

No. _____

In The
SUPREME COURT OF THE UNITED STATES

WES PERKINS,
Plaintiff – Appellant – Petitioner,
v.

JOHN LIPSCOMBE, Judge, County Court at Law
No. 3, Travis County, Texas, et al.
Respondents – Appellees – Respondents.

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

**CERTIFICATE OF SERVICE FOR THE
ORIGINAL PETITION FOR A WRIT OF CERTIORARI
WITH APPENDICES A, B, AND C**

By my signature below, per Rule 29.5(c), I certify,
pursuant to 28 U.S.C. § 1746, that on or about the
3d day of March, 2021, I served three (3) true and
correct copies of this

Original Petition for a Writ of Certiorari with its
Appendices A, B, and C

by certified mail, or by 3-day (or faster) delivery
service, as follows:

(No Official Appearance below)
DAVID ESCAMILLA
BILL SWAIM
TRAVIS COUNTY ATTORNEY'S OFFICE
P.O. Box 1748
Austin, TX 78767
(LIPSCOMBE, TRAVIS CO.)

**Additional material
from this filing is
available in the
Clerk's Office.**

Appendix A (No. 20-50682)

Rule 14.1(i)(i)—USCA5's Clerk's "judgment"

Dec. 31, 2020. Cover letter.

Case: 20-50682 Document: 00515690487 Page: 1
Date Filed: 12/31/2020

United States Court of Appeals

FIFTH CIRCUIT

OFFICE OF THE CLERK

**LYLE W. CAYCE
CLERK**

**TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130**

December 31, 2020

Ms. Jeannette Clack
Western District of Texas, Austin
United States District Court
501 W. 5th Street
Austin, TX 78701-0000

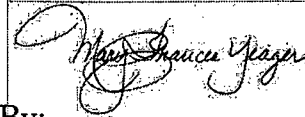
No. 20-50682 Perkins v. Lipscombe
USDC No. 1:20-CV-493

Dear Ms. Clack, [sic – :]

Enclosed is a copy of the judgment issued as the
mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

cc w/encl:
Mr. Wesley Perkins

Dec. 31, 2020. Clerk's "judgment."

Case: 20-50682 Document: 00515690488 Page: 1
Date Filed: 12/31/2020

**United States Court of Appeals
for the Fifth Circuit**

No. 20-50682

[SEAL]

A True Copy
Certified order issued Dec 31, 2020
/s/ Lyle W. Cayce
Clerk, U.S. Court of Appeals,
Fifth Circuit

WESLEY PERKINS,

Plaintiff-Appellant,

versus

JOHN LIPSCOMBE, Judge, County Court at Law No. 3,
Travis County, Texas Officially and Individually;
TRAVIS COUNTY, TEXAS,

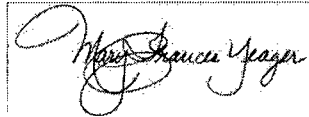
Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-493

CLERK'S OFFICE:

Under 5TH Cir. R. 42.3, the appeal is dismissed as of December 31, 2020, for want of prosecution. The Appellant failed to timely file a sufficient Appellant's brief. [1 2]

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

A handwritten signature in cursive script, reading "Mary Frances Yeager", is enclosed within a rectangular box.

By: _____
Mary Frances Yeager, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

Rule 14.1(i)(ii)—Additional Orders

USCA5.

OCT. 9, 2020. CLERK'S OBJECTIONS.

Case: 20-50682 Document: 00515597446 Page: 1
Date Filed: **10/06/2020** [emph. added]

United States Court of Appeals

FIFTH CIRCUIT

OFFICE OF THE CLERK

**LYLE W. CAYCE
CLERK**

**TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130**

October 09, 2020 [emph. added]

Mr. Wesley Perkins
P.O. Box 152766
Austin, TX 78715-2766

No. 20-50682 Wesley Perkins v. John
Lipscombe, et al
USDC No. 1:20-CV-493

Dear Mr. Perkins, [sic – :]

The following pertains to your brief filed on October 6, 2020.

We filed your brief. However, you must make the following corrections within the next 14 days.

You need to correct or add:

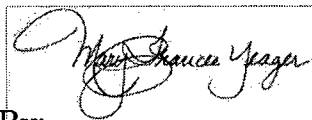
Record References: Although your brief contains citations to the record, they are not in proper form. Every assertion in briefs regarding matter in the record must be supported by a reference to the page number of the original record, whether in paper or electronic form, where the matter is found, using the record citation form as directed by the Clerk of Court. The use of "id" is not permitted when citing to the record on appeal. (See **5TH Cir. R. 28.2.2**). Brackets are not allowed. The record citations should appear as ROA.1 (for example). Also, if you have multiple pages, ROA.1,10 (for example).

The Table of Authorities must list cases (alphabetically arranged), statutes, and other authorities, with references to the pages of the brief where they are cited. See **Fed. R. App. P. 28(a)(3)**.

We have not received 4 copies of the Record Excerpts required by **5TH Cir. R. 30.1.2**. [1 2]

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, appearing to read "Mary Frances Yeager", is written over a horizontal line.

By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

**NOV. 10, 2020. MOTION TO STRIKE CLERK'S
OBJECTIONS DENIED.**

Case: 20-50682 Document: 00515690488 Page: 1
Date Filed: 12/31/2020

**United States Court of Appeals
for the Fifth Circuit**

No. 20-50682

Wesley Perkins,

Plaintiff-Appellant,

versus

John Lipscombe, Judge, County Court at Law No. 3,
Travis County, Texas Officially and Individually;
Travis County, Texas,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-493

ORDER:

IT IS ORDERED that Appellant's motion to file
brief in its present form is DENIED.

IT IS FURTHER ORDERED that Appellant's
motion per FRAP 2 to suspend the rules is DENIED.



