

No: _____

**In The
Supreme Court of the United States**

In re ERIC DRAKE,

**On Petition For A Writ of Mandamus to The
United States Court of Appeals For The Fifth Circuit**

APPENDIX

EMERGENCY PETITION FOR WRIT OF MANDAMUS

Eric Drake
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August 27, 2022

Appendix Declaration of Applicant Eric Drake

My name is Eric Drake. I am above the age of twenty-one years of age and I am fully competent to make this declaration. I am the Applicant in this Petition for Writ of Mandamus. I have reviewed the Circuit Court's order in this matter. I have personal knowledge of the facts stated herein and such matters are true and correct. Specifically, I swear and/or affirm that the attached Exhibits to my Appendix, A1, A2, and A3 (large excerpt of the brief filed in the Fifth Circuit regarding Walmart) are true and correct copies of the following under the penalty of perjury.

FURTHER AFFIANT SAYETH NOT.



Eric Drake

Appendix:

Fifth Circuit Court of Appeals Clerk of Court Order

April 28, 2022 **A1**

Copy of Magistrate's Order Administratively Closing *Drake v State Farm et al*, No. 21-10797 **A2**

Large Excerpt of Applicant's, *Drake v. Walmart et al*, No. 21-10248,
Brief Filed with Fifth Circuit Court of Appeals **A3**

Appendix A1

Copy of Fifth Circuit Clerk of Court
May 20, 2022 Order of Dismissal

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 28, 2022

Lyle W. Cayce
Clerk

No. 20-40492

E. V. DRAKE,

Plaintiff—Appellant,

versus

TRAVELERS INDEMNITY COMPANY; TRAVELERS INDEMNITY
COMPANY OF AMERICA; HARRISON COUNTY; THE CITY OF
HALLSVILLE; EAST TEXAS BRIDGE, INCORPORATED; TEXAS
DEPARTMENT OF TRANSPORTATION,

Defendants—Appellees.

AND

No. 21-10248

ERIC DRAKE,

Plaintiff—Appellant,

versus

WALMART, INCORPORATED; WAL-MART STORES TEXAS,
L.L.C., *doing business as* WAL-MART STORES TEXAS 2007, L.L.C.,

Defendants—Appellees.

AND

No. 20-40492
and Nos. 21-10248, 21-10797

No. 21-10797

E. V. DRAKE,

Plaintiff—Appellant,

versus

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY;
GOVERNMENT EMPLOYEES INSURANCE COMPANY, *doing business as*
GEICO INDEMNITY COMPANY, *doing business as* GEICO CASUALTY
INSURANCE COMPANY, *doing business as* GEICO SECURE INSURANCE
COMPANY, *doing business as* GEICO MUTUAL INSURANCE COMPANY;
CITY OF DALLAS; CITY OF FARMERS BRANCH; DORIS SMITH;
ERIC KNIGHT; POLICE CHIEF FLOYD BURKE; ULYSHIA RENEE
HALL; MICHAEL BEACH; TYLER BONNER; DAVID C. GODBEY;
JOHN DOE TRUCKING; COWBOY TRUCKING; SAM WEST,
INCORPORATED; NOTEBOOM THE LAW FIRM; CHARLES
NOTEBOOM; JORDAN TAYLOR; FARAH RABADI; CHEVRON;
BRAXTON CARTER THOMPSON; DALLAS COUNTY; TENNA
SCHULTZ,

Defendants—Appellees.

Appeals from the United States District Court
for the Eastern and Northern Districts of Texas
USDC Nos. 2:19-CV-346, 3:20-CV-581, 3:21-CV-1751

No. 20-40492
and Nos. 21-10248, 21-10797

ORDER:*

Eric Drake (Drake), who has used many aliases, seeks leave to appeal in forma pauperis (IFP) from the dismissal or administrative closure of three actions. We CONSOLIDATE the appeals, deny leave to proceed IFP, dismiss the appeals, and order Drake to show cause why sanctions should not be imposed.

By moving to appeal IFP, Drake challenges the certifications that the appeals are not in good faith. *See McGarrah v. Alford*, 783 F.3d 584, 584 (5th Cir. 2015). “An appeal is taken in good faith if it raises legal points that are arguable on the merits and thus nonfrivolous.” *Id.* We may dismiss an appeal “when it is apparent that an appeal would be meritless.” *Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir. 1997); *see 5TH CIR. R. 42.2*.

