Significantly, the statute is devoid of any mention of the possibility of remand. As described in a unanimous en banc decision of the Ninth Circuit, pursuant to §1421(c), "[u]pon request, the district court must undertake a full de novo review of the [Agency's] denial" and "is required to hold a de novo hearing after the [Agency] denies an application." United States v. Hovsepian, 359 F.3d 1144, 1162-63 (9th Cir. 2004) (en banc) (emphasis in original). *Epie v. Caterisano*, 402 F.

Supp. 2d 589 (D. Md. 2005) Furthermore, in interpreting a statute, a court may consider Congress's words in context "with a view to their place in the overall statutory scheme." *Davis v. Michigan Dep't of Treasury,* 489 U.S. 803, 809, 109 S.Ct. 1500, 103 L.Ed.2d 891 (1989); *FDA v. Brown Williamson Tobacco Corp.,* 529 U.S. 120, 133, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000). Again, under § 1447(b), when 120 days have elapsed without a final decision and a petition for review of application has been filed, a district court has the "power to pursue either of two options": it can either "determine the matter," by "mak[ing] a naturalization decision," *or* "it can remand the matter." *Zhai v. United States Citizenship Immigration Services,* 2004 WL 1960195, *3-4, 2004 U.S. Dist. LEXIS 18029, at *11 (N.D.Cal. Sept. 3, 2004). In contrast, § 1421(c) indicates what the district court "shall" do. Remand is not presented as an option.

The Court can only assume that Congress knew what language to include if it intended to grant district courts the option to remand. Here Congress apparently chose not to do so. *Epie v. Caterisano*, 402 F. Supp. 2d 589, 591 (D. Md. 2005)

In the notation of *Epie v. Caterisano*, 402 F. Supp. 2d 589, 591 (D. Md. 2005) (By way of further comparison, courts that have considered the question have concluded that § 1447(b), i.e., the provision that governs court review of petitions when there is agency inaction, grants district courts exclusive jurisdiction over naturalization applications rather than concurrent jurisdiction with the Agency. These courts have all read § 1421(c) language as mandating this conclusion. *See, e.g., Hovsepian,*359 F.3d at 1162 ("Because § 1421(c) requires the district court to undertake the *same* analysis that it must make under § 1447(b), it makes sense to interpret the latter statutory provision as giving district courts the last word, too.") (emphasis in original); *Zaranska v. United States Dep't of Homeland Sec.,*2005 U.S. Dist. LEXIS 17559, at *5-18 (E.D.N.Y. July 18, 2005). *Epie v. Caterisano*, 402 F. Supp. 2d 589, 591 n.1 (D. Md. 2005)

The NY Eastern district court when erred itself in its opinion on 7/26/23 said "The Court notes that it erred in the March 29th Docket Order when it concluded that it had exclusive jurisdiction over Saleh's N-400 application. (*See* 3/29/2023 Order Pt. App. ("The Court recognizes that it has exclusive jurisdiction over Saleh's naturalization application.").) Rather, courts in this Circuit hold that USCIS has *concurrent* jurisdiction with district courts over N-400 applications during the pendency of Section 1421(c) proceedings." *Saleh v. Garland*, 21-CV-5998 (PKC) (LB), 5 n.3 (E.D.N.Y. Jul. 26, 2023), this admission frankly shows there is conflict between the circuits about the cases filed pursuant to 1421(c).

The second circuit opinion interpreted the statute in a different way, contradicting the Ninth circuit and many district courts in other circuits : (Saleh argues that the agency's decision to naturalize him is void because his filing of this lawsuit divested the agency of jurisdiction to naturalize him. But nothing in 8 U.S.C. § 1421(c) supports Saleh's claim that the filing of a lawsuit under that section divests the agency of jurisdiction to consider an application for naturalization. To the contrary, once the agency naturalized him, Saleh ceased to be "[a] person whose application for naturalization . . . is denied," § 1421(c). Saleh's naturalization by the agency is not void simply because this action was pending in district court when he became a citizen.) *Saleh v. Garland*, No. 23-817, 3 (2d Cir. Apr. 23, 2024) Pt. App.

