

20-6867
No. _____

ORIGINAL

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

In re WILLIAM M. WINDSOR,

Petitioner

William M. Windsor, Petitioner

v.

Sean D. Fleming, Respondent

ON PETITION FOR WRIT OF MANDAMUS TO

Tenth Court of Appeals of the State of Texas

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QUESTIONS PRESENTED

Can Texas courts be allowed to violate federal law on removal and remand?

The decisions in this case conflict with a recent decision of this Court and every federal appellate court decision on removal and remand.

Do Texas courts have jurisdiction over a case following removal when the case was never remanded?

LIST OF PARTIES

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RELATED CASES

Windsor v. Joeyisalittlekid, et al, No. 88611, Ellis County Texas District Court. Order entered 12/29/2014 as to Sean D. Fleming.

Windsor v. Joeyisalittlekid, et al, No. 88611, Ellis County Texas District Court. Case dismissed for want of prosecution as to other Defendants.

Windsor v. Sam Round, No. 10-14-00355-CV, Tex.App. Dist.10. Opinion entered 8/28/2019.

Windsor v. Fleming, 10-14-00392-CV, Tex.App. Dist.10. Opinion entered 8/7/2019.

Windsor v. Kellie McDougald, No. 10-15-00069-CV, Tex.App. Dist.10. Opinion entered 8/28/2019.

Windsor v. Joeyisalittlekid, et al, No. 10-15-00092-CV, Tex.App. Dist.10. Opinion entered 8/28/2019.

Windsor v. Sam Round, No. 20-0144, Texas Supreme Court. Denial entered 7/17/2020.

Windsor v. Kellie McDougald, No. 20-0147, Texas Supreme Court. Denial entered 9/4/2020.

Windsor v. Joeyisalittlekid, et al, No. 20-0152, Texas Supreme Court. Denial entered 9/18/2020.

Windsor v. Sean D. Fleming, No. 20-0155, Texas Supreme Court. Denial entered 10/9/2020.

TABLE OF CONTENTS

| | |
|--|----|
| QUESTIONS PRESENTED..... | |
| LIST OF PARTIES..... | |
| RELATED CASES..... | |
| TABLE OF CONTENTS..... | |
| INDEX TO APPENDICES..... | |
| TABLE OF AUTHORITIES CITED..... | |
| OPINIONS BELOW..... | 1 |
| JURISDICTION..... | 1 |
| STATUTORY PROVISIONS INVOLVED..... | 1 |
| STATEMENT OF THE CASE..... | 2 |
| REASONS FOR GRANTING THE PETITION..... | 5 |
| I. THIS CASE PRESENTS AN ISSUE OF VITAL IMPORTANCE TO ALL CITIZENS..... | 5 |
| II. THE RULINGS OF TEXAS COURTS VIOLATE FEDERAL LAW..... | 5 |
| III. THE RULINGS OF TEXAS COURTS CONFLICT WITH A DECISION OF THIS COURT AND EVERY APPELLATE COURT..... | 5 |
| IV. MANDAMUS RELIEF IS APPROPRIATE UNDER THE CIRCUMSTANCES..... | 11 |
| CONCLUSION..... | 12 |
| VERIFICATION AND CERTIFICATE OF GOOD FAITH..... | 12 |
| CERTIFICATE OF COMPLIANCE..... | 13 |
| PROOF OF SERVICE..... | 14 |
| VERIFICATION..... | 16 |

INDEX TO APPENDICES

| | |
|------------|--|
| APPENDIX A | Decision of the Texas Tenth Court of Appeals 8/7/2019 |
| APPENDIX B | Decision of the State Trial Court – 40th Judicial District Court of Ellis County, Texas 12/19/2014 |
| APPENDIX C | Decision of Texas Supreme Court Denying Review |
| APPENDIX D | Decision of Texas Supreme Court Denying Rehearing |
| APPENDIX E | 28 U.S.C. §1446 |
| APPENDIX F | Docket of the U.S. District Court of South Dakota Case # 3-14-CV-03020-RAL |
| APPENDIX G | Docket of the U.S. Eighth Circuit Court of Appeals Case # 15-1565 |
| APPENDIX H | Notice of Removal 12/18/2014 |

