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OVERVIEW OF RECENT FIFTH CIRCUIT JURISDICTIONAL DECISIONS

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During the past year, the Fifth Circuit has had a number of opportunities to address its jurisdiction. This article provides an overview of the myriad of jurisdictional predicaments in which litigants have become ensnared.

I. ERISA PREEMPTION

A. The Federal Court's Authority to Review a Remand Order Based on § 1447(c) Grounds

1. *Smith v. Texas Children's Hospital*

One especially fertile area for jurisdictional disputes occurs when a defendant removes[1] a case from state to federal court, the plaintiff moves to remand[2] the case to state court, the district court grants the motion, and the unhappy defendant seeks review of that ruling in the federal court of appeals. The Fifth Circuit in *Smith v. Texas Children's Hospital*[3] faced just such a challenge.

In *Texas Children's Hospital*, Smith filed suit in Texas state court, alleging entitlement to long-term disability benefits under various state law causes of action.[4] Invoking federal question jurisdiction,[5] the Hospital removed the action to federal court on the grounds that the Employee Retirement Income Security Act of 1974 ("ERISA"),[6] as amended, completely preempted all of Smith's claims.[7] Subsequently, the Hospital moved for summary judgment, arguing that ERISA preempted all of Smith's state law claims because they related to a qualified employee benefit plan.[8] Smith amended her complaint, deleting her previous state law claims and adding the claims of estoppel and denial of benefits under ERISA.[9]

The district court granted the Hospital's motion for summary judgment as to the estoppel and ERISA claims.[10] The court found that a fraudulent inducement claim could exist that was not preempted. As a result, the court remanded that claim to state court.[11] The Hospital appealed the remand order on the grounds that when Smith amended her complaint, she failed to preserve a state law fraud-

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1. The general removal statutes are found at 28 U.S.C. §§ 1441 and 1446 (1994).
2. Remands are governed by 28 U.S.C. § 1447(c) and (d) (1994).
3. 172 F.3d 923 (5th Cir. 1999).
4. *See id.* at 924 n.1.
5. 28 U.S.C. § 1331 (1994).
6. 29 U.S.C. §§ 1001-1461 (1994).
7. *Texas Children's Hosp.*, 172 F.3d at 924.
8. Section 514(a) of ERISA, 29 U.S.C. §144(a), provides that "the provisions of this subchapter . . . shall supersede . . . all State laws insofar as they may now or hereafter relate to any [qualified] employee benefit plan . . . ."
9. *Texas Children's Hosp.*, 172 F.3d at 924.
10. *Id.* at 925.
11. *Id.*

ulent inducement claim.[12] The Hospital also argued that ERISA would preempt such a claim even if Smith had preserved it.[13] The Fifth Circuit remanded the case to the district court with instructions to consider whether Smith had preserved a fraudulent inducement claim that survived ERISA preemption.[14]

Following that remand, Smith once again amended her complaint to include claims of fraudulent inducement and misrepresentation.[15] The Hospital again moved for summary judgment, arguing that ERISA preempted the state law claims.[16] At that point, the district court remanded the case to state court noting that it lacked jurisdiction over Smith's claim and that it was remanding pursuant to 28 U.S.C. § 1447(c).[17] Once again, the Hospital appealed.[18]

Noting that it was obliged to examine the basis for its jurisdiction *sua sponte* if necessary,[19] the Fifth Circuit first discussed the district court's decision to remand under § 1447(c).[20] Under 28 U.S.C. § 1447(d), a district court's order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise.[21] Citing *Thermtron Products, Inc. v. Hermansdorfer*,[22] the Fifth Circuit explained that it is an established rule that § 1447(d) "prohibits review of all remand orders issued under [§]1447(c) whether erroneous or not."[23] Further, the two provisions must be construed *in pari materia*; therefore, only remand orders issued under § 1447(c) and the grounds invoking specified therein are immune from review under § 1447(d).[24]

When a district court orders a remand under § 1447(c), the order is not reviewable even if the court erroneously concluded that it lacked jurisdiction.[25] Acknowledging that the rule appears harsh, the court nonetheless emphasized that Congress immunized from all forms of review every remand order issued on § 1447(c) grounds.[26] In its balancing of competing interests, the court favored judicial economy. Consequently, the court opined that a district court "is the final arbiter of whether it has jurisdiction to hear the case."[27] Based on the foregoing, the Fifth Circuit held that it was barred by § 1447(d) from reviewing the remand order.[28]

In so holding, the court rejected the Hospital's argument that the remand order should be reviewable on appeal because the district court lacked authority to review the issue of subject matter jurisdiction upon receiving the case earlier

12. *Id.*
13. *Id.*
14. *Id. See* Smith v. Texas Children's Hosp., 84 F.3d 152, 153, 157 (5th Cir. 1996).
15. *Texas Children's Hospital*, 172 F.3d at 924.
16. *Id.*
17. Section 1447(c) provides that if at any time before final judgment it appears the district court lacks subject matter jurisdiction, the district court shall remand the case.
18. *Texas Children's Hospital*, 172 F.3d at 925.
19. *Id.* (citing Williams v. Chater, 87 F.3d 702, 704 (5th Cir. 1996)).
20. *Texas Children's Hospital*, 172 F.3d at 925.
21. *Id.*
22. 423 U.S. 336, 343 (1976).
23. *See Texas Children's Hosp.*, 172 F.3d at 925.
24. *See id.*
25. *See id.* (citing Gravitt v. Southwestern Bell Tel. Co., 430 U.S. 723, 723-24 (1977)).
26. *Texas Children's Hospital*, 172 F.3d at 925.
27. *Id.* (citing Soley v. First Nat'l Bank of Commerce, 923 F.2d 406, 408 (5th Cir. 1991)).
28. *Texas Children's Hospital*, 172 F.3d at 926.

