

In the
Supreme Court of the United States

IN RE J. CORY CORDOVA,

Petitioner.

On Petition for an Extraordinary Writ of Mandamus
to the United States Court of Appeals for the Fifth Circuit

**PETITION FOR AN
EXTRAORDINARY WRIT OF MANDAMUS**

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QUESTIONS PRESENTED

Petitioner's writ of mandamus to this Court is the only remaining legal remedy to ensure that Petitioner's viable claims against the Respondents/Defendants are not dismissed with prejudice by a federal court that never afforded him an opportunity to be heard and where federal subject matter jurisdiction never existed. This Court's consideration is necessary to demonstrate continued adherence to traditional and constitutionally dictated requirements; preserve the uniformity of this Court's decisions; restore proper balance between the state and federal courts' authority; clarify the unsettled area of law regarding improper/wrongful removal to prevent gamesmanship and to ensure that no litigant experiences the exploitation of our judicial system experienced by Petitioner which resulted in additional costs, three (3) years of delays, unfairness, and a waste of significant judicial resources.

THE QUESTIONS PRESENTED ARE:

1. Whether the Fifth Circuit exceeded its constitutional and appellate authority when it failed to review Petitioner's repeated objections to the subject matter jurisdiction of the district court which resolved the merits of the case before establishing its jurisdiction.
2. Whether the Fifth Circuit exceeded its authority in failing to give full faith and credit to an intervening and controlling decision by the Louisiana Supreme Court involving the same Defendants preclusive to the issue of the federal courts' lack of jurisdiction and necessitating remand of this case back to the Louisiana state court from which it was removed.

3. Whether the current law and jurisprudence is sufficient to deter Defendants from engaging in improper and/or wrongful removals when the benefits of removal far outweigh the risks.

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant Below

- J. Cory Cordova, M.D.

Respondents and Defendants-Appellees Below

- Louisiana State University Agricultural & Mechanical College Board of Supervisors
- Jeff Landry, Louisiana Attorney General
- Karen Curry
- Kristi Anderson
- Lafayette General Health System, Incorporated
- Lafayette General Medical Center, Incorporated
- Nicholas Sells
- University Hospital & Clinics, Incorporated

LIST OF PROCEEDINGS

The following proceedings are directly related to the case in this Court within the meaning of Rule 14.1 (b)(iii):

United States Court of Appeals for the Fifth Circuit
No. 21-30239

J. Cory Cordova, M.D., *Plaintiff/Appellant*, v. Louisiana State University Agricultural & Mechanical College Board of Supervisors; Karen Curry; Nicholas Sells; Kristi Anderson; University Hospital & Clinics, Incorporated; Lafayette General Medical Center, Incorporated; Lafayette General Health System, Incorporated, *Defendants/Appellees*

Date of Per Curiam Order: November 8, 2021

Date of Rehearing Denial: December 16, 2021

United States District Court for the
Western District of Louisiana

No. 6:19-CV-1027

J. Cory Cordova, M.D., *Plaintiff*, v. Louisiana State University Agricultural & Mechanical College Board of Supervisors; Karen Curry; Nicholas Sells; Kristi Anderson; University Hospital & Clinics, Incorporated; Lafayette General Medical Center, Incorporated; Lafayette General Health System, Incorporated, *Defendants*

Judgment on Order of Remand: March 24, 2021

Memorandum Order: April 14, 2021

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	iii
LIST OF PROCEEDINGS	iv
TABLE OF AUTHORITIES	viii
RULE 20 STATEMENT	1
OPINIONS BELOW	2
JURISDICTION	3
STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	3
A. Statement of Facts	4
B. Procedural History	6
1. Proceedings in the Federal District Court	6
2. Proceedings in the Fifth Circuit Court.....	10
REASONS FOR GRANTING THE PETITION	13
I. WRIT OF MANDAMUS IS WARRANTED BECAUSE SUBJECT MATTER JURISDICTION WAS NOT ESTABLISHED BEFORE A DISMISSAL OF THE MERITS RESULTING IN A DRIVE-BY JURISDI- TIONAL RULING	14
II. NO ADEQUATE MEANS EXIST TO DETER DEFENDANTS FROM ENGAGING IN IMPROPER REMOVALS BECAUSE THE BENEFITS OF REMOVAL OUTWEIGH THE RISK OF REMAND....	16

