

IN THE
Supreme Court of the United States

DASHON HINES

Petitioner,

v.

TOPSHELF MANAGEMENT, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION

JOSEPH M. HANNA
Counsel of Record
GOLDBERG SEGALLA LLP
665 Main Street
Buffalo, NY 14203
(716) 566-5447
jhanna@goldbergsegalla.com

Counsel for Respondent



COUNTERSTATEMENT OF THE QUESTION PRESENTED

Whether Petitioner has presented compelling reasons to grant the Petition where: 1) no Circuit split exists with respect to the decision issued by the Northern District of New York transferring the matter to the Western District of New York in the interest of justice under 28 U.S.C. § 1406(a) on the grounds that venue was improper in the Northern District of New York and 2) the Second Circuit's decision denying Petitioner's request to appeal does not conflict with any other decision of this Court.

**PARTIES TO THE PROCEEDINGS,
CORPORATE DISCLOSURE STATEMENT,
AND RELATED CASES**

There are no parties to the proceeding other than those listed in the caption. Petitioner Dashon Hines (“Hines”) is Plaintiff in the district court and appellant in the court of appeals. Respondent Topshelf Management (“Topshelf”) is defendant in the district court and appellee in the court of appeals.

Pursuant to Rule 29.6 of the Supreme Court Rules, Topshelf states there is no parent or publicly held company owning 10% or more of the corporation’s stock.

A list of all proceedings in other courts that directly relate to the case in this Court are as follows:

- *Dashon Hines v. Topshelf Management*, No. 5:20-cv-505, Northern District of New York. Judgement entered May 6, 2020.
- *Dashon Hines v. New York State Office of Temporary and Disability Assistance*, No. 1:20-cv-506, Northern District of New York. Judgment entered May 12, 2020.
- *Dashon Hines v. Erie County Department of Social Services*, No. 1:20-cv-536, Northern District of New York. Judgment entered May 15, 2020.
- *Dashon Hines v. New York State Department of Labor Staff*, No. 1:20-cv-517, Northern District of New York. Judgment entered June 5, 2020.
- *Dashon Hines v. Lt. Rose J. Dell, Lt. New York Haven Police Department*, No. 5:20-cv-638, Northern District of New York. Judgment entered August 5, 2020.
- *Dashon Hines v. TopShelf Management*, No. 20-1609, U.S. Court of Appeals for the Second Circuit. Judgment entered Oct. 22, 2020.

- *Dashon Hines v. New York State Office of Temporary and Disability Assistance*, No. 20-1627, U.S. Court of Appeals for the Second Circuit. Judgment entered Oct. 22, 2020.
- *Dashon Hines v. Erie County Department of Social Services*, No. 20-1656, U.S. Court of Appeals for the Second Circuit. Judgment entered Oct. 22, 2020.
- *Dashon Hines v. New York State Department of Labor Staff*, No. 20-1885, U.S. Court of Appeals for the Second Circuit. Judgment entered Oct. 22, 2020.
- *Dashon Hines v. Lt. Rose J. Dell, Lt. New York Haven Police Department*, No. 20-2728, U.S. Court of Appeals for the Second Circuit. Judgment entered Oct. 22, 2020.

TABLE OF CONTENTS

	Page
COUNTERSTATEMENT OF THE QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS, CORPORATE DISCLOSURE STATEMENT, AND RELATED CASES	ii
TABLE OF CONTENTS.....	iv
TABLE OF CITED AUTHORITIES	v
BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI	1
STATEMENT OF THE CASE.....	2
I. BACKGROUND AND FACTS OF THE CASE	2
II. PROCEEDINGS BELOW	2
A. THE DISTRICT COURT TRANSFERS CASE BASED ON IMPROPER VENUE	2
B. THE APPELLATE COURT DENIES HINES’ MOTION FOR LEAVE TO APPEAL	3
C. HINES FILES HIS PETITION FOR A WRIT OF CERTIORARI.....	4
III. REASONS FOR DENYING THE PETITION.....	4
IV. HINES’ MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS SHOULD BE DENIED	5
CONCLUSION.....	6

