

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID E. HILL — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID E. HILL
(Your Name)

U.S.P. FLORENCE-MAX
(Address)

P.O. BOX 8500, FLORENCE, CO. 81026
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THIS COURT'S DECISION IN
BE & K CONSTRUCTION CO. V. NLRB,
536 U.S. 516 (2002) AND CHRISTOPHER
V. HARBURY, 536 U.S. 403 (2002) AS
TO ACCESS TO THE COURT AND DUE
PROCESS OF LAW REQUIRED THAT THE PRE-
FILING INJUNCTION BE VACATED

WHETHER A PREFILING INJUNCTION BE
IMPOSED AGAINST A DEFENDANT WITHOUT
CONSIDERING LESS RESTRICTIVE SANCTIONS
IN LIGHT OF THE FIRST AND FIFTH AMEND-
MENT

WHETHER A PREFILING INJUNCTION
IMPOSED AGAINST A DEFENDANT WAS THE
LEAST SEVERE SANCTION AVAILABLE IN
LIGHT OF THE FIRST AND FIFTH AMEND-
MENT

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	19

INDEX TO APPENDICES

APPENDIX A	OPINION OF COURT OF APPEALS ON MAY 31, 2023
APPENDIX B	DISTRICT COURT'S NOVEMBER 30, 2022 ORDER
APPENDIX C	COURT OF APPEALS ORDER DENYING REHEARING AND REHEARING EN BANC ON AUGUST 1, 2023
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES

BE & CONSTRUCTION CO. v. NLRB, 536 U.S. 516 (2002)	7.
CHRISTOPHER v. HARBURY, 536 U.S. 403 (2002)	7.
CROMER v. KRAFT FOODS N. AM. INC., 390 F.3d 812 (4th Cir. 2004)	8.
IN RE GREEN, 669 F.2d 779 (D.C. Cir. 1981)	12.
IN RE OLIVER, 682 F.2d 443 (3d Cir. 1982)	12.
MENDOZA v. LYNALIGH, 989 F.2d 191 (5th Cir. 1993)	17.
MOISKI v. EVERGREEN DYNASTY CORP., 500 F.3d 1047 (9th Cir. 2007)	12.
RINGGOLD-LOCKHART v. COUNTY OF LA, 761 F.3d 1057 (9th Cir. 2013)	8, 9, 12, 16.
WOOD v. SANTA BARBARA CHAMBER OF COMMERCE, INC., 705 F.2d 1515 (9th Cir. 1983)	12.

STATUTES

28 U.S.C. § 1651(a)	15.
FED. R. CIV. P. 11.	14, 15.

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MAY 31, 2003.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: AUGUST 1, 2003, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

yes

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE FIRST AMENDMENT PROVIDES IN PART, CONGRESS SHALL MAKE NO LAW... PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH... OR THE RIGHT OF THE PEOPLE... TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

THE FIFTH AMENDMENT PROVIDES IN PART, NO PERSON SHALL BE... DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW...

STATEMENT OF THE CASE

THE FACTS NECESSARY TO PLACE IN THEIR SETTING THE QUESTIONS NOW RAISED CAN BE BRIEFLY STATED:

I. COURSE OF PROCEEDINGS IN THE CRIMINAL CASE NOW BEFORE THIS COURT

ON MAY 24, 2001, IN A CASE THEN PENDING IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, ENTITLED UNITED STATES V. DAVID HILL, CRIMINAL NO. 1:01-CR-00191-CMH-1, PETITIONER WAS FOUND GUILTY BY A JURY ON AN INDICTMENT OF SEVEN COUNTS CHARGING VIOLATIONS OF 18 U.S.C. § 371; THREE COUNTS OF 18 U.S.C. § 2113(a)(1); AND THREE COUNTS OF 18 U.S.C. § 924(c), FOR 1999 THROUGH 2000.

ON DECEMBER 7, 2001, THE DISTRICT COURT ENTERED JUDGMENT AND PETITIONER WAS SENTENCED TO 984 MONTHS IMPRISONMENT WITH THE 924(c) OFFENSES TO RUN CONSEC -

TIMELY, THIS JUDGMENT AND SENTENCE WAS AFFIRMED BY THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT UNITED STATES V. DAVID HILL, NO. 01-5004 (OCT 15, 2003).

ON NOVEMBER 30, 2022, THE DISTRICT COURT ENTERED A ORDER IMPOSING A PREFILING INJUNCTION UNDER 28 U.S.C. § 1651 TO PREVENT PETITIONER FROM FILING PETITIONS IN THIS CRIMINAL CASE. APP. B, PP. 1 THROUGH 4, MEMORANDUM ORDER.

