No. _____

IN THE

Supreme Court of the United States

J. CORY CORDOVA

Christine M. Mire/Attorney

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

April 19, 2024

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TO THE HONORABLE SAMUEL A. ALITO, JR.,
ASSOCIATE JUSTICE OF THE SUPREME COURT AND
CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

INTRODUCTION

This Application presents issues that far exceed the initial procedural infelicities this case presented when it reached this Court on two (2) prior occasions.[1] Respondents, all private actors, allege they obtained a judgment on the merits contained in an order granting remand that summarily dismissed with prejudice Plaintiff's state law claims and purported federal claims brought pursuant to 42 U.S.C. § 1983—a claim Plaintiff never pled, Plaintiff lacked Article III standing to allege, and the federal court lacked jurisdiction to dismiss on the merits. When Applicant requested relief from the Order granting remand, or alternatively, that the district court clarify the dismissed state law claims in order to defeat Respondents' plea of federal *res judicata* in state court, Applicant and Plaintiff were excessively sanctioned by the federal and state courts.[2] When Applicant appealed the denial of post judgment relief based, in part, on lack of subject matter jurisdiction, sanctions were imposed by the Fifth Circuit for refusing "to heed the district court's warnings about 'unreasonable attempts at continuing this litigation.'"[3]

While the appeal of the denial of post judgment relief was pending before the Fifth Circuit, the district court, *sua sponte*, ordered Applicant to appear before the court pursuant to Respondents' request for Rule 11 sanctions that encompassed issues that were then pending on appeal.[4] Applicant sought a stay from the Fifth Circuit and after the stay was denied, Applicant was sanctioned by the district court "to deter any more frivolous arguments or filings" related to lack

[1] See Case Nos.: 21-1280, 23A196 ,and 23-55.
[2] **Appendix, p. 48**, 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.
[3] **Appendix, p. 19.**
[4] Fifth Circuit Case No.: 22-30548, Document 64, Motion for Judicial Notice and Stay of Proceedings filed on January 30, 2023.

of state action, lack of Article III standing, and lack of subject matter jurisdiction.[5] When Applicant appealed the improper imposition of Rule 11 sanctions, Applicant was again sanctioned by the Fifth Circuit for repeatedly refusing "to heed the district court's warnings about 'unreasonable attempts at continuing this litigation.'"[6] In addition to the current sanctions orders pending review before this Court, Respondents have used excessive punitive sanctions in state and federal court in the total amount of **$252,724.81** to chill Applicant's speech and deter her client's access to the court system.[7]

A request for a stay of these proceedings and review of Federal Rule of Civil Procedure Rule 11 sanctions and the imposition of additional Federal Rule of Appellate Procedure Rule 38 sanctions by the Fifth Circuit against the Applicant/Attorney may seem to be an extraordinary remedy for an ordinary case; however, this case is extraordinary.[8] This fact intensive case must be reviewed with attention to the sheer number of punitive sanctions imposed upon Applicant after reporting suspected health care fraud to federal law enforcement and Respondents' professional misconduct to the courts.[9] Applicant's decision to honor her sworn oath and duties to our system of justice by discharging her mandatory reporting duty as an officer of the court was met with punitive sanctions, an improper arrest in state court, and threats of additional punitive sanctions to deter vexatiousness.[10] However, the decision to report the discoveries in this case was not to vex or harass Respondents. Rather, upon discovery of fraud involving public funds and attorney

[5] **Appendix, p. 32.**
[6] **Appendix, p. 17.**
[7] **Appendix, p. 374**, 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."
[8] **Appendix, p. 5,** Fifth Circuit Opinion on Rule 11 and Rule 38 sanctions (January, 31, 2024). **Appendix p. 32,** District Court Opinion finding liability for Rule sanctions (February 27, 2023).
[9] Applicant filed Rule 60(b) Motion regarding the undisclosed concurrent conflict of interest in this case and the material misrepresentations of the Respondents before the Fifth Circuit on October 14, 2021. See Fifth Circuit Case No.:21-30239, Document 44. See also **Appendix, pp. 619-627**, the public record from the United States Department of Health and Human Services/Office of Inspector General confirming the criminal complaint filed by Applicant against Respondents on May 22, 2022.
[10] See Louisiana Rules of Professional Conduct 1.3, 2.1, 3.3, and 8.3.

misconduct, 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. The repeated requests for sanctions by Respondents constitute impermissible retaliation that is harmful and/or interferes with Applicant's lawful employment or livelihood for providing information relating to the commission or possible commission of a federal offense in violation of 18 U.S.C. § 1513(e).

This Court reviews what constitutes an excessive fine on a case by case basis, which is fact intensive and based on the totality of the circumstances. In reviewing the imposition of excessive fines, this Court views one consideration as virtually dispositive—if the person sanctioned is entirely blameless, the fine is excessive *per se*—that is none of the other circumstances matter if the person sanctioned did nothing wrong.[11] The imposition of sanctions in this case are purely punitive since all sanctions were imposed without jurisdiction, the requisite showing of frivolity, evidence of any material misrepresentations, and/or evidence of bad faith by Applicant.

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 void judgments that will cause Applicant additional irreparable harm. On April 4, 2024, Applicant filed an Opposed Motion to Recall Mandate and Stay Proceedings based on this Court's intervening and controlling case law decided on March 15, 2024.[12] On April 11, 2024, the Fifth Circuit denied Applicant's Motion to Recall its Mandate.[13] Respondents have proven beyond all doubt, they will continue to retaliate absent a stay of these proceedings pending this Court's disposition of

[11] *Timbs v. Indiana,* 139 S.Ct. 682 (2019).
[12] **Appendix, p. 66.** See also *Lindke v. Freed,* 601 U.S._____. (2024).
[13] **Appendix p. 1.**

Applicant's writ of certiorari. In fact, after each stay was denied by the courts, Respondents' retaliation not only continued but intensified.

Applicant has become increasingly concerned due to the escalation of Respondents' retaliation, lack of relief from the state and federal courts, and the following events that have occurred since Applicant last sought relief from this Court: 1.) On July 18, 2023, after receiving a copy of Applicant's writ application, lead counsel for the Respondents threatened (in writing) to seek additional punitive relief from the courts to "atone" for "the ongoing wrongs" to his clients he attributed to Applicant and/or her client.[14] 2.) Respondents aggressively executed its improper punitive sanctions awards in state and federal court (despite timely and pending appeals) aided by the lower courts' enormous contempt power.[15] 3.) On October 9, 2023—after this Court denied Applicant's request for a stay and writ of certiorari—Applicant was arrested, spent nine hours in Lafayette Parish Correctional Center, and was professionally humiliated after being escorted through the state courthouse in an orange prison jumpsuit, leg shackles, handcuffs, and waist chains without notice, service, evidence of contemptuous behavior, and/or a final order.[16] 4.) On January 23, 2024, a hearing was held by the federal district court on Respondents' improper contempt motion for the payment of punitive sanctions. Applicant objected to the district court's jurisdiction and was threatened with additional sanctions and ordered to appear under the threat of a bench warrant.[17] Plaintiff's appearance at the contempt hearing was never summoned; however,

[14] **Appendix, p. 374**

[15] **Appendix p. 387**, the Supervisory Writ Application to the Louisiana Third Circuit Court of Appeals following Applicant's improper arrest in state court. See also, **Appendix, pp. 380-386**, the district court's Memorandum Ruling and Order requiring Plaintiff to produce confidential financial information to the district court under the threat of direct contempt of court and ordering Applicant and Plaintiff into federal court for a Motion for Contempt without proper service or subject matter jurisdiction under the penalty of a bench warrant.

[16] See the Application for Stay denied on October 2, 2023, in Case No.: 23A196 and the petition denied in Case No.: 23-55. See also **Appendix, p. 387**, a writ application filed before the state appellate court detailing Applicant's improper arrest for sanction imposed against Applicant for filing new claims in state court that were determined to be barred by federal res judicata relying on the district court's Order granting Applicant's Motion and Amended Motion to Remand based on lack of subject matter jurisdiction.

[17] **Appendix, pp. 380-386.**

the district court issued an order securing Plaintiff's appearance through the threat of the issuance of a bench warrant for nonappearance. Plaintiff's compelled appearance was ordered four (4) days prior to the district court's initial hearing on Respondents' Motion for Contempt.[18] 5.) On March 20, 2024, Applicant's home was unlawfully entered and a mysterious toxin/chemical was discovered inside her home by repairmen. This toxin/chemical caused Applicant, her daughter, a paralegal, and 3-4 repairmen to become ill. Applicant was required to vacate her home until the source of this toxin/chemical, which appeared to be chlorine gas and a gas leak, could be investigated and identified.[19]

STATEMENT

A. Factual Background

This case concerns a purported "merits judgment" contained in an order granting remand, which is void for lack of subject matter jurisdiction, obtained under deceptive pretenses. On July 8, 2022, Plaintiff sought relief from the federal court and produced voluminous evidence establishing that Defendants, all private actors, used the complexity of their contractual relationship to manufacture Article III standing, obscure Plaintiff's employment status, and obtain the improper summary dismissal of state law claims in federal court.

Applicant, an attorney in Lafayette, Louisiana, represented Plaintiff, J. Cory Cordova, M.D. ("Dr. Cordova"), who was wrongfully dismissed, without cause, from the Internal Medicine Residency Program located at University Hospital and Clinics, Inc. ("UHC"), in Lafayette,

[18] The transcript and audio recordings of the contempt proceedings before the district court on January 23, 2024 are a recent example of what Applicant and her client experienced as the district court was clearly enraged, told Applicant she had filed one too many times with the Fifth Circuit, told Applicant to sit down because he was tired of hearing from her, threatened Plaintiff with jail time, and indicated that Applicant would not be allowed to withdraw because she "started all of this" and was responsible for the punitive actions taken against her client.

