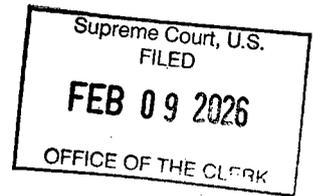


ORIGINAL

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No. _____



In the Supreme Court of the United States

VENISHA ARNOLD,
Petitioner,

v.

1600 WEST LOOP SOUTH, L.L.C., DOING BUSINESS
AS THE POST OAK AT UPTOWN HOUSTON;
JOSHUA BARRY; KEVIN MALONSON; CHRIS
HORAN; ROBERT MALONSON,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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FEBRUARY MMXXVI

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QUESTIONS PRESENTED

1. Where there is a lack of subject matter jurisdiction after all federal claims have been dismissed from a case that started in state court and the only remaining claims are state law claims a federal court whether trial or appellate must remand a case based on there being no jurisdiction for the case to be in federal court after removal by not remanding the case a federal court is departing from established legal procedures?

2. Whether a reserve member of law enforcement can be viewed as a state actor under 42 U.S.C. § 1983 when that reserve member of law enforcement is requested to investigate a possible crime because that person is a reserve member of law enforcement?

RELATED PROCEEDINGS

Texas District Court (127th Jud. Dist.):

Venisha Arnold v. 1600 West Loop South, L.L.C., doing business as The Post Oak at Uptown Houston; Josh-ua Barry; Kevin Malonson; Chris Horan; Robert Malonson, No. 2025211964 (removed to the Southern District of Texas) (Mar. 21, 2025)

United States District Court (S.D. Tex.):

Venisha Arnold v. 1600 West Loop South, L.L.C., doing business as The Post Oak at Uptown Houston; Josh-ua Barry; Kevin Malonson; Chris Horan; Robert Malonson, No. 4:25-cv-01337 (reconsideration denied and dismissal upheld) (Jun. 12, 2025)

Venisha Arnold v. 1600 West Loop South, L.L.C., doing business as The Post Oak at Uptown Houston; Josh-ua Barry; Kevin Malonson; Chris Horan; Robert Malonson, No. 4:25-cv-01337 (final judgment dismissing action) (Jun. 25, 2025)

United States Court of Appeals (CA5):

Venisha Arnold v. 1600 West Loop South, L.L.C., doing business as The Post Oak at Uptown Houston; Josh-ua Barry; Kevin Malonson; Chris Horan; Robert Malonson, No. 25-20216 (district court disposition upheld) (Oct. 29, 2025)

Venisha Arnold v. 1600 West Loop South, L.L.C., doing business as The Post Oak at Uptown Houston; Josh-ua Barry; Kevin Malonson; Chris Horan; Robert Malonson, No. 25-20216 (rehearing denied) (Nov. 2, 2025)

TABLE OF CONTENTS

Questions Presented	i
Related Proceedings	ii
Table of Authorities	vi
Opinions Below	1
Jurisdiction	1
Statement of the Case	1
1. Direct Appeal	3
Reasons for Granting the Petition	5
Conclusion	5
Appendix	
Appendix A	
Opinion [affirmed district court], United States Court of Appeals for the Fifth Circuit, <i>Venisha Arnold v. 1600 West Loop South, L.L.C., doing business as The Post Oak at Uptown Houston; Joshua Barry; Kevin Malonson; Chris Horan; Robert Malonson,</i>	
No. 25-20261 (Oct. 29, 2025)	App-1
Appendix B	
Order [rehearing en banc denied], United States Court of Appeals for the Fifth Circuit, <i>Venisha Arnold v. 1600 West Loop South, L.L.C., doing business as The Post Oak at Uptown Houston; Joshua Barry; Kevin Malonson; Chris Horan; Robert Malonson,</i>	

No. 25-20261 (Nov. 18, 2025) App-7

Appendix C

Order [denying reconsideration and upholding dismissal], United States District Court for the Southern District of Texas, *Venisha Arnold v. 1600 West Loop South, L.L.C., doing business as The Post Oak at Uptown Houston; Joshua Barry; Kevin Malonson; Chris Horan; Robert Malonson,*

No. 4:25-cv-01337 (Jun. 12, 2025) App-9

Appendix D

Final Judgment [dismissal], United States District Court for the Southern District of Texas, *Venisha Arnold v. 1600 West Loop South, L.L.C., doing business as The Post Oak at Uptown Houston; Joshua Barry; Kevin Malonson; Chris Horan; Robert Malonson,*

No. 4:25-cv-01337 (Jun. 25, 2025) App-10

Appendix E

Petition for Rehearing *En Banc*, United States Court of Appeals for the Fifth Circuit, *Venisha Arnold v. 1600 West Loop South, L.L.C., doing business as The Post Oak at Uptown Houston; Joshua Barry; Kevin Malonson; Chris Horan; Robert Malonson,*

No. 25-20261 (Nov. 2, 2025) App-12

TABLE OF AUTHORITIES

Cases

<i>Mesquite Asset Recovery Group, L.L.C. v. City of Mesquite,</i> 154 F.4th 313 (CA5 2025).....	1-2
<i>Morris v. Dillard Department Stores Inc.,</i> 277 F.3d 743 (CA5 2001)	3
<i>Osborn v. Bank of the United States,</i> 22 U.S. (9 Wheat.) 738 (1824)	1

Statutes

28 U.S.C. §1254	1
42 U.S.C. §1983	2, 4
S. Ct. R. 12.....	3-4

OPINIONS BELOW

The Fifth Circuit's opinion is reproduced in the Appendix at App.1-6. The Southern District of Texas's decisions are reproduced in the Appendix at App.9-11.