ON NOV, 30, 2022, A NOTICE OF APPEAL WAS FILED. ON 12/13/2022, PETITIONER FILED A INFORMAL APPELLATE BRIEF AGAINST THE PREFILING INJUNCTION, WHICH ARE IN ISSUE IN THIS CASE.

II RELEVANT FACTS CONCERNING THE UNDERLYING PREFILING INJUNCTION

THE RELEVANT FACTS ARE CONTAINED IN THE DISTRICT COURT'S PREFILING INJUNCTION UNDER 28 U.S.C. § 1651 (APP. B,

THE DISTRICT COURT IN IMPOSING ITS PREFILING INJUNCTION DID NOT WARN IT THAT FUTURE FILINGS MAY LEAD TO A PREFILING REVIEW SYSTEM, A NON-MONETARY DIRECTIVE, A ORDER TO PAY A PENALTY INTO THE COURT, OR A REASONABLE PENALTY OF ATTORNEY FEES. THE COURT DESCRIBED THE SCOPE OF THE ORDER AS FOLLOWS:

DEFENDANT IS ENJOINED FROM FILING IN THE EASTERN DISTRICT OF VIRGINIA ANY ADDITIONAL ACTIONS, PLEADINGS, MOTIONS, OR OTHER PAPERS THAT RELATE TO THIS CRIMINAL PROCEEDING, UNLESS HE FIRST OBTAINS LEAVE OF COURT FROM A JUDICIAL OFFICER TO DO SO. AS PART OF ANY APPLICATION FOR LEAVE TO FILE A NEW CHALLENGE TO HIS CRIMINAL CONVICTION OR SENTENCE, DEFENDANT MUST ATTACH A COPY OF THIS ORDER AND A DETAILED WRITTEN STATEMENT EXPLAINING WHY THE NEW REQUEST IS MATERIALLY DIFFERENT FROM ANY OF THOSE PREVIOUSLY FILED.

ON MAY 31, 2023, THE COURT OF APPEALS FOR THE FOURTH CIRCUIT AFFIRMS THE DISTRICT COURT'S PREFILING INJUNCTION HOLDING WE CONCLUDE THAT THE COURT DID NOT ABUSE ITS DISCRETION IN ISSUING THE INJUNCTION APP. A. p. 2.

ON AUGUST 1, 2023, THE COURT OF APPEALS DENIED A TIMELY FILED PETITION FOR REHEARING AND REHEARING EN BANC. App. C.

REASON FOR GRANTING THE PETITION

III THE COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH THE APPLICABLE DECISIONS OF THE COURT

THIS IS A ACCESS TO THE COURT CASE. PREFILING INJUNCTION. AT THE TIME OF THE DISTRICT COURTS PREFILING INJUNCTION LIMITING PETITIONERS ACCESS TO THE COURT, THIS COURT HAD PREVIOUSLY HELD, THE FIRST AMENDMENT RIGHT OF THE PEOPLE TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES, WHICH BECOMES THE RIGHT TO ACCESS THE COURTS, HAS BEEN TERMED ONE OF THE MOST PRECIOUS OF THE LIBERTIES STATE GUARANTEED BY THE BILLS OF RIGHTS. SEE BEEK CONSTRUCTION CO. V. NLRB, 536 U.S. 516, 524-25 (2002); SEE ALSO, CHRISTOPHER V. HARBOUR, 536 U.S. 403, 415 n.12. (2002)

(NOTING THAT THE SUPREME COURT HAS LOCATED THE COURT ACCESS RIGHT IN THE PRIVILEGES AND IMMUNITIES CLAUSE, THE FIRST AMENDMENT PETITION CLAUSE, THE FIFTH AMENDMENT DUE PROCESS CLAUSE, AND THE FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE). SEE *RINGGOLD-LOCKHART V. COUNTY OF L.A.*, 761 F.3d 1057, 1061-63 (9TH CIR. 2013); SEE *CROMER V. KRAFT FOODS N. AM. INC.*, 390 F.3d 812, 818 (4TH CIR. 2004) (SAME).

IN LIGHT OF THE SERIOUSNESS OF RESTRICTING LITIGANTS ACCESS TO THE COURTS, PREFILING ORDERS SHOULD BE A REMEDY OF LAST RESORT.