[19] **Appendix, p. 613.**

Louisiana.[20] 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 Science Center-Health Care Services Division, under the overall management of one of the Defendants, the LSU Board of Supervisors. These hospitals served as the primary source of health care services for the indigent population of the state. In addition, these hospitals are utilized by the LSU Health Science Center, 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

[20] Defendants 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").

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.[21] Under cooperative endeavor agreements, the former University Medical Center in Lafayette, Louisiana is managed by the Defendant, Lafayette General Medical Center.[22] 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 Systems, additional named Defendants in this case—the site at which Dr. Cordova completed his first year of internal medicine residency training from July 1, 2017-June 30, 2018.[23]

Applicant 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).[24] 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;[25] 2.) a qualified immunity defense for Dr. Curry to overcome her false statements regarding Dr.

[21] **Appendix p. 116.** 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.

[22] **Appendix pp. 139-140.** 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.

[23] ROA.23-30335.403.

[24] ROA.22-30732.1552. ROA.22-30732.1784.

[25] ROA23-30335.40-47.

Cordova's residency performance;[26] 3.) free legal representation from the Attorney General of Louisiana;[27] and 4.) attorneys' fees and costs as a state actor pursuant to 42 U.S.C. § 1988.[28]

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

To compound the complexity of this fact intensive case, Applicant was neither made aware of nor did Dr. Cordova waive a conflict of interest that existed with Dr. Cordova's 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 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.[29]

On March 29, 2019, Dr. Cordova brought suit in the 15th Judicial District Court in Lafayette, Louisiana 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.[30] The initial Petition for Damages was signed by Jacques Bezou, Sr., and was verified by Dr. Cordova.[31] 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

[26] ROA.22-30732.1169.
[27] ROA.23-30335.213-214.
[28] ROA.22-30732.4938.
[29] ROA.23-30335.3542-3545.
[30] ROA.22-30548.45.
[31] 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.

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."[32]

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.[33] 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 defense.[34] 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."[35] Finally, the Lafayette General Defendants allege: "Plaintiff never alleges an employment or contractual relationship with UHC or LGMC."[36]

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

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[32] ROA.22-30548.3631.
[33] ROA.23-30335.186-191.
[34] ROA.23-30335.191.
[35] **Appendix, pp. 141-144.** See Fifth Circuit Case: 22-30548, Document 98, Dr. Cordova's Response to Sanctions.
[35] ROA.23-30335.190.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.
[36] ROA.23-30335.190.

state court stating that Mr. Bezou, Jr., was "very close" with Mr. Gibson "as am I."[37] 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 LSU and Lafayette General Defendants to determine if the Amended Petition cured the exceptions filed by his then attorney, Mr. Gibson.[38] Thereafter, on July 22, 2019, Jacques Bezou, Sr., filed a First Amended Petition for Damages that was neither verified by Dr. Cordova nor signed by Applicant.[39] Although neither requested by the Lafayette General Defendants nor 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."[40]

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 and served Defendant under Louisiana state law, is still listed

[37] ROA.22-30548.3633.
[38] ROA.22-30548.335.
[39] ROA.22-30548.240.
[40] ROA.22-30548.226.

on the state court caption, and also remains listed on the district court's official case caption in this matter.[41]

2. The Improper Removal

On August 7, 2019, the LSU Board of Supervisors filed a Notice of Removal alleging 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."[42] The Notice also alleged that "Dr. Karen Curry, Dr. Nicholas Sells, and Kristi Anderson are made defendants in their individual capacities."[43] 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."[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."[45]

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 were 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. This Court has recently made clear that in suits

[41] ROA.22-30548.226.
[42] 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.
[43] ROA.23-30335.42.
[44] ROA.23-30335.43-44.
[45] ROA.23-30335.44.

brought under Section 1983, "the presence of state authority must be real, not a mirage."[46] "There must be a tie between the official's authority and 'the gravamen of the plaintiff's complaint.'"[47]

B. Procedural History

1. <u>The Attempted Dismissal of an Indispensable Party</u>.

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.[48] These material misrepresentations are inconsistent with the Louisiana Legislative audits contained in the Fifth Circuit's record and furnished to the Louisiana Attorney General identifying this entity and its organizational component units as private entities under Louisiana Revised Statute 17:3390.[49] 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.[50] 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."[51]

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.[52] 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

[46] *Lindke v. Freed,* 601 U.S. ____ (2024), p. 10.
[47] *Id*.
[48] 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.
[49] **Appendix, pp. 141-144.** ROA.22-30548.386-387. ROA.22-30548.492-493. See also Fifth Circuit Case No.: 23-30548, Document 98-3.
[50] ROA.22-30548.483.
[51] ROA.22-30548.518.
[52] ROA.22-30548.525.

federal district court.[53] 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.[54] 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.[55] 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 disclosure statement, no party completed initial disclosures, and Rule 26(f) reports were never completed.[56]

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 7, 2020, the district court issued an Order dismissing, without prejudice, many of Plaintiff's claims against the LSU Defendants but delayed ruling upon the qualified immunity of Dr. Karen Curry pending further development of the record. 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.[57] Despite the foregoing continuance due to Dr. Cordova's unavailability due to the global pandemic, on October 21, 2020, the LSU Defendants filed a Rule 12(b)(6) or alternatively a Rule 56 Motion for Summary

[53] **Appendix pp. 141-144.**
[54] 28 U.S.C. § 1446(b)(2)(a).
[55] 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.
[56] 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.
[57] ROA.23-30335.652.

Judgment seeking dismissal, with prejudice, of the due process claims and Dr. Cordova's state law breach of contract claims.[58]

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.[59] 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.[60] 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 the named LSU Defendants, Dr. Curry, Dr. Sells, and Kristi Anderson. are employed by a private actor.[61]

On November 4, 2020, Applicant enrolled in the federal district court case to assist lead counsel, Jacques Bezou, Sr., in defending against the LSU Defendants' Motion for Summary Judgment.[62] Upon review of the evidence placed in the record by the LSU Defendants, Applicant noted that the evidence placed into the record by the LSU Defendants 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.[63] Therefore, Dr.

[58] ROA.23-30335.679.
[59] ROA.23-30335.679.
[60] 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.
[61] **Appendix, 139-140 and pp. 141-144.** See also 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.
[62] ROA.23-30335.1508.
[63] 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.

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.[64] 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.[65]

On November 13, 2020, without Applicant'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."[66] Despite the lack of discovery and lack of pretrial disclosures, that same day, an electronic order was issued and the district court *sua sponte* set both summary judgments for oral argument at the height of the COVID-19 pandemic.[67] In response, Applicant 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

[64] 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.
[65] 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.
[66] ROA.22-30548.2132.
[67] ROA.22-30548.17.

> 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?[68]

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."[69]

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 in violation of the local rules governing trial attorney designations.[70] On December 15, 2020, the day oral argument was held, Applicant 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.[71] Applicant 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 Applicant's requests but allowed Applicant twenty minutes to return to her office to participate via telephone.[72]

During the hearing, it was clear that the district court was displeased that Dr. Cordova failed to conduct discovery. The district court repeatedly questioned Applicant—but not the other attorneys introducing evidence and requesting relief—regarding her lack of discovery. When Applicant requested additional time to conduct discovery because she was unaware of the Defendants' documents until placed into the federal record on summary judgment, the request was

[68] ROA.22-30548.3653-3654.
[69] ROA.22-30548.3653
[70] ROA.22-30548.3648. Local Rule 11.2 provides that the designated trial attorney will be responsible for the case and all notices and other communication with respect to it will be directed to the designated trial attorney.
[71] 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.
[72] ROA.22-30548.6243-6245.

denied in contravention to Federal Rule of Civil Procedure Rule 37(c).[73] The district court also denied Applicant's request to amend Dr. Cordova's pleadings.

Irrespective of the anomalies in 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 Applicant that the burden had shifted on summary judgment and Dr. Cordova's burden was heightened to prove that Dr. Curry's actions "shocked the conscience." Counsel for the Lafayette General Defendants argued lack of evidence and was dismissive of Applicant's failure to conduct discovery due to COVID-19 and further misrepresented that Dr. Cordova wrongfully refused depositions due to the pandemic.[74] However,

[73] 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.

[74] 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.

during oral argument, Applicant specifically advised the district court that the residents were paid by UHC. The record of the proceedings reflect that the following arguments were made:

> **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.[75]
>
> ***
>
> **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.[76]

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

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

constitutional violation and the substantive due process claim against Curry must be dismissed."[77] The district court further found no state action or 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.[78] Prior to the district court's certification, Dr. Cordova noted the LSU Defendants' 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.[79]

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).[80] On December 28, 2020, at Applicant's insistence, the Bezous 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.[81] 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."[82]

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

[77] ROA.22-30548.1865.
[78] ROA.22-30548.1865.
[79] ROA.22-30548.2214.
[80] ROA.22-30335.1936-1938.
[81] 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).
[82] ROA.23-30335.1951. See *Meyers ex Rel. Benzing v. Texas*, 454 F.3d 503 (5th Cir. 2006).

delinquent," "improper," "disingenuous" and "should not seriously be entertained."[83] 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 Applicant and an overtly threatening email containing an exploding car.[84]

3. Gamesmanship v. Candor

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 Section 1983 action.[85] 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.[86] The LSU Defendants alleged that they were "forced to defend against" "frivolous and groundless federal due process claims."[87] The LSU Defendants further argued that "Plaintiff's claims against the LSU Defendants never progressed past the initial pleading stage."[88] 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."[89]

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. Cordova's state court petition was "without allegations of civil rights violation under 42 USC 1983 in anticipation of Rule 12(b)(6) motion."[90] Egregiously, the LSU Defendants were strategizing for

[83] ROA.22-30548.2204.
[84] **Appendix, p. 249.** See also Case: 21-30239, Document: 00516082769. Case: 21-30239, Document: 00516065873.
[85] ROA.22-30548.1966.
[86] ROA.23-30335.2177.
[87] ROA.22-30548.1971-1974.
[88] 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.
[89] ROA.23-30335.2177.
[90] ROA.23-30335.1989.

