No. 24-6213

IN THE

SUPREME COURT OF THE UNITED STATES

Julien Simmons — PETITIONER
(Your Name)

vs.

Consumer Assistance Group et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Julien Simmons
(Your Name)

13423 Blanco Road Unit # 3011
(Address)

San Antonio, Texas
(City, State, Zip Code)

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(Phone Number)

Question(s) Presented

1. Has the United States Court of Appeal for the 5th Circuit entered a decision in conflict with the decision of *Hughes v. United States 263 F.3D 272, 278 (3rd Cir.2001),* which is the decision of another U.S. Court of Appeal on the same important matter, and reason for the U.S. Supreme Court to grant Writ of Certiorari pursuant to U.S. Supreme Court Rule 10 (a)(b)(c)?

2. Did the U.S. Court of Appeals for the 5th Circuit only state *Baugh v, Taylor, 117 F.3d 197, 202 (5th Cir. 1997),* and *Howard v. King, 707 F.2d 215, 202 (5th Cir. 1983)* and ignore the arguable legal points clearly defined in the Petitioners Appeal Brief that where nonfrivolous?

3. Did the U.S. Court of Appeals for the 5th Circuit use *Willingham v. Morgan, 395 U.S. 402, 409 (1969)* in their document filed on April 25th, 2024 to as a substitute for the averment of an official immunity defense and did Respondents Michelle Parham qualify for 28 U.S.C. 1442 (a) (1)?

4. Did the U.S. Court of Appeals for the 5th Circuit use *Joiner v. United States, 955 F.3d 399, 403 (5th Cir. 2020,* and *Life Partners Inc. v. United States, 650 F.3d 1026, 1029 (5th Cir. 2011)* correct in their statement on page 2 of Appendix A; stating that the Petitioner had failed in his contention that the district court had erred in granting sovereign immunity to the Federal Defendants?

5. Did the Petitioner make a cogent argument that the district court erred in determining that his claims against the Federal Defendants were not with the scope of the FTCA and that the discretionary function exception did not apply?

6. Has the Petitioner filed an administrative claim with CAG pursuant to FTCA, and did the district courts pass motions to dismiss lawfully pursuant their own court procedures?

7. Did Petitioner demonstrate a nonfrivolous issue in his appeal about the district court improper procedure by the district judges, and is the improper procedure of the district judges' reason to grant Writ of Certiorari pursuant to U.S. Supreme Court Rule 10 (a)?

8. Does Petitioner raise a nonfrivolous issue of judicial bias?

9. Was Petitioners concern that his appeal may be barred pursuant to 28 U.S.C 636 (b)(1)(C) and Douglass v. United Servs. Auto Ass'n, 79 F.3d 1415(5th Cir. 1996) (en banc) without foundation?

10. Did Petitioner qualify for IFP?

11. Was this case dismissed with congressional intent as frivolous pursuant to 5th Cir. R. 42.2.?

List of Parties

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

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Related Cases

- *Baugh v, Taylor, 117 F.3d 197, 202 (5th Cir. 1997)*
- *Howard v. King, 707 F.2d 215, 202 (5th Cir. 1983)*
- *Willingham v. Morgan, 395 U.S. 402, 409 (1969)*
- *Joiner v. United States, 955 F.3d 399, 403 (5th Cir. 2020)*
- *Life Partners Inc. v. United States, 650 F.3d 1026, 1029 (5th Cir. 2011)*
- *Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993)*
- *Union City Barge Line, Inc. v. Union Carbide Corp., 823 F. 2d 129, 135 (5th Cir. 1987)*
- *Liteky v. United States, 510 U.S. 540, 550 (1994)*
- *Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415 (5th Cir. 1996)*
- *Howard, 707 F.2d at 220*
- *Hughes v. United States 263 F.3D 272, 278 (3rd Cir.2001)*
- *Malley v. Briggs 475 US. 335, 341 (1996)*
- *Nettles v. Wainwright*, 677 F.2d 404, 408 (5th Cir.1982) (en banc).

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

Opinions Below

The opinion of The United States Court of Appeals for 5th Circuit appears at Appendix A to the petition and is unpublished.

Jurisdiction

Petitioner is seeking Writ for Certiorari for the judgement of his appeal dismissed in a document filed April 25th, 2024 by the United States Court of Appeals for the Fifth Circuit. The U.S. Supreme Court has jurisdiction to review this legal matter pursuant to Rules of the Supreme Court of the United States Rule 10 Considerations Governing Review for Certiorari (a)(b)(c) and Rule 13.

