No. _____

In the Supreme Court of the United States

ABRAM J. HARRIS,

Petitioner,

v.

U.S. DEPARTMENT OF TRANSPORTATION FMCSA AND THE UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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March 24, 2025
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QUESTIONS PRESENTED

1. Whether an action may be removed to the district court after it has been dismissed in the state court, here the District of Columbia Superior Court, and a notice of appeal filed.

2. Whether the removal statute invests courts with the discretion to overlook or excuse a failure to meet that statute's requirements to file a petition for removal within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

LIST OF PROCEEDINGS

U.S. Court of Appeals, District of Columbia Circuit

No. 23-5091

Abram J. Harris, *Appellant*, v.
U.S. Department of Transportation FMSCA and
United States of America, *Appellees*.

Opinion: December 6, 2024

Rehearing Denial: January 2, 2025

U.S. District Court, District of Columbia

No. 1:22-cv-2383

Abram J. Harris, *Plaintiff*, v.
Department of Transportation, Et Al., *Defendants*.

Memorandum Opinion: March 13, 2023

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals is officially reported at *Harris v. U.S. Dep't of Transportation FMCSA*, 122 F.4th 418 (D.C. Cir. 2024) and is reproduced in the Appendix ("App.") at 1a. The opinion of the United States District Court for the District of Columbia is unofficially reported at *Harris v. Dep't of Transportation*, No. 1:22-CV-2383 (TNM), 2023 WL 2477968, at *1 (D.D.C. Mar. 13, 2023), reconsideration denied, No. 1:22-CV-2383 (TNM), 2023 WL 6461006 (D.D.C. Apr. 27, 2023) and is reproduced at App.20a.

JURISDICTION

The Court of Appeals issued its decision on December 6, 2024. App.1a. A timely filed petition for rehearing en banc was denied on January 2, 2025. App.33a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

RELEVANT STATUTES

28 U.S.C. § 1442
Federal officers or agencies sued or prosecuted

(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity.

. . .

28 U.S.C. § 1446
Procedure for removal of civil actions

(a) Generally. A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) Requirements; generally.

(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service

> or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

STATEMENT OF THE CASE

Petitioner Harris operates a commercial motor carrier enterprise and filed a pro se lawsuit against the Department of Transportation in the D.C. Superior Court. May 3, 2022 detailing allegations of fraud and abuse of procedure. On July 22, more than two months later, the Superior Court dismissed the lawsuit *sua sponte* for failing to articulate a claim upon which relief can be granted, noting that DOT had not yet been served. A. 26-28. Petitioner filed an appeal with the D.C. Court of Appeals three days later. On August 11, the Department of Transportation submitted a notice of removal to both the district court and the D.C. Superior Court. The DOT delayed over a month before submitting a notice of removal to the D.C. Court of Appeals on September 15.

Petitioner completed service on May 16, substantiating this claim with many affidavits. The initial affidavit indicates that Petitioner communicated via telephone with a staff member at the D.C. Attorney General's office on June 21. A. 33. The second affidavit cites an email correspondence included with Petitioner's

June 2 application for default judgment and claims that the correspondence represented DOT's "acknowledgment" of the litigation. A. 37. The email correspondence indicates that on May 24, an employee from DOT's Customer Service & Vetting Division informed Harris that she had "submitted [his] information to the relevant parties" for their "response." A. 58. In his memorandum supporting his application for default judgment, Petitioner asserted that he served the D.C. Mayor and the Department of Transportation via certified mail on May 16. A. 55.

The District of Columbia Circuit concluded that the removal was proper, even if untimely, in spite of the fact that the District of Columbia Superior Court had dismissed the case and an appeal was taken to the District of Columbia Court of Appeals.

REASONS FOR GRANTING THE PETITION

THIS PETITION PRESENTS SUBSTANTIAL QUESTIONS CONCERNING REMOVAL JURISDICTION THAT IS THE SUBJECT OF CONFLICTING DECISIONS

I. An Action May Not Be Removed Following a Final Decision in the State Court

The applicable rule concerning removal is well-stated by Professor Moore: "The better rule is that removal to an appellate court is improper unless the removal statute otherwise provides. This approach comports with the general rule that the removal statutes be strictly construed." 16 MOORE'S FEDERAL PRACTICE - CIVIL § 107.25 (2d ed. 2024). Indeed, it

would seem that the full faith and credit clause and principles of federalism and comity bar a federal court from "snatch[ing] a case out of a state appellate court." *Federal Savings & Loan Ins. Corp. v. Templeton*, 700 F.Supp. 456, 458 (S.D. Ind.1988).

"Cases addressing the removal of state-court appeals are few in number, and generally pertain to specific removal statutes involving specific parties and subject areas." *In re Stahl*, 526 F. App'x 179, 181, n. 6 (3d Cir. 2013). *See, e.g., In re 5300 Mem'l Investors, Ltd.*, 973 F.2d 1160, 1161-62 (5th Cir. 1992) (approving of the removal of appeal by the Resolution Trust Corporation). By contrast, it is "not clear whether the general removal statutes permit appellate removal." *In re Meyerland Co.*, 960 F.2d 512, 515 (5th Cir. 1992) (en banc)[1]; *see also FDIC v. Keating*, 12 F.3d 314, 316 (1st Cir. 1993) (observing that "post-judgment removal may not be the statutory norm").

