

24-5805  
No. 24-

ORIGINAL

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SUPREME COURT OF THE UNITED STATES

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Ernest Adimora-Nweke,

*Petitioner,*

vs.

Steven C. McGraw, Director of Texas Department of Public Safety; Texas  
Department of Public Safety; Lynn N. Hughes, U.S. District Judge, Official  
Capacity,

*Respondents.*

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

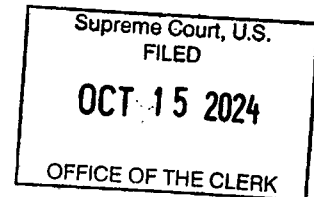
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PETITION FOR A WRIT OF CERTIORARI

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0082-15

### **Questions Presented**

- (1) Whether Petitioner & similarly situated class members lack standing to challenge the Statutory Warning DIC-24 form(s) promulgated by Texas Department of Public Safety ("TxDPS")
- (2) Whether a judge is absolutely immune from an injunction action, for acts not performed in the clear absence of all jurisdiction

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## **Petition for Writ Of Certiorari With 28 U.S.C. §1651 Relief**

Petitioner, Ernest Adimora-Nweke, petitions this court for a *writ of certiorari* to review the judgments & orders of the Federal 5th Circuit, & of USDC WDTX Austin district court. Alternatively, Petitioner requests §1651 *writ* relief.

### **Opinions Below**

The Fed. 5th Circuit's 6/7/24 unpublished decision<sup>1</sup> is attached at Appendix pages ("Appx.(Vol).Pg.(X)") Appx.1.Pg.1-10. The Fed. 5th Circuit's 8/12/24 order denying rehearing & rehearing *en banc*<sup>2</sup> is attached at Appx.1.Pg.59. WDTX Austin Division's 10/18/2024 appealed judgment<sup>3</sup> & opinion<sup>4</sup> are respectively attached at Appx.1.Pg.60 & Appx.1.Pg.12-13. WDTX Austin magistrate's adopted "order & recommendation on the merits"<sup>5</sup> is attached at Appx.1.Pg.14-21.

### **Jurisdiction**

Petitioner invokes this Court's jurisdiction per 28 U.S.C. §1254(1), upon filing this *writ of certiorari* petition within 90 days of Fed. 5th Circuit's 8/12/24 order denying rehearing & *en banc* petition(s).<sup>6</sup> Petitioner also invokes this Court's 28 U.S.C. §1651 jurisdiction for an extraordinary *writ*, as allowed.<sup>7</sup>

Petitioner's 10/18/24 appeal notice, post WDTX Austin district court's 10/18/24 final judgment, gave federal 5th circuit court jurisdiction.<sup>8</sup>

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<sup>1</sup> *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Docs. 49-1 & 50-2, Filed 6/7/24.

<sup>2</sup> *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 57-1, Filed 8/12/24.

<sup>3</sup> *Adimora-Nweke v. McGraw et al*, USDC WDTX Austin Case No. 1:23-CV-01048-RP, Doc. 12, Filed 10/18/23.

<sup>4</sup> *Adimora-Nweke v. McGraw et al*, USDC WDTX Austin Case No. 1:23-CV-01048-RP, Doc. 11, Filed 10/18/23.

<sup>5</sup> *Adimora-Nweke v. McGraw et al*, USDC WDTX Austin Case No. 1:23-CV-01048-RP, Doc. 9, Filed 10/10/23.

<sup>6</sup> 28 U.S.C. §1254(1); U.S. Supreme Court Rule 13(3); *See also*, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 53-1 (Appellant's Rule 35 Petition for *En Banc* Rehearing), Filed 7/20/24.

<sup>7</sup> 28 U.S.C. §1651

<sup>8</sup> 29 U.S.C. §1291; *Fed. R. App. Pro. Rule 4(a)(1)*

### Provisions Involved

#### United States Constitution, Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

#### United States Constitution, Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### 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.

#### United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### TEXAS TRANSPORTATION CODE CHAPTER 724. IMPLIED CONSENT

#### SUBCHAPTER B. TAKING & ANALYSIS OF SPECIMEN:

§724.015. INFORMATION PROVIDED BY OFFICER BEFORE REQUESTING SPECIMEN; STATEMENT OF CONSENT. (a) Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally & in writing that: ...

(6) if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions & for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state; ...

(8) if the person submits to the taking of a blood specimen, the specimen will be retained & preserved in accordance with Article 38.50, Code of Criminal Procedure.

Amended by: Acts 2011, 82nd Leg., R.S., Ch. 674 (S.B. 1787), Sec. 1, eff. Sept. 1, 2011. Acts 2021, 87th Leg., R.S., Ch. 840 (S.B. 335), Sec. 2, eff. Sept. 1, 2021.

### Statement of the Case

This case presents the questions of (1) whether Petitioner & similarly situated (or affected) Texas citizens, lack standing to challenge TxDPS's defective 2011 &/or 2021 Statutory Warning documents; & (2) whether a federal judge is absolutely immune from an injunction (or equitable prospective relief) action, for acts not performed in the clear absence of all jurisdiction.

The underlying claims waged against Respondents hail from three void-challenged documents: TxDPS' 2011<sup>9</sup> & 2021<sup>10</sup> DIC-24 Statutory Warning Statement of Consent forms, & Respondent Hughes' void-challenged order (i.e., Doc. 12 of USDC SDTX Houston Cause No. 4:20-CV-01651).<sup>11</sup>

On the DIC-24 forms issue, TxDPS' DIC-24 Statutory Warning forms are mandatory and jurisdictional notice documents that must contain all Texas Transportation Code §724.015(a)'s subsections statements contents.<sup>12</sup> The 2011 & 2021 versions, **used throughout Texas**, are void as each lacked §724.015(a)(6).<sup>13</sup>

TxDPS wrongly omitted §724.015(6) as of 9/2011; & §724.015(a)(6), as of 9/2021, which should read as follows:<sup>14</sup>

"If the officer determines that you are a Texas resident without a license to operate a motor vehicle in Texas, Texas Department of Public Safety will deny you

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<sup>9</sup> Appx.2.Pg.92, Appx.4.Pg.16.

<sup>10</sup> Appx.2.Pg.96

<sup>11</sup> Appx.1.Pg.26

<sup>12</sup> *Accord, Dep't of Pub. Safety v. Mitchell*, No. 2-01-00398-CV, 2003 WL 1904035 (Tex. App.—Fort Worth April 17, 2003, no pet.) (mem. op.) ("Appellant designed DIC-24 as a standard form for the request of breath specimens from suspected intoxicated drivers. [T]he form follows the statutory requirements of the transportation code... [T]he DIC-24 warnings incorporate the statutory requirements and amount to a sufficient warning to Appellee of the consequences of refusing to provide a breath specimen...") (internal citations omitted); *See also*, Tex. Transp. Code. Ann. §724.015(a); *See also*, Brief of Appellant Ernest Adimora-Nweke, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 9-1, Pgs. 15–19 & 28–32, Filed 11/27/2023.

<sup>13</sup> *See Brief of Appellant Ernest Adimora-Nweke*, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 9-1, Pgs. 17–18, Filed 11/27/23; *See also*, Appx.1.Pg.2, Appx.4.Pg.16, Appx.2.Pg.92–96.

<sup>14</sup> *Id.*



the issuance of a license, whether or not you are subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of your driver's license if you had held a driver's license issued by this state."<sup>15</sup>

*Inter alia*, Petitioner sought class action injunction against recognition of the DIC-24 forms.<sup>16</sup>

Overall, the district court action against Director McGraw & TxDPS seeks to vacate the defective 2011 & 2021 DIC-24 forms for missing §724.015(a)(6);<sup>17</sup> vacate any resulting TxDPS' order of suspensions;<sup>18</sup> & vacate the harmful resulting Court orders & judgments against Petitioner (including void judgments & orders issued in Petitioner's prior litigation efforts to challenge the DIC-24 forms);<sup>19</sup> all via a renewed FRCP Rule 60(d)(1) independent action in equity claim, filed with the originally raised 42 U.S.C. §1983 class action injunction, against TxDPS & McGraw, all in the same complaint.<sup>20</sup>

On the Hughes order issue, the Hughes order is void for *inter alia*, (a) its overbroad, unreasonable & draconian-punitive scope (i.e., barring Petitioner from filing cases in SDTX Courts); (b) being entered capriciously without basis, notice, or fair hearing opportunity; (c) effectively dismissing federal & state *qui tam* claims sought re-raised, without any jurisdiction-required 31 U.S.C. §3730 attorney general written consent ever in existence; & (d) its detrimental &

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<sup>15</sup> *Id.*

<sup>16</sup> See Appx.2.Pgs.65-70, 77-86, 133-136.

<sup>17</sup> Appx.4.Pg.16, Appx.2.Pg.96, Appx.2.Pgs.93-94.

<sup>18</sup> See *e.g.*, Appx.2.Pgs.90-91.

<sup>19</sup> Appx.1.Pgs.27-62.