TABLE OF CONTENTS – Continued

	Page
III. NO OTHER ADEQUATE MEANS EXISTS TO ENSURE THE FIFTH CIRCUIT APPLIES AN INTERVENING DECISION IN CONTROLLING STATE LAW THAT REMOVES ALL POSSIBLE DOUBT REGARDING FEDERAL SUBJECT MATTER JURISDICTION IN THIS CASE.	18
CONCLUSION.....	19

TABLE OF CONTENTS – Continued

	Page
APPENDIX TABLE OF CONTENTS	
OPINIONS AND ORDERS	
Opinion of the United States Court of Appeals for the Fifth Circuit (November 8, 2021).....	1a
Memorandum Order of the United States District Court for the Western District of Louisiana Lafayette Division (April 14, 2021)	5a
Judgment of the United States District Court for the Western District of Louisiana Lafayette Division (March 24, 2021)	11a
Report and Recommendation of the United States District Court for the Western District of Louisiana Lafayette Division (March 1, 2021).....	13a
REHEARING ORDER	
Order of the United States Court of Appeals for the Fifth Circuit Denying Petition for Rehearing (December 16, 2021).....	25a
OTHER DOCUMENTS	
Appellant’s Post-Decision Motion to Amend Judgment Based on New Controlling Case Law and New Evidence (January 13, 2022)....	27a
Louisiana Supreme Court Decision in <i>Nelson, et al. v. Oschner Lafayette General</i> (January 7, 2022).....	36a
Louisiana Supreme Court Decision in <i>Hayes, et al.</i> <i>v. University Health Shreveport, LLC, et al.</i> (January 7, 2022).....	38a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Arbaugh v. Y & H Corp.</i> , 546 U.S. 500 (2006)	15
<i>B.P. P.L.C., et al. v. Mayor and City Council of Baltimore</i> , 952 F.3d 452 (2021).....	14
<i>Bell v. Hood</i> , 367 U.S. 678 (1946)	17
<i>Carlsbad Technology, Inc. v. HIF Bio, Inc.</i> , 556 U.S. 635 (2009)	14
<i>Hayes, et al. v. University Health Shreveport</i> , 21-1601 (La. 1/7/22).....	18
<i>In re: Pennsylvania Co.</i> , 137 U.S. 451 (1890)	13
<i>Nelson, et al. v. Ocshner Lafayette General</i> , 21-1453 (La. 1/7/22).....	18
<i>Railroad Co. v. Wiswall</i> , 23 Wall. 507 (1874).....	13
<i>Steel Co. v. Citizens for a Better Env't.</i> , 523 U.S. 83 (1998)	14
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend. XI	6
STATUTES	
28 U.S.C. § 1254(1)	3
28 U.S.C. § 1367(c).....	14
28 U.S.C. § 1442.....	14

TABLE OF AUTHORITIES – Continued

	Page
28 U.S.C. § 1443.....	14
28 U.S.C. § 1447(c).....	1
28 U.S.C. § 1447(d)	13
28 U.S.C. § 1651, All Writs Act	3
42 U.S.C. § 1983.....	passim
42 U.S.C. § 1988.....	8

JUDICIAL RULES

Fed. R. Civ. P. 12(b)(6).....	6, 8, 16
Fed. R. Civ. P. 54(b)	8
Fed. R. Civ. P. 60(b)	11
Fed. R. Civ. P. 60(d)	11
Sup. Ct. R. 20	1

OTHER AUTHORITIES

Zachary D. Clopton & Alexandra D. Lahav, <i>Fraudulent Removal</i> , 135 HARV. L. REV. F. 87 (2021)	17
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PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

RULE 20 STATEMENT

Petitioner respectfully petitions for a writ of mandamus to the Fifth Circuit, requesting that the Fifth Circuit be directed to vacate its decisions and remand this case back to the Fifteenth Judicial District Court for the State of Louisiana based on lack of subject matter jurisdiction. When a writ of mandamus is sought to confine a federal court to a lawful exercise of its prescribed authority, this Court should issue the writ as a matter of course. Although Petitioner does request that this Court consider a writ of certiorari in the alternative, a writ of mandamus appears to be the only remedy for this Court to compel action and prevent dismissal of Petitioner's claims in a case where subject matter jurisdiction was never established prior to dismissal on the merits and no final appealable order exists.

