

No. 21-1442

In The
Supreme Court of the United States

In re: ADRIANO KRUEL BUDRI,

Petitioner.

**On Petition For Writ Of Mandamus
To The United States Court Of Appeals
For The Fifth Circuit**

**RESPONDENT FIRSTFLEET, INC.'S
BRIEF IN OPPOSITION**

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QUESTIONS PRESENTED

1. Did Petitioner properly show that he had no other adequate means to reverse the dismissal of his appeal as required to obtain a Petition for Writ of Mandamus?
2. Did Petitioner show a right to the issuance of a writ to reverse the dismissal of his appeal which occurred after Petitioner demonstrated contempt by refusing to comply with the reasonable requirements imposed by the Fifth Circuit Court of Appeals (“Fifth Circuit”) to ensure Petitioner ceased his repetitive, bad faith filings?
3. Does Petitioner’s continued practice of being a self-proclaimed “pain in the neck” litigant by making repeated filings in state and federal court actions, his disregard for judicial orders and the provision of multiple opportunities to address the Fifth Circuit’s concerns make the issuance of a writ inappropriate under the circumstances?

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Supreme Court Rule 29.6, FirstFleet, Inc. (“FirstFleet”) identifies the following as a full and complete list of all parties in this action:

Petitioner – Adriano Kruel Budri

Respondent – FirstFleet.

FirstFleet further states that it is a wholly owned subsidiary of First Enterprises, Inc., a privately held corporation and no publicly held corporation owns 10% or more of FirstFleet.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATE- MENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS AND ORDERS ENTERED	1
JURISDICTION.....	1
RELEVANT CONSTITUTIONAL AND STATU- TORY PROVISIONS	2
STATEMENT OF THE CASE.....	2
I. PETITIONER'S FIVE (5) YEAR RECORD OF HARASSING LITIGATION LED TO SANCTIONS AND THE ULTIMATE DIS- MISSAL OF HIS APPEAL	2
II. AFTER NOTICE OF POTENTIAL SANC- TIONS, THE FIFTH CIRCUIT DISMISSED THE APPEAL BASED ON PETITIONER'S FAILURE TO ABIDE BY ITS SANCTIONS ORDER	6
SUMMARY OF THE ARGUMENT	8
ARGUMENT	9
I. STANDARD OF REVIEW	9
II. PETITIONER FAILED TO MEET ANY OF THE STANDARDS REQUIRED TO OBTAIN A WRIT OF MANDAMUS	10

TABLE OF CONTENTS – Continued

	Page
A. Petitioner had other means to seek relief from the dismissal order	10
B. Petitioner has no right to the issuance of this writ of mandamus as the Fifth Circuit has the inherent right to control its own docket and sanction vexatious litigants	11
C. Petitioner’s latest harassing filing does not warrant extraordinary relief under these circumstances	13
CONCLUSION.....	14

TABLE OF AUTHORITIES

	Page
FEDERAL CASES	
<i>Budri v. Adm. Rev. Bd.</i> , 858 F. App'x 117 (5th Cir. 2021).....	<i>passim</i>
<i>Budri v. Dep't of Labor</i> , 140 S. Ct. 386 (2019)	10
<i>Budri v. FirstFleet, Inc.</i> , No. 21-11201 (5th Cir. Feb. 7, 2022)	1, 6, 7, 12
<i>Budri v. FirstFleet Inc.</i> , No. 3:19-CV-0409, 2021 WL 849012 (N.D. Tex. Feb. 18, 2021).....	13
<i>Budri v. FirstFleet, Inc.</i> , No. 3:21-CV-1872-L-BT, 2021 WL 6496786 (N.D. Tex. Oct. 22, 2021).....	5, 13
<i>Budri v. FirstFleet</i> , No. 3:21-CV-1872-L-BT, 2021 WL 5629149 (N.D. Tex. Nov. 30, 2021)	5
<i>Budri v. Humphreys</i> , 140 S. Ct. 143 (2019)	10
<i>Budri v. FirstFleet Inc.</i> , 2021 WL 842123 (N.D. Tex. Mar. 5, 2021)	13
<i>Goodyear Tire & Rubber Co. v. Haeger</i> , 137 S. Ct. 1178 (2017)	11
<i>Hollingsworth v. Perry</i> , 558 U.S. 183, 130 S. Ct. 705, 175 L.Ed.2d 657 (2010)	9