Before turning to the pending IFP motions, we provide a summary of Drake’s history of vexatious litigation, which gives context to the resolution of each matter and forms the basis for sanctions and consolidation. We have the power to enjoin vexatious litigants under 28 U.S.C. § 1651, the “All Writs Act.” *See Matter of Carroll*, 850 F.3d 811, 815 (5th Cir. 2017). This includes the power to deter litigants who have a history of filing “litigation entailing vexation, harassment and needless expense to other parties and an unnecessary burden on the courts and their supporting personnel.” *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 188 (5th Cir. 2008) (internal quotation marks and citation omitted). To deter vexatious litigants, courts may impose sanctions in the form of prefilings injunctions (PFIs) requiring sanctioned litigants to obtain judicial consent before they may file. *Id.* at 189.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this order should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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In addition, courts may adopt and apply sanctions imposed by other districts. *See Balawajder v. Scott*, 160 F.3d 1066, 1067-68 (5th Cir. 1998).

Numerous courts throughout the country have deemed Drake a “vexatious litigant” or noted his prolific filing of frivolous, vexatious, harassing, or repetitive litigation. As a Georgia federal court observed,

[Drake] seems to enjoy the legal process, but rather than pursuing a career in the law, he has chosen to inundate state and federal courts with filings Drake has signed his pleadings using different variations of his name and has claimed to be domiciled in multiple states using frequently changing post office box addresses. . . . [and] has even filed nearly identical pleadings in different districts.

Drake v. 7-Eleven Inc., No. 4:19-CV-208, 2020 WL 4196189, *1 (S.D. Ga. June 26, 2020) (*7-Eleven*), *report and recommendation adopted*, 2020 WL 4194007 (S.D. Ga. July 21, 2020). That court further reported that Drake had filed “more than 100 cases or appeals . . . in the federal courts over the course of the last two decades.” *7-Eleven*, 2020 WL 4196189 at *1-*2 & nn.1-3. Drake has filed litigation in federal courts in Hawaii, California, Louisiana, and New Hampshire, as well as in the Court of Federal Claims. *Drake v. Walmart*, No. 3:20-CV-581, 2021 WL 863217, *1 (N.D. Tex.; Feb. 9, 2021), *report and recommendation adopted*, 2021 WL 859132 (N.D. Tex. Mar. 8, 2021); *Drake v. United States*, 792 F. App'x 916, 919-20 (Fed. Cir. 2019). He has also filed frivolous litigation in Michigan and Arkansas. *See Drake v. Travelers Com. Ins. Co.*, No. CV 20-11551, 2020 WL 12630645, *1-*2 (E.D. Mich. July 22, 2020) (*Michigan Travelers*); *In re Drake*, No. 5:18-CV-73, 2018 WL 10158861, *2 (W.D. Ark. Oct. 19, 2018).

We too have noted that “Drake has been declared a vexatious litigant in Texas state courts, which means an administrative judge must authorize any state court lawsuit he files.” *Drake v. Costume Armour, Inc.*, 736 F. App'x

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505, 505 (5th Cir. 2018) (*Costume Armour*). We have affirmed “revoking Drake’s IFP status and imposing pre-filing sanctions based on Drake’s abusive filing history.” *Drake v. Navistar Int’l Corp.*, 611 F. App’x 235, 237 (5th Cir. 2015).

In 2012, the Eastern District of Texas imposed a PFI (the 2012 PFI) prohibiting Drake “from proceeding in forma pauperis with any civil action,” whether filed in the Eastern District or transferred or removed to it, unless he first obtains leave to proceed IFP from a district judge. *Drake v. Travelers Indem. Co.*, No. 2:11-CV-318, 2012 WL 13162668, *3 (E.D. Tex. Mar. 16, 2012) (*2012 Travelers*). The Northern District of Texas adopted and applied the 2012 PFI in 2018. *Drake v. Nordstrom Dep’t Stores*, No. 3:18-CV-471, 2018 WL 1399179, *2-*3 (N.D. Tex. Mar. 1, 2018), *report and recommendation adopted*, 2018 WL 1404320 (N.D. Tex. Mar. 19, 2018); *see also Drake v. Safeway, Inc.*, No. 3:20-CV-344, (N.D. Tex. Apr. 13, 2020). Drake abandoned his appeal of those PFIs.

