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# *Sanchez v. Smart Fabricators of Texas*: Navigating the Jones Act "Labyrinth"



## I. INTRODUCTION

When Congress passed the Jones Act in 1920 to protect injured seamen, it left "seaman" undefined, thereby paving the way for courts to grapple with the Act's application.[1] In *Sanchez v. Smart Fabricators of Texas, L.L.C.*, the United States Court of Appeals for the Fifth Circuit considered this issue after Gilbert Sanchez, a land-based welder, fell and sustained an injury.[2] Smart Fabricators of Texas, L.L.C. (SmartFab) hired Sanchez to work on two jacked up drilling barges

1. ROBERT FORCE, ADMIRALTY AND MARITIME LAW 96 (Kris Markarian ed., 2nd ed. 2013). The Seventh Circuit indicated its ire over confusion surrounding the Jones Act, saying, "Diderot may very well have had the previous Supreme Court cases in mind when he wrote, '[w]e have made a labyrinth and got lost in it. We must find our way out.'" McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 353, 1991 AMC 913, 925 (1991) (quoting Johnson v. John F. Beasley Constr. Co., 742 F.2d 1054, 1060, 1985 AMC 369, 377 (7th Cir. 1984)).

2. Sanchez v. Smart Fabricators of Texas, L.L.C., 997 F.3d 564, 566 (5th Cir. 2021).

owned by Enterprise Offshore Drilling L.L.C. (Enterprise).[3] Sanchez worked on the Enterprise WFD 350 for forty-eight days performing a discrete repair job, as well as the Enterprise 263 performing repairs for thirteen days before sustaining his injury.[4] In both cases, he worked on barges jacked up above the water so that they were level with the dock, positioning Sanchez only steps from the shore.[5]

Sanchez sued SmartFab in state court pursuant to the Jones Act.[6] SmartFab removed the case, but Sanchez sought to remand, asserting that the Jones Act prohibited removal.[7] The district court denied Sanchez's attempt to remand and held that he did not have seaman status under the Jones Act because he failed to establish the requisite connection between his work and the Enterprise fleet.[8] On appeal, the Fifth Circuit originally held that Sanchez was a seaman based on the court's precedent.[9] Judge W. Eugene Davis, writing for the unanimous panel, also filed a concurring opinion in which he asserted that the Circuit's precedent failed to adequately apply United States Supreme Court precedent.[10] Applying the Supreme Court's case law, Judge Davis concluded that Sanchez was a land-based employee and therefore failed to qualify as a seaman.[11]

In the noted case, the Fifth Circuit reconsidered its previous holding, ultimately agreeing with Judge Davis's contention that the Circuit's precedent was inconsistent with Supreme Court precedent.[12] The court subsequently held that Sanchez was a land-based welder and failed to qualify as a seaman under the Jones Act.[13] While the court properly deemphasized the "perils of the sea" test, it also added unnecessary barriers for Jones Act claims.[14] Part II of this Note discusses the development of the Supreme Court's approach to distinguishing land-based and sea-based employment, the United States Court of Appeals for the Second Circuit's more streamlined

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3. *Id.*
4. *Id.* at 567.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* at 567-68.
9. *Id.*
10. Sanchez v. Smart Fabricators of Texas, L.L.C., 970 F.3d 550, 555 (5th Cir. 2020) (Davis, J., concurring).
11. *Id.* at 557.
12. *Sanchez*, 997 F.3d at 568.
13. *Id.* at 566.
14. *See id.* at 575.

approach to a question of seaman status, and the Fifth Circuit's application of the Court's standard. Part III describes how the Fifth Circuit determined its precedent misapplied the Supreme Court's case law. Part IV argues that the Fifth Circuit correctly noted that its case law misinterpreted Supreme Court precedent, but in shifting tact, it made the Jones Act less accessible for maritime workers. Part V briefly concludes.