The problem of giving the agency the concurrent jurisdiction may leave the district court without jurisdiction once the agency reopened the petition, as in the case of Donnelly, the final administrative denial will not exist any more, so the petitioner should wait until he/she exhausts his administrative appeal which he already did before the reopening like Donelle case. In that case, it will be wasting the time and expenses of the petitioner. "The *Agarwal* Court, in finding for exclusive jurisdiction in the context of § 1447(b) suits, noted "that construing the statute to

provide concurrent jurisdiction would create a disincentive for the parties and the Court to invest adequate time and resources to consider the matter properly, knowing that at any moment the proceedings could be rendered moot, with so much effort wasted, by an eleventh-hour CIS action." *Agarwal v. Napolitano*, 663 F. Supp. 2d 528, 533 (W.D. Tex. 2009). This reasoning applies equally to the context of the instant suit and to § 1421(c) suits in general. Interpreting the law as Defendants suggest would vitiate the right of Salehs such as Ms. Khalid to seek meaningful de novo review as provided by statute because, at any time of its choosing, the USCIS could moot the pending suit. Only the agency's good faith would prevent its issuing arbitrary denials of naturalization applications and forcing individuals to obtain counsel and incur fees in order to achieve naturalization." *Khalid v. Gomez*, CIVIL ACTION No. 12-2643, 6 (E.D. La. May. 20, 2013)

It is illogical if a petitioner filed his case pursuant to 1421(c) in district court of any borough of CA or other district belong to the Ninth circuit to be treated with different way in Federal court in New York or Connecticut which belong second circuit, if the agency reopened the N-400 petition while is pending before the district court. It is supposed to be treated the same way in all of the United States, federal courts either concurrent jurisdiction or exclusive jurisdiction.

It seems the second circuit distinguishes between the cases filed pursuant to 1447(b) and the cases filed pursuant to 1421(c) but Ninth circuit does not distinguish, as Eastern district of Louisiana (Khalid v. Gomez et al, No. 2:2012cv02643 (E.D. La. 2013) did not distinguish between them.

Logicly, it should not be distinguish between Section 1447(b) and Section 1421(c) both of them vest the court exclusive jurisdiction, and if USCIS took any decision during the case before the court will be null and void regardless if USCIS decision granted the N-400 application or denied it.

In Section 1421(c), the court does not have the jurisdiction to remand the petition to the agency with instructions, but the court has the choice in Section 1447(b), either to decide the petition or to remand it to the agency with instructions.

In the petitioner's case, on 3/29/23, the court permitted the agency to reopen the application to approve it for expediting the approval, although the court said in the order: it has exclusive jurisdiction according to Bustamante case, So, the court according to that correct opinion, should embrace the agency's approval, and approve the appellant's petition by summary judgment sua sponte, as nothing remained for dispute for the trial or the hearing on the petition, and to order the agency to schedule the oath as soon as possible, and if the agency already informed the applicant to come to take the oath or already got his/her naturalization certificate, the court should issue order, in the naturalization certificate by the court's approval of the petition, not by agency, nunc pro tunc, or backdate, on the day of the oath 4/7/23, like what the court did in case of Castracani v. Chertoff, 377 F. Supp. 2d 71, 75 (D.D.C. 2005) It is clear, according to that opinion, the court has no jurisdiction to remand the case to the agency to reopen and approve the petition, if the agency did by itself did, the logic will say: the court sua sponte will issue an order to approve the petition without trial. So the approval is invalid as the agency approved it without jurisdiction as it happened with Castracani.

If there is concurrent jurisdiction in Section 1421(c), the agency could easily re-deny the application on another grounds, during the pendency of the N-400 application before the court which will decide the N-400 application for naturalization de novo which wastes the time and money of both agency and court.

So the Supreme court should grant the petition to resolve the conflict between the circuits at least between Second circuit and Ninth circuit.