Drake v. Travelers Indem. Co., No. 20-40492 (Travelers)

In *Travelers*, Drake’s primary allegation was that something fell from a bridge over I-20 in Texas, shattering his windshield and injuring his eyes. He had previously raised the same claim in federal courts in Georgia and in Michigan, where the court observed that Drake was “abusing the judicial system by bringing” the action there in order “to avoid the orders restricting his ability to file his claims in a proper venue.” *Michigan Travelers*, 2020 WL 12630645, *1-*2. Drake then filed the claim in the District of Maryland. There, he added numerous unrelated claims against, among many others, the then-President and Vice President of the United States, and the spouses of Supreme Court Justices. He alleged that the President and others failed to protect the nation from natural disasters in response to warnings that Drake had received through divine revelation.

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The Maryland court dismissed all claims except those concerning the bridge incident, which were transferred to the Eastern District of Texas. The Eastern District dismissed the remaining defendants, either with or without prejudice. The court also imposed a PFI (the *Travelers* PFI) further limiting Drake's ability to litigate in that district. Drake did not reply to the defendants' motions to dismiss and motion for a PFI.

On appeal, Drake contends that Federal Rule of Civil Procedure 41(a) was misapplied; his history as a vexatious litigant was misrepresented; that the district court lacked jurisdiction due to improper service; and that the action was timely. We do not address these contentions because Drake did not raise the issues in the district court. *See Keelan v. Majesco Software, Inc.*, 407 F.3d 332, 339-40 (5th Cir. 2005); *F.D.I.C. v. Mijalis*, 15 F.3d 1314, 1327 (5th Cir. 1994). Drake also raises meritless contentions that the district judges are racially biased; that the case should have been transferred so he could get a fair hearing; that the court improperly denied IFP in an unrelated case; that Maryland and Texas judges should have recused themselves; and that the Maryland court erroneously dismissed his other claims. He offers no nonfrivolous issue for appeal concerning the *Travelers* case.

Drake v. Walmart, Inc., No. 21-10248 (Walmart)

The *Walmart* action was removed from Texas state court after Drake had obtained leave from a state administrative judge to proceed in state court. He alleged that some boxes of frozen food fell on him in a Dallas Walmart. After removal, the district court properly denied Drake's motion to remand to state court. Walmart eventually moved to dismiss because Drake had failed to seek permission to proceed with the removed action in federal court within 30 days of removal, as required by the 2012 PFI. In response, Drake did not seek permission from a federal judge, but filed two inflammatory, frivolous, and unauthorized amended complaints in which he sued, among

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others, lawyers and federal judges, accusing them of bias and racism. The Northern District of Texas dismissed the action without prejudice.

On appeal, Drake incorrectly asserts that removal was untimely and improper; that the Northern District of Texas could not adopt and apply the Eastern District's 2012 PFI; that the district court should have allowed him to file his amended complaints; that his personal injury claim has merit; that the court was retaliating against him; and that the PFIs violate his constitutional rights. He also says that he complied with the 2012 PFI by getting leave to proceed in state court. But the state administrative judge did not authorize him to file an action in federal court, and Drake does not explain how the state judge's ruling affects the otherwise valid 2012 PFI. Essentially, Drake's contentions reflect his refusal to accept that federal courts have the power to enjoin vexatious litigants in federal court. He identifies no nonfrivolous issue for appeal from the Walmart judgment.

Drake v. State Farm. Mut. Auto. Ins. Co., No. 21-10797 (State Farm)

In *State Farm*, the magistrate judge administratively closed the case because Drake failed to comply with prior PFIs. Contrary to Drake's assertion, we lack jurisdiction over this appeal directly from a magistrate judge's ruling, because the parties did not consent to having the magistrate judge decide the case. *See United States v. Renfro*, 620 F.2d 497, 500 (5th Cir. 1980); *Butler v. S. Porter*, 999 F.3d 287, 297 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 766 (2022); *cf. also Mire v. Full Spectrum Lending Inc.*, 389 F.3d 163, 167 (5th Cir. 2004). Absent appellate jurisdiction, Drake can present no nonfrivolous issue for appeal.