JURISDICTION

The Fifth Circuit's decision was entered on October 29, 2025. The Fifth Circuit denied rehearing on November 18, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

Over 200 years ago, in *Osborn v. Bank of the United States*, this Court established that federal courts have jurisdiction over cases that have a "federal ingredient," even if state law is also involved. 22 U.S. (9 Wheat.) 738 (1824) The Fifth Circuit in *Mesquite Asset Recovery Group, L.L.C. v. City of Mesquite*, affirmed a district court's remand of a case to state court after the federal claims were eliminated, leaving only state-law negligence claims. 154 F.4th 313 (CA5 2025) In *Mesquite*, the district court dismissed the taking claim and *remanded* the plaintiffs' state-law claims to state court, reasoning that the plaintiffs had not "sufficiently alleged that the City acted in its sovereign, rather than its commercial, capacity", affirmed. *Id.* at 315. Here, the plaintiff's case began in state court before defendants removed the plaintiff's claim to federal court. The federal appeals court in question decided to affirm the trial court's dismissal of the federal claims. Thus, the only remaining claims in Arnold's

complaint are state law claims which the federal appeals court and its lower court have no jurisdiction to preside over again the case began in state court.

This case presents the question of whether the standard is satisfied when the Fifth Circuit, per *Mesquite*, has previously remanded cases to state court when only state-law claims remain.

The following is regarding the question presented under the 42 U.S.C. §1983 claim. The Fifth Circuit gave a short brief flawed sentence regarding the liability of defendant Joshua Barry. Per the evidence from the Harris County District Attorney's Office under fired District Attorney Kim Ogg, defendant Joshua Barry is and was the security director of the Post Oak Hotel at the time the plaintiff-appellant's false accusation began. Respondent Joshua Barry is/was a reserve constable for Harris County Precinct One Constables Office. Per the evidence from the District Attorney the plaintiff-appellant's false accusation started with defendant-appellee Joshua Barry, the hotel security director again per the evidence from the Harris County District Attorney's office.

The bulk of the case law defendants-appellees rely on regarding the plaintiff's 42 U.S.C. §1983 claims involve private individuals. Joshua Barry is not a private individual he is a state actor, he is a reserve constable for Harris County Precinct One who was acting under the color of law and the Security Director of the Post Oak Hotel he played the main role in the plaintiff's false accusation, *this is factual evidence on file at Harris County District Attorney's Office*. Joshua Barry's misconduct can be deemed as acting under the color of law as a member of law enforcement in a 1983 claim because why did Tilman Fertitta's relative

Lauren Ware go to respondent Joshua Barry instead of calling the police? The answer is because Joshua Barry is a cop, he is a reserve constable, the panel *erroneously* ignored this fact.

For example, the respondents cited *Morris v. Dillard Department Stores Inc.*, 277 F.3d 743 (CA5 2001). The *Morris* case fails because respondent Joshua Barry is *not* a private security guard, Joshua Barry is *not* a part-time worker, Joshua Barry is the security director for the Post Oak Hotel. *Again, the evidence from Harris County District Attorney's Office proves this.* Therefore, respondent Joshua Barry and his employer respondent 1600 West Loop South LLC are liable to the petitioner. This Court should grant certiorari because the Fifth Circuit "has so far departed from the accepted and usual course of judicial proceedings." S. Ct. R. 12(a).

1. Direct Appeal

On direct appeal the plaintiff-appellant reiterated her argument that her case should have been remanded to state court where her case began after the district court dismissed her federal claims and the appellate court affirmed that ruling. If the court will review the judgment rendered in the district court *there is no clarification regarding what claims are dismissed again the case started in state court and was removed by the respondents to federal court.* The two judgments from the district court appears in the Appendix at App.9-11.

Also regarding the trial court's judgment, respondent Joshua Barry was never orally dismissed after the petitioner filed a motion for reconsideration. The trial

court then gave a written order stating respondents 1600 West Loop South LLC and Joshua Barry were dismissed with prejudice. Again, there was never any clarification given regarding what was dismissed without prejudice regarding the federal and state claims. The lower courts erred by not remanding the case to state court where it began.

Also, the petitioner reiterated her argument that respondent Joshua Barry is law enforcement. Which means Joshua Barry is a state actor that is liable to the plaintiff-appellant under the petitioner's 42 U.S.C. §1983 claims and Joshua Barry's employer is liable to the plaintiff-appellant under 42 U.S.C. §1983.

REASONS FOR GRANTING THE PETITION

This court should grant certiorari because the lower federal courts erred by not remanding the state law portions of the claim to state court since the case started in state court and lower courts deemed respondents 1600 West Loop South LLC and Joshua Barry are not state actors under 42 U.S.C. §1983 thus there is no federal claim, which means there is a lack of subject matter jurisdiction and the lower courts committed an error of exceptional importance by not remanding the state law portions of the plaintiff-appellant's claim to state court. Per S. Ct. R. 12, this case involves a question of exceptional importance and present sufficient "compelling reasons," wherefore warranting this Court's granting of certiorari. Finally, this Court should bear in mind that this action originated from state court.

CONCLUSION

Wherefore, Arnold respectfully petitions this Court grant certiorari to the Fifth Circuit.

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