Motion to file out of time was granted, but Rehearing En Banc was denied 5th Circuit on 010/09/2024, and a copy of the order denying rehearing appears at Appendix C.

Constitutional and Statutory Provisions Involved

- *Baugh v, Taylor, 117 F.3d 197, 202 (5th Cir. 1997)* ..... Page 2, 3
- *Howard v. King, 707 F.2d 215, 202 (5th Cir. 1983)* ..... Page 2, 3
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Statement of the Case

The United States Court of Appeals for the 5th Circuit has entered a decision in in Appendix A that is in conflict of *Hughes v. United States 263 F.3D 272, 278 (3rd Cir.2001),* which is decision of another U.S. Court of Appeals on the same important matter. The important matter in question is whether sovereign immunity is Jurisdictional of Non-Jurisdictional when sovereign immunity is the affirmative defense of the Federal Appellees when there is substantial evidence proving they are guilty. 5th Circuit has dismissed the Petitioners appeal as frivolous. In doing so 5th Circuit decision conflicts with *Hughes v. United States* for in (ROA 25 Finding Facts paragraphs 22, 23, 24, 25, 26, 28, 29, 30, 31,32, 33, Contested Issues of Fact 1-14, Finding Facts of Recorded Dialogue 1-7 and ROA 27 exhibit 68 and all exhibits mentioned in ROA 25) Petitioner presents solid evidence PNC Respondents are lying in (ROA 3) and proves Federal Defendant acted negligently and out of lack of skill violated 12 U.S.C 1818 (b). Petitioner provide proof that he is a shareholder of PNC at the time of the examination in (ROA 27 exhibit 68). Petitioner proves he needed enforcement from OCC but Federal Defendant would not send his case to OCC. Federal Defendants affirmative defense was FTCA Statue of Limitations, which is the same as *Hughes v. United States.* District Court also raised an Order and dismissed

the Federal Defendants for lack of subject matter, which was also the same as *Hughes v. United States.* 5th circuit decision in Appendix A conflicts with the decision of another U.S. Court of Appeals and will cause confusion on how to interpret the law. U.S. Supreme Court must grant the Petitioner Writ of Certiorari, for the Court must ensure that laws are applied equally across the nation.

U.S. Court of Appeals for the 5th Circuit's only state *Baugh v, Taylor, 117 F.3d 197, 202 (5th Cir. 1997),* and *Howard v. King, 707 F.2d 215, 202 (5th Cir. 1983)* and erred ignoring arguable legal points clearly defined in Appellants Appeal Brief where nonfrivolous. 5th Cir totally ignored Disrtict Courts violation of their own Rules and Procedures and by dismissing the case by motion in a discovery matter. This being one of the reasons why the appeal is nonfrivolous. 5th Cir did not articulate how appeal did not have any legal point arguable. 5th Circuit just states on page 2 paragraph 2 in Appendix A "Our inquiry is "limited to whether appeal involves legal points arguable on their merits (and therefore not frivolous)". Petitioners appeal was not in bad faith, but district court and Respondents where in bad faith for asking for dismissal in a discloser case and granting of motions to dismiss and motions of stay which quashed discovery in the case. This will be concluded later in the following paragraphs.

U.S. Court of Appeals for 5th Circuit erred using *Willingham v. Morgan, 395 U.S. 402, 409 (1969)* in Appendix A was a substitute for an averment of an official immunity defense. Respondents CAG and Michelle Parham where not under the color of their office pursuant to 28 U.S.C 1442 (a)(1), nor where they under the color of their office as

the officers in *Willingham v. Morgan,* and pursuant to 28 U.S.C 1442 (c) (1,2, and 3) did not qualify for removal for Respondent Michelle Parham did not protect an individual in the presence of the officer from a violent crime. This is mentioned in (ROA 29 paragraphs 3and 4). Petitioner states in (ROA 29 paragraph 1) Statues of Limitations FTCA as Jurisdictional Prerequisite and Implications of Equitable Tolling allows the Petitioner to sue for Respondent Michellee Parham did not act on Petitioners complaint about PNC Respondents out of Negligence. In Appendix B the district judge dismissed Respondents CAG and Michelle Parham after Petitioner files (ROA 29) presenting substantial evidence for the equitable tolling of the Statue of limitations. 5th Cir didn't present any evidence Federal Respondents CAG or Michelle Parham had a causal connection of their duties for them to be granted immunity other than stating in document to substitute for averment. Respondents CAG and Michelle Parham's counsel didn't mention, nor did they make a statement in their own document's causal connection of their duties as a reason for them to be granted sovereign immunity. 5th Circuit acted in defense of Respondents and as an attorney. This legal matter has been dismissed without Respondents filing an Appellee brief. Every case 5th Circuit used in their Judgement was an attempt to substitute for the averment of an official immunity defense. You will find as you continue to read the next paragraphs the Petitioner stating more reasons why the Respondents CAG and Michelle Parham did not qualify for sovereign immunity.