<sup>20</sup> Appx.2.Pgs.1-4, 6-8, 13-72, 77-86, 90-136; See also, *e.g.*, Brief of Appellant Ernest Adimora-Nweke, Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 9-1, at Pgs. 28-32, 34 ("Summary of the Argument" §§ "B & D"), Pgs. 36-44, 47-52 ("Argument" §§ "A, B, C, DII"), Filed 11/27/23.

### Statement of the Case

This case presents the questions of (1) whether Petitioner & similarly situated (or affected) Texas citizens, lack standing to challenge TxDPS's defective 2011 &/or 2021 Statutory Warning documents; & (2) whether a federal judge is absolutely immune from an injunction (or equitable prospective relief) action, for acts not performed in the clear absence of all jurisdiction.

The underlying claims waged against Respondents hail from three void-challenged documents: TxDPS' 2011<sup>9</sup> & 2021<sup>10</sup> DIC-24 Statutory Warning Statement of Consent forms, & Respondent Hughes' void-challenged order (i.e., Doc. 12 of USDC SDTX Houston Cause No. 4:20-CV-01651).<sup>11</sup>

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TxDPS wrongly omitted §724.015(6) as of 9/2011; & §724.015(a)(6), as of 9/2021, which should read as follows:<sup>14</sup>

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<sup>12</sup> *Accord, Dep't of Pub. Safety v. Mitchell*, No. 2-01-00398-CV, 2003 WL 1904035 (Tex. App.—Fort Worth April 17, 2003, no pet.) (mem. op.) ("Appellant designed DIC-24 as a standard form for the request of breath specimens from suspected intoxicated drivers. [T]he form follows the statutory requirements of the transportation code... [T]he DIC-24 warnings incorporate the statutory requirements and amount to a sufficient warning to Appellee of the consequences of refusing to provide a breath specimen...") (internal citations omitted); *See also*, Tex. Transp. Code. Ann. §724.015(a); *See also*, Brief of Appellant Ernest Adimora-Nweke, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 9-1, Pgs. 15–19 & 28–32, Filed 11/27/2023.

<sup>13</sup> *See Brief of Appellant Ernest Adimora-Nweke*, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 9-1, Pgs. 17–18, Filed 11/27/23; *See also*, Appx.1.Pg.2, Appx.4.Pg.16, Appx.2.Pg.92–96.

<sup>14</sup> *Id.*

## Facts

On Nov. 14, 2018, a Houston Police Department officer Wang subjected Petitioner to the disputed 2011 DIC-24 form version;<sup>26</sup> then to resulting TxDPS driver's license ("DL") suspension(s)<sup>27</sup> & \$125 statutory reinstatement fee.<sup>28</sup>

Before TxDPS issued their order of DL suspension, Petitioner duly requested an ALR hearing on 11/16/2018,<sup>29</sup> within the §724.015(a)(7) 15-day request period that statutorily lapsed on 11/29/18.<sup>30</sup>

TxDPS's allegedly drafted & post-mailed a 11/26/18 notice-to-cure hearing request to Petitioner's office, not to his home address as stated on the driver's license.<sup>31</sup>

Petitioner never received the 11/26/18 notice letter; nor could Petitioner have received said 11/26/18 drafted notice-to-cure letter within the statutory 5-days mail transmission period<sup>32</sup> (i.e., by 12/1/18) in order to make any modified §724.041 hearing request by the 15-day statutory request deadline of 11/29/2018.<sup>33</sup>

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implicates expectations of privacy and security of such magnitude that the intrusion may be 'unreasonable' even if likely to produce evidence of a crime"); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) ("[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.'"); *Baldwin v. Hale*, 68 U.S. 223, 233 (1863) ("Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his [defense]."); *Weinberger v. Wiesenfeld*, 420 U.S. 636, n.2 (1975) ("...This Court's approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment..."); *Marshall v. Jerrico Inc.*, 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases... ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. The requirement of neutrality has been jealously guarded by this Court."); *U.S. Const. Amd. I, IV, & V*.

<sup>26</sup> Appx.2.Pg.42, Appx.3.Pg.84, Appx.4.Pg.16.

<sup>27</sup> Appx.2.Pg.42, Appx.1.Pgs.27-28, Appx.4.Pg.17; *See also*, *Tex. Transp. Code* §724.015(a)(2).

<sup>28</sup> Appx.1.Pg.2, Appx.2.Pg.42; *See also*, *Tex. Transp. Code* §724.046(a).

<sup>29</sup> Appx.2.Pg.42, Appx.4.Pg.18.

<sup>30</sup> Appx.2.Pg.42; *See Tex. Transp. Code* §724.015(a)(7)

<sup>31</sup> Appx.2.Pg.42, Appx.4.Pg.19,

<sup>32</sup> *Id*; *See*, *Tex. Transp. Code* §724.033(b) ("ISSUANCE BY DEPARTMENT OF NOTICE OF SUSPENSION OR DENIAL OF LICENSE... (b) Notice is considered received on the fifth day after the date it is mailed.").

<sup>33</sup> *Id.*; *See Tex. Transp. Code* §724.015(a)(7).

discriminatory effect on Petitioner (a licensed counsel in good standing) & his clients' petition, equal protection, & due process rights – e.g., redress & open courts, counsel-of-choice, & fair hearing rights – in the federal & state courts.<sup>21</sup> Petitioner seeks to vacate or enjoin against the unconstitutional & harmful Hughes order.<sup>22</sup>

Petitioner duly pled & sought equitable prospective relief against Hughes & his challenged-void Doc. 12 order, via (i) a *28 U.S.C. §1651 writ* claim sought against J. Hughes in official capacity, (ii) an alternatively pled *Bivens* prospective relief claim, & (iii) a second alternatively pled Rule 60(d)(1) independent action.<sup>23</sup>

The courts grievously err in dismissing Petitioner's actions on or before the pleading stage by *inter alia* (a) holding contrary to Texas Legislature & U.S. & Texas Supreme Court laws, that Petitioner & similarly situated persons lack standing to challenge the defective DIC-24 forms; (b) holding contrary to this Court's *Pulliam*, that judges are absolutely immune for equitable relief injunction actions for acts not performed in the clear absence of all jurisdiction;" &/or (c) denying Petitioner's entitled right to proceed in actions without paying costs.<sup>24</sup>

Such irreparably harms Petitioner, his litigation clients, & DIC-24 subjects' petition, unreasonable search & seizure, equal protection, & due process rights.<sup>25</sup>

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<sup>21</sup> See Appx.2.Pgs. 4–6, 8–13, 16–35, 29–30, 127, & 131; See, Brief of Appellant Ernest Adimora-Nweke, Fed. 5th Circ. Cause No. 23-50744, Doc. 9-1, Pgs. 19–22 & 25 ("Statement of the Case" §§ "B" & "D"), Pgs. 32–34 ("Summary of the Argument" § "C"), Pgs. 45–46 ("Argument" §§ "D(I)–D(II)"), Filed 11/27/23.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Appx.1.Pgs.1–25, 29–62.2.

<sup>25</sup> See Brief of Appellant Ernest Adimora-Nweke, Fed. 5th Circ. Cause No. 23-50744, Doc. 9-1, at Pgs. 28–34 ("Summary of Argument" §§ "A, B, & C"), 45–50 ("Argument Sub-Sub-Issues" §§ "DI, DII, & DIII"); See also, *BEK Constr. V. NLRB*, 536 US 516, 525 (2002) (... "the right to petition extends to all departments of the Government,"... "[t]he right of access to the courts is ... but one aspect of the right of petition."); *Winston v. Lee*, 470 U.S. 753, 759 (1985) ("A compelled surgical intrusion into an individual's body for evidence...

failure); where the fed. district court magistrate deceptively requested Petitioner to re-file his *IFP* application to proceed *IFP* in federal court.<sup>44</sup> Such compromised Petitioner's *IFP* status held pre-removal from state court.<sup>45</sup>

At the *IFP* hearing (a hearing now denied to have ever occurred)<sup>46</sup> the magistrate requested *IFP* Petitioner to either withdraw his *IFP* application, or face a dismissal of complaint without fair hearing on merits;<sup>47</sup> to which Petitioner elected to withdraw the newly filed *IFP* application.<sup>48</sup> Such further compromised Petitioner's *IFP* status for appeal purposes.

Right after Petitioner's newly-filed *IFP* application withdrawal, the magistrate & dist. judge *still* recommended & dismissed the case with prejudice & without Petitioner's requested fair oral hearing on merits;<sup>49</sup> then denied Petitioner's reconsideration motions,<sup>50</sup> & precluded any further motions via order denying such as moot – without a FRAP Rule 24(a)(3)(A) *IFP* appeal certification.<sup>51</sup>

Without a formal *IFP* application or motion denial from the district court, & without the FRAP Rule 24(a)(3)(A) certification from the district court,<sup>52</sup> the district clerk never issued the required "Notice of District Court's Denial" FRAP

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<sup>44</sup> Appx.2.Pg.16.

<sup>45</sup> Appx.4.Pgs.21–22 (State Court granted *IFP* Application), Appx.1.Pg.64 (Applicable Tex. R. Civ. Pro. Rule 145), Appx.3.Pgs.28–31; *See also*, H-CV–04149, Doc. 2, Pgs. 76–77, 71–75, 298, 326–327, 239 of 352, Filed 12/04/20.