TABLE OF AUTHORITIES CITED

CASES

| | |
|--|----|
| 14C C. Wright, A. Miller, E. Cooper, J. Steinman, & M. Kane, Federal Practice and Procedure §3736, pp. 727-729 (2018)..... | 6 |
| Academy Corp., 21 S.W.3d at 737..... | 8 |
| Allman v. Hanley, 302 F.2d 559, 562 (5th Cir.1962)..... | 9 |
| Amir-Sharif v. TDCJ, 13-16-00505-CV (Tex.App. Dist.13 11/03/2016)..... | 7 |
| Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc)..... | 12 |
| Burnham, William (2006). Introduction to the Law and Legal System of the United States (4th ed.). St. Paul, Minnesota: Thomson West. p.41..... | 8 |

| | |
|---|-------|
| Byron Thomas v. City of Houston, No. 01-11-00858-CV (Tex.App. Dist.1 01/19/2012)..... | 7 |
| Carpenter v. Wichita Falls Independ. Sch. Dist., 44 F.3d 362, 365-66 (5th Cir. 1995)... | 9 |
| E.D. Systems v. Southwestern Bell, 674 F.2d 453 fn2 (5th Cir. 04/30/1982)..... | 7, 10 |
| EOG Resources, Inc. v. Vela, No. 04-02-00168-CV (Tex.App. Dist.4 08/13/2003)..... | 7 |
| Estate of Benson, 04-15-00087-CV (Tex.App. Dist.4 03/30/2015)..... | 7 |
| Gonzalez Guilbot, 267 S.W.3d at 559..... | 8 |
| Guilbot Serros de Gonzalez, 315 S.W.3d at 536-38..... | 8 |
| Hsin-Chi-Su v. Vantage Drilling Co., 474 S.W.3d 284 (Tex.App. Dist.14 07/14/2015)..... | 8 |
| In re University of Incarnate Word, 469 S.W.3d 255 (Tex.App. Dist.4 06/24/2015) .. | 7 |
| Iqbal v. Bank of Am., N.A., No. A-12-CA-938-SS, 2012 WL 11955635, at *5 (W.D. Tex. Dec. 18, 2012), aff'd, 559 Fed.Appx. 363 (5th Cir. 2014)..... | 9 |
| J.P. Morgan Chase Bank, N.A. v. Del Mar Props., L.P., 443 S.W.3d 455 (Tex.App. Dist.8 08/26/2014)..... | 7 |
| Jiangsu Jinshi Machinery Group Co., Ltd. v. Kana Energy Services, Inc., 14-18- 01052-CV (Tex.App. Dist.14 06/11/2019)..... | 7 |
| Johnson v. Estelle, 625 F.2d 75, 77 (5th Cir.1980) (per curiam)..... | 9 |
| Kern v. Huidekoper, 103 U.S. 485, 493 (1881)..... | 6 |
| Leffall v. Johnson, No. 09-01-177 CV (Tex.App. Dist.9 01/31/2002)..... | 7 |
| Litman, 825 F.2d at 1510..... | 12 |
| Lowe v. Jacobs, 243 F.2d 432, 433 (5th Cir. 1957), cert. denied, 355 U.S. 842, 78 S. Ct. 65, 2 L. Ed. 2d 52 (1957)..... | 7 |
| Maseda v. Honda Motor Co., 861 F.2d 1248 (11th Cir. 12/19/1988)..... | 9 |
| Meyerland Co. v. F.D.I.C., 848 S.W.2d 82, 83 (Tex. 1993)..... | 7, 11 |

