No. 23A55

IN THE

Supreme Court of the United States

J. CORY CORDOVA

Applicant,

v.

LOUISIANA STATE UNIVRSITY AGRICULTURAL & MECHANICAL COLLEGE BOARD OF SUPERVISORS, KAREN CURRY, M.D., KRISTI ANDERSON, LAFAYETTE GENERAL MEDICAL CENTER, INCORPORATED, LAFAYETTE GENERAL HEALTH SYSTEM, INCORPORATED, UNIVERSITY HOSPITAL & CLINICS, INCORPORATED, NICHOLAS SELLS, M.D.,

Respondents.

EMERGENCY APPLICATION FOR STAY OF PRECEEDINGS AND EXECUTION OF FIFTH CIRCUIT COURT OF APPEALS MANDATE PENDING DISSOLUTION OF PETITION FOR WRIT OF CERTIORARI

CHRISTINE M. MIRE
Counsel of Record
LAW OFFICE OF
CHRISTINE M. MIRE
2480 YOUNGSVILLE HIGHWAY,
SUITE C
YOUNGSVILLE, LA 70592
(337) 573-7254
CMM@MIRELAWFIRM.COM

Counsel for Applicant

AUGUST 28, 2023

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TO THE HONORABLE SAMUEL A. ALITO, JR.,
ASSOCIATE JUSTICE OF THE SUPREME COURT AND
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INTRODUCTION

Absent the exceedingly rare intervention of this Court, a jurisdictional ruling granting remand based on lack of subject matter jurisdiction, which conflated the merits to dismiss Applicant's state law claims, will be given the effect of a final, irrevocable judgment unreviewable by any other court.[1] Respondents have hedged their bets on the unlikely odds of this Court granting Applicant's writ exemplified by their immediate waivers.[2] Respondents' disinterest before this Court does not extend to pendent litigation and the aggressive enforcement of a void judgment rendered by the district court without jurisdiction.[3] Respondents, all private actors, allege they obtained a judgment precluding all of Applicant's state law claims in an order granting remand that summarily dismissed purported federal claims brought pursuant to 42 U.S.C. § 1983—a claim Applicant never pled, Respondents lacked Article III standing to remove, and the federal courts lacked jurisdiction to dismiss on the merits.[4]

This case exemplifies the problems with conflating jurisdiction and the merits into a single step that go beyond procedural infelicity: conflating jurisdiction with the merits has irrational consequences inconsistent with this Court's precedents.[5] The district court dismissed Applicant's purported federal claims and the state law claims actually pled against Respondents by granting

[1] See Case No.: 23-55 seeking review from the Fifth Circuit's April 17, 2023 decision found at Appendix, pp. 6-12. The Fifth Circuit denied Applicant's Motion to Stay the Mandate on May 4, 2023. The denial of the stay is attached as Appendix, p. 4.
[2] See the Petition for Writ Application filed in Case No.: 23-55.
[3] This case provides an appropriate vehicle and is a cautionary tale created by the obscurity of this Court's precedent in *Thermtron Prod., Inc. v. Hermansdorfer*, 423 U.S. 336, 361, (1976), abrogated by *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 116 S. Ct. 1712, 135 L. Ed. 2d 1 (1996).
[4] See Appendix, p. 54, the district court's March 24, 2021, Judgment granting remand of only the legal malpractice claims made in Applicant's state court petition filed in the 15th Judicial District Court in Lafayette, Louisiana, Division D.
[5] *Beiser v. Weyler*, 284 F.3d 665, 672 (5th Cir. 2002).

partial summary judgments before the court firmly established its jurisdictional footing. The district court unequivocally assumed "hypothetical jurisdiction" over Applicant's state law claims and issued an unrefined disposition in an order of remand resulting in a "drive-by jurisdictional ruling" that should not be accorded precedential effect.[6] When Applicant requested relief from the district court's judgment, or alternatively, that the court clarify the dismissed state law claims in order to defeat Respondents' plea of federal *res judicata* in state court, Applicant was excessively sanctioned by the federal and state courts.[7] When Applicant appealed the denial of relief from the district court's judgment based on lack of subject matter jurisdiction, he was sanctioned by the United States Fifth Circuit for refusing "to heed the district court's warnings about 'unreasonable attempts at continuing this litigation.'"[8]

Applicant's complete denial of relief has been insufficient for Respondents who have continued to engage in harassing litigation through the application of enormous financial and political pressure designed to reduce Applicant "to a condition of exhausted compliance."[9] Respondents have used excessive punitive sanctions in the amount of **$237,724.81** to chill Applicant's speech and deter his access to the court system.[10] This Court held that "the protection against excessive fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties. Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies."[11] Thus, without a stay from this Court by September 5, 2023, Applicant will be held in contempt by the state court and very

[6] *Arbaugh v. Y & H Corp.* 546 U.S. 500. See also *Steel Co. v, Citizens for Better Environment*, 523 U.S. 83 (1998).
[7] See Appendix, pp. 36-53, the August 23, 2022 Memorandum Ruling denying the Motion to Vacate pursuant to Rule 60(b) and awarding sanctions to the LSU Defendants issued by the federal district court.
[8] See Appendix, p. 11.
[9] *Chambers v. Nasco, Inc.,* 501 U.S. 32 (1991).
[10] See Appendix, p. 76, one day after Applicant filed a petition for review of the decisions by this Court, Respondents warned: "Rest assured that my clients will seek all legal avenues to atone for the ongoing wrongs."
[11] *Timbs v. Indiana,* 139 S.Ct. 682 (2019).

likely imprisoned for objecting to payment of punitive sanctions in the amount of $98,390.17 based on federal *res judicata*.[12] In federal district court, Applicant also faces a finding of contempt if he fails to pay Respondents' punitive sanctions before September 13, 2023, that were assessed by the district court in the amount of $50,664.74.[13] The sanctions were imposed in the Fifth Circuit's *per curiam* unpublished opinion that remanded to the district court to assess the appropriate Fed. R. App. P. Rule 38 sanctions for Applicant's "untimely and also meritless Rule 60(b) motion" based on lack of subject matter jurisdiction, intervening developments of facts, and a controlling change in case law that is pending review by this Court.[14]

Thus, a stay of these proceedings pending the disposition of Applicant's petition is respectfully requested to prohibit additional abusive litigation tactics and aggressive enforcement of a void judgment that will cause Applicant irreparable harm. Applicant's petition requests this Court to review a remand order, which contains a dismissal of all of Applicant's claims against Respondents, utilizing the doctrine of hypothetical jurisdiction. "Much more than legal niceties are at stake here. For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act *ultra vires*."[15] Applicant's petition presents an issue that is *res nova* and the doctrine of hypothetical

[12] See Appendix, p. 62, the state trial court's Rule to Show Cause ordering the undersigned and Applicant to appear. Appendix, pp. 73-75, the state court judgment awarding sanctions and the state court's written reasons for ruling on sanctions for filing a claim precluded by federal res judicata. Also note that this award is currently pending appeal before the Louisiana Third Circuit Court of Appeals; however, Respondents dispute whether they may execute the judgment while a suspensive appeal is pending.

[13] See Appendix, p. 13, the district court's August 14, 2023, Judgment of sanctions. Appendix, pp. 14-16, the district court's June 29, 2023 Memorandum Ruling calculating an award of Fed. R. App. P. Rule 38 sanctions pursuant to the Fifth Circuit's mandate issued on May 12, 2023.

[14] See Appendix, pp. 5-15, the April 17, 2023 decision of the Fifth Circuit Court of Appeal. See also Appendix, p. 45, Footnote 2, the district court's denial of the Rule 60(b) Motion and the court's refusal to apply this Court's existing precedent in *Buck v. Davis*, 580 U.S. 100, 126 (2017) finding that the Fifth Circuit holds that a change in case law is not sufficient to warrant relief under Rule 60(b)(6). *Raby v. Davis*, 907 F.3d 880, 884 (5th Cir. 2018).

[15] *Waleski v. Montogomery, McCracken, Walker & Rhoads, LLP, et al.*, No.: 22-914, 599 U.S. (2023) (Thomas, J., dissenting).

jurisdiction is the subject of an entrenched Circuit split raising questions of constitutional law, a stay of these proceedings and review of Applicant's petition is respectfully requested.[16]

STATEMENT

A. Factual Background

This case concerns a judgment that is void for lack of subject matter jurisdiction obtained under deceptive pretenses by purportedly state actors. On July 8, 2022, Dr. Cordova sought relief from the federal court and produced voluminous evidence establishing that Respondents used the complexity of their contractual relationship to manufacture Article III standing, obscure Dr. Cordova's employment status, and obtain the improper dismissal of a state law action in federal court.

Applicant, J. Cory Cordova, M.D. ("Dr. Cordova"), was wrongfully dismissed, without cause, from the Internal Medicine Residency Program located at University Hospital and Clinics, Inc. ("UHC"), in Lafayette, Louisiana.[17] However, UHC—a private hospital and Dr. Cordova's true employer—utilized the complexity of the public private partnership between UHC and Louisiana State University School of Medicine to gain the benefits of qualified immunity in federal court and avoid liability for Dr. Cordova's state law claims. Beginning in 1997, Louisiana Revised Statute 17:1519.1 provided for the operation of Louisiana's ten (10) public hospitals by the LSU Health Sciences Center-Health Care Services Division, under the overall management of the Defendant, the LSU Board of Supervisors. These hospitals served as the

[16] Applicant's petition also seeks resolution of the issue that this Court left unresolved in *BP P.L.C. v. Mayor and City Council of Baltimore*, 952 F.3d 452 (2021)—the determination of whether other appealable issues contained in an Order of Remand may be reviewed by the appellate courts.

[17] Respondents are the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Dr. Karen Curry (the program director 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 "LSU Defendants" herein). Dr. Cordova also sued University Hospitals and Clinics, Inc., Lafayette General Medical Center, Inc., and Lafayette General Health System, Inc. (collectively referred hereinafter as "the Lafayette General Defendants").

primary source of health care services for the indigent population of the state. In addition, these hospitals are utilized by the LSU Health Sciences Centers, a private entity, as teaching hospitals wherein the medical and dental faculty and medical education students provide the medical care to patients. In 2013, the LSU Board of Supervisors transitioned management and operations of these former charity hospitals to private hospital partnerships.

In the Spring of 2013, following a directive from the State, the LSU System began to transition the management and operations of all but one of its hospitals to private entities, entering into public private hospital partnerships. This major transformation of public healthcare in Louisiana occurred in a span of months, beginning in July 2012, when Congress reduced the state's disaster-recovery Federal Medical Assistance Percentage (FMAP) rate from 71.92 percent to a projected 65.51 percent, the lowest reimbursement rate Louisiana has had in more than 25 years. Realizing that the cut to FMAP could be problematic, the public private hospital partnerships were formed as a way to increase support for healthcare services. The transition of the management and operations of the hospitals to private partners were negotiated and formalized through cooperative endeavor agreements (CEA). These CEA's were executed by the State, the LSU System, and the Private Partner selected for each former public hospital.[18]

Under cooperative endeavor agreements, the former University Medical Center in Lafayette, Louisiana is managed by the Defendant, Lafayette General Medical Center.[19] The former University Medical Center now operates as University Hospital and Clinics, Inc. ("UHC")—a wholly owned subsidiary of Lafayette General Medical Center and Lafayette General Health

[18] This information was obtained from a recent Louisiana Legislative Audit of the LSU System that details the nature of the relationship and the appropriate classification of the discreetly presented and component units of the system. The audits are furnished to the Louisiana Attorney General and are available as public records at www.lla.state.la.us.

