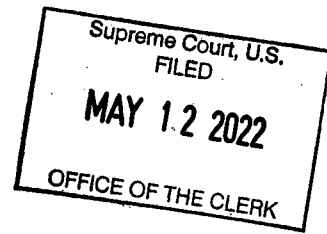


No. 21-1442

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In The  
Supreme Court of the United States

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IN RE: ADRIANO KRUEL BUDRI,  
*Petitioner,*

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On Petition for a Writ of Mandamus to the  
United States Court of Appeals  
for the Fifth Circuit

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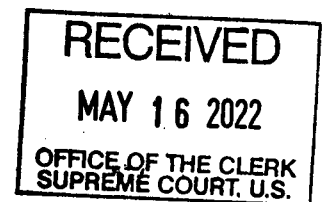
**PETITION FOR WRIT OF MANDAMUS**

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## **QUESTIONS PRESENTED**

1. Did the Panel of the U. S. Court of Appeals for the Fifth Circuit ("Fifth Circuit") err by dismissing for want to prosecution a pending Appellant's Opening Brief filed in a timely manner on 01/07/2022, and severely harming the constitutional rights of the Appellant as Pro Se and to remediate the default in a timely manner found?

## **PARTIES TO THE PROCEEDING**

### **1. Petitioner Adriano Kruehl Budri**

The Petitioner Adriano Kruehl Budri ("Budri") is a Self-Represented Litigant Pro Se and being one former private employee of the nationwide trucking company FIRSTFLEET, Inc. Budri worked as full time non-exempt employee in the occupation as Intrastate and Local Commercial Truck Driver CDL Class A in the State of Texas and that it is classified as safety sensitive function by the U. S. DOT, FMCSA, FLSA, OSHA, Texas Administrative Code and Texas Transportation Code. Also, the occupation of the Commercial Truck Drivers CDL Class A is covered undergird of the protected activities of the federal statute Surface Transportation Assistance Act (STAA) for Commercial Truck Driver Employee Protection Provisions and under the Sabine Pilot Claim Doctrine and adopted by the Supreme Court of Texas.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 29.6, Budri states that no parties are corporations.

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The Internal Operating Procedures (IOP) of the 5th  
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## **OPINIONS AND ORDERS ENTERED**

On February 23, 2022, the Fifth Circuit dismissed Budri's Appellant Opening Brief despite him to have filed in a timely manner the Opening Brief on 01/07/2022, based on a failure to comply with some restrictive additional procedural requirements issued from one separate order issued on 04/30/2021 by the Court and from other case and being related with the Budri's FirstFleet employment under the protected activities of the federal statute STAA and not having been issued a fair notice about the Appellant's rights to remediate the default found and within 45 days of the order issued on 02/23/2022.

## **JURISDICTION AND RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS**

The All Writs Act, 28 U.S.C. § 1651(a), provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The Fifth Circuit dismissed Budri's Opening Brief on February 23, 2022.

Pursuant to the Court's order regarding filing deadlines due to the ongoing COVID-19 pandemic, a Petitioner's Petition for Writ of Mandamus must be filed within 150 days from the date of the order issued, which is on or before July 13, 2022 in this specific case.



## RELEVANT LEGAL PROVISIONS

**I. Due Process Clause of the Fourteenth Amendment:** “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprives any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**II. Due Process Clause of the Fifth Amendment:** “...nor be deprived of life, liberty, or property, without due process of law....”

**III. The Internal Operating Procedures (IOP)** of the USCOA 5<sup>th</sup> Circuit for reinstatement is prescribed under the Cir. R. 27 that the litigant has the right to file such motion to reinstate the Appellant’s Opening Brief and having been duly remediated the default in a timely manner and being in compliance with the court’s local rules for reinstatement default.

