


In the  
Supreme Court of the United States



IN RE J. CORY CORDOVA,

*Petitioner.*

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

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**SUPPLEMENTAL BRIEF IN SUPPORT PETITION  
FOR AN EXTRAORDINARY WRIT OF MANDAMUS**

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## SUPPLEMENTAL BRIEF FOR THE PETITIONER

After Petitioner’s request for an extraordinary writ of mandamus was served upon the Respondents and docketed, Petitioner experienced an anomaly to the established rules of order. Although the Defendants/ Respondents do not oppose Petitioner’s request for mandamus relief, the Fifth Circuit *sua sponte* withdrew its November 8, 2021 unpublished per curiam opinion and reissued a new unpublished per curiam panel opinion five (5) months after its original opinion that is identical in substance. (Supp.App.1a) The Fifth Circuit’s April 13, 2022 identical unpublished opinion is accompanied by a cover letter—a two-page memorandum to counsel that informs Petitioner that a judgment had been entered, suggests that even the new judgment could be subject to future correction/withdrawal, and indicates a rehearing could again be requested before the Fifth Circuit but cautions counsel to review the standard for sanctions. (Supp.App.8a). Finally, the memorandum assesses the Defendants/ Appellees’ costs of appeal to Petitioner in full. (Supp. App.10a.). That same day, the Fifth Circuit also issued an order denying Petitioner’s January 13, 2022, Post Decision Motion to Amend Judgment without reasons. (Supp.App.6a)

Petitioner does not present a novel or complicated issue to this Court. Petitioner is an ordinary litigant seeking an extraordinary remedy for recognition of the rights he is constitutionally entitled—due process and a jurisdictional analysis before dismissal of his case on the merits. Petitioner’s breach of contract case

which implicated only state law has culminated into protracted federal litigation and a plea to the highest court in the land to restore order to the disorder Petitioner has experienced in the federal court system for the last three (3) years. The Defendants/ Respondents' failure to file an opposition identifying a single misstatement of law or fact surrounding their improper removal of this case coupled with the Fifth Circuit's refusal to examine its jurisdiction and apply controlling state law strengthens rather than weakens Petitioner's request to remand and not dismiss his state court action.



## REASONS FOR GRANTING THE PETITION

The traditional use of the writ of mandamus in aid of appellate jurisdiction both at common law and in the federal courts has been to confine the court against which mandamus is sought to a lawful exercise of its prescribed jurisdiction. *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943). Although courts have not confined themselves to an arbitrary and technical definition of jurisdiction, only exceptional circumstances amounting to a judicial usurpation of power or a clear abuse of discretion will justify the invocation of this extraordinary remedy. *Cheney v. United States District Court for the District of Columbia*, 542 U.S. 367 (2004) citing *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383 (1953). As the writ is one of the most potent weapons in the judicial arsenal, three conditions must be satisfied before it may issue. *Kerr v. United States Dist. Court for Northern Dist. of*

*Cal.*, 426 U.S. 394, 403 (1976). All three conditions are met in this case and mandamus relief is warranted.

**I. THERE IS NO OTHER ADEQUATE MEANS TO ATTAIN THE RELIEF PETITIONER DESIRES.**

Petitioner has no adequate means to obtain remand of his case back to the state court from which it was improperly removed. This Court has declared that because an order remanding a removed action does not represent a final judgment reviewable by appeal, the remedy in such a case is by mandamus to compel action and not by writ of error to review what has been done. There is no final appealable order allowing this Court to review whether the district court properly established subject matter jurisdiction. The Fifth Circuit acknowledged that Petitioner extensively briefed the objection of lack of subject matter jurisdiction but held he did not timely appeal the final “merits judgment” that dismissed all of his claims against the LSU and Lafayette General Defendants. However, the district court’s March 24, 2021 order was an order granting Petitioner’s Motion and Amended Motion to Remand based on lack of subject matter jurisdiction.

Since at least 1949, federal appellate courts have generally lacked the power to review a district court order remanding a case to state court. This Court has recently held that an order encompasses all issues contained in it. *B.P. P.L.C., et al. v. Mayor and City Council of Baltimore*, 952 F.3d 452 (2021). Therefore, the order granting the motion to remand shielded the issue of subject matter jurisdiction and the merits from appellate review. Mandamus is the only adequate means to ensure that Petitioner’s state court claims are remanded rather than dismissed.

