



*Inv'rs v. Miller*, 661 F.3d 904, 908 (5th Cir. 2011)). Though Plaintiffs do not file a motion to certify the appeal as frivolous, the Court will consider its jurisdiction in the interest of judicial efficiency.

As a general rule, “a notice of appeal [of an order denying immunity] . . . [gives] the appellate court sole jurisdiction and divest[s] the trial court of jurisdiction to proceed with the case.” *BancPass, Inc. v. Highway Toll Admin., L.L.C.*, 863 F.3d 391, 398 (5th Cir. 2017) (quoting *United States v. Dunbar*, 611 F.2d 985, 987 (5th Cir. 1980)). In *Dunbar*, the Fifth Circuit outlined an exception to this general rule in the context of interlocutory appeals of double jeopardy: district courts may maintain jurisdiction if they certify that the appeal is frivolous. *Dunbar*, 611 F.2d at 988. In *BancPass*, the Fifth Circuit extended the availability of this exception to denials of immunity in civil cases, such as here, noting that other circuits had found it proper when a “disposition is so plainly correct that nothing can be said on the other side.” 863 F.3d at 399 (quoting *Apostol v. Gallion*, 870 F.2d 1335, 1339 (7th Cir. 1989)). The Fifth Circuit further noted that the “rule is a permissive one: the district court *may* keep jurisdiction, but is not required to do so . . . [and] ‘[s]uch a power must be used with restraint.’” *Id.* (quoting *Apostol*, 870 F.2d at 1339).

In light of this standard, the Court declines to exercise jurisdiction pending the outcome of the appeal.

SIGNED this 20 day of August, 2020.



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ORLANDO L. GARCIA  
CHIEF UNITED STATES DISTRICT JUDGE