TABLE OF AUTHORITIES – Continued

	Page
STATE CASES	
<i>Budri v. Humphreys</i> , No. 02-18-00070-CV, 2018 WL 3763920 (Tex. App. Aug. 9, 2018).....	13
FEDERAL STATUTES	
All Writs Act, 28 U.S.C. § 1651.....	1, 2, 12
Surface Transportation Assistance Act	2, 3
RULES	
Fifth Circuit Rule 42.3	7
Federal Rule of Appellate Procedure 35	10
Federal Rule of Appellate Procedure Rule 40.....	10
OTHER AUTHORITIES	
Fair Labor Standards Act (“FLSA”).....	13

OPINIONS AND ORDERS ENTERED

The Fifth Circuit Order of February 7, 2022 in *Budri v. FirstFleet, Inc.*, No. 21-11201 (5th Cir. Feb. 7, 2022) (granting motion to strike Petitioner's brief for violating the Fifth Circuit's Order of April 30, 2021, *available at Budri v. Adm. Rev. Bd.*, 858 F. App'x 117, 128 (5th Cir. 2021), and allowing fifteen (15) days to show cause as to why Petitioner failed to obey the Order of April 30, 2021) [P. App'x A1]¹ and the Fifth Circuit's Order of February 23, 2022 in *Budri v. FirstFleet, Inc.*, No. 21-11201 (5th Cir. Feb. 23, 2022) [P. Appx A2-A3] are the orders at issue in this Petition for Writ of Mandamus.

JURISDICTION

FirstFleet respectfully submits that this Court lacks jurisdiction given that Petitioner seeks review of a dismissal and not the injunction of on-going actions taken on the part of the Fifth Circuit or the Northern District of Texas. To the extent this Court has jurisdiction to consider this Petition, it exists under the All Writs Act, 28 U.S.C. § 1651(a).

¹ All citations to Petitioner's Appendix shall be made as follows [P. App'x A-____].

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The All Writs Act, 28 U.S.C. § 1651(a) states “[t]he 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.”

STATEMENT OF THE CASE

I. PETITIONER’S FIVE (5) YEAR RECORD OF HARASSING LITIGATION LED TO SANCTIONS AND THE ULTIMATE DIS- MISSAL OF HIS APPEAL.

Petitioner worked for FirstFleet from January 25, 2017 to February 17, 2017. *Budri v. Adm. Rev. Bd.*, 858 F. App’x 117, 119 (5th Cir. 2021). After this brief employment, Petitioner has employed a “‘wear them down’ litigation strategy, which is ‘characterized by quantity, repetition, and obstinance, rather than quality, logic, and prudence, with little regard for legal requirements, efficiency or conservation of resources.’” *Id.* at 125. As discussed in the Fifth Circuit’s 2021 opinion detailing Petitioner’s penchant for engaging in frivolous litigation, Petitioner has brought six different OSHA administrative complaints against FirstFleet generally alleging termination in retaliation for Petitioner’s refusal to violate safety regulations under the Surface Transportation Assistance Act (“STAA”) and publishing negative information about Petitioner in

retaliation for bringing his STAA claims. *Id.* at 119-21. Petitioner filed these administrative complaints between January 25, 2017 and August 6, 2020. *Id.*

In considering the appeal of the Petitioner's fourth OSHA administrative complaint, and the prospect of having to review two more administrative complaints making the same allegations, the Fifth Circuit imposed sanctions against Petitioner. *Id.* at 128. (“Sanctions Order”) In so doing, the Fifth Circuit ordered the following:

- (1) Any future filings in this court by Adriano Budri (“Budri”), except briefs filed in strict compliance with the Federal Rules of Appellate Procedure, must not exceed 5 pages in length unless prior leave of court is sought and granted upon good cause shown. Any such request for leave must itself be limited to no more than 5 pages in length.
- (2) Unless otherwise ordered by this court, no more than three motions may be filed in any future proceeding in this court to which Budri is a party. Additionally, all motions filed by Budri must strictly comply with the Federal Rules of Appellate Procedure, as well as the Fifth Circuit Rules and Internal Operating Procedures.
- (3) Any future filings in this court by Budri must include proper citations of legal authority and proper citations to the applicable court or agency records, including pertinent case names, docket numbers, dates of filing or issuance of orders, decisions, and any other

relevant documents, as well as all pertinent page numbers.

(4) Budri must file a copy of the above-referenced separate written order in any future proceedings instituted in this court relating in any way to his 2017 employment by First[F]leet and/or his termination from that employment.

(5) Any material violations of the provisions of this court’s order(s) shall result in appropriate sanctions, including the striking of pleadings, dismissal, and/or the imposition of substantial monetary sanctions.

(6) Any future filings in this court by Budri must include a signed certification by Budri confirming that the filing is made in good faith, is not repetitive of a prior filing, and that Budri understands that any material violations of the provisions of this court’s order(s) shall result in appropriate sanctions, including the striking of pleadings, dismissal, and/or the imposition of substantial monetary sanctions.

Id. at 128 (“Sanctions Paragraph”). Showing utter disregard for the Fifth Circuit, Petitioner filed another action in the Northern District of Texas (“District Court”) against FirstFleet attempting to challenge the dismissals of his administrative complaints yet again.

The Magistrate Judge for the District Court recommended the granting of FirstFleet’s Motion to Dismiss noting Petitioner “is no stranger to federal court”

and that Petitioner “has a long history of litigation involving his alleged wrongful termination by FirstFleet in 2017.” *Budri v. FirstFleet, Inc.*, No. 3:21-CV-1872-L-BT, 2021 WL 6496786, at *1 (N.D. Tex. Oct. 22, 2021), *report and recommendation adopted*, No. 3:21-CV-1872-L-BT, 2021 WL 5629149 (N.D. Tex. Nov. 30, 2021), *motion for relief from judgment denied*, No. 3:21-CV-1872-L-BT, 2021 WL 8442255 (N.D. Tex. Dec. 6, 2021) (citing *Budri v. Admin. Rev. Bd.*, 858 F. App’x 117, 119-22 (5th Cir. 2021); *Budri v. Admin. Rev. Bd.*, 825 F. App’x 178, 180 (5th Cir. 2020); *Budri v. Admin. Rev. Bd.*, 764 F. App’x 431, 431-32 (5th Cir. 2019); *Budri v. FirstFleet Inc.*, 3:19-CV-00409-E-BH (N.D. Tex. Feb. 19, 2019); *Budri v. FirstFleet Inc.*, 3:17-CV-02945-C-BN, (N.D. Tex. Oct. 25, 2017); *Budri v. FirstFleet, Inc.*, 3:17-CV-03241-C-BN (N.D. Tex. Nov. 29, 2017)). The Magistrate Judge noted Petitioner “has been reprimanded and warned against refiling meritless claims and other vexatious litigation behavior” and that Petitioner “has boasted to FirstFleet’s counsel of his prowess as a ‘pain in the neck’ litigant,” recommending the dismissal of the action and sanctions limiting Petitioner’s ability to file future lawsuits based on the same facts. *Budri*, 2021 WL 6496786, at *1. The District Court accepted the Report and Recommendation of the Magistrate Judge to dismiss the action and enjoined Petitioner from not only making additional filings but also contacting and harassing FirstFleet representatives. *Budri v. FirstFleet*, No. 3:21-CV-1872-L-BT, 2021 WL 5629149 (N.D. Tex. Nov. 30, 2021). The District Court denied Petitioner’s Motion for Reconsideration and Petitioner filed a Notice of Appeal on December 2, 2021.

