

NO. 24-6213

In The
Supreme Court of the United States

Julien Simmons

Petitioner,

v.

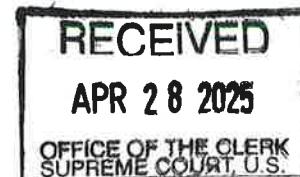
Consumer Assistance Group et al

Respondents,

**On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit**

**Amended Petition for Rehearing/ Panel Rehearing En Banc
For Petitioner**

Petitioner is *pro se*



List of all 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:

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Table of Contents

Sections	Pages
Petition for Rehearing.....	1-7

Table of Authorities

Federal Cases	Pages
<i>Cook v. United States, 933 F.2d 164,166 (5th Circuit)</i>	1
<i>Hughes v. United States 263 F.3D 272, 278 (3rd Cir.2001)</i>	1-3,6
<i>Irwin v. Dept. of Veteran Affairs, 498 U.S. 89, 93-96 (1990)</i>	1-6
<i>Perez v. United States, 167 F.3D 913, 915-17 (5th Cir 1999)</i>	1-4,6
<i>United States vs Wong 575 US 402 (9th Cir 2015)</i>	1-2,4-6

Federal Statutes

28 U.S.C. 2401(b).....	1-2,4-6
28 U.S.C. 1346(b)(1)	1-2,4-7
12 U.S.C. 1818(b) Notice to Primary Regulator Paragraph 3.....	3
38 U.S.C. 1151.....	3

Federal Rules

U.S. Supreme Court Rule 10(a).....	2-6
U.S. Supreme Court Rule 44.....	1,3-4,6
FRAP Rule 35	1-6
FRCP Rule 12(b)(1)(6).....	2-5

Other authorities

Business Organization Code Title 2, Corporations Chapter 21, For Profit Corporations Sub-Chapter A, General Provisions. Section 21.218(b)(c).....	3
<i>Bell Atl. Corp. v. Twombly</i> 550 U.S. 544, 570 (2007)	3

Appendix

Appendix A is the opinion filed by 5th Circuit on April 10th, 2024 dismissing Petitioners Appeal as frivolous and denied IFP.

Certification of Counsel/ Ground Presented

I Julien Simmons who is *pro se* in this legal matter am submitting this document in good faith and without delay. Pursuant to U.S. Supreme Court Rule 44.2 Petitioner request Rehearing

due to the fact the grounds of this Petition are limited to the intervening circumstances of a substantial and to other substantial grounds not previously presented. To be brief in Petitioners Writ of Certiorari and his Supplemental Brief he does not mention that this case is Plenary, because at the time he typed those two documents he did not know the term. Petitioners case is plenary for the U.S. Supreme Court has granted a Writ of Certiorari in *Irwin v. Dept. of Veteran Affairs*, 498 U.S. 89, 93-96 (1990). This case establishes a new rule and does away with the old rule of *Cook v. United States*, 933 F.2d 164,166 (5th Circuit), which is the same court from which Petitioners case has arisen. *Irwin v. Dept of Veteran Affairs* established all U.S. District Courts have jurisdiction to see legal disputes against the United States Government pursuant to 28 U.S.C 1346(b)(1). The denial of Petitioner Petition is against the former decision of the U.S. Supreme Court and is un-congressional. This is an intervening circumstance of a controlling effect that has not already been presented. Petitioner should be granted GVR which was also not previously presented. Petitioner does understand he is filing this Petition out of time since it is been longer then the 15 days of letter sent to him on March 25th, 2025. Petitioner has been unemployed and just began training for Amazon on March 25th, 2025. All my bills where behind including my mailbox with Anytime Mail box so I was unable to receive and open the letter of March 25th, 2025. This is due to my extreme circumstances of poverty. I paid Anytime Mail box \$55.24 on March 20th 2025. I have the March 1st, 2025 invoice and screen shot of the webpage saying payed late (Exhibit 1, 2) The payment made on March 20th, 2025 was also for an overdue payment of February 1st, 2025 (Exhibit 3). Petitioner is filing out of time, but his Writ of Certiorari should not have been denied for it is Plenary and the denial of his Writ of Certiorari is against un-congressional. Exhibits 1-3 will be found attached to this document.

Date 04/23/2025.