## II. BACKGROUND

Before Congress passed the Jones Act in 1920, seamen injured due to negligence in the service of a vessel did not qualify for remedial compensation for their injuries (except for maintenance and cure) unless the injury was attributable to unseaworthiness.[15] Seeking to provide broader remedies for maritime workers, Congress passed the Jones Act, which "provides a seaman with a negligence-based cause of action against an employer with the right to trial by jury."[16] More generally, the remedies afforded to a seaman "are intended to 'compensat[e] or offset[] the special hazards and disadvantages to which they who go down to sea in ships are subjected.'"[17]

The Longshore and Harbor Workers' Compensation Act (LHWCA) further complicates the remedies available to maritime workers. Unlike the Jones Act, which applies to seamen, the LHWCA extends to those engaged in "maritime employment."[18] Those covered under the LHWCA get reduced damages for their injuries, but they receive guaranteed benefits for work-related injuries regardless of fault.[19] The Jones Act and the LHWCA are mutually exclusive, leaving courts to determine who qualifies as a seaman under the former remedy and who is a land-based worker under the latter.[20]

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15. FORCE, *supra* note 1. Unseaworthiness is an absolute duty imposed on a vessel owner and provides seamen with a cause of action. *Id.* at 104. Courts determine a vessel's seaworthiness based on "whether the vessel as well as her equipment and other appurtenances are 'reasonably fit for their intended use.'" *Id.* (quoting Mitchell v. Trawler Racer, Inc., 362 U.S. 539, 550, 1960 AMC 1503, 1512 (1960)).

16. *Id.* at 95.

17. David W. Robertson, *The Supreme Court's Approach to Determining Seaman Status: Discerning the Law Amid Loose Language and Catchphrases*, 34 J. MAR. L. & COM. 547, 569 (2003) (alteration in original) (quoting McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 354, 1991 AMC 913, 926 (1991)).

18. FORCE, *supra* note 1, at 107.

19. *Id.*

20. Sanchez v. Smart Fabricators of Texas, L.L.C., 997 F.3d 564, 569 (5th Cir. 2021).

### *A. The "Supreme Court Trilogy": The Court's Quest to Define "Seaman"*

From 1991-1997, the Supreme Court decided a trio of cases referred to by the Fifth Circuit as the "Supreme Court Trilogy" that helped shape the boundaries of seaman status.[21] In *McDermott International, Inc. v. Wilander*, the Court shifted away from defining seaman status based on an employee's role in navigation.[22] In that case, Jon Wilander sued his employer, McDermott International, Inc., under the Jones Act after injuring his head while working on an offshore drilling platform.[23] The Court held that Wilander's job as a paint foreman did not preclude him from making a claim under the Jones Act, thus establishing a new test for seaman status.[24] The Court started by addressing a circuit split regarding whether one need assist in the navigation and transportation of the vessel to claim seaman status, ultimately determining that "the time has come to jettison the aid in navigation language."[25] The Court reasoned that the navigation requirement relied on an outdated interpretation of the LHWCA that failed to recognize the Jones Act and the LHWCA as mutually exclusive remedies differentiating "between land-based and sea-based maritime employees."[26] The Court turned towards a new standard for seaman status that defined it "solely in terms of the employee's connection to a vessel in navigation."[27] As such, a plaintiff claiming seaman status must "contribute[] to the function of the vessel or to the accomplishment of its mission."[28]

While the *Wilander* Court addressed types of activities that seamen engage in, the Court in *Chandris, Inc. v. Latsis* confronted the requisite relationship an employee must have with a vessel for seaman status.[29] Antonios Latsis sued Chandris, Inc. under the Jones Act after the ship's doctor failed to direct him to seek emergency medical attention for a detached retina.[30] In weighing whether Latsis qualified

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21. *Id.*
22. *Wilander*, 498 U.S. at 343, 1991 AMC at 917.
23. *Id.* at 339, 1991 AMC at 914.
24. *Id.* at 357, 1991 AMC at 928.
25. *Id.* at 348, 353, 1991 AMC at 921, 925.
26. *Id.* at 353, 1991 AMC at 925.
27. *Id.* at 354, 1991 AMC at 926.
28. *Id.* at 355, 1991 AMC at 926 (quoting Offshore Co. v. Robison, 266 F.2d 769, 779, 1959 AMC 2049, 2049 (5th Cir. 1959)).
29. Chandris, Inc. v. Latsis, 515 U.S. 347, 349-50 (1995).
30. *Id.* at 350-51.

as a seaman, the Court first addressed the validity of the "snapshot" test, which only considers the moment the injury took place, not the broader context of the employee's relationship to the vessel.[31] The Court rejected this test, explaining that employees do not "oscillate back and forth between Jones Act coverage and other remedies depending on the activity in which the worker was engaged while injured."[32]

