No. 21-836

In The Supreme Court of the United States

IN RE SARA GONZÁLEZ FLAVELL,
Petitioner,

v.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Federal courts are ones of limited jurisdiction. In February 2020 Petitioner brought complaint in D.C. Superior Court against IBRD for D.C. law violations. IBRD removed the case to federal court, next moving to dismiss for lack of jurisdiction. Petitioner moved to remand. On March 25, 2021 the district court, stating it acted without removal jurisdiction, denied both motions, retaining Petitioner's action without filings or remedy, effectively disposing of the state law case. It next refused to certify an interlocutory appeal.

Petitioner approached the court of appeals for extraordinary writ, noting the district court's order is void for lack of jurisdiction, abuse of lawful authority and abuse of discretion, and violation of her Constitutional right to procedural due process. The court of appeals denied the petition stating the district court may determine removal jurisdiction based on later filings on unconnected grounds.

Certiorari is sought because the lower two courts' failure to follow the law here undermines the bedrock core principle of the judicial system, jurisdictional limits, frustrating Congress's determination and their own purpose, creating new legal rights by exercising judicial authority they lack. These courts' also ignore existing federal caselaw and their own prior consistent decisions.

The questions presented are:

1. Whether a writ of certiorari is appropriate because, contrary to the denial of mandamus and

prohibition by the court of appeals and its holding, the district court's order resulted from failure to carry out its federal judicial duty to establish, and stay within, its limited jurisdictional authority, and is clear and indisputable legal error, requiring issuance of the requested writs, *or* determination that the order was void, and that the federal courts lack jurisdiction over the Petitioner's state law action.

2. Whether writ of certiorari is required because the court of appeals erred in failing to issue writ of mandamus or prohibition to correct, and restrain, the district court's abuse of its powers, and abuse of its discretion, in violation of procedural due process and the Petitioner's Constitutional rights at law.

3. Whether certiorari is appropriate to correct the failure to consider mandamus requested for the district court's clear abuse of discretion in refusing to certify its order for interlocutory appeal.

PARTIES TO THE PROCEEDINGS

Petitioner Sara González Flavell, was Plaintiff in the D.C. Superior Court, Plaintiff in the district court and Petitioner in the court of appeals.

Respondent in this Court is the United States Court of Appeals for the District of Columbia Circuit. Respondent in the U.S. Court of Appeals was the United States District Court for the District of Columbia. Defendant in the District Court and, until removal, in the D.C. Superior Court, is the International Bank for Reconstruction and Development (IBRD).

RELATED PROCEEDINGS

There are no related proceedings.

The district court in its opinion, App.D, referenced as *"parallel"* another later case brought by Petitioner in D.C. Superior Court in December 2020 against different defendants for different causes of action and different injuries sustained, relating to a different time-period and based on entirely different facts.

That case is :

Sara González Flavell v. Kim et al 1 - 21 -cv - 00115 CKK also removed from D.C. Superior Court to District Court by those Defendants[1].

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[1] Petitioner has two further unrelated proceedings currently also removed and stymied in District Court *Sara González Flavell v. Rebecca Collier And Reed Group* 1 : 20 -cv- 00959 – DLF and *Sara González Flavell v. Tracy Marshall And Reed Group* 1 : 21 -cv- 01406 – DLF.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Sara González Flavell, respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals is unreported. App. A. The opinion of the district court denying a motion to certify an interlocutory appeal is set forth in App. B. The order and opinion of the district court denying a motion to remand and a motion to dismiss are set forth in Appendix C and D.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) or, in the alternative, 28 U.S.C. §1651 and Supreme Court Rule 20.3. This appeal is timely in accordance with this Court's Order of July 19, 2021 allowing 150 days to file for lower court judgements issued before July 19, 2021. The court of appeals entered judgment July 9, 2021. App. 1a.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Sect. 2 of the Constitution provides:

.....The judicial Power [of the United States] shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...

- 28 U.S.C. §1441 provides:

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

- 28 U.S. Code § 1446 – provides:

(a) 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.

The Code of the District of Columbia § 11–921 provides:

(a) the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia...

Federal Rule of Civil Procedure 1 provides:

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

28 U.S.C. 1292(b) provides:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

STATEMENT OF THE CASE

Petitioner's is a purely state law matter, an action for return of monies misappropriated in contravention of D.C. law, and debt recovery. IBRD[1] removed Petitioner's action to federal court due to its IOIA international organization status, claiming federal jurisdiction under the FSIA. There it is retained by federal district court by whimsical

[1] An international organization engaging in commercial activities in the District of Columbia that exalts the necessity of good governance and separation-of-powers, and exhorts sovereign nations to respect the rule of law, eliminate abuse and corruption, and maintain independent judicial systems and judiciary, free from executive interference. Standards it believes inapplicable to its own dealings and conduct.

judicial wrongfulness, the court issuing substantive dispositive orders, denying remand, without yet establishing any jurisdiction. App. 25a-37a.

In the face of the district court's unlawful breach of jurisdictional boundaries the Petitioner applied to the court of appeals for extraordinary writs. The appellate court denied mandamus and prohibition despite the order brought before it being either abhorrent abuse of discretion and unlawful exercise, or void due to lack of jurisdiction, each of which exceptional circumstance was sufficiently clear to require writ issuance.

Each of the lower court's opinions warrants this Court's grant of certiorari as each breaks with judicial precedent, creates dangerous inroads into Congressionally authorized jurisdictional boundaries, and exhibits manifest errors of law of grave proportion, limiting the rights of citizens and States, ignoring due process and comity. Only this Court has the authority to supply remedy.

Procedural History

On February 6, 2020, Petitioner filed in D.C. superior court against IBRD, to have her money, purloined on December 30, 2017 by "deductions", returned, and a debt, owed to her since December 1, 2017, paid.[2] Petitioner asserts she has suffered injuries to a proprietary interest in her own monies. App. E.

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[2] The court opinions adopt IBRD's misstatements of alleged facts instead of the veracity of Petitioner's Complaint's allegations.

On March 3, 2020, IBRD removed Petitioner's action pursuant to U.S.C. 1441(a) claiming immunity from service of process and federal original jurisdiction, and on March 10, 2020 moved to dismiss under F.R.C.P. 12(b)(1), lack of subject-matter jurisdiction. On March 17, 2020 Petitioner moved to remand. All briefing was complete on April 17, 2020.

On March 10, 2020 Petitioner was Court-ordered to file an amended complaint, filed by order June 8, 2020, the court so denying IBRD's motion no longer operative.

