

26-5868

ORIGINAL

No. _____

Supreme Court, U.S.
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OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2026

JOSEPH ANTHONY REYNA,
Petitioner,

v.

BLOCK, INCORPORATED, d/b/a CASH APP; SUTTON BANK,
Respondents.

**CORRECTED PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

(Resubmitted in response to the Clerk's letter of July 20, 2026, returning the original petition unfiled for form defects; substance unchanged from the original June 5, 2026 filing except as noted)

Joseph Anthony Reyna

Pro Se Petitioner

5900 Balcones Drive, No. 100

Austin, Texas 78731

(Paper mail only — no electronic service)

QUESTIONS PRESENTED

I. Whether a federal court imposing a pre-filing injunction — a prior restraint that bears a heavy presumption against constitutional validity — is constitutionally required to find that each predicate prior filing was individually frivolous or harassing, as the Ninth and Fourth Circuits hold, or whether a court may impose an indefinite prior restraint on the First Amendment right to petition based on the aggregate volume of § 1915 dismissals without individualized frivolousness findings, without a separate evidentiary hearing, and without examining whether the predicate dismissals were entered for frivolousness or for failure to state a claim.

II. Whether, following *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), the Electronic Funds Transfer Act's definition of 'consumer' as 'a natural person,' 15 U.S.C. § 1693a(6), encompasses all natural persons regardless of their business associations, without the 'household purposes' limitation that appears nowhere in the statute and only in Regulation E — an agency gloss no longer entitled to deference — and whether dismissal without leave to amend was proper where the court acknowledged the threshold coverage question remained unresolved, and where resolving consumer standing in Petitioner's favor would establish that the notice pleading deficiency is curable by amendment, making the consumer standing question outcome-determinative of whether the amendment denial was an abuse of discretion under *Foman v. Davis*, 371 U.S. 178 (1962).

Rule 10 Note: Rule 10 states certiorari is rarely granted for unpublished opinions. This petition challenges the constitutionality of the ongoing pre-filing injunction the opinion

affirmed, not the opinion itself. The injunction operates today as a binding restriction on access to every federal district court in the Fifth Circuit, independent of the opinion publication status. Review is warranted to resolve the documented conflict between the Fifth, Ninth, and Fourth

Circuits on whether the right to petition a federal court depends on which circuit you are in. This petition is itself a live demonstration: it is filed by an unrepresented IFP litigant who cannot afford specialized Supreme Court counsel. If this petition is denied while the documented circuit split persists, that outcome confirms — not refutes — the argument that constitutional rights depend on the ability to pay.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner is a natural person. He has no parent corporations, and no publicly held company owns 10% or more of any interest he holds.

PARTIES TO THE PROCEEDING

Petitioner Joseph Anthony Reyna was Plaintiff-Appellant below.

Respondent Block, Incorporated, d/b/a Cash App, was Defendant-Appellee below. Pursuant to Supreme Court Rule 14.1(b)(i), Block, Inc. is publicly traded on the New York Stock Exchange under the ticker symbol XYZ.

Respondent Sutton Bank was Defendant-Appellee below. Sutton Bank is privately held and has no ticker symbol.

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Opinions Below

The per curiam opinion of the Fifth Circuit (Appendix A) is unpublished under 5th Cir. R. 47.5 and available at No. 25-50966 (5th Cir. May 18, 2026). The pre-filing injunction it affirms is a binding, ongoing restriction of Petitioner's First Amendment rights. The district court's adoption order (Appendix B) is available at No. 1:25-CV-1402-RP (Dkt. 9, Oct. 30, 2025). The magistrate's Report and Recommendation (Appendix C) is available at Dkt. 4 (Oct. 1, 2025) and contains the characterization of the five predicate cases central to this petition.

Jurisdiction

The Fifth Circuit entered judgment on May 18, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). The petition is timely if filed by August 16, 2026. Sup. Ct. R. 13. The pre-filing injunction creates a live, ongoing controversy. Statutory penalties of \$100–\$1,000 per violation under 15 U.S.C. § 1693m survive restoration of actual damages. *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 189 (2000).

Constitutional And Statutory Provisions Involved

The First Amendment provides: "Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances."