<sup>46</sup> *See* Appx.4.Pg.8, (06/06/2022 & 06/08/2022 docket entry in USDC SDTX Cause No. 4:20–CV–04149) Appx.4.Pg.12 (06/06/2022 & 06/08/2022 docket entry in USDC SDTX Cause No. 4:22–CV–00765); *Cf.* Appx.4.Pgs.6–7 (04/02/2021 & 04/08/2021 docket entry in USDC SDTX Cause No. 4:20–CV–04149).

<sup>47</sup> Appx.2.Pg.17.

<sup>48</sup> *Id.*, Appx.1.Pg.29.

<sup>49</sup> Appx.1.Pgs.30–45, Appx.1.Pg.61.

<sup>50</sup> Appx.1.Pgs.48–50, 51–56, Appx.3.Pgs.61–88 ("Plaintiff's FRCP Rule 59 Motion for Reconsideration"); *See also*, H-CV–04149, Doc. 56 ("Plaintiff's FRCP Rule [54] Motion for Reconsideration"); *See also*, Fed. R. Civ. Pro. Rules 54(b) & 59(a)(1)(B).

<sup>51</sup> Appx.1.Pg.56 ("Any further motions hereafter filed on this docket will be summarily denied as moot."); *See also*, Fed. R. App. Pro. Rule 24(a)(3)(A).

<sup>52</sup> *Id.*

Petitioner was illegally denied the ALR hearing,<sup>34</sup> his driver's license **unjustly** & illegally suspended – without petition, equal protection & due process entitled statutory DIC-24 notice, nor ALR fair notice & hearing opportunity.<sup>35</sup>

Petitioner is consequently subject to a \$125.00 reinstatement fee, increase in insurance costs, suspension on his driver's license record, etc.; all without authority, nor any fair notice & hearing opportunity.<sup>36</sup>

### **Procedural History**<sup>37</sup>

Petitioner duly filed a §1983 class action injunction action in TX State District Court against McGraw & TxDPS in 9/15/20 (per relation back procedural doctrine),<sup>38</sup> along with other unrelated claims against other non-TxDPS govt. parties;<sup>39</sup> & duly requested service of process on all Defendants.<sup>40</sup>

After reasonable efforts to effectuate service,<sup>41</sup> the state clerk & court ultimately granted Petitioner *in forma pauperis* status per TRCP 145(b);<sup>42</sup> yet the clerk randomly chose to, & served process only on Director McGraw & TxDPS.<sup>43</sup>

McGraw & TxDPS answered & immediately removed the action to USDC SDTX Houston Division (before Petitioner noticed the clerk's service of process

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<sup>34</sup> Appx.2.Pg.42, Appx.4.Pg.19.

<sup>35</sup> *Id.*, Appx.1.Pgs.27–28, Appx.4.Pg.20.

<sup>36</sup> *Id.*, Appx.1.Pg.2, Appx.1.Pg.28, Appx.2.Pg.42, Appx.2.Pg.54; *Tex. Transp. Code* §724.046(a)

<sup>37</sup> See Appx.2.Pgs.16–36.

<sup>38</sup> Appx.1.Pg.30, Appx.2.Pg.16, Appx.3.Pgs.27–28; See also, *Adimora-Nweke v. Yabrough-Smith et al*, USDC SDTX Houston Cause No 4:20–CV–04149, Doc. 2, Pgs. 4–6 (Original 1<sup>st</sup> Action State Court Docket, pre-removal), 288–297 (3<sup>rd</sup> Amended Complaint class action claims against TxDPS & Director McGraw), 299–325 (Motion to Certify Class against TxDPS & McGraw, & Proposed Order) of 352, Filed 12/04/20.

<sup>39</sup> See e.g., H–CV–04149, Doc. 2, Pgs. 177–179 (2<sup>nd</sup> Amended Complaint parties), 240–242 (3<sup>rd</sup> Amended Complaint parties) of 352, Filed 12/04/20; *Accord*, Appx.2.Pgs.49–52.

<sup>40</sup> Appx.2.Pg.16, Appx.4.Pgs.21–22 (State Court *IFP* form application); See also, H–CV–04149, Doc. 2, Pgs. 76–77, 71–75, 78–91, 235–236, 237–242 of 352, Filed 12/04/20.

<sup>41</sup> See Appx.4.Pgs.21–22 (State Court *IFP* form application), Appx.3.Pgs.27, 72–74; See also, H–CV–04149, Doc. 2, Pgs. 76–77, 71–75, 78–91, 144–165, 168–173 of 352 Filed 12/04/20.

<sup>42</sup> *Id.*, Appx.3.Pgs.29–31, Appx.1.Pg.64 (Applicable Tex. R. Civ. Pro. Rule 145); See also, H–CV–04149, Doc. 2, Pgs. 298, 326–327, 341 of 352, Filed 12/04/20.

<sup>43</sup> *Id.*

status-Petitioner to file a FRAP Rule 24(a)(1) motion & obtain an order from the dist. judge to proceed *IFP* on appeal<sup>64</sup> – contrary to *Yick Wo & Mahone*,<sup>65</sup> *Bolling*, & FRAP Rule 24(a)(3). The dist. judge denied Petitioner's consequent 24(a)(1) motion on non-good-faith appeal grounds; thereon controverting Petitioner's pre-existing uncontroverted *IFP* status that exited pre-removal since state court.<sup>66</sup>

Unable to appeal *IFP*, Petitioner filed a disregarded FRAP Rule 24(a)(5) motion, which included Petitioner's appellate brief for said action, showing merit of appeal.<sup>67</sup> The 5<sup>th</sup> circ. dismissed said appeal for *IFP* Petitioner's failure to pay filing fee;<sup>68</sup> to which Petitioner appealed to this U.S. Supreme Court.<sup>69</sup>

This Court granted Petitioner's *IFP* application, yet denied Petitioner's *certiorari* & reconsideration.<sup>70</sup> Thereafter, Petitioner made multiple futile efforts to refile a FRCP Rule 60(d)(1) action in SDTX Houston Division, seeking relief from (1) the prior void district court dismissals & proceedings, (2) the challenged

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<sup>64</sup> Appx.2.Pg.19; See also, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 22-20269, Doc. 8, Filed 06/09/22.

<sup>65</sup> *Mahone v. Addicks Utility Dist. of Harris County*, 836 F.2d 921 (Fed. 5<sup>th</sup> Circ. 1988) ("As the Supreme Court explained long ago, equal protection of the law requires not only that laws be equal on their face, but also that they be executed so as not to deny equality. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); accord *Zeigler v. Jackson*, 638 F.2d 776, 779 (5th Cir. Unit B March 1981) ("[T]he unequal application of a state law, fair on its face, may act as a denial of equal protection.")")

<sup>66</sup> Appx.1.Pgs.57–58, Appx.2.Pgs.19–20, Appx.4.Pg.12; See also, H–CV–00765, Docs. 27 & 30 (*IFP* application & resulting district court's denial order), Filed on 06/13/22 & 06/23/22 respectively; See also, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 22-20269, Doc. 9, Filed 07/01/22; Cf. Fed. R. App. Pro. Rules 24(a)(3)(A), 24(a)(4)(A), 23(a)(4)(B), & 24(a)(5); Cf. *Supra*, fn(s) 51–57.

<sup>67</sup> Appx.2.Pg.20; See also, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 22-20269, Docs. 13–1, 13–2, Filed 08/02/22.

<sup>68</sup> Appx.1.Pg.62.1–62.2, Appx.2.Pgs.20–21; See also, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 22-20269, Doc. 15, Filed 08/15/22.

<sup>69</sup> See Petition for Writ of Certiorari, *Adimora-Nweke v. McGraw et al*, U.S. Supreme Court Case No. 22-6773, Filed 11/14/22, entered 2/16/23; See also, *Id.*, Motion for Leave to Proceed *IFP*, Filed 11/14/22, entered 2/16/23; See Petition for Rehearing, *Adimora-Nweke v. McGraw et al*, U.S. Supreme Court Case No. 22-6773, Filed 5/2/23; See also, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 22-20269, Doc. 42, Filed 02/16/23.

<sup>70</sup> See *Adimora-Nweke v. McGraw et al*, U.S. Supreme Court Case No. 22-6773, Filed respectively on 4/17/23 ("Petition denied" docket entry) & 6/5/23 ("Rehearing denied" docket entry). See also, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 22-20269, Docs. 43 & 44, Filed 04/17/23 & 06/06/23 respectively.