Exceptional circumstances exist in this case because without this Court's intervention Petitioner's claims will be dismissed implicating due process, federalism concerns, and Petitioner's right of access to the courts. The petition is directed to this Court, as the Petitioner has exhausted avenues for appeal in the Fifth Circuit. Additionally, Petitioner respectfully requests that prior to remand that the issue of attorney's fees and costs be considered pursuant to 28 U.S.C. § 1447(c).

OPINIONS BELOW

On November 8, 2021, the Fifth Circuit Court of Appeal in an unpublished per curiam opinion dismissed Plaintiff's Appeal of the March 24, 2021 Judgment and affirmed the April 14, 2021 costs award. (App.1a) On December 16, 2021, the Fifth Circuit denied Appellant's Request for Rehearing En Banc. (App.25a) On December 24, 2021, the Fifth Circuit granted Petitioner's motion to stay the mandate pending a writ to this Court through March 28, 2022. On January 13, 2022, Petitioner filed a Post Decision Motion to Amend based on New and Controlling Case Law and Newly Discovered Evidence. (App.27a). On January 14, 2022, the Fifth Circuit directed the Defendants to respond but the motion remains pending and the delays for filing a writ with this Court are not suspended.

The United States District Court for the Western District of Louisiana, Lafayette Division ordered that the Report and Recommendation of the Magistrate Judge be adopted and that the Plaintiff's Motion to Remand and Amended Motion to Remand be granted on March 24, 2021 but remanded only the remaining state law legal malpractice claims. (App.11a). On April 14, 2021, the United States District Court for the Western District of Louisiana, Lafayette Division issued a Memorandum Order on the Defendants' Motion for Attorney's Fees and Costs. (App.5a)



JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651. Alternatively, out of an abundance of precaution and should this Court determine that this matter is more appropriately resolved through a writ of certiorari, this Court's jurisdiction rests on 28 U.S.C. § 1254(1). On December 16, 2021, the Fifth Circuit denied rehearing of its November 8, 2021 unpublished per curiam opinion. (App.25a).



STATUTORY PROVISIONS INVOLVED

All Writs Act, 28 U.S.C. § 1651(a):

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.



STATEMENT OF THE CASE

There is no greater individual constitutional right than the right to be heard and no greater federal constitutional issue than that of subject matter jurisdiction. Here, when the district court and Fifth Circuit failed to adhere to both fundamental principles, a grievous injustice occurred necessitating this writ of mandamus.

A. Statement of Facts

On March 29, 2019, Petitioner, J. Cory Cordova, M.D., filed a lawsuit in state court against the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Dr. Karen Curry (the program directory at UHC), Dr. Nicholas Sells (the head of UHC's internal medicine department), and Kristi Anderson (UHC's director of graduate medical education) (collectively referred to as "LSU Defendants" herein). Dr. Cordova also sued University Hospitals and Clinics, Lafayette General Medical Center, Inc., and Lafayette General Health System, Inc. (collectively referred hereinafter as "Lafayette General Defendants"). In general terms, Dr. Cordova alleged that the LSU Defendants and Lafayette General Defendants breached his contract, imposed unwarranted discipline, denied him contractual and statutory due process under the terms of his contract, and sabotaged his efforts to apply to other residency programs.

Petitioner's case against the LSU and Lafayette General Defendants was dismissed after removal to federal court through summary judgment prior to initial disclosures, formal discovery, and depositions during the height of the COVID-19 pandemic. However, the record of these proceedings do contain objective and unrefuted evidence that the Respondents/Defendants did not act in good faith when they breached Dr. Cordova's contract and released him from its medical residency program. On January 5, 2018, twenty-five (25) days prior to the Request for Adverse Action that led to Dr. Cordova's improper nonrenewal of his contract, LSU/UHC prepared an administrative summary of all of Dr. Cordova's faculty evaluations from August 11, 2017 to December 14, 2017 as follows:

- a. Patient care: 6.5 (Experienced/Competent and Expected Score of PGY:2)
- b. Medical Knowledge: 6.6 (Experienced/Competent and Expected Score of PGY:2)
- c. Practice-based learning and improvement: 6.5 (Experienced/Competent and Expected Score of PGY:2)
- d. Interpersonal and communication skills: 9.0 (Aspirational/Expert and Expected Score of PGY:3)
- e. Professionalism: 6.5 (Experienced/Competent and Expected Score of PGY:2)
- f. Systems-Based Practice: 5.8 (Experienced/Competent and Expected Score of PGY:2)
- g. Total Average: 6.8 (Experienced/Competent and Expected Score of PGY:2)

Despite Dr. Cordova excelling beyond his required competency for a first-year resident (PGY:1) and his successful completion of his first year of residency, his contract was not renewed. Dr. Cordova initially filed suit because he was terminated from his residency program without the opportunity to be heard required by the contract. Dr. Cordova's right to be heard continues to be denied because the case was dismissed without ever affording him the ability to say a single word to clear his professional reputation.

B. Procedural History

1. Proceedings in the Federal District Court

On August 7, 2019, the LSU Defendants filed a Notice of Removal that asserted, “[a] constitutional tort claim under 42 U.S.C. § 1983 is facially removable because it is a civil action founded on claims under the Constitution and/or law of the United States.” After the notice of removal, the district court neither conducted a jurisdictional analysis nor was there an attempt to remand the action to state court. Nine days later, the LSU Defendants filed an Answer asserting Eleventh Amendment immunity from suit in federal court and a Rule 12(b)(6) motion requesting dismissal of Dr. Cordova’s federal due process claims.

On March 9, 2020, the LSU Defendants filed a second Rule 12(b)(6) Motion for failure to state a claim upon which relief can be granted seeking dismissal of federal due process claims Dr. Cordova never specifically pled. Despite the previous averments in the Notice of Removal, the LSU Defendants then claimed that from the face of Dr. Cordova’s state court Petition for Damages, he failed to state a federal procedural or substantive due process claim. Specifically, the LSU Defendants further argued that “any assertion that this court previously determined that Plaintiff has stated a claim for a Section 1983 violation by the LSU Defendants should be rejected.”

On April 6, 2020, while the Rule 12(b)(6) motion was under advisement, counsel for Lafayette General, James Gibson, and Dr. Cordova’s counsel at the time, Jacques Bezou, Sr., had a telephone conversation memorialized in an email by Mr. Gibson to all attorneys which stated:

I talked to Jacques this morning. He brought up that his client, an ER doctor cannot be deposed now or likely for the foreseeable future. Moreover, unlike others on this email, Jacques and I are in the target age for catching the virus (he more than me, based on age). We discussed filing a joint motion to continue the trial date/all deadlines, with a request for a conference call if that is necessary. We can add emergency to that motion if necessary and point out all issues to the Court.

On April 7, 2020, the district court dismissed the procedural due process claims and many of the substantive due process claims against LSU because vicarious liability cannot support a claim under § 1983. The district court maintained that Dr. Cordova had identified a “possible” substantive due process violation against only Dr. Karen Curry. The district court deferred its ruling on qualified immunity pending development of the record.

On April 27, 2020, all parties to these proceedings signed and filed a Joint Motion and Order to Continue Trial for the following reasons:

Cordova, a medical resident who currently is working in a hospital emergency room, has been working an increased number of shifts and hours as a result of enhanced health care demands/needs related to the COVID-19 pandemic. Consequently, he has not been able to make himself available for deposition preparation conferences with his attorneys and is unable to appear for deposition questioning by multiple lawyers at this time. And

it is unknown when he will become available for conference(s) with counsel and/or for deposition.

Although initial disclosures were never exchanged, no further discovery was conducted, and the pandemic necessitated continued executive and judicial orders, the LSU Defendants filed a Motion for Summary Judgment on October 21, 2020. The motion alleged that Dr. Cordova failed to properly allege a federal due process claim and again asserted the defense of qualified immunity. The LSU Defendants also argued that Dr. Cordova did not comply with the federal heightened pleading requirements. The LSU Defendants' memorandum in support of their motion for summary judgment was nearly identical to the previous Rule 12(b)(6) motion. On November 13, 2020, the Lafayette General Defendants also filed a Motion for Summary Judgment arguing they did not employ Dr. Cordova.