## II. THE ISSUANCE OF THE WRIT IS CLEAR AND INDISPUTABLE.

Petitioner raised the issue of subject matter jurisdiction and the misrepresentations by the Defendants/Respondents regarding Petitioner's employer in the district court and the Fifth Circuit. This issue has not been acknowledged or reviewed despite the Louisiana Supreme Court's January 7, 2022 decisions in the consolidated matters of *Hayes v. University Health Shreveport*, 21-1601, \_\_\_ So.3d \_\_\_ (La. 1/7/22), consolidated with *Nelson v. Ocshner Lafayette General*, 21-1453 \_\_\_ So.3d \_\_\_ (La. 1/7/22). In that case, the Louisiana Supreme Court judicially determined that Lafayette General/UHC is a private actor under Louisiana state law implicating the jurisdiction of this Court. In ruling for Lafayette General/UHC, 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. The Louisiana state court decision should be afforded full faith and credit by this Court as it raises an identical issue and involves the same Defendant represented by the same attorneys.

Ironically on the same day that the Louisiana Supreme Court judicially determined the true employer for the UHC residents (like Petitioner), the Fifth Circuit issued a ruling applicable to its jurisdictional analysis in this case. In *Dallas County, et. al. v. Marian Brown, et al.*, No. 18-11368 (5th Cir. 1/7/22), an en banc panel of the Fifth Circuit stated that "[d]eciding



if a case should be allowed to proceed in federal court at all is an issue that should not be postponed indefinitely.” The Fifth Circuit also acknowledged the fundamental principle that a court has a continuing obligation to assure itself of its own jurisdiction *sua sponte* if necessary. More importantly, the Fifth Circuit acknowledged its duty to examine state law in the context of 1983 actions but refused to do so in this case. It is clear and indisputable that Petitioner’s case should be remanded back to state court in light of the Louisiana Supreme Court’s ruling and the federal court’s lack of subject matter jurisdiction.

### **III. THE WRIT OF MANDAMUS IS APPROPRIATE UNDER THE CIRCUMSTANCES.**

This Court unequivocally possesses the legal power to determine that the lower courts lacked jurisdiction in this case. Moreover, this Court has the power to address the anomaly of defendants who both invoke and then deny a court’s federal jurisdiction in the same case in an effort to have a plaintiff’s claims dismissed. The law governing removal recognizes the judicial need to avoid inconsistency, anomaly, and unfairness, and not upon a defendant’s preference or desire which might, after all, favor selective use of the law to achieve litigation advantages. This case is an example of the worst possible result to a plaintiff—dismissal of his case without a single opportunity for his voice to be heard by any court.



## CONCLUSION

Petitioner respectfully requests that this Court grant mandamus relief, give full faith and credit to the Louisiana Supreme Court decisions, vacate the district court and Fifth Circuit's decisions, and remand this matter in its entirety to state court pursuant to 28 U.S.C. § 1447. Petitioner also reserves his right to request attorney's fees and costs pursuant to 28 U.S.C. § 1447(c) and Rule 11 should this Court determine that this mandamus supports remand for lack of subject matter jurisdiction.

Respectfully submitted,

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APRIL 18, 2022

**SUPPLEMENTAL BRIEF  
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**OPINION OF THE UNITED STATES COURT  
OF APPEALS FOR THE FIFTH CIRCUIT  
(APRIL 13, 2022)**

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UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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J CORY CORDOVA,

*Plaintiff-Appellant,*

v.

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

*Defendants-Appellees.*

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No. No. 21-30239

Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 6:19-CV-1027

Before: CLEMENT, HO, and OLDHAM,  
Circuit Judges.

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PER CURIAM:\*

It is ORDERED that our prior panel opinion, *Cordova v. La. State Univ. Agri. & Mech. College Bd. of Supervisors*, No. 21-30239, 2021 WL 5183510 (5th Cir. Nov. 8, 2021), is WITHDRAWN and the following opinion is SUBSTITUTED therefor.

[\* \* \*]

Plaintiff appeals both the district court's March 24, 2021 final order dismissing all claims against the LSU Defendants and Lafayette General Defendants and its April 14, 2021 final order granting in part the LSU Defendants' motion for attorney's fees and costs.

Federal Rule of Appellate Procedure 4(a)(1)(A) provides that a notice of appeal must be filed in the district court within 30 days after entry of the judgment or order appealed from. Rule 4(a)(4)(A)(iii), however, provides that in the event a party timely files a motion for attorney's fees under Federal Rule of Civil Procedure 54, and if the district court extends the time to appeal under Federal Rule of Civil Procedure 58, the 30-day clock does not begin to tick until the district court's entry of the order disposing of the motion for attorney's fees.

"A timely filed notice of appeal is an absolute prerequisite to this court's jurisdiction." *Moody Nat. Bank of Galveston v. GE Life & Annuity Assur. Co.*, 383 F.3d 249, 250 (5th Cir. 2004) (citing *Browder v. Dir., Dep't of Corrs.*, 434 U.S. 257, 264 (1978)). "[P]ost judgment

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\* Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

motions addressing attorney's fees can only extend the time for appeal if (1) the motion is filed before the delay for appeal expires and (2) the court orders that the motion be considered as a Rule 59 motion." *Id.*; see also *Kleinman v. City of Austin*, 749 F. App'x 294, 295 (5th Cir. 2019) (unpub.) (quoting *Moody* for the proposition that "[m]otions addressing costs and attorney's fees . . . are considered collateral to the judgment, and *do not toll the time period for filing an appeal.*").