[19] The Cooperative Endeavor Agreements between the parties and other public records regarding the public private partnerships are contained in the record of these proceedings. ROA.22-30732.1579-1838. ROA.22-30732.4440-4671.

Systems, additional named Defendants in this case—is the site at which Dr. Cordova completed his first year of internal medicine residency training from July 1, 2017-June 30, 2018.[20]

Dr. Cordova has consistently maintained that the declarations and Affidavits furnished by the LSU and Lafayette General Defendants to obtain their victory in this purported civil rights action violated Fed. R. Civ. P. Rule 56(h).[21] The LSU Defendants misrepresented the nature of their relationship when they maintained that Dr. Cordova, Dr. Karen Curry, Dr. Nicholas Sells, Kristi Anderson, and Dr. James Falterman were all employed by the Board of Supervisors for LSU, a state actor, in order to obtain the following advantages in this case: 1.) removal to federal court;[22] 2.) a qualified immunity defense for Dr. Curry to overcome her false statements regarding Dr. Cordova's residency performance;[23] 3.) free legal representation from the Attorney General of Louisiana;[24] and 4.) attorneys' fees and costs as a state actor pursuant to 42 U.S.C. § 1988.[25]

1. <u>An Undisclosed Concurrent Conflict of Interest and Improper Removal.</u>

To compound the complexity of this fact intensive case, Dr. Cordova was neither made aware of nor did he waive a conflict of interest that existed with his previous lawyer from the start of this litigation. This undisclosed concurrent conflict of interest between the lead attorney for the Respondents, James Gibson, and Dr. Cordova's own lead counsel was instrumental in facilitating the improper removal and the summary dismissal of all of his state law claims without federal subject matter jurisdiction or a full and fair opportunity to be heard. On February 18, 2019, Dr. Cordova hired the Bezou Law Firm. On March 15, 2019, Jacques Bezou, Jr., of the

[20] ROA.23-30335.403.
[21] ROA.22-30732.1552. ROA.22-30732.1784.
[22] ROA23-30335.40-47.
[23] ROA.22-30732.1169.
[24] ROA.23-30335.213-214.
[25] ROA.22-30732.4938.

Bezou Law Firm, was sued for malpractice in *Dupre v. CNA, et al*, and was represented by James Gibson, the attorney for the Lafayette General Defendants in this case.[26]

On March 29, 2019, Dr. Cordova brought suit in the 15th Judicial District Court against Louisiana State University Health Science Center ("LSUHSC"), University Hospital and Clinics ("UHC"), Lafayette General Hospital, Dr. Karen Curry, Dr. Nicholas Sells, Kristi Anderson, Christopher Johnson, and the Gachassin Law Firm.[27] The initial Petition for Damages was signed by Jacques Bezou, Sr., and was verified by Dr. Cordova.[28] On April 5, 2019, while still representing the Bezou Law Firm, James Gibson requested an extension on behalf of the Lafayette General Defendants from the Bezous to file responsive pleadings in this case. Despite the concurrent representation, the Bezous did not advise Dr. Cordova of the conflict. Rather, Mr. Bezou, Jr., sent Dr. Cordova a correspondence advising that "Jim Gibson is an old friend and frequent opponent. Glad to see he is defending one of the parties here."[29]

On April 23, 2019, the attorneys for Lafayette General Defendants enrolled in the state court proceeding and filed a Dilatory Exception of Vagueness and Nonconformity of Dr. Cordova's Petition. Mr. Gibson requested that his client, Mr. Bezou, cure the filed Exception by amending Dr. Cordova's petition.[30] The Exception alleged that Dr. Cordova's original petition was vague because the allegations against the Lafayette General entities were "sparse" and did not provide the Lafayette General Defendants with the information necessary to properly prepare its

[26] ROA.23-30335.3542-3545.
[27] ROA.22-30548.45.
[28] ROA.22-30548.178-180. Christopher Johnston and the Gachassin Law firm were remanded to state court as a result of the district court's remand order issued on March 24, 2021 and this legal malpractice action and the legal malpractice action of the Bezous are pending in the 15th Judicial District Court, Lafayette Parish Louisiana, Division D, Docket No.: 2019-2019.
[29] ROA.22-30548.3631.
[30] ROA.23-30335.186-191.

defense.[31] The Lafayette General Defendants further asserted: "Plaintiff does not identify the employers of the other individual defendants, although Drs. Curry and Sells are faculty and Ms. Anderson is Director of Graduate Medical Education of LSU School of Medicine."[32] Finally, the Lafayette General Defendants allege: "Plaintiff never alleges an employment or contractual relationship with UHC or LGMC."[33]

On May 1, 2019, while still represented by Mr. Gibson, Mr. Bezou, Sr., advised Dr. Cordova that Mr. Bezou, Jr., would be handling the hearing on the Exception of Vagueness to be heard in state court stating that Mr. Bezou, Jr., was "very close" with Mr. Gibson "as am I."[34] The Bezous again did not disclose that Mr. Gibson was concurrently representing the firm in a malpractice action at this time or any other time during this litigation. Prior to filing the Amended Petition, Mr. Bezou sent an unsigned petition to the attorneys for the Defendants to determine if the Amended Petition cured the exceptions filed by his then attorney, Mr. Gibson.[35] Thereafter, on July 22, 2019, Jacques Bezou, Sr., filed a First Amended Petition for Damages that was not verified by Dr. Cordova.[36] Although neither requested by the Lafayette General Defendants nor

[31] ROA.23-30335.191.
[32] The Louisiana Legislative audit is filed in the federal record and provides that Louisiana State University School of Medicine in New Orleans Faculty Group Practice, a Louisiana non-profit corporation, d/b/a LSU Healthcare Network (LSUHN), supports the LSU Health Sciences Center (LSUHSC) in carrying out its medical, educational, and research functions. In FY2022, total operating expenses were $149.7 million of which the largest component was the net revenue returned to LSU Health Sciences Center (LSUHSC) of $104.6 million. LSUHN remains a ***private entity under Louisiana Revised Statute (R.S.) 17:3390*** but is combined with the Louisiana State University System for financial reporting purposes and is included in the basic financial statements of the Louisiana State University System together with its blended component units. LSUHN's activities include billing for services provided at UHC in Lafayette and the public clinics serviced by LSUHSC. LSUHN's physicians provide services in hospital-based clinics at UHC in Lafayette. *See Fifth Circuit Case: 22-30548, Document 98, Dr. Cordova's Response to Sanctions*.
[33] ROA.23-30335.190.
[34] ROA.22-30548.3633.
[35] ROA.22-30548.335.
[36] ROA.22-30548.240.

verified by Dr. Cordova, Mr. Bezou unilaterally named a new defendant: "The Board of Supervisors of Louisiana State Agricultural and Mechanical College, a state agency."[37]

Although not relevant to cure the Exceptions filed by the Lafayette General Defendants, the amended petition also removed a Defendant named and served in the original petition, Louisiana State University Health Science Center ("LSUHSC"), and added the Board of LSU, "a state agency." However, the Amended Petition did not formally dismiss or substitute the original defendant, LSUHSC, thereby leaving LSUHSC a named and served party in the state proceedings. To date, LSUHSC remains a named Defendant listed on the state court caption and also remains listed on the district court's official case caption in this matter.[38]

1. <u>The Improper Removal</u>

On August 7, 2019, the LSU Board of Supervisors filed a Notice of Removal and alleged that "plaintiff specifically alleges that the LSU Defendants' actions violated his 'due process rights established in the federal and state constitutions' citing the case of *Driscoll v. Stucker*, 04-0589 (La. 1/19/05), 893 So.2d 32, in support of the assertion."[39] The Notice also alleged that "Dr. Karen Curry, Dr. Nicholas Sells, and Kristi Anderson are made defendants in their individual capacities."[40] The Notice alleged removal was timely to the Western District of Louisiana which "unquestionably has jurisdiction by reason of 28 U.S.C. §§ 1331 and 1343 and because claims asserted by the plaintiff allegedly arise under the Fourteenth Amendment to U.S. Constitution."[41]

[37] ROA.22-30548.226.
[38] ROA.22-30548.226.
[39] ROA.23-30335.41. The *Driscoll* case also proves the intentional misrepresentations made by the LSU Defendants contained in the Notice of Removal which asserts that LSUHSC was not a proper entity/party and was erroneously named. ROA.22-30548.35. Moreover, the LSU Defendants were fully aware that LSUHSC was a proper entity/party as their attorney billing records indicate that prior to removing the case from state court, counsel for the LSU Defendants reviewed Dr. Cordova's "payroll/wage records from his residency at UHC/LSUHSC." ROA.22-30548.2092-2093 ROA.22-30548.2096.
[40] ROA.23-30335.42.
[41] ROA.23-30335.43-44.

Finally, the Notice of Removal alleged: "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 laws of the United States."[42]

However, neither the original nor the amended petition mentions 42 U.S.C. § 1983 and never alleges that any of the Defendants are state actors or acting under the color of state law. With all Defendants domiciled in Louisiana, neither subject matter jurisdiction nor Article III standing was sufficient to wrestle this case from state court. Yet, in support of removal, the LSU Defendants cited *Quinn v. Guerrero,* 863 F.3d 353 (5th Cir. 2017), the antithesis of supporting removal in this case.[43] In *Quinn*, the Fifth Circuit held that the plaintiff's federal question must appear on the face of his well-pleaded complaint and that vague references to the United States Constitution are not enough.[44] Moreover, it is well established that jurisdiction cannot be established on a theory that a state court ***plaintiff*** has not advanced, lest the serious anomalies and unfairness present in this case will occur in other cases without recourse.[45]

A. Procedural History

1. The Attempted Dismissal of an Indispensable Party.

On August 16, 2019, nine (9) days after removal, the LSU Defendants filed a Rule 12(b)(6) and asserted that LSUHSC was not a proper party citing nonbinding case law that misstates current Louisiana state law.[46] These material misrepresentations are inconsistent with the

[42] ROA.23-30335.44.
[43] ROA.23-30335.33. ROA.22-30548.387.
[44] *Id.* citing *Bernhard v. Whitney Nat'l Bank*, 523 F.3d 546, 551 (5th Cir. 2008); *Caterpillar Inc. v. Williams,* 482, U.S. 386, 391-92 (1987). However, the Fifth Circuit took the opposite position in this case holding that quoting the Fourteenth Amendment "made the case plainly removable and gave the district court jurisdiction."
[45] *Carpenter v. Wichita Falls Independent School*, 44 F.3d 362, 365 (5th Cir. 1995) citing *Travelers Indemnity Company v. Sarkisian,* 794 F.2d 754, 758 (2nd Cir.), *cert. denied,* 479 U.S. 885, 107 S.Ct. 277, 93 L.Ed. 253 (1986).
[46] The LSU Defendants used LA R.S. 17:1519.1 et. seq., the statutes that applied prior to the 2013 privatization of the public hospitals in Louisiana.