On December 17, 2020, the district court found that Dr. Cordova "has failed to meet his burden on the qualified immunity defense or establishing a constitutional violation and the substantive due process claim against Curry must be dismissed." The district court also found that Dr. Cordova's failure to conduct discovery was dispositive. A deadline to submit briefs regarding certification under the Federal Rule of Civil Procedure 54(b) was set for December 28, 2020. Prior to the district court's certification, Dr. Cordova objected to the court's lack of subject matter jurisdiction and later filed a Motion to Remand and Amended Motion to Remand based on lack of subject matter jurisdiction.

On December 31, 2020, the LSU Defendants prematurely sought attorney's fees pursuant to 42 U.S.C. § 1988 as the prevailing party in a § 1983 action. The

LSU Defendants—the party who removed this action from state court—sought fees and costs on a theory of recovery Dr. Cordova never pled and instead alleged that they were “forced to defend against” frivolous and groundless federal due process claims. The billing records associated with the LSU Defendants’ Motion for Attorney’s Fees prove that at the time of removal, the LSU Defendants were aware that Dr. Cordova’s state court petition was “without allegations of civil rights violation under 42 U.S.C. § 1983.”

On January 27, 2021, the district court issued an order indicating that it must resolve Dr. Cordova’s Motions to Remand before it could proceed on any additional motions relating to the merits. On March 1, 2021, the magistrate judge issued a Report recommending that the motion to remand should be GRANTED and that the matter should be REMANDED to the 15th Judicial District Court, Lafayette Parish, Louisiana. (App.13a). However, the magistrate remanded only the legal malpractice claims and noted the general rule is that a court should decline to exercise supplemental jurisdiction over remaining state-law claims when all federal law claims are eliminated before trial. Dr. Cordova objected to the magistrate’s recommendations because the status of Dr. Cordova’s state law claims against all of the Defendants was unclear.

On March 24, 2021, the district court adopted the magistrate’s Report and Recommendations, granted the motions to remand, and certified its previous rulings. (App.11a). On April 14, 2021, the district court issued a Memorandum Order, clarified its previous rulings, denied the motion for attorney’s fees, and granted the LSU Defendants’ motion to tax costs. (App.5a). On April

27, 2021, Dr. Cordova filed a Notice of Appeal of both orders.

2. Proceedings in the Fifth Circuit Court.

On October 14, 2021—while the appeal was pending before the Fifth Circuit—Dr. Cordova filed a Motion for Relief from Judgment alerting the Fifth Circuit to newly discovered information regarding a conflict of interest between Dr. Cordova’s previous attorneys, Jacques Bezou Sr., Jacques Bezou Jr., and the current attorney for Lafayette General, James Gibson. This new evidence revealed an undisclosed conflict of interest that compromised Dr. Cordova’s representation in this matter. The motion also alerted the Fifth Circuit to the fact that the Lafayette General Defendants misrepresented in briefing that Dr. Cordova refused to have his deposition taken. This misrepresentation was material because Dr. Cordova’s failure to conduct discovery was a central issue at oral argument on the Motions for Summary Judgment. It is important to note that due to the pandemic, Dr. Cordova was not allowed to attend oral argument on the Motions for Summary Judgment and his counsel was the only attorney denied entry into the district courthouse. The Defendants proceeded in person with Dr. Cordova’s counsel arguing by speakerphone.

On October 22, 2021, the attorney for Lafayette General filed a response to the motion and admitted he represented Dr. Cordova’s attorneys (Jacques Bezou, Sr. and Jacques Bezou, Jr.) for nine (9) months during the time that his clients were representing Dr. Cordova in this litigation. Dr. Cordova was neither made aware of this conflict nor did he waive the conflict and consent

to the continued representation. Importantly, the undisclosed concurrent representation of Dr. Cordova's attorneys by the attorney for Lafayette General Defendants occurred at the time of removal of this matter to federal court.

On November 5, 2021, the LSU Defendants filed an untimely response to the motion for relief of judgment adopting the Lafayette General Defendants' response to the motion and further argued that the undersigned counsel misrepresented to the Fifth Circuit that a stay of discovery was agreed upon by all of the parties in this case. However, the billing entries filed into the record by the LSU Defendants support the undersigned's assertion that the parties agreed to "stay/continue" discovery due to the ongoing COVID-19 pandemic and Dr. Cordova's status as a front-line medical professional.