2) **THIS CASE PRESENTS AN IMPORTANT AND RECURRING QUESTION ON IMMIGRATION LAW, 8 U.S.C. § 1421(c)**

Resolution of the questions presented is a matter of great importance for the millions of petitioners. The supreme court should give a final opinion to resolve the conflict which it is very concern for all the nation and millions of petitioners who their N-400 petitions were got final denial by the agency then suddenly agency reopens the petition by its own motion, leaving the federal court without jurisdiction as no final denial is exist any more, "It is, therefore, well established that CIS had the authority and jurisdiction to vacate its own denial of petitioner's naturalization application. Because CIS did vacate its denial, there is no longer any final agency denial, which would trigger § 310(c) and give this Court jurisdiction over the present petition. Accordingly, petitioner's claim is dismissed for lack of jurisdiction without prejudice as to its eventual renewal." *Gizzo v. Immigration Naturalization Service*, 510 F. Supp. 2d 210, 213 (S.D.N.Y. 2007) then the agency may re-deny the petition on another ground as happened with Donnelly case and put the petitioners in close circuit, so this Court should resolve the question

3) THIS CASE IS AN IDEAL VEHICLE TO RESOLVE THIS CONFLICT OF JURISDICTION OF CASES FILED PURSUANT TO 1421(C).

As noted above, the Ninth circuit as many district courts understood from the opinion en banc, the district court has exclusive jurisdiction in the cases filed pursuant to 1421(c) and no distinguish between these cases and cases filed pursuant to 1447(b) as second circuit opinion, so this Court should resolve the question.

4) THIS CASE IS IDEAL TO PUT CLEAR RULE FOR ISSUING BACKDATED NATURALIZATION CERTIFICATE, IN CASE, THE AGENCY CHANGED THE DATE

OF THE DENIAL TO BE A DATE OF THE APPROVAL AND IF RUNNING FOR CONGRESS IS ENOUGH REASON FOR GRANTING NUNC PRO TUNC RELIEF.

The agency did not deny or dispute, as it never issued or sent a new letter or a notice of approval of the N-400 application, but according to the agency attorneys, it approved Saleh's petition backdate or nunc pro tunc on 8/31/20 the same date of the first denial of the N-400 Application, The trail court said in its opinion on May 11, 23 (Although the Court sympathizes with Saleh's position, the Court does not find that the five-year period between the filing of Saleh's naturalization petition in May 2018 and the ultimate granting of Saleh's naturalization in April 2023 constitutes "the extraordinary harm" nunc pro tunc relief is reserved for. See Panchishak v. U.S. Dep't of Homeland Sec. Neb. Serv. Ctr. U.S.C.I.S., F. App'x 361, 363 (2d Cir. 2011)

The court missed the point, Saleh did not mean the agency's accidental delay between his filing N-400 application and getting his naturalization after five years, -although it is very painful- but Saleh's argument is based on the intentional negligence and intentional wrongdoing from the agency by applying CARRP for intentional delay then intentional denial of his application for illegal reasons against the INA as what happend in his adjustment of status I-485, but after long battle, (he applied 2003, interview 2007, denial 2009) he got his green card by IJ (Aug. 15, 2013) then after he filed his N-400 petition on 5/18/18, no interview until he filed his first case Saleh I in southern district on 9/26/19, then first denial on 8/31/20 then final denial on 6/24/21 during pendency of his case Saleh II before Second Circuit then he filed Saleh III in eastern district, then defendants filed motion to dismiss, refused Saleh's suggestion to reopen N-336 which the court urged the agency to accept by its order on 6/17/22, then after the court denied the motion, the agency admitted its wrongdoing when it canceled the previous denial of N-400 application on 8/31/20 to approval backdated on the same date 8/31/20.

That is the main basis to request the nun pro tunc as the Second Circuit said ("[i]n the immigration context, the purpose of the [nunc pro tunc] doctrine is to enable the court to return applicants 'to the position in which they would have been, but for a significant error in their immigration proceedings.'" Constantino v. U.S. Citizenship and Immigration Servs., No. 14-CV-8753 (AT) (DF), 2015 WL 13659483, at *5 (S.D.N.Y. May 11, 2015) (quoting Edwards v. I.N.S., 393 F.3d 299, 308-09 (2d Cir. 2004)).