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.[91]

On January 13, 2021, after the Bezous were dismissed due to their refusal to raise the issue of subject matter jurisdiction, Applicant 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 the LSU Defendants' claims of frivolity in support of their request for attorney's fees 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."[92] 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. [93]

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: "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

[91]ROA.2330335.1991.1992.1993.1994.2002.2003.2004.2013.2014.2015.2022.2024.2029.2030.2051.2062.2073.2097.2098.2101.

[92] *Williamson v. Tucker*, 645 F.2d 404, 416 (5th Cir. 1981).

[93] 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).

remaining motions *sua sponte* to determine if any should be set for hearing."[94] No further discovery was allowed and the hearing on the original Motion to Remand was cancelled by the district court.[95]

On March 1, 2021, the magistrate judge issued a report and recommendations granting the orders of remand for discretionary considerations but not for lack of subject of matter jurisdiction.[96] The magistrate judge did not have the benefit of a corporate disclosure statement from the LSU Defendants, initial disclosures from any party, 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 General and LSU Defendants. The report and recommendations are silent regarding Article III standing and the remand of Dr. Cordova's state law claims as to the LSU and Lafayette General 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).[97] 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.[98]

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 merit.[99] 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

[94] 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.
[95] ROA.23-30335.2187.
[96] ROA.23-30335.2837.
[97] ROA.23-30335.2852-2858.
[98] ROA.23-30335.2855.
[99] ROA.23-30335.2860.

not implicate subject-matter jurisdiction."[100] The Lafayette General Defendants further pointed the district court to the Fifth Circuit case of *Beiser v. Weyler* in support of its legal position.[101] However, *Beiser* warns of the awkward and inequitable preclusive posture that the district court's order of remand created. Finally, the Lafayette General Defendants asserted 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."[102] That same day, the LSU Defendants also filed a response fully adopting the Lafayette General Defendants' arguments *in extensio*.[103]

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 based on lack of subject matter jurisdiction, and granted the LSU Defendants' motion for entry of judgment pursuant to Rule 54(b).[104] 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."[105] The district court placed all of its rulings, both jurisdictional and purported merits determinations, in the order granting Dr.

[100] ROA.23-30335-2860.
[101] ROA.23-30335.2860.
[102] 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).
[103] ROA.23-30335.2863.
[104] ROA.23-30335.2865.
[105] ROA.23-30335.2865.

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. But this does not mean that the constitutional claims were frivolous.** Here, as the court's prior opinions describe, there were inadequate allegations to support some of plaintiff's constitutional claims and records provided in support of the summary judgment motion showed there was no basis for holding the remaining defendants liable for a due process violation based on their academic judgments or evaluations of plaintiff. But plaintiff did provide grounds for opposing the motion for summary judgment, including letters of recommendation from providers cited as sources for his negative evaluations, which support a reasonable belief in his theory that the proceedings against him were somehow unfair. [106]

The district court's refusal to award the LSU Defendants' attorney's fees on April 14, 2021, is inconsistent with the district court and Fifth Circuit's recent opinions imposing sanctions upon Applicant for the following reasons: "The court on three separate occasions ruled that the underlying claims were meritless, regardless of who employed Cordova. Therefore, continuing to argue who was Cordova's actual employer would not change that. Accordingly, it was unreasonable for Mire to continue to press an issued that the district court had already decided."[107]

4. 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.[108] However, Dr. Curry again disseminated false information regarding Dr. Cordova's performance while he was a

[106] ROA.23-30335.2873. Emphasis added.
[107] **Appendix, p. 14.**
[108] See *Cordova v. La. State Univ. Agric. & Mech. Coll. Bd. of Supervisors,* N. 21-30239, 2022 WL 1102480, at *1 (5th Cir. Apr. 13, 2022). 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.

first year resident at UHC to the Mississippi state medical licensure board on June 10, 2021 and in January of 2022 to the Louisiana state medical licensure board. 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."[109] 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 Defendants' policies and Louisiana Revised Statute 23:291 making a preliminary injunction to prevent future improper disclosures not only legally appropriate but necessary.[110]

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.[111] The petition was met with various exceptions including a peremptory exception of federal *res judicata* in state court, which was not privy to the voluminous federal record of these proceedings. Therefore, Applicant requested that the state court stay the state proceedings to allow the federal district court to

[109] ROA.23-30335.5771-5776
[110] ROA.23-30335.5771-5776
[111] 23-30335.2895. Dr. Cordova attached his pending state court petition to his Motion for Relief from Judgment filed in district court.

determine its jurisdiction and/or clarify the preclusive effect of its March 24, 2021, order granting remand.[112]

5. <u>Proceedings in District Court Related to Clarification of its Prior Rulings and Motion for Relief of Judgment Pursuant to Federal Rule of Civil Procedure Rule 60.</u>

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. Specifically, the motion for relief of judgment alleged the following: 1.) The lead counsel for Dr. Cordova and the lead counsel for the Lafayette General Defendants had an undisclosed concurrent conflict of interest that compromised Dr. Cordova's representation; 2.) The Defendants strategically and improperly removed this case from state court by misrepresenting/misleading the district court as to Dr. Cordova's true employer when all Defendants knew that Dr. Cordova was employed by the Lafayette General Defendants; 3.) The Defendants failed to inform the district court that all parties agreed to stay discovery prior to the summary judgments due to the COVID-19 pandemic; 4.) The Defendants misled and/or misrepresented that the LSU Defendants maintained Dr. Cordova's residency/personnel file when all were aware that the file was maintained by the Lafayette General Defendants; 5.) On January 7, 2022, a Louisiana Supreme Court decision was released wherein the Lafayette General Defendants stipulated it was a private actor in a vaccine mandate case and no federal constitutional claims could be asserted; 6.) On July 5, 2022, the Lafayette General Defendants filed an exception

[112] ROA.23-30335.2895.

of res judicata based on the district court's rulings and requested dismissal of Dr. Cordova's new claims against the Lafayette General Defendants in state court.[113]

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.[114] The district court stated:

> On Rule 12(b)(6) motions to dismiss filed by the LSU defendants, the court dismissed the breach of contract claims as to the individual defendants, without prejudice to plaintiff's right to amend and dismissed may of the due process claims, leaving as to the LSU defendants only the breach of contract claim against LSU and the substantive due process claim against Curry, with the issue of qualified immunity deferred until summary judgment. Docs. 29, 41…In ruling on the second motion to dismiss, the court has also noted a potential due process violation based on negative information that Curry community to other programs but held that plaintiff failed to allege sufficient harm to show a constitutional violation…[115]

With respect to the Respondents, the Lafayette General Defendants, the district court noted that the Lafayette General Defendants "could not be held liable for a due process violation because they are not state actors and did not conspire with the LSU defendants to violate plaintiff's rights."[116] The district court stated: "Finally, to the extent the plaintiff otherwise seeks clarification of the court's prior rulings, those should stand for themselves."[117] The district court awarded the LSU Defendants attorneys' fees pursuant to 42 U.S.C. § 1988 due to "plaintiff's unreasonable attempts at continuing this litigation" though both "unfounded allegations of compromised

[113] ROA.23-30335.2866-2895
[114] **Appendix, pp. 48-65.**
[115] **Appendix, pp. 49-50.**
[116] **Appendix, pp. 50-51.**
[117] **Appendix, p. 51.**

representation and arguments about ancillary issues such as the status of the Lafayette General defendants as private employers."[118]

However, the district court's assertions of untimeliness are misplaced since the motion for relief of judgment was filed within the delays for Dr. Cordova to seek a writ of certiorari. On March 15, 2022, Dr. Cordova first sought this Court's intervention by filing a writ of mandamus to compel the Fifth Circuit to act upon the Post Judgment Motion filed pursuant to Fed. R. App. Pro. Rule 27, Fifth Circuit Internal Operating Procedures, and Fed. R. Civ. Pro. Rule 59(e) on January 13, 2022.[119] Applicant argued that Plaintiff was employed by a private actor and requested that the circuit court afford full faith and credit to the Louisiana Supreme Court's intervening and controlling decisions in the consolidated matters of *Hays 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 are legally preclusive as to the issue of Plaintiff's true employer as a resident at University Hospitals & Clinics (UHC) and should have been afforded full faith and credit.

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**. In keeping with the inherent goals of federalism, the Louisiana Supreme Court decision should have been

[118] **Appendix pp. 64-65**.
[119] Fifth Circuit Case No.: 21-30239, Document 76.

afforded full faith and credit as it is preclusive to the lack of federal subject matter jurisdiction and involves the same Respondents represented by the same attorneys.

On April 13, 2022, while Dr. Cordova's mandamus relief was still pending before this Court, the Fifth Circuit substituted its original opinion issued on November 8, 2021, with an identical opinion and denied Applicant's Rule 59(e) motion without reasons.[120] Thereafter, on May 16, 2022, this Court denied the writ of mandamus and the mandate from the Fifth Circuit Court of Appeal was issued to the district court on May 19, 2022. Fifty (50) days after the mandate was issued to the district court, Applicant filed a Rule 60(b) motion on behalf of Dr. Cordova. Thus, the district court and Fifth Circuit's factual finding that Applicant filed an untimely Rule 60(b) motion is misplaced.