JAMES C. HO

United States Circuit Judge

**NOV. 10, 2020. CLERK'S OBJECTIONS
REASSERTED.**

Case: 20-50682 Document: 00515633466 Page: 1
Date Filed: 11/10/2020

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE **TEL. 504-310-7700**
CLERK **600 S. MAESTRI PLACE,**
 Suite 115
 NEW ORLEANS, LA 70130

November 10, 2020

**MEMORANDUM TO COUNSEL OR PARTIES
LISTED BELOW:**

No. 20-50682 Wesley Perkins v. John
 Lipscombe, et al
 USDC No. 1:20-CV-493

Enclosed is an order entered in this case.

In light of the enclosed order, the Court is allowing
you fourteen (14) days to submit a sufficient
Appellant's Brief and to file Record Excerpts.

Per our deficiency notice dated October 9, 2020,
please see the necessary corrections:

Record References: Although your brief contains
citations to the record, they are not in proper form.
Every assertion in briefs regarding matter in the
record must be supported by a reference to the page

number of the original record, whether in paper or electronic form, where the matter is found, using the record citation form as directed by the Clerk of Court. The use of "id" is not permitted when citing to the record on appeal. (See **5TH CIR. R. 28.2.2**). Brackets are not allowed. The record citations should appear as ROA.1 (for example). Also, if you have multiple pages, ROA.1,10 (for example).

The Table of Authorities must list cases (alphabetically arranged), statutes, and other authorities, with references to the pages of the brief where they are cited. See **Fed. R. App. P. 28(a)(3)**.

We have not received 4 copies of the Record Excerpts required by 5TH Cir. R. 30.1.2. [1 2]

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, appearing to read "Mary Frances Yeager", is written over a horizontal line.

By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

Mr. Wesley Perkins

**DEC. 9, 2020. TWO ITEMS. USCA5 ACTIVITY WITH
CLERK'S EXPANSION VIA COVER LETTER.**

Case: 20-50682 Document: 00515668308 Page: 1
Date Filed: 12/09/2020

***United States Court of Appeals*
FIFTH CIRCUIT
OFFICE OF THE CLERK**

**LYLE W. CAYCE TEL. 504-310-7700
CLERK 600 S. MAESTRI PLACE,
 Suite 115
 NEW ORLEANS, LA 70130**

December 09, 2020

**MEMORANDUM TO COUNSEL OR PARTIES
LISTED BELOW:**

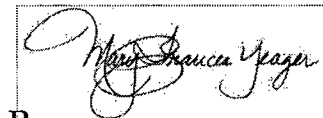
No. 20-50682 Wesley Perkins v. John
 Lipscombe, et al
 USDC No. 1:20-CV-493

Enclosed is an order entered in this case.

A sufficient brief is due for filing within fourteen (14)
days, or by no later than December 23, 2020.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

Mr. Wesley Perkins

**United States Court of Appeals
for the Fifth Circuit**

No. 20-50682

WESLEY PERKINS,

Plaintiff-Appellant,

versus

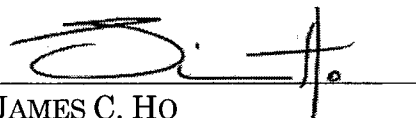
JOHN LIPSCOMBE, JUDGE, COUNTY COURT AT LAW NO.
3, TRAVIS COUNTY, TEXAS OFFICIALLY AND
INDIVIDUALLY; TRAVIS COUNTY, TEXAS,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-493

ORDER:

- (√) On November 10, 2020, the clerk provided the appellant 14 days to correct deficiencies in the brief filed on October 6, 2020. The directed corrections were not made. The appellant is provided 14 additional days to return a sufficient brief. If the appellant fails to correct the deficiencies and return the brief within the provided time, the clerk is directed to strike the brief and dismiss the appeal for failure to prosecute under 5TH CIR. R. 42.3. [± 2]


JAMES C. HO
United States Circuit Judge

W.D.Tex.

JUL. 13, 2020. MOTION TO DISQUALIFY DENIED.

Case 1:20-cv-00493-RP Document 14 Filed 07/13/20
Page 1 of 4

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WESLEY PERKINS,	§ No. 1:20-CV-0493-OLG
	§
Plaintiff,	§
	§
v.	§
	§
JOHN LIPSCOMBE, et al.,	§
	§
<u>Defendants.</u>	§

ORDER DENYING MOTION TO DISQUALIFY

Before the Court is a Motion to Disqualify filed by Plaintiff Wes Perkins ("Plaintiff" or "Perkins"). (Dkt.

9.) On July 9, 2020, this Motion was referred by the Honorable Chief Judge Orlando L. Garcia to the undersigned for determination. (Dkt. # 13.) Pursuant to Local Rule CV-7(h), the Court finds this matter suitable for disposition without a hearing. After careful consideration, the Court **DENIES** the motion for the following reasons.

BACKGROUND

Plaintiff brings this motion to disqualify the “presently assigned § 451 judge,” which at the time was Judge Robert Pitman. (Dkt. # 14.) Perkins asserts that the Western District of Texas has an “insatiable desire to prohibit trial and compel arbitration.” (*Id.* (emphasis and internal punctuation marks omitted).) Plaintiff asserts that he “does not consent to any form of non-judicial decision- [1 2] making” and that his matter should not be referred “at any time, to any arbiter (a/k/a magistrate).” (*Id.* (emphasis omitted).) In arguing that Judge Pitman should be disqualified, Perkins asserts that Judge Pitman “has done exactly what [Judge Lee Yeakel] has done, namely exercise non-existent jurisdiction to violate, intentionally, several of Perkins's rights, the most directly relevant for Disqualification analysis being the right to trial, at all, [Judge Pitman] is also now not only a party in litigation adverse to Perkins but also a party adverse to Perkins on an issue that attacks the very heart of this country, namely the obliteration of Structural Due Process.” (*Id.* (emphasis and internal punctuation marks omitted).)