## RULE 20.1 STATEMENT

There is an exceptional circumstance that it mandates the issuance of the writ sought by Budri as Petitioner in this specific matter. As set forth in detail below, Budri as Appellant Pro Se has been deprived to the Fifth Circuit’s Panel based one additional proceeding requirement issued and dated on 04/30/2021, and from one separate order related with the Budri’s FirstFleet employment and from the case disposed: *Budri v. Admin. Rev. Board*, --- F.

App'x ----, No. 20-60574, 2021 WL 1726818, at \*9 (5th Cir. Apr. 30, 2021) and having issued with the unique and exclusive proposal to create deprivation under the due process to one Self Represented Litigant as Pro Se and to pursue his worker's rights before the USCOA 5<sup>th</sup> Circuit and being related with his FirstFleet employment term.

This is fundamentally wrong on two levels—first, it violates Budri's sacrosanct due process rights as guaranteed to him under the Fourteenth and Fifth Amendments to the United States Constitution, and second, even more importantly it violates his constitutional rights to the due process and guaranteed by the United States Constitution.

On a more macro level, the Fifth Circuit's decision is further evidence of the highly politicized nature of many courts today. This is, of course, highly improper, as it runs counter to the sole function of the court system, which is to provide a non-biased and fair resolution to everyone, regardless of political affiliation and ideological belief, based solely on the facts at issue and the relevant law. The result of this politicization is that those who are Self-Represented Litigants as Pro Se in civil cases filed in the State of Texas, they are being frequently discriminated against, that is '*left out in the cold*' by today's frequently dysfunctional legal system and of which more and more Self Represented Litigants as Pro Se are flagrantly discriminated with separate and discriminatory orders and having as finality only to deprive the due process of the Appellant as Pro Se before the USCOA 5<sup>th</sup> Circuit.

This has become so apparent that the Panel has deprived the Appellant as Self Represented Litigant Pro Se and not having been provided at least one fair notice and to have the right to reinstate the Appellant's Opening Brief and following the local rules of the USCOA 5<sup>th</sup> Circuit, and specifically the Rule 27 of the Internal Operating Procedures (IOP) for reinstatement of the brief and previously filed in a timely manner with the Court and having been accepted by the Court's Clerk Office as satisfactory on 01/07/2022.

After the Panel has dismissed for want to prosecution the appeal, only on or about 03/08/2022, Appellant received a letter and from the part of the Clerk's Office and notifying that the Court received the Appellant's motion to reopen the case and having instructed to Appellant how to remediate the default and to be sent to the Clerk's Office as material proof that the Appellant's Opening Brief has been duly remediated the default in a timely manner and to be filed his motion to reinstate the case with the Court's Clerk Office.

On 03/16/2022, Appellant mailed via USPS priority mail to the Clerk's Office, one new copy of the Appellant's Opening Brief and duly remediated the default, as well as, other required documents and following strictly the additional procedural requirements stipulated from one separate order issued on 04/30/2021 about the Budri's FirstFleet employment term with the Court and also having filed in a timely manner his motion to reinstate the case.

Since then, the Appellant phoned to the Deputy Clerk Roeshawn Johnson, and in charge of the case management at phone number: (504) 310-7998 and

to request a status of the Appellant's motion to reinstate the Appellant's Opening Brief and duly remediated the default.

The Deputy Clerk Roeshawn Johnson informed by phone that she did not receive the Appellant's Opening Brief and additional documents by mail and spite of the fact that the Court has received via USPS priority mail on 03/16/2022 such documents required and having been confirmed via the USPS tracking number web site of the documentation received by the court.

Appellant not only mailed via USPS Priority Mail and with tracking number registered and proving the delivery occurred, as well as, the Appellant sent via email message with document in PDF format document to the address recipient of the court for Pro Se filling documents filed and including to the email address of the Deputy Clerk Roeshawn Johnson and in charge of the case management assigned.