Rule 24(a)(4)<sup>53</sup> in USDC SDTX Houston Cause No. 4:20-CV-04149.<sup>54</sup>

Without the FRAP Rule 24(a)(4) clerk Notice, a procedural pre-condition to Petitioner's ability/right to file a motion to proceed IFP on appeal, Petitioner was procedurally precluded from a FRAP Rule 24(a)(5) motion in the appeals court.<sup>55</sup>

Unable to file a FRAP Rule 24(a)(1) motion in district court, nor file a FRAP Rule 24(a)(5) motion in Fed. 5<sup>th</sup> Circuit Appeals Court to appeal *IFP*,<sup>56</sup> & with Petitioner's state court granted *IFP* status compromised, Petitioner filed a "Plaintiff's Original Bill of review (Independent Action in Equity) Complaint" titled collateral attack in state court;<sup>57</sup> applied to proceed *IFP*,<sup>58</sup> & was again granted such *IFP* status by state court & clerk.<sup>59</sup>

Director McGraw was duly served process on TxDPS' behalf; to which they responded & removed the action again to SDTX Houston Division.<sup>60</sup>

Post removal, the SDTX Houston judge immediately dismissed the case with prejudice<sup>61</sup> without any fair notice, FRCP Rule 16 docket control or initial conference, nor fair hearing;<sup>62</sup> & *IFP* Petitioner duly appealed.<sup>63</sup>

On appeal, the Fed. 5<sup>th</sup> circuit clerk wrongly requested an already *IFP*.

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<sup>53</sup> See Fed. R. App. Pro. Rule 24(a)(4).

<sup>54</sup> See Appx.4.Pgs.3-8.

<sup>55</sup> See Fed. R. App. Pro. Rule 24(a)(5).

<sup>56</sup> See *Id.*, Fed. R. App. Pro. Rule 24(a)(1).

<sup>57</sup> Appx.2.Pg.18; See also, *Adimora-Nweke v. McGraw et al*, USDC SDTX Houston Cause No. 4:22-CV-00765, Doc. 1-2, Pgs. 5-43 (Complaint part applicable to TXDPS & McGraw), 45-203 (Complaint Exhibits attached), 208-212 (Notice of Hearing & exhibits) of 839, Filed 03/10/22.

<sup>58</sup> Appx.2.Pg.18, Appx.1.Pg.64 (Applicable Tex. R. Civ. Pro. Rule 145); See also, H-CV-00765, Doc. 1-2, Pgs. 3-4 (State Court granted IFP application) of 839, Filed 03/10/22.

<sup>59</sup> *Id.*; See also, H-CV-00765, Doc. 1-2, Pgs. 204-206 (issuance request & summons for TXDPS) of 839, Filed 03/10/22.

<sup>60</sup> H-CV-00765, Doc. 1-2, Pgs. 205-206 (summons issued & served on Director McGraw for TXDPS), 222 (certified mail return receipt for Director McGraw & TXDPS service of process) of 839, Filed 03/10/22.

<sup>61</sup> Appx.1.Pgs.53-56, Appx.1.Pg.62, Appx.4.Pg.11; See also, H-CV-00765, Doc. 21, Filed 05/25/22.

<sup>62</sup> Appx.2.Pg.19, Appx.4.Pg.11

<sup>63</sup> *Id.*



H-CV-01651 dismissal.<sup>79</sup>

Petitioner's recent Rule 60(d)(1) collateral attack efforts waged in SDTX Houston courts on the TXDPS claims were denied on grounds of the draconian Hughes order;<sup>80</sup> which bars Petitioner from filing cases in SDTX courts.<sup>81</sup>

Consequently, Petitioner filed this dismissed & appealed independent action-collateral attack in WDTX Austin Division,<sup>82</sup> as allowed per TxDPS' Austin headquarters location.<sup>83</sup>

In the governing complaint,<sup>84</sup> Petitioner requested separate injunctions against separate Respondents (i.e., a class action injunction against TxDPS & McGraw in his official capacity; & an injunction against J. Hughes in his official capacity), & on separate issues duly pled (i.e., defective DIC-24 forms & resulting void TxDPS ALR proceedings, suspensions orders, & fees; & the harmful unconstitutional & overbroad J. Hughes order).<sup>85</sup> Petitioner supported the pleading's claims with self-authenticating evidence<sup>86</sup> that were attached, referenced, or included in the complaint."<sup>87</sup>

Petitioner requested the Courts to, *inter alia*, (a) nullify the non-compliant DIC-24 form(s); (b) nullify & vacate the TxDPS suspension order(s), reinstatement fee payment(s), & payment obligation(s), which all resulted from the void DIC-24

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<sup>79</sup> Appx.1.Pgs.62.3-62.5; *See also*, *Ohakweh, et al v. Harris Hlth Sys, et al*, USDC SDTX Houston Cause No. 4:20-CV-01651, Docs. 13 & 14, Filed 6/26/20.

<sup>80</sup> Appx.2.Pgs.118, 127, 131.

<sup>81</sup> Appx.1.Pg.26.

<sup>82</sup> *Accord*, Appx.1.Pgs.12-13.

<sup>83</sup> 28 USC §1391; *See also*, Appx.1.Pg.27.

<sup>84</sup> Appx.2.Pgs.1-137.

<sup>85</sup> *Id.*; *See also*, Brief of Appellant Ernest Adimora-Nweke, Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 9-1, Pgs. 45-50 ("Argument" §§ "D(I)-D(III)").

<sup>86</sup> *See* Fed. R. Evid. Rules 902 & 803(8).

<sup>87</sup> *See e.g.*, Appx.2.Pgs.27-30 (Footnotes 73-90: references), Appx.2.Pgs.71-132 (attachments).

TxDPS suspensions & DIC-24 forms, & (3) a void & overbroad order issued by Judge Hughes in a separate case (Doc. 12 of USDC SDTX Houston Cause No. 4:20–CV–01651), which barred Petitioner from filing cases in SDTX.<sup>71</sup>

*Inter alia*, Hughes issued the harmful<sup>72</sup> order<sup>73</sup> capriciously without fair notice or hearing;<sup>74</sup> in a separate, independent, non-TxDPS-involved, healthcare civil rights & healthcare *qui tam* case dismissal in 2020;<sup>75</sup> & without jurisdictional-mandated §3730(b)(1) attorney general dismissal consent for any dismissal ever issued or filed.<sup>76</sup> Fed. 5<sup>th</sup> circ. affirmed<sup>77</sup> the collateral-attackable<sup>78</sup>

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<sup>71</sup> See e.g., Appx.2.Pgs.1, 113, 119, 128; See also, *Adimora-Nweke v. McGraw et al*, USDC SDTX Houston Case No. 4:23-mc-00964, Filed 6/15/23; *Adimora-Nweke v. McGraw et al*, USDC SDTX Houston Case No. 4:23-mc-00973, Filed 6/20/23; *Adimora-Nweke v. McGraw et al*, USDC SDTX Houston Case No. 4:23-mc-01283, Filed 8/3/23.

<sup>72</sup> Cf. *BEK Constr. V. NLRB*, 536 US 516, 525 (2002); *Adams v. Carlson*, 488 F.2d. 619, 632–634 (7th Circ. 1973) (“Access to the courts,’ . . . is a larger concept than that put forward by the State. It encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him...”); *Hooks v. Wainwright*, 352 F.Supp. 163, 167 (M.D. Fla. 1972) (“...the constitutional protection of access to the courts is much broader, for it includes access to all courts, both state & federal, without regard to the type of petition or relief sought. *U.S. Const. Amends. I & XIV, § 1.*”);

<sup>73</sup> Appx.1.Pg.26, Appx.2.Pg.89; *Ohakweh, et al v. Harris Hlth Sys, et al*, USDC SDTX Houston Cause No. 4:20–CV–01651, Doc. 12, Filed 6/26/20

<sup>74</sup> Appx.2.Pgs.9–13; See *Ohakweh, et al v. Harris Hlth Sys, et al*, USDC SDTX Houston Cause No. 4:20–CV–01651, Filed 5/12/2020, Terminated 6/26/2020 (Case Docket – available via PACER: [www.pacer.gov](http://www.pacer.gov)).

<sup>75</sup> *Id.*; *Ohakweh, et al v. Harris Hlth Sys, et al*, USDC SDTX Houston Cause No. 4:20–CV–01651, Docs. 13 & 14, Filed 6/26/20.

<sup>76</sup> *Id.*; See e.g., *Ohakweh, et al v. Harris Hlth Sys, et al*, USDC SDTX Houston Cause No. 4:16–CV–1704, Filed 4/30/16 (Case Docket – available via PACER: [www.pacer.gov](http://www.pacer.gov)); See also, *Hall v. Hall*, 138 S. Ct. 1118 (2018) (consolidated cases retain their separate identity & independent characters)

<sup>77</sup> See, *Ohakweh, et al v. Harris Hlth Sys, et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 20–20446, Docs. 77 & 78, Filed 11/18/20.

<sup>78</sup> *Accord Marshall v. Jerico Inc.*, 446 U.S. 238, 242 (1980); *Bass v. Hoagland*, 172 F.2d. 205, 209 (5<sup>th</sup> Circ. 1949), cert denied, 338 U.S. 816 (1949) (“We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void, and attackable collaterally by habeas corpus if for crime, or by resistance to its enforcement if a civil judgment for money, because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, and its courts are included in this prohibition.”); *Walls v. Erupcion Mining Co.*, 36 N.M. 15, 6 P.2d 1021 (N.M. 1931) (Void judgment which has been affirmed on review in an appellate court, or an order or judgment renewing or reviving it entered, adds nothing to its validity. Such a judgment has been characterized as a dead limb upon the judicial tree, which may be chopped off at any time, capable of bearing no fruit... but constituting a constant menace.); See also e.g., *Adimora-Nweke et al v. Harris County Hospital District et al*, USDC SDTX Houston Cause No. 4:22–CV–04352, Doc. 1–1 (“Plaintiffs & Realtors’ Original Bill of Review (Independent Action In Equity Complaint)”), Filed 12/15/22; See also, H–CV–04352, Doc. 23, Pg. 1 (“Notice on Governing Pleading & Standard”), Filed 3/6/23.