As the Ninth Circuit has observed, "The [removal] statute[s] . . . imply that the case must still be pending in the state trial court, and not the appellate

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[1] *Meyerland* is limited to the specific statute authorizing removal by the FDIC. It was decided by a divided court with the dissenters noting that the majority opinion conflicted with the constitutional limitation on review of state court judgments by any other court than this Court. Prior to *Meyerland Co.*, there had been some disagreement on this point among the district courts of the Fifth Circuit. Compare *Resolution Trust Corp. v. Key*, 733 F.Supp. 1086, 1088 n. 2 (N.D.Tex.1990) (recognizing the right of the FDIC to remove a state court appeal) with *Federal Deposit Insurance Corp. v. Sellards*, 731 F.Supp. 1300, 1301 (N.D. Tex.1990) ("[R]emoval of a state court appeal to federal court runs contrary to . . . the nature of our federalist system.").

court, at the time of removal."[2] This conflict in authority has been recently recognized. *See* Zachary D. Clopton, *Power and Politics in Original Jurisdiction*, 91 U. CHI. L. REV. 83, 163 n. 302 (2024).

The District of Columbia Circuit declined to follow Moore's analysis as well as the analysis of other Circuits. If it had, it would have held that removal was improper.

Whether a particular dismissal of a state civil action constitutes a final resolution of the case depends on state law. *See Yassan v. J.P. Morgan Chase & Co.*, 708 F.3d 963, 969-71 (7th Cir. 2013) (finding removal to federal court to be proper when the state court judge dismissed the action for failure to prosecute the day before removal to federal court because under Illinois law dismissals for want of prosecution were "not a final and appealable order" and state court judges retained jurisdiction to vacate such dismissals for 30 days). *See also Carnero v. Cargill Meat Sols. Corp.*, 2022 WL 1063127, at *1 (E.D. Cal. Apr. 8, 2022).

Under District of Columbia law, a judgment or order is final when it "terminates the action in the Superior Court." *Frost v. Peoples Drug Store, Inc.*, 327 A.2d 810, 811 (D.C. 1974), overruled on other grounds by *Rolinski v. Lewis*, 828 A.2d 739, 742 (D.C. 2003); *see, e.g., Ford v. ChartOne, Inc.*, 834 A.2d 875, 878 (D.C. 2003). That is the case here.

Once the case was dismissed in the Superior Court there was nothing pending in that court to remove.

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[2] "The term 'State court' includes the Superior Court of the District of Columbia, a court of a United States territory or insular possession, and a tribal court." 28 U.S.C. § 1442(d)(6).

As a matter of logic and common sense, the district court had nothing to dismiss.

Notice of appeal to the District of Columbia Court of Appeals was filed on July 25, 2022. A23. This deprived the Superior Court of jurisdiction. *See Lacek v. Washington Hosp. Ctr. Corp.*, 978 A.2d 1194, 1197 n.3 (D.C. 2009) (citing *Smith v. Pollin*, 194 F.2d 349, 350, (D.C.Cir.1952)[3]). On August 11, 2022, filed a notice of removal to the district court. A7. This was too late as the district court had no jurisdiction to review the judgment of the Superior Court.

II. There is a Split in Authority As to Whether the Removal Statute Invests Courts with the Discretion to Overlook or Excuse a Failure to Meet That Statute's Requirements

In *Nessel v. Enbridge Energy*, 104 F.4th 958 (6th Cir. 2024), cert pending No. 24-783, the Sixth Circuit joined the Second Circuit in holding that the 30 day limit for filing a petition for removal is immutable. *Taylor v. Medtronic, Inc.*, 15 F.4th 148 (2d Cir. 2021). The Sixth Circuit recognized, its ruling is inconsistent with the holding in *Loftin v. Rush*, 767 F.2d 800 (11th Cir. 1985). In *Loftin*, the Eleventh Circuit refused to remand a case that had been removed "far beyond the 30-day time limit established by 28 U.S.C. § 1446(b)." *Loftin*, 767 F.2d at 805. The Fifth Circuit agrees with the Eleventh Circuit that the district court can excuse

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[3] According to the District of Columbia Court of Appeals, decisions of the United States Court of Appeals rendered prior to February 1, 1971, constitute the case law of the District of Columbia. *M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971).

the 30-day time requirement in certain circumstances. *See Gillis v. Louisiana*, 294 F.3d 755 (5th Cir. 2002).

Even before the Sixth Circuit issued its opinion in this case, the leading commentators on federal practice and procedure—Wright & Miller—recognized the disagreement in the federal courts on this issue. 14C Wright & Miller, *Federal Practice and Procedure* § 3731 & nn.31-32 (4th ed.) ("Some circuits have adopted a doctrine pursuant to which in 'exceptional circumstances' the court may permit removal even when defendants fail to comply fully with Section 1446(b) within the 30-day removal period.").

According to the docket, this Court has ordered that a response be filed to the petition in *Nessel* by March 31, 2025. Amicus in that case has concluded that the issue can be decided either way and needs a single national rule. This case deserves the same attention.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 24, 2025