from the Fifth Circuit.[29] The Hospital urged that the Fifth Circuit's prior opinion bound the district court as the law of the case.[30] According to the Hospital, the district court had no authority to reconsider whether it had subject matter jurisdiction;[31] the court reiterated, however, that even if it assumed the district court erred in reconsidering the issue, § 1447(d) nonetheless precluded the review of a remand ordered under § 1447(c).[32]

The Hospital also argued that the court should review the remand order because the Hospital could be substantially prejudiced if substantive rulings by the district court were viewed as binding on the Hospital in subsequent state court proceedings.[33] Deeming this argument meritless, the court explained that because the district court remanded the case for lack of jurisdiction, the district court's rulings have no preclusive effect on the state court's consideration of the Hospital's substantive preemption defense.[34]

The Hospital also urged the court to review the substantive ruling found in the district court's remand order.[35] According to the Hospital, because the substantive ruling preceded the district court's conclusion that it lacked subject matter jurisdiction, the ruling therefore constituted a non-section 1447(c) rationale for remand.[36] Consequently, the order should be subject to appellate review.[37]

Noting that it had previously rejected the approach that looks beyond the language of the remand order to all the surrounding circumstances when determining whether the order was based on a substantive decision on the merits, the court explained that it would review remand orders only if the district court affirmatively stated a non-section 1447(c) ground for remand.[38] In this case, the district court had not done so;[39] therefore, the court concluded that it was precluded from reviewing the remand order and dismissed the appeal.[40]

2. *Copling v. Container Store, Inc.*

Within days of issuing its opinion in *Texas Children's Hospital*, a different panel of the court dismissed an ERISA preemption-based appeal. The plaintiff in *Copling v. Container Store, Inc.*[41] was an employee of the defendant. The employer provided employees and their dependents with medical benefits, one of which included a "flexible benefit" that allowed employees to deduct pretax dollars from their paycheck to cover eligible medical expenses.[42] The deducted

29. *Id.* at 926.
30. *Id.*
31. *Id.*
32. *See id.*
33. *Texas Children's Hospital*, 172 F.3d at 926.
34. *See id.*
35. *Id.*
36. *Id.*
37. *Id.*
38. *See id.* at 926-27.
39. *Id.* at 927.
40. *See id.*
41. 174 F.3d 590 (5th Cir. 1999).
42. *Id.* at 593.

funds were placed in a healthcare reimbursement account from which the employee drew funds for eligible expenses.[43] Federal tax regulations required that any unused funds remaining in the account at the end of the plan year were forfeited.[44]

Copling told the employer that he planned to have some dental work performed.[45] The employer alleged that Copling entered into a flexible benefit plan providing for the employer to deduct some $1,500 from his salary to fund unreimbursed medical and dental expenses.[46] Copling signed a form authorizing these deductions and providing that any contributions not used during the plan year would be forfeited.[47] Copling received $300 from the plan.[48]

Copling argued that he was not informed that any unused funds would be forfeited.[49] Copling stated that he thought he was getting a simple payroll deduction to fund unreimbursed medical expenses but the employer gave him an ERISA health care reimbursement account instead.[50] The employer insisted that Copling forfeited the remainder of the money under the plan's terms.[51]

Copling filed a breach of contract action in state court.[52] The employer removed the case to federal court and moved for summary judgment.[53] The district court granted Copling's motion to remand,[54] and the employer appealed.[55]

The Fifth Circuit distinguished between the two types of preemption under ERISA.[56] First, ERISA may occupy a particular field.[57] This results in complete preemption[58] under § 502(a) of the Act.[59] According to the court, complete preemption functions as an exception to the well-pleaded complaint rule[60] on the theory that "Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character."[61] The court further stated that "[section] 502, by providing a civil enforcement cause of action, completely preempts any state cause of action seeking the same relief, regardless of how artfully pled as a state claim."[62]

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43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.* at 593.
48. *Id.*
49. *Id.*
50. *Id.* at 593-94.
51. *Id.* at 594.
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. 29 U.S.C. § 1132(a) (1994).
60. The well-pleaded complaint rule states that a suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or the Constitution. The Supreme Court explained the rule in Louisville & Nashville Railroad Co. v. Mottley, 211 U.S. 149, 152-54 (1908).
61. *Copling*, 174 F.3d at 594 (quoting Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63-64 (1987)).
62. *Id.*

Because such a claim presents a federal question, it provides grounds for a federal court's exercise of jurisdiction on removal from a state court.[63] On a motion to remand, all the defendant must do to prevent remand is demonstrate a substantial federal claim, *e.g.*, one completely preempted by ERISA.[64] Once the court has proper removal jurisdiction over a federal claim it may exercise supplemental jurisdiction[65] over state claims even if it dismisses or otherwise disposes of the federal claim or claims.[66]