On June 26, 2020 IBRD again moved to dismiss for lack of jurisdiction. All briefing was complete September 14, 2020.

On March 25, 2021 district court issued its order and opinion, Apps. C and D, denying Petitioner's motion to remand and IBRD's motion to dismiss. It had not overcome the obvious jurisdictional threshold hurdles having failed to determine it had removal, or any, jurisdiction before issuing its paradigmatic order.

On April 15, 2021, Petitioner moved for reconsideration. Denied without opposition. On 23 April, 2021 Petitioner moved for §1292(b) certification. On April 29, 2021 the court ordered opposition filing, extending deadlines, couriering to the Petitioner.

On May 3, 2021 Petitioner filed second motion to remand, expressly conditional on need to do so under court order. IBRD filed opposing certification, May 7, 2021.

On June 3, 2021 Petitioner petitioned the court of appeals for a writ of mandamus to direct the

district court to determine its jurisdiction or to certify its March 25 order for interlocutory appeal under 28 U.S.C. 1292(b), and/or writ of prohibition.

On June 29, 2021 the district court refused certification. App. B.

On July 9, 2021, the court of appeals denied Petitioner's petition. App. A. stating the district court may determine removal jurisdiction based on Petitioner's later May 3, 2021 filing. The court of appeals fell short of the clear and indisputable standard to correct matters of such magnitude.

REASONS FOR GRANTING THE PETITION

The constitution holds that states have jurisdiction over state law cases. "Federal courts are courts of limited jurisdiction," possessing "only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co.,* 511 U.S. 375, 114 S.Ct. 1673 (1994). Congress has granted federal courts jurisdiction over actions "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. A defendant is entitled to remove "any civil action brought in a State court of which the district courts ... have original jurisdiction." 28 U.S.C. § 1441.

In the case at bar, the district court adjudicated without establishing § 1441 removal jurisdiction yet denying dispositive motions. App. 36a. stating :

> ... the Court will deny Plaintiffs motion to remand ... **because of the uncertainty regarding the Court's**

> **removal jurisdiction**, the Court will deny IBRD's pending motion to dismiss.

1. *Certiorari is appropriate to correct the court of appeals denial of writs, necessary to correct the district court's unlawful act outside jurisdictional authority, and for clear and indisputable legal errors, or for failure to declare the orders void and that federal courts lack jurisdiction*

Petitioner requested the court of appeals to issue *all writs necessary or appropriate.* And to direct the lower court to now exercise its duty to determine *sua sponte* its jurisdiction, alternatively to remand her case to D.C. Superior Court so it may move forward, or direct the lower court to certify it's order for §1292(b) appeal. Asking it "to review and determine the order null and void" and prohibit continuation of federal court proceedings.

I. *Mandamus:* Mandamus is for exceptional circumstances. *United States v. McGarr* 461 F.2d 1 (7th Cir. 1972). It requires showing "right to issuance is 'clear and indisputable'; no other adequate means exist to attain relief; and "the writ is appropriate under the circumstances." *Hollingsworth* v. *Perry*, 558 U.S. 183 (2010). These requirements were met and in the circumstances the appellate court abused its discretion in refusing mandamus as it had a duty to restrain the unlawful abuse and to follow all precedent that a court **must** establish removal jurisdiction before denying remand. The district court had no other jurisdiction it could exercise to deny the motions.

On March 25, 2021 the district court ruled on Petitioner's motion to remand explicitly determining the motions *fully briefed* and "**ripe for this Court's review.**" App. 24a. But it refused to perform its non-discretionary duty to determine its jurisdiction *before* denying substantive motions, so retaining the case with no issues before it, still failing to move to the merits.

Here, "exceptional circumstances" amounting to "judicial usurpation of power" as well as "a clear abuse of discretion" justified the invocation of the extraordinary remedy of mandamus. *See Cheney v. United States Dist. Court for D.C.,* 542 U.S. 367, 194 S. Ct. 2576 (2004).

Yet the court of appeals denied writ because the Petitioner

> *has not demonstrated that she has "no other adequate means" to attain the relief she desires.... Petitioner has already filed in district court a motion that will require the district court to determine its own jurisdiction, which provides an adequate means for Petitioner to attain the relief she seeks.* App.1a.

Both courts disregarded the constitutional implications of retaining this litigation in federal court, a matter of first impression for this Court, since this permits a wrongful extension of federal jurisdiction by judicial interpretation that Congress has denied. *American Fire & Casualty Co. v. Finn,* 341 U.S. 6 (1951).

In denying mandamus the court of appeals acted unreasonably for untenable reasons, ignoring

the unlawful order, allowing continuation in federal court stating Petitioner can next "attain the relief she desires" in district court, when in fact the Petitioner has no "speedy legal remedy" open there then or now. A discretionary determination of whether such 'adequate remedy' exists is to be disturbed if "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Dress v. Washington State DOC*, 279 P.3d 875 168 Wn. App. (2012).

The limited jurisdiction of federal courts under the Constitution and statute, "is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction and the burden of establishing the contrary rests upon the party asserting jurisdiction". *Kokkonen* at 377. A court may raise the jurisdictional issue sua sponte *NetworkIP LLC v FCC* 548 F.3d 116 (D.C. Cir. 2008). Indeed it *must*, because it is forbidden from acting without jurisdictional authority. "It is imperative for the Court to ensure that it has subject matter jurisdiction at all times" *Id.*

As this Court stated "Moreover, courts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party". *Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006). Here **both** parties motions challenged the district court's jurisdiction. Yet it stated it would not determine removal jurisdiction and, because of "uncertainty", therefore denied the dispositive filings before it, unable to move to the merits. Effectively putting the case out of court, unlawfully. App. 36a.

Jurisdiction must appear on the record to maintain a suit in federal court. *Sullivan v. Fulton Steamboat Company,* 19 U.S. 6 Wheat. 450 (1821). Here, appositely, the opinion records "uncertainty" of jurisdiction.

In these "exceptional circumstances" Petitioner requested extraordinary writs "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Roche v. Evaporated Milk Assn.,* 319 U.S. at 26, 63 S. Ct. 938. The court of appeals untenable reason for refusal, that the lower court could adjudicate removal jurisdiction on later filings, cannot stand. Lack of jurisdiction cannot be cured retroactively.