LEGAL STANDARD

Under 28 U.S.C. § 144, whenever a party files a

timely and sufficient affidavit that the presiding judge has a personal bias or prejudice either for or against said party, such judge shall proceed no further, and another judge shall decide the issue. A judge must be disqualified where “his impartiality might reasonably be questioned” or where he “has a personal bias or prejudice concerning a party.” 28 U.S.C. § 455(a) & (b)(1). Under either § 144 or § 455, “the alleged bias must be personal, as distinguished from judicial in nature.” United States v. Scroggins, 485 F.3d 824, 830 (5th Cir. 2007) (internal citations omitted). A judicial ruling alone “almost never constitute[s] a valid basis for a bias or partiality motion.” United States ex rel Gage v. Davis SR Aviation L.L.C., [1 3] 658 F. App'x 194, 198-99 (5th Cir. 2016) (internal quotation marks omitted). The alleged bias or prejudice must stem from an extrajudicial source, resulting in an opinion “on some basis other than what the judge learned from his participation in the case,” United States v. MMR Corp., 954 F.2d 1040, 1045-46 (5th Cir. 1992) (quoting United States v. Grinnell Corp., 384 U.S. 563, 583 (1966)), and therefore, a motion to disqualify ordinarily “may not be predicated on the judge's rulings in the instant case.” Scroggins, 485 F.3d at 830 (internal quotations omitted). The determination of whether disqualification is appropriate is within the sound discretion of the judge. In re Hipp Inc., 5 F.3d 109, 116 (5th Cir. 1993).

ANALYSIS

Plaintiff seeks to disqualify Judge Pitman because “by compelling arbitration” Judge Pitman has “overtly defied Perkins's right to a trial at all” and thus “rendered himself incapable of providing

Perkins a fair and impartial trial.” (Dkt. # 9 (emphasis and internal punctuation marks omitted).) Plaintiff also asserts that Judge Pitman has “joined the conspiracy” against Perkins. (*Id.*)

This Court cannot find anywhere in the record an instance where Judge Pitman denied Perkins his right to a trial and demanded arbitration. Furthermore, there appears to be no evidence of Judge Pitman conspiring against Perkins. Without any support, Perkins's conclusory statement is unlikely to cause “a reasonable and objective person” to “harbor doubts concerning the judge’s [1 4] impartiality.” See *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 484 (5th Cir. 2003) (quoting *In re Chevron U.S.A. Inc.*, 121 F.3d 163, 165 (5th Cir. 1997)).

CONCLUSION

Having reviewed Plaintiff's motion and the entire record, this Court finds that none of Plaintiff's allegations present a legitimate ground for the disqualification of Judge Pitman under Section 144, Section 455, or subsequent case law. The Court finds that no reasonable person, knowing all the facts and circumstances surrounding these matters, would question Judge Pitman's impartiality or fairness to Plaintiff. Thus, the Court **DENIES** Plaintiff's Motion.

IT IS SO ORDERED.

DATED: San Antonio, Texas, July 13, 2020.

/s/ D Ezra

David Alan Ezra

Senior United States District Judge

JUL. 20, 2020. DISMISSAL.

Case 1:20-cv-00493-RP Document 17 Filed 07/20/20
Page 1 of 5

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WESLEY PERKINS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	1:20-CV-493-RP
	§	
JOHN LIPSCOMBE,	§	
<i>in his official and</i>	§	
<i>individual capacities, and</i>	§	
TRAVIS COUNTY, TEXAS,	§	
	§	
Defendants.	§	

ORDER

Plaintiff Wesley Perkins (“Perkins”) filed his complaint in this case on May 6, 2020. (Dkt. 1). After Perkins moved to disqualify the undersigned, (Dkt. 9), this case was transferred to the docket of the Honorable Orlando L. Garcia, Chief United States District Judge for the Western District of Texas, (Dkt. 10). Chief Judge Garcia referred Perkins’s motion to Senior United States District Judge David A. Ezra, (Dkt. 13), who denied it, (Dkt. 14). Chief Judge Garcia then transferred this case to the undersigned’s docket. Having reviewed Perkins’s

filings so far in this case, the dockets of other cases Perkins has filed, and the relevant law, the Court dismisses Perkins's complaint with prejudice.

Perkins is proceeding pro se. This case is one of three he has filed in the Western District of Texas this year. See *Perkins v. Brewster*, No. 1:20-CV-70-RP (W.D. Tex.); *Perkins v. Mischlian*, No. 1:20-CV-296-RP-ML (W.D. Tex.). These cases complement the two that he previously filed in the Western District. See *Perkins v. Brewster*, No. 1:17-CV-378-LY, 2018 WL 814250, at *1 (W.D. Tex. Feb. 9, 2018), *report and recommendation adopted*, No. 1:17-CV-378-LY, 2018 WL 1898402 (W.D. Tex. Mar. 7, 2018); *Perkins v. Brewster*, No. 1:17-CV-1173-LY, 2018 WL 4323948, at *1 (W.D. Tex. Sept. 7, 2018), *subsequently aff'd sub nom. Perkins v. Ivey*, 772 F. App'x 245 (5th Cir. 2019) (per curiam). Perkins has also previously filed a habeas case, *Perkins v. Hernandez*, 1:18-CV-201-RP (W.D. Tex.), and multiple cases in state court, see *Perkins v. State*, 2016 WL 4272109 (Tex. App.—Austin Aug. 11, [1] 2] 2016, pet. denied); *Perkins v. State*, No. 03-14-733-CR, 2016 WL 691265 (Tex. App.—Austin Feb. 19, 2016, pet. denied); *Perkins v. State*, 2015 WL 3941572 (Tex. App.—Austin June 25, 2015).