Notice of Appeal, *Budri v. FirstFleet, Inc.*, No. 21-11201 (5th Cir.).

II. AFTER NOTICE OF POTENTIAL SANCTIONS, THE FIFTH CIRCUIT DISMISSED THE APPEAL BASED ON PETITIONER’S FAILURE TO ABIDE BY ITS SANCTIONS ORDER.

On January 7, 2022, Petitioner filed his Opening Brief with the Fifth Circuit attempting to relitigate his same claims against FirstFleet. Opening Brief, *Budri v. FirstFleet, Inc.*, No. 21-11201 (5th Cir. Dec. 27, 2021). Petitioner failed to include the Sanctions Paragraphs as required by the Sanctions Order for “any future proceedings instituted in this court relating in any way to his 2017 employment by Firstfleet and/or his termination from that employment.” *See id.*; *Budri*, 858 F. App’x at 128. Petitioner also failed to include the certification “confirming that the filing is made in good faith, is not repetitive of a prior filing, and that Budri understands that any material violations of the provisions of this court’s order(s) shall result in appropriate sanctions, including the striking of pleadings, dismissal, and/or the imposition of substantial monetary sanctions.” *See* Appellee’s Motion to Strike Appellant’s Brief, for Sanctions Against Appellant, and to Stay Briefing Deadlines, *Budri v. FirstFleet, Inc.*, No. 21-11201 (5th Cir. Jan. 21, 2022); *Budri*, 858 F. App’x at 128.

FirstFleet filed a Motion to Strike Appellant’s Brief, for Sanctions Against Appellant, and to Stay

Briefing Deadlines. Appellee’s Motion to Strike Appellant’s Brief, for Sanctions Against Appellant, and to Stay Briefing Deadlines, *Budri v. FirstFleet, Inc.*, No. 21-11201 (5th Cir. Jan. 21, 2022). FirstFleet requested, in part, that the Fifth Circuit strike Appellant’s Brief due to Petitioner’s failure to attach the Sanctions Paragraphs and Petitioner’s failure to certify Petitioner filed Appellant’s Brief in good faith and that it was not repetitive of a previous filing. *Id.* at ¶¶ 11-16.

On February 7, 2022, the Fifth Circuit granted FirstFleet’s Motion to Strike Appellant’s Brief and suspended the briefing deadlines in the appeal. The Court also gave notice that Petitioner must “show cause within 15 days why we should not impose sanctions against him for failing to comply with this court’s order of April 30, 2021.” P. App’x A1. More than fifteen (15) days after the entry of this Order, the Fifth Circuit denied FirstFleet’s motion for monetary sanctions but found Petitioner failed to remedy his failure in a timely fashion and ordered the Clerk of Court to dismiss the appeal pursuant to Fifth Circuit Rule 42.3. P. App’x A2-A4 (issuing “a FINAL WARNING that additional frivolous or abusive filing in this court or the district court will result in the immediate imposition of sanctions in accordance with the order and this court’s previous order referenced above”) (“Dismissal Order”).

The Fifth Circuit properly struck Appellant’s Brief based on Petitioner’s refusal to abide by the Sanctions Paragraphs. The Fifth Circuit provided Petitioner the opportunity to address this failure and re-file the brief with the Sanctions Paragraphs and the certification

required by the Sanctions Paragraphs. The Fifth Circuit properly dismissed the appeal for want of prosecution after Petitioner failed again to abide by the Sanctions Order.

SUMMARY OF THE ARGUMENT

Petitioner had adequate means to review the Dismissal Order but chose not to do so. Petitioner did not seek a rehearing or *en banc* review as allowed under the Federal Rules of Appellate Procedure. Petitioner did not attempt to file a Petition for Writ of Certiorari seeking review of the Fifth Circuit's decision. Petitioner's attempt to obtain a Writ of Mandamus in this situation is wholly inappropriate given the multiple means available for Petitioner to seek this relief.