Louisiana Legislative audits, which are contained in the Fifth Circuit's record and are furnished to the Louisiana Attorney General, identifying this entity and its organizational component units as private entities under LA R.S. 17:3390.[47] In filing the Motion to Dismiss the proper entity, the LSU Defendants attempted to retroactively cure the failure to obtain the unanimous written consent of all of the defendants required to remove the matter from state court by falsely alleging to the district court that Dr. Cordova had no viable claim against LSUHSC.[48] The LSU Defendants point out to the district court that: "LSUHSC has not been dismissed as a party. Out of an abundance of caution a dismissal of LSUHSC from this litigation is requested."[49]

Relying on the LSU Defendants' misrepresentations that LSUHSC was not the proper party and/or lacked the capacity to be sued, the district court found no basis for dismissing LSUHSC from the federal suit.[50] Thus, LSUHSC, a private non-profit entity, which is a component unit of the entity that employs Dr. Curry, Dr. Sells, and Kristi Anderson, was never properly before the federal district court. The removal procedure in this matter was deceptive and defective from its inception since not all of the defendants named and served in the state court proceedings provided consent to the removal.[51] More importantly, Dr. Cordova's claims contained in his original state court petition against the proper entity, LSUHSC, currently remain pending in the remanded state court action.[52] Thus, the district court's jurisdiction was never properly established since the Bezous did not seek remand, the LSU Defendants did not file a corporate

[47] ROA.22-30548.386-387. ROA.22-30548.492-493. See also Fifth Circuit Case No.: 23-30548, Document 98-3.
[48] ROA.22-30548.483.
[49] ROA.22-30548.518.
[50] ROA.22-30548.525.
[51] 28 U.S.C. § 1446(b)(2)(a).
[52] Importantly, the Notice of Removal filed by the LSU Defendants correctly allege that service was made on LSUHSC through its registered agent so this entity was properly joined prior to removal but did not consent to the removal as the law requires. ROA.22-30548.38. ROA.22-30548.191.204.

disclosure statement, no party completed initial disclosures, and Rule 26(f) reports were never completed.[53]

On March 16, 2020, the governor of Louisiana declared a state of emergency and issued stay at home orders as a result of the COVID-19 pandemic. On April 28, 2020, the district court signed an Order granting the Joint Motion to Continue the trial and all deadlines filed by all parties based on Dr. Cordova's unavailability and inability to meet with his lawyers due to the COVID-19 pandemic.[54] Despite the foregoing, on October 21, 2020, the LSU Defendants filed a Rule 12(b)(6) or alternatively a Rule 56 Motion for Summary Judgment seeking dismissal with prejudice of the due process claims and Dr. Cordova's state law breach of contract claims.[55] The LSU Defendants—the party who invoked the jurisdiction of the federal court—denied federal jurisdiction and attempted to shift the burden of proving Article III standing to Dr. Cordova who neither alleged the Defendants were state actors nor alleged the Defendants acted under the color of state law to deprive him of a right secured by the constitution.[56] More importantly, the LSU Defendants, the party bearing the burden of establishing qualified immunity, failed to establish the named Defendants were state actors or a "person" acting under the color of state law as defined by Section 1983.[57] To the contrary, the Affidavits filed in support of Motion for Summary Judgment, attorney billing entries, and all of the evidence contained in the voluminous record prove that Dr. Curry, Dr. Sells, and Kristi Anderson are employed by a private actor.[58]

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[53] On August 8, 2019, the LSU Defendants, the removing party, received a Notice of Corporate Disclosure Statement Requirement with an electronic filing deadline of 8/22/19. ROA.22-30335.370. This disclosure was never filed.
[54] ROA.23-30335.652.
[55] ROA.23-30335.679.
[56] ROA.23-30335.679.
[57] The district court dismissed the LSU Board of Supervisors with prejudice because Section 1983 does not allow vicarious liability. This dismissal was jurisdictional and should have been without prejudice.
[58] Fifth Circuit, Case No.: 22-30548, Document 98 contains public records from the Louisiana Legislature indicating that the named defendants are employed by a private entity pursuant to LA R.S. 17:3390. See Document 98-3, p. 21.

On November 4, 2020, undersigned counsel enrolled in the federal district court case to assist lead counsel, Jacques Bezou, Sr., in defending against the LSU Defendants' Motion for Summary Judgment.[59] Upon review of the evidence placed in the record by the LSU Defendants, undersigned counsel noted that the evidence did not support any of the allegations made by the LSU Defendants to obtain summary judgment; rather, all of the evidence in the record fully supported that Dr. Cordova was wrongfully discharged.[60] Therefore, Dr. Cordova sought Rule 56(h) sanctions due to the LSU Defendants' misrepresentations and false allegations contained in Dr. Curry's Affidavit regarding Dr. Cordova's performance while he was a resident at UHC.[61] Thereafter, on November 12, 2020, the Lafayette General Defendants, also a private actor, filed a motion for summary judgment seeking dismissal of Dr. Cordova's purported federal claims and his state law breach of contract claims. Dr. Cordova also sought Rule 56(h) sanctions against the Lafayette General Defendants based on the false allegations contained in the Affidavits to obtain summary judgment.[62]

On November 13, 2020, without the undersigned counsel's knowledge, a telephone conference with the district court was held regarding the "protocol for the upcoming hearing on LSU Defendant's motion for summary judgment."[63] Despite the lack of discovery and lack of pretrial disclosures, that same day, an electronic order was issued and the district court *sua*

[59] ROA.23-30335.1508.
[60] Dr. Cordova's cumulative evaluations are contained in the record and are inconsistent with Dr. Curry's Affidavit. Dr. Cordova's actual evaluations prove that he was at a level consistent with a second year resident.
[61] ROA.23-30335.1551-1537 contains Dr. Cordova's Contested Facts with 50 separate paragraphs with record cites pointing the district court to the record evidence that supported Dr. Cordova exceeded the expectations of a second-year resident despite being discharged after his first year.
[62] ROA.22-30548.1554. Dr. Cordova also contested the Lafayette General Defendants' Contested Facts and filed 31 separate paragraphs with record cites pointing the district court to the record evidence that supported Dr. Cordova's assertions that the Lafayette General Defendants were involved in the non-renewal process that led to Dr. Cordova's wrongful dismissal from UHC. ROA.23-30335.1805-1810.
[63] ROA.22-30548.2132.

sponte set both summary judgments for oral argument at the height of the COVID-19 pandemic.[64] In response, the undersigned sent an email to the Bezous that stated in pertinent part:

> We need to propound some discovery…Also why don't we notice Curry's deposition? Our discovery deadline has got to be coming up soon with an April trial date. I am so confused as to why the defendants would file MSJ when they have done zero discovery. I have never seen that before in my life. Any thoughts on that?[65]

In response Mr. Bezou stated, "I can't explain they're [sic] lack of discovery…Before we do anything I want these MSJ's behind me."[66]

2. <u>Shifting Burdens of Proof and Assumption of Jurisdiction</u>.

Despite repeated requests and his trial attorney designation, Mr. Bezou refused to appear at oral argument.[67] On December 15, 2020, the day oral argument was held, undersigned counsel was denied entry into the federal courthouse to attend the hearing after answering yes to the following question: "Have you been around anyone required to self-quarantine?" This question was not included as a visitor restriction on the Western District of Louisiana's Order establishing the courthouse's COVID-19 "protocols" issued on March 13, 2020.[68] The undersigned counsel requested that the court security officers contact the district court to explain the situation and to request participation in the oral argument hearing in person or via Zoom. The district court denied the undersigned's requests but allowed undersigned twenty minutes to return to her office to participate via telephone.[69] During the hearing, it was clear that the district court was displeased that Dr. Cordova failed to conduct discovery. The district court repeatedly questioned

[64] ROA.22-30548.17.
[65] ROA.22-30548.3653-3654.
[66] ROA.22-30548.3653
[67] ROA.22-30548.3648.
[68] ROA.22-30548.3667-3668. The court security officers were ordered to deny entry to anyone attempting to enter the courthouse in violation of the courthouse COVID-19 "protocols." ROA.23-30335.3668.
[69] ROA.22-30548.6243-6245.

the undersigned—but not the other attorneys requesting relief—regarding her lack of discovery. When Dr. Cordova requested additional time to conduct discovery because he was unaware of the Defendants' documents until placed into the federal record on summary judgment, the request was denied.

Federal Rule of Civil Procedure Rules 26 and 37(c)(1) provide a self-exacting sanction prohibiting a party who fails to provide information from using that information at any hearing to avoid unfair surprise. Nevertheless, the district court also denied Dr. Cordova's request to amend his pleadings. Irrespective of the anomalies in the prehearing procedures, Dr. Cordova was able to establish (through objective evidence placed in the record by the Defendants) serious inconsistencies in his actual evaluations and the Affidavits provided by the LSU Defendants to support summary judgment. The evidence proved Dr. Cordova's dismissal from UHC was patently unfair and based on false allegations. However, the district court informed undersigned that the burden had shifted on summary judgment and Dr. Cordova's burden was heightened to now prove that Dr. Curry's actions "shocked the conscience."

Counsel for the Lafayette General Defendants argued lack of evidence and was dismissive of the undersigned's failure to conduct discovery due to COVID-19 and further misrepresented that Dr. Cordova wrongfully refused depositions due to the pandemic.[70] However, during oral argument, the undersigned specifically advised the district court that the residents were paid by UHC. The record of the proceedings reflect that the following arguments were made:

[70] On April 6, 2020, while the LSU Defendants' Rule 12(b)(6) motion was under advisement, counsel for Lafayette General, James Gibson, sent an email 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. ROA.23-30335.3059.