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

Dr. Cordova appealed the district court's ruling denying the Motion for Relief of Judgment to the Fifth Circuit in Case No. 22-30548 contending the post judgment relief was timely as it 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, required 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). The Lafayette General Defendants filed a brief in opposition and requested sanctions pursuant to Fed. R. App. Pro. Rule 38. Applicant

[120] *Cordova v. La. State Univ. Agric. & Mech. Coll. Bd. of Supervisors,* No. 21-30239, 2022 WL 1102480 (5th Cir. Apr. 13, 2022).

filed an opposition to Respondents' request for sanctions and further requested the disqualification of Respondents' lead counsel due to the undisclosed concurrent conflict of interest.[121] On January 4, 2023, the motions were carried with the case by Order of the Fifth Circuit.[122]

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 victors in the 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 Defendants misrepresented the nature of their employment relationship.[123] Applicant further pointed the Fifth Circuit to the employment forms and other specific documentation in the record supporting the argument that UHC, a private actor, was Dr. Cordova's true employer.[124]

C. The Instant Appeal of Rule 11 Sanctions Imposed by the District Court

1. The Rule 11 sanctions hearing is set by the district court while the denial of the Rule 60(b) Motion is pending on appeal

On January 13, 2023, while the appeal of the district court's denial of Rule 60(b) relief was still pending, the district court, *sua sponte,* issued an Electronic Order resetting the hearing on the Motion for Sanctions filed by Respondents from March 1, 2023 to February 23, 2023, a date on which all parties were aware that Dr. Cordova was unable to appear due to preexisting travel plans. More importantly, Respondents' Motion for Sanctions requested that the district court dismiss the Motion for Relief of Judgment and further requested that the district court make disputed factual

[121] Fifth Circuit Case No.: 22-30548, Document 35.
[122] Fifth Circuit Case No,: 22-30548, Document 56.
[123] ROA.22-30335.2935.
[124] ROA.23-30335.2910-2913.

determinations regarding the merits of Dr. Cordova's Rule 60(b) motion that was pending on appeal.

On January 30, 2023, Applicant filed a Motion for Judicial Notice with the Fifth Circuit to notify the circuit court of the sanctions hearing and the potential for Respondents to alter the status of the issues being considered on appeal.[125] Applicant further requested a stay of the district court's sanctions hearing to the extent it requested the district court to resolve disputed issues that were pending on appeal and/or implicated disputed issues that were not fully discovered or adjudicated by the district court. In the request for a stay, Applicant expressed concern that Respondents were requesting factual determinations to insulate themselves from liability and/or preclude any future discovery or litigation on the merits of Dr. Cordova's underlying claims. On February 3, 2023, Respondents filed an opposition to Applicant's request for stay and argued:

> Appellant mischaracterizes the district court's sanctions analysis as determining "disputed genuine issues of material facts" "pending before this Court." Actually, under the snapshot rule, the facts and the law are set as of the time Appellant filed the Rule 60(b) motion. *Thomas v. Capital Security Services, Inc*., 836 F. 2d 866, 874 (5th Cir. 1988); *Skidmore Energy, Inc. v. KPMG*, 455 F. 3d 564 (5th Cir. 2006). The district court will look at what facts were known and reasonably knowable to Appellant and his counsel upon filing the motion; an inquiry made simple by the well-developed record and the district court's extensive and exhaustive reasons for rulings already made dismissing the Appellant's original claims.[126]

After receiving Respondents' opposition, the Fifth Circuit denied Applicant's stay and allowed the district court to proceed on the collateral issue of sanctions.[127] However, Respondents did not abide by the representations made to the Fifth Circuit; rather, they facilitated and encouraged the district court to make determinations that were pending before the Fifth Circuit on appeal.

[125] Fifth Circuit Case No.: 22-30548, Document 64, Motion for Judicial Notice and Stay of Proceedings filed on January 30, 2023.
[126] Fifth Circuit Case No.: 22-30548, Document 66, Respondents' Opposition to Stay.
[127] Fifth Circuit Case No.: 22-30548, Document 77, the Fifth Circuit Order denying stay as to the collateral issue of sanctions.

Respondents also immediately introduced new evidence intentionally disregarding their representations to the Fifth Circuit and knowingly violating the Rule 11 snapshot rule.[128]

Thus, the district court's February 27, 2023 order finding liability for sanctions and the district court's April 13, 2023 order imposing monetary sanctions upon Applicant encompassed issues that were pending on appeal that the district court lacked jurisdiction to decide.[129] The district court found that Applicant's "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, the new evidence submitted by Respondents at the sanctions hearing further supports Applicant's repeated claims. The 2017-2018 W-2's introduced at the district court's hearing on sanctions listed Dr. Cordova's employer as Louisiana State University Health Science Center-New Orleans, the same entity the LSU Defendants previously requested the district court dismiss from this action.

Respondents erroneously asserted to the district court and Fifth Circuit that they consistently maintained that Dr. Cordova was employed and compensated by LSU Health Science Center-New Orleans. This assertion is inaccurate since LSUHSC is neither a party to the federal proceedings nor a state actor. LSUHSC is a private non-profit entity domiciled in Louisiana and not subject to suit in federal court pursuant to Section 1983. Had Respondents asserted that Dr. Cordova was employed by a private actor, rather than maintaining he was employed by a state actor, this case would have remained in state court. Thus, Respondents' new evidence and the public records filed before the Fifth Circuit establish what Applicant has always maintained—the concurrent conflict of interest compromised Dr. Cordova's representation and federal subject matter jurisdiction never existed in this case. Ironically, the new evidence intended to prove Applicant's bad faith

[128] 23-30335.6536, ll. 16-23.
[129] **Appendix p. 32.**

establishes Respondents' bad faith. More importantly, all of the evidence contained in the record of these proceedings prove that all of the federal court's decisions are void because they were rendered by a court that lacked jurisdiction and without an indispensable party served, but never removed, from the state court.[130]

2. <u>A Motion for Sanctions is filed by Applicant before the Fifth Circuit providing additional documentation to support Applicant's arguments that the district court lacked subject matter jurisdiction.</u>

On March 20, 2023, Applicant filed a Motion for Sanctions/Damages with the Fifth Circuit on behalf of Dr. Cordova due to the material misrepresentations made by the LSU and Lafayette General Defendants, fraud on the court, and the concurrent conflict of interest that compromised Dr. Cordova's representation.[131] In the Motion for Sanctions, Applicant advised the Fifth Circuit of the LSU Defendants' judicial admissions that Dr. Cordova's alleged federal claims relied on "undisputedly meritless legal theory," and that "it is undeniable that Plaintiff identified no constitutional deprivation."[132] Applicant argued that it was these inconsistent arguments and the LSU Defendants' knowledge that Dr. Cordova was employed by a private rather than a state actor that constituted fraudulent removal.

Applicant further argued that counsel for the LSU Defendants' knowledge of the fraudulent removal in this case was supported by the case of *Allemang v. State of Louisiana et. al.*, where counsel for the LSU Defendants' exceptional knowledge of the Fifth Circuit's controlling case law

[130] **Appendix pp. 15-17.** The argument regarding the W-2's introduced into evidence at the sanctions hearing was fully briefed by Applicant in briefing to the Fifth Circuit but overlooked in its January 13, 2024 opinion. See also **Appendix p. 72,** Applicant's Motion to Recall Mandate and to Stay Proceedings filed before the Fifth Circuit on April 4, 2024.
[131] Fifth Circuit Case No.: 22-30548, Document 81.
[132] ROA.23-30335.2177.

regarding the appropriate removal of a state court case to federal court was laid bare.[133] In *Allemang,* counsel for the LSU Defendants asserted that no federal jurisdiction exists if no issue of federal law appears on the face of the petition.[134] Unlike this case, in *Allemang,* counsel for the LSU Defendants argued that a reference to the "14th Amendment and 42 U.S.C. Section 1983" was insufficient to remove a case to federal court because the petition "identifies no particular substantive or procedural due process claims that were allegedly violated" and "because the Eleventh Amendment bars suits against state agencies, the federal court lacked subject matter jurisdiction to decide any federal question gleaned from the plaintiff's first supplemental and amended petition."[135]

In the Motion for Sanctions, Applicant asserted that the district court lacked subject matter jurisdiction for the very same reasons advanced by counsel for the LSU Defendants in the *Allemang* matter which was decided by the same district court judge fourteen (14) days prior to the improper removal in this case.[136] Finally, Applicant notified the Fifth Circuit that counsel for the LSU Defendants, the party who invoked the jurisdiction of the federal courts, had a pattern of improvidently removing cases as another case was pending before the Fifth Circuit at that time. In the case of *Derbes v. Louisiana Through Landry,* counsel for the LSU Defendants made identical allegations to support removal as in this case.[137] In *Derbes,* counsel for the LSU Defendants asserted that "tort claims under 42 U.S.C. § 1983 are facially removable under federal question

[133] 2019 WL 3368783. Louisiana District Court for the Western District, Lafayette Division, Docket Number: 2:19-cv-00128, Document 9-1.

[134] Louisiana District Court for the Western District, Lafayette Division, Docket Number, 2:19-cv-00128, Document 9-1, p. 4.

[135] Louisiana District Court for the Western District, Lafayette Division, Docket Number, 2:19-cv-00128, Doc. 1, pp. 3-6.

[136] 2019 WL 3368783.