The appellate court failed to consider the lower court's lack of jurisdictional authority, or its own, as this Court pronounced for appellate courts "the first and fundamental question is that of jurisdiction, **first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself.**" *Great Southern Fire Proof Hotel Co. v. Jones,* 177 U.S. 449 (1900) at 453. The appellate court had no discretion but to declare the opinion order before it to be void for want of jurisdiction. It follows all subsequent proceedings flowing from the void order in district court are subject to that initial infirmity and equally invalidated, so the court of appeals is incorrect, no valid "relief" for the Petitioner from such proceedings can now ensue. As a result, the Petitioner, remaining in federal court on invalidly ordered filings which do not address statutory removal grounds of the §1446 Not. of

removal and which cannot provide the court with removal jurisdiction, cannot attain relief. Mandamus is appropriate when the petitioners "have no other adequate means to attain the relief [they] desire." *See Cheney (supra).*

As a threshold matter, the district court had no jurisdiction ascertained, nevertheless it pirated this to issue its order. App. C. "The requirement to establish jurisdiction first is 'inflexible and without exception.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 118 S. Ct. 1003 (1998). Here the district court, like the *Kokkonen* lower courts, has no "inherent power" to rely upon. There is no "doctrine of hypothetical jurisdiction,"*(Steel),* which would "offend fundamental principles of separation-of-powers." Yet both lower courts assumed jurisdiction neither possessed, the district court denying motion to remand and motion to dismiss (the latter with no reason given at all in its opinion) App. 36a. As this Court stated in *Steel* "without proper jurisdiction, a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit", to pronounce without jurisdiction is "by very definition, an ultra vires act." Incomprehensibly, the district court ignored a need for jurisdiction, rendering its judgement unlawful abuse as well as void. The appellate court was compelled to act (See *Roche*).

The removal statute defined the court's task and duty, to review strictly and grant remand absent a finding of jurisdiction. Manifestly it failed. It unlawfully exceeded the bounds of its statutory instructions (*see Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296 (1989)). It had an obligation "If federal jurisdiction is doubtful, a

remand is necessary". *Mulcahey v. Columbia Organic Chemicals Co.*, Inc. 29 F.3d 148 (1994). Ignoring all precedent, it determined the opposite. Feigning belief that statutory removal jurisdiction over the action could arise from replicating argument in a *"parallel"* case. Such ruling is tainted by bias.

In such circumstances the court of appeals was required to issue mandamus to compel official action to enforce the district court's nondiscretionary, plainly defined, duty. The lower court had no discretion to shirk its duty before issuing the order it did. App C. "Without jurisdiction the court cannot proceed at all in any cause...when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex parte McCardle,* 7 Wall. 506, 514 (1868), noting "failure to do so causes injustice that cannot be righted on appeal" *Id.* The order had been rendered without jurisdiction. The relief Petitioner requested "could obviously not be preserved for presentation on appeal." *Dellinger v. Mitchell,* 442 F.2d at 790. Nor is there another statutory method of appeal applicable to counter the abuse.

The appellate court failed to determine that, without removal jurisdiction, the lower court's order was judicial "usurpation of power." *De Beers Condol. Mines v. U.S.*, 325 U.S. at 217. (Mandamus issued as the court "ha[d] no judicial power to do what it purport[ed] to do."). Mandamus may be appropriately issued to confine an inferior court to a lawful exercise of prescribed jurisdiction, or for usurpation of judicial power. *Schlagenhauf v. Holder,* 379 U.S. 104 (1964).

The Petitioner asked the appellate court to correct the matter. It ignored its obligation to do so. In *Kokkonen* and *Roche* the lower district courts examined and established jurisdiction, albeit later determined erroneous. But in this Petitioner's case the district court stated categorically it acted **because** no jurisdiction was established, expressing uncertainty. App. 36a. It cannot lawfully consider the arguments of a separate case as applicable to determine removal jurisdiction in this case. The appellate court's reasoning is faulty, Petitioner cannot get relief "she desires" from the lower court continuing, further adjudications will be infected by the invalidity of its unlawful act. It now has no means left to it for establishing removal jurisdiction at all.

Moreover, by its denial the court of appeals allowed a federal court to frustrate its functions, creating lacuna, stymying the action. See *U.S. Alkali Export Ass'n v. United States*, 325 U.S. 196, 204 (1945) (review appropriate to avoid the lower court creating a "frustration of the functions which Congress" intended).

Here the Petitioner's "clear and indisputable right to relief" to eliminate that "threat [to] the separation-of-powers" posed by the court exceeding the boundaries of Congressionally determined federal jurisdiction and to remedy the abuse of power, was established. The court of appeals was required "to confine [an inferior court] to a lawful exercise of its prescribed jurisdiction," *Cheney*, at 381. To remand the case based on manifest absence of jurisdiction. See *In re Roman Catholic Diocese of Albany, New York, Inc.*, 745 F.3d 30, 35-36 (2d Cir.

2014) (issuing mandamus based on district court's failure to grant motion, lacking jurisdiction).

Removal jurisdiction is statutory, and must be clearly intended by Congress. *Franchise Tax Board,* 463 U.S. at 20, 103 S. Ct. at 2852. As explained in *Cogdell, V.Wyeth*, No. 03-12146. (11th Circuit) (2004) it is a "species" of subject matter jurisdiction "but requires more" being narrow, it must arise from following the requirements of the removal statute, which must be strictly construed. Even "parallel" cases would be immaterial.

Here, the district court, to indulge a whim for symmetry, decided it will consider new *Grable* arguments never before it, outside its statutory ability to acquire removal jurisdiction. It's opinion specifies " **IBRD makes no attempt in either it's Not. of removal or its Opp'n Brief to invoke the *Grable* exception**" and notes it cannot sustain jurisdiction on a "theory not advance". App. 35a. *See* also App. 30a, the omission to state a ground in the Not. of removal is "prohibitive". Nevertheless, it decided it may determine jurisdiction later on *Grable* arguments, not in the removal notice. And will do so if Petitioner continues filing. **Petitioner had no other option.** However, "removal jurisdiction" cannot be determined on later filings concerning grounds on which removal was not predicated, retroactively mischaracterized as *"additional"*. App. 14a. It's claims abuse statutory authority, it states, App. 13a:

> this Court has *not* yet determined whether removal was appropriate or if it has jurisdiction to consider the merits of Plaintiff's claims...Rather,...the

> Court concluded that additional briefing -specifically addressing the applicability of *Grable* to this case - would aid its determination of its own jurisdiction.

No statutory removal jurisdiction can arise. As such, statutory review is no longer authorized, No statutory removal jurisdiction ground is left for it to consider, as the opinion establishes, the court having rejected each of IBRD's stated grounds on which it's removal was based App. 25a-28a, stating "**the Court is not persuaded"** by any, in its footnote 3 even stating IBRD's argument in opposition brief is jurisdictionally insufficient. App 27a. Removal jurisdiction cannot stem. And "due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined". *Shamrock Oil & Gas Corporation v. Sheets et al.* 313 U.S. 100 61 S.Ct. 868 (1941).