But the second circuit erred when agreed with the district court by reciting the petitioner failed to established significant error or undue delay or misconduct although what he was very clear in his complaint of 100 misconduct because of CARRP "denying *nunc pro tunc* relief where petitioner failed to establish significant error, undue delay, or misconduct" *Saleh v. Garland*, No. 23-817, 4 (2d Cir. Apr. 23, 2024)

The question here is, is there a significant error or not? If there is a significant error, the nunc pro tunc should be available. The defendants admitted: they made a significant error, when it changed the original denial and replaced it with approval on 8/31/20. So, the court should return the Saleh-applicant to the position in which he would have been, if the USCIS did not apply CARRP, and made that significant error in the proceedings, as Saleh has all the requirements to be naturalized, but because of CARRP, the USCIS fabricated illegal reasons to deny the application, first: considering the applicant abandoned his continuous residence in USA and took Morocco as a residence place, although he has nothing (parents, wife, kids, siblings, business, assets, residence card) to joint him with Morocco except to attend a legal action as he was summoned by police, prosecutor and court against Moroccan fraud gang who committed a big fraud against him and his american nonprofit organization, and he never stayed in any trip more than 6 months which was only always with tourist visa and roundtrip tickets, second: he has no good moral characters, so

USCIS changed the denial grounds 3 times, after every time Saleh not only overcame but also crushed the ground of denial of his application.

Saleh wants to run for Congress, he can not run until at least 7 years passed from the naturalization date, so since he was naturalized on 4/7/23, after he passed 60 years old, he can not run until he becomes 67 years old, which it will be very difficult to him, but if he is naturalized, backdated, he will run earlier.

(Here, any "error" which may have occurred was **the delay in Saleh's application by several weeks**. Considering the frequency with which such applications are delayed, the Court cannot plausibly infer that the delay in Saleh's application was caused by any "intentional or negligent conduct" ..... .This is an unfortunate situation, and if USCIS deems it proper to grant Saleh's naturalization application *nunc pro tunc,* that decision would certainly represent a compassionate exercise of the Service's discretion.) See *Maniulit v. Majorkas*, Case No.: 3:12-cv-04501-JCS, 8 (N.D. Cal. Nov. 9, 2012)

If the court decided the USCIS and district court shares concurrent jurisdiction, for the equitable relief and the justice, the USCIS after admitted the intentional wrongdoing by changing the original denial date to approval, the agency should issue the certificate of naturalization, 6 months later from the filing N-400 i.e. in end of 2018 or at least in the same day of the approval on 8/31/20.
So this court should resolve the questions.

5) THIS CASE IS IDEAL TO DECIDE IN WHICH CIRCUMSTANCES THE APOLOGY LETTER SHOULD BE AN AVAILABLE REMEDY.

If the US Supreme court puts the rule of issue an apology letter as an available remedy if no monetary damages or backdated, will give very good signal for United States citizens and the other nations over the world, that we are a great nation, when agency causes any harm by

intentional delay then intentional illegal denial to any petitioner either by intentional or negligent conduct, USCIS humbley and without arrogance, will issue an apology letter for the petitioner as spiritual compensation if no other remedy is available. *The honorable second circuit Judge Calabresi asked the government counsel during the oral argument before the circuit panel, if they may give the petitioner a friendly apology, but the counsel said we have no problem giving an apology but the government decided not to give the petitioner an apology, as nothing in the law binds the government to do so.*

The second circuit said "An apology is seldom an available form of relief, *see, e.g.*, *Birnbaum v. United States*, 588 F.2d 319, 335 (2d Cir. 1978)" *Saleh v. Garland*, No. 23-817, 4 (2d Cir. Apr. 23, 2024) without giving any explanation in which seldom circumstances the court may order to issue an apology letter, leaving the petitioner without any compensation although no doubt the agency committed a fatal mistake by changing the denial date to approval date, as the agency never issued an approval letter or notice of approval. So this court should resolve the questions.