X *Julien Simmons*

Julien Simmons
Petitioner/Plaintiff pro se

Amended Petition for Rehearing

Petitioner is filling an Amended Petition for Panel Rehearing En Banc on the merits pursuant FRAP 35 and U.S. Supreme Court Rule 44 for his Petition for Writ of Certiorari was denied by Justice Alito March 3rd, 2025; Justice Alito's decision conflicts with the decision of the U.S. Supreme Court in federal case *Irwin v. Dept. of Veteran Affairs*, 498 U.S. 89, 93-96 (1990), and the opinion of the lower courts that he has concurred with conflicts with the ruling of other U.S. Courts of Appeal in federal 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), and *United States vs Wong* 575 US 402 (9th Cir 2015). This qualifies Petitioners case for Rehearing pursuant to FRAP 35 (1)(A). Pursuant to FRAP 35 (1)(B) Petitioner qualifies for rehearing/ Panel Rehearing En Banc for his case has raised an important question of federal law which is, "Whither 28 U.S.C. 2401(b) can be equitably tolled pursuant to 28 U.S.C. 1346(b)(1)"? Justice Alito took no part in the consideration or decision of Petitioners petition, calling for the consideration and decision of the other 8 Justices of this Court. The U.S. Supreme Court should hear Petitioner Panel Rehearing En Banc for his Petition for Writ of Certiorari because it is necessary to secure and maintain the uniformity of the Courts decisions pursuant to FRAP 35(a)(1), and the proceedings involves a question of exceptional importance stated in the previous sentence pursuant to FRAP 35(a)(2). Petition for Rehearing En Banc is timely filed and in good faith for it is filed within 25 days after the order of denial of Justice Alito on March 3, 2025.

Irwin v. Dept. of Veteran Affairs established the equitable tolling of 28 U.S.C. 2401(b) pursuant to 28 U.S.C. 1346(b)(1). This established jurisdiction of district courts in lawsuits against United States Government to be exclusive. The old rule of *Cook v. United States*, 933 F.2d 164,166 (5th Circuit) was replaced by *Irwin v. Dept. of Veteran Affairs*. *Irwin v. Dept. of*

Veteran Affairs is the framework of *Perez v. United States*, and *United States v. Wong*, which are both cases that Justice Alito and the lower courts decisions conflict with giving the U.S. Supreme Court reason to grant Petitioner Writ of Certiorari pursuant to U.S. Supreme Court Rule 10(a). The decision of the lower courts and Justice Alito conflict with decision of the U.S. Supreme Court in *Irwin v. Dept. of Veteran Affairs* making Petitioners case plenary, for Petitioner case and *Irwin v. Dept. of Veteran Affairs* were both dismissed by the lower courts for lack of subject matter of jurisdiction pursuant to FRCP 12(b)(1)(6). Petitioners case is plenary, and he should be granted GVR. U.S. Petitioner does state and articulate in his supplemental brief (on pages 9, 13-14, 17-18, 21) how *Irwin v. Dept. of Veteran Affairs* was a case that had been heard by this court and the lower court's opinion (Appendix A) conflicts with the ruling of the U.S. Supreme Court. At the time Petitioner did not know the term "plenary" and how it applied to be granted Writ of Certiorari. Supreme Court should grant Petitioners rehearing because Justice Alito, and the lower courts have made a decision that conflicts with the decision made by U.S. Supreme Court in *Irwin v. Dept. of Veteran Affairs*, which qualifies Petitioner for Panel Rehearing En Banc pursuant to FRAP 35 (a)(1) for en banc consideration is necessary to maintain and secure uniformity of the court's decision.

The opinion of the lower courts, and the decision Justice Alito splits the circuits, for it conflicts with decisions of cases *Hughes v. United States*. 28 U.S.C. 2401(b) was equitably tolled pursuant to 28 U.S.C. 1346(b)(1) for Hughes case was dismissed by district courts pursuant to lack of subject matter of jurisdiction FRCP 12(b)(1)(6). With FRCP 12(b)(1)(6) and 28 U.S.C. 2401(b) as the Defendant United States (VA) affirmative defense the case was reversed by the 3rd Circuit, because Hughes presented a substantial amount of evidence proving the VA acted out on negligence and lack of skill resulting in loss of all of limbs of Hughes during surgery.