For this reason the Petitioner asked the court of appeals to require the lower court to determine its jurisdiction sua sponte, which is all it now can do. *See Smith v. Mylan Inc.*, 761 F.3d 1042, 1044 (9th Cir. 2014). She brought jurisdictional abuse to its attention stating the order was void and inconsistent with due process. *See Margoles v. Johns,* 660 F.2d 291 (7th Cir. 1981). The court of appeals was required to examine, and compelled to act, to prevent injustice. "There is no discretion to ignore lack of jurisdiction." *Patton v Diemer* 35 Ohio St. 3d 68 518 N.E. 2d 941.

The appellate court's ruling in these circumstances, that threshold statutory jurisdictional determinations can arise from later filings resulting from the void order, is fundamentally flawed. It relies on *United States v. Fokker Servs.* B.V. 818 F.3d 733 where it granted mandamus writ, *precisely because* the lower court exceeded authority, making a determination not it's to make. The same is true here, yet it denied Petitioner mandamus.

An appellate writ is necessary as Petitioner has no "*adequate* means" of obtaining relief from the usurpation and resulting continuation. See, *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754 (D.C. Cir. 2014) (appeal after final judgment would not provide "adequate" relief). The court of appeals also failed to consider that the court required filings outside its statutory boundaries.

II. *Prohibition:* Petitioner also requested protection by writ of prohibition, necessary to prevent miscarriage of justice by the lower court proceeding without jurisdiction. Prohibition lies precisely to challenge jurisdiction and prevent federal court's continuing acting unlawfully. The determinative question is whether the inferior court is empowered and relief lies for want or excess of jurisdiction. *See Rollins v. Bazile*, 205 Va. 613, 139 S.E.2d 114 (1964); *Grief v. Kegley* 79 SE 1062 (Va. 1913). Prohibition must issue to prevent exercise of jurisdiction by the court where "the judge has no jurisdiction at all, or is exceeding it". Burks Pleading and Practice, 4th Ed., 200, p. 326. (That although jurisdiction of the subject matter may have once existed, if for any cause it has

been lost, the writ may issue)[3]. Statutory removal jurisdiction was lost once the district court determined the Not. of removal grounds all failed, and it would look outside the removal grounds, any consideration of other grounds must be prohibited.

The writ was necessary to keep the lower court "within the limits and bounds of the jurisdiction prescribed to it by law."' M*ayo v. James,* 53 Va. (12 Gratt.) 17, 23 (1855) and prevent further abuse. *See James v. Stokes,* 77 Va. 225 (1883).

This Court has proclaimed that when a federal court is clearly without jurisdiction the writ will ordinarily be granted to one who at the outset objected to the jurisdiction, has preserved their rights by appropriate procedure and has no other remedy. (*Re Chicago, R. I. & Pac. Ry.,* 1921, 255 U.S. 273, 41 S.Ct. 288, 65). This is the Petitioner's position.

The appellate court broke with its own circuit rulings that "writs will issue where the question of jurisdiction is undecided." *In re Halkin*, 598 F.2d 176 (1979) citing *Morrow v. District of Columbia*, 417 F 2d (1969), by denying prohibition writ it condoned judicial abuse.

To secure and maintain the uniformity of judicial decisions it is up to this Court, Petitioner's last resort, to remedy the lower court's abuse of jurisdictional limits which is in conflict with the

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[3] Wright et al , *Federal Practice & Procedure* vol. 15A, §3903 (2d ed., West 1992)

provisions of the U.S. Constitution and this Court's authority. Such conflict warrants the grant of certiorari.

III. *The Court Of Appeals Jurisdiction:* The AWA, 28 U.S.C. §1651(a), confers power to issue writs on federal courts necessary or appropriate "*in aid of* their respective jurisdictions", which it does not enlarge. *Clinton v. Goldsmith*, 526 U.S. 529 119 S. Ct. 1538 (1999), it does not create jurisdiction otherwise lacking, allowing a court to order remedy only where subject-matter jurisdiction already exists. *Carson v. United States Office of Special Counsel*, 534 F.Supp.2d. 103 (D.D.C. 2008) and already acquired on some other independent ground. Here, it is the authority of the removal statute, not the AWA, that controls. *See Pa. BOC v. U.S. Marshalls Serv. 474 US 34 43 106 S.Ct 355 (1985); United States v. Perry,* 360 F.3d. 519 (6th Cir. 2004) ("Orders issued without legal basis, conflicts of interest, and generally mysterious conduct reflect exactly the sort of sloppy adjudication that a thorough district court proceeding, *i.e.,* due process, is meant to avoid").

The lower court had stated it had *not* established jurisdiction, the court of appeals had a duty to consider from where its own jurisdiction might derive. An appellate court "must determine its own jurisdiction and is bound to do so in every instance." *Dickerson v. McClellan*, 37 F.3d 251, 252 (6th Cir.1994). "We have jurisdiction over this appeal if the district court had jurisdiction over this action". *See Weber v. United States*, 209 F.3d 756 (D.C.Cir.2000). However *see McClellan v.*

Carland, 217 U.S. 268, 30 S. Ct. 501, (1910), mandamus may issue in aid of appellate jurisdiction if such *may later* exist, to prevent unauthorized actions of the lower court.

Here the court of appeals, splitting from precedent consensus, despite the Petition before it, failed its duty to substantiate its authority, necessarily considering the jurisdiction of the lower court to do so, before adjudicating, denying the Petition.

Both lower courts failed to grapple with federalism constraints, usurping the role of Congress. The appellate court, if it had jurisdiction, should not have denied writ, so condoning the novel approach of denying remand and Mot. to dismiss with no underpinning jurisdictional determination. In a biased attempt to withhold a wholly state case from state court, allowing IBRD to argue for federal jurisdiction outside its removal.[4] Moreover, as both courts know, it does not lie in the mouth of IBRD to claim federal removal jurisdiction, when the law of the case shows it filed contradictory two motions to dismiss for lack of federal jurisdiction. *Baggs v. Martin*, 179 U.S. 206, 21 S.Ct. 109 (1900).

Certiorari should issue, since whether the court of appeals could proceed in the manner it did, without establishing its own jurisdiction or declaring it lacked any, is an important matter of first impression for this Court. Clearly, its error is of constitutional dimension. Petitioner has no legal

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[4] Effectively joining in gas-lighting the Petitioner instead of protecting her rights.

remedy *other than to this Court*, which alone has the jurisdiction required to resolve this abuse.