The court determined that this case involved the second type of preemption known as conflict preemption.[67] Conflict preemption is referred to as ordinary preemption under § 514.[68] The court explained that state law claims falling outside the scope of ERISA's civil enforcement provision, even if preempted by § 514(a), are nonetheless governed by the well-pleaded complaint rule and therefore are not removable under complete preemption principles.[69] Conflict preemption, rather than "transmogrifying a state cause of action into a federal one, as occurs with complete preemption,"[70] serves as a *defense* to a state claim.[71] It simply fails to establish federal question jurisdiction.[72]

When a complaint raises state causes of action that are completely preempted, a federal court may exercise removal jurisdiction.[73] A complaint containing conflict preempted state causes of action must be remanded for want of subject matter jurisdiction.[74] If a complaint raises both completely preempted claims and arguably conflict preempted claims, a district court may exercise removal jurisdiction over the completely preempted claims and supplemental jurisdiction over the remaining claims.[75]

The employer in *Copling* contended that only conflict preemption existed.[76] Because conflict preemption does not function as an exception to the well-pleaded complaint rule, the court determined that the district court had no federal claims before it at any time.[77] Thus, the district court never had subject matter jurisdiction and was obligated to remand to state court.[78] While the court correctly issued the remand order, it previously commented that ERISA conflict preempted none of the claims.[79]

In response, the employer argued that the § 1447(d) bar on reviewing § 1447(c) remand orders did not prevent the Fifth Circuit from reviewing the order.[80] The

63. *Id.*
64. *Id.*
65. *See* 28 U.S.C. § 1367 (1994).
66. *Copling*, 74 F.3d at 594.
67. *Id.* at 595.
68. 29 U.S.C. § 1144 (1994).
69. *Copling*, 174 F.3d at 595.
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.*
75. *See id.*
76. *Id.*
77. *Id.* at 595-96.
78. *See id.* at 596.
79. *Id.*
80. *Id.*

employer urged that the court could review the merits as separable from, and collateral to, the remand.[81]

The court did not agree.[82] It held that the "rejection of an ERISA preemption defense does not 'in logic and in fact' precede a remand order because, under the 'well-pleaded complaint rule,' a defense does not confer removal jurisdiction."[83] The court held that "if the district court considered the preemption defense, it did so only because of an erroneous belief that the defense was relevant to the jurisdictional issue."[84] The court found that the discussion of ERISA conflict preemption was a separable, appealable order.[85] Because the district court remanded under § 1447(c), the court dismissed the appeal for want of jurisdiction under § 1447(d).[86]

II. IMMIGRATION LAW

A. Alvidres-Reys v. Reno

The plaintiffs in *Alvidres-Reyes v. Reno*[87] were fifty resident illegal aliens, who brought suit for mandamus, declaratory, and injunctive relief.[88] They sought to compel the Attorney General and the Immigration and Naturalization Service ("INS") to consider their applications for suspension of deportation under a since-repealed provision of the Immigration and Naturalization Act ("INA") rather than the more onerous criteria imposed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA").[89]

The district court dismissed the complaint for failure to state a claim upon which relief could be granted.[90] The Fifth Circuit agreed with this determination, but concluded that a more fundamental reason that the plaintiffs' cause could not be heard was the federal courts' lack of subject matter jurisdiction.[91]

The district court had not ruled on the defendant's motion to dismiss for lack of subject matter jurisdiction.[92] The Fifth Circuit held that the exclusive jurisdiction provision of IIRIRA[93] applies retroactively to deprive courts of jurisdiction to hear any cause by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute

81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.* at 597.
86. *See id.*
87. 180 F.3d 199 (5th Cir. 1999).
88. *Id.* at 201.
89. *Id.* (citing Pub. L. No. 104-208, 110 Stat. 309-546).
90. *Alvidres-Reyes*, 180 F.3d at 201 (citing FED. R. CIV. P. 12(b)(6)).
91. *Alvidres-Reyes*, 180 F.3d at 201.
92. *Id.*
93. 8 U.S.C. §1252(g) (1994) states that:

> [e]xcept as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

deportation orders. This exclusive jurisdiction is subject only to exceptions not applicable to the case before the court.[94]

While the plaintiffs did not explicitly request the district court to order the defendant to initiate proceedings or adjudicate their deportability, the suit, if successful, would compel the defendant to do so in order to consider their applications for suspension of deportation.[95] Thus, the suit necessarily called for judicial intervention to reverse the Attorney General's exercise of her discretion not to commence proceedings against the plaintiffs and not to adjudicate their deportations, which necessarily was included within her refusal to entertain their applications for suspension of deportations.[96] Relying on *Reno v. American-Arab Anti-Discrimination Committee*,[97] the court held that § 1252(g) of the INA applied retroactively, even to pending cases.[98] As a result, the court vacated the district court's judgment and dismissed the case for lack of jurisdiction.[99]