Pursuant to 38 U.S.C. 1151 Hughes qualified for benefits. In Petitioner legal matter Respondent CAG and Respondent Michelle Parham acted out of negligence and lack of skill, and plain incompetents. Petitioner qualified for 12 U.S.C. 1818(b) Notice to Primary Regulator Paragraph 3 because he was able to detect a criminal breach of trust be committed by the PNC Respondents using Business Organization Code Title 2, Corporations Chapter 21 Section 21.218(b)(c) to perform an audit to search for his trust fund, however the PNC Respondents out of band faith as a fiduciary violated the Petitioners minority shareholder rights. Petitioner provided substantial amount of evidence during the district trial proving Respondent CAG and Michelle Parham acted out of negligence, which damages of Petitioners trust fund cannot be calculated yet, and PNC Respondents committed perjury further confirming the criminal breach of trust. Therefore, Petitioner survived dismissal pursuant to FRCP 12(b)(1)(6) for he has pleaded enough facts “that state claim to relief that is plausible on its face”, (quoting *Bell Atl. Corp. v. Twombly* 550 U.S. 544, 570 (2007), and therefore non-frivolous. These Facts are mentioned in Petitioners Supplemental Brief please see pages 9-11. Justice Alito decision to deny the Petitioner’s Petition for Writ of Certiorari, and the opinion of 5th Circuit (Appendix A) conflicts with decision of 3rd Circuit splitting the circuits giving reason for Petitioners Writ of Certiorari to be granted pursuant to U.S. Supreme Court Rule 10(a) and gives reason for Petitioner to granted rehearing pursuant to FRAP 35(a)(1) and U.S. Supreme Court Rule 44 for rehearing is necessary to maintain and secure uniformity of the court’s decisions.

5th Circuit has entered an opinion (Appendix A) that conflicts with its own ruling of *Perez v. United States*, and pursuant to FRAP 35(1)(A) is reason for rehearing en banc to be granted. Justice Alito entered a decision to deny Petitioners Writ of Certiorari, which conflicts with U.S. Supreme Court Case *Irwin v. Dept. of Veteran Affairs*, and *Perez v. United States*. In

Perez v. United States, the district courts dismissed the Federal Defendants pursuant to FRCP 12(b)(1)(6) for lack of subject matter of jurisdiction. Perez used *Irwin v. Dept. of Veteran Affairs* as framework for her appeal which was granted by 5th Circuit. Jurisdiction of the district courts was determined by 28 U.S.C. 1346(b)(1), which called for the tolling of 28 U.S.C. 2401(b). In Petitioners case district courts dismissed Federal Respondents pursuant to FRCP 12(b)(1)(6) and remanded the PNC Respondents back to 133rd Harris County where the case was dismissed. 5th Circuit denied Petitioners appeal as frivolous conflicting with not only its own prior ruling for reversal of *Perez v. United States* and tolling of 28 U.S.C. 2401(b) pursuant to 28 U.S.C. 1346(b)(1), but also another case *Irwin v. Dept. of Veteran Affairs*, that arose out of 5th Circuit that won Writ of Certiorari with the U.S. Supreme Court making Petitioners appeal non frivolous. This conflict provided Petitioner reason to be granted Writ of Certiorari pursuant to U.S. Supreme Court Rule 10(a) and provides reason for Petitioner to be granted rehearing pursuant to FRAP 35 (a)(1) and U.S. Supreme Court Rule 44. Justice Alito denial of Petitioner Writ of Certiorari conflicts with U.S. Supreme Court ruling in *Irwin v. Dept. of Veteran Affairs*, which is the framework of *Perez v. United States*. Petitioners must be granted rehearing to secure and maintain uniformity of the court's decisions for Petitioners case is a matter of national importance.

Justice Alito has entered a decision that conflicts with the decision of a U.S. Supreme Court case *Irwin v. Dept. of Veteran Affairs*, which is the framework of *United States v. Wong*. This is providing reason for Petitioner to be granted rehearing pursuant to FRAP 35(a)(1) and U.S. Supreme Court Rule 44. In *United State v. Wong*, the district court dismissed both cases for lack of subject matter of jurisdiction pursuant to FRCP 12(b)(1)(6). Both Defendants had either untimely filed a claim or failure to begin their lawsuit within 6 months of filing a claim with the

appropriate agency. Using *Irwin v. Dept. of Veteran Affairs*, Wong, and June where able to equitably toll 28 U.S.C. 2401(b)(1) arising from motion to dismiss pursuant FRCP 12(b)(1)(6) by establishing the district courts had exclusive jurisdiction to hear a case against the United States Government pursuant to the language of 28 U.S.C. 1346(b)(1). June argued she should be excused of from filing her claim out of time, because the government was withholding information vital to her claim. PNC Respondents would not disclose any documents that would be vital in Petitioners case and in providing a damage amount in his claim. This information can be found on (pages 14-16 and 19 -20). Petitioner provides he had timely filed a claim and started his lawsuit within 6 months pursuant to 28 U.S.C. 2401(b) on (page 12) of his Supplemental Brief. In Petitioners legal matter the district courts dismissed his case for lack of subject matter of jurisdiction, and 5th Circuit dismissed his appeal as frivolous. 5th Circuits opinion (Appendix A) conflicts with the decision of the 9th Circuit in *United States v. Wong*, splitting the circuits giving reason for Petitioners Writ of Certiorari to be granted pursuant to U.S. Supreme Court Rule 10(a) and Justice Alito's decision conflicts with the framework of Petitioners Writ of Certiorari *Irwin v. Dept. of Veteran Affairs*, qualifying Petitioner for rehearing en banc pursuant to FRAP 35(a)(1).