Petitioner still lacks available adequate legal remedy.<sup>98</sup>

### REASONS FOR GRANTING THE WRIT

A. *Inter alia*, to avoid erroneous deprivations of citizens' redress, access to courts, counsel of choice, & fair hearing due process & petition rights, this Court should clarify *Pulliam's* exception to judicial absolute immunity – in light of *Weinberger v. Weinsfeld*; as the Fed. 5<sup>th</sup> circuit panel's decision conflicts with relevant decisions of this Court<sup>99</sup> & of the Fed. 5<sup>th</sup> circuit itself,<sup>100</sup> & this Court's consideration is therefore necessary to secure & maintain uniformity of decisions.<sup>101</sup>

### ABSOLUTE IMMUNITY ISSUE

As pled before WDTX & as argue-briefed before fed 5<sup>th</sup> circuit, the void-challenged J. Hughes order subjects or harms counsel Petitioner & his litigation clients' U.S. Const. redress petition rights, liberty of association rights, equal protection rights, & due process rights; as the order is used as leverage to (a) subject Petitioner & his litigation clients to unreasonable discrimination in case administration within the courts – contrary to *Bolling*, *Yick Wo* & *Mahone* principles, (b) deny Petitioner & his litigation clients 1st Amendment U.S. Const. petition right to file or litigate actions in fed. courts (including as *pro se* for Petitioner) – contrary to *Bolling*, *Adams v. Carlson*, & *US Const. Amd. I & V*, & (c) subject or deny counsel Petitioner & his clients due process fair hearing & counsel of choice rights upon removal of cases to S.D. TX federal courts<sup>102</sup> –

<sup>98</sup> See Appx.2.Pgs.4, 8, 33, 35, 49, 50 (Petitioner pled irreparable harms & no adequate [legal] remedy).

<sup>99</sup> See e.g., *Pulliam v. Allen*, 466 US 522 (1984), *Weinberger v. Wiesenfeld*, 420 U.S. 636, fn. 2 (1975), *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560–561 (1992), *U.S. v. Beggerly*, 524 U.S. 38, 47 (1998), *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 244–245, & *Bolling v. Sharpe*, 347 U. S. 497, 347 U. S. 499 (1954)

<sup>100</sup> See e.g., *Mahone v. Addicks Utility Dist. of Harris County*, 836 F.2d 921 (Fed. 5<sup>th</sup> Circ. 1988), *Bass v. Hoagland*, 172 F.2d 205, 209 (Fed. 5<sup>th</sup> Circ. 1949); *Turner v. Pleasant*, 663 F.3d 770, 776 (5<sup>th</sup> Circ. 2011)

<sup>101</sup> U.S. Supreme Court Rule 10(c)

<sup>102</sup> See e.g., *Supra*, fn. 21

forms & resulting ALR proceedings; & (c) nullify & vacate prior orders & judgments entered against Petitioner in prior prospective relief efforts.<sup>88</sup>

The WDTX Austin district court dismissed the action on frivolous grounds.<sup>89</sup> On the TxDPS & McGraw's wrongful DIC-24 & harmful result issues, the WDTX district court held that Petitioner & such persons who possess valid Tx DL license when subjected to the DIC-24 forms lack standing to challenge the DIC-24 forms and suspensions.<sup>90</sup> On the J. Hughes void-order injunction issue, the WDTX court held that Hughes was absolutely immune from suit.<sup>91</sup>

The Fed. 5<sup>th</sup> Circuit three judge panel affirmed said rulings in its 6/7/24 appeal disposition opinion;<sup>92</sup> & dismissed the appeal on frivolous grounds.<sup>93</sup>

Per federal 5<sup>th</sup> circuit's 6/7/24 opinion, J. Hughes was absolutely immune from Petitioner's suit because the challenged order was found to be a judicial act 'not performed in the clear absence of all jurisdiction.'..."<sup>94</sup>

Upon the fed. 5<sup>th</sup> circ.'s error finding of a frivolous appeal, said court unjustly sanctioned Petitioner in the panel's opinion & judgement orders.<sup>95</sup>

Said court denied rehearing & *en banc* rehearing petitions<sup>96</sup> on 8/12/24.<sup>97</sup>

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<sup>88</sup> Appx.2.Pgs.65-70, 77-87; *See also*, Brief of Appellant Ernest Adimora-Nweke, Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 9-1, Pgs. 53-54 ("Conclusion & Relief Requested").

<sup>89</sup> Appx.1.Pgs.13, 12-13, 14-21, 60; *See also*, *Adimora-Nweke v. McGraw et al*, USDC WDTX Austin Case No. 1:23-CV-01048-RP, Docs. 9, 11, & 12, Filed 10/10/23 & 10/18/23 respectively.

<sup>90</sup> Appx.1.Pgs.17-19; *See* A-CV-01048-RP, Doc. 9, Pgs. 4-6, Filed 10/10/23

<sup>91</sup> Appx.1.Pgs.16-17; *See* A-CV-01048-RP, Doc. 9, Pgs. 3-4, Filed 10/10/23

<sup>92</sup> Appx.1.Pgs.1-10; *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Docs. 49-1 & 50-2, Filed 6/7/24.

<sup>93</sup> Appx.1.Pgs.8, 10.

<sup>94</sup> Appx.1.Pg.7; *See also*, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 49-1, Pg. 7, Filed 6/7/24

<sup>95</sup> Appx.1.Pgs.7-8, 10; *See also*, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 49-1, Pgs. 7-8, & Doc. 50-2, Pg. 2, Filed 6/7/24.

<sup>96</sup> *See*, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 53-1, Filed 7/20/24.

<sup>97</sup> Appx.1.Pg.59; *See also*, *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23-50744, Doc. 57-1, Filed 8/12/24.

manner of errors, including departing from the rules of natural justice, proceeding with a suit in which he has an interest, misconstruing substantive law, and rejecting legal evidence.<sup>107</sup>

Furthermore, in footnote 2 of *Weinberger v. Weinsfeld*, this Court confirmed that "...**approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment...**"<sup>108</sup>

Since *writs* & collateral prospective relief actions are not barred by judicial absolute immunity against judicial officers per *Pulliam*, & since U.S. Const. 5<sup>th</sup> & 14<sup>th</sup> Amendment principles are similarly applied against respective applicable federal & state persons per *Weinberger*, then Petitioner's pled §1651 *writ* injunction action sought against J. Hughes & his Doc.12 of Cause 4:22-CV-01651 order, & Petitioner's alternatively pled independent action in equity action<sup>109110111</sup>

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<sup>107</sup> *Id.* at 532-534 (1984)

<sup>108</sup> *Weinberger*, at fn. 2 (Bold emphasis added)

<sup>109</sup> FRCP Rule 60 procedurally served to abolish the need for various common-law bills & *writs*; while reserving the right to entertain a new [collateral] independent action in equity to grant relief from judgment. See *Fed. R. Civ. Pro.* Rule 60(e) ("(e) **BILLS AND WRITS ABOLISHED.** The following are abolished: bills of review, bills in the nature of bills of review, and writs of *coram nobis*, *coram vobis*, and *audita querela*."); See also, *Id.* at Rule 60(d)(1).

<sup>110</sup> Appx.2.Pgs.1, 4-13, 16-35, 71-78, 127, 131, 113-131, (Contains most of the governing Amended Complaint's pled facts, elements/law, & complaint-attached-evidence, (A) all pled & provided in support of (i) the 28 U.S.C. §1651 *writ* action, (ii) the alternative FRCP Rule 60(d)(1) independent action, & (iii) the *Bivens* alternative action against J. Hughes in his official capacity; & (B) seeking injunction & vacate of the void challenged order (Appx.1.Pg.26, Appx.2.Pg.89) that harms Petitioner & his clients' petition, equal protection, & due process rights to file or defend against actions, mandamus & other extraordinary *writs*, removals, or any claim or crim. charges required litigated in SDTX Courts.)

<sup>111</sup> Appx.2.Pgs.118, 124, 127, 130, 131 (Contains orders denying Petitioner right to file the appealed independent action in equity & 28 U.S.C. §1651 *writ* action in SDTX Houston Court, on grounds of J. Hughes' void & challenged order's terms.)

Such are *prima facie* official proof of the discrimination/segregation harm to Petitioner, his client's, & their U.S. Constitution protected petition, equal protection, & due process rights to file & defend claims required or allowed pursued in SDTX Fed. Dist. Crt.; all resulting from J. Hughe's void & challenged order, (A) in violation of *Bolling v. Sharpe*, 347 U. S. at 499-500 ("... the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The "equal protection of the laws" is a more explicit safeguard of prohibited unfairness than "due process of law," and therefore we do not

contrary to *Bolling, Mahone, Adams, Gonzalez-Lopez*,<sup>103</sup> *Balwin, & Marshall* principles.