IV. THE COURT OF APPEALS ERRED IN AFFIRMING THE PREFILING INJUNCTION RELYING IN LARGE PART ON PETITIONERS MOTION PRACTICES OVER THE COURSE OF THIS CRIMINAL CASE AND FOUR FEDERAL LAWSUITS WITHOUT CONSIDERING LESS RESTRICTIVE SANCTIONS UNDER FED. R. CIV. P. 11 IN LIGHT OF THE FIRST AMENDMENT

A. ADEQUATE RECORD FOR REVIEW

AN ADEQUATE RECORD FOR REVIEW SHOULD INCLUDE A LISTING OF ALL THE CASES AND MOTIONS THAT LEAD THE DISTRICT COURT TO CONCLUDE THAT A VEXATIOUS LITIGANT ORDER WAS NEEDED. SEE *RINGGOLD-LOCKHART V. COUNTY OF L.A.*, 761 F.3d 1057, 1063 (9th Cir. 2013).

HERE, THE DISTRICT COURT DID NOT COMPILE AN ADEQUATE ORDER TO PERMIT THE APPELLATE COURT TO REVIEW THE BASIS OF ITS ORDER OF NOVEMBER 30, 2022. THE DISTRICT COURT DID NOT DISCUSS AND EXPLAIN THE LITIGATION HISTORY LEADING TO ITS ORDER, AND DID NOT APPEND A LIST OF DISTRICT COURT FILINGS, OR MOTIONS TO SUPPORT ITS ORDER.

THE NUMBER OF COMPLAINTS WAS IN-
ORDINATELY LITIGIOUSNESS ALONE IS
NOT ENOUGH, EITHER: THE PLAINTIFFS
CLAIMS MUST NOT ONLY BE NUMEROUS,
BUT ALSO BE PATENTLY WITHOUT MERIT.
AS AN ALTERNATIVE TO FRIVOLOUSNESS,
THE DISTRICT COURT MAY MAKE AN
ALTERNATIVE FINDING THAT THE LITI-
GANT'S FINDINGS SHOW A PATTERN OF
HARRASSMENT. HOWEVER, COURTS MUST
BE CAREFUL NOT TO CONCLUDE THAT PARTI-
CULAR TYPES OF ACTIONS FILED REPETI-
TIOUSLY ARE HARRASSING, AND MUST
INSTEAD DISCERN WHETHER THE FILING
OF SEVERAL SIMILAR TYPES OF ACTIONS
CONSTITUTES AN INTENT TO HARRASS
THE DEFENDANT OR THE COURT. FINALLY,
COURTS SHOULD CONSIDER WHETHER
OTHER, LESS RESTRICTIVE OPTIONS ARE

B. SUBSTANTIVE FINDINGS OF FRIVOLOUSNESS OR HARASSMENT

BEFORE A DISTRICT COURT ISSUES A PREFILING INJUNCTION IT IS INCUMBENT ON THE COURT TO MAKE SUBSTANTIVE FINDINGS AS TO THE FRIVOLOUS OR HARASSING NATURE OF THE LITIGANT'S ACTIONS. TO DETERMINE WHETHER THE LITIGATION IS FRIVOLOUS, DISTRICT COURTS MUST LOOK AT BOTH THE NUMBER AND CONTENT OF THE FILINGS AS INDICATION OF THE FRIVOLOUSNESS OF THE LITIGANT'S CLAIMS. WHILE THE COURT HAS NOT ESTABLISHED A NUMERICAL DEFINITION FOR FRIVOLOUSNESS, THE COURT HAS SAID THAT EVEN IF A LITIGANT PETITION IS FRIVOLOUS, THE COURT MUST MAKE A FINDING THAT

ADIEQUATE TO PROTECT THE COURT
AND PARTIES, SEE RINGOLD-LOCKHART,
761 F.3d, AT 1064.

HERE, THE DISTRICT COURT FOUND
PETITIONER VEXATIOUS PRIMARILY
ON THE BASIS OF THE CURRENT CASE
AND FOUR CIVIL CASES. AS AN TRITIAL
MATTER, FOUR CIVIL CASES IS FAR FEWER
THAN WITH OTHER COURTS HAVE FOUND
INORDINATE. SEE, e.g. MOISK, 500 F.3d
AT 1060 (ROUGHLY 400 SIMILAR CASES);
WOOD v. SANTA BARBARA CHAMBER
OF COMMERCE, INC., 705 F.2d 1515,
1526 (9TH CIR. 1983) (THIRTY-FIVE
ACTIONS FILED IN 30 JURISDICTIONS);
IN RE OLIVER, 682 F.2d 443, 444
(3d CIR. 1982) (MORE THAN FIFTY
TRIVOLIOUS CASES). IN RE CROWN, 669
F.2d 779, 781, 215 U.S. App. D.C. 393