Abandoning the "snapshot" test, the Court established a two-prong test that articulates the standard for Jones Act plaintiffs.[33] The first prong derives from *Wilander* and requires the employee to play a role in the vessel's function or mission.[34] Under the second prong, known as the substantial connection test, "a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its *duration* and its *nature*."[35] The Court explained that the substantial connection test necessitates a division between Jones Act employees who are exposed to the "perils of the sea,"[36] and land-based employees "who have only a transitory or sporadic connection to a vessel in navigation."[37] Further, the Court adopted the Fifth Circuit's thirty percent rule, holding that employees cannot satisfy the duration element of the test unless they spend more than roughly thirty percent of their time working on a vessel in navigation.[38]

In *Harbor Tug & Barge Co. v. Papai*, the Court elaborated on the substantial connection test.[39] Harbor Tug & Barge Co. hired John Papai

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31. *Id.* at 363.

32. *Id.*

33. *Id.* at 368.

34. *Id.* (citing McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 355, 1991 AMC 913, 926 (1991)). Courts construe this category broadly to include "many individuals who would not ordinarily be thought of as seamen." FORCE, *supra* note 1, at 96-97. Under this standard, "individuals as varied as a hairdresser aboard a cruise ship, a roustabout aboard an oil rig, and a paint foreman aboard a vessel used in painting offshore oil platforms have been held to satisfy that requirement for seaman status." *Id.* at 97.

35. *Chandris*, 515 U.S. at 368 (emphasis added).

36. "Perils of the sea" refers to "both perils of the open ocean and vessel-movement dangers. . . . [S]eamen face special dangers—including deep-sea and open-ocean perils as well as vessel-movement dangers on inland waterways—that demand special protections." Robertson, *supra* note 17, at 570.

37. *Chandris*, 515 U.S. at 368.

38. *Id.* at 371. In a concurring opinion, Justice Stevens, joined by Justices Thomas and Breyer, disagreed with the Court's standard in this case, asserting that "an employee of the ship who is injured at sea in the course of his employment is always a 'seaman.'" *Id.* at 377 (Stevens, J., concurring).

39. 520 U.S. 548, 550-51 (1997).

for a one-day job to paint a tug.[40] Papai sued under the Jones Act after injuring his knee in the course of his work.[41] The Court determined that "the inquiry into the nature of the employee's connection to the vessel must concentrate on whether the employee's duties take him to sea" and reaffirmed that a "transitory or sporadic" connection to a vessel disqualifies one for seaman status.[42] The Court reasoned that an examination of an employee's duties further elucidates the "nature of the employee's connection to the vessel . . . [and] distinguish[es] land-based from sea-based employees."[43]

### *B. The Second and Fifth Circuits Navigate the Labyrinth*

The Second and Fifth Circuits' application of Supreme Court case law bears significance in maritime jurisprudence.[44] While the Fifth Circuit has a reputation as the leading circuit in maritime law, the Second Circuit is also influential in this area of law due to its heavy maritime caseload.[45] In *Matter of Buchanan Marine, L.P.*, the Second Circuit determined whether Wayne Volk qualified as a seaman after he fell and sustained injuries while inspecting a moored barge.[46] In order to determine if Volk had a substantial connection to this vessel, the court took a broad view of his employment, considering whether "in light of the totality of the circumstances, 'the worker in question is a member of the vessel's crew or simply a land-based employee who happens to be working on the vessel at a given time.'"[47] Utilizing that framework, the court determined that Volk was not a seaman because he (1) belonged to a dock union, (2) did not possess a maritime license, (3) returned home at the end of the work day, and (4) did not assist in the barge's operation or navigation.[48] The court regarded Volk's work

40. *Id.*
41. *Id.* at 551-52.
42. *Id.* at 555, 560 (citation omitted).
43. *Id.* at 555. Additionally, the Court rejected a broad definition of "fleet," limiting it to a group of vessels under "common ownership or control." *Id.* at 556.
44. Jason Kornmehl, *The Shifting Tides in Coverage for Maritime Workers' Compensation Under the Longshore Act*, 45 J. MAR. L. & COM. 401, 404 (2014).
45. *Id.* at 404, 410.
46. Matter of Buchanan Marine, L.P., 874 F.3d 356, 360-61, 2017 AMC 2674, 2675 (2d Cir. 2017).
47. *Id.* at 366, 2017 AMC at 2683 (quoting Chandris, Inc. v. Latsis, 515 U.S. 347, 370 (1995)).
48. *Id.* at 367, 2017 AMC at 2685.