The U.S. Court of Appeals for the 5th Circuit erred using *Joiner v. United States, 955 F.3d 399, 403 (5th Cir. 2020,* and *Life Partners Inc. v. United States, 650 F.3d 1026, 1029 (5th Cir. 2011)* in their statement on page 2; Petitioner did not fail in his contention that district court had erred in granting sovereign immunity to Federal Respondents.

Petitioner in his Appeal Brief proves Federal Respondents did not qualify for sovereign immunity, because it was their affirmative defense, with no other defense or reason for dismissal in the case. In *Joiner v. United States, 955 F.3d 399, 403 (5th Cir. 2020),* defendants have more than Statue of Limitations of FTCA. They presented raised facts of why they qualified for sovereign immunity. Respondents did not have any raised facts of why they qualified for sovereign immunity and it was their affirmative defense. In case of *Hughes v. United States*, Hughes had a substantial number of reasons and evidence against United States so the case could not be dismissed and FTCA Statue of Limitations was found to be non-jurisdictional. Petitioner during district court presented substantial amount of evidence and the case should have not been dismissed. Petitioner also mention this in his (ROA Appellant Brief on page 11). Petitioner provided a substantial amount of evidence in (ROA 25 and 27 all pages). Evidence in (ROA 25 and 27) proved Respondents are guilty of all charges. 5th Circuit in (ROA 51) asked Petitioner to make his appeal brief about (ROA 27), which was document containing sufficient evidence for sovereign immunity to be tolled same as *Hughes v. United States*. Petitioner also filed along with his Appeal Brief a revised copy of (ROA 25) and recordings for the document. These documents and recording where thrown away by 5th Circuit. It was not congressional intent to for Statue of Limitations of FTCA to be used as an affirmative defense to protect a plainly incompetent agent of agency, however with strong evidence of congressional intent, equitable tolling may be justified. Federal Respondents affirmative defense was FTCA Statue of Limitations and pursuant to case *Hughes v. United States 263 F.3D 272, 278 (3rd Cir.2001),* Statue of Limitations can be equitably tolled. *Hughes v United States* is a reason for the U.S. Supreme Court to rehear

Petitioners appeal En Banc. It is also reason for U.S. Supreme Court to grant Petitioner Writ of Certiorari pursuant to U.S. Supreme Court Rule 10 (a). When it comes to 5th Circuits use of *Life Partners Inc. v. United States, 650 F.3d 1026, 1029 (5th Cir. 2011)*, as a reason to dismiss for lack of subject matter jurisdiction. 5th Circuit and district courts both had subject matter jurisdiction because this is a civil matter that was properly filed in a civil court by the Petitioner and criminal evidence was presented during trial. Petitioner does not wish to be respondent in the following sentences of this paragraph, but must answer this question in this manner for the way *Life Partners Inc. v. United States* is stated in Appendix A. Since Respondents CAG and Michelle Parham's affirmative defense is Statue of Limitations, and *Hughes v. United States* makes Statue of Limitations non jurisdictional we look to Federal Tort Claims Act paragraph 2 "The Concept of Clearly Established Law" *Malley v. Briggs 475 US. 335, 341 (1996).* Qualified immunity provides "ample room for mistaken judgments" and protects all government officials except "the plainly incompetent or those who knowingly violate the law". In Petitioners appeal he provides ample evidence Respondents CAG and Michelle Parham were plainly incompetent or those who knowingly violating the law by not enforcing Petitioners complaint to Respondents CAG about Respondents PNC violation of Business Organization Code Title 2, Corporations Chapter 21, For Profit Corporations Sub-Chapter A, General Provisions. Section 21.218(b)(c). This can be found on page 10 of Petitioners Appeal Brief and evidence in (ROA 27) and in the USB with audio provided to 5th Circuit by Petitioner. Within (ROA 25 and 27) Petitioner presents substantial evidence of congressional intent for equitable tolling. In this legal matter it is not a matter of injury but a matter of acting negligently and with lack of skill. Respondent