B. Zadvydas v. Underdown

Shortly after deciding *Alvidres-Reyes*, the court again encountered the jurisdictional question posed by § 1252(g). This time, however, in *Zadvydas v. Underdown*,[100] the court concluded that it did have jurisdiction.[101] In this case, Zadvydas immigrated to the United States in 1956 but, despite his long residence, never became a citizen.[102] He did, however, succeed in compiling a lengthy criminal record, including convictions for attempted robbery and attempted burglary.[103] On these convictions, the INS based its 1977 decision to deport Zadvydas.[104] While those proceedings were pending, Zadvydas was released into the community.[105]

In 1982, following a lengthy delay, the INS denied Zadvydas's motion for relief from deportation.[106] Facing a hearing before an immigration judge that year, Zadvydas vanished.[107] During the next decade, the INS failed to locate him.[108] In 1992, he voluntarily surrendered to authorities and was tried on an outstanding drug charge, convicted and sentenced to sixteen years imprisonment.[109] After serving only two years, Zadvydas was released on parole. The INS subsequently took him into custody, reinitiating the deportation proceedings.[110]

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94. *Alvidres-Reyes*, 180 F.3d at 201.
95. *Id.* at 205.
96. *Id.*
97. 525 U.S. 471, 487 (1999).
98. *See Alvidres-Reyes*, 180 F.3d at 206.
99. *See id.*
100. 185 F.3d 279 (5th Cir. 1999).
101. *Id.* at 286.
102. *Id.* at 283.
103. *Id.*
104. *Id.*
105. *Id.*
106. *Id.*
107. *Id.*
108. *Id.*
109. *Id.*
110. *Id.*

For the next three years, Zadvydas was held in custody pending his deportation.[111] The INS found itself in a quandary, as neither Germany nor Lithuania would accept Zadvydas as a citizen.[112] Zadvydas filed a petition for a writ of habeas corpus,[113] arguing that his continued detention violated his constitutional rights.[114]

The district court agreed, holding that continued detention was unconstitutional.[115] While the court rejected all challenges to the deportation order and ruled that his continued detention was authorized by statute, it nonetheless concluded that "Zadvydas was 'stateless' and thus could 'never be deported because there [was] no place to send him.'"[116] Granting the writ, the court held Zadvydas could not be permanently incarcerated and that as a practical matter, even though the INS had in place procedures for review, there was "no end in sight" for Zadvydas' detention. This violated his substantive due process rights.[117]

The INS, which had challenged the district court's jurisdiction in that court, appealed.[118] The INS argued that under *Gisbert v. United States Attorney General*,[119] the long-term detention of excludable aliens pending deportation was allowable.[120] It did not, however, re-urge that challenge before the Fifth Circuit.[121]

As a threshold matter, the Fifth Circuit addressed the question of its jurisdiction.[122] The court first explained that Congress plainly indicated its desire to minimize judicial intrusion into deportation decisions, as evidenced by enactment of IIRIRA.[123] As in *Alvidres-Reyes*, the court relied on *Reno v. American-Arab Anti-Discrimination Committee*.[124] In *Reno*, the Supreme Court held that the enactment was not a general bar, but rather, that it limited judicial review of a narrow class of discretionary executive actions.[125] The statute immunized from review actions to "execute removal orders against any alien under this chapter."[126]

In concluding that jurisdiction existed, the Fifth Circuit agreed with the Seventh Circuit case, *Parra v. Perryman*.[127] The Seventh Circuit held in *Parra* that the IIRIRA provisions did not remove the courts' jurisdiction to hear a § 2241 habeas petition challenging the validity of the statutes authorizing the detention of aliens.[128] The court held that "the detention, while intimately related

111. *Id.*
112. *Id.*
113. *See* 28 U.S.C. § 2241 (1994).
114. *Zadvydas*, 185 F.3d at 283.
115. *Id.*
116. *Id.*
117. *Id. See* Zadvydas v. Caplinger, 986 F. Supp. 1011, 1027 (E.D. La. 1997).
118. *Zadvydas*, 185 F.3d at 284.
119. 988 F.2d 1437, 1448 (5th Cir. 1993).
120. *Zadvydas*, 185 F.3d at 285.
121. *Id.* n.4.
122. *Id.*
123. *Id.*
124. *Id.* (citing Reno v. American-Arab Anti-Discrimination Comm., 525 U.S. 471 (1999)).
125. *Zadvydas*, 185 F.3d at 285.
126. *Id.*
127. 172 F.3d 954 (7th Cir. 1999).
128. *Zadvydas*, 185 F.3d at 285.

to efforts to deport, was not itself a decision to 'execute removal orders' and thus did not implicate [§] 1252(g) under *Reno*."[129]

Upon resolving the jurisdictional issue, the court reversed the district court's judgment.[130] The court held that the government may detain a resident alien based on either danger to the community or risk of flight,[131] but a good faith effort to effectuate the alien's deportation must continue and reasonable parole and periodic review procedures must remain in place.[132]

III. ABSTENTION

More recently, the Fifth Circuit confronted a jurisdictional question in *Weekly v. Morrow*.[133] The district court abstained from deciding *Weekly* under the *Younger* doctrine.[134] The *Younger* doctrine reflects a court's prudential decision not to exercise equity jurisdiction even though it possesses that jurisdiction.[135] In *Weekly*, the plaintiff filed a disputed worker's compensation claim with the Louisiana Office of Workers' Compensation.[136] Defendant Morrow was the administrative hearing officer assigned to Weekly's case.[137]