in its entirety to conclude that he failed to satisfy the substantial connection requirement because his work was mostly land-based.[49]

The Fifth Circuit took a different approach in its application of the Supreme Court trilogy, instead asking whether plaintiffs faced the "perils of the sea."[50] In *In re Endeavor Marine*, Kevin Baye injured his knee and back aboard the *Frank L.* while employed by Crane Operators, Inc.[51] Over the course of his work, Baye handled cargo and maintained a crane on a barge that was generally moored to the dock, although sometimes moved to different wharfs.[52] Using the *Chandris* test, the en banc court held that Baye may still qualify as a seaman even though his work often occurred dockside.[53] The court declined to interpret *Papai* as a literal requirement for Jones Act claimants' duties to take them to sea.[54] Instead, it held that Papai "is a shorthand way of saying that the employee's connection to the vessel regularly exposes him 'to the perils of the sea.'"[55] The court determined that Baye faced the "perils of the sea" and qualified for seaman status.[56]

The Fifth Circuit again used the "perils of the sea" test in *Naquin v. Elevating Boats, L.L.C.* to determine that Larry Naquin, Sr. was a seaman.[57] Naquin sued Elevating Boats, L.L.C. (EBI) under the Jones Act after he sustained an injury in its shipping yard.[58] Naquin spent the majority of his time working on vessels moored, jacked up, or docked in EBI's shipyard.[59] The panel drew parallels to *Endeavor Marine*, again holding that the plaintiff faced the "perils of the sea" and therefore received protections under the Jones Act.[60] The court determined that even though he largely worked on docked vessels, Naquin had a substantial connection to the EBI fleet because of the "maritime perils" he faced.[61]

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49. *Id.* at 366, 2017 AMC at 2683-84.
50. Sanchez v. Smart Fabricators of Texas, L.L.C., 997 F.3d 564, 573 (5th Cir. 2021).
51. 234 F.3d 287, 289, 2001 AMC 581, 581 (5th Cir. 2000) (per curiam).
52. *Id.*, 2001 AMC at 582.
53. *Id.* at 292, 2001 AMC at 586.
54. *Id.* at 291, 2001 AMC at 585.
55. *Id.*, 2001 AMC at 586 (quoting Harbor Tug & Barge Co. v. Papai, 520 U.S. 548, 554-55 (1997)).
56. *Id.* at 292, 2001 AMC at 587.
57. 744 F.3d 927, 930, 2014 AMC 913, 914 (5th Cir. 2014).
58. *Id.*
59. *Id.*, 2014 AMC at 915.
60. *Id.* at 935, 2014 AMC at 922.
61. *Id.* In a dissenting opinion, Judge Edith H. Jones argued that Naquin failed to satisfy the substantial connection test. *Id.* at 941, 2014 AMC at 931 (Jones, J., dissenting). She asserted that counting time spent repairing docked vessels towards the duration component

## III. COURT'S DECISION

In the noted case, the Fifth Circuit shifted away from *Naquin*'s and *Endeavor Marine*'s analyses and adopted a standard in accordance with the Supreme Court trilogy.[62] First, the en banc court distinguished the Jones Act from the LHWCA.[63] Second, the court distilled the core concepts in the Supreme Court's case law, ultimately rejecting *Naquin* and *Endeavor Marine*.[64] Third, the court established a test more consistent with the Supreme Court trilogy.[65] Finally, the court applied their new test to the facts of Sanchez's case, concluding that as a land-based welder employed for short-term work, he did not qualify for seaman status.[66]

The Fifth Circuit first contextualized the issue of whether Sanchez is a seaman by examining the Jones Act and the LHWCA.[67] The court reviewed the LHWCA's legislative history to conclude that it applies to land-based workers and excludes "a master or member of a crew of any vessel."[68] Accordingly, the court determined that the LHWCA limits Jones Act coverage to maritime workers who crew a vessel in navigable waters.[69] The Jones Act, then, is the "seaman's remedy," while the LHWCA extends to other maritime employees.[70]

Second, the court examined the relevant principles from the Supreme Court trilogy, resolving that the Fifth Circuit misinterpreted the Court's precedent.[71] *Naquin* and *Endeavor Marine* relied exclusively on the "perils of the sea" test to satisfy *Chandris*'s substantial connection requirement, which "alone is a problematic test for making the land-based and sea-based distinction."[72] As such, the court asserted that the "perils of the sea" test is insufficient to differentiate seamen and other maritime workers and should only serve

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undermines the requirement because the workers do not face dangers associated with vessels in navigation. *Id.* at 942, 2014 AMC at 933. Judge Jones further concluded that Naquin did not satisfy the nature component of the substantial connection test because he did not face maritime dangers while working on docked vessels. *Id.* at 943, 2014 AMC at 934.