CAG and Michelle Parham's negligence, incompetence, and wrongful decision making is not same as, *Life Partners Inc. v. United States, 650 F.3d 1026, 1029 (5th Cir. 2011)* insurance claim. 5th Circuit had jurisdiction over this case pursuant to cases *Malley v. Briggs,* and *Hughes v. United States.* In (ROA 51) Appellant is asked by district court to prepare his Petitioner Appeal Brief using paginated record. Document contained in the CD was (ROA 27), which was exhibits for (ROA 25) proving Respondents are guilty and is nonfrivolous reasons for this case is to be reversed.

Petitioner did make a cogent argument district court erred in determining that his claims against Federal Respondents were not within the scope of FTCA and discretionary function exception did not apply. On page 10 of Petitioners Appeal Brief, Appellant states as quoted "Appellees CAG and Michelle Parham does not qualify for sovereign immunity pursuant to FTCA paragraph 2 "The Concept of Clearly Established Law" *Malley v. Briggs*. Qualified immunity provides "ample room for mistaken judgments" and protects all government officials except "the plainly incompetent or those who knowingly violate the law". Respondents Michelle Parham was plainly incompetent, and knowingly did not enforce Petitioners complaint against Respondent PNC, which Respondent Michelle Parham's incompetents was meant to aid Respondent PNC in stealing Petitioners Trust Fund. Respondents CAG, and Michelle Parham had private conversation with Respondents PNC, and has violated Penal Code Title 8. Offenses Against Public Administration Chapter 36. Bribery and Corrupt Influence Sec. 36.04 Improper Influence (a) (b). Respondents all live and work in office in the same city and state of Houston Texas and may know one another. In the statement made in (ROA 25 Pages 19-21 Paragraphs 4-7) by Petitioner makes his

cogent argument about Respondents CAG and Michelle Parham's failure to exercise or perform a discretionary function or duty as an agency or government employee. Incompetents of Respondents Michelle Parham and CAG is the reason why discretionary function exception did not apply. This Statement is mentioned and made a topic as a nonfrivolous reason for appeal in Petitioners Appeal Brief on page 12. Therefore, Petitioner has not waived any challenge to the remand of his claim and did not fail in his brief. This makes *Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993)* irrelevant in this legal matter.

Petitioner filed an administrative claim with Respondent CAG on May 31st, 2024. Petitioner last letter from Respondent Michelle Parham and CAG was on June 8th, 2022. Petitioner also received his final response from The Office of The Ombudsman on August 15th, 2022. Both dates make Petitioner administrative claim timely filed pursuant to FTCA. Petitioner did not know, nor did he understand that he needed to file the Standard form 95 prior to placing the lawsuit at the time he filed it, but he needed to take legal action against Respondents. Petitioner had to file *pro se* without limited scope from an attorney. Petitioner searched for one on the bar but there were not any attorneys available for him. Standard 95 form has been timely filed after the start of this legal matter, but within 6 months after filing administrative claim sent to Respondent CAG via certified mail. Making this legal matter same as *Hughes v. United States.* District court did err in granting sovereign immunity to Respondents CAG and Michelle Parham. Pursuant to Court Procedures Hon. Charles R. Eskridge III page 12, Section 15. Discovery and Scheduling Disputes (a). This legal matter is a discovery matter, and it is stated in Judge Eskridges Court Procedures under Discovery and Scheduling Disputes on page 12 "Good faith is required". Make a serious attempt to resolve all discovery and scheduling disputes without motion. This includes