Moreover, the Fifth Circuit acted appropriately. The Fifth Circuit had the authority to require Petitioner to include the Sanctions Paragraph in future filings regarding Petitioner's employment with First-Fleet. The Fifth Circuit likewise had the authority to enforce these provisions and impose the sanction of dismissal after Petitioner chose not to comply following the receipt of notice of the possibility of sanctions for non-compliance with the Sanctions Order. The right to the issuance of a writ is not clear and indisputable.

Finally, the issuance of a writ under these circumstances is inappropriate. Petitioner has sought relief in multiple administrative forums as well as state and federal judicial venues over the last five

years. In both the Fifth Circuit and the Northern District of Texas, Petitioner has been repeatedly admonished and sanctioned for his vexatious and harassing conduct. This Court should refuse to reward this conduct by allowing Petitioner another opportunity to flaunt the authority of yet another court.

ARGUMENT

I. STANDARD OF REVIEW

For a writ of mandamus to issue, Petitioner “must establish that (1) ‘no other adequate means [exist] to attain the relief he desires,’ (2) the party’s ‘right to issuance of the writ is ‘clear and indisputable,’” and (3) ‘the writ is appropriate under the circumstances.’” *Hollingsworth v. Perry*, 558 U.S. 183, 190, 130 S. Ct. 705, 710, 175 L.Ed.2d 657 (2010) (quoting *Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367, 380-81, 124 S. Ct. 2576, 159 L.Ed.2d 459 (2004)) (some internal quotation marks omitted). As discussed below, Petitioner cannot meet any of these three requirements and this Court should deny Petitioner’s request for the issuance of a writ of mandamus to the Fifth Circuit.

II. PETITIONER FAILED TO MEET ANY OF THE STANDARDS REQUIRED TO OBTAIN A WRIT OF MANDAMUS.

A. Petitioner had other means to seek relief from the dismissal order.

Petitioner failed to take advantage of the multiple avenues available to seek relief from the Fifth Circuit’s Dismissal Order. Following the Dismissal Order, Petitioner had the opportunity to file a Petition for Rehearing pursuant to Federal Rule of Appellate Procedure Rule 40. Petitioner likewise could have sought *en banc* review pursuant to Rule 35. The record clearly shows that Petitioner chose instead to file a “motion to re-open” after dismissal without adequately addressing the basis for the default dismissal. *Cf.* P. App’x A8.

Having already failed in a previous attempt to seek a Petition for Writ of Certiorari from this Court on two separate occasions, *see Budri v. Dep’t of Labor*, 140 S. Ct. 386 (2019); *Budri v. Humphreys*, 140 S. Ct. 143 (2019), Petitioner chose to seek a Petition for Writ of Mandamus to review the Fifth Circuit’s Order without explanation. Petitioner had multiple methods by which to seek review of the Dismissal Order. Petitioner had every opportunity to pursue this course of action. Petitioner’s decision to forego these methods of challenging the Dismissal Order does not equate to a deprivation of Due Process as alleged in the Petition for Writ of Mandamus. Petitioner had other adequate means to attain the relief he desired and this Court should refuse to entertain this extraordinary Petition for Writ of Mandamus.

B. Petitioner has no right to the issuance of this writ of mandamus as the Fifth Circuit has the inherent right to control its own docket and sanction vexatious litigants.

The Fifth Circuit’s exercise of its authority to control its own docket by striking Petitioner’s frivolous filing and ultimately dismissing Petitioner’s appeal for failing to comply with its Sanctions Order does not violate Petitioner’s rights. This Court has made clear that “[f]ederal courts possess certain ‘inherent powers,’ not conferred by rule or statute, ‘to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.’” *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017) (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31 (1962)). This includes “the ability to fashion an appropriate sanction for conduct which abuses the judicial process.” *Id.* (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991)). In issuing a pre-filing injunction to address vexatious, harassing and repetitive litigation, the Fifth Circuit considers the history of the litigation, whether the litigation is being brought in bad faith, the burden on the courts and other parties incurred as a result of these repeated filings, and the adequacy of other sanctions to curb this conduct. *Budri v. Adm. Rev. Bd.*, 858 F. App’x 117, 127-28 (Apr. 3, 2021) (noting “[p]ro se litigants are not excluded from such sanctions”).