[137] 2023 WL 4265757 (5th Cir. 6/29/23). The Fifth Circuit ultimately found that counsel for the LSU Defendants had improvidently removed the matter to federal court and affirmed the district court's award of attorney's fees and costs.

doctrine." Egregiously, in the *Derbes* case, counsel for the LSU Defendants later admitted there was no 1983 action despite her Rule 11 assertions.[138]

After Applicant filed Dr. Cordova's Motion for Sanctions before the Fifth Circuit, the Respondents moved to strike the attachments to Applicant's motion and further argued that there was nothing nefarious about the removal of Dr. Cordova's case from state court. Counsel for the LSU Defendants further asserted her request that the district court dismiss the nonremoved entity known as LSUHSC was appropriate because that entity was not a proper party or lacked the capacity to be sued. On April 6, 2023, Applicant filed a supplemental motion with the Fifth Circuit and attached the Louisiana legislative audits definitively proving the material misrepresentations made by counsel for the LSU Defendants.[139] Although the LSU Defendants alleged that Louisiana State University Health Science Center-New Orleans was not a proper party or lacked the capacity to be sued, three (3) recent public records/legislative audits identified the entity, LSUHSC, as a non-profit private company under Louisiana law. The audits contained in the record before the Fifth Circuit further prove that this matter was correctly filed in state court on March 29, 2019 and was improperly removed by the Defendants with the assistance of Dr. Cordova's lead counsel who was burdened by an undisclosed concurrent conflict of interest.[140]

3. <u>The Fifth Circuit opinion and warning is first issued to Applicant four days after the district court entered its sanctions award</u>

Eleven (11) days after Applicant filed the legislative audits with the Fifth Circuit, or on April 17, 2023, the Fifth Circuit issued a *per curiam* unpublished opinion that consolidated the appeals

[138] *Derbes v. Louisiana Through Landry*, No. CV 21-710-SDD-SDJ, 2022 WL 4838211, at *1 (M.D. La. Sept. 9, 2022), report and recommendation adopted sub nom. *Derbes v. Louisiana*, No. CV 21-710-SDD-SDJ, 2022 WL 4793052 (M.D. La. Sept. 30, 2022).
[139] Fifth Circuit Case No.: 22-30548, Document 98.
[140] Fifth Circuit Case No.: 22-30548, Document 98.

on its own motion. The panel denied Applicant's motion to disqualify and motion for sanctions without reasons, issued an opinion affirming the district court, and awarded Respondents' Rule 38 sanctions for a frivolous appeal. Two of the three members of the panel were the same members that heard Dr. Cordova's previous appeal and issued the mandate to the district court on May 19, 2022. 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 with the district court.[141]

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."[142] However, the Fifth Circuit did not determine that the district court properly established Article III standing or subject matter jurisdiction in this case. At best, the Fifth Circuit merely determined that the removal procedure was valid due to the language contained in the unverified Amended Petition signed by Dr. Cordova's then lead counsel—who was, at the time of removal, burdened with an undisclosed concurrent conflict of interest.[143] The distinction between proper removal and subject matter jurisdiction was not discussed in the Fifth Circuit's opinion as it was recently in the case of *Lutostanski v. Brown,* which was authored by a member of the panel that affirmed the district court's denial of post judgment relief in this case.

In *Lutostanki,* the Fifth Circuit held "compliance with § 1331 is necessary but not sufficient for federal subject matter jurisdiction. The plaintiffs must also show that they have Article III standing."[144] The Fifth Circuit held: "Because the plaintiffs lack standing, the district court lacks

[141] 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.
[142] **Appendix, p.19.**
[143] **Appendix, p. 22.**
[144] *Lutostanski v. Brown,* 88 F.4th 582, 588 (5th Cir. 2023) citing *Steel Co.*, 523 U.S. at 103–04, 118 S.Ct. 1003.

subject matter jurisdiction under § 1447(c) to do anything but remand the removed case (and with it, plaintiffs' federal claims)."[145]

In this case, Applicant argued that Dr. Cordova lacks Article III standing since all Defendants in this matter are private actors. Without subject matter jurisdiction, the district court neither possessed the requisite constitutional authority to rule upon the merits of Dr. Cordova's case nor possessed the power to remand only discrete claims. As the Fifth Circuit recently reiterated:

> First, § 1447(c) requires the court to remand the "case," not discrete claims…Finally, defendants' litigation conduct reveals their misunderstanding about federal jurisdiction and our federal system. Plaintiffs sued in state court—a choice that (as far as we know) plaintiffs had every right to make. Defendants removed to federal court on the assurance that federal courts would have the jurisdiction defendants invoked. Then, having invoked federal jurisdiction, defendants turned around and sought a dismissal in federal court on the grounds that the plaintiffs lacked standing. That is not how the system works. Either the federal courts have subject matter jurisdiction, and the plaintiffs' claims can be adjudicated; or there is no federal jurisdiction, and the suit must be remanded to state court. Federal jurisdiction is not a game of whack-a-mole.[146]

Despite its clear precedent that supports Applicant's legal theories and arguments made in the Rule 60(b) motion, the Fifth Circuit affirmed the district court's denial of Rule 60(b) relief and determined Rule 38 sanctions were also 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."[147] 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."[148] On July 14, 2023,

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[145] *Id.*
[146] *Lutostanski v. Brown*, 88 F.4th 582, 588 (5th Cir. 2023)
[147] **Appendix, pp. 25-26.**
[148] **Appendix, p. 11.**

Applicant sought relief from this Court based on the Fifth Circuit's April 17, 2023, *per curiam* unpublished opinion.[149] The writ application was denied by this Court on October 2, 2023.

4. Fifth Circuit decision affirming the district court's award of Rule 11 sanctions that forms the basis of this Application and Petition for Writ of Certiorari

The anomalies and opinions that are inconsistent with this Court's precedent continued through the instant appeal of the district court's imposition of Rule 11 sanctions upon Applicant, attorney for the Plaintiff. The hearing on the district court's imposition of sanctions was heard by the district court on February 23, 2023, one day after Respondents' duplicative sanctions were heard by the state trial court. On February 27, 2023, the district court issued a Memorandum Order finding liability for Rule 11 sanctions upon only Applicant.[150] Applicant filed a timely Notice of Appeal; however, on April 13, 2023, the district court imposed the monetary award of sanctions. Thus, the district court's sanctions order was ripe for appeal on April 13, 2023, four (4) days prior to the Fifth Circuit's *per curiam* opinion affirming the district court's denial of Rule 60(b) relief.

a. Two Appeals of One Order of Sanctions

On May 15, 2023, Applicant filed a timely Amended Notice of Appeal after the district court imposed the monetary sanctions award in a separate order. However, the clerk of court for the Fifth Circuit provided Applicant with two (2) different docket numbers for her appeal of the district court's imposition of sanctions and Amended Notice of Appeal that included the award of monetary sanctions.[151] Applicant contacted the Fifth Circuit clerk regarding the receipt of two (2) different docket numbers for one appeal and was advised by the clerk that Applicant received two (2) docket numbers because the Fifth Circuit's staff attorney determined that the district court's

[149] Supreme Court Case No.: 23-55.
[150] **Appendix, p.32.**
[151] Fifth Circuit Case No.: 23-30335, Document 51-12, p. 4.

order imposing liability for sanctions and the award of monetary sanctions listed in Applicant's Amended Notice were actually two (2) separate appeals.[152] Therefore, the clerk was advised to treat Applicant's Amended Notice of Appeal as a second and separate appeal in contravention to established statutes governing appeals and Fifth Circuit precedent.[153]

b. <u>Applicant is referred to the Fifth Circuit mediation program to negotiate settlement of a sanctions order</u>

On May 22, 2023, Applicant received correspondence from the Fifth Circuit clerk requesting that she pay an additional and second fee of five hundred and five dollars ($505.00) for the instant appeal (Case Number: 23-30335) on or before June 6, 2023. Shortly after receiving the clerk's request for an additional payment in the instant appeal, Applicant was then notified by electronic mail that she had been referred to the Fifth Circuit's mediation program.[154] The referral to the mediation program was received before the instant appeal was properly paid for, lodged, or the issues briefed.[155] Therefore, Applicant sought clarification in writing from Respondents and the assigned Fifth Circuit mediator to determine if the instant appeal had been referred to mediation in error.[156] Applicant was concerned due to the procedural maneuvering she had previously experienced and the recent Fifth Circuit imposition of Rule 38 sanctions that overlooked relevant evidence in the record and failed to follow established precedent.

More importantly, the referral of the imposition of sanctions to the mediation program was inconsistent with the ethical duties imposed upon all lawyers as sanctions were imposed in this case for Applicant's alleged bad faith breach of a duty owed to the court.[157] After receiving

[152] See Fifth Circuit Case No.: 23-30335, Document 51. Applicant's Motion for Stay filed on December 21, 2023 containing supporting documentation and an Affidavit proving the facts asserted herein.
[153] Fifth Circuit Case No.: 23-30335, Document 51-15, pp. 1-6.
[154] Fifth Circuit Case No.: 23-30335, Document 51-12.
[155] Fifth Circuit Case No.: 23-30335, Document 51-12.
[156] Fifth Circuit Case No.: 23-30335, Document 51-18.
[157] Fifth Circuit Case No.: 23-30335, Document 51-17.

Applicant's email, the assigned mediator contacted Applicant via telephone and advised Applicant that she would have to dismiss her appeal or get the Fifth Circuit and the district court's permission prior to mediation. However, Applicant was concerned about the seriousness of sanctions and was aware of the Fifth Circuit's jurisprudence holding that the settlement of the monetary award of sanctions could render the merits of the instant appeal moot. Thus, Applicant respectfully declined to participate in mediation and was released from mediation on May 31, 2023.[158]

After avoiding an apparent attempt to render the merits of Applicant's appeal moot, Applicant was then unable to pay the additional fees assessed by the Fifth Circuit on Pacer or through the Fifth Circuit clerk.[159] The Fifth Circuit's clerk advised Applicant that the additional fee (assessed by the Fifth Circuit's attorney advisor) needed to be paid to the clerk of court for the United States District Court for the Western District, Lafayette Division to avoid dismissal of her Fifth Circuit appeal. However, when Applicant contacted the clerk of court for the district court, the clerk advised that nothing was owed and there was no way to accept Applicant's credit card payment over the phone since no outstanding payment was owed. Applicant explained to the clerk that the Fifth Circuit would dismiss the instant appeal if the clerk of court did not accept payment. The clerk of court for the district court advised Applicant that the fees would need to be paid in person.

c. Obstacles encountered at the district court level when Applicant sought to pay a second fee for the appeal of one order of sanctions

On June 6, 2023, the date in which the fees were due, Applicant's staff member, Angela Vincent, arrived at the district courthouse with Applicant's firm payment and the district clerk again refused to accept payment because Applicant owed no fees for the Amended Notice of

[158] Fifth Circuit Case No.: 23-30335, Document 51-14.
[159] Fifth Circuit Case No.: 23-30335, Document 51-18.

Appeal.[160] Applicant's representative explained that the Fifth Circuit staff attorney had designated the Amended Notice of Appeal as a new Notice of Appeal and required payment of additional costs that day. The clerk employee then contacted Applicant and Applicant confirmed the necessity of the clerk accepting payment or Applicant's appeal would be dismissed by the Fifth Circuit.