disputes to compel or quash any discovery or for protection." Judge Eskridge resided over the case, and his rules of court procedure applied in governing the case. Dismissing the case was his ultimate decision in his (ROA 39 pages 1-3) However the motions by requested by Respondents where in bad faith and in attempt to protect themselves from discovery. PNC Respondents made a motion for Judgement on the Pleadings in (ECF 16), and Respondents CAG and Michelle Parham made a motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1)(6) in (ROA 4). At the time Petitioner had not filed a claim with Respondent CAG. It was in bad faith for Respondent CAG to pass a motion for dismissal pursuant to F.R.A.P 12(b)(1)(6) to protect themselves and PNC Respondents trying to get the case dismissed before making a serious attempt to resolve discovery without motion. Pursuant to Judge Eskridges Court Procedures under Discovery and Scheduling Disputes on page 12 Respondents CAG and Michelle Parham's motion should have been denied. Petitioner needed discovery of requested documentation so he can state claim to his Trust Fund that is being withheld from him by Respondents PNC. Granting Respondents CAG and Michelle Parham's Motion to Dismiss was a violation of Judge Eskridges own Procedures. Judge Eskridge allowed and aided Respondents in this case in stealing Petitioners Trust Fund. This information was mentioned during district court in (ROA 38-page 3 paragraph 3) unlike *Yohey v. Collins*. It is also mentioned in (ROA 38- page 3-4) and in Respondents Appeal Brief (pages 9-10) Magistrate Judge had district trial stayed improperly, and the case had been dismissed improperly pursuant to of Judge Eskridges own Procedure. Unlike *Yohey v. Collins*, Yohey presented facts that had not been mentioned in district courts. Respondents Lack of an administrative claim was not one of the reasons why 5th Circuit dismissed his appeal. The reasons for the 5th Circuits dismissal of Petitioners appeal were simply as averment for the Respondents, and in aid of them committing a crime.

Petitioner demonstrated nonfrivolous issues in his appeal on pages 9,14, and 15 about district court violation of procedure by both magistrate and district and the improper procedure of the district court are reasons to grant Writ of Certiorari pursuant to U.S. Supreme Court Rule 10 (a). Pursuant to their own court procedures "Court Procedures Hon. Charles R. Eskridge III Page 12, Section 15. Discovery and Scheduling Disputes (a), for it states in his court procedures "Good faith required", and "Court Procedures of Magistrate Judge Christina A Bryan IV Discovery Disputes Page 4 paragraph 12", Respondents document (ROA 24 pages 1,3,5) was a violation of Judges Eskridge, Bryan procedures, and FRCP Rule 26(c) for the Respondents raised Motions to Dismiss (ROA 4) and Motion for Judgement on The Pleadings(ROA 16) in discovery case without attempting to disclose documents prior to filing (ROA 24), and did not make attempt to resolve dispute without court action. District Court filed an Order (ROA 28 page 1), which canceled pretrial conference and stayed the case. This Order was a violation of both Judge Bryans and Judge Eskridges court procedures. Respondents CAG and Michelle Parham were in bad faith in their Motion to Dismiss (ROA 4), and in discovery a matter the district courts violated FRCP Rule 26 Duty to Disclose, General Provisions Governing Discovery (c) Protection Orders, because motion for protection without any party making a motion included certification that movant has in good faith coffered of attempted to confer with any other affected parties to resolve the dispute without court action was made by the district courts by granting stay in (ROA 28). Therefore, they should not have been granted sovereign immunity. In combination with Court Procedures Hon. Charles R. Eskridge III Page 12, Section 15. Discovery and Scheduling Disputes (a) and affirmative defense being sovereign immunity *Hughes v. United States.* Petitioner does demonstrate a nonfrivolous issue about district courts improper procedure by

both district judges residing over the case for it's some of the injustice stated in Petitioners Appeal Brief and (ROA 38) when magistrate judge attempts to dismiss and bar Petitioner pursuant to 28 U.S.C 636 (b)(1)(c) and case *Douglas v. United Servs Auto Ass'n,* 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc) in (ROA 36 pages 15-16). Mentioned on page 12 of Petitioner Appeal Brief and (ROA 36 pages 15-16) U.S.C 636 (b)(1)(c) and case *Douglas v. United Servs Auto Ass'n* was to prevent Petitioner from attacking it upon plain error and manifest injustice in an appeal pursuant to *Nettles v. Wainwright*, 677 F.2d 404, 408 (5th Cir.1982) (en banc). This topic can be found on pages 8,9,11,12, and 15 of the Petitioners Appellant Appeal Brief. *Union City Barge Line, Inc. v. Union Carbide Corp., 823 F. 2d 129, 135 (5th Cir. 1987)* is not applicable in this legal matter for discovery was quashed before documents that could be used as evidence to help assert Petitioners claims against Respondents could be obtained. This is another averment being made by 5th Circuit as reason to dismiss the case. Respondents Attorneys held pretrial conference by email, which was a violation of to Court Procedures of Magistrate Judge Christina A. Bryan Discovery Disputes Page 4, counsel must confer by telephone or video conference. A violation of FRCP Rule 26 (c) Protection Orders, for magistrate judge provided the Respondents protection with stay in the case without judgement of the case and quashed discloser of documents with the cancellation of pretrial conference which was vital for the salvation of the Petitioners Trust Fund. Without the documents requested for discloser Petitioner cannot state claim to his trust and is reason for the bad faith of the Respondents passing motions for dismissal which are in violation of Court Procedures Hon. Charles R. Eskridge III Page 12, Section 15. Discovery and Scheduling Disputes (a). The violations of rules, and procedure mentioned in this paragraph are sufficient reasons for The U.S. Supreme Court to grant Writ of Certiorari for the appeals court and the district court are to far outside of accepted judicial proceedings pursuant to