TABLE OF CITED AUTHORITIES

Page(s)

Cases

<i>In re Martin-Trigona</i> , 9 F.3d 226 (2d Cir. 1993).....	3
<i>Keith v. Univ. of Miami</i> , 437 F. Supp. 3d 1167 (S.D. Fla. 2020)	4

Statutes and Other Authorities

28 U.S.C. § 1391(b)	1
42 U.S.C. § 2000e	1
Supreme Court Rule 10.....	4
Supreme Court Rule 29.6.....	ii
Supreme Court Rule 39.8.....	5

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In his *pro-se* Petition, Hines seeks permission to appeal to this Court to “redress grievances without fear of punishment or reprisals.” The Petition does not raise any valid legal grounds that warrant consideration by this Court. Procedurally, there has been no determination on the merits on this case and it is in the earliest of stages. The Northern District of New York (hereafter “Northern District”), in its initial review of the *pro se* complaint alleging employment discrimination, transferred the matter to the Western District of New York (hereafter “Western District”) in the interest of justice due to improper venue. Hines brought an action in the Northern District claiming employment discrimination under 42 U.S.C. § 2000e despite the fact that all of the facts and circumstances surrounding his employment took place in the Western District where Topshelf is located.

Upon information and belief, Hines filed the action in the Northern District because, as noted in the decision below, he is barred from filing claims in the Western District without prior permission due to numerous previous frivolous filings. All of the parties and alleged events outlined in the complaint occurred in Buffalo, New York, located in the Western District. The Northern District recognized this, analyzed venue pursuant to 28 U.S.C. § 1391(b), and transferred the case to the Western District. The Northern District declined to consider Hines’ motion for poor person status and left that decision for the Western District. As of the date of this filing, that decision is still pending.

Hines moved for permission to appeal the Northern District decision transferring his case to the Second Circuit. The Second Circuit correctly denied Hines’ motion to appeal in a decision on this matter (and four other unrelated matters concurrently), finding Hines’ motion frivolous and “because the appeals do not depart from Petitioner’s ‘prior pattern of vexatious filings.’” *Second*

Circuit Mandate Issued 10/22/20 (Case No. 20-1609). Given that the issue determined below does not present any novel legal issues to be considered by this Court, Hines' Petition for a Writ of Certiorari should be denied.

STATEMENT OF THE CASE

I. BACKGROUND AND FACTS OF THE CASE

Only a brief statement of facts is necessary given the procedural posture of this case. This litigation is in the earliest stages and Topshelf has yet to file a responsive pleading. Hines is a former employee of Topshelf. Hines was terminated in mid-March 2020 as a direct result of the COVID-19 pandemic. Hines was notified he was being terminated, along with many other employees, in mid-March 2020. In the underlying complaint, Hines alleges he was terminated due to race discrimination and in retaliation for raising an internal complaint of discrimination. Hines filed a charge of discrimination with the Equal Employment Opportunity Commission after his termination and then proceeded to file a Complaint in federal court in the Northern District.

At all times relevant in the complaint, Hines was a resident of Buffalo, New York. During his employment with Topshelf, Hines lived and worked in Buffalo, New York located in the Western District. Even at the time he commenced the action in the Northern District, Hines lived in Buffalo, New York. There is absolutely no connection to the Northern District.

II. PROCEEDINGS BELOW

A. THE DISTRICT COURT TRANSFERS CASE BASED ON IMPROPER VENUE

Upon its review of the *pro se* complaint, the Northern District examined the allegations of the complaint and reviewed whether the action had been commenced in the proper district. The Northern District determined that all of the events took place in Buffalo, New York and because Hines was also a resident of Buffalo, New York, there was no connection to the Northern District

and venue was improper. *See Dashon Hines v. Topshelf Management*, N.D.N.Y. 5:50-CV-505 (Order dated 5/6/20). The Northern District further noted that Hines had been issued an order in the Western District barring him from filing any civil action without permission and that this action was the second action in less than a month that plaintiff had filed with improper venue in the Northern District. *Dashon Hines v. Topshelf Management*, N.D.N.Y. 5:50-CV-505 (Order dated 5/6/20), at p. 4.