Thereafter, the clerk employee contacted Bobby Walker, the appellate clerk assigned to the Cordova appeals. While the clerk employee discussed the issues with Mr. Walker, Applicant's staff member overheard another clerk, Wendy, engage in a telephone conversation wherein she advised the caller that she had closed her drawer early that day and asked if she reopened the drawer would it still enter the payment as June 6, 2023. Due to the confusion and now potential inaccuracy of the date stamp entry for Applicant's payment, Applicant's staff member requested a paper receipt to evidence the date, the docket number of the Amended Notice of Appeal, and the amount paid ($505.00). When none of the clerks responded to this request, Applicant's staff member explained that a paper receipt was necessary to ensure that if a subsequent challenge was made to the timeliness of payment, the appeal could be dismissed, and a paper receipt would alleviate the necessity of future Affidavits from the clerks to evidence the payment was made timely. The receipt and the Affidavit attesting to these facts are contained in the Fifth Circuit record of these proceedings to memorialize the repeated anomalies experienced in this case.[161]

d. <u>Respondents' continued efforts to moot the merits of Applicant's appeal of sanctions</u>

Undeterred, Respondents then made several attempts to get Applicant to file her brief on the merits of the sanctions appeal in the interlocutory appeal that was not properly perfected.[162] The

[160] Fifth Circuit Case No.: 23-30335, Document 51-18.
[161] Fifth Circuit Case No.: 23-30335, Document 51-18.
[162] Fifth Circuit Case No.: 23-30335, Document 51-12.

case caption of the interlocutory appeal was also changed by the Fifth Circuit clerk to *Mire v. University Hospitals and Clinics, Inc.*, Docket No.: 23-30186, rather than the correct case caption as reflected in the properly perfected appeal found in Case No.: 23-30335.[163] Respondents' transparent efforts to persuade Applicant to file her merits' brief into the matter docketed as 23-30186 was an additional attempt to improperly dismiss her appeal since Applicant's initial Notice of Appeal was interlocutory pursuant to clear Fifth Circuit precedent.[164] Therefore, Applicant ignored Respondents' requests and filed her merits brief in the proper case number to ensure that Respondents did not succeed at their repeated efforts to moot the merits of her appeal.

However, on July 18, 2023, just days after Applicant sought intervention from this Court for the second time, the case improperly entitled *Mire v. University Hospitals and Clinics, Inc.*, Docket No.: 23-30186, was prematurely dismissed and the mandate was issued by the Fifth Circuit clerk "at the direction of the court."[165]

e. <u>Additional orders entered by the district court while review was pending before this Court</u>

On July 18, 2023, a few hours after the interlocutory appeal was prematurely dismissed by the Fifth Circuit clerk "at the direction of the Court," Respondents filed a Motion for Entry of Judgment before the district court requesting a separate judgment of the district court's June 29, 2023, Memorandum Ruling awarding Rule 38 sanctions in the amount of **<u>$50,664.74</u>** assessed against Dr. Cordova.[166] Out of fear of more punishment and/or retaliation, Dr. Cordova did not

[163] Fifth Circuit Case No.: 23-30335, Document 51-14.
[164] Fifth Circuit Case No.: 23-30335, Document 51-12, p. 3.
[165] Fifth Circuit Case No.: 23-30335, Document 51-14.
[166] **Appendix, p. 27.** See also Fifth Circuit Case No.: 23-30335, Document 51-14., Fifth Circuit Case No.: 23-30335, Document 51-12.

object to this entry 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.[167]

5. Applicant's Arrest in State Court

As predicted by Applicant in her previous request for a stay of the proceedings filed with this Court, on October 9, 2023, Applicant was unlawfully arrested by the state trial court without notice, an opportunity to be heard, or a proper court order.[168] At the October 9, 2023 hearing on Respondents' Motion for Contempt, which was held seven days after this Court denied Applicant's previous stay request, the trial court ordered Applicant to jail. Applicant, a licensed attorney who regularly practices before the 15th Judicial District Court in Lafayette, Louisiana, was escorted through the courthouse in an orange jumpsuit, orange crocks that were approximately five sizes too large, handcuffs, waist chains, and leg shackles in the presence of her colleagues, other judges, court personnel, and litigants. After a brief hearing with the trial court, Applicant was allowed to purge and ultimately released from jail on the evening of October 9, 2023 at nearly 6:00 P.M.—almost nine (9) hours after she was first improperly imprisoned. Since Applicant was without any power to alleviate the contempt she was entitled to (but not afforded) the same rights as a criminal defendant and a finding of contempt was required to be beyond a reasonable doubt.

On December 6, 2023, Applicant sought a supervisory writ with the Louisiana Third Circuit Court of Appeal which properly converted her writ application to an appeal on March 8, 2024.[169]

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[167] See **Appendix, p. 374**, 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.

[168] See Supreme Court Case No.: 23A196. See also **Appendix, p. 387** detailing the circumstances surrounding Applicant's improper arrest in state court to enforce a judgment for sanctions imposed for filing a state court claim precluded by federal res judicata utilizing the district court's Order granting remand to secure dismissal of Plaintiff's new claims.

[169] **Appendix p. 387** contains the Supervisory Writ filed at the Louisiana Court of Appeal for the Third Circuit with a full recitation of the facts surrounding Applicant's arrest secured by the Respondents with supporting documentation and transcripts of the state trial court proceedings**.**

Thus, Applicant's unlawful arrest is currently pending appeal before the Louisiana Third Circuit Court of Appeal. However, the preparation of the appellate record alone will cost Applicant over $12,000.00, which Applicant does not have the ability to pay, in order to have this matter heard by the appellate court evidencing the irreparable harm Applicant has experienced and will continue to experience absent a stay by this Court.

6. Respondents file a Motion for Contempt before the federal district court seeking Dr. Cordova's arrest

On December 7, 2023, one day after Applicant sought a supervisory writ with the Louisiana Third Circuit Court of Appeal regarding her improper arrest in state court, Respondents filed a Motion for Contempt before the federal district court seeking Dr. Cordova's arrest for the nonpayment of the Rule 38 sanctions imposed by the district court. In the Motion for Contempt filed with the federal district court, Respondents made inconsistent arguments than those previously made before the state court. Respondents no longer maintained that an award of sanctions was a money judgment as they had previously alleged to secure Applicant's improper imprisonment in state court.[170] Rather, Respondents now argued that an award of sanctions was a finding of misconduct that could be enforced by the district court through contempt proceedings.[171]

Due to Applicant's recent arrest and the acrimony Applicant had previously experienced before the district court, Dr. Cordova contacted new counsel with more experience in federal contempt proceedings. Thus, on December 19, 2023, Applicant filed an Unopposed Motion to Withdraw and an Unopposed Extension of Time to respond to the Respondents' Motion for Contempt. The

[170] **Appendix p. 251,** Respondents' Opposition to Applicant's Supervisory Writ filed with the Louisiana appellate court wherein counsel for Respondents argues that sanctions ARE a money judgment subject to immediate enforcement despite the pending appeal of the state trial court's sanctions award. See also **Appendix, p. 366,** the Reply Memorandum to Respondents' Motion for Contempt filed with the federal district court ten (10) days later arguing that sanctions ARE NOT a money judgment and may be enforced through contempt proceedings in federal court.
[171] **Appendix, p. 366.**

extension of time was requested to allow new counsel to properly prepare Dr. Cordova's defense against the contempt allegations. Importantly, at the time of Applicant's Unopposed Motion to Withdraw, no hearings were pending before the district court and all counsel consented to the filing. Nevertheless, on December 20, 2023, the district court denied both of Applicant's unopposed motions without reasons necessitating an expedited request to the Fifth Circuit to stay the district court proceedings to preserve the rights of the affected client.[172]

7. Second Request for a Stay of Proceedings from the Fifth Circuit

The request for stay of the district court proceedings was filed with the Fifth Circuit while Applicant's Rule 11 sanctions was still pending on appeal. Applicant feared that Respondents would again attempt to alter the status of the appeal and/or seek to arrest and humiliate Dr. Cordova in the same manner Applicant was professionally humiliated. Applicant advised the Fifth Circuit that Applicant and Dr. Cordova did not intend to return to the district court given the district court's clear warnings that they would be sanctioned should Applicant return to the district court. At the time the Motion for Stay was filed before the Fifth Circuit, Respondents had ruled Applicant and Dr. Cordova into state and federal court fourteen (14) times in sixteen (16) months without admonishment from any court. Applicant also advised the Fifth Circuit that Respondents' Motion for Contempt was the precise improper maneuvering Respondents utilized in state court to facilitate Applicant's improper arrest.

It is well settled that the enforcement of judgments must be through the execution/executory proceedings, not by contempt. Contempt proceedings are to vindicate the court not to aid litigants in the enforcement of judgments or to allow litigants to insulate their conduct by coercively attempting to render pending appeals moot. On December 22, 2023, the Fifth Circuit denied

[172] Fifth Circuit Case No.: 23-30335, Document 51, the Emergency Request for Stay filed with the Fifth Circuit on December 21, 2023.

Applicant's request for a stay of the proceedings and would not allow Applicant to withdraw from the representation of Dr. Cordova before the district court.

8. <u>Respondents' Motion for Contempt proceeds before the federal district court</u>

On December 22, 2023, Applicant filed an opposition to Respondents' Motion for Contempt as ordered by the district court. Applicant objected to Respondents' Motion for Contempt as improper since Respondents had repeatedly claimed in state court that an award of sanctions was a "money judgment." Applicant further argued that Respondents' litigation tactics and inconsistent arguments before the state and federal courts constituted harassment and obliterated the entire purpose of why remand orders are not reviewable on appeal—to allow the parties to get on with litigating the merits of their cases in state court. Thus, Applicant respectfully requested that the district court dismiss Respondents' motion and admonish their abusive litigation tactics designed to increase litigation costs and harass Dr. Cordova.