After the phone conversation occurred with the Deputy Clerk Roeshawn Johnson, the Appellant mailed one letter via USPS first class mail and addressed to the USCOA 5<sup>th</sup> Circuit Clerk of Court: Lyle W. Cayce, and complaining about the documents duly delivered by the USPS at USCOA 5<sup>th</sup> Circuit in New Orleans, Louisiana, and having the Deputy Clerk Roeshawn Johnson affirmed in telephone conversation that she did not receive the remediated default about the Appellant's Opening Brief, as well as, other documents and required in a separate order issued on 04/30/2021 by the Court.

After the letter mailed to the Court Clerk of the USCOA 5<sup>th</sup> Circuit, later, the Appellant sent (02) two email messages and addressed to the Chief Circuit

Mediator of the Circuit Mediation and Judicial Support Office of the USCOA 5<sup>th</sup> Circuit, Vikram Chandhok, via email message to the email address: vikram-chandhok@ca5.uscourts.gov, and reporting the incident occurred with the Clerk's Office of the USCOA 5<sup>th</sup> Circuit and also being sent with copy to the Deputy Clerk Roeshawn Johnson of the Case Management assigned Number: 21-11201, case style: Adriano Kruel Budri v. FirstFleet, Incorporated.

Since then, Appellant did not receive any answer and much less an acknowledgment receipt letter notice and in response of his complaints filed with the Court.

Lastly, Budri is left without any adequate relief from any other court, as the Fifth Circuit has informed Budri that its decision to dismiss his appeal for want to prosecution, and it is not apparently subject to any subsequent appeal or review by the same USCOA 5<sup>th</sup> Circuit.

Thus, this Petition is Budri's only avenue to obtain appropriate relief for reinstatement of his Appellant's Opening Brief remediated the default and having been filed in a timely manner with the required Court's Local Rules for reinstatement and remediated default occurred.

## **STATEMENT OF THE CASE**

### **I. Background Facts**

Adriano Kruel Budri is a Self Represented Litigant Pro Se and a former private employee non-exempt of the nationwide trucking company FirstFleet, Inc, and whose private trucking employment term it was undergird of the protected

activity of the federal statute Surface Transportation Assistance Act (STAA) for commercial truck driver employee protection provisions.

During his tenure of the private employment at FirstFleet, Inc in the State of Texas, Budri refused to violate the safety rules prescribed by the USDOT, FMCSA and the Texas Transportation Code and having reported to the Safety Department of FirstFleet, Inc located at Corporate Headquarters Office in Murfreesboro, Tennessee, as consequence of his safety reports filed with the company and not to violate the public safety laws in Texas, Budri has been involuntarily terminated of his private employment with FirstFleet, Inc.

## **II. Facts Pertaining to Budri's Fifth Circuit Appellant Opening Brief**

Budri filed a civil lawsuit before the United States District Court for the Northern District of Texas, Dallas Division, and having been assigned with the USDC Case Number: 3:21-CV-01872, Case Style: Adriano Krue Budri v. FIRSTFLEET, Inc.

The Defendant's Lead Attorney of FirstFleet, Inc has been represented by the out of state attorney Charles Eric Stevens and having been inappropriately admitted as Pro Hac Vice party in that Federal District Court located in Dallas, Texas and because the out of state attorney has not been properly admitted under the local rule requirements and the Guidance for Appearance as Pro Hac Vice Attorney and that it requires one Presiding Judge of the case assigned as the Judge delegated and designated to grant or deny any application for admission as Pro Hac Vice party submitted in that

USDC for the Northern District of Texas, Dallas Division. Also, when one Pro Hac Vice party has been already admitted in a previous proceeding in the same U. S. District Court for the Northern District of Texas, according to the local rule requirements, and the Guidance for Admission as Pro Hac Vice Attorney in that District Court, the applicant for admission as Pro Hac Vice form cannot be re-admitted and for other case assigned in the same District Court, and except if the applicant attorney has been duly licensed by the State Bar of Texas and having proof of the residence in the Dallas County, Texas as jurisdiction of the U. S. District Court for the Northern District of Texas, Dallas Division and to be authorized to practice law in that District Court in Dallas, Texas.