The Northern District further noted that the Second Circuit Court of Appeals had also issued a bar order against Hines. Although it could dismiss the action outright due to improper venue, it would transfer the matter in the interest of justice to the Western District “where it should have been filed and where plaintiff may have to accept the consequences of any finding that his complaint does not comply with the Western District’s orders.” *Id.* The Northern District also deferred the determination of Hines’ motion for poor person status to the Western District. The Northern District further warned that the Northern District may initiate the procedure to have Hines barred in the North District as well if Hines continues to file cases, which clearly belong the Western District of New York. *Id.* at pp. 4-5.

B. THE APPELLATE COURT DENIES HINES’ MOTION FOR LEAVE TO APPEAL

Hines moved for permission to appeal the Northern District decision to the Second Circuit. Without much elaboration, the Second Circuit consolidated five proceedings, including the proceeding by Hines against Topshelf and denied Hines’ five motions for leave to appeal. *See Dashon Hines v. Topshelf Management*, 2d Cir. 20-1609 (Order dated 10/22/2020). The Second Circuit ordered that the motions be denied because the appeals do not depart from Hines’ “prior pattern of vexatious filings.” *Id.*, citing, *In re Martin-Trigona*, 9 F.3d 226, 229 (2d Cir. 1993).

C. HINES FILES HIS PETITION FOR A WRIT OF CERTIORARI

Hines filed a Petition for Writ of Certiorari to this Court. Hines seeks to petition this court due to a need to “redress grievances without fear of punishment or reprisals.” In support of his Petition, Hines cites to the United States Constitution, the Bill of Rights, the First Amendment, and *Keith v. Univ. of Miami*, 437 F.Supp. 3d 1167 (S.D. Fla. 2020), none of which support granting his Petition. *Keith* is a district court case alleging violations under the Fair Labor Standards Act in which a motion to dismiss was granted in favor of an employer. There was no analysis even remotely relevant to the present case. In addition, all of Hines’ additional citations are wholly irrelevant and do not support his Petition.

III. REASONS FOR DENYING THE PETITION

As outlined in Rule 10 of the Rules of the United States Supreme Court, “a petition for a writ of certiorari will be granted only for compelling reasons.” The following reasons are examples of where a petition for writ of certiorari might be granted: A) a United States court of appeals has issued a decision in conflict with another United States court of appeals on the same important matter. . . B) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals or C) a state court of a United States court of appeals has decided an important question of federal law that has not been, but should be settled by this Court, or had decided a question in a way that conflicts with relevant decisions of this Court. *see United States Supreme Court Rule 10*. “A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” *Id.*

In the present case, the Petition fails to meet any of the criteria. The decision to transfer the matter to the Western District and the Second Circuit’s subsequent order denying the motion

for leave to appeal do not conflict with decisions from any other United States court of appeals. Similarly, no decision from a state court of highest resort is implicated here. Finally, the challenged decisions do not conflict with any prior decisions of this court or involve an important question of federal law that should be settled by this court. Rather, it is clear the Petition is frivolous, does not meet any compelling reason for consideration and should be denied.

IV. HINES' MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS SHOULD BE DENIED

As noted above, the Northern District noted Hines' motion for in forma pauperis was not complete, but did not consider his application. Hines has also filed a motion seeking in forma pauperis status from this Court. On its face, Hines' application is patently deficient and appears to contain blatant misrepresentations. For example, the form requests Hines' employment for the last two years. Hines answered "none" even though the underlying action arises from Hines' employment at Topshelf that was terminated in March 2020. Hines also failed to disclose his W-2 earnings for 2019 or 2020 and upon information and belief, underreported the state and federal unemployment benefits he received. Moreover, the present Petition lacks merit. Given Hines' frivolous appeals and claims, this Court should deny leave to proceed in forma pauperis pursuant to Rule 39.8.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari and the motion for leave to proceed in forma pauperis should be denied.

Respectfully submitted,

JOSEPH M. HANNA
Counsel of Record
GOLDBERG SEGALLA LLP
665 Main Street
Buffalo, NY 14203
(716) 713-9144
jhanna@goldbergsegalla.com