28 U.S.C. § 1915(e)(2)(B) authorizes dismissal of IFP complaints that are: (i) 'frivolous or malicious' — a bad-faith finding; or (ii) 'fail to state a claim' — a pleading-adequacy finding identical to Fed. R. Civ. P. 12(b)(6), carrying no finding of bad faith. These are

legally distinct categories. 28 U.S.C. § 1915(g) bars future IFP status after three qualifying dismissals — but applies only to 'a prisoner,' which Petitioner is not. 15 U.S.C. § 1693a(6) defines 'consumer' as 'a natural person.' Regulation E, 12 C.F.R. § 1005.2, adds a 'household purposes' limitation not found in the statute.

Statement Of The Case

A. Background

The First Amendment right to petition is not forfeited by pleading imperfectly. It is not forfeited by filing frequently. Under the Constitution, it is forfeited only upon a specific judicial finding — after adversarial testing, on an accurate record — that prior petitions were frivolous in purpose or designed to harass. This case presents two independent failures to meet that standard: the Fifth Circuit applied a standard that the Ninth and Fourth Circuits have rejected, and the predicate record on which the injunction rests was miscounted and mischaracterized.

Petitioner Joseph Anthony Reyna is a pro se litigant, independent recording artist, and executive director of Dreams Over Dollars Foundation, a 501(c)(3) nonprofit. Between April 3 and May 21, 2025, unauthorized Google Play charges of \$63.93 appeared in a Cash App account managed by Respondents. On June 6, 2025, Petitioner transmitted a written communication to Respondents identifying the errors. After a subsequent \$3.73 unauthorized charge, Petitioner wrote Cash App directly on August 11, 2025. Cash App restored \$67.66 eight days later.

B. The Predicate Cases — What the Orders Actually Say

The Block R&R; stated that 'Magistrate Judges have recommended dismissal of five of them as frivolous under 28 U.S.C. § 1915(e)(2).' App. C at 5. Examination of the five underlying orders — available in the public record — reveals that characterization is inaccurate as to three of the five.

Case Docket No. Actual Ground Qualifying as Frivolous? Soc. Sec. Admin. 1:25-cv-01293
R&R uses 'frivolous' expressly Yes — (B)(i) Spotify Tech. S.A. 1:25-cv-01023 Bare (B);

Neitzke analysis; Yes — (B)(i) substantively 'lacks arguable basis' Tex. Med. Liab. Tr.
1:25-cv-01105 Twombly/Iqbal analysis applied No — (B)(ii) pleading failure Nelnet, Inc.
1:25-cv-01107 R&R cites '§ 1915(e)(2)(B)(ii)' No — (B)(ii) explicit explicitly in text DaVita,
Inc. 1:25-cv-01028 Dismissed WITHOUT PREJUDICE No — mischaracterized; not a § 1915
dismissal for lack of subject matter jurisdiction (not § 1915(e)(2)(B) at all)

Nelnet: The R&R; explicitly cites '28 U.S.C. § 1915(e)(2)(B)(ii)' — a failure-to-state-a-claim
determination, not a frivolousness finding. Reyna v. Nelnet, No. 1:25-cv-01107, R&R; Dkt. 6.

Texas Medical Liability Trust: The R&R; applied the Twombly/Iqbal plausibility standard —
the hallmark of (B)(ii), not (B)(i). Reyna v. Tex. Med. Liab. Tr., No. 1:25-cv-01105, R&R;
Dkt. 5.

DaVita: Dismissed without prejudice for lack of subject matter jurisdiction — a ruling that
does not reach the merits and is not a § 1915(e)(2)(B) dismissal at all. A court that cannot
establish subject matter jurisdiction has made no finding that the plaintiff's claims are
frivolous. Reyna v. DaVita Inc., No. 1:25-cv-01028, R&R; Dkt. 4; Arbaugh v. Y&H; Corp.,
546 U.S. 500, 514 (2006). Additionally, the Texas Attorney General independently
investigated Spotify's royalty practices identical to those alleged in No. 1:25-cv-01023 — a
claim under active state AG investigation cannot be 'indisputably meritless' under Denton v.
Hernandez, 504 U.S. 25, 32–33 (1992).

Corrected count: two qualifying (B)(i) frivolousness findings (SSA; Spotify substantively);
two (B)(ii) pleading failures (Nelnet, TMLT); one jurisdictional dismissal that was not a §
1915(e)(2)(B) dismissal (DaVita). Two reliable predicate findings out of twenty-four cases
filed. No circuit's standard sustains a permanent prior restraint on the right to petition on this
record.