Charles Eric Stevens is an out of state attorney from Nashville, Tennessee, and he is not licensed by the State Bar of Texas and he is not authorized to practice law in that U. S. District Court for the Northern District of Texas located in Dallas, Texas, and also he has been already admitted and from the same U. S. District Court for the Northern District, Dallas Division in the year of 2017 as admitted Pro Hac Vice party and for this reason he is not eligible and to be re-admitted as Pro Hac Vice Attorney in that same District Court and according to local rule requirements and the Guidance for Appearance as Pro Hac Vice Attorney in that specific U. S. District Court.

During the initial phase of the civil case assigned and filed before the USDC for the Northern District of Texas, Dallas Division, Charles Eric Stevens as out of state attorney from Nashville, TN, he filed deliberately a new application for admission Pro Hac

Vice Form and same knowingly about the local rule requirements and the Guidance for Admission as Pro Hac Vice attorney stipulated by the U. S. District Court for the Northern District of Texas that he cannot be re-admitted as pro Hac Vice Attorney At U. S. District Court for the Northern District of Texas. After to file his newly application for admission as Pro Hac Vice form, in the day after of his application filed, summarily, the Magistrate Judge Rebecca Rutherford (*and not consented for all parties to conduct the civil case assigned*) has perfunctorily granted a rubberstamped admission to the out of state attorney Charles Eric Stevens and without have done at least a comprehensive review of the out of state attorney Charles Eric Stevens' history as Pro Hac Vice already admitted with that U. S. District Court in one previous case assigned in the same District Court and without have checked properly the application for admission as Pro Hac Vice Form and to know if the out of state attorney was really eligible to be admitted to participate as Pro Hac Vice party in the case assigned or not.

Also, the admission's order issued by the Magistrate Judge is completely invalid and because according to the local rule requirements and the Guidance for Appearance of the Pro Hac Vice Attorney in that U. S. District Court for the Northern District of Texas, only the Presiding Judge of the case assigned has exclusive delegation to decide every single application for admission as Pro Hac Vice Form submitted with the case assigned and whose Presiding Judge is one United States District Judge of the Article III of the Federal District Court appointed by the President and endorsed by the United States Senate and to preside the case



assigned in that U. S. District Court for the Northern District of Texas located in Dallas, Texas.

For this reason, Plaintiff as Appellant has vehemently contested the mistrial occurred before the United States District Court for the Northern District of Texas, Dallas Division and when the out of state attorney Charles Eric Stevens has not been properly admitted to participate as Pro Hac Vice party in that civil case assigned and from the part of the Presiding Judge Sam Lindsay and assigned as the presiding Judge of the case as U. S. District Judge at the U.S.D.C. for the Northern District of Texas and for exclusive decision for all applications for admission as Pro Hac Vice form in that specific case.

The admission order issued and from the part of the Magistrate Judge Rebecca Rutherford is void and under the local rule requirements and the Guidance for Appearance as Pro Hac Vice Attorney with the United States District Court for the Northern District of Texas, Dallas Division and also under the Supremacy Doctrine of the District Court for local rule requirements and for admission of the Pro Hac Vice Attorney in that specific U. S. District Court.

All pleadings filed by the out of state attorney Charles Eric Stevens in that specific case assigned and before the United States District Court for the Northern District of Texas, Dallas Division is in fact one nullity under the law and under the doctrine of the Supremacy of the District Court for current Local Rule requirements at U. S. District Court for the Northern District of Texas for Pro Hac Vice attorney.

The Northern District of Texas ultimately erroneously dismissed with prejudice the civil case assigned, and having ignored the Plaintiff's Motions filed in a timely manner and dismissed as "*Moot*" and also having been issued one opinion for failure to state a claim.

Subsequently, the Plaintiff filed his appeal in a timely manner as *de novo* review before the USCOA 5<sup>th</sup> Circuit.