Because Drake fails to present any nonfrivolous issue for appeal, his IFP motions are DENIED and his appeals are DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; *see 5TH CIR. R. 42.2*. In *Travelers*, Drake

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moves to expedite his appeal and for leave to file an amended pleading. These and all other motions are DENIED.

Sanctions

Drake is the quintessential vexatious litigant. Further, his response to prior sanctions is to increase his abusive attempts to sue judges, the spouses of judges, lawyers, and anyone who has displeased him in even the most tenuous connection with a seemingly unlimited array of claims. In a pleading he seeks to file in this court, he threatened to sue "all of the judges on the Eastern District of Texas, all of the legal counsel involved and their families, the clerk of court, and members of this Court and many of their family members." Moreover, his pleadings are insulting and disparaging of specific judges and of courts in general. "This court simply will not allow liberal pleading rules and pro se practice to be a vehicle for abusive documents." *Theriault v. Silber*, 579 F.2d 302, 303 (5th Cir. 1978).

Accordingly, Drake is ORDERED to show cause within 20 days why the following sanctions should not be imposed. Drake's response to the order to show cause may not exceed 20 pages.

Drake shall be required to pay a sanction in the amount of \$2000, payable to the clerk of this court. He shall be barred from filing or prosecuting any motion, action, or appeal in this court or any court subject to this court's jurisdiction, until he has paid the sanction.

Even after paying the sanction, Drake shall be permanently enjoined from filing or prosecuting any civil appeal, motion, or action in this court or in any court subject to this court's jurisdiction, without first receiving permission from the forum court. When seeking leave of court, Drake shall be required to certify that any claim he wishes to present has not been raised and disposed of on the merits, or is not pending, in any federal court. If a case is removed or transferred to a

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court within this court's jurisdiction, Drake shall be required make the required payments and obtain the required permission within 30 days of removal or transfer, or the case will be dismissed. The clerk of this court and the clerks of all courts subject to the jurisdiction of this court shall be directed to return to Drake, unfiled, any attempted submission until Drake has complied with the sanction order.

Effective immediately, Drake is ORDERED to review all pending pleadings and to withdraw those that are frivolous or abusive. He is also WARNED that vexatious filings or filings containing abusive, disparaging, and contemptuous language will result in further sanctions and may result in prosecution for civil or criminal contempt. *See 18 U.S.C. § 401.*

Appeals CONSOLIDATED; IFP motions DENIED; all other motions DENIED; appeals DISMISSED; sanction warning ISSUED; appellant ORDERED to show cause why sanctions should not be imposed.

By: LYLE W. CAYCE, CLERK

United States Court of Appeals
for the Fifth Circuit
ENTERED AT THE DIRECTION OF THE COURT



Certified as a true copy and issued
as the mandate on May 20, 2022

Attest:

Lytle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Appendix A2

Copy of Magistrate's Order Admin. Closing
Applicant's Personal Injury Case

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

E. V. DRAKE,)
vs. Plaintiff,)
STATE FARM MUTUAL AUTOMOBILE) No. 3:21-CV-1751-K-BH
INSURANCE COMPANY, et al.,)
Defendants.) Referred to U.S. Magistrate Judge¹

ORDER

The *pro se* plaintiff, Eric Von Drake, has filed numerous cases in this district, as well as in others across the United States, and has been sanctioned for his vexatious litigation practices. *See Drake v. Safeway, Inc.*, No. 3:20-CV-0344-N-BH, 2020 WL 1855381 (N.D. Tex. Feb. 14, 2020), (citing *Drake v. Nordstrom Dept. Stores*, No. 3:18-CV-471-D-BN, doc. 5 at 1 (N.D. Tex Mar. 1, 2018)), *rec. adopted*, 2020 WL 1848080 (N.D. Tex. Apr. 13, 2020). As noted in *Nordstrom Dept. Stores*, the Eastern District of Texas has noted his long history of vexatious litigation and has prohibited him from proceeding *in forma pauperis* in any civil action in that district without first obtaining leave:

Eric Drake is prohibited from proceeding *in forma pauperis* with any civil action in this court – whether he filed it in this court, he filed it in another court and it was removed to this court, or he filed in another federal court and it was transferred to this court – unless he first obtains from a district judge of this court leave to proceed *in forma pauperis* in this court. If a civil action is removed or transferred to this court, the case will be subject to summary dismissal unless, within 30 days of the date of removal or transfer, Drake seeks, in writing, leave from a district judge of this court to proceed in this court.