On December 28, 2023, the district court issued an electronic order setting a hearing on Respondents' Motion for Contempt stating: "A hearing on the Motion for Contempt is set for 1/16/2024 at 01:30 PM in Lake Charles, Courtroom 4 before Judge Cain. Plaintiff is ORDERED to appear in person at this hearing. Plaintiff is further ORDERED to file his 2022 federal and state tax returns, along with any W-2s and 1099s received for that year and his pay stubs for the last three months, under seal in this matter by 1/11/2024." On January 11, 2024, Applicant objected to the district court's electronic order because it was improperly issued prior to hearing the preliminary procedural issues raised by Dr. Cordova in his Memorandum of Opposition—lack of

subject matter jurisdiction and failure to state a claim. Additionally, the Court's Electronic Order was issued prior to service upon Dr. Cordova or establishing personal jurisdiction.

On January 12, 2024, the district court entered a memorandum ruling denying Applicant's objection to the district court's jurisdiction stating:

> Cordova's objections to subject matter jurisdiction, which he has pressed since a motion to remand denied in March 2021, are unfounded. They were rejected by the Fifth Circuit on his most recent appeal. See *Cordova*, 2023 WL 2967893 at *1 ("[Cordova's allegations] plainly made the case removeable and gave the district court federal jurisdiction."). Yet he still attempts to resurrect this issue. The court will not waste any more time with it. Cordova risks further sanctions under Rule 11(b)(2) by pressing his frivolous legal arguments.[173]

The district court agreed that a summons may not be served electronically and "that no such summons has been issued for Cordova's appearance."[174] However, the district court found that no summons was needed to back up a court order that a civil litigant appear at a proceeding. The district court further ruled:

> Because of Cordova's efforts to throw up roadblocks to every court order, however, the court has little confidence that a summons would suffice. If he does not appear as ordered the court will issue a bench warrant compelling his appearance when the matter is reset.[175]
> For the reasons stated above, the Motion to Dismiss and Objections [doc. 197] will be DENIED. Cordova and counsel are ORDERED to appear at the contempt hearing set for January 16, 2024, and to produce the documentation described in the court's preceding order [doc. 195].[176]

The district court's initial hearing was postponed due to severe weather until January 23, 2024. When Applicant and Dr. Cordova appeared at the hearing before the federal district court on January 23, 2024, the district court was clearly enraged. Although no transcript has been completed, the audio recordings will confirm that the district court advised Applicant she had filed

[173] **Appendix, p. 382**.
[174] **Appendix, p. 384.**
[175] **Appendix, p. 384.**
[176] **Appendix, p. 385.**

one too many times with the Fifth Circuit, told Applicant to sit down because he was tired of hearing from her, threatened Plaintiff with jail time, and indicated that Applicant would not be allowed to withdraw because she started all of this and was responsible for the punitive actions taken against her client. Following this hearing and out of sheer fear of jail or more retaliation, Dr. Cordova terminated Applicant's services and borrowed money to pay the sanctions order. On February 6, 2024, Applicant filed a Motion to Withdraw based on the termination of her services. Applicant's second Motion to Withdraw remains pending before the district court.[177]

On February 7, 2024, Dr. Cordova attempted to pay the sanctions in full and made the check payable to the Lafayette General Defendants and their counsel; however, this check was refused by counsel for the Respondents. At the instruction of counsel for Respondents, Dr. Cordova made his second check payable to Ochsner Clinic Foundation, a nonparty to these proceedings, signaling another potential and indispensable party.[178] On February 22, 2024, the district court entered an electronic order after receipt of the Fifth Circuit's mandate affirming the district court's Rule 11 sanctions and imposing additional Rule 38 sanctions to be determined by the district court.[179] The district court's electronic order indicated that deadlines for the Fifth Circuit's Rule 38 sanctions would be set at a later date. However, as of this filing, Applicant has not received any further orders from the district court.

Applicant fears additional retaliation and irreparable harm especially in light of the recent illness she experienced since March 13, 2024. On March 13, 2023, Applicant, who was not feeling well, was visited by a friend at her home and an unlawful entry was discovered. At the time of this visit, Applicant was not herself due to fatigue, confusion, brain fog, and other cognitive issues. On

[177] **Appendix, pp. 84-85.**
[178] **Appendix, p. 611.**
[179] **Appendix, p. 609.**

March 20, 2024 repairmen discovered a potential gas leak in Applicant's home as well as the presence of a toxin that smelled like chlorine gas that caused 3-4 repairmen to become ill.[180] The severity of the retaliation in this case as well as Applicant's recent and mysterious poisoning make a stay of these proceedings legally appropriate and necessary. The Fifth Circuit denied Applicant's request to recall the mandate and her request for stay on April 11, 2024.[181] A stay is requested in this case as Applicant and her client, Dr. Cordova, have suffered repeated, intense, and prolonged injustice that cannot and does not satisfy the appearance of justice.[182]

ARGUMENT

Applicant, Christine M. Mire, a Louisiana licensed attorney, is entitled to a stay pending appeal because 1.) Applicant is likely to succeed on the merits; 2.) Applicant 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.

A stay is warranted in this case due to the escalating actions that have already caused irreparable physical, emotional, financial, and professional harm to Applicant. Moreover, Applicant is likely to prevail on a writ of certiorari in light of established precedent that clearly supports Applicant's colorable and legitimate arguments made before the district court and the Fifth Circuit. The district court's lack of subject matter jurisdiction is not a contested issue as Respondents have consistently maintained that they are private actors. The Fifth Circuit and district court duly acknowledge that no state action was alleged by Plaintiff against Respondents in this case.[183] Inexplicably, no court has analyzed federal subject matter jurisdiction or Article III standing in any opinion issued in this case despite Applicant's consistent objections. Rather, the

[180] **Appendix, p. 613.**
[181] **Appendix, p. 1.**
[182] *In re Murchison*, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955).
[183] **Appendix, p. 3.**

lower courts repeatedly imposed punitive sanctions upon Applicant for failing to heed the warnings of the district court and the district court threatened Applicant with additional sanctions if she objects to the jurisdiction of the federal court in the future.[184]

"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*."[185] For a court to impose punitive sanctions upon a lawyer for arguing the constitutional limitations of the federal courts and/or for reporting criminal violations involving taxpayer funds is a matter of significant public interest. This fact intensive case presents far-reaching implications for lawyers, clients who hire lawyers, and the public that lawyers serve as it examines the impact that chilling the rights of lawyers may have on the independence of our judicial system. Thus, this case provides an appropriate vehicle for this Court to analyze the restrictions placed on lawyer speech in court proceedings as well as the protections afforded when lawyers report concerns involving systemic harm not readily apparent to the general public.

I. APPLICANT IS LIKELY TO PREVAIL ON THE MERITS

A. 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.[186] In *Steel Co. v. Citizens for a Better Env't,* this Court rejected the use of "hypothetical jurisdiction" under

[184] **Appendix, p. 382.**
[185] *Waleski v. Montogomery, McCracken, Walker & Rhoads, LLP, et al.*, No.: 22-914, 599 U.S. (2023) (Thomas, J., dissenting).
[186] *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).

which courts assumed the existence of jurisdiction, where that analysis would be particularly complex, and resolved the case on a simpler merits question.[187] 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."[188] Hypothetical jurisdiction runs afoul to separation of powers 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.[189]

The LSU Defendants, as the party invoking federal jurisdiction, bore the burden of establishing that all elements of jurisdiction, including Article III standing, existed at the time jurisdiction was 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."[190] 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.[191] 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."[192] It is these arguments advanced by the LSU Defendants, who bore the burden of establishing jurisdiction, that prove the judgments issued in this matter are void and without legal effect due to lack of federal jurisdiction.

This Court recently reiterated these bedrock principles on March 15, 2024 in the case of *Lindke v. Freed*, 601 U.S. _____ (2024). This Court made clear that if the plaintiff cannot make a threshold

[187] 523 U.S. 83, 89 (1998).
[188] *Id.* at 93-94.
[189] *Id.* at 91.
[190] ROA.21-30239.32-33.
[191] ROA.21-30239.380-403.
[192] ROA.21-302391136-1138.

showing of state authority, he cannot establish state action. In this case, Applicant admits Plaintiff cannot make a showing of state authority and was sanctioned by the district court and the Fifth Circuit for arguing this case does not involve state action or a claim brought pursuant to 42 U.S.C. § 1983 because all Defendants are private actors. Moreover, in briefing before the Fifth Circuit, Applicant argued that the judgments issued in this case are void because subject matter jurisdiction was never established by the district court. Applicant further argued that Plaintiff was employed by a private actor and 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 *Hays v. University Health Shreveport,* 21-1601, 332 So.3d 1163 (La. 1/7/22) and *Nelson v. Ochsner Lafayette General*, 21-1453, 332 So.3d 1172 (La. 1/7/22).

The consolidated cases are legally preclusive as to the issue of Plaintiff's true employer as a resident at University Hospitals & Clinics (UHC). 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**. In keeping with the inherent goals of federalism, the Louisiana Supreme Court decision should have been afforded full faith and credit as relates to the federal subject matter jurisdiction of the district court and involves the same Respondents represented by the same attorneys.

The new intervening case law from this Court in *Lindke* is consistent with the Louisiana Supreme Court case and establishes that the district court lacked subject matter jurisdiction in this case from its inception. Thus, the Fifth Circuit's failure to address Applicant's arguments regarding

lack of state action and lack of subject matter jurisdiction is contrary to this Court's established precedent. The Fifth Circuit also overlooked the previous legislative audits identifying all of the Defendants in this case as private actors pursuant to Louisiana law. Additionally, on April 4, 2024, Applicant sought to recall the mandate and stay the proceedings in light of this Court's intervening and controlling jurisprudence. In support of Applicant's previous arguments, Applicant introduced a January 10, 2024 Louisiana Legislative audit confirming the veracity of all allegations made by Applicant in briefing and again confirming that all of the Defendants are private actors pursuant to Louisiana Revised Statute 17:3390.[193].

