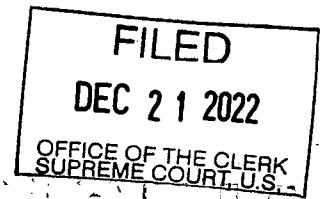


22-6405  
No. \_\_\_\_\_



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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**DAVID LEE SMITH, INDIVIDUALLY AND IN HIS CAPACITY  
AS REPRESENTATIVE OF THE ESTATE OF MARY JULIA  
HOOK, DECEASED,**

**PETITIONER**

**VS.**

**UNITED STATES,**

**RESPONDENT**

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
FEDERAL CIRCUIT**

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED FOR REVIEW**

The question presented for review is whether the United States Court of Appeals for the Federal Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the United States Court of Federal Claims, as to call for an exercise of the Supreme Court's supervisory power under Supreme Court Rule 10(a): the Federal Circuit grossly abused its discretion and its inherent power (and its discretion and power under Fed. R. App. P. 38) by imposing the harsh and unjustified sanction of appeal dismissal against appellant David Lee Smith for filing an alleged frivolous appeal of the unwarranted dismissal (on jurisdictional grounds) of his Complaint filed in the Court of Federal Claims alleging an unlawful judicial taking by the United States District Court for the District of Colorado of his home and personal property without due process of law or just compensation (and reducing Smith to abject poverty at now age 78), in violation of the Fifth Amendment to the Constitution of the United States. The Federal Circuit's Per Curiam Order dismissing Smith's appeal was signed and filed by the Clerk without identifying the

panel of Federal Circuit Judges imposing this sanction against Smith, and stated that the Order is “nonprecedential,” even though the appeal and the imposition of the sanction of appeal dismissal against Smith involved important issues of first impression in the Federal Circuit and/or issues involving conflicts with previous precedents in the Federal Circuit and in the Supreme Court of the United States. In its Per Curiam Order, the Federal Circuit failed to address Smith’s requests for relief under *United States Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010) and 28 U.S.C. § 2106—a clear abuse of discretion depriving Smith of his constitutional (First and Fifth Amendments) and federal statutory (28 U.S.C. § 1295) right to appeal and receive meaningful appellate review. The Federal Circuit arbitrarily denied Smith’s motion to proceed on appeal in forma pauperis even though Smith had demonstrated that he had been reduced to abject poverty by the unlawful judicial taking by the United States District Court for the District of Colorado of his home and personal property without due process of law or just compensation, in violation of the Fifth Amendment to the Constitution of the United States.

**LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

**RELATED CASES**

*David Lee Smith v. United States*, Case No. 22-cv-0052-AOB, United States Court of Federal Claims, Judge Armando O. Bonilla. Order dismissing Smith’s Complaint entered on June 6, 2022.

*David Lee Smith v. United States*, Case No. 2022-1968, United States Court of Appeals for the Federal Circuit. Order dismissing Smith’s appeal entered on August 31, 2022.

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*Pro se* Petitioner David Lee Smith respectfully submits his Petition for a Writ of Certiorari:

### **OPINIONS BELOW**

The opinions of the lower courts have not been published. The unreported decision of the United States Court of Appeals for the Federal Circuit is reproduced in Appendix A to this petition. The unreported decision of the United States Court of Federal Claims is reproduced in Appendix B to this petition.

### **JURISDICTION**

The Order to be reviewed was entered on August 31, 2022. The Order denying rehearing *en banc* was entered on October 6, 2022. The statutory provision believed to confer jurisdiction on the Supreme Court to review on a writ of certiorari the Order in question is 28 U.S.C. § 1254(1).



**CONSTITUTIONAL AND STATUTORY PROVISIONS  
INVOLVED**

APPENDIX F:

Constitution of the United States, Amendments 1, 5 & 7

APPENDIX G:

Supreme Court Rule 10(a)

APPENDIX H:

28 U.S.C. §§ 1254, 1295, 1491 & 2106

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**STATEMENT OF THE CASE**

On August 31, 2022, the Clerk of the United States Court of Appeals for the Federal Circuit signed and filed the Court's Per Curiam Order (a copy of which is attached hereto as Appendix A) imposing the harsh and unjustified sanction of appeal dismissal against appellant David Lee Smith for filing an alleged frivolous appeal of the unwarranted dismissal (on jurisdictional grounds) of his Complaint filed

in the United States Court of Federal Claims (Judge Armando O. Bonilla) alleging an unlawful judicial taking by the United States District Court for the District of Colorado (Judge Raymond P. Moore) of his home and personal property without due process of law or just compensation (and reducing Smith to abject poverty at now age 78), in violation of the Fifth Amendment to the Constitution of the United States.<sup>1</sup> This Per Curiam Order was signed and filed by the Clerk without identifying the panel of Federal Circuit Judges imposing this sanction against Smith, and stated that the Order is “nonprecedential,” even though the appeal and the imposition of the sanction of appeal dismissal against Smith involved important issues of first impression in the Federal Circuit and/or issues involving conflicts with previous

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<sup>1</sup>Jurisdiction in the Court of Federal Claims was based on 28 U.S.C. § 1491(a)(1) providing that “[t]he United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded . . . upon the Constitution . . . .” Smith’s claim was founded upon the Takings Clause of the Fifth Amendment to the Constitution of the United States providing that “nor shall private property be taken for public use, without just compensation.”

precedents in the Federal Circuit and in the Supreme Court of the United States.