As Pro Se, Appellant filed in a timely manner his Appellant's Opening Brief on 01/07/2022 and having been accepted by the Clerk's Office and having satisfied all FRAP Rules and Court's Local Rule requirements and IOP requirements.

However, the Appellee's Attorney Charles Eric Stevens and representing FirstFleet before the USCOA 5<sup>th</sup> Circuit filed a motion to strike and requesting sanctions against the Appellant's Opening Brief and having argued the Appellant's failure to comply with certain additional procedural requirements stipulated from one separate order issued on 04/30/2021, and in relation the Budri's employment term with FirstFleet, Inc.

Since then, the Panel of the Court issued an order to the Appellant to show cause and having the Appellant showed cause in a timely manner as required by the Panel of the Court.

Subsequently, the Panel issued one order of dismissing the appeal for want to prosecute and still warning the Appellant for further fillings before the USCOA 5<sup>th</sup> Circuit and including the District Court for possible frivolous and for excessive fillings and having denied the Appellee's request for sanctions against the Appellant as Pro Se.

Because Appellant has the right to reinstate and to remediate the default occurred, the Appellant filed in a timely manner a new Appellant's Opening Brief and duly remediated and also with additional documents and being in compliance with the separate order issued on 04/30/2021 and having filed in a timely manner a motion to reinstate the case and spite of the fact that the court did not provide a fair notice for reinstatement of the Appellant's Opening Brief with the Court dated on 02/23/2022, and only having received one letter and from the part of the Court's Clerk Office on 03/08/2022 as acknowledgment letter from one Appellant's motion to reopen/reconsideration the case and providing information about the remediation of the default as material proof and to file one motion to reinstate the case with the Courts Clerk Office.

Importantly, the order issued on 02/23/2022, did not mention that the Court has procedures for appeal or reconsideration of the dismissal for want to prosecute for reinstatement and to remediate the default found, and the Court can accept for filing or review any additional materials seeking reconsideration or reopen the appeal case and for reinstatement of the Appellant's Opening Brief and leaving the Appellant Budri with no adequate remedy at law but to file this instant Petition not just to protect his own interests but more importantly his constitutional rights for the due process in this important appeal.

Regrettably, the Panel of Fifth Circuit dismissed prematurely one legitimate appeal and filed from one Self Represented Litigant Pro Se and due to for some failure of the additional procedural additional requirements issued in one separate order dated on

04/30/2021 and having been complained by the Appellee's attorney Charles Eric Stevens, but having been immediately remediated the default in a timely manner with the Court and filed in a timely manner one motion to reinstate the case with the Court's Clerk Office.

This is evidenced by the fact that the Panel's Order to dismiss with want to prosecute has not mentioned in absolutely in nothing the Appellant's Rights to remediate the default and dismissed for failure of some procedural additional requirements and from one separate order issued on 04/30/2021 as want to prosecute pursuant to 5th Cir. R. 42.3.

To make matters worse, the Panel ignored the serious mistrial occurred before the United States District Court for the Northern District of Texas, Dallas Division in relation the fraud on the court and practiced by the Defendant's Attorney Charles Eric Stevens in his bogus application for admission as Pro Hac Vice Form in that U. S. District Court for the Northern District of Texas and same being aware that he could not be admitted again in that the same U. S. District Court and undergird of the local rule requirements and also the Guidance for Appearance of the Pro Hac Vice Attorney by the Supremacy Doctrine of the District Court Local Rules.

Despite the fact that Budri presented a litany of material evidences in his favor, and the Appellee's Attorney Charles Eric Stevens only has presented one poor motion to strike and requesting sanctions against the Appellant's Opening Brief, the Panel of the case assigned issued fatally flawed in their decision to dismiss the appeal for want to prosecute, which made it clear that it did not even review in

fact the Appellant's submissions and simply took the Appellee's side about the motion to strike the Appellant's Opening Brief for failure from some procedural additional requirements stipulated in one separation order issued on 04/30/2021 and of which it is permissible to be remediated the default via one motion to reinstate the case.