On November 8, 2021, the Fifth Circuit panel issued an unpublished *per curiam* opinion that dismissed Dr. Cordova's appeal of the March 24, 2021 order as untimely and affirmed the April 14, 2021, award of costs because Dr. Cordova's brief exclusively argued subject matter jurisdiction but did not brief an objection to the imposition of costs. Finally, the Fifth Circuit held that it did not have jurisdiction to review the Rule 60(b) and (d) Motion for Relief of Judgment because it was not first presented to the district court. However, overlooked is the fact that the motion could not be brought in the district court because the district court was divested of jurisdiction by the appeal and the remainder of the case had been remanded to state court.

On December 16, 2021, the Fifth Circuit denied Dr. Cordova's timely filed motion for rehearing. On December 24, 2021, the Fifth Circuit granted Dr.

Cordova's Motion to Stay the Mandate pending a writ to this Court or until March 28, 2022. On January 13, 2022, Dr. Cordova filed a Post Decision Motion to Amend Judgment for three (3) mutually exclusive reasons:

- 1.) There was an intervening change in controlling law because of the January 7, 2022, Louisiana Supreme Court decisions involving the Lafayette General/UHC Defendants preclusive to the issues of Dr. Cordova's employer and implicating the jurisdiction of the federal court.
- 2.) Inconsistent and/or contrary statements made by the Lafayette General/UHC Defendants in the Louisiana Supreme Court case and the instant case implicate the doctrine of judicial estoppel.
- 3.) Recently obtained public records supports that the district court's dismissals were predicated on misleading and/or false statements and Affidavits.

On January 13, 2022, the Fifth Circuit directed a response from the Defendants. On January 24, 2022, the Defendants responded, but the Motion to Amend remains pending before the Fifth Circuit.



REASONS FOR GRANTING THE PETITION

When a writ of mandamus is sought to confine a federal court to a lawful exercise of its prescribed authority, this Court should issue the writ as a matter of course. A writ of mandamus appears to be the only remedy for this Court to compel action and prevent dismissal of Petitioner's claims in a case where the Respondents/Defendants are fully aware that subject matter jurisdiction never existed. Moreover, in this case, there is no final appealable merits order allowing this Court to review the district court and Fifth Circuit's failure to establish subject matter jurisdiction before resolving the merits. This Court has declared that because an order remanding a removed action does not represent a final judgment reviewable by appeal, "the remedy in such a case is by mandamus to compel action and not by writ of error to review what has been done." *Railroad Co. v. Wiswall*, 23 Wall. 507, 508 (1874). Absent statutory prohibition, when a remand order is challenged by a petition for mandamus in an appellate court, "the power of the court to issue the mandamus would be undoubted." *In re: Pennsylvania Co.*, 137 U.S. 451, 453 (1890).

The Fifth Circuit held that Petitioner extensively briefed the objection of lack of subject matter jurisdiction, but he did not timely appeal the "merits judgment" that dismissed all of his claims. (App.3a). Overlooked is the fact that the March 24, 2021 "merits judgment" was not a judgment on the merits. (App.11a). The district court's March 24, 2021 order was an order granting Petitioner's motion to remand. 28 U.S.C. § 1447(d) clearly states that an order remanding a case to the

State court from which it was removed is not reviewable on appeal or otherwise except one removed pursuant to section 1442 and 1443. This Court recently held that an order encompasses all issues contained in it. *B.P. P.L.C., et al. v. Mayor and City Council of Baltimore*, 952 F.3d 452 (2021). Arguably, this entry of judgment is part of an order that may be appealed for an abuse of discretion pursuant to 28 U.S.C. § 1367(c) but may not be raised at any time as a jurisdictional defect. *Carlsbad Technology, Inc. v. HIF Bio, Inc.*, 556 U.S. 635 (2009).

Here, the order granting the motion to remand effectively shielded the issues it contained from appellate review by the Fifth Circuit and this Court. Exceptional circumstances exist because this case involves the fundamental principles of due process and the balance between the federal and state courts. Justice and equity forbid that a case be dismissed without affording a party a meaningful opportunity to be heard. Petitioner was denied the right to be heard by the district court and the right to appellate review of the dismissal of his case.