Louisiana law entitles employers to an offset in workers' compensation payments for certain types of Social Security benefits received by an injured employee.[138] Weekly's employer sought discovery of Weekly's Social Security records.[139] Weekly objected,[140] asserting that he had a privacy interest in his Social Security records and, under federal law, could not be compelled to disclose them.[141] Morrow disagreed and ordered Weekly to sign a form consenting to the disclosure of the records.[142]

Weekly appealed Morrow's ruling to the Louisiana Court of Appeal, which found no error.[143] He then applied to the Supreme Court of Louisiana for discretionary relief.[144] When the court denied Weekly's application, Weekly petitioned the Supreme Court of the United States–with similar results.[145]

Subsequently, Weekly filed an action in the United States District Court for the Western District of Louisiana seeking to enjoin Morrow from taking steps to enforce her disclosure order.[146] Weekly specifically sought to enjoin Morrow from applying to a Louisiana district court for a contempt citation.[147] Weekly had

129. *Id.* (quoting *Parra*, 172 F.3d at 957).
130. *Zadvydas*, 185 F.3d at 297.
131. *Id.*
132. *See id.* at 297.
133. 204 F.3d 613 (5th Cir. 2000).
134. *See* Younger v. Harris, 401 U.S. 37 (1971); *See also infra*, note 150 text accompanying.
135. *Weekly*, 204 F.3d at 614-15.
136. *Id.* at 613.
137. *Id.*
138. *Id.*
139. *Id.*
140. *Id.*
141. *Id.*
142. *Id.*
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.*

characterized his federal suit as one arising under the laws of the United States,[148] and as such, one cognizable under the district court's federal question jurisdiction.[149] The district court dismissed Weekly's claim on grounds of *Younger* abstention.[150]

On appeal, Weekly challenged the propriety of the district court's decision to abstain.[151] Prior to oral argument, however, the Fifth Circuit requested supplemental briefing on whether, quite apart from the abstention issue, the court possessed jurisdiction over the case.[152]

In its opinion, the Fifth Circuit explained that no statute grants federal district courts jurisdiction to hear appeals from state court decisions.[153] While final decisions of the states' highest courts may be reviewed by the Supreme Court on certiorari,[154] no parallel provision exists granting appellate jurisdiction over state court decisions to either the federal district courts or the federal courts of appeals.[155] In fact, the Supreme Court established under the *Rooker-Feldman*[156] doctrine that "'federal district courts, as courts of original jurisdiction, lack appellate jurisdiction to review, modify, or nullify final orders of state courts.'"[157]

Weekly, according to the Fifth Circuit, came to federal court seeking precisely such relief.[158] The court concluded that "the district court did not have jurisdiction to hear Weekly's claim, even to the preliminary stage of considering prudential abstention under *Younger*."[159] Thus, dismissal was proper, but for lack of jurisdiction.[160] On those grounds only, the Fifth Circuit affirmed the district court's judgment.[161]

IV. HABEAS CORPUS

Another case illustrating the courts of appeals' ongoing duty to question the existence of jurisdiction is *United States v. Key*.[162] Defendant Key pled guilty to second degree murder committed on federal property and was sentenced to a prison term of forty years.[163] Five years later, he filed a petition for a writ of habeas corpus.[164] The district court denied the petition. A year later, the Fifth Circuit denied Key a certificate of appealability.[165]

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148. Specifically, he premised the suit on 42 U.S.C. § 1306(a) (1994), which governs the disclosure of information in the possession of the Social Security Administration.
149. *See* 28 U.S.C. § 1331 (1994).
150. *Id.* The *Younger* doctrine reflects a court's prudential decision not to exercise equity jurisdiction even though it possesses that jurisdiction.
151. *Id.* at 615.
152. *Id.*
153. *Id.*
154. *See* 28 U.S.C. § 1257 (1994).
155. *Weekly*, 204 F.3d at 615.
156. *See* Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).
157. *Weekly*, 204 F.3d at 615. (quoting Liedtke v. State Bar of Texas, 18 F.3d 315, 317 (5th Cir. 1994), *cert. denied*, 513 U.S. 906 (1994)).
158. *Weekly*, 204 F.3d at 615.
159. *Id.*
160. *Id.* at 615-16.
161. *Id.* at 616.
162. 205 F.3d 773 (5th Cir. 2000).
163. *Id.*
164. *Id.* at 774.
165. *Id.*

The following year, Key sent the district judge a letter asking that counsel be appointed to assist him in filing a future petition for post-conviction relief.[166] The district court construed the letter as a motion for the appointment of counsel and denied it. Key appealed that denial. [167]

The government did not raise lack of jurisdiction as an issue, but the Fifth Circuit addressed it *sua sponte*.[168] The court stated that "'every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review, even though the parties are prepared to concede it.'"[169] If a district court lacked jurisdiction, the jurisdiction of the court of appeals "'extends not to the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit.'"[170]

Here, the Fifth Circuit found that the district court lacked jurisdiction over Key's motion.[171] Because Key had previously filed a federal habeas petition, he needed the Fifth Circuit's permission before challenging his conviction or sentence in the district court.[172] If he filed a second habeas petition in the district court, it would immediately be dismissed for lack of jurisdiction because § 2244(b)(3)(A) acts as a bar to the district court's assertion of jurisdiction over any successive habeas petition until the court of appeals grants the petitioner permission to file one.[173]