The Panel's order issued on 02/23/2022 has not cited any legal or factual analysis, after having egregiously denied him his Constitutional Rights for due process and to reinstate the default found and in fact having been remediated in a timely manner and filed with the Court's Clerk Office on 03/16/2022.

The most fundamental and basic tenet of our judicial system is that an individual is to be provided due process and equal protection under the law.

This has grossly and severely prejudiced Budri, depriving him of his ability to represent himself as Self Represented Litigant Pro Se and before the USCOA 5<sup>th</sup> Circuit and also with the USDC for the Northern District of Texas, Dallas Division.

More importantly, this has also severely prejudiced Budri as Appellant Self Represent Litigant Pro Se, and not the Appellee's Attorney Charles Eric Stevens and who was not properly admitted before the U. S. District Court for the Northern District of Texas as Pro Hav Vice Attorney and with the Presiding Judge Sam Lindsay assigned of the case.

## **STANDARD OF REVIEW**

The Supreme Court has the power to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages

and principles of law.” See: 28 U.S.C. § 1651(a). To obtain a writ of mandamus, the applicant must demonstrate that he has “no other adequate means to attain the relief he desires.” See: *Cheney v. United States Dist. Court*, 542 U.S. 367, 380 (2004).

The applicant must then demonstrate that the applicant’s right to the writ is “clear and indisputable.” Finally, the applicant must demonstrate that the writ is otherwise appropriate under the circumstances. A writ is appropriate in matters where the applicant can demonstrate a “judicial usurpation of power” or a clear abuse of discretion. See also *Roche v. Evaporated Milk Ass’n*, 319 U.S. 21, 26 (1943) (“The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.”).

## **REASONS FOR GRANTING THE WRIT**

### **I. This Case Involves Budri’s Constitutional Due Process Rights**

This case flies in the face of one of the basic tenets of the American legal system – that persons are entitled to a due process.

This is well settled by the Supreme Court as early as 1895. See: *Coffin v. United States*, 156 U.S. 432 (1895).

This fundamental right is engrained in the Due Process Clause of the Fifth and Fourteenth Amendments, which state that no person shall be deprived of life, liberty, or property without due process of the law.

The Fifth Circuit, in denying Budri his constitutional right to pursue his worker's rights has clearly deprived Budri of a fundamental liberty without due process. This is only amplified by the Fifth Circuit denying Budri any right of appeal or review of the dismissal for want to prosecute about the appeal filed in a timely manner with the USCOA 5<sup>th</sup> Circuit and having been initially accepted by the Court's Clerk Office as satisfactory and duly filed on 01/07/2022 with the Court's Clerk Office. The order issued on 02/23/2022 is a clear abuse of discretion.

Thereby, of depriving him of any adequate remedy at law.

**II. The Fifth Circuit's Decision Invokes the Constitutional Right to Due Process and including for Self Represent Litigant Pro Se in civil cases.**

There is absolutely no prejudice that would result from the Fifth Circuit simply granting Budri's reinstatement of the Appellant's Opening Brief and having been duly remediated the default found as he is clearly eligible to do so.

Now, however, in the absence of the implementation of this constitutional (and common sense) solution, Budri is severely prejudiced and stands to lose all of his legitimate appellate rights and due a previous failure arbitrary procedural of the additional requirements stipulated from one separate order issued on 04/30/2021 by one Panel's Court of 5<sup>th</sup> Circuit and having been promptly cured such additional procedural requirements and with the submission of one new Appellant's Opening Brief and duly remediated the default and filed with his motion to reinstate the case on 03/16/2022.