I. WRIT OF MANDAMUS IS WARRANTED BECAUSE SUBJECT MATTER JURISDICTION WAS NOT ESTABLISHED BEFORE A DISMISSAL OF THE MERITS RESULTING IN A DRIVE-BY JURISDICTIONAL RULING.

Inexplicably, the Fifth Circuit's unpublished per curiam opinion in this matter conflicts with the pivotal case of *Steel Co. v. Citizens for a Better Env't.*, 523 U.S. 83 (1998) and two hundred (200) years of jurisprudence which mandates that the first and fundamental question in any appeal is that of jurisdiction. The Fifth Circuit held that Petitioner exclusively briefed the

objection of lack of subject matter jurisdiction but did not timely appeal the “merits judgment” that dismissed all of his claims against the Respondent/Defendants. (App.1a). The Fifth Circuit also found that Petitioner timely appealed the district court’s April 14, 2021 order awarding costs but noted that, “Plaintiff dedicates his entire brief to arguing that the district court lacked subject matter jurisdiction in the first instance.” Overlooked by the Fifth Circuit is the fundamental principle that without jurisdiction, a court may not rule on any issue at all. Without definite jurisdictional footing, the district court should not have proceeded on the issue of attorneys’ fees, costs, or any other merits determination in this matter.

The federal courts have the duty to address its jurisdiction and apply the inflexible principle that jurisdiction must be decided before the merits. Jurisdiction before merits determinations is required to explicitly consider whether the dismissal of a case should be for lack of subject matter jurisdiction or for failure to state a claim. When a court fails to establish its jurisdiction before deciding the merits, this Court has described such unrefined dispositions as “drive-by jurisdictional rulings” that should be accorded “no precedential effect” on the question whether the federal court has authority to adjudicate the claim in the suit. *Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006). The question of whether the federal court had the authority to rule on the merits of this case remains unanswered by the district court and the Fifth Circuit. This Court is the court of last resort to determine if jurisdiction ever existed in this state court breach of contract case.

II. NO ADEQUATE MEANS EXIST TO DETER DEFENDANTS FROM ENGAGING IN IMPROPER REMOVALS BECAUSE THE BENEFITS OF REMOVAL OUTWEIGH THE RISK OF REMAND.

The Respondents/Defendants removed the Petitioners' state court breach of contract case based upon the district courts' "unquestionable" jurisdiction over a 1983 claim they knew or should have known did not exist. This prior knowledge is supported by the Respondent/Defendants' billing records submitted in support of its Motion for Attorney Fees wherein a billing entry dated prior to removal states that Petitioner's state court petition for damages was "without allegations of civil rights violation under 42 U.S.C. § 1983 in anticipation of removal and the filing of a 12(b)(6) motion."

Although clearly aware at the time of removal that Petitioner did not and could not allege a civil rights violation under Section 1983 because Petitioner was employed by a private rather than a state actor, the Respondent/Defendants strategically and improperly removed the matter. Once removed, the Respondent/Defendants took the complete opposite position and immediately began filing dispositive motions alleging that Petitioner failed to allege a federal civil rights action. The Respondent/Defendants persisted on this inconsistent course of action and later sought attorney's fees because Petitioner's state court petition contained "allegations were woefully insufficient to satisfy the elements of a Section 1983 claim. Simply put, Plaintiff's claims were groundless and wholly lacking in evidentiary support." The Respondents/Defendants also judicially assert that the Petitioner's alleged federal claims relied on "undisputedly meritless legal theory," and that "it is undeniable that Plaintiff identified no

constitutional deprivation.” It is these inconsistent arguments and the Defendants’ knowledge that Plaintiff/Petitioner was employed by private rather than state actor that border dangerously close to “fraudulent removal”.¹

The removal of Petitioner’s state court breach of contract case resulted in three (3) years of delays, successful dismissal of Petitioner’s claims, increased costs, and a significant waste of judicial resources. More importantly, the removal of Petitioner’s action allowed the Respondent/Defendants to proceed to judgment without any risks of adverse consequences since an objection to subject matter jurisdiction may be raised at anytime in the proceedings and even for the first time on appeal. The purpose of an objection to improper removal is designed to prevent unfair advantages and also supports the need to sanction the actual achievement of an unfair tactical advantage. However, this case exemplifies that the benefits of improperly removing and dismissing Petitioner’s case valued by his expert economist at ten million dollars (\$10,000,000.00) far outweighed the risk of approximately one hundred fifty thousand (\$150,000.00) the Petitioner may be awarded in attorney’s fees for improper removal. Only a directive from this Court can protect Petitioner and other plaintiffs from the