### **REASONS FOR GRANTING THE PETITION**

In the Federal Circuit, an appeal is frivolous **as filed** when “the judgment by the tribunal below was so plainly correct and the legal authority contrary to appellant’s position so clear that there really is no appealable issue.” *State Indus., Inc. v. Mor-Flo Indus., Inc.*, 948 F.2d 1573, 1578 (Fed. Cir. 1991). An appeal is frivolous **as argued** when the appellant engages in misconduct in arguing the appeal. *Id.*

Smith’s appeal was not frivolous **as filed** because it was not plainly correct that the Court of Federal Claims lacked jurisdiction over Smith’s judicial taking claim under the Fifth Amendment to the Constitution of the United States. In fact, legal authority in the Supreme Court and in the Federal Circuit clearly establishes that the Court of Federal Claims has jurisdiction over a judicial taking claim even if the Court of Federal Claims is required to scrutinize the actions of another tribunal. *See, e.g., Stop the Beach Renourishment v. Florida Department of Environmental Protection*, 560 U.S. 702, 130 S. Ct. 2592, 177 L. Ed.

2d 184 (2010); *Knick v. Township of Scott*, 588 U.S. \_\_\_, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019); *David Lee Smith v. United States*, 709 F.3d 1114 (Fed. Cir. 2013). Virtually every judicial taking claim filed in the Court of Federal Claims requires that Court to scrutinize the actions of another tribunal without loss or preclusion of jurisdiction. *See, e.g., David Lee Smith v. United States*, 709 F.3d 1114 (Fed. Cir. 2013), in which the Federal Circuit held that the Court of Federal Claims had jurisdiction to hear Smith's Fifth Amendment taking claim but upheld the dismissal of the claim as having been filed beyond the six-year statute of limitations.<sup>2</sup> This precedent is clearly controlling on the jurisdictional issues in the present case, and the Federal Circuit's Per Curiam Order is clearly in conflict with this precedent, which may explain why the Federal Circuit stated that its Per Curiam Order is "nonprecedential."

The legal authorities cited by the United States on appeal did not even involve judicial taking claims and for this reason, these legal

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<sup>2</sup>A copy of this Federal Circuit decision is attached hereto as Appendix E.

authorities are “nonprecedential” in the present case. Furthermore, the judicial taking in the present case was void under the “doctrine of void judgments” discussed by the Supreme Court in *United States Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010). Under the “doctrine of void judgments,” a judgment or order is void and can be declared void by another court if the judgment or order was the product of jurisdictional defects and/or due process violations—both of which were present with respect to the judgments and orders of the United States District Court for the District of Colorado (Judge Raymond P. Moore) and the United States Court of Appeals for the Tenth Circuit. In *United States Student Aid Funds*, the Supreme Court said that the source of the “doctrine of void judgments” is old case law and Fed. R. Civ. P. 60(b)(4) [RCFC 60(b)(4) in the Court of Federal Claims]. Smith requested the need for possible relief under the “doctrine of void judgments” in the present case because Judge Bonilla of the Court of Federal Claims said in his Order of dismissal of Smith’s Complaint (a copy of which is attached hereto as Exhibit D) that Smith had not been deprived of his “day in court” on his Fifth

Amendment judicial taking claim—a demonstrably untrue statement that Judge Bonilla indicated was the basis for his Order of dismissal for lack of jurisdiction.

In his Order of dismissal, Judge Bonilla found and concluded that Smith and his wife, Mary Julia Hook (also an attorney, now deceased), had already "exhaustively litigated" the issues involved in this case in the United States District Court for the District of Colorado and had "exhausted their appeals" to the United States Court of Appeals for the Tenth Circuit and the Supreme Court of the United States. However, this is not true. Judge Moore of the United States District Court for the District of Colorado refused to hold the Seventh Amendment jury trial demanded by Smith and Hook in Civil Action No. 14-cv-00955-RM and then refused to hold a hearing or otherwise follow the applicable federal constitutional and statutory law and procedure before unlawfully taking their home and personal property in postjudgment collection proceedings. Both Judge Moore and the judicial panels of the Tenth Circuit on appeal refused to address or decide Smith and Hook's due process and judicial taking claims on the merits, and the Tenth Circuit

dismissed Hook's appeals on these and other issues as sanctions for filing alleged frivolous appeals. The Tenth Circuit dismissed Hook's appeals *sua sponte* without giving her the due process opportunity to defend or to clear her name of these false and defamatory charges. Under these circumstances, there was never any decision on the merits of these issues; the judgments and orders of these courts were void under *United Student Aid Funds* because of the jurisdictional defects and due process violations in those courts; and the doctrines of *res judicata*, collateral estoppel and law of the case were inapplicable. The Supreme Court denied Smith and Hook's petitions for writs of certiorari without addressing or deciding these issues. Accordingly, Smith has not "had more than his day in court," as found and concluded by Judge Bonilla in his Order of dismissal in the present case.