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.[194] 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;[195] 2.) Dr. Cordova's Louisiana Department of Revenue Form L-4 which lists UHC as his employer;[196] 3.) Dr. Cordova's Immigration Form I-9 which lists UHC as

[193] **Appendix, p. 66.**
[194] *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).
[195] ROA.23-30335.2914.
[196] ROA.23-30335.2915.

his employer;[197] and 4.) Dr. Cordova's Medicare Enrollment Record which also lists UHC as his employer.[198]

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 employees."[199] 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)."[200] 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."[201]

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, LSU, and LGHS to provide for the operation of the former University Medical Center."[202] UHC

[197] ROA.23-30335.2916.
[198] ROA.23-30335.2917-2918.
[199] ROA.23-30335.4619.
[200] ROA.23-30335.4619.
[201] *Allen v. State ex rel. Ernest N. Morial-New Orleans Exhibition Hall Auth.*, 2002-1072 (La. 4/9/03), 842 So.2d 373, 382.
[202] ROA.23-30335.4224.

asserts that it has "two home based residency programs providing graduate medical education" in "internal medicine and family medicine."[203] 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."[204] 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."[205]

C. The Public Interest of Lawyers and Litigants Favor a Stay

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."[206] Without a stay from this Court, Applicant will continue to experience harassment, fear, and additional excessive fines for exercising her right to be heard and for complying with her mandatory duty to report the criminal and disciplinary actions of the Respondents to federal law enforcement and to the courts.[207] Applicant informed the district court, state trial court, and the Fifth Circuit that on May 22, 2022, she filed a federal criminal complaint regarding the health care fraud she and a member of her staff discovered in this case.[208] Applicant's forthcoming Petition for Writ of Certiorari respectfully requests this Court to review the district court and Fifth Circuit's

[203] ROA.23-30335.4224.
[204] ROA.23-30335.4231.
[205] 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.
[206] *Timbs v. Indiana*, 139 S.Ct. 682 (2019).
[207] **Appendix, p. 619**.
[208] **Appendix, p. 619.**

award of punitive sanctions. Applicant contends that the sanctions awards in this case are excessive *per se* because Applicant has done nothing improper.

II. THE EQUITIES OVERWHELMINGLY FAVOR A STAY

A. Applicant 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.[209] This Court held: "The Constitution does not permit the Government to confine litigants and their attorneys in this manner."[210] 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 more than eleven (11) Motions for Sanctions in state and federal court that are duplicative and unsupported by existing law. 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 sanctions indicate Applicant has refused "to heed the warnings" of the district court but fail to point to a specific argument raised by Applicant 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.

B. Factual Findings and Objective Evidence in the Record

The factual findings contained in the written opinions of the lower courts regarding sanctions are inconsistent with the evidence contained in the record and the precedents of this Court. For instance, the federal district court imposed sanctions for the filing of a Rule 60(b) motion because

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

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.[211]
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> **THE COURT:** I give you kudos. It's a novel way of thinking about it, but it's just not the same thing.[212]

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 Applicant and warned Dr. Cordova that he would expose himself to liability if he continued to seek justifications to reopen the suit.[213]

Overlooked by the Fifth Circuit is the fact that Applicant did heed the warnings of the district court as she neither returned to the district court nor made any additional arguments to the district court after the district court's February 23, 2023, sanctions hearing. Applicant attempted to withdraw from the district court case to avoid any additional harm to her client and her request was denied by the district court and the Fifth Circuit.[214] However, when Applicant recently

[211] ROA.23-30335.6558, ll. 17-25; ROA.23-3033.6559, ll. 1-18. Emphasis added.
[212] ROA.23-30335.6560, ll. 13-25.
[213] **Appendix, p. 46, footnote 2.**
[214] **Appendix, p. 84.**

requested that the district court admonish the Respondents for attempting to reopen the case after the district court's warnings, she was threatened by the district court with additional sanctions.[215]

In the Fifth Circuit's opinion, the court acknowledges that "[a]n attorney may not by speech or other conduct, resist a ruling of the trial court beyond the point necessary to preserve a claim for appeal."[216] However, overlooked by the Fifth Circuit is the fact that Applicant was sanctioned while the merits of her Rule 60(b) motion was pending on appeal. Thus, Applicant was required to preserve the claims she argued before the district court at the sanctions hearing due to the pending appeal of the merits of the Rule 60(b) motion for relief. The Fifth Circuit opinion also overlooked Applicant's Motion for Judicial Notice and Request for Stay she filed with the circuit court prior to the district court's sanctions hearing raising concerns that the sanctions hearing would raise issues encompassed on appeal or alter the status of her client's appeal.[217]

Finally, the Fifth Circuit overlooked the statements made by the district court 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.
> **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

[215] **Appendix, p. 380.**
[216] *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1071 (1991).
[217] Fifth Circuit Case No.: 22-30548, Document 64, Motion for Judicial Notice and Request for Stay filed by Applicant on January 31, 2023.

> 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.[218]

In affirming the district court's award of sanctions in this case, the Fifth Circuit violated the precedents of this Court as well as its own precent on Rule 11 sanctions. The Fifth Circuit has previously held:

> District courts are given broad discretion in imposing sanctions against attorneys under Rule 11 and § 1927, but even broad discretion must be exercised within clear and reasonable limits. As we have explained before, Rule 11 is not intended to unreasonably chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. To this end, courts should not impose sanctions simply because one party ultimately lost on the merits in litigation; nor should courts use the wisdom of hindsight in ruling on a motion for sanctions under Rule 11 or § 1927. Instead, the task for the district court under Rule 11 and § 1927 is only to decide whether an attorney has failed to conduct a reasonable inquiry into the law and the facts and comply with "an objective standard of reasonableness under the circumstances."[219]

Imposing sanctions upon 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.[220] At the hearing on sanctions, Applicant respectfully reminded the district court that all

[218] ROA.23-30335.6569, ll. 15-24.
[219] *Trinity Gas Corp. v. City Bank & Tr. Co. of Natchitoches*, 54 F. App'x 591 (5th Cir. 2002).
[220] 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).

of its prior orders were contained in the March 24, 2021 order granting remand. In response, counsel for Respondents/Lafayette General Defendants 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.[221]

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."[222]
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> ***
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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

[221] ROA.23-30335.6557, ll. 10-18
[222] ROA.23-30335.6567, ll. 12-24.

> that information should not even be released. I attached to my opposition to sanctions –[223]

In affirming the district court's sanctions, the Fifth Circuit ignored its own precedent by sanctioning Applicant after the case was over and pending appeal. The Fifth Circuit previously held:

> The most obvious defect in this procedure is that it flies in the face of the primary purpose of sanctions, which is to deter subsequent abuses. This policy is not well served by tolerating abuses during the course of an action and then punishing the offender after the trial is at an end. A proper sanction assessed at the time of a transgression will ordinarily have some measure of deterrent effect on subsequent abuses and resultant sanctions. Such "prompt action helps enhance the credibility of the rule and, by deterring further abuse, achieve its therapeutic purpose."[224]

III. CONSIDERATION OF THIS APPLICATION AS A PETITION FOR WRIT OF CERTIORARI

In the interest of judicial efficiency, Applicant respectfully requests that this Court consider this Application as Applicant's Petition for Writ of Certiorari and grant both remedies. Applicant has sought intervention from this Court previously and endured five years of the treatment articulated in this Application. Accordingly, Applicant is eager to conclude this matter as the underlying case has been delayed for over five years due to no fault of Applicant or Dr. Cordova. Additionally, expedient resolution of this matter is requested as Applicant has suffered professional reputational harm and spent inordinate amounts of time on this case to the detriment of her livelihood.

CONCLUSION

A stay is respectfully requested to ensure that additional punitive sanctions and irreparable harm are not imposed upon Applicant for seeking redress from this Court for legitimate grievances

[223] ROA.23-30335.6563, ll. 5-24.
[224] *Thomas v. Cap. Sec. Servs., Inc.*, 836 F.2d 866, 881 (5th Cir. 1988).

that impact significant public interests. This case presents substantial issues that extend beyond the affected attorney and implicate the integrity of our system of justice. Federal courts enjoy the inherent power to "manage their own affairs so as to achieve the orderly and expeditious disposition of cases."[225] This power includes the ability to discipline attorneys, punish for contempt, control admission to its bar, and vacate judgments.[226] The integrity of our judicial system lies in its intolerance of those who are unfaithful to the oath administered to officers of the court, unfaithful to the constitution, and unfaithful to the codes of conduct which govern ethical behavior. The failure of other attorneys, judges, and officers of the court to investigate, correct, or report known misconduct affects the entire system and its inherent self-policing function. Unfortunately, Applicant knows from personal experience that to honor our oath to report misconduct is to face a real possibility of suspension or disbarment. Even with hard evidence of corruption, attorneys need the assistance and protection of the courts to ensure that dishonesty does not silence or punish integrity.

Applicant has overcome five years of Respondents' procedural double binds, lack of discovery, sanctions imposed without supporting evidence or law, and false allegations of unethical conduct and legal malpractice. However, it is the court's monetary rewards to the Respondents to be paid by sanctioning and damaging Applicant's professional reputation that will leave an indelible impact. It is no surprise that the vast majority of attorneys cannot and will not risk the severe punishments meted out for exposing misconduct and/or corruption. Applicant respectfully requests that this Court use this case to clarify a lawyer's duties and provide incentive for other lawyers to have the courage to honor their fundamental duty to their clients and the goals of our system—

[225] *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).
[226] *Id*. at 43–44, 111 S.Ct. 2123.

honor and truth. This is not merely an aspirational goal; it is essential to ensuring judicial independence.

RESPECTFULLY SUBMITTED BY:

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CERTIFICATE OF SERVICE

NO: _____

J. Cory Cordova

Christine M. Mire, attorney, Petitioner/Applicant

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 100 Canterbury Road, Lafayette, Louisiana 70503.

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.

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ANGELA VINCENT

April 19, 2024