C. Proceedings in the Block Case

Petitioner filed suit in the Western District of Texas alleging EFTA violations. The magistrate screened the complaint and recommended dismissal for a notice pleading deficiency and a pre-filing injunction. No hearing was held; Respondents did not move for the injunction. Petitioner submitted authenticated exhibits the district court dismissed without reviewing: Exhibit B, a screenshot showing the refund labeled For We're Sorry by Block in the Cash App interface; Exhibit C, a legal letter dated August 22, 2025, in which Block attempted to re-characterize the same refund as a one-time gesture of goodwill; and Exhibit D, the CFPB Consent Order (Jan. 16, 2025) finding Block violated 15 U.S.C. § 1693f and 12 C.F.R. § 1005.11 in the same manner alleged here and ordering \$175 million in relief.

The absence of a motion from Respondents is procedurally significant: no party was required to brief the evidentiary standard for a pre-filing injunction, submit declarations about the prior cases, or prove the predicate. The factual record underlying a permanent prior restraint on a constitutional right was never adversarially tested.

D. The Fifth Circuit's Decision

The Fifth Circuit affirmed per curiam in an unpublished opinion. On the EFTA merits, the court held the complaint failed to plead notice with specificity and found Petitioner had 'pleaded his best case.' The court explicitly declined to resolve whether the account was a 'consumer' account under EFTA. App. A at 4 n.6. On the injunction, the court accepted the Block R&R's characterization of the five predicate cases without examining the underlying orders, without specifying whether those dismissals were entered under (B)(i) or (B)(ii), and without individualized findings of frivolousness or harassing purpose. The court then warned that future abusive filings could result in sanctions 'in any district court subject to this court's jurisdiction.' App. A at 6. This warning, broader than the injunction it accompanied, threatens prior restraint across three states based on a single unpublished affirmance.

Reasons For Granting The Petition

I. THE DOCUMENTED CIRCUIT CONFLICT — THE RIGHT TO PETITION A FEDERAL COURT DEPENDS ON WHICH CIRCUIT YOU ARE IN.

A citizen alleging consumer fraud in California faces one constitutional standard before her court access may be restricted. The same citizen with the same record alleging the same fraud in Texas faces a different, broader standard. The First Amendment does not vary by zip code. This Court should resolve the conflict.

A. The Ninth Circuit: Individualized Frivolousness Findings Required

The Ninth Circuit requires 'substantive findings as to the frivolous or harassing nature of the litigant's actions' before a pre-filing injunction may issue. *Ringgold-Lockhart v. County of Los Angeles*, 761 F.3d 1057, 1062 (9th Cir. 2014). In *Ringgold-Lockhart*, the court did not merely articulate this standard — it vacated the pre-filing injunction for failure to make adequate findings. *Id.* at 1065. The four-factor test requires: (1) notice; (2) an adequate record; (3) substantive findings that each prior filing was frivolous or harassing; and (4) narrow tailoring. *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1058 (9th Cir. 2007); *De Long v. Hennessey*, 912 F.2d 1144, 1147–48 (9th Cir. 1990). A (B)(ii) dismissal for failure to state a claim does not, standing alone, satisfy the third prong.

B. The Fourth Circuit: The Same Standard

The Fourth Circuit requires 'substantive findings as to the frivolous or harassing nature of the litigant's action' before a pre-filing injunction may issue. *Cromer v. Kraft Foods North America, Inc.*, 390 F.3d 812, 818 (4th Cir. 2004). The court must weigh the plaintiff's right of access against the defendant's right to be free from harassment. *Id.*

C. The Fifth Circuit: Volume of Dismissals Sufficient

The Fifth Circuit, applying *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181 (5th Cir. 2008), accepted the volume of prior § 1915 dismissals as sufficient predicate without specifying whether each was entered under (B)(i) or (B)(ii), without examining the underlying orders, and without individualized findings of harassing purpose. App. A at 5–6.

D. Prior Restraints Bear a Heavy Presumption of Invalidity

A pre-filing injunction is a prior restraint on a constitutional right — it administratively bars speech before it occurs. This Court has held that the right of access to courts is 'one aspect of the right of petition.' *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). Even unsuccessful litigation retains First Amendment protection where it is reasonably based. *BE&K; Construction Co. v. NLRB*, 536 U.S. 516, 531 (2002).

"Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." — *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

This presumption — which applies to all prior restraints on First Amendment activity, not just press restrictions — means the burden falls on the government to justify the restraint, not on the petitioner to justify its removal. *Near v. Minnesota ex rel. Olson*, 283 U.S. 697 (1931). The Fifth Circuit's standard, which permits a permanent prior restraint without individualized frivolousness findings, inverts this burden. The Ninth and Fourth Circuits correctly require the government to make specific findings before

the presumption is overcome.

II. THE PREDICATE RECORD WAS MISCOUNTED AND MISCHARACTERIZED.

The difference between § 1915(e)(2)(B)(i) and § 1915(e)(2)(B)(ii) is not a technical distinction. It is the difference between a court finding that a plaintiff filed a case for improper

purposes — with no arguable legal or factual basis — and a court finding that a plaintiff's complaint needed more detail. *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992). Only the former establishes the abuse that constitutionally justifies restricting future petitioning activity. The Fifth Circuit conflated the two without examining the underlying orders.

The examination of the five predicate cases, set out in the Statement above, confirms the miscounting. Nelnet was explicitly dismissed under § 1915(e)(2)(B)(ii) — the subsection appears in the R&R; text. Texas Medical Liability Trust was dismissed under *Twombly/Iqbal* analysis — (B)(ii) by operation. *DaVita* was dismissed without prejudice for lack of subject matter jurisdiction — not a § 1915(e)(2)(B) dismissal at all, and therefore not a qualifying predicate under any standard. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). Only two of five cases carry confirmed frivolousness findings. Two reliable predicate findings do not sustain a permanent prior restraint on the constitutional right of petition under the Ninth Circuit's standard, the Fourth Circuit's standard, or the presumption this Court recognized in *Bantam Books and Near v. Minnesota*.

Block did not simply restore funds. It labeled the \$63.93 refund For We're Sorry in the Cash App transaction interface, Block's own words, recorded before any legal correspondence. Block then sent a legal letter three days later attempting to re-characterize the same payment as a one-time gesture of goodwill. Label first; walk-back second. The sequence documents an express acknowledgment followed by consciousness of liability. The court called the claim meritless. The defendant apologized for it. Both cannot simultaneously be true.

Settlement visibility asymmetry compounds this problem systemically. Dismissed cases appear in the public record and count against a litigant under the vexatious litigant framework. Settled cases — where defendants concede arguable merit by paying — disappear behind confidentiality agreements. The more meritorious a litigant's claims, the worse his visible record may appear. A pre-filing injunction built on dismissed cases alone is built on a

structurally incomplete and constitutionally suspect foundation.

III. PROCEDURAL DUE PROCESS AND RULE 65(d) SPECIFICITY.

The pre-filing injunction violates procedural due process on two independently sufficient grounds.

First: No adversarial hearing. No party moved for the injunction. No declarations were submitted. No evidentiary hearing was held. The factual predicate — five cases alleged to be frivolous — was never adversarially tested. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the private interest at stake (the First Amendment right to petition) is fundamental; the risk of erroneous deprivation is demonstrated by the record (at least three of five predicate cases were mischaracterized); and the government's burden of a separate hearing is minimal. *Boddie v. Connecticut*, 401 U.S. 371 (1971). *Lewis v. Casey*, 518 U.S. 343 (1996). *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). The error in the predicate persisted through two levels of review precisely because no adversarial process existed to surface it.

Third: The pre-filing injunction operates as an unlicensed prior restraint system without procedural safeguards. In *Freedman v. Maryland*, 380 U.S. 51, 58–59 (1965), this Court held that any system of prior restraints must contain: (1) the burden of justifying the restraint must rest on the government; (2) the decision whether to permit speech must be made promptly; and (3) there must be assurance of a prompt final judicial decision. The pre-filing injunction here fails all three. There is no standard telling Petitioner what a permissible complaint must contain; no timeframe within which the court must act on a leave request; and no mechanism for appellate review of a denial of leave. The injunction installs the court as an indefinite licensor of complaints with unconstrained discretion — precisely the prior restraint architecture this Court condemned in *Freedman*.