In each of these cases, Perkins has advanced similar or identical legal arguments, each of which has repeatedly been deemed not meritorious. In particular, in each of the cases he filed in 2020, he challenges the ability of a district judge to refer a dispositive motion to a magistrate judge for a report and recommendation. (See, e.g., Notice, Dkt. 8; Notice, Dkt. 16). Each of his complaints stems from his arrests “for driving without a license or registration and for operating an untitled and

unregistered motor vehicle,” and in each case, he argues that “his vehicle was not engaged in commercial transportation, and thus was not subject to the requirements of the Texas Transportation Code.” *Perkins*, 772 F. App’x at 245; (see Compl., Dkt. 1).

Both strains of argument are without merit. The Fifth Circuit, directly addressing Perkins’s own arguments concerning referrals to magistrate, held that:

District court judges may designate magistrate judges to “submit . . . proposed findings of fact and recommendations for the disposition” of any motion to dismiss.² Thus Perkins’s first two arguments are directly foreclosed by law. And because his disqualification argument is founded on the mistaken belief that district judges may not delegate certain pretrial matters to magistrate judges for review and recommendation, it fails as well.

Perkins, 772 F. App’x at 246 (citing 28 U.S.C. § 636(b)(1)(B)) (footnote omitted); (see also Order, Dkt. 14, at 3 (differentiating between statutorily permitted referral of matters to magistrate judges and forced arbitration of claims)). In his filings, Perkins also argues that *Roell v. Withrow*, 538 U.S. 580, 582 (2003), bars referrals under 28 U.S.C. § 636(b)(1)(B). (Notice, Dkt. 8; Notice, Dkt. 16). In *Roell*, the Supreme Court held that a court can infer, from the parties’ “conduct during litigation,” their consent to a magistrate judge conducting “any or all proceedings in a jury or nonjury civil matter” under 28 U.S.C. § 636(c)(1). *Roell* is inapplicable to the cases now before this Court. Perkins’s arguments miss the fundamental distinction between referring all proceedings to a magistrate judge under § 636(c)(1), which indeed requires the parties’

consent (inferred or not), and referring [1 3] individual motions to a magistrate judge for a report and recommendation under § 636(b)(1). The question of whether or not Perkins “consents” to a referral under § 636(b)(1), the provision at issue here, is immaterial.

Similarly, multiple courts have held that Perkins’s Texas Transportation Code-related claims, such as those he brings in this case, are meritless. *See, e.g., Perkins*, 772 F. App’x at 246–27 (“Perkins violated these laws according to their plain meaning. And his counter-argument that he is not governed by the statutes is unconvincing.”); *Perkins*, 2018 WL 4323948, at *1–2 (“[T]he entire basis for each of his claims is the oft-rejected argument that he is not required to either have a driver’s license or register his car because he does not consent to be bound by the Texas Transportation Code. This is blatantly incorrect.”); *Perkins*, 2017 WL 814250, at *2;¹ *Perkins*, 2016 WL 4272109, at *2; *Perkins*, 2016 WL 691265 at *1–2; *Perkins*, 2015 WL 3941572, at *2–3.

Perkins is not a prisoner and is not proceeding *in forma pauperis*. The screening provisions of 28 U.S.C. §§ 1915(a) and (e) therefore do not apply here. Nevertheless, district courts have the inherent authority to screen a pleading for frivolousness and

¹ “Leaving aside how non-sensical [the argument that Perkins did not consent to be bound by the Texas Transportation Code] is, the Court’s analysis need go no further than the very first assertion: that to be regulated under the Transportation Code, one must assert ‘commercial consent.’ Because this assertion is incorrect (as numerous courts have told Perkins), the remaining steps in his analysis cannot stand, as they are based on a false premise.”

may dismiss, sua sponte, claims that are “totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion” because such claims lack “the ‘legal plausibility necessary to invoke federal subject matter jurisdiction.’” *Apple v. Glenn*, 183 F.3d 477, 479–80 (6th Cir. 1999) (per curiam) (citing *Hagans v. Lavine*, 415 U.S. 528, 536–37 (1974); see also *Dilworth v. Dallas Cty. Cmty. Coll. Dist.*, 81 F.3d 616, 617 (5th Cir. 1996)). This inherent power applies to complaints for which the plaintiff is not a prisoner and has paid a filing fee. *Black v. Hornsby*, No. 5:14-CV-0822, 2014 WL 2535168, at *3 (W.D. La. May 15, 2014), *aff’d sub nom. Black v. Hathaway*, 616 F. App’x 650 (5th Cir. 2015). [⌞ 4]

The Fifth Circuit has recently affirmed that “[s]ome claims are ‘so insubstantial, implausible, . . . or otherwise completely devoid of merit as not to involve a federal controversy.’” *Atakapa Indian de Creole Nation v. Louisiana*, 943 F.3d 1004, 1006 (5th Cir. 2019) (quoting *Oneida Indian Nation of N.Y. v. Oneida Cty.*, 414 U.S. 661, 666 (1974)). Indeed, “[f]ederal courts lack power to entertain these ‘wholly insubstantial and frivolous’ claims.” *Id.* (quoting *Southpark Square Ltd. v. City of Jackson, Miss.*, 565 F.2d 338, 343–44 (5th Cir. 1977)). “Determining whether a claim is ‘wholly insubstantial and frivolous’ requires asking whether it is ‘obviously without merit’ or whether the claim’s ‘unsoundness so clearly results from the previous decisions of [higher courts] as to foreclose the subject.’” *Id.* (quoting *Southpark Square*, 565 F.2d at 342). While here, the Court makes no jurisdictional findings, as the Fifth Circuit arguably did in *Atakapa*, the Court does find that Perkins’s claims

—made after repeated admonishments by multiple courts over several years that they are meritless—are insubstantial and frivolous. Perkins’s choice to proceed in this manner harms both the Court and other litigants:

Federal courts are proper forums for the resolution of serious and substantial federal claims. They are frequently the last, and sometimes the only, resort for those who are oppressed by the denial of the rights given them by the Constitution and laws of the United States. Fulfilling this mission and the other jurisdiction conferred by acts of Congress has imposed on the federal courts a work load that taxes their capacity. Each litigant who improperly seeks federal judicial relief for a petty claim forces other litigants with more serious claims to await a day in court. When litigants improperly invoke the aid of a federal court to redress what is patently a trifling claim, the district court should not attempt to ascertain who was right or who was wrong in provoking the quarrel but should dispatch the matter quickly.