2. *This Court should grant certiorari to address the constitutional limitations of the rulings which violate procedural due process, and to correct the lower court's abuse of its powers, and discretion*

FRCP. 1 dictates courts administer the rules "to secure the just, speedy, and inexpensive determination of every action and proceeding." Court rules are binding, "if courts are to require that others follow regular procedures, courts must do so as well." especially "when those rules relate to the integrity of judicial processes." *Hollingsworth v. Perry*, 558 U.S. 183, 192 (2010) at 199 and 196.

Motions governing threshold issues are to be handled swiftly with priority, a lengthy delay "can amount to a denial of the right to have that request meaningfully considered." *In re Google*, No. 15-138, 2015 WL 5294800 (Fed. Cir. 2015). "Impermissible" passage of time is arbitrary denial, requiring mandamus.

This Petitioner *still* awaits any lawful adjudication. Justice delayed is justice denied, without later appeal against such delay. Petitioner requested extraordinary writs to relieve this wrong, proper to correct "usurpation of judicial power" constituted by the judicially-created artificial delay *In re Link_A_Media Devices Corp.*, 662 F.3d 1221 (Fed. Cir. 2011).

Compounding its abuse, the district court stated it would address jurisdiction if Petitioner "*re-*

files", to prevent its order completely dismissing her action[5]. Petitioner has been coerced, through the court's artful withholding of determination of removal jurisdiction, and refusal to remand or move to the merits, to file irregular conditional second motion to remand. Petitioner is denied not simply justice, but access to justice, to a court with jurisdiction over her action, and so due process. See *Thermtron Products, Inc. Hermansdorfer,* 423 U.S. 336 96 S.Ct. 584 (where district court refused to adjudicate mandamus was "proper remedy" to compel).

An important question of first impression is whether an appellate court can refuse to correct such abuse. It could not avoid knowing Petitioner's due process rights had been violated. Its refusal to speak out on jurisdiction, allows the lower court to continue stymying Petitioner's case, compounding wrongfulness. Denying Petitioner's right to have the court provide just speedy inexpensive determination. Putting the Petitioner "effectively out of court", denying due process.

The two lower courts committed further multiple violations of Constitutional 14th amendment due process protections, including Petitioner's procedurally protected right to bring her state law action, and to be meaningfully heard, contradictory to their own jurisprudence and that of this Court.

The matter at hand is fundamental: the right to a fair federal court system that allows state courts

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[5] IBRD's Counsel informed Petitioner this would result from not continuing.

to function as Congress has enacted and the Constitution demands. State law has given Petitioner a right to bring her chose in action in state courts, a property right (which arose on filing complaint under DC. Court rules and FRCP 3) and procedurally protected, *see Marbury v. Madison* 375 U.S. (1 Cranch) 137 (1803). "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever [s]he receives an injury." Yet here federal courts deny Petitioner her right to pursue her D.C. law action. *See Bodie v. Connecticut* 401 U.S. 371 (1971) (14th amendment due process is central to the judicial system's operation).

The two federal courts rulings, failing to make jurisdictional determination, fall foul of the due process clauses. As explained in *Hovey v. Elliot* 167 U.S. 409 (1897) "if the court had power to [adjudicate property rights] by denying the right to be heard...what plainer illustration could there be of taking property without hearing or process of law?" not even courts have "the power to violate [such] fundamental constitutional safeguards", yet this is what these federal courts refusals to proclaim lack of jurisdiction, so releasing Petitioner's state action, are in essence. Ignoring her interest in bringing her claim in a specific jurisdiction violates the principle that "issues cannot be resolved by a doctrine favoring one class of litigants over another." *Schlagenhauf v. Holder (supra).*

Additionally, detaining her case without determining lack of jurisdiction denies Petitioner her constitutional right to a meaningful opportunity to be heard when litigating, another central aspect of

procedural due process. *See Logan v. Zimmerman Brush Co.,* 455 U.S. 422, 437 (1982).

Petitioner's case is detained, without remedy. Her motion would have been granted pursuant to controlling case law, had the court established jurisdiction to consider it. Instead, due to unlawful abuse of power, Petitioner is detained in federal court which will not proceed to merits, and she is forced to litigate frivolous new *Grable* argument outside statutory removal jurisdiction. The appellate court's error in allowing the lower court to continue abusing and exceeding authority, denied Petitioner's due process rights. By failing to issue writs in the face of clear judicial abuse, or alternatively review jurisdictional basis and determine whether none exists for either federal court, the appellate court itself abused its discretion, "discretion has its limits, it is not whim". *Martin v. Franklin Capital* 546 US 132 126 S.Ct. 704 (2005).

The court of appeals, citing *Fokker,* failed to carry out the *Fokker* analysis that where there is a threshold jurisdictional question to review an appellate court must "first consider whether the district court legally erred" *id.* 740, and at 747, when mandamus "is sought from an appellate court to confine a trial court to a lawful exercise of its prescribed authority, the court should issue the writ almost as a matter of course." Had it followed *Fokker* it would have determined all three mandamus requirements met, and in view of the abuse, as in *Fokker*, would have issued writ, if it determined it had jurisdiction to do so.

Additionally, the district court violated due process by establishing the correct standard, yet

capriciously refusing to apply it or follow precedent, noting caselaw that doubt requires remand and IBRD bears the jurisdictional burden, it whimsically denied resolving jurisdictional uncertainty in favor of remand. App. 36a. *See Franchise Tax Bd., supra.* This breaking with strong continuous judicial precedent displays bias. Compounded by its repeated bias in adopting IBRD's factual account, misstating petitioner's allegations App. 2a, 20a. IBRD's wrongful deductions, from only a partial payment, a month late, cannot be mischaracterized as contractual breach of "withholding of employment benefits". In turn this bias denies Petitioner's right to a neutral, detached, decision-maker, another minimum due process protection.

The *Code of Conduct for U.S. Judges* requires judges "perform the duties of [their] office fairly, impartially" and "uphold the integrity and independence of the judiciary". It applies to the judges in both courts, all of whom breached their Code.

Against such clear prejudicial treatment, and abuse of constitutional 14th amendment due process protections there is no final appeal other than to this Court. Confidence in the rule of law, and the willingness of federal judges to administer it impartially, will continue to erode if this Court fails to issue certiorari to remedy these new inroads to Constitutionally-protected rights.

3. *Alternatively, certiorari is appropriate to correct the failure to consider mandamus requested for interlocutory appeal certification*

Petitioner requested the district court certify its March order, under §1292(b) and the 'collateral order doctrine'. And asked the appellate court to direct that certification.