Under 28 U.S.C. § 2106, "[t]he Supreme Court or any other court of **appellate jurisdiction** [emphasis added] may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such

further proceedings to be had as may be just under the circumstances.” Smith requested the Federal Circuit for relief under this statutory provision in addition to relief under *United States Student Aid Funds*. The Federal Circuit failed to address these requests for relief in its Per Curiam Order dismissing Smith’s appeal—a clear abuse of discretion depriving Smith of his constitutional (First and Fifth Amendments) and federal statutory (28 U.S.C. § 1295) right to appeal and receive meaningful appellate review. The Federal Circuit arbitrarily denied Smith’s motion to proceed on appeal in forma pauperis even though Smith had demonstrated that he had been reduced to abject poverty by the unlawful judicial taking by the United States District Court for the District of Colorado of his home and personal property without due process of law or just compensation, in violation of the Fifth Amendment to the Constitution of the United States.

Smith did not engage in misconduct in making these and other meritorious arguments on appeal, so this appeal was not frivolous as **argued**. Requesting the Federal Circuit to declare the unlawful judicial taking in this case void under the “doctrine of void judgments” discussed



by the Supreme Court in *United States Student Aids Funds* and under 28 U.S.C. § 2106 was not a “collateral attack” (as alleged in the Federal Circuit’s Per Curiam Order) on this judicial taking but a legitimate response in the present case to Judge Bonilla’s statement that Smith had not been deprived of his “day in court” on his Fifth Amendment judicial taking claim. This demonstrably untrue statement was clearly the basis for Judge Bonilla’s clearly erroneous Order of dismissal for lack of jurisdiction.

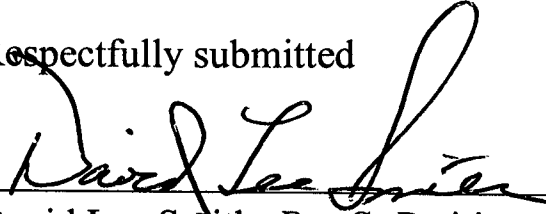
### **CONCLUSION**

The United States Court of Appeals for the Federal Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the United States Court of Federal Claims, as to call for an exercise of the Supreme Court’s supervisory power under Supreme Court Rule 10(a): the Federal Circuit grossly abused its discretion and its inherent power (and its discretion and power under Fed. R. App. P. 38) by imposing the harsh and unjustified sanction of appeal dismissal against appellant David Lee Smith for filing an alleged frivolous appeal of the unwarranted dismissal (on jurisdictional

grounds) of his Complaint filed in the United States Court of Federal Claims alleging an unlawful judicial taking by the United States District Court for the District of Colorado of his home and personal property without due process of law or just compensation (and reducing Smith to abject poverty at now age 78), in violation of the Fifth Amendment to the Constitution of the United States. The Federal Circuit's Per Curiam Order dismissing Smith's Complaint was signed and filed by the Clerk without identifying the panel of Federal Circuit Judges imposing this sanction against Smith, and stated that the Order is "nonprecedential," even though the appeal and the imposition of the sanction of appeal dismissal against Smith involved important issues of first impression in the Federal Circuit and/or issues involving conflicts with previous precedents in the Federal Circuit and in the Supreme Court of the United States. In its Per Curiam Order, the Federal Circuit failed to address Smith's requests for relief under *United States Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010) and 28 U.S.C. §2106—a clear abuse of discretion depriving Smith of his constitutional (First and Fifth Amendments) and federal statutory (28

U.S.C. § 1295) right to appeal and receive meaningful appellate review. The Federal Circuit arbitrarily denied Smith's motion to proceed on appeal in forma pauperis even though Smith had demonstrated that he had been reduced to abject poverty by the unlawful judicial taking by the United States District Court for the District of Colorado of his home and personal property without due process of law or just compensation, in violation of the Fifth Amendment to the Constitution of the United States. For these reasons, Smith respectfully requests the Supreme Court to grant his Petition for a Writ of Certiorari, and to grant such other and further legal and equitable relief as may be just under the circumstances, including an order vacating, setting aside, or reversing the Federal Circuit's August 31, 2022 Order dismissing Smith's appeal under 28 U.S.C. § 2106 providing for such relief. Smith requests Justice Gorsuch not to recuse from voting whether to grant this petition as he has done with respect to previous petitions filed by Smith.

Respectfully submitted

A handwritten signature in black ink, appearing to read "David Lee Smith", written over a horizontal line.

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DATE:

December 21, 2022