To dismiss the action against Hughes on frivolous grounds, the WDTX district court & the federal 5<sup>th</sup> circuit panel ruled that “Hughes is absolutely immune from suit,” because his challenged order that bars Petitioner’s legal practice in SDTX courts was a judicial act ‘not performed in the clear absence of all jurisdiction.’...”<sup>104</sup>

That Petitioner always pled & sought equitable prospective relief against Hughes & his challenged-void Doc. 12 order, via (i) a 28 U.S.C. §1651 writ claim sought against J. Hughes in official capacity, (ii) an alternatively pled *Bivens* prospective relief claim, & (iii) a second alternatively pled Rule 60(d)(1) independent action in equity, shows that the 5<sup>th</sup> circuit panel’s absolute immunity ruling is fatal error; contrary to *inter alia*, this Court in *Pulliam & Weinberger*.

In *Pulliam*, this Court analyzed the issue of “whether a [state] judicial officer acting in judicial capacity should be immune from prospective injunctive relief,”<sup>105</sup> & held that judicial absolute immunity does not extend to bar prospective collateral injunctive relief actions against judges.<sup>106</sup>

This Court recognized that *writs* (including mandamus *writs*) were historically used/issued to (a) prevent judges from exceeding jurisdiction, (b) require judge to exercise jurisdiction, & (c) prevent a judge from committing all

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<sup>103</sup> *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144–148 (2006) (Right to counsel of choice is a 6<sup>th</sup> Amd. Constitutional due process guaranteed right of a Defendant.)

<sup>104</sup> *Adimora-Nweke v. McGraw et al*, U.S. Fed. 5<sup>th</sup> Circ. Cause No. 23–50744, Doc. 49–1, Pg. 7, Filed 6/7/24.

<sup>105</sup> *Pulliam*, 466 U.S. at 528–541

<sup>106</sup> *Id.* at 531–542 (1984)

A judicial act in clear absence of all jurisdiction, vs. in excess of jurisdiction, only matters in for ascertaining judicial absolute immunity from civil damages liability actions;<sup>119</sup> & not for injunction or prospective equitable relief actions.<sup>120</sup>

Thus, neither the fed. 5<sup>th</sup> circ. appeal nor the WDTX Austin actions are frivolous – as there exists valid FRCP Rule 60(d)(1) independent action in equity &/or valid §1651 *writ* claims, pled<sup>121</sup> & argued<sup>122</sup> against J. Hughes, at the least.

Also, consequently, the fed. 5<sup>th</sup> circ.'s 6/7/2024 dismissal opinion, sanctions, & judgment rulings,<sup>123</sup> & the WDTX district court's appealed 10/18/23 opinion & judgment,<sup>124</sup> should all be reversed &/or vacated.

That the WDTX & 5<sup>th</sup> circuit rulings directly conflict with relevant *Pulliam* & *Weinberger* decisions of this Court, especially on the scope of federal & state judicial absolute immunity, (a) proves that the proceeding involves exceptional important question, & (b) shows that this Court's consideration is necessary to secure & maintain uniformity of decisions within fed. & state courts.<sup>125</sup>

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<sup>119</sup> See, *Bradley v. Fisher*, 80 U.S. 335, 351–354 (1871) (differentiating a judge's action in excess of jurisdiction vs. a judge's action in absence of jurisdiction for determining whether there exists judicial absolute immunity from **civil damages liability**) (bold emphasis added); See also, *Pierson v. Ray*, 386 U.S. 547, 553 – 553 (1967) ("Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine in *Bradley*...") (internal citations omitted); *Accord, Pulliam*, 466 US at 545 (1984) (dissenting opinion) ("Since 1869, this Court consistently has held that judges are absolutely immune from **civil suits for damages**... We have had no occasion, however, to determine whether judicial immunity bars a §1983 suit for prospective relief. See *Supreme Court of Virginia v. Consumers Union of United States, Inc.*, 446 U. S. 719, 446 U. S. 735 (1980)...") (bold emphasis added; internal citations omitted)

<sup>120</sup> See e.g., *Pulliam*, 466 U.S. at 544 ("The Court today reaffirms the rule that judges are immune from suits for damages, but holds that they may be sued for injunctive and declaratory relief...") (J. Powell, J. Requist, & J. O'Connor [joint] dissenting opinion)

<sup>121</sup> See e.g., *Supra*, at fn(s) 17–24.

<sup>122</sup> See e.g., *Brief of Appellant Ernest Adimora-Nweke*, Fed. 5th Circ. Cause No. 23–50744, Doc. 9–1, Pgs. 19–22, 25 ("Statement of the Case" §§ "B" & "D"); *Id.*, at Pgs. 32–34 ("Summary of the Argument" § "C"), Filed 11/27/23.

<sup>123</sup> *Supra*, fn. 1.

<sup>124</sup> *Supra*, fn(s) 3 & 4.

<sup>125</sup> Fed. R. App. Pro. Rule 35(a); See also, 5th Cir. R. 35 I.O.P., "Federal Rules of Appellate Procedure With

(procedurally & substantively allowed Petitioner under *Fed. R. Civ. Pro. Rules 8(a), 8(d)(2), 8(d)(3)*,<sup>112</sup> *60(d)(1)*, *Turner v. Pleasant*,<sup>113</sup> *U.S. v. Beggerly*,<sup>114</sup> & *Hazel-Atlas Co. v. Hartford Co.*<sup>115</sup>), are valid & alternative prospective relief claims allowed Petitioner against Judge Hughes in his official capacity.

Hence, neither (a) Petitioner's pled Rule 60(d)(1) independent action in equity that seeks prospective injunctive relief against Judge Hughes & the void challenged-unconstitutional order, nor (b) Petitioner's alternatively pled §1651 *writ* action seeking prospective or injunctive relief against Judge Hughes & his unconstitutional-draconian order,<sup>116</sup> are judicial absolute immunity barred.<sup>117</sup>

That any Court finds J. Hughes' act of issuing the void-challenged order,<sup>118</sup> as an act "not performed in the clear absence of all jurisdiction," is irrelevant grounds to immunize said wrongful Hughes act from Petitioner's collateral injunctive relief action to enjoin against recognition & enforcement of the order.

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imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process..."); (B) in violation of *Weinberger, fn. 2*; & (C) in violation of this Court's *Mahone*, 836 F.2d at 932.

<sup>112</sup> See e.g., *Fed. R. Civ. Pro. Rule(s) 8(a)(1); Rule 8(a)(3); 8(d)(2)* (*Alternative or hypothetical statements of a claims or defenses allowed.*); & *Rule 8(d)(3)* (*Inconsistent separate claims or defenses allowed*)

<sup>113</sup> *Turner v. Pleasant*, 663 F.3d 770, 776 (Fed. 5<sup>th</sup> Circ. 2011) ("...[f]ive elements of an independent action in equity: (1) a prior judgment which 'in equity & good conscience' should not be enforced; (2) a meritorious claim in the underlying case; (3) fraud, accident, or mistake which prevented the party from obtaining the benefit of their claim; (4) the absence of fault or negligence on the part of the party; & (5) the absence of an adequate remedy at law.")

<sup>114</sup> *U.S. v. Beggerly*, 524 U.S. 38, 47 (1998) (independent action in equity "available only to prevent a grave miscarriage of justice")

<sup>115</sup> *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 244–245 (1944) (1944) (court of equity authority to set aside final judgments after term available "where enforcement of the judgment is "manifestly unconscionable..." (Citing *Pickford v. Talbott*, 225 U.S. 651, 657 (1912)))

<sup>116</sup> See e.g., *Supra*, fn. 21

<sup>117</sup> *Accord, Pulliam v. Allen*, 466 US 522 (1984)

<sup>118</sup> Appx.1.Pg.26, Appx.2.Pg.89; See also, *Supra*, fn(s) 72 & 78.



reinstatement fee per the void order of suspension; all show that Petitioner suffers concrete & particularized personal harm, which are fairly traceable in sequence from the challenged defective TxDPS DIC-24 forms.

ALSO, Petitioner always pled &/or argued that without a compliant DIC-24 [Statutory Warning "notice"] form, & since §724.015(a) is a mandatory & jurisdictional statute,<sup>131</sup> with

1. substantive due process rights implications (e.g., request consent to invasive blood draw),<sup>132</sup>
2. procedural due process rights implications (e.g., §724.015(a)'s notice of (i) state's implied consent authority, & (ii) subject's right to an ALR hearing/proceedings, etc.),<sup>133</sup>
3. unreasonable search & seizure rights implications (e.g., jurisdictional consequence of "refusal" in state's authority to obtain warrant for blood law in Tex. Code of Crim. Pro. Art. 18.01(j)),<sup>134</sup> &
4. equal protection rights implications<sup>135</sup> (e.g., (A) equal protection of fundamental rights between & within civil & criminal statutorily created, effectuated, & related subgroups; & (B) equal protection in administration of civil & criminal related statutory proceedings. On the civil side, *inter alia*, between (1)(a) consent vs refusal statutory effectuated subgroups; & between (1)(b) breath vs blood draw statutory created subgroups. On the criminal side, & within the mandated precursor "refused" subgroup per 721.015(a), between (2)(a) breath vs. blood draw statutorily created & effectuated subgroups, (2)(b) consent vs refusal, & (2)(c) warrant vs. no warrant authority subgroups effectuated per TCCP Art. 18 & 18.01(j).),<sup>136</sup> the government (e.g., officer or TxDPS), on the civil side, lacked authority to

<sup>131</sup> Appx.3.Pgs.16, 18, Appx.2.Pgs. 36–41, 57–65.