| | |
|--|-------------|
| National Steam-Ship Co. v. Tugman, 106 U.S. 118, 1 S. Ct. 58, 27 L. Ed. 87 (1882)..... | 6, 7 |
| Nelly Uribe v. Willie L. Hilson, No. 01-10-00709-CV (Tex.App. Dist.1 02/23/2012) .. | 7 |
| Parrish v. State, 485 S.W.3d 86 (Tex.App.—Houston [14th Dist.] 2015, pet. ref'd) .. | 11 |
| Phillips v. Phillips, 05-18-00659-CV (Tex.App. Dist.5 11/06/2018); In re Johnson, 04-18-00641-CV (Tex.App. Dist.4 10/04/2018)..... | 7 |
| Pittman v. Seterus, Inc., No. 3:14-CV-3852-M BF, 2015 WL 898990, at *2 (N.D. Tex. Mar. 2, 2015)..... | 9 |
| Quaestor Investments, Inc. v. State of Chiapas, 997 S.W.2d 226, 229 (Tex. 1999).... | 8 |
| Roman Catholic Archdiocese of San Juan v. Feliciano, 18-921 (U.S. 02/24/2020)..... | 6 |
| Russell v. Dallas Independent School Dist., No. 05-10-00563-CV (Tex.App. Dist.5 07/21/2010)..... | 8 |
| Weaver v. Tobin, No. 03-03-00573-CV (Tex.App. Dist.3 12/11/2003)..... | 7 |
| Williams v. Lambright, 05-18-00240-CV (Tex.App. Dist.5 05/14/2018)..... | 7 |
| Windsor v. Fleming, 10-14-00392-CV (Tex.App. Dist.10 08/07/2019)..... | 1, 4, 5 |
| Windsor v. Joeyisalittlekid, et al, No. 88611, Ellis County Texas District Court..... | 2, 3, 4, 10 |
| Windsor v. Joeyisalittlekid, U.S. District Court District of South Dakota, Case # 3:14-CV-03020-RAL..... | 4, 10 |
| Windsor v. Joeyisalittlekid, U.S. Eighth Circuit Court of Appeals, Case # 15-1565.. | 4 |
| Windsor v. Sean D. Fleming, No. 20-0155, Texas Supreme Court..... | 1, 5 |
| Wolf v. Deutsche Bank National Trust Co., 17-50732 (5th Cir. 08/09/2018)..... | 9 |
| STATUTES AND RULES | |
| 28 U.S.C. § 1455..... | 11 |
| 28 U.S.C. § 1447..... | 9, 10 |

| | |
|---|----------|
| 28 U.S.C. § 1746..... | 12 |
| 28 U.S.C. § 1651(a)..... | 1 |
| 28 U.S.C. § 1446..... | 1, 6, 11 |
| 28 U.S.C. § 1446(d)..... | 2 |
| U.S. Constitution, Article VI Clause 2..... | 8 |
| U.S. Supreme Court Rule 29..... | 14 |

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the Petition and is published at *Windsor v. Fleming*, 10-14-00392-CV (Tex.App. Dist.10 08/07/2019).

The opinion of the State Trial Court appears at Appendix B and is unpublished.

The opinion of the Texas Supreme Court denying review appears at Appendix C to the Petition and is published at *Windsor v. Fleming*, 20-0155 (Tex. 10/09/2020).

The opinion of the Texas Supreme Court denying rehearing appears at Appendix D to the Petition and is published at *Windsor v. Fleming*, 20-0155 (Tex. 12/18/2020).

JURISDICTION

The date on which the highest state court decided my case was December 18, 2020. A copy of the decision appears at Appendix D.

This Court is authorized to issue a Writ of Mandamus pursuant to 28 U.S.C. § 1651(a).

STATUTORY PROVISIONS INVOLVED

This case involves 28 U.S.C. §1446. [APPENDIX E.]

STATEMENT OF THE CASE

1. The nature of the case is defamation. It is a suit for damages filed on 12-26-2013. Windsor felt he was the victim of the largest case of defamation in U.S. history. The trial court was the 40th Judicial District Court ("DC") in Ellis County Texas which became the 378th. Case #88611.

2. On 2/24/2014, Sean D. Fleming's Motion to Dismiss ("MTD") pursuant to the Texas Citizens Participation Act (Anti-SLAPP) was filed. Fleming had viciously defamed Windsor.

3. On 10/29/2014, Windsor was taken from the a hearing held in Case # 88611 at the Ellis County Courthouse to the Ellis County Jail on extradition to Montana. Windsor believes this was orchestrated by Defendants, including Sean D. Fleming and his attorney, Barbara Hachenburg. Their plan was to use their Montana and Ellis County judicial and law enforcement contacts to make sure Windsor could not pursue his defamation case. Windsor had never been in jail before. He doesn't even have a traffic or parking ticket in the last 21 years.

4. Windsor was never arrested, but he was incarcerated. He was denied bond, and he was not given access to his case files or computer.

5. On 12/18/2014, Windsor was taken from the Ellis County Jail in handcuffs and shackles to the courthouse for a hearing. He was not told what the hearing was about. When Windsor arrived in the courtroom, he learned this was to be a hearing on Sean D. Fleming's Motion to Dismiss in Case #88611 pursuant to Anti-SLAPP.