Raymon v. Alvord Indep. Sch. Dist., 639 F.2d 257, 257 (5th Cir. Unit A 1981).

Because the Court finds that Perkins’s claims are frivolous, the Court invokes its inherent authority and **ORDERS** that Perkins’s complaint, (Dkt. 1), is **DISMISSED WITH PREJUDICE** as frivolous. The Court will enter final judgment in a separate order.
[5]

IT IS FURTHER ORDERED that Perkins is warned that filing or pursuing any further frivolous lawsuits may result in (1) the imposition of court costs under 28 U.S.C. § 1915(f); (2) the imposition of

significant monetary sanctions under Fed. R. Civ. P. 11; (3) the imposition of an order barring him from filing any lawsuits in this Court without first obtaining the permission from a District Judge of this Court or a Circuit Judge of the Fifth Circuit; or (4) the imposition of an order imposing some combination of these sanctions.

SIGNED on July 20, 2020.

/s/ Robert Pitman
ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

JUL. 20, 2020. FINAL JUDGMENT.

Case 1:20-cv-00493-RP Document 18 Filed 07/20/20
Page 1 of 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WESLEY PERKINS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	1:20-CV-493-RP
	§	
JOHN LIPSCOMBE,	§	
<i>in his official and</i>	§	
<i>individual capacities, and</i>	§	
TRAVIS COUNTY, TEXAS,	§	
	§	
Defendants.	§	

FINAL JUDGMENT

On July 20, 2020, the Court dismissed Plaintiff Wesley Perkins's complaint, (Dkt. 1), with prejudice as frivolous. As nothing remains to resolve, the Court entered final judgment under Federal Rule of Civil Procedure 58.

IT IS ORDERED that this case is **CLOSED**.

IT IS FURTHER ORDERED that all pending motions are **MOOT**.

IT IS FINALLY ORDERED that all parties shall bear their own costs.

SIGNED on July 20, 2020.

/s/ Robert Pitman

ROBERT PITMAN

UNITED STATES DISTRICT JUDGE

Rule 14.1(i)(iii)—Rehearing

None.

Rule 14.1(i)(iv)—Judgment of Different Date

None.

Rule 14.1(i)(v)—Statutes

TEX. TRANSP. CODE § 502.001(45) (“vehicle”).

“**Vehicle**” means a device in or by which a person or property is or may be transported or drawn [i.e., towed] on a public highway

28 U.S.C.A. § 636(b)(1)(A).

(b)(1) Notwithstanding any provision of law to the contrary,

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, ***except*** a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

Pub. L. No. 94-577, 90 Stat. 2729 (Oct. 21, 1976)
(***emphasis*** added).

28 U.S.C.A. § 636(c) (in relevant part).

§ 636(c)(1) “Upon the consent of the parties.” ...
“Upon the consent of the parties.”

§ 636(c)(2) If a magistrate judge is designated to

exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of the court shall, at the time the action is filed, notify the parties of the **availability of a magistrate judge** to exercise such jurisdiction. **The decision of the parties shall be communicated to the clerk of the court.** Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. *Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.*

28 U.S.C.A. § 636(c)(1), (c)(2) (all emphasis added).

Regarding 28 U.S.C.A. § 455(a), it's not a matter of construction but rather of application.

Regarding 5TH.CIR.RS, in particular, and FED.R.APP.P., generally, along with *ad hoc* and *ex post facto*, key is the process by which that language comes to exist, at all, in the first place.

Rule 14.1(i)(vi)—Additional materials

Reference to the Record(s) will suffice. *See also* Appendices B and C.

Appendix B (from No. 20-50678)

Rule 14.1(i)(ii)—Additional Orders

Oct. 7, 2020. Clerk's objections.

Case: 20-50678 Document: 00515592996 Page: 1
Date Filed: **10/06/2020** [emph. added]

United States Court of Appeals

FIFTH CIRCUIT

OFFICE OF THE CLERK

**LYLE W. CAYCE
CLERK**

**TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130**

October 07, 2020 [emph. added]

Mr. Wesley Perkins
P.O. Box 152766
Austin, TX 78715-2766

No. 20-50678 Wesley Perkins v. Whitney
Brewster, et al
USDC No. 1:20-CV-70

Dear Mr. Perkins, [sic – :]

We filed your brief. However, you must make the following corrections within the next 14 days.

Opposing counsel's briefing time continues to run.

You need to correct or add:

Caption on the brief does not agree with the caption of the case in compliance with **Fed. R. App. P.**

32(a)(2)(C). Caption must exactly match the Court's Official Caption (See Official Caption below)

A concise statement of the case setting out the facts relevant to the issues submitted for review, see **Fed. R. App. P. 28(a)(6)**. The facts should be incorporated within, or as a subsection of, the 'Statement of the Case'. A separate 'Statement of Facts' is not acceptable. The statement of facts must be included in the statement of case.