The Fifth Circuit properly considered the Department of Labor’s request for a pre-filing injunction against Petitioner and Petitioner responded to the

request as part of his pleadings in the appeal. *Budri*, 858 F. App'x at 128. The Fifth Circuit issued the injunction under its authority to "enjoin vexatious litigants under the All Writs Act, 28 U.S.C. § 1651." *Id.* at 127. The Fifth Circuit properly issued its Sanctions Order requiring Petitioner to include the Sanctions Paragraphs in all future litigation. Petitioner simply chose to ignore it.

Upon FirstFleet's motion, Appellee's Motion to Strike Appellant's Brief, for Sanctions Against Appellant, and to Stay Briefing Deadlines, *Budri v. FirstFleet, Inc.*, No. 21-11201 (5th Cir. Jan. 21, 2022), the Fifth Circuit stayed all briefing and provided Petitioner fifteen (15) days to show cause as to why the Fifth Circuit should not impose sanctions against Petitioner for his failure to include the Sanctions Paragraphs and requisite certification as part of his Opening Brief. Petitioner did not comply with the Sanctions Order within the timeframe set forth by the Fifth Circuit resulting in the dismissal of the appeal, a sanction specifically mentioned in the Sanctions Paragraph.

Petitioner had notice that he had fifteen (15) days to address his failure to comply with the Sanctions Order. P. App'x A1. Petitioner failed to make an adequate filing that addressed the failure and/or corrected the failure within those fifteen (15) days. P. App'x A2-A3. The Fifth Circuit promptly took action upon the expiration of the deadline to make this filing and dismissed this claim. *Id.* Petitioner cannot show a "clear and indisputable" right to the issuance of a writ of

mandamus requiring the reversal of the dismissal and this Court should deny Petitioner's request.

C. Petitioner's latest harassing filing does not warrant extraordinary relief under these circumstances.

Based on Petitioner's less than month-long employment with FirstFleet, Petitioner has filed two separate Petitions for Writ of Certiorari to this Court, six separate OSHA administrative complaints that were dismissed at the administrative stage and were later affirmed by the Fifth Circuit, another FLSA administrative complaint, and three separate actions against FirstFleet and others in the Northern District of Texas. *See Budri*, 2021 WL 6496786, at *1. Petitioner has a similar litigation history in the Texas state courts. *See, e.g., Budri v. FirstFleet Inc.*, No. 3:19-CV-0409, 2021 WL 849012, at *1-5 (N.D. Tex. Feb. 18, 2021) (detailing Petitioner's long litigation history including two state court actions involving FirstFleet), *report and recommendation adopted by Budri v. FirstFleet Inc.*, 2021 WL 842123 (N.D. Tex. Mar. 5, 2021); *Budri v. Humphreys*, No. 02-18-00070-CV, 2018 WL 3763920 (Tex. App. Aug. 9, 2018). Petitioner's latest filing to this Court represents yet another attempt to be the "pain in the neck" litigant intent on continuing his "wear them down" litigation strategy, which is 'characterized by quantity, repetition, and obstinacy, rather than quality, logic, and prudence, with little regard for legal requirements, efficiency, or conservation of resources.'" *Budri*, 2021 WL 6496786, at *1 (N.D. Tex. Oct. 22, 2021). This

conduct that has not only cost FirstFleet time and money has also been detrimental to judicial economy for more than five years and must stop.

Petitioner must not be allowed to continue to flaunt the authority of every judicial body with which he comes in contact. After more than five years of meritless litigation arising out of a less than month-long employment, granting Petitioner's request for a writ of mandamus would be wholly inappropriate under these circumstances.

CONCLUSION

Like an unruly child, Petitioner has repeatedly been warned about his behavior but without real consequence, and from that has learned only to show more contempt for the judicial system. Respondent respectfully requests this Court deny the Petition for Writ of Mandamus and put an end to this vexatious litigation.

Respectfully submitted,
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