U.S. Supreme Court Rule 10 (a) (b) "; or has so far departed from the accepted and usual judicial proceedings, or sanctioned by departure of the lower court, as to call for this Courts supervisory powers.". 5th Circuit's decision in Appendix A conflicts with *Hughes v. United States*, which was a decision made different state court of last resort or United States court of appeals.

Petitioner raises nonfrivolous issues of judicial bias in the appeal. Violations of court procedures were out of bias and magistrate judge acted as an attorney in defense of Respondents when the Petitioner presented sufficient evidence that proved Respondents are guilty and their affirmative defense was sovereign immunity same as *Hughes v. United States.* District courts dismissed the case without trial, and appellate courts dismissed the case without Respondents preparing an Appellee Brief. Both Courts acted as attorneys for Respondents and was in their defense. Petitioner filed (ROA 38) pursuant to 28 U.S.C 144 Bias or Prejudice Judge not 28 U.S.C 455 there for *Liteky v. United States, 510 U.S. 540, 555(1994)* is not applicable in this legal matter. 5th Circuit does not provide any specific reasons why for *Liteky v. United States,* was a reason to dismiss this case other than state the case and Petitioner did not provide a non-frivolous issue. District Judges dismissed the case without trial and was in defense of Respondents in (ROA 36, 39 and 49). Petitioner demonstrates non frivolous reasons issues for appeal and why there is judicial bias on page 11, and 12 of his appeal for the improper procedures where an injustice and bias judge is manifest in (ROA 38) and defines a multitude of violations magistrate judge had committed. (ROA 38) is stated rather than restate them all. These issues where nonfrivolous to the case because each issue or violation of law was the reason why injustice was manifest and the magistrate judge was bias in her decision to stay the case, cancel the pretrial hearing, and dismiss Federal Respondents and remand the case back to 133rd without

discovery of documents. Magistrate judge tried to have the case barred so Petitioner wouldn't be able to appeal and so she could cover her tracks. In Petitioners Appellant Appeal Brief this served as some of the non-frivolous reasons for the case should have been reversed.

Petitioner's concern that his appeal may be barred pursuant to 28 U.S.C 636 (b)(1)(C) and *Douglass v. United Servs. Auto Ass'n* had foundation. On Pages 11 and 12 of Petitioners Appeal Brief presents non frivolous facts that serve as foundation for his concerns his appeal may be barred pursuant to 28 U.S.C 636 (b)(1)(C) and *Douglass v. United Servs. Auto Ass'n,* but also injustice in the case and as a nonfrivolous reason why the case should be reversed pursuant to *Nettles v. Wainwright*. Injustice manifested in this case and magistrate judges use of *Douglass v. United Servs. Auto Ass'n,* to bar the Petitioner from appeal are reason why magistrate judge should have been removed by the Petitioner motion in (ECF 38)

Petitioner did qualify for IFP. He was denied IFP by both district court and appellate court. Petitioner had employment at the time of filing, but his expense/bills exceeded his income and was unable to pay the court fees to proceed with the appeal out of pocket. Petitioner in his IFP explains how magistrate judge's decisions in the district case led to Petitioners losing dwelling and transportation. Both district judges quashed Petitioners subpoenas. Petitioner needed subpoenas to obtain documents so he could state claim to his Trust Fund and salvage his trust before there are no funds left. District courts quashed them stating subpoenas where untimely, but being it was a time sensitive matter was reason for subpoenas to be granted. This was on page 6 of Petitioners IFP. District courts then quashed discovery pretrial conference pursuant to Respondents motion for stay. Respondents would

not disclose any information and discovery was quashed district courts. Petitioners does not only state magistrate judge had untimely rulings; he proves decisions of district courts led to loss of dwelling, loss of transport and loss of income. Petitioner presented with merit and nonfrivolous reasons for he needed to proceed IFP such as use of technology in his document Motion to Proceed Informa Pauperis. There for this case should have not been dismissed pursuant to *Baugh v. Taylor*; and *Howard v. King*; or 5th Cir. R. 42.2.