> **The Court:** I mean there's nothing—y'all don't compensate the residents? Y'all don't pay them? They're not part of your employee staff? They're just in your facility?
> **Mr. Gibson:** It's not our facility. It's the state's facility.
> **The Court:** Well, the state's facility.
> **Mr. Gibson:** We're managing it. And look, if—
> **The Court:** A different state agency totally, right? The hospital's part of the—
> **Mr. Gibson:** We're not the state—in fact, her earlier comment on that case, we're not a state actor. They didn't allege we're a state actor.[71]
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> ***
>
> **Ms. Mire**: I think I can help the Court with respect to that. What does it have do is the fact that UHC signed a collaborative effort [sic] agreement with LSU and they paid for all–they subsidized all of LSU's employees. They're actually compensated—
> **The Court:** But at the end of the day what does that have to do with your client being not renewed for his residency program? So what that the hospital is in agreement with LSU for the facilities and the use of residents. I guess they don't have anything to with whether or not he got dismissed, do they? Did the hospital have anything to with –
> **Mr. Gibson:** No, Your Honor.
> **The Court:** --him being dismissed and not renewed?
> **Ms. Mire:** Yes, they do.
> **The Court:** I'm going to be honest with you. I'm going to shut this argument down because you're just barking up the wrong tree on this one. You know, I'm going to tell you right now I'm going to grant the hospital's motion. I'm going to lay out the reasons on it, but I'm not buying what you're selling on this one so I don't want to waste any more everybody's time on that. I've read the briefs. I've read the record. I've heard counsel and I let you be heard on this extensively. But I'm telling you, I'm not there.
> **Ms. Mire:** I don't feel that I've been heard, Your Honor.
> **The Court:** Well, you know what, if you don't feel like you've been heard, I'll tell you what you can do. You go to the U.S. Fifth Circuit and you take it up with them, and they are at the next level; and then you can go to the U.S. Supreme Court. And I'll do exactly what the United States Fifth Circuit tells me to do. If they tell me I'm wrong. I'm wrong. And I'll do what they tell me. They're at a higher pay grade than me, not much but they're there.[72]

On December 17, 2020, the district court issued a memorandum ruling and 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

[71] ROA.23-30335.6524, ll. 23-25; ROA.22-30335.6525, ll. 1-10.
[72] ROA.23-30335.6527-6529.

dismissed."[73] The district court further found no basis for holding the Lafayette General defendants liable under the breach of contract claim raised. The district court, *sua sponte*, set a deadline to submit briefs regarding certification under the Federal Rule of Civil Procedure 54(b) for December 28, 2020.[74] Prior to the district court's certification, Dr. Cordova noted Respondents' dubious strategy of invoking and denying jurisdiction in the same case and objected to the court's lack of subject matter jurisdiction to enter a final judgment.[75]

On December 23, 2020, the Bezous filed a Motion to Remand only the remaining legal malpractice claims based on lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c).[76] On December 28, 2020, Dr. Cordova opposed certification under Federal Rule of Civil Procedure 54(b) and objected to the federal district court's jurisdiction. Specifically, Dr. Cordova alleged that the district court improperly shifted the burden of establishing subject matter jurisdiction to Dr. Cordova and should have remanded the matter when the LSU Defendants argued that the petition failed to allege a federal constitutional violation.[77] Finally, Dr. Cordova asserted: "Permitting the LSU Defendants to follow its litigation interest by both invoking and denying federal jurisdiction in the same case generates seriously unfair results and inappropriately exhausts judicial resources. See *Meyers ex Rel. Benzing v. Texas*, 454 F.3d 503 (5th Cir. 2006)."[78]

Rather than acknowledge that the district court lacked jurisdiction, the LSU and Lafayette General Defendants repeatedly and unwarrantedly attacked undersigned counsel characterizing the objection of subject matter jurisdiction as an attack on the court, "sly," "exceptionally ill-

[73] ROA.22-30548.1865.
[74] ROA.22-30548.1865.
[75] ROA.22-30548.2214.
[76] ROA.22-30335.1936-1938.
[77] ROA. 23-30335.1951 citing *Lapides v. Board of Regents of the University System of Georgia*, 535 U.S. 61, 122 S.Ct. 1640, 1646 (2002).
[78] ROA.23-30335.1951.

timed," "grossly delinquent," "improper," "disingenuous" and "should not seriously be entertained."[79] After raising the issue for the first time on December 28, 2020, Mr. Bezou, Dr. Cordova's designated trial attorney who refused to appear to prevent summary judgment, sent a racially insensitive email targeting undersigned counsel and an overtly threatening email containing an exploding car.[80]

5. <u>Gamesmanship v. Candor</u>

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.[81] The LSU Defendants—the party who removed this action from state court—declared themselves victor of a pure state law case and sought fees and costs in the amount of $80,440.86 on a theory of recovery Dr. Cordova never pled.[82] The LSU Defendants alleged that they were "forced to defend against" "frivolous and groundless federal due process claims."[83] The LSU Defendants further argued that "Plaintiff's claims against the LSU Defendants never progressed past the initial pleading stage."[84] The LSU Defendants asserted that Dr. Cordova's claims were "woefully insufficient to satisfy the elements of a Section 1983 claim," "were groundless," and "wholly lacking in evidentiary support."[85]

The billing records submitted to support the requested fees for the LSU Defendants' attorneys establish that at the time of removal, the LSU Defendants were fully aware that Dr.

[79] ROA.22-30548.2204.
[80] Case: 21-30239, Document: 00516082769. Case: 21-30239, Document: 00516065873.
[81] ROA.22-30548.1966.
[82] ROA.23-30335.2177.
[83] ROA.22-30548.1971-1974.
[84] ROA.23-30335.1978. However, the LSU Defendants have argued to the state court that Dr. Cordova had a full and fair opportunity to be heard and should be sanctioned for bringing a new claim in state court that occurred after the dismissal of his state claims in federal court.
[85] ROA.23-30335.2177.

Cordova's state court petition was "without allegations of civil rights violation under 42 USC 1983 in anticipation of Rule 12(b)(6) motion."[86] More dubiously, the LSU Defendants were strategizing for hours with their co-defendants, the Louisiana Department of Justice, and others to determine the best way to improperly defeat Dr. Cordova's viable state court claims without due process. The billing entries of the LSU Defendants exemplify gamesmanship with winning as their goal rather than the time honored, orderly, and truth-seeking function of our federal judicial system.[87]

On January 13, 2021, after the Bezous were dismissed due to their refusal to raise the issue of subject matter jurisdiction, Dr. Cordova filed an Amended Motion for Remand and requested that ***all*** state law claims be remanded to state court. In support of remand, Dr. Cordova argued that Respondents' claims of frivolity supported remand for lack of subject matter jurisdiction rather than dismissal since under the substantiality doctrine "a court may find it lacks subject matter jurisdiction over a federal constitutional claim or statutory right if that claim is sufficiently weak." Dr. Cordova's state law case should have been remanded for lack of subject matter jurisdiction since the LSU Defendants admitted that the federal claims were "wholly insubstantial and frivolous."[88] The LSU Defendants' admissions prove that federal jurisdiction was lacking and the district court was required to remand rather than dismiss the state law claims under this Court's long standing precedent. [89]

On January 21, 2021, the district court issued an order that it must determine Dr. Cordova's lack of jurisdiction objections before rendering a decision on the merits. The district court stated:

[86] ROA.23-30335.1989.
[87]ROA.2330335.1991.1992.1993.1994.2002.2003.2004.2013.2014.2015.2022.2024.2029.2030.2051.2062.2073.2097.2098.2101.
[88] *Williamson v. Tucker*, 645 F.2d 404, 416 (5th Cir. 1981).
[89] 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).

"The court will not resume its consideration of any substantive issues in the case until the plaintiff's jurisdictional objections have been heard." "If the case is not remanded, the court will evaluate the remaining motions *sua sponte* to determine if any should be set for hearing."[90] No further discovery was allowed and the hearing on the original Motion to Remand was cancelled by the district court.[91]

On March 1, 2021, the magistrate judge issued a report and recommendation granting the orders of remand for discretionary considerations but not for lack of subject of matter jurisdiction.[92] The magistrate judge did not have the benefit of initial disclosures or Rule 26(f) reports detailing Dr. Cordova's claims since the parties never completed the necessary disclosures. Thus, the magistrate appeared to be under the mistaken belief that Dr. Cordova raised only federal claims against the Lafayette and LSU Defendants. The report is silent regarding Article III standing and the remand of Dr. Cordova's state law claims as to the Defendants. On March 11, 2021, Dr. Cordova filed: "Plaintiff's Objection to and Appeal of Magistrate Judge's Report and Recommendation" pursuant to Local Rule 74.1(B) and Federal Rule of Civil Procedure 72(b).[93] Dr. Cordova sought *de novo* review from the district court of the magistrate's determination on jurisdiction and the remand of the state law claims against the LSU and Lafayette General Defendants.[94]

On March 15, 2021, the Lafayette General Defendants filed a response alleging Dr. Cordova's objections lacked merit, misunderstood the law, and confused jurisdiction with

[90] ROA.23-30335.2284. All of Dr. Cordova's claims against the Respondents were dismissed in the district court's December 17, 2020, Memorandum Ruling.
[91] ROA.23-30335.2187.
[92] ROA.23-30335.2837.
[93] ROA.23-30335.2852-2858.
[94] ROA.23-30335.2855.

merit.[95] In support, the Lafayette General Defendants cited *Steel Co. v. Citizens for a Better Environment*, arguing that this Court "instructed that '[t]he absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction."[96] The Lafayette General Defendants further pointed the district court to the Fifth Circuit case of *Beiser v. Weyler* in support of its legal position.[97] However, *Beiser* warns of the awkward and inequitable preclusive posture that the district court's order of remand created. Finally, the Lafayette General Defendants assert that Dr. Cordova's argument that federal courts do not have jurisdiction over wholly insubstantial federal claims "renders dispositive motion practice in this case toothless, futile, and insusceptible of appellate review. That is not the law."[98] That same day, the LSU Defendants also filed a response fully adopting the Lafayette General Defendants' arguments *in extensio*.[99]

On March 24, 2021, the district court entered a Judgment adopting the magistrate judge's Report and Recommendation, granted Dr. Cordova's Motion to Remand and Amended Motion to Remand, and granted the LSU Defendants' motion for entry of judgment pursuant to Rule 54(b).[100] The district court further held that it "agrees that, in light of the resolution of the claims arising under federal law, the court should decline to exercise supplemental jurisdiction over the remaining claims arising under state law between plaintiff and defendants the Gachassin Law Firm and Christopher C. Johnston."[101] The district court placed all of its rulings, both

[95] ROA.23-30335.2860.
[96] ROA.23-30335-2860.
[97] ROA.23-30335.2860.
[98] ROA.23-30335.2861. 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).
[99] ROA.23-30335.2863.
[100] ROA.23-30335.2865.
[101] ROA.23-30335.2865.

jurisdictional and purported merits determinations, in the order granting Dr. Cordova's Motions to Remand for lack of subject matter jurisdiction. Finally, the judgment did not contain the express language required by Fed. R. Civ. P. Rule 54(b). On April 14, 2021, the district court denied the LSU Defendants' request for attorney's fees asserting:

> Plaintiff spends most of his opposition focused on his subject matter jurisdiction argument, which the court has already rejected and finds frivolous in itself.[102]

3. Subsequent Proceedings in State Court for Injunctive/Declaratory Relief.

While his case was pending on the first appeal of this matter, Dr. Cordova completed his family medicine residency training program from the University of Alabama at Selma.[103] However, Dr. Curry again disseminated false information regarding Dr. Cordova's performance while he was a first year resident at UHC to the state medical licensure boards on June 10, 2021 and in January of 2022. Unlike the information that Dr. Curry shared between residency programs in Dr. Cordova's initial lawsuit, the ACGME informed all program directors across the country "[t]he milestones were not designed or intended for use by external entities, such as state medical licensing boards or credentialing entities, to inform or make high stakes decisions."[104] It cannot be disputed that Dr. Curry inappropriately released Dr. Cordova's individual Milestone information to the Mississippi and Louisiana licensing boards in violation of the ACGME declarations that prohibits the release of that information for high stakes decisions even if it is true. However, the information released by Dr. Curry is false; therefore, the release of Dr. Cordova's confidential information was in bad faith and violated the Lafayette General

[102] ROA.23-30335.2873.
[103] The prior appeal in this matter was the subject of the first Writ of Mandamus filed before this Court in *In re. J. Cory Cordova,* No.: 21-1280. Denied on May 16, 2022. Dr. Cordova completed his medical residency training program one and half years behind schedule due to his wrongful dismissal from UHC.
[104] ROA.23-30335.5771-5776

Defendants' policies and LA R.S. 23:291 making a preliminary injunction to prevent future improper disclosures not only legally appropriate but necessary.