<sup>132</sup> Appx.2.Pgs.40–41; *See also, Winston v. Lee*, 470 U.S. 753, 759 (1985)

<sup>133</sup> Appx.2.Pgs.37–39; *See also, Tex. Transp. Code Ch. 724* ("Implied Consent").

<sup>134</sup> Appx.2.Pgs.41, 44–46; *Tex. Code of Crim. Pro. Art. 18.01(j)*; *Accord, State v. O'Connor*, 877 N.W.2d 312 (N.D. 2016) (holding failure of officer to comply with implied consent statutory requirement rendered chemical test inadmissible in criminal & administrative proceedings); *Accord, Tex. Transp. Code §724.002 & §724.048*.

<sup>135</sup> Appx.2.Pgs.2–3, 15, 24, 47, 49, 56–65.

<sup>136</sup> *Tex. Code of Crim. Pro. Art(s). 18, 18.01(j)*; *Cf. Mahone*, 836 F.2d at 932 (citing *Yick Wo v. Hopkins*), *Bolling*, 347 U.S. at 499, *Weinberger*, 420 U.S. 636, fn. 2, *O'Connor*, 877 N.W.2d 312; *See also, Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020) ("When the express terms of a statute give us one answer & extratextual considerations suggest another, it's no contest. Only the written word is the law, & all persons are entitled to its benefit."), *BankDirect Capital Finance, LLC v. Plasma Fab, LLC.*, 519 S.W.3d 76, 78 (Tex. 2017) (holding strict compliance for textually unambiguous statutory notice provisions.).

Hence, fed. 5<sup>th</sup> circuit abused discretion in denying rehearing & *en banc* petitions; & this Court should grant this petition for *writ*.<sup>126</sup>

**B. To avoid erroneous deprivations of Texas citizen's redress petition, equal protection, unreasonable search & seizure, & due process rights, this Court must *inter alia*, clarify *Lujan v. Defs. Of Wildlife* standing principles in light of Tex Transp. Code 724.011 & 724.015; as this proceeding involves exceptional important issues on (i) standing & (ii) the effect of statutory notice compliance on the petition, equal protection, unreasonable search & seizure, & due process rights of subjected citizens; which the 5th circuit panel decision conflicts with the authoritative decisions of U.S. Supreme Court,<sup>127</sup> Texas courts, & other courts that have addressed similar or relate-able issues or principles.<sup>128</sup> Hence, *writ* grant is duly warranted.<sup>129</sup>**

### STANDING ISSUE

The fed. 5<sup>th</sup> circuit panel, like prior Courts, erred in holding that Petitioner lacked standing to challenge TxDPS' 2011 & 2021 DIC-24 "Statutory [Statement of Consent] Warning" notice forms.<sup>130</sup> Petitioner clearly has standing per *Lujan*.

That Petitioner was subjected to TxDPS' 2011 DIC-24 form on 11/14/2018; was denied fair & timely ALR notice letters; denied ALR hearing; his driver's license revoked &/or suspended; & Petitioner subject to both (a) an increase in driver's insurance costs per the void order of suspension, & (b) a \$125.00

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Fifth Circuit Rules & Internal Operating Procedures," Amd'd 12/1/23, Available @ [ca5.uscourts.gov/home](http://ca5.uscourts.gov/home).

<sup>126</sup> *Accord*, U.S. Supreme Court Rule 10(c).

<sup>127</sup> *See Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020); *Lujan*, 504 U.S. 555, 560-561 (1992); *Yick Wo*, 118 U.S. 356 (1886); *Beggerly*, 524 U.S. 38, 47 (1998); *Hazel-Atlas Co.*, 322 U.S. 238, 244 - 245; *Bolling*, 347 U. S. 497, 347 U. S. 499 (1954).

<sup>128</sup> *BankDirect Capital Finance, LLC v. Plasma Fab, LLC.*, 519 S.W.3d 76, 78 (Tex. 2017); *Dews v. Floyd*, 413 S.W.2d 800, 804 (Tex.Civ.App.- Tyler, 1967); *Walls v. Eruption Mining Co.*, 36 N.M. 15, 6 P.2d 1021 (N.M. 1931); *State v. O'Connor*, 877 N.W.2d 312 (N.D. 2016).

<sup>129</sup> U.S. Supreme Court Rules 10(a) & 10(c).

<sup>130</sup> *Supra*, fn.1, Doc. 49-1, Pgs. 3, 5-6; *See also*, Appx.1.Pgs.3, 5-6.

vs. a non-Tx DL holder subgroup, are irrelevant for §724.015(a)'s purpose. As a statutory enumerated notice, §724.015(a)'s required "Statement of Consent," & its corresponding DIC-24 "Statutory [Required] Warning" contents, are intended to be non-discriminatorily administered between "person(s) arrested for an offense arising out of acts alleged to have been committed while the person was operating a motor vehicle in a public place, or a watercraft, while intoxicated..."<sup>140</sup> Hence, whether or not Petitioner is/was a TX resident &/or with a TX DL, are irrelevant for the defective (or facially invalid) DIC-24 forms' compliance with §724.015(a).

Therefore, Petitioner pursued arguably irrelevant administrative ALR procedures; Petitioner has standing per *Lujan*; & neither this appeal nor the WDTX appealed case are frivolous, as there exists valid FRCP 60(d)(1) action & §1983 claim pled<sup>141</sup> & argued<sup>142</sup> against TxDPS & McGraw, at the least.

Thus, the WDTX Austin court's 10/18/2023 opinion & final judgment, & the federal 5<sup>th</sup> circuit court's 6/7/2024 rulings, sanctions order, & final judgment, should all be reversed &/or vacated.

And since the DIC-24 forms (1) violate Tx legislature's mandatory requirements; (2) are still used daily against people in Texas; (3) are used in highly-invasive needle blood-draws & without consent nor constitutional authority; & (4) subjects or deprives Texas subjects of their petition, equal protection, unreasonable search & seizure, & due process rights, the proceeding therefore involves questions of exceptional importance to warrant *en banc*

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<sup>140</sup> *Tex. Transp. Code*. §724.011; *See also, Id.* at §724.002.

<sup>141</sup> *See Supra*, fn. 138.

<sup>142</sup> *See Supra*, fn. 139.

suspend Petitioner's license, or subject Petitioner to ALR proceedings requirements, obligations, or consequences for any "refusal" (e.g., temporary license suspensions, ALR hearing requests, any resulting Driver's License suspension or such on driving record, increase in insurance costs, & \$125.00 statutory reinstatement fee).<sup>137</sup>

That Petitioner made reasonable yet arguably irrelevant efforts to request an ALR hearing, but was denied fair & timely notice to cure (which resulted in the challenged void suspension order), also shows (1) mistake or error not of Petitioner's fault, that resulted in the void & challenged DL suspension order; & (2) that Petitioner pursued statutory & ALR administrative procedures available, yet still suffered/suffers harmful & redressable DL suspension record order, increase in driver's insurance costs, and subject to the \$125.00 reinstatement fee.

Combined with Petitioner's always pled<sup>138</sup> &/or argued<sup>139</sup> 60(d)(1) & §1983 equitable reliefs, a favorable judgment &/or order that nullifies or vacates the void & non-compliant TxDPS DIC-24 form(s), vitiates the relevance & validity of any (1) TxDPS ALR proceeding obligation from Petitioner or any subjected, (2) TxDPS' ALR proceeding resulting Driver's License ("DL") order of suspension, (3) TxDPS' ALR proceeding resulting DL reinstatement fee, & (4) prior judgments or orders in Petitioner's collateral attack efforts. Hence, Petitioner meets *Lujan* standing.

Being a Tx resident vs. non-Tx resident subgroup, or being a Tx DL holder

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<sup>137</sup> Appx.2.Pgs.37-38, 41, 43-47, 59-65.

<sup>138</sup> Appx.2.Pgs.1-4, 6-7, 13-73, 77-87, 90-96, 97-132.