**III. No Fair Notice has been issued to Appellant that dismissal was imminent for not compliance of one separate order issued on 04/30/2021 and related with the FirstFleet's employment term of the Appellant and from one appeal without counsel.**

The court has not warned that failure to comply with a separate order issued on 04/30/2021 will create a potential risk of dismissal of the case; the panel of the Fifth Circuit has failed to heed a warning based in not compliance from certain procedural requirements from one separate order issued on 04/30/2021 and that it is not sufficient to justify dismissal without more egregious conduct on the part of the appellant.

In the order issued on 02/07/2022 by the Panel of Fifth Circuit ordered that the part of the appellant had to show cause about his failure and not to comply with a separate order issued on 04/30/2021; it was not issued on notice of the potential for dismissal pursuant to 5<sup>th</sup> Cir. R. 42.3., about that order to show cause and having failed the Panel to issue a fair notice and to be addressed to the part of the appellant for potential dismissal of the case for want to prosecute if the Appellant's Opening Brief as pleading filed with the court on 01/07/2022 was not amended in a timely manner.

Nothing in the record reflects that appellant was on notice that the case would be dismissed for want to prosecute pursuant to 5<sup>th</sup> Cir. R. 42.3., if he did not amend his Appellant's Opening Brief in a timely manner and following the additional procedural requirements stipulated from one separate order issued on 04/30/2021 and from other case.



Budri was not on notice of the draconian threat of dismissal for want to prosecute pursuant to 5th Cir. R. 42.3 and from the Panel's Order to show cause and about his failure for not compliance with one separate order issued on 04/30/2021 from other case.

Also, the Panel of Fifth Circuit did not afford to appellant at least one unique and single opportunity to amend his Appellant's Opening Brief and to remediate the default found about one separate order issued on 04/30/2021 and from other case.

No fair notice warning has been released that failure to amend the Appellant's Opening Brief would result in a summary draconian dismissal for want of prosecute pursuant to 5<sup>th</sup> Cir. 42.3.

No warning notice has been issued to Appellant that dismissal was imminent and from the notice to show cause and of which he showed cause in a timely manner and prescribed by the Panel of the 5<sup>th</sup> Circuit.

There is a clear abuse its discretion in dismissing the case for want of prosecute pursuant to 5<sup>th</sup> Cir. 42.3 and after the Appellant has responded promptly his response to show cause to the Panel, and from one order to show cause issued on 02/07/2022. See: The United States Court of Appeals for the Federal Circuit, Case Number 04-1364, Case Style: *Michael Bowling, Plaintiff-Appellant, v. Hasbro, Inc, Defendant-Appellee*, and decided on 04/11/2005.

No Clerk's Fair Notice has been issued for the appeal without counsel. Appellant is self-represented litigant Pro Se and he is not represented with one counsel. The Internal Operating Procedure of the USCOA 5<sup>th</sup> Circuit is clear that the clerk must issue

a fair notice and when the appeal has been filed without counsel and giving a determined time frame to appellant to remediate the default found in his Appellant's Opening Brief.

The Clerk did not issue one notice and addressed to appellant and for appeal without counsel, and clearly prescribed in the 5<sup>th</sup> Circ. Rule 42.3.1.2, and that the appellant has 15 days and from the date of the notice the appeal and to remediate the default and if the default is remediated within that time prescribed by the local rules of the 5<sup>th</sup> Circuit, then the clerk must not dismiss the appeal without counsel for want of prosecute.

Also, according to the 5<sup>th</sup> Circ. Rule 42.3.3, in all instances of failure to prosecute an appeal to hearing as required, the court *may* take such *other action* as *it deems appropriate*.

No other action has been taken, no fair notice has been issued, no compliance of the 5<sup>th</sup> Circ. Rule 42.3.1.2 and for appeals without counsel having complied by the court.

The panel of the 5<sup>th</sup> Circuit simply reviewed only the Appellee's Motion to Strike the Appellant's Opening Brief and having suspended the Appellant's Opening Brief and ordered to Appellant to show cause and not giving at least 15 days to Appellant to remediate the appeal without counsel and showing total discrimination and usurpation of judicial power and in flagrant violation of the IOP 5<sup>th</sup> Circuit rules for fair notice from appeals without counsel, and under the Rule 42.3.1.2 and to give one opportunity to appellant to remediate the Appellant's Opening Brief in a timely manner as appeal without counsel and clearly described in the Court's Rules.