Second: Rule 65(d) requires specificity. Every injunction must 'state its terms specifically' and 'describe in reasonable detail the act or acts restrained.' Fed. R. Civ. P. 65(d)(1)(B)-(C). This Court has held that the specificity provisions of Rule 65(d) 'are no mere technical requirements.' *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (per

curiam). The pre-filing injunction here requires Petitioner to obtain 'leave of court' before filing — but specifies no standard by which leave will be granted or denied, no process for reviewing proposed complaints, and no criteria distinguishing permissible from impermissible future filings. An injunction that conditions the exercise of a constitutional right on undefined prior approval is void for vagueness. Without specific terms, the injunction gives no guidance to Petitioner and no basis for appellate review of future leave denials.

Third: Unconstitutional conditions. The government 'may not deny a benefit to a person on a basis that infringes his constitutionally protected interests.' *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). The pre-filing injunction conditions the exercise of the First Amendment right to petition — itself a constitutional right — on prior judicial approval. This condition directly burdens the exercise of the right it regulates. Without compelling justification supported by specific findings, it cannot stand.

IV. CONGRESS ADDRESSED SERIAL IFP LITIGATION MORE NARROWLY — AND EXPRESSLY FOR PRISONERS ONLY.

When Congress enacted the Prison Litigation Reform Act, it confronted the precise problem motivating the pre-filing injunction here. Congress's solution was 28 U.S.C. § 1915(g): after three qualifying dismissals, a litigant loses IFP status — but retains the right to file by paying the fee. Congress was explicit: § 1915(g) applies to 'a prisoner.' Petitioner is not a prisoner. The courts below applied the logic of a prisoner-management statute to a non-prisoner civil litigant and imposed a more

restrictive remedy — prior approval of every future filing — that Congress never authorized for this class of litigants.

The pre-filing injunction also exceeds § 1915(g) in scope. Section 1915(g) bars only IFP status, not court access. A three-struck prisoner may still file by paying the fee. The injunction here bars filing itself absent prior judicial approval — an absolute restriction rather than a financial threshold. Fed. R. Civ. P. 11 provides yet another targeted mechanism for addressing frivolous filings — with notice, opportunity to cure, and proportionality. The pre-filing injunction bypassed both § 1915(g) and Rule 11 in favor of the broadest available restraint. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991).

The IFP Bootstrapping Loop. The § 1915 mechanism was designed to open the courthouse door for those who cannot pay filing fees. But it contains a self-defeating recursion: IFP status triggers § 1915 screening; screening generates (B)(ii) pleading dismissals; dismissals accumulate as predicate strikes; predicate strikes trigger the pre-filing injunction; the pre-filing injunction restricts future IFP access. The mechanism that opens the door also locks it. A paying litigant cycles through none of these stages. She files, is served, and litigates on the merits. The § 1915 apparatus is presented as a benefit for the poor — but as applied here, it is the exclusive instrument of their permanent exclusion. Congress did not design it this way. Courts using inherent power to convert the IFP mechanism into a revolving lock exceed the bounds Congress intended and impose a constitutional tax on poverty itself.

V. EQUAL PROTECTION — THE WEALTH-INDEXED ACCESS PROBLEM.

A law firm that files eleven lawsuits in four months faces no pre-filing injunction. No court screens its complaints under § 1915. No judge labels its claims frivolous without adversarial briefing. The firm avoids § 1915 screening entirely by paying the filing fee. The only legally cognizable distinction between a law firm and Petitioner is the ability to pay.

This Court has held that wealth-based barriers to court access trigger heightened constitutional scrutiny. *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ('There can be no equal justice where the kind of trial a man gets depends on the amount of money he has'); *M.L.B. v. S.L.J.*, 519 U.S. 102, 113–14 (1996) (constitutional scrutiny applies to wealth-based restrictions on access to judicial proceedings affecting fundamental interests). A pre-filing injunction that operates exclusively against unrepresented IFP litigants — because represented litigants avoid the § 1915 screening mechanism that generates the predicate dismissals — is a wealth-indexed restriction on the fundamental right of petition that this Court should address.