To conclude the answers to all the questions stated above. With all the facts presented by the Petitioner thus far this case was dismissed outside the congressional intent of 5th Cir. R. 42.2. 5th Cir. R. 42.2 and used to dismiss this case as an averment and out of defense of the Respondents. The Courts erred and ignored the non-frivolous reasons why Petitioners appeal was adequate for the reversal of the district court decision and failed to see that the Petitioner was on the merits dismissing the case with prejudice. This case qualifies for Writ of Certiorari pursuant to U.S. Supreme Court Rule 10 (a)(b)(c) because the Petitioner has presented a substantial amount of evidence proving that the Respondents are quietly same as *Hughes v. United States 263 F.3D 272, 278 (3rd Cir.2001)* therefore Federal Respondents do not qualify for Sovereign Immunity for Statue of Limitations is tolled, and this court decision must be secured and maintained.

Reason for Granting Certiorari

The U.S. Supreme Court should grant the Petitioner Writ of Certiorari pursuant to U.S. Supreme Court Rule 10(a)(b)(c). Petitioner has reason to be granted Writ of Certiorari pursuant to U.S. Court Rule 10(a), because the U.S. Court of Appeals for the

5th Circuit entered a decision that conflicts with *Hughes v. United States 263 F.3D 272, 278 (3rd Cir.2001),* which was a decision made by the U.S. Court of Appeals for the 3rd Circuit. In *Hughes v. United States,* Hughes was unconscious while his attorney filed his lawsuit without first stating a claim with Veterans Affairs and the Federal Defendants in that case raised a motion for dismissal pursuant to FTCA Statue of Limitations and the case was dismissed by the district court. Same as Petitioners case the Federal Respondents are negligent in not enforcing the Petitioners claim against the PNC Respondents, which Federal Respondents where obligated to pursuant to SEC Order 12 U.S.C. 1818(b) Notice to Primary Regulator paragraph 3. Business Organization Code Title 21, Corporations Chapter 2, For Profit Corporations Sub-Chapter A, General Provisions. Sec 21.218(b)(c), Sec 21.219, and Sec 21.354(a)(1)(b) was a law that was applicable to be enforced for it was used by the Petitioner to detect a crime had been committed. Federal Respondents out of negligence and the lack of detective skill pursuant to a federal law makes Petitioners case same as *Hughes v. United States.* In Petitioner case 12 U.S.C. 1818(b) is the same as 38 U.S.C. 1515 (a)(b)(c) in *Hughes v. United States* for it is the primary violation out of negligence and lack of skill of the Federal Respondents. District Courts dismissed Federal Defendants in (Appendix B) for lack of subject matter same as *Hughes v. United States.* In (ROA 5 paragraphs 2,3,4) Federal Respondents stated that removal was not based on diversity of jurisdiction therefore the district court had subject matter jurisdiction and the federal defendants should not have been dismissed for lack of subject matter jurisdiction by the district court. Petitioner timely filed for appeal and appeal was dismissed as frivolous by the appellate court. District Courts departure of accepted and usual judicial proceedings was

sanctioned by the appellate court, which is reason for the calling of this Courts supervisory power. The district court quashed discovery of documents and granted motions of for dismissal and stay in a case before discloser of documents to protect the Respondents and violated court procedures pursuant to Court Procedures Hon. Charles R. Eskridge III page 12, Section 15. Discovery and Scheduling Disputes (a) and, Court Procedures of Magistrate Judge Christina A Bryan IV Discovery Disputes Page 4 paragraph 12. Federal Respondents violated these procedures by raising a Motion for Dismissal (ROA 4), and the PNC Respondent raised a Motion for Judgement on the Pleadings (ROA 16) in bad faith pursuant to Court Procedures Hon. Charles R. Eskridge III page 12, Section 15. Discovery and Scheduling Disputes (a) and, Court Procedures of Magistrate Judge Christina A Bryan IV Discovery Disputes Page 4 paragraph 12, and FRCP Rule 26 (c) without attempting to disclose any information to the Petitioner. District Court quashed discovery by canceling the pretrial conference and granting a Motion of Stay in (ROA 28). By doing so they violated their own court procedures Court Procedures Hon. Charles R. Eskridge III page 12, Section 15. Discovery and Scheduling Disputes (a) and, Court Procedures of Magistrate Judge Christina A Bryan IV Discovery Disputes Page 4 paragraph 12 and FRCP Rule 26 (c). The district quashing of discovery and canceling pretrial conference was a violation of FRCP Rule 26(c) since the courts granted a motion to stay the case when the Respondents in bad faith would not confer with the Petitioner to resolve the dispute without court action. 5th Circuit sanctioned districts courts departure of accepted and usual judicial procedures by dismissing Petitioners facts presented in his appeal brief about the district court violation of judicial procedure as frivolous. Therefore, Petitioner has provided reason for the exercise of the