The court's record reflects that the clerk did not issue a fair notice to appellant to remediate his Appellant's Opening Brief and in relation the separate order issued on 04/30/2021 and much less citing what was the default found and to be remediated with 15 days of the date of notice of appeal without counsel. There is a clear violation and from the part of the court with the 5<sup>th</sup> Circ. Rule 42.3.1.2 and appeal without counsel.

After the Panel's decision and to dismiss the appeal without counsel dated on 02/23/2022, subsequently, the appellant filed a motion to reopen / reconsideration the case and having been received by the Court and having been issued one clerk's acknowledgment letter and dated on 03/08/2022 and informing about the remediation default process and how to file a motion to reinstate the case and showing that the Appellant's Opening Brief has been duly remediated the default. Within 9 days of the clerk's letter issued on 03/08/2022, the appellant has remediated the default and having filed one motion to reinstate the case and duly delivered with the Court's Clerk Office on 03/16/2022 via USPS Priority Mail with tracking number registered, as well as, sent via email message in document in PDF format attached to the email address of the Pro Se recipient with the appeals court of the 5<sup>th</sup> Circuit and also to the email address of the Deputy Clerk of the Case Management assigned.

**IV. General Docket Orders about the COVID-19 are not frivolous and the Pro Se has right to file via email with printed signature authorized by the Court.**

The Chief Judge Priscilla R. Owen of the U. S. Fifth Circuit Court of Appeals has issued at the present date at approximately 10 General Docket Orders related the COVID-19 pandemic and not having rescinded the Filing Option Number 3 for Pro Se Mailbox and for usage of the email address: Pro\_se@ca5.uscourts.gov and with filing instructions for the Pro Se Mailbox and including about the printed signature and submitted via email messages to the Court. Appellant has complied strictly with the General Docket Orders and issued by the Chief Judge Priscilla R. Owen of the U. S. Fifth Circuit Court of Appeals about the COVID 19 pandemic and whose General Docket Orders are not frivolous and are effective.

**CONCLUSION**

Based on the foregoing, the Court should grant Budri's Petition to be reinstated his Appellant's Opening Brief and duly remediated the default found and for additional procedural requirements stipulated from one arbitrary separate order issued on 04/30/2021 about the Budri's FirstFleet employment term and whose separate order issued by the Court has been a clear judicial usurpation of power and only to create additional hardship and futile bureaucratic procedural hurdles and with the unique proposal to deprive the due process that the Appellant as Pro Se has the right and undergird of the United States Constitution provisions.

The Court's decision to grant Budri's Petition is valid to reopen the case and to be reinstated the Appellant's Opening Brief and of which has been duly remediated the default on 03/16/2022 with the Court's Clerk Office in a timely manner and within 9 days of the clerk's acknowledgment letter issued on 03/08/2022.

The Panel's Court has flagrantly discriminated one Self-Represented Litigant as Pro Se in one appeal without counsel and not having described in the decision order dated on 02/23/2022 to dismiss for want of prosecute what kind of the default the Appellant has committed and in relation the separate order issued on 04/30/2021 and to result in one draconian and summary dismissal of the case and without to give one unique opportunity to Appellant to remediate the so called obscure default and not described by the Panel of the Court's order on 02/23/2022 and for dismissal to want of prosecute and for supposed not compliance of the separate order dated on 04/30/2021. It is a job of the Panel's Court to describe the default supposedly occurred and to elucidate the litigant and to give a specific timeframe to remediate such supposed default appointed. The Panel's Court did not appoint any specific supposed default occurred and in relation the separate order issued on 04/30/2021.

Dated: May 12, 2022

Respectfully Submitted,

/s/ Adriano Krue Budri

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