¹ Federal question requires a colorable claim of right arising under federal law and the court may find it lacks subject matter jurisdiction if the claim is weak. Put simply, a frivolous federal claim can be dismissed for lack of jurisdiction. *Bell v. Hood*, 367 U.S. 678 (1946). “Fraudulent removal” occurs when a removing defendant’s assertion of federal jurisdiction is made in bad faith or is wholly insubstantial. Zachary D. Clopton & Alexandra D. Lahav, *Fraudulent Removal*, 135 HARV. L. REV. F. 87 (2021).

attractive gamesmanship improper removals currently invite.

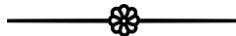
III. NO OTHER ADEQUATE MEANS EXISTS TO ENSURE THE FIFTH CIRCUIT APPLIES AN INTERVENING DECISION IN CONTROLLING STATE LAW THAT REMOVES ALL POSSIBLE DOUBT REGARDING FEDERAL SUBJECT MATTER JURISDICTION IN THIS CASE.

The recent Louisiana Supreme Court’s January 7, 2022 decisions in the consolidated matters of *Hayes, et al. v. University Health Shreveport*, 21-1601 (La. 1/7/22) and *Nelson, et al. v. Ocshner Lafayette General*, 21-1453 (La. 1/7/22) are preclusive to the issue of Petitioner’s true employer as a resident at University Hospitals & Clinics (UHC). (App.36a). The Louisiana Supreme Court has judicially determined that Lafayette General/UHC is a private actor under Louisiana state law implicating the jurisdiction of this Court. (App.38a).

In ruling for Lafayette General/UHC (the same Respondents herein represented by the same counsel herein), the Louisiana Supreme Court noted “[t]here is no allegation or even the barest insinuation that Employer is a state actor; indeed, the parties in this case stipulated that Employer is a private actor.” (App.48a). Further, the Louisiana Supreme Court stated that Lafayette General/UHC (Respondents herein) as a private actor could not present issues of federal law and solely state law applied. (App.51a). Moreover, the Louisiana Supreme court held that constitutional claims may not be brought against private actors and the court declined the invitation to extend the scope of the Louisiana constitution to restrict private actors. (App.51a) This decision is preclusive to the instant matter as Dr. Cordova, a resident at UHC, was employed

by a private actor and federal jurisdiction does not apply.

The Louisiana state court decision should be afforded full faith and credit by this Court as it interprets subject matter jurisdiction issues relevant to this case and involves the same Respondents represented by the same attorneys. The Fifth Circuit has not yet ruled on Petitioner's pending motion to remand and has failed to give full faith and credit to Louisiana Supreme Court's ruling which requires remand of Petitioner's case back to state court for lack of subject matter jurisdiction. Clearly, this Court is the only court with authority to instruct the Fifth Circuit and confine all federal courts to the proper exercise of its constitutional authority.



CONCLUSION

This Court unequivocally possesses the legal power to determine that the lower courts lacked jurisdiction in this case. Moreover, this Court has the power to address the anomaly of defendants who both invoke and then deny a court's federal jurisdiction in the same case in an effort to have a plaintiff's claims dismissed. It is well settled that where a defendant voluntarily removes a case to federal court and submits its rights for judicial determination, it will be bound thereby and cannot escape the result of its own voluntary act. In this case, the Respondent/Defendants were brought involuntarily into the case as defendants in the original state court proceedings, but then voluntarily agreed to remove this case to federal

court. In doing so, it voluntarily invoked the federal court's jurisdiction. The law governing removal recognizes the judicial need to avoid inconsistency, anomaly, and unfairness, and not upon a defendant's preference or desire which might, after all, favor selective use of the law to achieve litigation advantages. This case is an example of the worst possible result to a plaintiff—dismissal of his case without a single opportunity for his voice to be heard by any court.

Respectfully submitted,

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