6) THIS CASE IS IDEAL TO DECIDE WHICH EQUITABLE REMEDY OR AVAILABLE REMEDY IN CASE NEITHER MONETARY DAMAGES, NOR NUNC PRO TUNC, NOR APOLOGY IS AVAILABLE IN CASE OF INTENTIONAL OPPRESSION OF THE AGENCY THROUGH UNWARRANTED DELAY THEN ILLEGAL DENIAL BECAUSE OF THE INFAMOUS CARRP.

If the law left loophole in immigration proceeding if the agency made a intentional denial without any legal reason or any kind of discretion but for negligence conduct to make him suffering 20 years, either in green card or naturalization, because the officer get instruction from FBI agent to delay then deny any immigration benefit, for being that person refused to work as informant, what kind of compensation may the court find as an available remedy to compensate him, or the court

will leave him without even spirit compensation, only he should thank God, he is naturalized, like a pet, the agency throw him piece of meat to eat and enjoy and should be happy for that, if nothing the supreme court could do, the petitioner wish the supreme court to issue an order at least to remind the congress to look at that issue for achieving justice without leaving the citizens are sad when the agency oppressed them for no reason except reject to be submissive to the FBI agent.

7) THIS CASE IS IDEAL TO DECIDE IF THE AGENCY COULD USE IN THE FUTURE THE INFAMOUS POLICY CARRP AND MAP AGAINST PETITIONER'S FAMILY MEMBERS, SHOULD BE CONSIDERED TRUE OR SPECULATIVE.

The delay then denial of the green card then naturalization prevented the petitioner to apply for his 6 sibling to join him in US as they were between 63 youngest almost 47 years and their kids almost married, and the time for visa to be available for siblings about 15 years so it is impossible to apply for them either the petitioner will be passed away or his siblings, then may apply CARRP against them so it is not speculative, it harmed him before, now and in the future , so the court should consider to issue injunctive relief if it is unconstitutional and the MAP is against the INA as true not speculative.

8) THE CASE IS IDEAL TO DECIDE IF MONETARY DAMAGES COULD BE AVAILABLE REMEDY THROUGH BIVENS IN IMMIGRATION PROCEEDINGS IF THERE IS VIOLATION OF DUE PROCESS IN FIFTH AMENDMENT IF THERE IS INTENTIONAL DELAY AND ILLEGAL DENIAL.

"The Supreme Court has greatly constrained the causes of action recognized under Bivens and "emphasized that recognizing a cause of action under Bivens is 'a disfavored judicial activity, it does not bar it from extending it in violation of the fifth amendment. In Bivens, the Court held that it had authority to create a damages action against federal agents for violating Saleh's Fourth

Amendment rights. Over the next decade, the Court also fashioned new causes of action under the Fifth Amendment, see Davis v. Passman, 442 U. S. 228, and the Eighth Amendment, see Carlson v. Green, 446 U. S. 14. See also Egbert v. Boule, 142 S. Ct. 1793, 1803 (2022) The agency violated Saleh's liberty in the Fifth Amendment when he did not get his naturalization early to allow him to travel to most or all of the world's countries without requesting a visa. So the Supreme court may extend Bivens in the immigration proceedings if there is intentional denial without legal reason.

9) THE CASE IS IDEAL TO RESOLVE THE INJUSTICE WITH PRO SE PETITIONERS WHEN THEIR APPEALS WILL BE DENIED BY COURT OF APPEALS IF THEY DO NOT AMEND THEIR FIRST NOTICE OF APPEAL ALTHOUGH THE DECISION OF THE TRIAL COURT IN MOTION FOR RECONSIDERATION AND FEE DOES NOT CHANGE THE FIRST DISMISSAL.