(D.C. Cir. 1981) (per curiam) (between 600 and 700 complaints),

THE DISTRICT COURT ALSO CITES PETITIONER'S MOTIONS PRACTICE IN THIS CRIMINAL CASE TAKING ISSUE WITH ~~THE~~ HIS NUMEROUS MOTIONS TO VACATE PRIOR DECISIONS OR RELIEF FROM JUDGMENT." BUT EXAMINATION OF THE DISTRICT COURT'S NOVEMBER 30, 2022 ORDER REVEALS NO LIST OF MOTIONS THE COURT CLAIM AS BASELESS OR AN ATTEMPT TO RELITIGATE ADJUDICATED CLAIMS. WHETHER A LITIGANT'S MOTION PRACTICE IN THIS CASE COULD EVER BE SO VEXATIOUS AS TO JUSTIFY IMPOSING A PREFILED ORDER AGAINST A PERSON, THE COURT OF APPEALS DID NOT SAY OR DECIDE. SUCH A SITUATION WOULD AT LEAST BE EXTREMELY UNUSUAL, IN LIGHT OF THE ALTERNATIVE

REMEDIES AVAILABLE TO DISTRICT JUDGES TO CONTROL A LITIGANT'S BEHAVIOR IN INDIVIDUAL CASES.

THE DISTRICT COURT FAILED TO CONSIDER WHETHER OTHER REMEDIES WERE ADEQUATE TO CURB WHAT IT VIEWED AS PETITIONERS FRIVOLOUS MOTION PRACTICE. THE FEDERAL RULES OF CIVIL PROCEDURE PROVIDE COURTS WITH A MEANS TO ADDRESS FRIVOLOUS OR ABUSIVE FILINGS: FED. R. CIV. P. 11 SANCTIONS. INDEED, RULE 11'S EXPRESS GOAL IS DETERRENCE. WHEN THERE IS CONDUCT IN THE COURSE OF LITIGATION THAT COULD BE ADEQUATELY SANCTIONED UNDER THE RULES, THE COURT ORDINARILY SHOULD RELY ON THE RULES RATHER THAN THE INHERENT POWER. SIMILAR TO THE LIMITA-

TION COURTS TIME IMPOSED ON VEXATIOUS LITIGANT ORDERS, RULE 11 REQUIRES THAT A SANCTION IMPOSED UNDER THIS RULE MUST BE LIMITED TO WHAT SUFFICES TO DETER REPE- TION OF THE CONDUCT. RULE 11(c)(4). RULE 11 PROVIDES A LIST OF SANCTIONS VARYING BEVERITY THAT COURTS MAY, IN THEIR DISCRETION, IMPOSE: NON-MONETARY DIRECTIVES, AN ORDER TO PAY A PENALTY INTO COURT, OR IF IMPOSED ON MOTION AND WARRANTED FOR EFFECTIVE DETERRENCE, AN ORDER DIRECTING PAYMENT TO THE MOVANT OF PMT OR ALL OF THE REA- SONABLE ATTORNEY'S FEES AND OTHER EXPENSES DIRECTLY RESULTING FROM THE VIOLATION. BEFORE ENTERING A MONOMIAL PRE-FILING ORDER UNDER THE ALL WHITS ACT, 28 U.S.C. § 1651(a),

APPLICABLE TO OTHER CASES THAN THE CURRENT ONE, A DISTRICT COURT SHOULD CONSIDER WHETHER IMPOSING SANCTIONS SUCH AS COSTS OR FEES ON THE LITIGANT WOULD HAVE BEEN AN ADEQUATE DETERRENT. R. DRIGOLD-LOCKHART, 761 F. 3d. AT 1065.

HERE, THE DISTRICT COURT FAILED TO CONSIDER ALTERNATIVE SANCTIONS BEFORE ISSUING THIS INJUNCTION.

V. THE COURT OF APPEALS ERRED IN AFFIRMING THE PREFILING INJUNCTION BECAUSE IT WAS NOT THE LEAST SEVERE SANCTION AVAILABLE

THE IMPOSITION OF A SANCTION WITHOUT PRIOR WARNING IS GENERALLY TO BE AVOIDED. SEE MENDOZA V. LYNAUGH, 989 F.2d 191, 195 (5TH CIR. 1993).

THE COURT SHOULD FIND THERE WAS AN ABUSE OF DISCRETION FROM A NUMBER OF CONSIDERATIONS. FIRST, THERE WAS NO PRIOR WARNING GIVEN TO PETITIONER THAT HIS ACTIONS COULD RESULT IN SANCTIONS AT ALL - MUCH LESS SUCH SEVERE SANCTIONS. SECOND, WHEN GAUGED BY FIFTH CIRCUIT JURISPRUDENCE THIS SANCTION EXCEEDS THE