On June 8, 2022, Dr. Cordova filed a petition against Dr. Karen Curry and the Lafayette General Defendants requesting injunctive relief to prevent further disclosures and declaratory relief regarding the true nature of Dr. Cordova's employment status.[105] The petition was met with various exceptions including a peremptory exception of federal *res judicata* in state court who was not privy to the voluminous federal record of these proceedings. Therefore, Dr. Cordova requested that the state court stay the state proceedings to allow the federal district court to determine its jurisdiction and/or clarify the preclusive effect of its March 24, 2021, judgment.[106]

4. Proceedings in District Court Related to Clarification and Motion for Relief of Judgment Pursuant to Federal Rule of Civil Procedure Rule 60.

On July 8, 2022, Dr. Cordova filed a Rule 60(b) motion before the district court requesting relief from its previous adverse judgments/orders for six (6) mutually exclusive reasons including lack of subject matter jurisdiction. The LSU and Lafayette General Defendants opposed the motion arguing it was unfounded, untimely, and requested sanctions. The district court denied Dr. Cordova's motion as untimely and without merit. The district court stated: "Finally, to the extent the plaintiff otherwise seeks clarification of the court's prior rulings, those should stand for themselves."[107] Additionally, the district court awarded the LSU Defendants attorneys' fees pursuant to 42 U.S.C. § 1988 due to Dr. Cordova's "unfounded allegations of compromised representation and arguments about ancillary issues such as the status of the Lafayette General defendants as private employers."

[105] 23-30335.2895. Dr. Cordova attached his pending state court petition to his Motion for Relief from Judgment filed in district court.
[106] ROA.23-30335.2895.
[107] See Appendix, p. 51.

5. Appeal to Fifth Circuit Related to the Motion for Relief of Judgment Pursuant to Federal Rule of Civil Procedure 60 (Case Nos.: 22-30548 C/W 22-30732).

Dr. Cordova appealed the district court's ruling denying the Motion for Relief of Judgment to the Fifth Circuit in Case No. 22-30548. On appeal to the Fifth Circuit, Dr. Cordova contended the Motion for Relief of Judgment was timely and raised issues of subject matter jurisdiction and due process pursuant to *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998) and *Williams v. New Orleans Public Serv., Inc*., 728 F.2d 730, 735 (5th Cir.1984). Dr. Cordova further argued that intervening and controlling case law negated federal subject matter jurisdiction requiring vacatur and a remand of the case back to state court. Finally, Dr. Cordova argued that Rule 60(b)(6) allowed the district court to reopen a judgment in extraordinary circumstances, including a change in controlling law and intervening developments of facts citing *Buck v. Davis,* 580 U.S. 100, 126, 128. (2017).

In a separate appeal in Case No.: 22-30732, Dr. Cordova also sought review of the collateral order awarding attorney's fees to the LSU Defendants pursuant to 42 U.S.C. § 1988. In the appeal of the collateral order, Dr. Cordova argued that attorney's fees were improperly awarded because: 1.) no separate motion was filed by the LSU Defendants; 2.) the district court previously refused to declare the LSU Defendants the victors in the underlying purported civil rights' action; and 3.) attorney's fees may not be awarded pursuant to Section 1988 since no subject matter jurisdiction existed and the LSU Defendants misrepresented the nature of their employment relationship.[108] Dr. Cordova pointed the Fifth Circuit to the employment forms and

[108] ROA.22-30335.2935.

other specific documentation in the record supporting his argument that UHC, a private actor, was the true employer.[109]

On April 17, 2023, the Fifth Circuit issued a *per curiam* unpublished opinion that consolidated the appeals on its own motion. Two of the three members of the panel were the same members that heard Dr. Cordova's previous appeal issuing the mandate on May 19, 2022; however, the panel concluded the Rule 60(b) motion, filed on July 8, 2022, was untimely because 471 days had elapsed before Rule 60(b) relief was sought.[110] Without any jurisdictional analysis of Article III standing, the Fifth Circuit concluded that Dr. Cordova "quoted the Fourteenth Amendment and alleged due process violations making the state case plainly removable." The Fifth Circuit also determined Rule 38 sanctions were warranted since: "Cordova has repeatedly refused to heed the district court's warnings about 'unreasonable attempts at continuing this litigation' with an untimely and meritless 60(b) motion." The Fifth Circuit remanded the case to the district court to determine the appropriate sanction to be assessed "that both deters vexatiousness and also does not duplicate the other sanctions imposed or to be imposed in this case."[111] Finally, on May 4, 2023, the Fifth Circuit denied Dr. Cordova's motion to stay the mandate pending the filing of a writ of certiorari to this Court.[112]

The award of Rule 38 sanctions and review of the lower courts' jurisdictional determination is the basis of Dr. Cordova's petition pending before this Court. To date, Dr. Cordova has been sanctioned by the state court, district court, and the Fifth Circuit for "unreasonable attempts at

[109] ROA.23-30335.2910-2913.
[110] It is unknown how the panel determined that Dr. Cordova waited 471 days when only 50 days had elapsed since the same members of the panel issued the mandate and the delays to seek review from this Court did not elapse until July 12, 2022 or 4 days after Dr. Cordova filed his Rule 60(b) motion before the federal district court.
[111] See Appendix, p. 11.
[112] See Appendix, p. 4.

continuation of this litigation" for exercising rights explicitly recognized by this Court.[113] Therefore, a stay of the proceedings to prevent additional sanctions and execution of the sanctions already obtained through enforcement of a void judgment is respectfully requested from this Court.

ARGUMENT

Applicant, J. Cory Cordova, M.D., ("Dr. Cordova") is entitled to a stay pending appeal because (1) Dr. Cordova is likely to succeed on the merits; 2.) Dr. Cordova will be irreparably injured absent a stay; 3.) a stay will not substantially injure other parties; and 4.) a stay serves the public interest. Factors one and two are critical, imminent, and certain.

I. APPLICANT IS LIKELY TO PREVAIL ON THE MERITS

A. Respondents, as the Party who Invoked the Jurisdiction of the Federal Court, Bears the Burden of Establishing Jurisdiction.

When a lower federal court lacks jurisdiction, this Court has jurisdiction, not of the merits, but merely for the purpose of correcting the error of the lower court in entertaining the suit.[114] In *Steel Co. v. Citizens for a Better Env't,* this Court rejected the use of "hypothetical jurisdiction" under which courts assumed the existence of jurisdiction, where that analysis would be particularly complex, and resolved the case on a simpler merits question.[115] This constituted what the majority derided as a "drive-by jurisdictional ruling" that produced "nothing more than a hypothetical judgment—which comes to the same thing as an advisory opinion, disapproved by this Court from the beginning."[116] Hypothetical jurisdiction runs afoul to separation of powers

[113] See Appendix, pp. 11, 33, and 53.
[114] *Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 95, 118 S. Ct. 1003, 1013, 140 L. Ed. 2d 210 (1998) citing *United States v. Corrick,* 298 U.S. 435, 440 (1936).
[115] 523 U.S. 83, 89 (1998).
[116] *Id.* at 93-94.

and structural constitutional imperatives that a federal court lacked the power to consider or resolve the substantive merits unless and until it had established its jurisdiction.[117]

In this case, the district court improperly assumed jurisdiction over this case rather than requiring the LSU Defendants to prove by a preponderance of the evidence that subject matter jurisdiction existed. The LSU Defendants strategically removed this matter despite being aware that Dr. Cordova's petition was "without allegations of civil rights violation under 42 USC 1983 in anticipation of removal and the filing of a 12(b)(6) motion."[118] This type of dubious strategy, whereby state court defendants remove a case to federal court and dismiss the case for lack of jurisdiction is improper and wastes substantial judicial resources. The LSU Defendants, as the party invoking federal jurisdiction, bear the burden of establishing that all elements of jurisdiction, including Article III standing, existed at the time jurisdiction is invoked.

Initially, the LSU Defendants removed this matter based on the district court "unquestionably" having subject matter jurisdiction because a "Section 1983 claim is facially removable."[119] Once removed, the LSU Defendants took the complete opposite position and immediately began filing dispositive motions alleging that Dr. Cordova failed to allege a civil rights action.[120] The LSU Defendants further alleged that Dr. Cordova's federal claims relied on "undisputedly meritless legal theory," and that "it is undeniable that Dr. Cordova identified no constitutional deprivation."[121] It is these arguments advanced by Respondents, who bear the burden of establishing jurisdiction, that prove the judgment is void and without legal effect due to lack of federal jurisdiction.

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[117] *Id.* at 91.
[118] ROA.21-30329.1145.
[119] ROA.21-30239.32-33.
[120] ROA.21-30239.380-403.
[121] ROA.21-302391136-1138.