62. Sanchez v. Smart Fabricators of Texas, L.L.C., 997 F.3d 564, 573 (5th Cir. 2021).
63. *Id.* at 568-69.
64. *Id.* at 569-74.
65. *Id.* at 574.
66. *Id.* at 566.
67. *Id.* at 569.
68. *Id.* (quoting 33 U.S.C. § 902(3)(G)).
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.* at 573 n.63.

as a consideration in weighing the nature element of the substantial connection test.[73]

Third, the court determined that parsing seaman status demands a series of additional inquiries.[74] The court, therefore, should ask the following questions to supplement the *Chandris* test: (1) whether the worker is tied to the vessel or a land-based employer; (2) if the employment is sea-based; (3)(a) if the worker's task is transient in nature, or (b) if the employee's work involves traveling with the vessel to various locations.[75] The court reasoned that seamen and other maritime workers may face overlapping risks, so merely examining the perils they face is insufficient.[76] The additional inquiries, then, offer a more definitive distinction between seamen and non-seamen.[77]

Finally, having rejected the "perils of the sea" test, the court examined Sanchez's case under its new standard.[78] The court determined that Sanchez satisfied the first prong of the *Chandris* test because his work contributed to the function of the vessels.[79] The court further concluded that Sanchez did not fulfill the duration element of the substantiality test because he spent less than twenty percent of his time working aboard the Enterprise 263 where he sustained his injury.[80]

The court, however, raised issue with the nature prong of the substantiality test.[81] The court first asserted that per *Papai*, Sanchez's work was not sea-based as it occurred on jacked up barges only steps from the shore.[82] Moreover, Sanchez was a transient worker, which is a class of employee that the *Papai* Court determined does not have the requisite "connection to a vessel or group of vessels and do[es] not qualify for seaman status."[83] Since Sanchez neither engaged in "seagoing activity," nor did he have a connection to the vessel beyond this discrete job, he did not satisfy the nature element of the substantiality test.[84]

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73. *Id.* at 573-74.
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.* at 576.
81. *Id.* at 574-75.
82. *Id.* at 575.
83. *Id.* at 576.
84. *Id.* at 575-76. In a concurring opinion, Judge James L. Dennis agreed that the majority's decision is consistent with the Supreme Court trilogy. *Id.* at 577 (Dennis, J.,

## IV. ANALYSIS

The Fifth Circuit's holding in the noted case was a necessary course correction to more closely adhere to the Supreme Court trilogy, but its additional considerations represent an overcorrection.[85] While the court originally held that Sanchez was a seaman based on *Endeavor Marine* and *Naquin*, it reversed course on rehearing, ultimately bucking its precedent.[86] Yet in doing so, the court created barriers for attaining seaman status.[87] First, the court correctly shifted away from the "perils of the sea" test to more closely align itself with the Supreme Court's case law.[88] Second, by supplementing *Chandris* with additional considerations, the court limited the class of people who qualify as seamen under the Jones Act.[89] Third, the Second Circuit's application of *Chandris* in *Buchanan* evidences that extra factors are unnecessary to determine if a worker qualifies for seaman status.[90]

The Fifth Circuit correctly deemphasized the "perils of the sea" test as a standard for the *Chandris* substantial connection prong.[91] The Supreme Court regularly references the "perils of the sea" test in its case law, which underscores a core underpinning of the Jones Act: seamen face exceptional dangers and accordingly, they deserve special protections.[92] The "perils of the sea" test can help illuminate an employee's seaman status; however, the phrase's ill-defined boundaries render it unwieldy and too haphazard to serve as the decisive factor for the substantial connection test.[93] It encompasses "both perils of the open ocean and vessel-movement dangers"[94] making it a broad term of

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concurring). He cautioned that the court should consider additional resources such as David W. Robertson's "The Supreme Court's Approach to Determining Seaman Status: Discerning the Law Amid Loose Language and Catchphrases," which he lauded as a guide to navigating the Supreme Court's Jones Act case law. *Id.*

85. *Id.* at 574 (majority opinion).