6. Windsor was a resident of South Dakota at the time, and he had only slight knowledge on removal to federal court. On 12/18/2014, a written Notice of Removal of the case to federal court was filed at 2:09 pm with the Clerk of the Court in Ellis County and sent to the U.S. District Court for South Dakota ("USDCSD"). It was served immediately thereafter by Windsor on Fleming's attorney and the District Court judge. [APPENDIX H.]

7. On 12/18/2014 at approximately 4:00 p.m., a newly-assigned District Court judge conducted a hearing on Sean D. Fleming's Anti-Slapp Motion to Dismiss. Judge Richard Davis was given the Notice of Removal, but without explanation, he claimed he had jurisdiction. Judge Richard Davis had difficulty staying awake during the hearing. Windsor objected to the hearing and argued against Sean D. Fleming though he had no files or information with which to work.

8. On 12/19/2014 at 9:32 am, 1½ business hours after the hearing ended and Judge Richard Davis was assigned, he signed an order prepared by Sean D. Fleming's attorney granting Fleming's Anti-Slapp Motion to Dismiss. It awarded \$77,558.50 in attorney's fees, 3,526.63 in costs, and \$250,000 in sanctions to Fleming. [APPENDIX B.]

9. On 12/29/2014, USDCSD confirmed the removal. [APPENDIX F – Docket 1 and 2.]

10. On 1/12/2015, a Notice of Appeal dated 1/7/2015 was filed by Windsor in the District Court out of an abundance of caution. It appealed the alleged order of 12/19/2014.

11. On 1/29/2015, the USDCSD received Windsor's \$400 filing fee requested to validate the removal. [APPENDIX F – Docket 7.]

12. The USDCSD then entered an order dismissing USDCSD Case #3:14-CV-03020-RAL without prejudice. [APPENDIX F – Docket 9.]

13. On 3/2/2015, Windsor mailed a Notice of Appeal to USDCSD appealing dismissal of Case #3:14-cv-03020-RAL. [APPENDIX F – Docket 10.]

14. On 3/9/2015, Windsor's appeal was docketed in the USDCSD Case #3:14-CV-03020. [APPENDIX F – Docket 10.]

15. On 3/13/2015, Windsor filed a Notice of Appeal (docketed 3/18/2015).

16. On 3/17/2015, Windsor's appeal from Case #3:14-CV-03020 was docketed in the U.S. Court of Appeals for the Eighth Circuit ("USCA-8th") and the USCA-8th remanded the case to USDCSD to determine Windsor's IFP status and assess filing fees. [APPENDIX G – Docket 1 and 3.]

17. On 6/25/2015, USCA-8th dissolved the limited remand in Appeal #15-1565. [APPENDIX G – Docket 9.]

18. On 9/3/2015, USCA-8th dismissed Windsor's appeal. [APPENDIX G – Docket 12.] This ended the appeal process on the 12/18/2014 removal of Ellis County Texas Case # 88611. [APPENDIX G.]

19. On 6/25/2015, Windsor filed his Brief in 10-14-00392-CV.

20. On 8/7/2019, Tex.App. Dist.10 denied Windsor's appeal in 10-14-00392-CV. [APPENDIX A.]

21. On 10/28/2019, Windsor filed Motion for Rehearing in 10-14-00392-CV.

22. On 1/23/2020, Tex.App. Dist.10 denied Windsor's Motion for Rehearing in 10-14-00392-CV.

23. On 8/1/2020, Windsor filed a Petition for Review with the Texas Supreme Court. 20-0155.

24. On 10/9/2020, the Texas Supreme Court denied the Petition for Review. 20-0155. [APPENDIX C.]

25. On 11/16/2020, Windsor filed a Motion for Rehearing with the Texas Supreme Court. 20-0155.

26. On 12/18/2020, Texas Supreme Court denied the Motion for Rehearing. 20-0155. [APPENDIX D.]

REASONS FOR GRANTING THE PETITION

27. The Petitioner seeks a writ of mandamus to compel the Texas courts to comply with federal law.

I. THIS CASE PRESENTS AN ISSUE OF VITAL IMPORTANCE TO ALL CITIZENS

28. This Court can't allow the State of Texas to ignore federal law when every other state complies.

II. THE RULINGS OF TEXAS COURTS VIOLATE FEDERAL LAW.

29. The decisions of the District Court, Texas Tenth Court of Appeals, and Texas Supreme Court violate federal law and all case law on removal and remand.