B. Respondents Lack Standing to Remove the Case as Private Actors.

This Court's precedent establishes that a plaintiff generally cannot sue a private company or individual for violations of his constitutional rights.[122] The record contains voluminous documents and other public records surrounding the public private partnership between Louisiana State University Health Science Center ("LSUHSC") and University Hospital and Clinics, Inc. ("UHC"). The agreements and other documentation in the record establish that Dr. Cordova and all named Defendants are employed by private actors. Objective evidence that Dr. Cordova was employed by University Hospital & Clinics ("UHC") includes: 1.) Dr. Cordova's Form W-4 which lists UHC as his employer;[123] 2.) Dr. Cordova's Louisiana Department of Revenue Form L-4 which lists UHC as his employer;[124] 3.) Dr. Cordova's Immigration Form I-9 which lists UHC as his employer;[125] and 4.) Dr. Cordova's Medicare Enrollment Record which also lists UHC as his employer.[126]

The Master Collaborative Agreement executed on June 24, 2013, between UHC, Lafayette General Health Systems (LGHS), and the LSUHSC through its Health Care Services Division clearly define the employer of Dr. Cordova, Dr. Curry, Dr. Sells, and Kristi Anderson. The agreement contains an unambiguous provision entitled "Statutory Employer" whereby UHC and LSUHSC agreed "that UHC is the principal or statutory employer of LSU's employees for purposes of LA R.S. 23:1061 (a) only." UHC and LSU also acknowledged UHC's status as the "statutory or as the special employer (as defined in LA R.S. 23:1031(C)) of LSU's

[122] *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999). *Burnett v. Grattan,* 468 U.S. 42, 45 (1984).
[123] ROA.23-30335.2914.
[124] ROA.23-30335.2915.
[125] ROA.23-30335.2916.
[126] ROA.23-30335.2917-2918.

employees."[127] UHC further agreed that the services performed by LSU "are an integral part of and are essential to the ability of UHC to generate UHC's goods, products and/or services" and "shall be considered part of UHC's trade, business, and occupation for purpose of LA R.S. 23:1061(a)(1)."[128]

Under Louisiana law, this contractual language is preclusive as to UHC's employer status. Per the agreement contained in the record, Louisiana law is the governing law and the Louisiana Supreme Court has held "the purpose behind the statutory employer doctrine was to prevent principals from evading their compensation responsibilities by interposing a 'straw man' between them and those 'employees' who are doing the whole or part or their trade."[129] A worker should be protected as to the compensation obligation owed to him, and "the principal should not be allowed to insulate itself through a contracting scheme."[130] Moreover, given the existence of a written contract as required by LA R.S. 23:1061(A)(3), UHC is presumed to be the statutory employer of all of LSUHSC's employees. This presumption may only be rebutted by demonstrating a fact that is already admitted in the contract—that the work performed by these employees is not part of UHC's trade, business, or occupation.[131] UHC is liable for the tortious actions of its employees under Louisiana Civil Code Article 2320, LA R.S. 23:291, and LA R.S. 9:3921.

The record also contains the 2017 IRS Form 990 for UHC identifying UHC as a teaching hospital "created as a result of a cooperative endeavor agreement between the State of Louisiana,

[127] ROA.23-30335.4619.
[128] ROA.23-30335.4619.
[129] *Allen v. State ex rel. Ernest N. Morial-New Orleans Exhibition Hall Auth*., 2002-1072 (La. 4/9/03), 842 So.2d 373, 382.
[130] *Id*.
[131] *Preston v. S. Univ. Through Bd. of Supervisors of S. Univ. Agric. & Mech. Coll*., 2020-0035 (La. App. 1 Cir. 7/13/21), 328 So. 3d 1194, 1202, *writ not considered*, 2021-01217 (La. 11/17/21), 327 So. 3d 510.

LSU, and LGHS to provide for the operation of the former University Medical Center."[132] UHC asserts that it has "two home based residency programs providing graduate medical education" in "internal medicine and family medicine."[133] UHC's IRS Form 990 establishes that during the time period Dr. Cordova attended UHC, it received federal funding to educate, supervise, and control the residents and further paid $22,851,383.00 to LSU-New Orleans for residents and faculty for "transitions services."[134] UHC's direct controlling entity is Lafayette General Health Systems, Inc. ("LGHS"), the management company for the hospital known as UHC. LGHS's 2017 IRS Form 990 reflects that it also paid LSU-New Orleans $24,347,499.00 for services related to "residents and faculty."[135]

Dr. Cordova further requested that the district court and the Fifth Circuit afford full faith and credit to the Louisiana Supreme Court's intervening and controlling decisions in the consolidated matters of *Hayes v. University Health Shreveport,* 21-1601 332 So.3d 1163 (La. 1/7/22) and *Nelson v. Ochsner Lafayette General*, 21-1453 (La. 1/7/22). The consolidated cases involved a mandatory vaccine policy implemented by the Lafayette General Defendants. The notice was directed to all "physicians, APPs [advanced practice providers,] and all employees, vendors, contracted staff, medical and allied health students, ***residents***, fellows, and agency staff."[136] The notice provided that individuals who were not vaccinated by the initial deadline would be placed

[132] ROA.23-30335.4224.
[133] ROA.23-30335.4224.
[134] ROA.23-30335.4231.
[135] ROA.23-30335.4278.4332. The LGHS tax return also reflects that it paid $586,286.00 to an additional party named in the remanded portion of this lawsuit, the Gachassin Law Firm. The Gachassin Law Firm represented Dr. Cordova in contesting the RFAA but failed to disclose a conflict of interest and failed to timely request a hearing on his behalf when UHC improperly dismissed Dr. Cordova from its residency program.
[136] *Hayes v. Univ. Health Shreveport, LLC*, 2021-01601 (La. 1/7/22), 332 So. 3d 1163, 1166 FN 4. Emphasis added.

on leave and individuals not fully vaccinated by the final deadline would be terminated for policy violations.[137]

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." Further, the Louisiana Supreme Court stated that Lafayette General/UHC as a private actor **could not present issues of federal law and solely state law applied**. Specifically, the Louisiana Supreme Court held: "While courts have found La. Const. art. I, § 5 applicable to government conduct, Louisiana courts have not applied it to private action. Therefore, the validity of these cases is upheld, and this court declines the invitation to extend the scope of La. Const. art. I, § 5 to restrict private actors."[138] The Louisiana Supreme Court's determinations are legally preclusive as to the issue of Dr. Cordova's true employer as a resident at UHC. In keeping with the inherent goals of federalism, the Louisiana Supreme Court decision should have been afforded full faith and credit as it raises subject matter jurisdiction issues relevant to this case and involves the same Defendants represented by the same attorneys.

Respondents in this case simply cannot have it both ways. The Lafayette General Defendants cannot accept Medicare graduate medical education payments and bill Medicaid/Medicare as a provider for a resident's services and at the same time claim they do not educate, supervise, or control the residents. Likewise, the Lafayette General Defendants cannot litigate before the Louisiana Supreme Court its CMS mandatory vaccination policy upon its employees (which included the residents) to ensure the continued receipt of Medicaid/Medicare funds and at the

[137] *Id.* Emphasis added.
[138] *Id.*

same time sanction Dr. Cordova for requesting that the federal courts give full faith and credit to the decision that is preclusive to this case.

C. The Public Interest of the Citizens of Louisiana Favor a Stay

Respondents, the LSU Defendants represented by the Louisiana Attorney General, have dispassionately filed a waiver to respond to Dr. Cordova's petition pending before this Court (Case No.: 23-55) that details suppression of core speech and viewpoint discrimination by a state government colluding with private actors. The filing of a waiver by Respondents and the Louisiana Attorney General should not be construed as disinterest or lack of concern about the issues raised by Dr. Cordova. The Louisiana Attorney General has concurrently and successfully obtained an injunction in district court to prohibit government censorship through social media platforms by the federal government. *State of Missouri v. Biden*, (Fifth Circuit Case No.: 23-30445), will likely be heard by this Court as a matter of national concern involving suppression of viewpoints by private entities colluding with the federal government.

In *Missouri v. Biden*, the Louisiana Attorney General has taken the position that viewpoint discrimination and government censorship is so crucial that he has a sovereign interest in protecting all citizens of Louisiana from irreparable harm. However, in light of the Louisiana Attorney General's filing of a waiver in this case involving the very same issue, a precedent may be established that the citizens of Louisiana have more free speech rights when speaking freely regarding the actions of federal officials than they do when speaking freely regarding the actions of state officials. Stated differently, if Dr. Cordova speaks openly regarding concerns regarding federal officials, the Attorney General has a sovereign interest in championing those rights; however, when Dr. Cordova sought relief from the improper litigation tactics employed by the Louisiana Attorney General, Dr. Cordova's arguments were repeatedly and punitively sanctioned

based on the lower courts' subjective view that Dr. Cordova's arguments were frivolous and made in bad faith. Respondents and the lower courts have consistently warned Dr. Cordova that if continues to seek relief and fails "to heed the warnings" of the lower courts, he will incur additional sanctions to prohibit his core political speech rights causing irreparable harm to his right to speak and the people of Louisiana's right to hear. It is concerning that the Louisiana Attorney General claims standing to pursue an action against the federal government while the very same rights of a Louisiana citizen are being violated in this case. Nevertheless, Dr. Cordova agrees that this type of action establishes irreparable harm and an injunction or stay of these harmful actions is appropriate.

II. THE EQUITIES OVERWHELMINGLY FAVOR A STAY

A. Dr. Cordova will Experience Substantial and Unrecoverable Harm

This Court's precedent is clear that sanctions intended to silence litigants or deter lawyers from bringing colorable arguments is prohibited particularly when the regulator seeking to "truncate presentation to the courts" of certain arguments is also the entity whose law the lawyers are forbidden from challenging.[139] This Court held: "The Constitution does not permit the Government to confine litigants and their attorneys in this manner."[140] Thus, courts may not exclude from litigation those arguments and theories the court finds unacceptable which by their nature are within the province of the court to consider.

Respondents have filed ten (10) Motions for Sanctions that are duplicative and unsupported by existing law in state or federal court. The opinions of the lower courts do not identify the precise action/argument that the courts seek to deter. Rather, all of the courts opinions regarding

[139] *Legal Services Corporation v. Velazquez*, 531 U.S. 533 (2001).
[140] *Id.* at 548.

sanctions indicate Dr. Cordova has refused "to heed the warnings" of the district court but fail to point to a specific argument raised by Dr. Cordova that may be construed as objectively frivolous. It is the courts' monetary rewards to the Respondents designed to silence core speech through punitive sanctions that run afoul to the Constitution and this Court's precedents. Respondents have been awarded **$237,724.81** to be paid by Dr. Cordova and the undersigned counsel for filing a Rule 60(b) in federal district court, an appeal from a denial of that motion, and a petition for nonmonetary injunctive and declaratory relief for improper disclosures that occurred after the judgment at issue.

Dr. Cordova has been ruled into court by the Respondents in state and federal court ten (10) times. Despite the number of hearings, the merits of Dr. Cordova's claims have never been heard by any court. On **October 11, 2022**, the federal district court awarded the LSU Defendants sanctions in the amount **$11,582.50** in attorney's fees and **$637.54** in costs of pursuant to 42 U.S.C. § 1988 for Dr. Cordova's "unfounded allegations of compromised representation and arguments about ancillary issues such as the status of the Lafayette General defendants as private employers."[141] On **March 29, 2023**—the state trial court (Division L) awarded sanctions in the amount of **$98,390.17** to the Lafayette General Defendants for the filing of injunctive/declaratory relief precluded by federal *res judicata*.[142] Dr. Cordova has sought review of the award of sanctions by Division L in two (2) separate appeals to the Louisiana Third Circuit Court of Appeal. In response, the Lafayette General Defendants have sought two (2) sets of sanctions for Dr. Cordova's appeal as of right. The Lafayette General Defendants also sought to enforce their attorney's fee award despite the pending suspensive appeal. When undersigned counsel advised

[141] See Appendix, p. 35, the District Court Judgment of October 11, 2022 awarding LSU Defendants Sanctions. See also Appendix, pp. 34 and 53.