<sup>139</sup> Brief of Appellant Ernest Adimora-Nweke, Fed. 5th Circ. Cause No. 23-50744, Doc. 9-1, Pgs. 15-19, 22-26 (Statement of the Case §§ "A, C, & D"); *Id.*, at Pgs. 28-32. (Summary of the Argument § "B"); *Id.*, at Pgs. 36, 44-45, 47-50. (Argument §§ "A, DI, & DIII").

application, & the district court's subsequent capricious dismissal & order denying "any further motions filed on the docket," all without any FRAP Rule 24(a)(3)(A) *IFP* appeal certification, wrongly precluded Petitioner's right to file a FRAP Rule 24(a)(1) motion in district court to appeal *IFP*, & also wrongly precluded Petitioner's right to file a FRAP Rule 24(a)(5) motion in Fed. 5<sup>th</sup> Circuit Appeals Court to appeal *IFP*.<sup>152</sup>

Without appeal fee funds, & with *IFP* status denied Petitioner – per the orders precluding a further FRAP 24(a) motion, Petitioner could not appeal the USDC# 4:20–CV–04149's void dismissal.<sup>153</sup> Hence, the fatal resulting lack of legal remedy due to lack of funds was not *IFP* Petitioner's fault.<sup>154</sup>

Petitioner consequently had to, & did wage a collateral attack on the void H-CV-04149 dismissal-judgment, via a "Bill of Review/Independent Action in Equity" titled-complaint;<sup>155</sup> but erred in filing such in the state court that granted *IFP* status, vs. in SDTX fed. court where Petitioner is barred from practice.

Yet, that Petitioner erred in filing the "Bill of review/Independent Action in Equity Complaint" titled complaint in state court to collaterally attack USDC# 4:20–CV–04149's judgment dismissal, was rectified & became irrelevant upon McGraw/TxDPS' state court answer & subsequent USDC SDTX Houston Cause # 4:22–CV–00765 removal to federal court.<sup>156</sup>

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<sup>152</sup> *Supra*, Pgs. 13–14; *See also*, Brief of Appellant Ernest Adimora-Nweke, Fed. 5<sup>th</sup> Circ. Cause No. 23–50744, Doc. 9–1, Pgs. 22–25 ("Statement of the Case" § "C"); Appx.2.Pgs.16–18, 18–22.

<sup>153</sup> *Id.*; Appx.2.Pgs.16–21, 46.

<sup>154</sup> *Id.*; *Accord*, *Bolling*, 347 U.S. at 499; *Mahone*, 836 F.2d at 932, *Marshall*, 446 U.S. 238, 242 (1980); *Bass*, 172 F.2d at 209.

<sup>155</sup> *See Supra*, fn. 57.

<sup>156</sup> Appx.2.Pgs.18, 48–50; *See also*, H-CV–00765, Docs. 1 (Notice of Removal) & 1–2 (Appendix State Court Pleadings), Filed 3/10/22.

rehearing in the federal 5th circuit & this Court's grant of *writ* petition because the WDTX & fed. 5th circuit panel decisions conflict with the authoritative decisions of U.S. Supreme Court,<sup>143</sup> Texas Supreme Court,<sup>144</sup> & other states' courts<sup>145</sup> that have addressed similar or relate-able issues or principles.<sup>146</sup>

### COLLATERAL ISSUES

#### Additional Material Fed. 5<sup>th</sup> Circuit Overlooked Fact(s) & Law(s)<sup>147</sup>

The fed. 5<sup>th</sup> circuit's 6/7/24 opinion,<sup>148</sup> just as the SDTX Houston's dismissal opinion in 4:22-CV-00765,<sup>149</sup> raises that Petitioner failed to appeal the dismissal of USDC SDTX Houston Cause No. 4:20-CV-04149; & rather filed a "bill of review" in state court.

Said courts overlooked their respective complaints,<sup>150</sup> which duly pled or raised facts, allegations & arguments to explain said issue. Said courts also overlooked that the respective complaints cited & attached evidence in support of explanation of said issues;<sup>151</sup> all which showed & argued that:

*Inter alia*, in the original-removed USDC# 4:20-CV-04149 action, after denying Petitioner fair oral hearing on merits, the H-CV-04149 case magistrate's deceptive compromise of Petitioner's *IFP* status without ruling on the *IFP*

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<sup>143</sup> See *Bostock*, 140 S. Ct. 1731, 1737 (2020), *Lujan*, 504 U.S. 555, 560-561 (1992), *Yick Wo*, 118 U.S. 356 (1886), *U.S. v. Beggerly*, 524 U.S. 38, 47 (1998), *Hazel-Atlas Co.*, 322 U.S. 238, 244-245; *Bolling*, 347 U.S. 497, 347 U.S. 499 (1954).

<sup>144</sup> *BankDirect*, 519 S.W.3d 76, 78 (Tex. 2017).

<sup>145</sup> *State v. O'Connor*, 877 N.W.2d 312 (N.D. 2016).

<sup>146</sup> See *Supra*, fn. 125; See also, U.S. Supreme Court Rules 10(a) & 10(c).

<sup>147</sup> See also, *Supra*, fn. 6, Doc. 53-1.

<sup>148</sup> Appx.1.Pg.3; *Supra*, fn. 1, Doc. 49-1, Pg. 3.

<sup>149</sup> Appx.1.Pg.54; H-CV-00765, Doc. 21, Filed 5/25/22.

<sup>150</sup> *Supra*, fn(s) 21-25, 84-88.

<sup>151</sup> *Id.*

Petitioner is barred from practice in SDTX Houston, (a) shows the irreparable harm to Petitioner caused by the Hughes' void-challenged order sought enjoined & vacated; & (b) shows the irreparable harm that the order subjects Counsel-Petitioner's litigation clients, upon need for federal equitable or legal relief.

For these reasons, the WDTX court's disposition rulings, the fed. 5<sup>th</sup> circuit panel's 6/7/2024 disposition rulings & sanctions order, & the fed. 5<sup>th</sup> circuit panel's 8/12/2024 rehearing denial order, all further grave miscarriage of justice, & perpetuate the void & discriminatory orders effectuated against Petitioner; depriving Petitioner, his clients, & similarly situated §724.015 subjects of petition, equal protection, unreasonable search & seizure, & due process rights; & contrary to *inter alia*, this Court & the fed. 5<sup>th</sup> circuit's *Iqbal*, *Pulliam*, *Lujan*, *Weinberger*, *Bolling*, *Mahone*, *Beggerly*, *Hazel-Atlas*, *Turner*, & *Bass* principles.

Hence, the Fed. 5<sup>th</sup> circuit abused discretion in denying rehearing & *en banc* petitions, & in dismissing the current & prior appeal(s); the WDTX Austin district court abused discretion in dismissing the appealed action; the fed. 5<sup>th</sup> circ's 6/7/24 opinion, judgment, & sanctions orders must be reversed &/or vacated; the WDTX Austin district court's 10/18/23 opinion & judgment must be reversed &/or vacated; & this Court should grant this *writ* petition, & its requested reliefs.

### **RELIEF REQUESTED**

Wherefore, Petitioner requests this Court to grant *writ* of *certiorari* petition, & after its due course of proceedings (e.g., order Respondents to brief responses), (a) reverse &/or vacate the federal 5<sup>th</sup> circuit court's 6/7/24 opinion, judgment, & sanctions order; (b) reverse &/or vacate the WDTX district court's 10/18/23

Such is because FRCP Rule 60(d)(1) action contains same elements as “Bill of review,” & serves same equitable relief & collateral attack purpose in federal court.<sup>157</sup> And since fed. court pleadings are judged per facts pled to meet legal elements of claim,<sup>158</sup> & Petitioner’s governing pleading(s)<sup>159</sup> always met *Iqbal*’s FRCP Rule 8(a) pleading standard for §1983 claims or FRCP 60(d)(1) collateral equity actions involving McGraw, TxDPS, & the DIC-24 forms,<sup>160</sup> Respondents *TxDPS & McGraw*’s removal action (via USDC SDTX Cause No. 4:22–CV–00765 action) resolved any Petitioner error in filing the collateral action in state court.

### CONCLUSION

Since Petitioner always pled & argued the above, including the overlooked facts, law, & evidence in/with his complaints, (a) the continued existence of the void/defective DIC-24 forms, (b) the resulting void statutory administration (including ALR proceeding requests, TxDPS suspension orders, & \$125.00 statutory reinstatement fee requirements), & (c) the continued irreparable harm to DIC-24 subject’s petition, equal protection, due process, & unreasonable search & seizure rights, show or strongly evidence that the challenged harmful & prior fed. district & appeal dismissals, orders, & judgments against Petitioner, are void, & perpetuate grave miscarriage of justice & manifest unconscionable results.<sup>161</sup>

The pleading-attached orders from SDTX Houston, which deny Petitioner right to proceed *IFP* or seek pled federal equitable relief, on grounds that

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<sup>157</sup> Appx.2.Pgs.7–8, 48–49.

<sup>158</sup> *Id.*; See also, *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949–1953 (2009)

<sup>159</sup> Appx.2.Pgs.1–4, 6–7, 13–73, 77–87, 90–96, 97–132.

<sup>160</sup> *Id.*; See also, Appx.2.Pgs.48–49.

<sup>161</sup> Brief of Appellant Ernest Adimora-Nweke, Fed. 5<sup>th</sup> Circ. Cause No. 23–50744, Doc. 9–1, Pgs. 30–32. (“Summary of the Argument” § “B”); *Id.* at Pgs. 47–50 (“Argument” § “DIII”).