Court's discretionary jurisdiction, and grant Writ of Certiorari and pursuant to U.S. Supreme Court Rule 10(a).

Petitioner has reason to be granted Writ of Certiorari pursuant to U.S. Supreme Court Rule 10(b), because 5th Circuit has decided an important federal question in a way that conflicts with the decision of U.S. Court of Appeals for the 3rd , 5th , and 9th circuit. The question as stated in the Petitioners Appeal Brief was, "Did Appellees CAG and Michelle Parham qualify for sovereign immunity?" has national importance because the decision entered by 5th Circuit conflicts with the ruling of *Hughes v. United States 263 F.3D 272, 278 (3rd Cir.2001)*. 5th Circuit decision disagrees 3rd Circuit on how to interpret the law, which will lead to confusion for other court across the nation on legal matters concerning FTCA Statue of Limitations. This is reason for The U.S. Supreme Court open a precedent to take on this case, and ensure laws are applied equally across the Nation. The question raised by Petitioner in his Appeal Brief could be better worded to, "Did Appellees CAG and Michelle Parham qualify for sovereign immunity and can FTCA Statue of Limitations be equitably tolled.", or "Is FTCA Statue of Limitations jurisdictional or non-jurisdictional and may it be equitably tolled." Petitioner at the time of his appeal had less understanding of how to properly raise federal questions of law so please excuse is ignorance for Petitioner is only pro se and this legal matter is of national importance on how courts should rule in case pertaining to FTCA Statue of Limitations and equitable tolling. In (Appendix A) 5th Circuit states that the Petitioner did not present a cogent argument that the district court erred in determining his claims against the Federal Respondents the scope of FTCA and that discretionary function exception applied. Petitioner proves in his appeal that the FTCA Statue of Limitation should have been tolled pursuant to cases *Hughes v. United States 263 F.3D 272, 278 (3rd Cir.2001), Perez v. United States, 167 F.3D 913, 915-17 (5th Cir 1999), In Irwin v. Dep't of Veteran Affairs, 498 U.S. 89, 93-96 (1990),* and

United States vs Wong 575 US 402 (9th Cir 2015). Petitioner states in his Appeal Brief in summary of the argument on page 12 and 13, "The Appellant as provided sufficient evidence in the "Statement of Facts" with supporting exhibits in (ROA 27 Pages 1-80) in the Document being filed alongside this document, but not attached to it titled "Final Court Order" and has proven in "Conclusion" of the "Statement of Facts" that the Appellees are guilty of all assertions against them." The document that was filed along with Appeal Brief was thrown away by Fifth Circuit. Petitioner also states in Appeal Brief in paragraphs on pages 9-11 states the reasons why FTCA Statue of Limitations should be tolled and the district courts order reversed. With this legal matter being so similar to *Hughes v. United States* as stated in the paragraph above and Petitioner presented nonfrivolous facts of why FTCA Statue of Limitations should have been tolled, and the 5th circuit has erred in dismissing this case as frivolous. 5th Circuit's decision in this case conflicts with the decision on the 3rd Circuit case *Hughes v. United States* making Petitioners case Nationally important because this disagreement can cause confusion, especially because 5th Circuit ruled the same as 3rd Circuit in *Perez v. United States.* Therefore 5th Circuit has decided an important question of federal law in a way that conflicts with another U.S. Court of Appeals pursuant to U.S. Supreme Court Rule 10(b), giving reason for the exercise of the Court's discretionary jurisdiction, and grant Writ of Certiorari.

Conclusion

The U.S. Supreme Court of Appeals has reason for the exercise of the Court's discretionary jurisdiction and grant Writ of Certiorari for the 5th Circuit has decided an important question of federal law that has not been, but should be, settled by this Court, and if there has been a relevant decision of this Court that the decision of 5th Circuit is not to the knowledge of the *pro se* Petitioner. This statement is pursuant to U.S. Supreme Court Rule 10(c).