[142] See Appendix p. 73, the state trial court's Rule to Show Cause ordering the undersigned and Applicant to appear. Appendix p. 62 is the state court judgment awarding sanctions. Appendix, p. 73-75 contains the state court's written reasons for ruling on sanctions for filing a claim precluded by federal res judicata.

the state trial court that the pending appeal divested the trial court of jurisdiction, the state court overruled this objection and ordered Dr. Cordova and the undersigned to appear on September 5, 2023 for a hearing to be held in direct contempt of court.[143]

On **April 13, 2023**, sanctions in the amount of **$29,692.70** were awarded to the Lafayette General Defendants by the federal district because the undersigned counsel acted in bad faith by alleging the Lafayette General Defendants employed Dr. Cordova.[144] On **May 12, 2023**—the Lafayette General Defendants sought sanctions after the undersigned counsel filed a routine and mandatory Motion to Consolidate to transfer the action dismissed on the grounds of federal *res judicata* into the remanded portion of this case currently pending in another division of the 15th Judicial District Court in Lafayette, Louisiana. This request for sanctions remains pending and has not been heard or ruled upon by Division D.

On **June 29, 2023**, the Lafayette General Defendants were awarded sanctions by the district court in the amount **$50,664.74** pursuant to Fed. R. App. P. Rule 38 and the Fifth Circuit's April 17, 2023 remand that are currently pending review by this Court.[145] On **July 17, 2023**, the state court awarded **$47,394.70** to Dr. Curry for filing a frivolous claim in state court precluded by federal *res judicata*.[146] Dr. Cordova noticed his intent to file a suspensive appeal and the state trial court refused to provide a return date for the appeal until Dr. Cordova posts a security bond thereby limiting his right to appeal the imposition of sanctions.[147] The Lafayette General Defendants and the state trial court have taken the position that the award of sanctions is a "money judgment" akin to a civil jury award entitling the Defendants to the requirement of Dr.

[143] See Appendix, p. 62.
[144] See Appendix, pp.17-18. See also Appendix pp. 19-33, the February 27, 2023 Memorandum Ruling awarding Sanctions to Lafayette General Defendants.
[145] See Appendix, pp. 14-16.
[146] See Appendix, pp. 63-67, the July 17, 2023 award of sanctions based on federal res judicata awarded by state court to Dr. Curry.
[147] See Appendix, p. 56.

Cordova posting security to suspend the execution of the judgment awarding sanctions. This signals additional attempts in the future to further thwart Dr. Cordova's appellate rights and impose additional irreparable harm by utilizing aggressive enforcement practices in the event security is not posted.

One day after electronically filing the petition pending before this Court, or on **July 18, 2023**, the Lafayette General Defendants filed a Motion for Entry of Judgment requesting the district court to issue a separate judgment of its June 29, 2023, Memorandum Ruling awarding Rule 38 sanctions in the amount of **$50,664.74** so that it can be immediately enforced. Out of fear of more punishment and/or retaliation, Dr. Cordova did not object and a final judgment was entered on August 14, 2023 ordering Dr. Cordova to pay the amount of **$50,664.74** by September 13, 2023.[148] The imposition of Rule 38 sanctions is currently pending review by this Court.[149] On **August 8, 2023**, the Lafayette General Defendants filed an Appellee Brief before the Fifth Circuit in Case No.: 23-30335, the appeal of the Rule 11 sanctions against undersigned counsel, and requested a second award of Rule 38 sanctions for "ignoring the district court's warning about unreasonable attempts at continuing this litigation echoed by this Court." The Lafayette General Defendants also conclusively asserted the appeal was "frivolous," and "interposed for improper purposes."[150]

B. Factual Findings and Objective Evidence in the Record

The factual findings contained in the written opinions of the state and federal courts regarding sanctions are inconsistent with the evidence contained in the record and the precedents of this

[148] See Appendix, p. 13. See also Appendix, p. 76, the email correspondences from counsel for the Lafayette General Defendants threatening Dr. Cordova that his client will "atone" for Dr. Cordova's recent wrongs which could only include petitioning this Court for relief in this case.
[149] See Appendix, p. 13.
[150] See Fifth Circuit Case No.: 23-30335, Document 30.

Court. For instance, the federal district court imposed sanctions for the filing of a Rule 60(b) motion because of its "meritless arguments and lack of investigation regarding the Lafayette General defendants' potential liability as employers are so unfounded as to amount to violations of Rule 11(b)(1)-(3)." However, at the hearing on sanctions, Dr. Cordova advised the district court that the record evidence contained a contract identifying the Lafayette General Defendants as Dr. Cordova's statutory employer:

> **THE COURT:** The problem with that statutory employer argument is there has to be a contract, it has to be signed, has to be very specific language in it about them being a statutory employer.
> **MS. MIRE:** And it's in a signed contract with the specific language that he is a statutory employee and UHC employs them, and they represented to this Court they do not employ and continue to represent to this Court they do not employ even today. After I –
> **THE COURT:** ***It's a novel argument. I'll give her that.***
> **MS. MIRE:** After I filed in state court yesterday this very document, he stands up today and says he doesn't employ Dr. Cordova. That in and of itself is sanctionable.[151]
>
> ***
>
> **THE COURT:** I give you kudos. It's a novel way of thinking about it, but it's just not the same thing.[152]

Novel arguments can neither be sanctioned nor can it serve as the basis of a finding of bad faith. Nevertheless, the district court imposed sanctions upon the undersigned and warned Dr. Cordova that he would expose himself to liability if he continues to seek justifications to reopen the suit.[153] Moreover, the district court made statements at the hearing that suggested it believed that the filing of the Rule 60(b) motion in and of itself was sanctionable:

> **MS. MIRE:** To the extent that the Court's ruling was that the 60B was denied, I appreciate that, I respect that; but that in and of itself, just because I lost, does not mean that it's sanctionable. I filed one 60B motion.

[151] ROA.23-30335.6558, ll. 17-25; ROA.23-3033.6559, ll. 1-18. Emphasis added.
[152] ROA.23-30335.6560, ll. 13-25.
[153] See Appendix, p. 33, footnote 2.

> **THE COURT:** I think the reason it's a little different is because the purpose of the 60B is rehashing issues I'd already ruled on in the summary judgments and the 12(b)(6) motion. I already heard the conflict issue. I heard that in the original argument.
> **MS. MIRE:** I didn't even know of the conflict issue so there's no way it was.
> **THE COURT:** That wasn't raised at the initial thing?
> **MS. MIRE:** No, sir.[154]

Thereafter, the undersigned counsel reminded the district court that all of its prior orders were contained in the March 24, 2021 order granting remand. In response, counsel for Lafayette General and the district court stated:

> **MR. GIBSON:** The case she's talking about, the U.S. Supreme Court, again I've been doing this awhile, motions to remand, those rulings are not appealable.
> **THE COURT:** Well, there's no jurisdiction to appeal.
> **MR. GIBSON:** That's right.
> **THE COURT:** There's no federal jurisdiction once I remand it.
> **MR. GIBSON:** That's been for 20 or 30 years.[155]

Imposing sanctions upon litigants or their lawyers for filing a Rule 60(b)(4) motion, particularly when there is no jurisdiction to appeal, is inconsistent with this Court's precedents and the precedents of the Fifth Circuit.[156] Although the district court did not identify any legal basis for imposing sanctions, the district court stated:

> **THE COURT:** The Court finds nothing -- look, I am not offended. Okay. I think you're trying to be an advocate for your client, and I appreciate that. Okay. But at some point as an attorney you've got to look at the whole situation and you've got to have a talk with your client, "Hey, we lost. Okay. There's nothing else I can do for you on this. It's done. The Court didn't see it our way. We've got to move on."[157]

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[154] ROA.23-30335.6569, ll. 15-24.
[155] ROA.23-30335.6557, ll. 10-18
[156] In *Beiser v. Weyler*, 284 F.3d 665, 673 (5th Cir. 2002), the Fifth Circuit held that a remand order is not entitled to preclusive effect. (explaining that when "a litigant, as a matter of law, has no right to appellate review, then he has not had a full and fair opportunity to litigate and the issue is not precluded"); *see also Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 395 (5th Cir. 1998) (suggesting that "collateral estoppel may not be applied offensively to a jurisdictional decision—such as one granting a motion to remand—that is not capable of being subjected to appellate review"); 18A Charles Alan Wright et al., Federal Practice and Procedure § 4433 n.39 (3d ed. 2021).
[157] ROA.23-30335.6567, ll. 12-24.

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> **THE COURT:** I understand. But still, the client, he has -- you have a duty to consult him and I figure you met that duty, and he knew -- you know, at some point you've got to tell your client, "Hey, you know what, we lost." And I don't know if he's pushing you to keep reviving this or you're doing this on your own, but I'm just going to tell you in the federal court system you're done and he needs to not push you to come back up here with this case anymore. I mean, I don't know what's going on in state court. Maybe you can revive it there, but it's not going to get revived in the federal court system.
>
> **MS. MIRE:** It was res judicata. There is no recourse for him. Even the new releases, the Court ruled based on the federal res judicata statute that we could not bring even an injunction or declaratory action to even stop the false dissemination that's affecting his livelihood. In this case, Judge, it's affecting a livelihood when that information should not even be released. I attached to my opposition to sanctions –[158]

Respondents were also awarded sanctions from the Fifth Circuit who determined: "Cordova has repeatedly refused to heed the district court's warnings about 'unreasonable attempts at continuing this litigation' with an untimely and meritless 60(b) motion." Finally, the Fifth Circuit remanded to the district court to determine the appropriate sanction to be assessed "that both deters vexatiousness and also does not duplicate the other sanctions imposed or to be imposed in this case." Respondents' basis for Rule 38 sanctions were conclusory, inflammatory, and alleged Dr. Cordova's modus operandi is that he "looks at the blue sky and declares it green. This is not a valid basis for appeal." These types of allegations make it difficult to discern the basis for sanctions if the intended goal is deterrence; however, one of the allegations made by Respondents was:

> On appeal, Appellant fails to explain how the district court erred or assert a coherent rebuttal of its reasoning. He offers no independent analysis beyond that already rejected by the district court. Instead, Appellant re-urgues lack of subject matter jurisdiction as a magic bullet against untimeliness under Rule 60(b)(6), neglecting to identify and distinguish well-settled law holding that res judicata

[158] ROA.23-30335.6563, ll. 5-24.

> bars reexamination of subject matter jurisdiction given his failure to timely appeal.

The Fifth Circuit reviews *de novo* a district court's denial of a Rule 60(b)(4) motion to set aside a judgment as void.[159] "Rule 60(b)(4) motions leave no margin for consideration of the district court's discretion as the judgments themselves are by definition either legal nullities or not."[160] Dr. Cordova's Rule 60(b) motion was supported by existing jurisprudence and ample, unrefuted evidence that should have been reviewed *de novo* rather than sanctioned.