No. 3:18-CV-471-D-BN, doc. 5 at 1 (quoting *Eric Drake v. Travelers Indem. Co. Consumer Cty. Mut. Ins. Co.*, No. 2:11-cv-00318-MHS-CMC, Dkt. No. 11 at 6 (E.D. Tex. Mar. 16, 2012)); *see also In re Eric Drake*, No. 4:17-MC-ALM-CAN, 2018 WL 912894, at *1 n.2 (E.D. Tex. Jan. 10, 2018), rec.

¹ By Special Order No. 3-251, this *pro se* case has been automatically referred for full case management.

adopted, 2018 WL 905560 (E.D. Tex. Feb. 15, 2018). The United States Court of Appeals for the Fifth Circuit has affirmed the imposition of pre-filing sanctions on the plaintiff based on his “abusive filing history, consisting of multiple lawsuits in state and federal courts arising from the same series of events.” *Drake v. Navistar*, 611 F. App’x 235, 237 (5th Cir. 2015).

Based on the sanctions imposed in the Eastern District, this district has also summarily dismissed cases filed by the plaintiff. *See Safeway, Inc.*, 2020 WL 1855381, at *2 (citing cases), *rec. adopted*, 2020 WL 1848080, at *1; *see also Drake v. Walmart, Inc.*, No. 3:20-CV-581-M-BK, 2021 WL 863217, at *1 (N.D.Tex. Feb. 9, 2021) (citing cases), *rec. adopted*, 2021 WL 859132 (N.D. Tex. Mar. 8, 2021), appeal filed, No. 21-10248 (5th Cir. Mar. 16, 2021). In addition, this Court has also ordered that the plaintiff “may not re-file this action or any other civil action in this court without prepaying the requisite filing fees and obtaining leave from a district judge in this court.” No. 3:20-CV-0344-N-BH, doc. 21. *In E.V. Drake v. Government Employees Ins. Co.*, No. 3:20-CV-3189-B-BK, doc. 17 (N.D. Tex. Nov. 2, 2020), the court summarily closed a transferred case filed by the plaintiff in another district based on the sanction order in No. 3:20-CV-0344-N-BH. After the plaintiff objected, it specifically concluded that the sanction order in No. 3:20-CV-0344-N-BH also applies to any new actions “misfiled by [the plaintiff] in other districts and subsequently transferred to this Court,” and it denied the plaintiff relief. *See id.*, doc. 20 at 2.

Courts observe and enforce their own sanction orders. *Sabedra v. Meadows*, No. 3:05-CV-1304-L, 2006 WL 1499985, at *1 (N.D. Tex. May 5, 2006) (recommendation of Mag. J.), *accepted by* 2006 WL 1571669 (N.D. Tex. May 31, 2006). This district also routinely “honors sanctions imposed by other federal district courts in Texas’ against … vexatious litigants.” *Drake*, No. 3:18-CV-471-D-BN, doc. 5 at 4 (quoting *Roy v. Ass’n Comm. to Elect Rev. Dr. Kamal K. Roy*, No. 3:08-CV-327-N, 2008 WL 1970945, at *2 (N.D. Tex. May 5, 2008); *see also Balawajder v. Scott*, 160 F.3d

1066, 1067 (5th Cir. 1999) (affirming dismissal of case based on another district's sanction order). The plaintiff is still subject to, but did not comply with, the prior sanction order by obtaining leave to file this transferred action. Accordingly, the Clerk's Office shall file a copy of the sanctions order from case No. 3:20-CV-0344-N-BH in this case and shall **ADMINISTRATIVELY CLOSE** it for failure to comply with the terms of the sanctions order.

Any pending and future motions in this action shall be docketed for administrative purposes only and terminated. No action will be taken on those filings while this action remains closed pursuant to the sanctions order.

The Clerk's Office is **DIRECTED** to forward copies of this order and the prior sanctions orders in cases No. 3:20-CV-344-N to the plaintiff.

SO ORDERED this 30th day of July, 2021.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

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