III. THE RULINGS OF TEXAS COURTS CONFLICT WITH DECISIONS OF THIS COURT AND EVERY APPELLATE COURT.

30. The decisions conflict with every court decision the Petitioner has been able to find.

31. The writ will be in aid of the Court's appellate jurisdiction. Exceptional circumstances warrant the exercise of the Court's discretionary powers. Adequate relief cannot be obtained in any other form or from any other court.

32. This Court issued an Opinion on a Petition for Writ of Certiorari that indicates the orders of the Tex.App. Dist.10 and DC are void. In *Roman Catholic Archdiocese of San Juan v. Feliciano*, 18-921 (U.S. 02/24/2020), this Court wrote:

“Once a notice of removal is filed, the State court shall proceed no further unless and until the case is remanded.” 28 U.S.C. §1446(d). The state court “los[es] all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment [are] not . . . simply erroneous, but absolutely void.” *Kern v. Huidekoper*, 103 U.S. 485, 493 (1881). “Every order thereafter made in that court [is] *coram non judice*,” meaning “not before a judge.” *Steamship Co. v. Tugman*, 106 U.S. 118, 122 (1882); Black’s Law Dictionary 426 (11th ed. 2019). See also 14C C. Wright, A. Miller, E. Cooper, J. Steinman, & M. Kane, Federal Practice and Procedure §3736, pp. 727-729 (2018). [emphasis added.]

“The Court of First Instance issued its payment and seizure orders after the proceeding was removed to federal district court, but before the federal court remanded the proceeding back to the Puerto Rico court. At that time, the Court of First Instance had no jurisdiction over the proceeding. The orders are therefore void.”

33. In 1882 in *National Steam-Ship Co. v. Tugman*, 106 U.S. 118, 1 S. Ct. 58, 27 L. Ed. 87 (1882), this Court held that the removal of a case from state court to federal court ends the power of the state court to act. When *National Steam-Ship* was decided, a case had to be properly removable in order for a removal to divest the state court of jurisdiction. 28 U.S.C. §1446 was amended in 1949, however.

Later cases hold that even if a case is not properly removable, the filing of

a removal petition in federal court ends the state court's jurisdiction until the case is remanded. See *Lowe v. Jacobs*, 243 F.2d 432, 433 (5th Cir. 1957), cert. denied, 355 U.S. 842, 78 S. Ct. 65, 2 L. Ed. 2d 52 (1957); *E.D. Systems v. Southwestern Bell*, 674 F.2d 453 fn2 (5th Cir. 04/30/1982).)

"Prior to the amendment of 1949 this removal, to be effective, must be with respect to a case in which a party was 'entitled to remove.' The language now employed is 'A defendant *** desiring to remove ***.' " (*Lowe v. Jacobs*, 243 F.2d 432, 433 (5th Cir. 1957), cert. denied, 355 U.S. 842, 78 S. Ct. 65, 2 L. Ed. 2d 52 (1957)).

34. The Texas Supreme Court has held 28 U.S.C. § 1446(d) applies to the Texas courts of appeals in *Meyerland Co. v. F.D.I.C.*, 848 S.W.2d 82, 83 (Tex. 1993):

"The court of appeals' order of dismissal was void because it occurred after the cause had been removed to federal court. Once removal is effected, 'the State court shall proceed no further unless and until the case is remanded.' 28 U.S.C. § 1446(d)."

35. The 1st, 3rd, 4th, 5th, 8th, 9th, 13th, and 14th Texas courts of appeal have cited *Meyerland* and say "Once removal is effected, the State court shall proceed no further unless and until the case is remanded."

Jiangsu Jinshi Machinery Group Co., Ltd. v. Kana Energy Services, Inc., 14-18-01052-CV (Tex.App. Dist.14 06/11/2019); *Phillips v. Phillips*, 05-18-00659-CV (Tex.App. Dist.5 11/06/2018); *In re Johnson*, 04-18-00641-CV (Tex.App. Dist.4 10/04/2018); *Williams v. Lambright*, 05-18-00240-CV (Tex.App. Dist.5 05/14/2018); *Amir-Sharif v. TDCJ*, 13-16-00505-CV (Tex.App. Dist.13 11/03/2016); *In re University of Incarnate Word*, 469 S.W.3d 255 (Tex.App. Dist.4 06/24/2015); *J.P. Morgan Chase Bank, N.A. v. Del Mar Props., L.P.*, 443 S.W.3d 455 (Tex.App. Dist.8 08/26/2014); *Estate of Benson*, 04-15-00087-CV (Tex.App. Dist.4 03/30/2015); *Nelly Uribe v. Willie L. Hilson*, No. 01-10-00709-CV (Tex.App. Dist.1 02/23/2012); *Byron Thomas v. City of Houston*, No. 01-11-00858-CV (Tex.App. Dist.1 01/19/2012); *Weaver v. Tobin*, No. 03-00573-CV (Tex.App. Dist.3 12/11/2003); *EOG Resources, Inc. v. Vela*, No. 04-02-00168-CV (Tex.App. Dist.4 08/13/2003); *Leffall v. Johnson*, No. 09-01-177 CV (Tex.App. Dist.9 01/31/2002); *Russell v. Dallas Independent School Dist.*, No. 05-10-00563-CV (Tex.App. Dist.5 07/21/2010);