The Fifth Circuit concluded that when a statute removes jurisdiction over a particular type of case from the district courts, it must by necessity also remove from the district courts' consideration motions for the appointment of counsel to file the particular claims over which the district courts lack jurisdiction.[174] Thus in *Key*, the district court lacked jurisdiction to consider Key's motion for the appointment of counsel.[175] Because the district court was without the power to rule on the motion, the Fifth Circuit vacated the judgment of the district court and dismissed the appeal for lack of jurisdiction.[176]

V. AMOUNT IN CONTROVERSY

In *Simon v. Wal-Mart Stores, Inc.*,[177] the Fifth Circuit demonstrated that a lack of jurisdiction must be noticed even when a verdict has been handed down.[178] In *Simon*, the plaintiff suffered injuries as a result of a purse-snatching incident in the parking lot of the defendant's store in Denham Springs, Louisiana.[179] The

166. *Id.*
167. *Id.*
168. *Id.*
169. *Id.* (quoting Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 95 (1998)).
170. *Key*, 205 F.3d at 774 (quoting New York Life Ins. Co. v. Deshotel, 142 F.3d 873, 882 (5th Cir. 1998)).
171. *Key*, 205 F.3d at 774.
172. *See* 28 U.S.C. § 2244(b)(3)(A) (1994) ("Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.")
173. *Id. See* Hooker v. Sivley, 187 F.3d 680, 681-82 (5th Cir. 1999).
174. *Key*, 205 F.3d at 775.
175. *Id.*
176. *Id.*
177. 193 F.3d 848 (5th Cir. 1999).
178. *Id.* at 851-52.
179. *Id.* at 849.

plaintiff filed suit against Wal-Mart in Louisiana state court, asserting that she "suffered bodily injuries and damages including but not limited to a severely injured shoulder, soft-tissue injuries throughout her body, bruises, abrasions and other injuries to be shown more fully at trial, and has incurred or will incur medical expenses."[180] In accordance with Louisiana law,[181] she did not plead a specific monetary amount of damages.[182]

Wal-Mart removed the case to federal court[183] invoking diversity jurisdiction.[184] Neither the district court nor either of the parties questioned the court's jurisdiction, and the case proceeded to trial.[185] The district court entered judgment on a $30,000 jury verdict for Simon, and Wal-Mart appealed.[186]

The Fifth Circuit did not reach the merits of the case because it concluded that the district court lacked subject matter jurisdiction.[187] While the citizenship of the parties was completely diverse, Wal-Mart failed to meet its burden of proof that the amount in controversy exceeded the statutory minimum of $75,000.[188]

The court found that a defendant who removes a case from a Louisiana state court—or from the state courts of any other state that prohibits a specific monetary demand in the pleadings—may make this showing in one of two ways.[189] First, the defendant may demonstrate that it is "facially apparent" that the claims are likely above $75,000.[190] Second, a defendant may set forth facts in controversy—preferably in the notice of removal—that support a finding of the requisite amount.[191]

The court observed that Wal-Mart neither filed an affidavit with its notice of removal nor set forth any facts in controversy in that notice.[192] Wal-Mart alleged in a conclusory manner that the amount in controversy exceeded the jurisdictional amount.[193] Accordingly, removal was proper "only if the jurisdictional amount was 'facially apparent' from the complaint."[194]

Unlike *Simon*, the court in *Luckett* concluded that the jurisdictional amount of damages was apparent on the face of the complaint.[195] In *Luckett*, the plaintiff sued an airline for the loss of her luggage that contained her heart medication.[196] She became severely ill after missing her medication. In her complaint, the plaintiff alleged damages involving actual property damage, lost travel expenses, an emergency ambulance trip, a six-day hospital stay, pain and suffering, humiliation, and temporary inability to do housework following her hospitalization.[197]

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180. *Id.* at 849-50 (quoting from *Simon*'s pleading).
181. *See* LA. CODE CIV. PRO. ANN. art. 893 (West 1999).
182. *Simon*, 193 F.3d at 849-50.
183. *Id.* at 850.
184. *See* 28 U.S.C. § 1332 (1994).
185. *Simon*, 193 F.3d at 850.
186. *Id.* at 848.
187. *Id.* at 849.
188. *Id.* at 850.
189. *Id.*
190. *Id.*
191. *Id.* (citing Luckett v. Delta Airlines, Inc., 171 F.3d 295, 298 (5th Cir. 1999)).
192. *Simon*, 193 F.3d at 850.
193. *Id.*
194. *Id.*
195. *Id.*
196. *Id.*
197. *Id.*

In contrast, the complaint in *Simon* alleged, with little specificity, damages from less severe physical injuries—an injured shoulder, bruises, and abrasions—and unidentified medical expenses.[198] The complaint did not allege damages for loss of property, emergency transportation, hospital stays, specific types of medical treatment, emotional distress, functional impairments, or disability which, if alleged, would have supported a substantially larger monetary basis for federal jurisdiction.[199] On the basis of these allegations, the court concluded that it was not "facially apparent" that the amount of damages would exceed $75,000.[200]