Record References: Although your brief contains citations to the record, they are not in proper form. Every assertion in briefs regarding matter in the record must be supported by a reference to the page number of the original record, whether in paper or electronic form, where the matter is found, using the record citation form as directed by the Clerk of Court. The use of "id" is not permitted when citing to the record on appeal. (See 5TH Cir. R. 28.2.2)

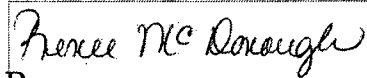
To reduce paper filings during the COVID19 pandemic, we are permitting pro se litigants to email filings to the court. A pro se litigant should save the pleading as a PDF document and email it to: pro_se@ca5.uscourts.gov .

We encourage pro se litigants to accept email notice of case activity. See instructions at [1 2] <http://www.ca5.uscourts.gov/docs/default-source/forms/pro-sefiler-instructions>. If a pro se only desires electronic notice, bypass the screens requesting credit card information. Only provide the credit card information to access other documents on PACER.

Sincerely,

LYLE W. CAYCE, Clerk

B-2



By: _____
Renee S. McDonough, Deputy Clerk
504-310-7673

cc:

Ms. Natasha Hines
Mr. Henry Gray Laird III
Mr. Clark Willis Richards
Mr. Alex S. Tradd II

[3]

[Official Case Caption]

Case No. 20-50678

Wesley Perkins,
Plaintiff - Appellant

v.

Executive Director Whitney Brewster, Texas
Department of Motor Vehicles, which department is
a public charitable trust and non-beneficiary,
Officially and Individually; City of Austin, a
municipal corporation; City Attorney Anne Morgan,
Officially and Individually; Police Chief Brian
Manley, Officially and Individually; J. M. Hallmark,
Arresting Officer, Officially and Individually;
Southside Wrecker, a commercial enterprise; Judge
Lee Yeakel,

Defendants - Appellees

Oct. 29, 2020. "Order" compelling consent to
Clerical objections.

Case: 20-50678 Document: 00515620519 Page: 1
Date Filed: 10/29/2020

**United States Court of Appeals
for the Fifth Circuit**

No. 20-50678

WESLEY PERKINS,

Plaintiff-Appellant,

versus

EXECUTIVE DIRECTOR WHITNEY BREWSTER, TEXAS
DEPARTMENT OF MOTOR VEHICLES, WHICH
DEPARTMENT IS A PUBLIC CHARITABLE TRUST AND
NON-BENEFICIARY, OFFICIALLY AND INDIVIDUALLY;
CITY OF AUSTIN, A MUNICIPAL CORPORATION; CITY
ATTORNEY ANNE MORGAN, OFFICIALLY AND
INDIVIDUALLY; POLICE CHIEF BRIAN MANLEY,
OFFICIALLY AND INDIVIDUALLY; J. M. HALLMARK,
ARRESTING OFFICER, OFFICIALLY AND INDIVIDUALLY;
SOUTHSIDE WRECKER, A COMMERCIAL ENTERPRISE;
JUDGE LEE YEAKEL,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-70

ORDER:

(X) On October 7, 2020, the clerk provided the
appellant 14 days to correct deficiencies in the

brief filed on October 6, 2020. The directed [1 2] corrections were not made. The appellant is given until November 13, 2020, to return a sufficient brief. If the appellant fails to correct the deficiencies and return the brief within the provided time, the clerk is directed to strike the brief and dismiss the appeal for failure to prosecute under 5TH Cir. R. 42.3.

/s/ Leslie H. Southwick
LESLIE H. SOUTHWICK
United States Circuit Judge

Nov. 12, 2020. Order confirming sufficiency of
Brief as originally filed.

Case: 20-50678 Document: 00515635295 Page: 1
Date Filed: 11/12/2020

**United States Court of Appeals
for the Fifth Circuit**

No. 20-50678

WESLEY PERKINS,

Plaintiff-Appellant,

versus

EXECUTIVE DIRECTOR WHITNEY BREWSTER, TEXAS
DEPARTMENT OF MOTOR VEHICLES, WHICH
DEPARTMENT IS A PUBLIC CHARITABLE TRUST AND
NON-BENEFICIARY, OFFICIALLY AND INDIVIDUALLY;
CITY OF AUSTIN, A MUNICIPAL CORPORATION; CITY

ATTORNEY ANNE MORGAN, OFFICIALLY AND INDIVIDUALLY; POLICE CHIEF BRIAN MANLEY, OFFICIALLY AND INDIVIDUALLY; J. M. HALLMARK, ARRESTING OFFICER, OFFICIALLY AND INDIVIDUALLY; SOUTHSIDE WRECKER, A COMMERCIAL ENTERPRISE; JUDGE LEE YEAKEL,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-70

Before HIGGINBOTHAM, SOUTHWICK, and
ENGELHARDT, *Circuit Judges*.

PER CURIAM: [1 2]

A member of this panel previously extended time for the appellant to submit a sufficient brief until November 13, 2020. Appellant has refused to comply with instructions from the Clerk's Office, then from one member of this panel, to have his brief conform to the format required by this court for all litigants. Even litigants who are not represented by counsel are to comply with these rules. Such conformity assists the court and allows for a more effective presentation of a party's arguments.

The panel has considered Appellant's motion for reconsideration. The deficiencies in the brief may affect its utility to the court, but we will not have the Clerk's Office again seek to have the brief conform.

IT IS ORDERED that the brief as currently written be accepted by the Clerk's Office for filing.

Appendix C (from No. 1:20-CV-296)

Rule 14.1(i)(ii)—Additional Orders

Apr. 8, 2020. YEAKELE's "at filing" referral
"order."