In conclusion *Irwin v. Dept. of Veteran Affairs* is a federal case heard by the U.S. Supreme Court that was granted Writ of Certiorari, serving as the framework Petitioners Writ of Certiorari. The decision of Justice Alito conflicts with the ruling of *Irwin v. Dept of Veteran Affairs*, which calls for the tolling of 28 U.S.C. 2401(b) pursuant to 28 U.S.C. 1346(b)(1) when a lack of subject matter of jurisdiction is raised pursuant to FRCP 12(b)(1)(6). Petitioners legal matter is plenary, because of *Irwin v. Dept. of Veteran Affairs* was a case granted Writ of Certiorari making Petitioner qualify for GVR as sought relief. This conflict qualifies Petitioner

for Rehearing pursuant to FRAP 35(a)(1) and U.S. Supreme Court rule 44. The opinion entered by 5th Circuit (Appendix A) conflicts with *Irwin v. Dept. of Veteran Affairs*, 498 U.S. 89, 93-96 (1990), *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), and *United States vs Wong* 575 US 402 (9th Cir 2015) providing reason for Petitioner to granted Writ of Certiorari pursuant to U.S. Supreme Court Rule 10(a), and FRAP 35(a)(1) for en banc consideration is necessary to secure or maintain uniformity of the court's decisions; and the decision of Justice Alito and 5th Circuit conflicts with the decision of the U.S. Supreme Court and the court to which Petitioners Writ of Certiorari arouse from. Petitioner qualifies for rehearing pursuant to FRAP 35(a)(2), for the proceedings involves a question of exceptional importance, "Whither 28 U.S.C. 2401(b) can be equitably tolled pursuant to 28 U.S.C. 1346(b)(1)"? The answer is, "Yes, 28 U.S.C. 2401(b) can be equitably tolled pursuant to 28 U.S.C. 1346(b)(1), and I quote "the district courts, together with the United States District Courts for the District of the Canal Zone and the District Court for the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, occurring on or after January 1, 1945, for injury loss of property, or personal injury of death caused by the negligent or wrongful act of omission of any employee of Government while acting within the scope of his office or employment, under the circumstance where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act of omission occurred". This was established by *Irwin v. Dept. Veteran Affairs*, maintained by *Hughes v. United States*, *Perez v. United States*, and *United States vs Wong*. Now Petitioner must be granted writ of Certiorari and Rehearing to maintain the U.S. Supreme Court ruling of *Irwin v. Dept. of Veteran Affairs*, for the conflict of the decisions of the Justice Alito and 5th Circuit not only conflicts with the uniformity of the court's it also

violates the rights of all U.S. Citizens to sue the United States Government making this legal matter a matter of national importance, because the violation of 28 U.S.C. 1346(b)(1) would make it impossible for any citizen to sue the United States Government.

Petitioner would like to request he be granted GVR. Petitioner would like to have this legal matter reversed with all Respondents remanded back to the lower courts for trial. Petitioner has put the Respondents in a bind using the perjury and obstruction of justice that they have committed to make them disclose the documents requested so Petitioner can state claim to his trust fund. Petitioner requests this Court to make note of his bind of the Respondents in their opinion granting this petition, so the lower courts have a basis of how to rule in the Petitioner's favor. This bind will be vital for the salvation of Petitioner's trust fund if he has funds left. This should help to ensure honesty of the Respondents. However, if the Courts feel that they still need Brief on the Merits, Petitioner has one already prepared.

Respectfully submitted,

X Julien Simmons
Julien Simmons
Petitioner pro se

Date: 04/23/2025

Proof of Service

This proof of services is being provided pursuant to Rule 29, and pursuant to 28 U. S. C. § 1746 I certify under penalty of perjury that the foregoing is true and correct executed on
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CERTIFICATE OF COMPLIANCE WITH SIGNATURE

I hereby certify that on, 04/23/2025 this official document complies with the standards of the Supreme Court of the United States.

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CERTIFICATE OF SERVICE

I hereby certify that on, 4/23/2025 a true and correct copy of the foregoing was served on the following via U.S mail, Email, or by Hand:

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