Though Plaintiff filed a motion for attorney's fees and costs, the order respecting which was not issued until April 14, 2021, there is no order from the district court extending the time for Plaintiff to appeal its March 24, 2021 order dismissing Plaintiff's claims on the merits.<sup>1</sup> Plaintiff's deadline to appeal *that* order was April 23, 2021. Because he did not file his notice of appeal with respect to the district court's March 24, 2021 merits order until April 27, 2021, his appeal was untimely. As such, the court lacks jurisdiction to review Plaintiff's appeal of the district court's March 24, 2021 order dismissing his claims against the LSU Defendants and Lafayette General Defendants.

His appeal of the district court's April 14, 2021 order granting the LSU Defendants' motion to tax costs, though timely filed, fares no better. Plaintiff dedicates his entire brief to arguing that the district court lacked subject matter jurisdiction in the first instance. But he does not even attempt to press, let alone substantiate, his argument that the district

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<sup>1</sup> The district court denied the LSU Defendants' request for attorney's fees, but it granted their request for costs in the amount of \$1,068.80.

court erred in taxing costs against him. His failure to do so is fatal to his appeal. *Davis v. Maggio*, 706 F.2d 568, 571 (5th Cir. 1983) (“Claims not pressed on appeal are deemed abandoned.”).

Plaintiff also argues that new evidence discovered on appeal reveals a conflict of interest that deprived him of due process in the proceedings in the district court and thus justifies relief under Rule 60(b). He asserts that, because the conflict of interest was brought to light during the pendency of this appeal, he had no opportunity to request Rule 60(b) relief from the district court. Thus, Plaintiff requests that this court grant relief under Rule 60(b) and vacate the underlying “judgment [of the district court] dismissing his case on the merits.” This court’s jurisdiction is limited to appeals from the “final decisions of the district courts of the United States” and certain interlocutory orders and decrees. 28 U.S.C. § 1291. Plaintiff does not dispute that he did not file this Rule 60(b) Motion with the district court. Rule 60(b) does not equip this court with jurisdiction. *See Cooter & Gell P. Hartmarx Corp.*, 496 U.S. 384, 406 (1990) (holding that “Rule 11 does not apply to appellate proceedings,” because “Federal Rule of Civil Procedure 1 . . . indicates that the Rules only ‘govern the procedure in the United States district courts’”); *Sheldon P. Khanal*, 502 F. App’x 765, 773 (10th Cir. 2012) (rejecting request on appeal for Rule 60(b)(2) relief because “the Federal Rules of Civil Procedure apply to the district courts, not to the courts of appeals”). Plaintiff was required to either bring this Motion before the district court under Rule 62.1 or raise this issue in his briefing on appeal. He did neither.

Supp.App.5a

We DISMISS Plaintiff's appeal of the judgment and AFFIRM the costs award. We DENY Plaintiff's Motion for Relief from Judgment Pursuant to Rule 60(b).



**ORDER OF THE UNITED STATES COURT  
OF APPEALS FOR THE FIFTH CIRCUIT  
DENYING APPELLANT'S MOTION  
TO AMEND JUDGMENT  
(APRIL 13, 2022)**

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UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

J CORY CORDOVA,

*Plaintiff-Appellant,*

v.

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

*Defendants-Appellees.*

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No. No. 21-30239

Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 6:19-CV-1027

Before: CLEMENT, HO, and OLDHAM, Circuit Judges.

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PER CURIAM:

IT IS ORDERED that Appellant's motion to amend judgment is DENIED.

**STATEMENT OF THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH TO  
THE PARTIES ON PETITIONS FOR  
REHEARING OR REHEARING EN BANC  
(APRIL 13, 2022)**

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*UNITED STATES COURT OF APPEALS*  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

Lyle W. Cayce, Clerk

April 13, 2022

**MEMORANDUM TO COUNSEL OR  
PARTIES LISTED BELOW**

Regarding: Fifth Circuit Statement on Petitions  
for Rehearing or Rehearing En Banc

No. 21-30239 Cordova v. LA State Univ Agri  
USDC No. 6:19-CV-1027

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. 5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order. Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which

## Supp.App.9a

may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en bane) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, and advise them of the time limits for filing for rehearing and certiorari. Additionally, you. **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Supp.App.10a

The judgment entered provides that plaintiff-appellant pay to defendants-appellees the costs on appeal. A bill of cost form is available on the court's website [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov).

Sincerely,

LYLE W. CAYCE, Clerk

By: /s/ Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Ms. Elizabeth Bailly Bloch

Mr. James Huey Gibson

Ms. Stacy N. Kennedy

Ms. Christine M. Mire

Mrs. Jennie Porche Pellegrin