The court emphasized that it must evaluate the facts supporting jurisdiction as of the time of removal; therefore, the court may not consider the entire post-removal record.[201] For example, the court could not consider evidence adduced at trial or allegations of damages described in the parties' appellate briefs.[202]

Because Wal-Mart faced a complaint that described damages that were inadequate to support removal, it had an affirmative burden to produce information through factual allegations or an affidavit sufficient to show by a preponderance of the evidence that the amount in controversy exceeded $75,000.[203] Simon's failure to object to removal or jurisdiction did not relieve Wal-Mart of its burden to support federal jurisdiction at the time of removal.[204] Holding that the district court lacked subject matter jurisdiction, the Fifth Circuit vacated the district court's judgment, remanded the case to the district court with instructions for it to remand to the state court from which the case had been removed, and dismissed the appeal.[205]

VI. NOTICE OF APPEAL

The Federal Rules of Appellate Procedure require that a notice of appeal specify the order from which the appeal is taken.[206] A policy of liberal construction of notices of appeal prevails when the intent to appeal an unmentioned or mislabeled ruling is apparent and there is no prejudice to the adverse party.[207]

A bankruptcy trustee in *In re Hensley*[208] brought an adversarial proceeding seeking a determination that pre-petition partition agreements executed by the debtor and his non-debtor wife were void as fraudulent.[209] On May 13, 1999, the district court held the partition void as to the non-debtor wife and entered an interlocutory judgment restoring the couple's pre-partition community property interests and passing the debtor-husband's pre-partition interest to the trustee.[210]

198. *Id.*
199. *Id.* at 851.
200. *See id.*
201. *Id.*
202. *Id.*
203. *Id.*
204. *Id.*
205. *Id.* at 851-52.
206. *See* FED. R. APP. P. 3(c)(1)(B) (A notice of appeal must designate the judgment, order, or part thereof being appealed).
207. *See In Re Hensley*, 201 F.3d 638, 641 (5th Cir. 2000) (citing Warfield v. Fidelity and Deposit Co., 904 F.2d 322, 325 (5th Cir. 1990)).
208. 201 F.3d at 638.
209. *Id.* at 641.
210. *Id.*

On July 31, the district court issued a supplemental opinion denying both parties' motions to alter and amend the judgment, reiterated the basis for its decision, and clarified that the wife's pre-partition community interest was "subject to the community debts and the bankruptcy estate's control."[211] In the interim, the court entered an order on July 1, granting the trustee's June 29 motion to unfreeze the wife's brokerage accounts, which contained proceeds of partitioned property, and to transfer the balance to the trustee.[212] On July 2, the wife filed a notice of appeal from the July 1 order.[213] The parties did not dispute the statutory basis for the Fifth Circuit's appellate jurisdiction.[214] The court was then required to consider the scope of its jurisdiction.[215] The Fifth Circuit concluded that because the July 1 order merely allowed execution on the May 13 interlocutory judgment, and because both parties briefed the substantive issues regarding summary judgment, the court's jurisdiction extended to the May 13 opinion and judgment.[216]

At the same time, the court concluded that it lacked jurisdiction over the district court's July 31 supplemental opinion and August 2 order.[217] The court based this reasoning on the conclusion that the appellant could not have intended to appeal from an order not yet issued at the time she filed the notice of appeal.[218]

VII. RIPENESS

In an attempt to give meaning to Article III's "case or controversy" requirement, courts have developed a series of principles termed "justiciability doctrines." One such doctrine that "cluster[s] about Article III" is ripeness.[219]

In *United Transportation Union v. Foster*,[220] the Fifth Circuit had occasion to address the ripeness of a case for adjudication. The issue presented on appeal was whether federal law preempted three Louisiana railroad transportation statutes.[221] The defendant, the Governor of Louisiana, signed the three transportation statutes into law.[222] One authorized Louisiana law enforcement officers to administer post-collision toxicological testing to railroad crews involved in collisions at railroad crossings.[223] The second statute required that locomotives be equipped with audible signaling devices and required train operators to use

211. *Id.*
212. *Id.*
213. *Id.*
214. The court had jurisdiction under 28 U.S.C. § 1292(a)(1), which grants appellate jurisdiction over interlocutory orders of the district courts granting, continuing, modifying, refusing or dissolving injunctions.
215. *In Re Hensley*, 201 F.3d at 641.
216. *See id.* at 642.
217. *Id.*
218. *Id.*
219. Vander Jagt v. O'Neill, 699 F.2d 1166, 1178 (D.C. Cir. 1982) (Bork, J., concurring), *cert. denied*, 464 U.S. 823 (1983).
220. 205 F.3d 851 (5th Cir. 2000).
221. *Id.* at 855.
222. *Id.*
223. *Id.*

the devices at specified locations.[224] The third statute required railroad employees to inform state authorities whether a train involved in an accident at a railroad crossing possessed an event recorder.[225]

The plaintiffs, two unions and a railroad industry association, filed suit in federal district court seeking pre-enforcement review of the railroad safety laws.[226] The plaintiffs alleged that federal law preempted all three statutes and that all three statutes created an undue burden on interstate commerce. They further alleged that the first statute violated the Fourth Amendment by allowing a law enforcement officer who lacks probable cause to administer post-collision toxicological testing to a railroad employee as part of a criminal investigation.[227]