On June 9, 2021 the district court denied certification because "this Court has *not* yet determined whether removal was appropriate or if it has jurisdiction to consider the merits of Plaintiff's claims." App. 13a.

It failed to address that it denied Petitioner's remand motion, IBRD's motion to dismiss (without opinion) and now motion for certification *all without any jurisdiction established.* The opinion relies on *Bronner v. Duggan* 962 F.3d 596,601 (D.C.Cir 2020) where jurisdictional sufficiency (re-questioned later) was determined *prior* to rulings. App. 13a. Petitioner's situation is the opposite, the court denying remand for want of jurisdiction: "this court has *yet to decide* whether her case may proceed in federal court" or be remanded, "this Court has yet to reach any conclusion regarding the very issue about which Plaintiff seeks appellate review" App. 15a. The order was well within 28 U.S.C. 1292(b) certification grounds involving a "controlling question of law". And clearly an "immediate appeal" would "materially advance the ultimate termination of the litigation," resolution would require threshold dismissal by remand to D.C. Superior Court. It is likewise clear there exists "substantial ground[s] for difference of opinion" on the validity of the determination.

The district court incorrectly stated it follows binding precedent that "denial of a motion to remand does not fall within the collateral order doctrine"

App. 15a. And its order "did not "conclusively determine" removal jurisdiction. Begging the point for which certification was necessary, its invalidity. Further it had finally disposed of any possibility of attaining removal jurisdiction. The court of appeals should have addressed the matter, instead failing to mention Petitioner's request for mandamus to order certification in its order, all the more necessary now certification had been denied, as it knew from the docket before it. The failure to review the clear abuse of discretion before it in incorrectly applying §1292(b) factors required mandamus in these "extraordinary" circumstances.

Petitioner requested certification relying on both 1292(b) and on this Court's determination in *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949), holding appeal may be taken from a federal order denying a motion when the matter does not affect a decision on the merits and amounts to a final disposition of a right, not an ingredient of the cause of action and not requiring consideration with it. *Cohen* 547. Precedent exists despite the district court stating otherwise: *See Quackenbush, Cal. Ins. Comm'r, et al. v. Allstate Ins. Co.* (95-244), 517 U.S. 706 (1996) (remand order appealable) examining collateral orders not "final" but nevertheless immediately appealable under §1291. *See Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U.S. 1 (1983): stay order appealable under §1291, as a "final decision" because it put the litigants "effectively out of court", and also under the collateral order doctrine amounting "to a refusal to adjudicate" so "the practical equivalent of an order dismissing the case". *Id.*

The denial of Petitioner's remand motion here also amounts to a refusal to adjudicate. (*See Railroad Co.* v. *Wiswall,* 23 Wall. 507 (1875) this Court intervened where a determination amounted to "refusal to hear and decide").

Further, no other remedy applies and the Petitioner's right to remand (including for procedural irregularity infecting the removal, denied by the adjudication failing to address this) will be forever merged. Appeal "will be too late effectively to review the present order and the rights conferred by the statute, if it is applicable, will have been lost, probably irreparably" *Cohen.*

The district court's order did not apply the correct legal standards and was "arbitrary", "based on passion or prejudice" or "manifest bad faith". The denial also usurped judicial power, and "clear[ly] abuse[d]," its discretion refusing certification in so clear a case, which "justif[ies] the invocation of" mandamus. *Cheney,* at 380. Had the court of appeals, in adjudicating, correctly considered the requested writ of mandamus for certification it would have had to acknowledge Petitioner's 'clear and indisputable' right to relief. Its failure to do so renders its own judgment biased and/or lacking, compounding the abuse.

The appellate court had an obligation to consider the lower court's manifest error, claiming it ordered "additional" filings. App. 13a. Both courts knew it had not. It's order denying remand make no mention of "additional" (supplemental) briefings. App. D. If it had *it would have deferred adjudication.* As federal rules state, supplemental filings address new or intervening matter. Further, new argument

may not be asserted *for the first time* in an "additional" brief. Such briefings are pointless after determination of denial.

All certification grounds were met: substantial grounds of disagreement exist on whether an Article III court may deny remand without jurisdiction. It is also "a debatable question" whether the district court properly held Petitioner must "re-file" *to remain in any court at all.* The removal statute is clear, this new "*Grable* ground" was not in any IBRD filing, and the court determined both motions, each challenging jurisdiction, "ripe" for review. To require "re-filing" is judicial abuse, falls foul of the removal statute, and also begs whether "additional" briefings can be filed after adjudication. Other substantive questions include its refusal to apply the collateral order doctrine, erroneously relying on *Neal v. Brown*, 980 F.2d 747 298 (D.C.Cir. 1992) where the decision to deny remand did not end the litigation. In this Petitioner's case, the denial **did the exact opposite**, it *ended* all proceedings "effectively putting the litigants *out of* court" with no filings remaining. Requiring the safety valve of mandamus review.

To create a new legal path for parties to contest removal, outside the statutory requirements, and still deny the right to certification for appeal is judicial abuse. Allowing IBRD to introduce via the backdoor its speculative theory that actions against it belong in federal court because of its own importance to US foreign relations. App. 51a-54a. IBRD's argument disrespects the U.S., and its federal judicial system. *See Qatar v. First Abu Dhabi Bank* 432 F.Supp.3d 401 (N.Y Cir. 2020)

(state case remanded, federal court rejecting "important issues" and "foreign relations" FSIA *Grable* argument which would otherwise provide jurisdiction via *" a backdoor to the federal courthouse",* thus nullifying Congress's FSIA jurisdictional "foreign states" delineation).

Such *Grable* argument, unlawfully demanded by the court, and contemplating it, flies in the face of Congress and gives the appearance of the executive leaning on the judiciary unacceptably, causing federal courts to be further brought into understandable disrepute.

Circuit Splits require Certiorari: This Court's review is warranted because circuits are split. Some consider mandamus unavailable for certification's denial. *See In re Ford Motor Co.*, 344 F.3d 648 (7th Cir. 2003); *Green v. Occidental Petroleum Corp.*, 541 F.2d 1335 (9th Cir. 1976). Though conceding writs remain for "serious abuse[es]" including through mandamus of the underlying question. *Ford* at 654.

By contrast, the Eleventh Circuit holds mandamus available directing 1292(b) certification *see Fernandez-Roque* v. *Smith*, 671 F.2d 426 (1982), granting mandamus directing the district court rule on a threshold jurisdictional issue then "certify for appeal."