Case 1:20-cv-00296-RP Document 4 Filed 04/08/20
Page 1 of 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
2020 APR -8 PM 3: 02
CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
By /s/ LO [?]
Deputy

WES PERKINS,	§	
PLAINTIFF,	§	
	§	
V.	§	
	§	
JOHN MISCHTIAN,	§	CAUSE NO.
JUDGE COUNTY COURT	§	1:20-CV-296
AT LAW 2, BELL COUNTY,	§	
TEXAS, OFFICIALLY AND	§	
INDIVIDUALLY, AND	§	
BELL COUNTY, TEXAS,	§	
DEFENDANTS.	§	

ORDER

IT IS HEREBY ORDERED that all pending and future nondispositive motions in this case are **REFERRED** to United States Magistrate Mark Lane for resolution. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72; Loc. R. W.D. Tex. App. C, R. 1(c).

IT IS FURTHER ORDERED that all pending and future dispositive motions are **REFERRED** to United States Magistrate Judge Mark Lane for Report and Recommendation. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72; Loc. R. W.D. Tex. App. C, R. 1(d).

SIGNED this 8th day of April, 2020.

/s/ Lee Yeakel

LEE YEAKEL

UNITED STATES DISTRICT JUDGE

Jun. 24, 2020. Participation by the un-consented-to arbiter (magistrate).

Case 1:20-cv-00296-RP Document 10 Filed 06/24/20
Page 1 of 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

WES PERKINS
Plaintiff,

V.

§

§

§ NO. 1:20-cv-296

§

-RP-LY

C-2

JOHN MISCHTIAN, §
COUNTY COURT AT LAW §
2, BELL COUNTY, TEXAS, §
OFFICIALLY AND §
INDIVIDUALLY, AND §
BELL COUNTY, TEXAS, §
Defendants. §

ORDER

Before the court is Wes Perkins's ("Perkins") Motion to Withdraw Yeakel's Illegal Referral Order (Dkt. #8). Perkins appears to object to the District Court's referral of dispositive matters in the above-styled case to the Magistrate Court. Dkt. #8. Perkins is correct that 28 U.S.C. § 636(b)(1)(A) permits district court judges to designate magistrate judges to "hear and determine" nondispositive pretrial matters. However, 28 U.S.C. § 636(b)(1)(B) permits district court judges to designate magistrate judges to "submit ... proposed findings of fact and recommendations" concerning dispositive pretrial matters. *See also* W.D. Tex. Loc. R., App'x C, r. 1(c)-(d). Moreover, while Perkins makes it plain that he does not consent to a magistrate judge, such non-consent does not prevent the undersigned from performing the tasks outlined in the above two statutes. *See* 28 U.S.C. § 636(c)(1); *see also* W.D. Tex. Loc. R., App'x C, r. 1(i). Accordingly, Perkins objections are not well-founded, and his Motion to Withdraw is **DENIED**. Dkt. #8.

SIGNED June 24, 2020.

/s/ M L
MARK LANE
UNITED STATES MAGISTRATE JUDGE

Jun. 30, 2020. Motion to withdraw referral
“order” denied; Motion to strike participation by un-
consented-to arbiter denied.

Case 1:20-cv-00296-RP Document 12 Filed 06/30/20
Page 1 of 3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WESLEY PERKINS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	1:20-CV-296-RP
	§	
JUDGE JOHN MISCHTIAN,	§	
<i>in his individual and official</i>	§	
<i>capacity,</i> and BELL COUNTY,	§	
TEXAS,	§	
	§	
Defendants.	§	

ORDER

On June 15, 2020, Perkins filed a motion to withdraw the District Court’s referral order, which referred all pretrial matters in this case to Judge Lane. (Mot. Withdraw, Dkt. 8). Perkins specifically objected to the District Court’s referral of all pending and future dispositive matters to Judge Lane for report and recommendation. (*Id.* at 2; *see also* Order, Dkt. 4, at 1). Judge Lane denied Perkins’s motion, explaining that 28 U.S.C. § 636(b)(1)(B) permits district court judges to designate magistrate judges

to “submit ... proposed findings of fact and recommendations” concerning dispositive pretrial matters, whether or not the parties consent. *See also* W.D. Tex. Loc. R., App’x C, r. 1 (c)-(d). (Order, Dkt. 10, at 1). Perkins now moves to strike Judge Lane’s order, which the Court construes as an appeal. (Mot. Strike, Dkt. 11). Having considered Perkins’s motion, the law, and the record in this case, the Court will deny the motion.

A district judge may reconsider any pretrial matter determined by a magistrate judge where it has been shown that the magistrate judge’s order is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A). District courts apply a “clearly erroneous” standard when reviewing a magistrate judge’s ruling under the referral authority of that statute. *Castillo v. Frank*, 70 F.3d 382, 385 (5th Cir. 1995). The clearly erroneous or contrary to law standard of review is “highly deferential” and [1 2] requires the court to affirm the decision of the magistrate judge unless, based on the entire evidence, the court reaches “a definite and firm conviction that a mistake has been committed.” *Gomez v. Ford Motor Co.*, No. 5:15-CV-866-DAE, 2017 WL 5201797, at *2 (W.D. Tex. Apr. 27, 2017) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). The clearly erroneous standard “does not entitle the court to reverse or reconsider the order simply because it would or could decide the matter differently.” *Id.* (citing *Guzman v. Hacienda Records & Recording Studio, Inc.*, 808 F.3d 1031, 1036 (5th Cir. 2015)).

Having reviewed Judge Lane’s order, the Court finds no clear error. As Judge Lane rightly notes, under 28 U.S.C. § 636(b)(1)(B), the District Court

may designate a magistrate judge to “submit ... proposed findings of fact and recommendations” concerning dispositive pretrial matters.¹ (Order, Dkt. 10, at 1). The Court understands that Perkins does not consent to the referral in this case. Mot. Strike, Dkt. 11, at 2). But Perkins’s decision not to consent has no bearing at all on the District Court’s decision to make a referral. While a magistrate judge may not decide case-dispositive motions without the parties’ consent, a magistrate judge may, on a district court judge’s referral, submit a report and recommendation concerning a case-dispositive matter for the District Court’s review. *Compare* 28 U.S.C. § 636(b)(1)(B), *with* 28 U.S.C. § 636(c)(1); *see also* W.D. Tex. Loc. R., App’x C, r. 1(i). Perkins’s objections to judge Lane’s Order are therefore unfounded and the Court will deny his motion.