The district court granted summary judgment in favor of the plaintiffs.[228] In making its decision, the district court held that the federal law preempted all three statutes. The court further held that the first statute violated the Fourth Amendment, and the second statute created an undue burden on interstate commerce.[229]

The Fifth Circuit, *sua sponte*, raised the issue of ripeness because of the possible jurisdictional defect.[230] The court stated that "[r]ipeness separates those matters that are premature because the injury is speculative and may never occur from those that are appropriate for judicial review."[231] Even though a case may be brought under the federal Declaratory Judgment Act,[232] and prior to a completed "injury-in-fact," such a case must still be limited to the resolution of an "actual controversy."[233] Thus, despite the nature of the action, a court cannot hear a case unless the suit is ripe for review.[234]

The court set forth the prevailing standard for determining whether a dispute is ripe for adjudication:

> A court should dismiss a case for lack of "ripeness" when the case is abstract or hypothetical. The key considerations are "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." A case is generally ripe if any remaining questions are purely legal ones; conversely, a case is not ripe if further factual development is required.[235]

Based on this standard, the court concluded that the plaintiffs' challenge to the first of the three statutes was "entirely too speculative and hypothetical" to establish the existence of a "case or controversy." In other words, the challenge was not ripe for review.[236]

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224. *Id.* at 855-56.
225. *Id.* at 856.
226. *Id.*
227. *Id.*
228. *Id.*
229. *Id.*
230. *See id.* at 857 (citing Lang v. French, 154 F.3d 217, 222 (5th Cir. 1998)).
231. *Foster*, 205 F.3d at 857.
232. *See* 28 U.S.C. § 2201 (1994).
233. *Foster*, 205 F.3d at 857.
234. *Id.* (citing Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 239-40 (1937)).
235. *Foster*, 205 F.3d at 857 (quoting New Orleans Pub. Serv., Inc. v. Council of New Orleans, 833 F.2d 583, 586-87 (5th Cir. 1987)).
236. *Foster*, 205 F.3d at 858.

The court characterized the plaintiffs' challenge as one that "sits atop a mountain of conjecture and speculation."[237] For the statute to run afoul of the Fourth Amendment, a series of events must necessarily occur.[238] First, a collision must occur at a Louisiana railroad crossing. Although the law of probability suggests that such a collision may be inevitable, the court could not determine with any degree of certainty when such an event would occur.[239] It is possible that the state legislature may amend or repeal the statute before another locomotive collision at a Louisiana railroad crossing occurs.[240]

Second, even assuming such a collision occurs, the statute does not operate automatically in the event of a collision.[241] Instead, a law enforcement officer must have "reasonable grounds to believe the person [operated] or [had] physical control of the locomotive engine while under the influence" of alcohol or other illegal controlled substances.[242] The court pointed out that many cases will arise where an officer's suspicion does not rise to the level necessary to trigger the statute's application.[243]

Third, "reasonable grounds to believe" must be interpreted to mean something other than "probable cause."[244] An officer must order such testing without actually having "probable cause."[245] In light of what it deemed "the extreme prematurity of [the] action," the court refused to allow the plaintiffs' Fourth Amendment facial challenge to the statute.[246]

The court next turned to the second and third statutes.[247] The court found that the second statute imposed immediate obligations on the railroad, including potential equipment modifications and operating procedures.[248] The court held that the issue was ripe for judicial resolution.[249]

The third statute was also ripe for adjudication.[250] Its requirements, similar to those of the first statute, depended upon a future railroad collision.[251] Unlike the first statute, however, the only questions the court needed to decide were purely legal ones.[252] Thus, the issues were appropriate for judicial review.[253]

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237. *Id.*
238. *Id.*
239. *Id.*
240. *Id.*
241. *Id.*
242. LA. REV. STAT. ANN. § 32:661.2 A(2) (West 1999).
243. *Foster*, 205 F.3d at 858.
244. *Id.*
245. *Id.*
246. *Id.*
247. *Id.* at 859.
248. *Id.*
249. *Id.*
250. *Id.*
251. *Id.*
252. *Id.*
253. *See id.* (citing New Orleans Pub. Serv., Inc. v. Council of New Orleans, 833 F.2d 583 (5th Cir. 1987)).

VIII. CONCLUSION

Referring to the federal courts, the Supreme Court made clear early in the history of the Republic, that the "presumption is (not as with regard to a court of general jurisdiction, that a cause is within its jurisdiction unless the contrary appears, but rather) that a cause is without its jurisdiction, until the contrary appears."[254] As is apparent from the foregoing cases, the Fifth Circuit views quite seriously its proper role as an appellate court of limited jurisdiction.

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254. Turner v. Bank of North America, 4 U.S. (4 Dall.) 8, 10, (1799); *see also* Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994) ("It is to be presumed that a cause lies outside a federal court's limited jurisdiction."); Grace v. American Cent. Ins. Co. of St. Louis, 109 U.S. 278, 283 (1883) ("As the jurisdiction of a federal court is limited, in the sense that it has no other jurisdiction than that conferred by the constitution and laws of the United States, the presumption is that a cause is without its jurisdiction unless the contrary affirmatively appears.").