“...the Federal Court's failure to sign a remand order is not a non-jurisdictional procedural defect but the failure of a prerequisite to the State Court's exercise of jurisdiction. *See Tugman*, 106 U.S. at 122, 1 S.Ct. at 60; *Meyerland Co.*, 848 S.W.2d at 83; *Guilbot Serros de Gonzalez*, 315 S.W.3d at 536-38; *Quaestor Investments, Inc.*, 997 S.W.2d at 228-29; *Gonzalez Guilbot*, 267 S.W.3d at 559; *Academy Corp.*, 21 S.W.3d at 737. The lack of a remand order is not a trifling thing. The remand order is essential. Its absence is not a procedural defect. It is a fatal defect.” (*Hsin-Chi-Su v. Vantage Drilling Co.*, 474 S.W.3d 284 (Tex.App. Dist.14 07/14/2015).)

36. But now the District Court, Texas Tenth Court of Appeals, and Texas Supreme Court ignore federal law, binding decisions of this Court, decisions of eight Texas appellate courts, and the Texas Supreme Court.

37. The Supremacy Clause of the United States Constitution (Article VI, Clause 2), establishes that the Constitution, federal laws made pursuant to it, and treaties made under its authority, constitute the “supreme Law of the Land,” and thus take priority over any conflicting state laws. (Nelson, Caleb; Roosevelt, Kermit. “The Supremacy Clause”. Philadelphia, Pennsylvania: National Constitution Center. October 10, 2019.) It provides that state courts are bound by, and state constitutions subordinate to, the supreme law. (Burnham, William (2006). *Introduction to the Law and Legal System of the United States* (4th ed.). St. Paul, Minnesota: Thomson West. p.41.)

38. The actions of the DC and Tex.App. Dist.10 are void and must be so declared by this Court.

39. This is the law in the Fifth Circuit and the Northern District of Texas. *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 365-66 (5th Cir. 1995); *see* 28 U.S.C. § 1446(d) (establishing that once a party files notice of removal with the state court, the State court shall proceed no further unless

and until the case is remanded"). In other words, removal "divests the state court of jurisdiction and precludes any state court/federal court conflict." *Pittman v. Seterus, Inc.*, No. 3:14-CV-3852-M BF, 2015 WL 898990, at *2 (N.D. Tex. Mar. 2, 2015); *see also Iqbal v. Bank of Am., N.A.*, No. A-12-CA-938-SS, 2012 WL 11955635, at *5 (W.D. Tex. Dec. 18, 2012), *aff'd*, 559 Fed.Appx. 363 (5th Cir. 2014). (*Wolf v. Deutsche Bank National Trust Co.*, 17-50732 (5th Cir. 08/09/2018).)

"28 U.S.C. § 1446 was amended. Under the amendment, the filing of a removal petition terminates the state court's jurisdiction until the case is remanded, even in a case improperly removed." (*Lowe v. Jacobs*, 243 F.2d 432, 433 (5th Cir.), cert. denied, 355 U.S. 842, 78 S. Ct. 65, 2 L. Ed. 2d 52 (1957).) [emphasis added.]

"Since *Steamship Co.* was decided, the removal statute 28 U.S.C. § 1446 was amended. Under the amendment, the filing of a removal petition terminates the state court's jurisdiction until the case is remanded, even in a case improperly removed. *Lowe v. Jacobs*, 243 F.2d 432, 433 (5th Cir.), cert. denied, 355 U.S. 842, 78 S. Ct. 65, 2 L. Ed. 2d 52 (1957). Thereafter, it is the federal district court's duty to determine whether to remand due to lack of subject matter jurisdiction. *Id.* This is contrary to the former rule where the case must have been properly removed to end the state court's jurisdiction. *Id*" (*Maseda v. Honda Motor Co.*, 861 F.2d 1248 (11th Cir. 12/19/1988).)