Other courts achieve this differently. *See In re McLelland Engineers, Inc.*, 742 F.2d 837 (1984), the Fifth Circuit proclaiming "refusal to certify in the circumstances presented constitutes an abuse of discretion," so vacating and remanding, expecting prompt certification.

Indeed, the D.C. Circuit adopted this "disapprove and remand" approach in *In re Trump*, 781 Fed. App'x. 1 (D.C. Cir. 2019) remanding "for reconsideration of the motion to certify." On reconsideration, district court certified both interlocutory rulings. *Blumenthal v. Trump*, 949 F.3d 14 (D.C. Cir. 2020), the appellate court next granting 1292(b) interlocutory appeal. Even though reconsidered *en banc,* this provides clear precedent that D.C. Circuit appropriately requires certification by these means in 1292(b) situations. Here the court of appeals broke with its own precedent.

The conflict among circuits concerning mandamus for 1292(b) certification merits this Court's review.

Certiorari should be granted here because the appellate court erred in denying mandamus, although a drastic remedy, for while certification is discretionary in both courts, abuse of discretion cannot be upheld.

4. The Grounds For Certiorari Are More than Met

I. Certiorari is required because the decision below breaks with consistent authority, including this Court's, that mandamus is necessary to contain a court to exercise of its lawful authority

The court of appeals' decision to deny mandamus states denial is premised on Petitioner's failure to demonstrate she has "no other adequate means" to attain relief. Yet the order brought before it must be either a severe biased abuse of discretion, or void. Its reasoning was incorrect. Because of

unlawfulness and abuse of power (including through denying due process), the district court's opinion demanded mandamus (*see Cheney*) as no other relief can now be attained. It overlooked its duty to determine that, since the district court had no "jurisdiction in the underlying action", it **cannot** provide remedy envisioned by the appellate court. *See U.S. Catholic Conf. v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 108 S.Ct 2268 (1988) (certiorari granted). The appellate court in no way addresses the district court's act constitutes unlawful abuse of judicial authority and abuse of discretion requiring writ. *See Bankers Life Cas. Co. v Holland* 346 U.S. 379 74 St. Ct. 145 (1953). Moreover, "[A] clear error of law or clear error of judgment leading to a patently erroneous result may constitute a clear abuse of discretion." *In re Apple, Inc.*, 602 F.3d 909, 911 (8th Cir. 2010). It was necessary for the appellate court to determine the district court's opinion, at very least was in excess of prescribed authority, it failed to do so. Usurpation of power by a federal court was before it yet it neglected its duty to direct the lower court to stay within lawful boundaries. "**[W]hen the writ of mandamus is sought from an appellate court to confine a trial court to a lawful exercise of its prescribed authority, the court should issue the writ almost as a matter of course.**" *Schlagenhauf v. Holder, supra.*

The question for this Court is whether a court can ignore such obligation in performing its appellate duties. Petitioner was entitled to have the appellate court step in.

Both lower courts ignored precedent and judicial duty, proceeding unlawfully, abusing jurisdictional boundaries, disobeying the Constitution and Congress. The court of appeals order breaks with its own, and other circuits, precedent. It has issued writs to remedy excess of jurisdiction yet denied precisely this here. Other circuits have also, see *In re Kemp*, 894 F.3d 900 (8th Cir. 2018) (to review lower court's non-final denial of motion to dismiss).

Only this Court can remedy this matter, without which remedy the Petitioner has no other recourse.

II. This Court should grant certiorari because the appellate court ignored the need to review its own, and the lower court's, jurisdiction

The decision conflicts with decisions of the D.C. and all Circuits, as well as States' highest courts, on the fundamental question of whether the court should, on request for mandamus, evaluate the validity of the Order before it in determining whether mandamus should be granted. The court of appeals simply failed to opine. It was its constitutionally-mandated duty, "to review the facts to ensure the district court has federal jurisdiction under the Constitution."(*See U.S. Catholic Conf. supra*) The appellate court was wrong to disclaim its obligation to do so.

The district court had ignored strict requirement, to examine its jurisdiction, and, if unable to determine on the filings, then to do so sua sponte ***prior*** to exercising authority issuing dispositive orders. It held the motions "ripe" for

review. *Both* lower court's decisions are irreconcilable with this Court's decisions that jurisdictional determination comes first (*Kokkonen).*[6]

The appellate court failed to consider whether it, or the lower court, had any jurisdiction at all. D.C. Circuit always determines removal jurisdiction before dispositive motions (*see Perisic v. Kim* No. 2018-2038 (D.D.C. 2019)).

The new path of adjudicating because of *lack* of jurisdiction, approved by the appellate court's decision, is in tension with longstanding precedent.

This raises issues of exceptional importance as "Orders issued without jurisdiction are void". *U.S. Catholic Conf.* The decision below holds the opposite, at odds with all precedent, now rendering D.C. Circuit the sole outlier on this important constitutional question. This new jurisdictional threshold issue being, of course, one of first impression, and involving the power of district courts, is particularly appropriate for writ issuance (*See In re Pruett*, 133 F.3d 275, 280-81 (4th Cir. 1997) (mandamus granted).

This Court's review is warranted not only to correct serious jurisdictional error but also to resolve this new conflict in authority.

III. Certiorari is necessary because the court's order denying remand yet refusing to progress her case

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[6] *Francisco S., v. Aetna Life and World Bank MIP "Mem. Decision Order" (ECF No. 14)* Case No. 2:18-cv-00010-EJF (Utah), Only **after** establishing jurisdiction did it issue **June 6, 2020** order, determining FSIA commercial exception applies to IBRD re employee.

deprived Petitioner of Due Process and Equal Protection at Law

The touchstone of civil procedural due process is the fundamental right of access to civil courts for all litigants for determination of their actions by a duly empowered court. By its unlawful acts these federal courts have denied Petitioner equal protection under the law, due process, and to have her State case heard in an authorized court.

This case thus raises an important issue never addressed by this Court, as to whether a district court is obligated to proceed to the action's merits once remand is denied. The Petitioner has a right to be provided an opportunity to be heard, even if simply to appeal after the merits.

Certiorari should be granted because the decision is in conflict with constitutional principles safeguarded by this Court on the 14th Amendment to the Constitution.

Additionally, the lower courts' mishandling of Petitioner's case concerns a novel issue of first impression of the parameters of "right to a fair and speedy trial". It requires this Court's review as it concerns Federal Rules of Civil Procedure interpretation which "is the duty of this Court to formulate and put in force, [so] this Court will consider the merits of such issues and formulate necessary guidelines, rather than remand the cause." *Schlagenhauf v. Holder* (*supra*).