86. *Id.* at 573.

87. *Id.*

88. *Id.*

89. *Id.* at 574.

90. Matter of Buchanan Marine, L.P., 874 F.3d 356, 366, 2017 AMC 2674, 2684 (2d Cir. 2017).

91. *Sanchez*, 997 F.3d at 573.

92. Robertson, *supra* note 17.

93. *Sanchez*, 997 F.3d at 573-74 ("Consider the captain and crew of a ferry boat or of an inland tug working in a calm river or bay, or the drilling crew on a drilling barge working in a quiet canal. No one would question whether those workers are seamen. Yet, their risk from the perils of the sea is minimal."); Matthew H. Frederick, Note, *Adrift in the Harbor: Ambiguous-Amphibious Controversies and Seamen's Access to Workers' Compensation Benefits*, 81 TEX L. REV. 1671, 1704 (2003).

94. Robertson, *supra* note 17, at 570.

art that lacks the nuance required to distinguish seamen from other maritime workers in Jones Act cases.[95] Moreover, overreliance on this factor contributes to a "borderline seaman category" wherein perils faced by some claimants may or may not also apply to non-seamen maritime employees, thereby dulling its effectiveness as a limiting principle.[96] Indeed, the Court in *Chandris* confronted this issue when it asserted that "[s]eaman status is not coextensive with seamen's risks."[97] Due to its indeterminant nature, the Court made clear that "perils of the sea" cannot serve as the decisive factor for the connection element.[98] Consequently, the Fifth Circuit correctly noted that it misapplied the Supreme Court trilogy in its addressing the Jones Act.[99]

Yet the Fifth Circuit went beyond the Court's *Chandris* framework, signaling a shift towards a narrower view of seamen.[100] This limitation may result in a more difficult road to recovery for claimants who have an incentive to pursue a claim under the Jones Act.[101] An injured "worker who can establish status as a seaman has access to a triad of remedies that, in combination, make seamen the 'most generously-treated personal injury victims in American law.'"[102] While Jones Act plaintiffs have a right to a jury trial, maritime workers who recover under the LHWCA neither retain a cause of action against their employer, nor can they recover their full damages for employment-related injuries.[103] In *Sanchez*, the Fifth Circuit further limited access to the more generous means of recovery.[104]

The first prong of the *Chandris* test has a more inclusive view of seaman status, with the substantiality test serving as a limiting factor.[105] The Court in *Papai* determined that the inquiry surrounding the

95. *Sanchez*, 997 F.3d at 574.

96. Frederick, *supra* note 93, at 1705 ("There is no doubt that a stevedore or longshoreman faces at least some 'perils of the sea,' but no one would contend that these workers qualify as seamen.").

97. Chandris, Inc. v. Latsis, 515 U.S. 347, 361 (1995).

98. *See id.*

99. *Sanchez*, 970 F.3d at 573.

100. *Chandris*, 515 U.S. at 568.

101. *See* FORCE, *supra* note 1 (explaining that the Jones Act is "liberally construed in favor of injured seamen").

102. Robertson, *supra* note 17, at 547 (quoting DAVID W. ROBERTSON ET AL., ADMIRALTY AND MARITIME LAW IN THE UNITED STATES 240 (1st ed. 2001)).

103. FORCE, *supra* note 1, at 107.

104. Robertson, *supra* note 17, at 547.

105. FORCE, *supra* note 1, at 96-97 (explaining that the first prong of the *Chandris* test encompasses a broad swath of maritime works, while the second prong serves as a barrier to claimants).

substantial connection requirement should focus on "whether the employee's duties take him to sea."[106] The Fifth Circuit could have concluded Sanchez was not a seaman based solely on *Papai* since Sanchez worked on jacked up vessels and commuted home every day.[107] Instead, the court demands inquiries beyond what the Supreme Court laid out in the trilogy to interrogate the nature of the claimant's work.[108] For instance, courts bound by this decision must ask whether the worker's allegiance is to a vessel or a land-based employer, as well as if their work is sea-based in nature.[109] Such considerations invite more fact-intensive legal battles concerning the worker's scope of employment and connection to a vessel.[110]