40. 28 U.S.C. § 1447 provides: "A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case."

"[J]urisdiction vests in the state court when the federal district court executes the remand order and mails a certified copy to the state court." *Quaestor Investments, Inc. v. State of Chiapas*, 997 S.W.2d 226, 229 (Tex. 1999). Any orders the state court issues prior to remand are void. *Meyerland Co. v. F.D.I.C.*, 848 S.W.2d 82, 83 (Tex. 1993).

41. Fifth Circuit cases provide that the jurisdiction of the state court is not restored unless and until the federal court remands the case. (*Johnson v. Estelle*, 625 F.2d 75, 77 (5th Cir.1980) (per curiam); *Allman v. Hanley*, 302 F.2d

559, 562 (5th Cir.1962); *E.D. Systems v. Southwestern Bell*, 674 F.2d 453,457 (5th Cir.1982).)

42. Federal case law on this is clear. The Petitioner cited 20 cases documenting that filing a notice of removal immediately strips the state court of its jurisdiction. Tex.App. Dist.10 ignored all 20.

43. Cases hold that even if a case is not properly removable, the filing of a removal petition ends the state court's jurisdiction until the case is remanded. (*E.D. Systems v. Southwestern Bell, id.*)

44. Defendants never moved for remand. The federal court never complied with 28 U.S.C. § 1447.

45. The USDCSD case was dismissed without prejudice on 1/29/2015. The judge called the removal a nullity, but there is no such thing in the federal removal statutes, and USDCSD failed to remand. Windsor appealed.

46. Windsor has used versuslaw.com to research Texas cases as well as every federal appellate court case, and "nullity" has never been used with a removal. The sole means of returning a case to state court after removal is remand.

47. The case was removed to federal court and was on appeal in federal court from 12/18/2014 to 9/3/2015. No order of remand was ever sent by the USDCSD clerk to DC as required by law. [APPENDIX F.] [APPENDIX G.]

48. The DOCKET in Case #88611 shows that no order of remand was ever received by the Ellis County Texas court.

49. This case was removed to federal court at 2:09 p.m. on 12/18/2014 so DC had no jurisdiction thereafter. The order filed on 12/19/2014 is void.

50. In *Meyerland v. F.D.I.C.*, 848 S.W.2d 82, 83 (Tex.1993) the Texas Supreme Court stated:

“The court of appeals’ order of dismissal was void because it occurred after the cause had been removed to federal court. Once removal is effected, ‘the State court shall proceed no further unless and until the case is remanded.’ 28 U.S.C. § 1446(d).”

This issue was raised in the Appellant’s Brief. In its opinion, Tex.App. Dist.10 cited *Parrish v. State*, 485 S.W.3d 86 (Tex.App.—Houston [14th Dist.] 2015, pet. ref'd) as the authority for overruling this issue. *Parrish* does not apply; it is a criminal matter involving a different federal statute in which there was an untimely filing. Unlike 28 U.S.C. §1446, the filing of notice of removal under 28 U.S.C. §1455 does not prevent the state court from continuing its proceedings. In the instant case, the federal courts did assume jurisdiction, and this is a civil matter with timely filing.

IV. MANDAMUS RELIEF IS APPROPRIATE UNDER THE CIRCUMSTANCES.

51. For the reasons discussed above, mandamus relief is “appropriate under the circumstances.”

52. There are no other adequate means to obtain the relief the Petitioner seeks.

when district courts vitiate their “obligation to follow precedent,” which the

11th Circuit defined as an "essential factor in the proper operation of the judiciary." *See Litman*, 825 F.2d at 1510; *see, e.g., Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

CONCLUSION

53. The petition for writ of mandamus should be granted.

Respectfully submitted, this 5th day of January, 2021.



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VERIFICATION AND CERTIFICATE OF GOOD FAITH

I hereby certify that this Petition is being filed in good faith. I also verify under penalty of perjury pursuant to 28 U.S.C. §1746 that all statements of fact contained herein are true and based upon my personal knowledge.

Certified this 5th day of January, 2021,



William M. Windsor
Pro Se