Dr. Cordova was also sanctioned in state court for the following reasons: "The filing of the Instant Suit against the Lafayette General Defendants was clearly precluded by res judicata." "Her actions in seeking a stay of the Instant Suit and attempting to re-open *Cordova I* after the exception of res judicata was filed demonstrate that knowledge. Sanction [sic] is appropriate in this case." This opinion is inconsistent with the pleadings and arguments made in the state court proceedings and effectively ensures that Dr. Cordova will not be heard by any state or federal court. Assuming *arguendo* that the March 24, 2021, judgment does have preclusive effect, it does not bar Dr. Cordova's new cause of action that occurred on June 10, 2021. Dr. Cordova provided the state court with Fifth Circuit cases that hold: "The doctrine of res judicata does not bar a party from bringing a claim that arose subsequent to a prior judgment involving the same parties."[161] When the undersigned requested that the state court stay its proceedings to allow the

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[159] *Callon Petroleum Co. v. Frontier Ins. Co.*, 351 F.3d 204, 208 (5th Cir. 2003).

[160] *Sec. & Exch. Comm'n v. Novinger*, 40 F.4th 297, 301–02 (5th Cir. 2022) citing *Brumfield v. La. State Bd. of Educ.*, 806 F.3d 289, 296 (5th Cir. 2015) (quoting *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998)).

[161] *Am. Home Assur. Co. v. Chevron, USA, Inc.*, 400 F.3d 265, 272 (5th Cir. 2005). Dr. Cordova also pointed the Court's attention to footnote 22 contained in the Fifth Circuit opinion which cited other cases that makes clear that the Court's finding as to Dr. Cordova's knowledge is misplaced. See, e.g., *Lawlor v. National Screen Service Corp*., 349 U.S. 322, 328, 75 S.Ct. 865, 99 L.Ed. 1122 (1955) (prior judgment did not preclude subsequent suit on cause of action arising after entry of the original judgment); *Chapman v. Crane*, 123 U.S. 540, 548, 8 S.Ct. 211, 31 L.Ed. 235 (1887); 46 Am Jur Judgments § 532 ("***Obviously, if the cause of action in the second action arises after the rendition of the judgment in the first action, it is a different cause of action not barred by the prior judgment***"). See also La.Rev.Stat. § 13:4231. *Emphasis added.*

federal court to determine its jurisdiction and the preclusive effect of the federal judgment, the Lafayette General Defendants accused the undersigned of arguing inconsistent positions before the state and federal courts. Thereafter, undersigned counsel was repeatedly sanctioned and berated by the state trial court:

> THE COURT: Okay. Ms. Mire, don't act – don't play dumb with me. Okay? You're before this Court, right now, on an exception of the res judicata. He has just made the argument that Judge Cain's determination in federal court are the same operative facts. Do you have any response to that?

Due process guarantees a right to be heard and those basic guarantees and expectations of justice are defeated if a litigant has no right to express and vindicate his/her rights in court proceedings due to fear of sanctions, punishment, or retaliation. The legal actions taken by Dr. Cordova are appropriate and disproportionate to the sanctions imposed. Far from permitting excessive punitive sanctions, this Court has warned the Constitution guards against it.[162] This Court has further held that the "[p]rotection against excessive punitive economic sanctions" is "fundamental" and "deeply rooted in this Nation's history and tradition."[163] The key question is whether the penalty imposed is punishment. It is clear that the sanctions imposed in this case do not have the intended goal of deterrence.[164] Rather, punitive sanctions chill Dr. Cordova's right to seek redress for legitimate grievances and deter others.

C. <u>The Real Motive for Excessive Sanctions</u>.

The briefs and voluminous evidence filed before the district court and the Fifth Circuit reveal the true motive for the severe retaliation in this case. Dr. Cordova discovered a complicated

[162] See *Austin v. United States*, 509 U. S. 602, 610 (1993).
[163] *Timbs v. Indiana*, 139 S.Ct. 682 (2019).
[164] *Giaccio v. Pennsylvania*, 382 U. S. 399, 402 (1966); *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018) (Gorsuch, J., concurring in part and concurring in judgment) (slip op., at 10).

scheme exposing prohibited and complex structures by which UHC—a shell corporation formed on April 18, 2013, wholly owned and funded by Lafayette General Health Systems, Inc. ("LGHS") and Lafayette General Medical Center, Inc. ("LGMC")—collaborated with various Louisiana state entities to receive Medicare/Medicaid disproportionate share hospital payments, residency caps, and other federal benefits to which they were not entitled.[165] The complexity of this scheme and the improper assignment of the state's Medicaid and Medicare numbers and provider agreements to a private hospital (UHC) was discovered by Dr. Cordova due to the unprecedented amount of stonewalling he received when he sought to clarify the true nature of his employment relationship with the LSU and Lafayette General Defendants in this case.[166]

Through public records obtained from CMS, there is unrefuted, objective evidence in the record that establishes in 2013, when the public private partnerships were formed, UHC filed a Form 855B with CMS and asserted that its former legal business name was the state owned "University Medical Center."[167] Thus, UHC obtained and has used the state's Medicare/Medicaid identification number, as well as its legacy numbers, to receive benefits not otherwise available to a private hospital.[168] This discovery and the severe retaliation experienced by Dr. Cordova and undersigned counsel was disclosed to the lower courts to seek whistleblower protection and prohibit the continued retaliation through punitive sanctions. However, the district court determined that the filing of a criminal complaint was Dr. Cordova's "business" and imposed additional sanctions.[169]

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[165] The public private partnership at University Hospital & Clinics, Inc. ("UHC") in Lafayette, Louisiana was formed to bail out the economically unstable charity (public) hospital system, University Medical Center, using funding from private hospitals who were then repaid through the increased Medicare/Medicaid benefits subject to disallowance. UHC operates an outpatient clinic, medical residency program, and inpatient hospital services.
[166] ROA.23-30335.4620.
[167] ROA.23-30335.5900.
[168] See *Dubin v. United States*, U.S. Supreme Court No.: 22-10, decided June 8, 2023.
[169] See Appendix, p. 15.

The Fifth Circuit overlooked the health care fraud and arguments made in Dr. Cordova's original and reply briefs filed in Case No.: 22-30732. Instead, the Fifth Circuit took the following actions in Dr. Cordova's appeal of the district court's denial of the Rule 60(b) motion: 1.) consolidated 22-30732 with Case No.: 22-30548 on its own motion; 2.) issued an unpublished *per curiam* opinion determining Dr. Cordova's Rule 60(b) motion was untimely and meritless; 3.) determined that "Cordova has repeatedly refused to heed the district court's warnings about 'unreasonable attempts at continuing this litigation;'" 4.) remanded to the district court to determine the appropriate sanction to be imposed "that both deters vexatiousness and also does not duplicate the other sanctions imposed or to be imposed in this case;" 5.) denied Dr. Cordova's request for sanctions and damages against Respondents without reasons; 6.) denied the motion to disqualify counsel for the Lafayette General Defendants for a concurrent conflict of interest with Dr. Cordova's prior lead counsel without reasons; and 7.) denied Dr. Cordova's request for a stay to seek a writ to this Court.

The decision to report the discoveries in this case to federal law enforcement was not to vex or harass Respondents. Rather, upon discovery of fraud involving public funds, there is no real choice for any officer of the court who is duty bound by sworn oath to uphold the criminal and ethical laws of our system of justice without fear or favor. Pursuant to 18 U.S.C. § 1035, it is a serious felony to conceal, cover up, or hide by use of a scheme or device any Medicaid/Medicare fraud. Nevertheless, Dr. Cordova and undersigned have been repeatedly and excessively sanctioned by the district court, the Fifth Circuit, and the state court after seeking relief. The retaliation has escalated with threats of imprisonment by the state court, denial of Dr. Cordova's right to appeal, additional punitive sanctions imposed, exorbitant sanctions to be aggressively

enforced upon Dr. Cordova's property under the threat of contempt, and threats of more punitive sanctions in the future.[170]

CONCLUSION

A stay is respectfully requested to ensure that additional sanctions are not imposed upon Applicant for seeking redress from this Court for legitimate grievances that impact significant public interests. The litigation tactics in this case have resulted in four years of delays and depleted significant judicial resources. Thus, this case presents substantial issues that extend beyond the affected client and implicate the integrity of our system of justice. This case exemplifies the worst possible outcome for a plaintiff—dismissal of his case without a single opportunity to be heard by any court due to no fault of his own.

Federal courts enjoy the inherent power to "manage their own affairs so as to achieve the orderly and expeditious disposition of cases."[171] This power includes the ability to discipline attorneys, punish for contempt, control admission to its bar, and vacate judgments.[172] Enforcing any judgment gained against any Plaintiff in this manner is unconscionable but when a judgment is obtained against a front-line hero at the height of the COVID-19 pandemic, it puts our entire system in disrepute. Applicant respectfully requests that this Court stay the past orders in this matter and ensure that the tactics employed do not happen to any other litigant in the future. The alternative is to clear the way for other Defendants who engage in gamesmanship, selective use of the law, misrepresentations, procedural maneuvering, and strategic omissions to perfect and reprise their schemes to deny litigants access to justice and further target Plaintiffs and their

[170] See Appendix, p. 76, the email correspondence received from counsel for the Lafayette General Defendants one day after the petition was filed with this Court.
[171] *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962).
[172] *Id*. at 43–44, 111 S.Ct. 2123.

lawyers with impunity. Thus, Applicant, J. Cory Cordova, respectfully requests that this Honorable Court grant a stay of these proceedings pending disposition of the pending petition for a writ of certiorari.

RESPECTFULLY SUBMITTED BY:

S/Christine M. Mire
Christine M. Mire (Bar Roll Number: 29352)
2480 Youngsville Highway, Suite C
Youngsville, LA 70592
Telephone: (337) 573-7254
Facsimile: (337) 205-8699
Email: cmm@mirelawfirm.com
ATTORNEY FOR APPLICANT, J. CORY CORDOVA

CERTIFICATE OF SERVICE

NO: 23-55

J. Cory Cordova

Petitioner

Louisiana State University Agricultural & Mechanical Board of Supervisors et al.

Respondents

STATE OF LOUISIANA

PARISH OF LAFAYETTE

Being duly sworn, I depose and say under penalty of perjury:

1. That I am over the age of 18 years and not a party to this action. I am a paralegal with a mailing address at 2480 Youngsville Highway, Suite C, Youngsville, Louisiana 70592.

2. On the undersigned date, I served the parties in the above captioned matter with the *Emergency Application for Stay of Proceedings and Enforcement and Execution of Judgment* by electronic mail at the email addresses provided to the Louisiana State Bar Association service in the federal proceedings which the undersigned avers covers all parties required to be served.

Jennie Porche Pellegrin
NeunerPate
1001 West Pinhook Road
Suite 200
Lafayette, Louisiana 70503-2898
(337) 272-0389
jpellegrin@neunerpate.com
Counsel for Louisiana State University, Dr. Karen Curry, Dr. Nicholas Sells, and Kristi Anderson

James Huey Gibson
Stacy Kennedy
Gibson Law Partners, LLC
2448 Johnston Street
P.O. Box 52124
Lafayette, Louisiana 70505
(337) 761-6025
jimgibson@gibsonlawpartners.com
Counsel for University Hospitals and Clinics, Inc., Lafayette General Medical Center, Inc., Lafayette General Health System, Inc.

ANGELA VINCENT

August 28, 2023