In reviewing the record in this case, the Court also notes that Perkins has failed to timely serve Defendants Judge John Mischian and Bell County, Texas (together, “Defendants”). “If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff— must dismiss the action without prejudice against that defendant [1 3] or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). More than 90 days have passed since Perkins filed his complaint.² Thus, the Court will order Perkins to

¹ Should Perkins object to Judge Lane’s proposed findings and recommendations, he may timely file specific, written objections and, in doing so, secure de novo review of any dispositive motion by the District Court. 28 U.S.C. § 636(b).

² Perkins filed an amended complaint on June 15, 2020, which did not add additional defendants.

show cause as to why his claims should not be dismissed for failure to timely serve the Defendants in this case.

Accordingly, the Court **AFFIRMS** Judge Lane's Order denying Perkins's motion to withdraw, (Dkt. 10), and **DENIES** Perkins's motion to strike, (Dkt. 11).

IT IS FURTHER ORDERED that Perkins shall show cause in writing on or before **July 10, 2020**, as to why his claims against Defendants should not be dismissed for failure to timely effectuate service. Failure to do so may result in the dismissal of this action. *See* Fed. R. Civ. P. 41(b) (action may be dismissed for want of prosecution or failure to comply with court order); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998) (district court has authority to dismiss case for want of prosecution or failure to comply with court order).

SIGNED on June 30, 2020.

/s/ Robert Pitman
ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

(Am. Compl., Dkt. 7). Accordingly, Perkins's amended complaint does not extend the deadline by which Perkins must effect service. *See* 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure Civil* § 1137 (4th ed. 2020) ("Filing an amended complaint does not toll the Rule 4(m) service period and thereby provide an additional 90 days for service.").

Jul. 13, 2020. Motion to Disqualify denied.

20-50707.127. Essentially identical to the one already included. See A-11.

Jul. 17, 2020. Reasserted Motion to withdraw referral "order" denied.

Case 1:20-cv-00296-RP Document 23 Filed 07/17/20
Page 1 of 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WESLEY PERKINS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	1:20-CV-296-RP
	§	
JUDGE JOHN MISCHTIAN,	§	
<i>in his individual and official</i>	§	
<i>capacity,</i> and BELL COUNTY,	§	
TEXAS,	§	
	§	
Defendants.	§	

ORDER

On June 15, 2020, Perkins filed a motion to withdraw the District Court's referral order, which referred all pretrial matters in this case to Judge Lane. (Mot. Withdraw, Dkt. 8). Perkins specifically

objected to the District Court's referral of all pending and future dispositive matters to Judge Lane for report and recommendation. (*Id.* at 2; *see also* Order, Dkt. 4, at 1). Judge Lane denied Perkins's motion, explaining that 28 U.S.C. 636(b)(1)(B) permits district court judges to designate magistrate judges to "submit... proposed findings of fact and recommendations" concerning dispositive pretrial matters, whether or not the parties consent. *See also* W.D. Tex. Loc. R., App'x C, r. 1(c)-(d). (Order, Dkt. 10, at 1). Perkins then moved to strike Judge Lane's order, which the Court construed as an appeal. (Order, Dkt. 12, at 1). The Court affirmed Judge Lane's order and denied Perkins's motion to strike. (*Id.* at 3). Perkins now brings a second motion to withdraw the "illegal referral order" to judge Lane. (2nd Mot. Withdraw, Dkt. 16, at 2).

Perkins's second motion to withdraw the referral order in this case raises the same argument he raised in his prior motion, specifically that the District Court judge lacked authority to refer all pretrial matters in this case to judge Lane without his consent. (*Compare id.*, with Mot. Withdraw, Dkt. 8). As this Court explained to Perkins in its two previous orders, District Court judges may [1 2] designate a magistrate judge to "submit ... proposed findings of fact and recommendations" concerning dispositive pretrial matters, with or without Perkins's consent. 28 U.S.C. § 636(b)(1)(B); (*See* Order, Dkt. 10, at 1; Order, Dkt. 12, at 2). Perkins's objection to the referral order in this case is unfounded and the court will once more deny his motion.

The court reminds Perkins that the Fifth circuit's directly applicable opinion in *Perkins v. Ivy*, 772 F. App'x 245, 246 (5th Cir. 2019) bars this very

argument. Should Perkins continue to knowingly advance duplicative legal arguments, he is warned that he may face sanctions up to and including being barred from commencing litigation in the Western District without advance permission from a judge.

Accordingly, **IT IS ORDERED** that Perkins's motion to withdraw the magistrate referral in this case, (Dkt. 16), is **DENIED**.

SIGNED on July 17, 2020.

/s/ Robert Pitman

ROBERT PITMAN

UNITED STATES DISTRICT JUDGE

March 8, 2021

WES PERKINS
P.O. Box 152766
Austin, Texas 78715-2766

Hon. SCOTT S. HARRIS, Clerk
SUPREME COURT OF THE UNITED STATES
1 First Street, N.E.
Washington, DC 20543

Re: New filing
PERKINS v. LIPSCOMBE (USCA5 No. 20-50682)

Dear Mr. Harris:

Enclosed are 40 copies of the petition and the Certificate of Service. Under prior, separate cover, I've submitted the proof print version, a Certificate of Compliance, and the filing fee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wes Perkins', with a stylized flourish at the end.

/s/ Wes Perkins
WESLEY PERKINS

cc: USCA5 (via email)
No. 20-50678