"Stokes v. Peyton's Inc., is representative. The appellant in *Stokes* filed a timely motion for a new trial and then filed a notice of appeal while the motion was pending. Although the appellant did not file another notice of appeal after the motion for new trial was denied, he continued to pursue the appeal by paying his filing fee and filing his brief with the appellate court. The Fifth Circuit Court of Appeals denied the appellee's motion to dismiss the appeal. It reasoned that as long as the appellant had manifested an intent to pursue the appeal and there was no prejudice to the appellee, the appeal should not be dismissed even though it was technically premature. A premature notice of appeal would not be given effect, however, if the underlying judgment was substantially altered by the granting of a post-trial motion. This is illustrated by *Keith v. Newcourt.* In the *Keith* case, a notice of appeal was filed while the appellee's motion for new trial was pending, and then the trial court granted the motion for new trial. The Eighth Circuit Court of Appeals quite properly ruled that it lacked jurisdiction to decide the appeal, because the trial court would be holding a new trial

that might obviate the grounds for the appeal. But at least where a post-trial motion was ultimately denied, most courts (with the exception of the Tenth Circuit) allowed an appeal to be decided on its merits in cases where a notice of appeal had been filed before the trial court decided the motion." *Timing of Appeals Under Rule 4(A)(4)*, 123 F.R.D. 371, 374-75 (J.P.M.L. 1988)

As happened with the petitioner, the second circuit said it has no jurisdiction to review dismissal motion for reconsideration and fee as the petitioner never amend his notice of appeal, although the dismissal of the motions affirm the first denial without any change, although the petitioner submitted during 6 month a motion to amend his notice of appeal but the court denied it, the clerk never wrote in his letter for dismissal of the motion for reconsideration and fee, the petitioner should amend his notice of appeal. It is unfair to pro se petitioner, if the law is not clear enough especially if the court denied the motion for reconsideration and fee and affirmed the first denial which requested the cost and fee in the original complaint. This court should resolve this question to put rules to achieve justice especially if there is no prejudice on the other party and no change for the original decision, treating the pro se petitioner with spirit of the law, especially if the rule is not clear enough and the professors of the law themself have different opinions about *Rule 4(A)(4), even they ask the congress to change it.* *https://casetext.com/case/timing-of-appeals-under-rule-4a4*

Furthermore, as the Supreme Court explained, "[t]he plain language makes clear that `a final judgment' under § 2412 can only be the judgment of a court of law." Melkonyan v. Sullivan, 501 U.S. 89, 94 (1991). "The 30-day EAJA clock begins to run after the time to appeal that `final judgment' has expired." Id. at 96. Jimenez v. U.S. Immigration Naturalization Serv., 02 Civ. 9068 (RWS), 5 (S.D.N.Y. Oct. 30, 2003)

The petitioner letter motion for reconsideration and fee was filed on 5/15/23 after he sent online his notice of Appeal on 5/12/23, so the district court made a mistake to decide the motion for fee as the time of appeal is not expired and the final judgment has not expired, it means the motion was premature and the court has no jurisdiction to decide it, so the denial of the motion of the cost was invalid and it is unfair, the second circuit to say no jurisdiction to review denial of motion for reconsideration and fee because the petitioner did not amend notice of appeal. *Saleh v. Garland*, No. 23-817, 3 (2d Cir. Apr. 23, 2024) Pt. App.

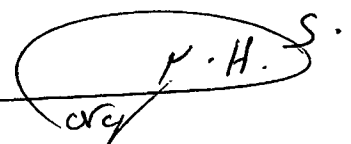
The district court erred when it did not consider Saleh the prevailing party, Actually, the plaintiff's case satisfied *Buckhannon* 's "material alteration" as the the Supreme Court has made clear that the "material alteration" requirement must be understood to require some "*resolution of the dispute* which changes the legal relationship between [the plaintiff] and the defendant." *Texas State Tchrs. Ass'n v. Garland Indep. Sch. Dist.* , 489 U.S. 782, 792, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989) see ("*Buckhannon* , 532 U.S. at 605, 121 S.Ct. 1835 (citing *Hewitt* , 482 U.S. at 760, 107 S.Ct. 2672, and *Hanrahan* , 446 U.S. at 754, 100 S.Ct. 1987)") *Junfei Ge v. United States Citizenship & Immigration Servs.*, 20 F.4th 147, 156 (4th Cir. 2021)

CONCLUSION

For the foregoing reasons, Mr. Saleh respectfully requests that this Court issue a writ of certiorari to review the judgment of the NY Federal Court of Appeals, Second Circuit.

Dated: Sept. 17, 2024

Respectfully submitted,

By: 

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