The two courts failure to afford Petitioner her constitutional right to access and be meaningfully heard, due process, and a fair and speedy trial, obstructing her from litigating in the court of her choice where her Complaint began, is sufficient

consideration for granting certiorari review. App. E. The matter concerns more than the violated rights of only this Petitioner.

The district court denied its owed duty to progress her action because the Petitioner has filed another, later, unrelated case. Such restriction on litigants, and their right to use the court system, cannot be allowed in this abusive manner.

Certiorari is necessary to prevent the lower courts actions further calling the federal court system into disrepute for failure to provide equal protection.

IV. The decisions raise Questions of First Impression

Comity: There are stark separation-of-powers concerns raised by the two lower courts' rulings abusing Article III jurisdiction to retain Petitioner's suit in federal court. IBRD's removal, invoking federal jurisdiction, simultaneously demanding dismissal for lack of the same, over this wholly state law claim must fail. The district judge stated as much in her opinion denying each IBRD Not. of removal argument articulated. Yet capriciously retaining the case without statutory right, manifestly abusing power, exhibiting bias, detaining without cause or jurisdiction. The court's unlawful abuse **denies and affects the rights of D.C. Superior Court**. Comity is to be considered in writ proceeding, *see In re La Providencia Dev. Corp.*, 406 F.2d 251 (1st Cir. 1969). If the lower courts' decisions hold, that a federal court can, at will, contrary to statutory requirements, play cat and mouse speculating on removal grounds not before it or

raised by either party, to judicially suspend determining jurisdiction and the action, the result is open season on state law actions removed to federal court.

The district court's opinion states its primary concern was not to assess IRBD's removal's validity, or evaluate IBRD's motion to dismiss, but to "avoid inconsistent jurisdictional rulings in these parallel actions" between irrefutably different cases. This novel reason for exercising jurisdiction and making dispositive orders is an obstruction of justice. And one of first impression. The decision creates a new legal right for parties to conjure up new grounds for statutory removal, retroactively. This asserted judicial expansion of the removal statute causes harm, stands alone without legislative authorization, and has not historically served as a basis for the exercise of federal courts' jurisdiction. This approach has now been upheld by the appellate court. This issue of first impression causes confusion and uncertainty for all state litigants.

Quagmire/Parties: This court must address whether a federal court can deny establishing, and record it has no, jurisdiction, to retain a matter solely for jurisdictional determination. As well put in *La Providencia (supra)*, in determining removal jurisdiction "the district court has **one shot**, right or wrong". Here the judicial quagmire created, retaining with no further filings at court, exceeded all reasonable bounds, going far beyond statutory and Article III jurisdiction, usurping Congress and breaking with all judicial authority. Both federal courts exercised a judiciary's prerogative neither has, because of sensitivity to the identity of a party,

claiming "parallel" individuals and an organization. It is inconceivable what could have influenced such an erroneous determination. Certiorari is necessary to protect litigants from lawless abuse and obstruction, prevent the courts thwarting their own purpose, and protect equal treatment by federal courts.

In its essence the district court's denial of statutory grounds remand is a final order. The case now proceeds on an entirely different *"Grable"* consideration outside the removal statute's ambit altogether. The district court's opinion follows reasoning both unlawful and illogical: that it can deny remand to entertain removal jurisdiction on removal grounds claimed in a *"parallel"* case. In doing so it expands federal jurisdiction to apply arguments of different parties when such arguments were not, and cannot be, before it. That holding undermines a key safeguard for litigants. For this reason too it is a case of first impression requiring this Court's intervention.

The case also presents first impressions concerning the right to claim entitlement to federal jurisdiction for international organizations because of intended IOIA defense. App. 51a-55a.

V. The Questions Presented Are Important and Frequently Recurring

The "judicial act" of violating a constitutional jurisdictional limit on federal courts, and the Court's doctrine of *sua sponte* determination, is profound, self-evident and everlasting. This proceeding sets dangerous precedent, both lower courts refusing to determine lack of jurisdiction.

No other court has the power to vacate the court of appeals unlawful order and right this matter of usurpation of federal jurisdiction. Certiorari is therefore required as any alternative relief that Petitioner could seek is directly limited by the unlawful order.

The "novelty of the court's ruling", combined with its potentially broad and "destabilizing effects," underscores granting such a writ is "appropriate under the circumstances." *Kellogg Brown, supra.* This Court has made clear extraordinary writ relief is available in such unique circumstances. See *U.S. Alkali Export Ass'n, supra,* (writ in aid of appellate jurisdiction must be to the Supreme Court).

It would be difficult to overstate the importance of the questions presented here. IBRD seeks, and district court supports, removal of a purely state law matter to federal court that has never before been permitted. It does so to enforce what it considers still an absolute immunity. App. 49a-52a. IBRD asserts a right to have all actions against it only in federal court, simultaneously maintaining federal courts have no jurisdiction over it, that has never previously been recognized by any court. The district court fundamentally erred in permitting this unprecedented extraordinary argument to proceed, its own Rules require it to consider remand of every removed action, *independently on the facts.* The matter presents an important question of law to be resolved by this Court as many international organizations are headquartered in D.C and so within this circuit.

If allowed to stand, the decision below will seriously chill suits being able to be brought against international organizations in state courts, a right that has not been taken away by Congress or the state courts themselves, due to judicial interference. In this way, the errors of the decision below will act as an impediment and deterrent, it threatens to bar litigants from the courthouse without having their individual claims considered. Certiorari is granted "in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties." *Labor Board v. Pittsburg S. S.* Co., 340 U.S. 498 71 S. Ct. 453 (1951). As here.

Lastly, this case provides a convenient vehicle for this Court to provide much-needed clarity and guidance to lower courts, which have regularly expressed confusion on whether an international organization can state it cannot be served and is immune. Despite numerous rulings including *Rodriguez v. Pan American Health Org.* 502 F. Supp. 3d 200 (D.D.C. 2020) IBRD continues to murky this legal area deliberately App 54a-55a. Which calls for judicial explanation, particularly in the light of the two adjudications in *Francisco S. (supra).*

This Court must now step in to straighten matters and take Certiorari because of the importance of these questions and their resolution.

CONCLUSION

This petition for a writ of certiorari should be granted.

Alternatively, the Court could construe this as a petition for a writ of mandamus and/or prohibition and direct the court either to remand the action

outright to D.C. Superior Court, or to require the district court at least to certify interlocutory appeal, and prohibit it exercising its power in a manner unauthorized by law.

Respectfully submitted,

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