Further, the court's new criteria have the potential to sow seeds of confusion for courts and claimants.[111] The Fifth Circuit asks whether the worker performed discrete tasks or if their work involved sailing to different locations, which raises questions about whether a worker must sail with the vessel to be a seaman, or where the line is between transient work and sufficiently permanent work for seaman status.[112] Accordingly, workers who are not permanently assigned to a single vessel, as was the case in *Sanchez*, may be unable to sue their employers under the Jones Act due to these additional hurdles.[113] The court's shift has the potential to provide clarity and help draw the line between sea-based workers and land-based maritime workers in some instances, but restricting seaman status stands in opposition to Supreme Court precedent.[114]

The Second Circuit's analysis in *Buchanan* demonstrates that additional factors need not be considered to weigh the application of seaman status.[115] In that case, the court heeded the *Chandris* Court's warning "to focus upon the essence of what it means to be a seaman and to eschew the temptation to create detailed tests to effectuate the

106. Harbor Tug & Barge Co. v. Papai, 520 U.S. 548, 555 (1997).
107. Sanchez v. Smart Fabricators of Texas, L.L.C., 997 F.3d 564, 567, 574 (5th Cir. 2021).
108. *Id.* at 574; Chandris, Inc. v. Latsis, 515 U.S. 347, 368 (1995).
109. *Sanchez*, 997 F.3d at 574.
110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.* at 567.
114. Frederick, *supra* note 93, at 1703.
115. Matter of Buchanan Marine, L.P., 874 F.3d 356, 366, 2017 AMC 2674, 2684-85 (2d Cir. 2017).

congressional purpose."[116] The Second Circuit held that the plaintiff did not satisfy the substantiality portion of the *Chandris* test by weighing the circumstances holistically.[117] The court's approach conforms to the *Chandris* Court's motivation for the substantial connection test: "to give full effect to the remedial scheme created by Congress."[118] To that end, the Fifth Circuit should assess a worker's employment in its entirety to judge if they have the requisite connection as opposed to adding a rigid set of standards.[119] The Second Circuit confirmed that the additional factors laid out in *Sanchez* are not essential to the seaman status analysis.[120]

Judge Davis took a similar approach in his concurrence upon originally hearing this case.[121] In his concurrence, Judge Davis considered the facts surrounding Sanchez's employment to determine that he did not qualify for seaman status, reasoning that it would "be consistent with the Second Circuit's approach in *Matter of Buchanan Marine, L.P.*"[122] As such, *Buchanan* and Judge Davis's concurrence evince that the court would have drawn the same conclusion without adding a layer of scrutiny that the *Chandris* court warned against.[123] Considering that the Fifth Circuit is the leading voice in maritime law, its factors in *Sanchez* may prove to be the leading approach in future Jones Act cases.[124]

## V. CONCLUSION

Seaman status is a frequently litigated issue fueled by the benefits offered to Jones Act claimants that do not extend to other maritime works.[125] While it is possible that no single "test can capture the essence of what it means to be a seaman,"[126] the Supreme Court sought to provide a definitive standard for the famously undefined term with its

116. *Id.*, 2017 AMC at 2684 (quoting Chandris, Inc. v. Latsis, 515 U.S. 347, 369 (1995)).
117. *Id.*
118. *Chandris*, 515 U.S. at 368.
119. *Buchanan*, 874 F.3d at 366, 2017 AMC at 2684.
120. Sanchez v. Smart Fabricators of Texas, L.L.C., 997 F.3d 564, 574 (5th Cir. 2021).
121. Sanchez v. Smart Fabricators of Texas, L.L.C., 970 F.3d 550, 557 (5th Cir. 2020) (Davis, J., concurring).
122. *Id.* at 557 n.23 (citation omitted).
123. *Buchanan*, 874 F.3d at 366, 2017 AMC at 2684; *Sanchez*, 970 F.3d at 557 (Davis, J., concurring).
124. *Sanchez*, 997 F.3d at 574.
125. Robertson, *supra* note 17, at 570.
126. Frederick, *supra* note 93, at 1703.

trilogy of Jones Act cases.[127] In the noted case, the Fifth Circuit undermined the Court's efforts by limiting the category of workers covered by the act through an additional layer of analysis.[128] Consequently, the case represents a subtle but substantial shift in maritime remedial law by limiting access to Jones Act coverage.

Caroline Silverstein*

127. *Sanchez*, 997 F.3d at 569.

128. *Id.* at 574.

* 2022 Caroline Silverstein, J.D. candidate 2023, Tulane University Law School, B.A. 2019, Occidental College. Thank you to my brother for his generosity with his time and counsel, as well as to my parents for their support.