The Volume Paradox. A law firm filing twenty-four cases in twelve months is described as prolific. A pro se plaintiff filing the same twenty-four cases is labeled vexatious and subjected to a permanent prior restraint. The conduct is identical. The only legally cognizable difference is the ability to pay a filing fee and thereby avoid the § 1915 screening mechanism entirely. Congress created private rights of action in EFTA, civil rights statutes, and consumer protection laws because individual plaintiffs acting as private attorneys general are a necessary component of federal enforcement.

Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402 (1968). When courts use pre-filing injunctions to restrict private attorneys general who cannot afford institutional backing, they impose a structural tax on the enforcement of public rights that Congress delegated to private litigants. The wealthy pay no such tax. The poor pay it permanently.

The Regulatory Capture Dimension. Petitioner pursued claims of the type that regulators cannot individually enforce for every consumer. The CFPB found Block violated the identical statute and ordered \$175 million in relief, but that action did not individually compensate Petitioner. Congress created 15 U.S.C. § 1693m to fill exactly this gap. The court that called Petitioner's EFTA claim frivolous cannot simultaneously credit the CFPB's finding that Block violated the identical statute. A pre-filing injunction applied to a litigant pursuing claims the

federal regulator itself validated is not docket management. It is suppression of the private enforcement architecture Congress built.

† Respondents will likely invoke this Court's authority to bar repetitive pro se filers under Rule 39.8, citing *Zatko v. California*, 502 U.S. 16 (1991), and *In re McDonald*, 489 U.S. 180 (1989). That authority is categorically distinct from the injunction challenged here. Rule 39.8 restricts access to this Court's wholly discretionary appellate docket — not to a trial court's original jurisdiction where federal statutory rights are adjudicated for the first and only time. There is no constitutional right to certiorari review. There is a constitutional right — recognized in *Boddie v. Connecticut*, 401 U.S. 371 (1971), and *Griffin v. Illinois*, 351 U.S. 12 (1956) — to meaningful access to courts of original jurisdiction to adjudicate substantive rights. The two are not analogous. Rule 39.8 is the apex court managing its discretionary docket; the pre-filing injunction here is a trial court barring a citizen from the courthouse door.

VI. THE EFTA QUESTION — LOPER BRIGHT AND THE PLAIN TEXT.

A. The Statute Says Natural Person. The Regulation Adds More. Post-Loper Bright, the Addition Has No Force.

Three independent sources establish this claim had arguable merit. First, Block labeled the refund For We're Sorry in its own transaction interface before any legal correspondence. Second, Block's legal letter re-characterizing it as goodwill demonstrates consciousness of liability. Third, the CFPB Consent Order (January 16, 2025) found that Block violated 15 U.S.C. § 1693f and 12 C.F.R. § 1005.11 by failing to investigate unauthorized transactions, ordering \$175 million in relief for the identical conduct alleged here. Under *Denton v. Hernandez*, a claim cannot lack an arguable basis when the federal regulator found the same defendant violated the same statute months earlier. The §1693m(e) safe harbor cannot protect a company under active CFPB enforcement for the same conduct.

Respondents face a binary choice on the coverage question. If they characterize the Google Play charges as involving human intermediation, they may escape EFTA under *Kashanchi*, 703 F.2d 936 (5th Cir. 1983) — but simultaneously concede common-law negligence and breach of contract for allowing unauthorized charges through human action. If they confirm the charges were automated digital transactions — as the CFPB enforcement finding confirms — they fall directly into EFTA's strict liability framework. The "For We're Sorry" label and CFPB finding collectively establish Block treated these as automated unauthorized charges. Both horns lead to liability. *Kashanchi* creates the frame; Block must choose which way to step.

EFTA defines 'consumer' as 'a natural person.' 15 U.S.C. § 1693a(6). Nothing in the statute limits this definition to accounts used for household purposes, or excludes natural persons who associate their accounts with business entities. The statute is unambiguous on its face: natural person.

Regulation E, 12 C.F.R. § 1005.2, adds that EFTA coverage requires accounts used 'primarily for personal, family, or household purposes.' This limitation does not appear in the statute. In *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), this Court overruled *Chevron* and held that courts must interpret statutes as written. Courts may no longer defer to an agency's interpretation that adds meaning not in the statutory text. The 'household purposes' limitation in Regulation E is precisely such an addition: the CFPB inserted it; Congress did not write it. Under *Loper Bright*, the agency gloss does not control. The statute must be read as Congress wrote it — protecting 'a natural person.'

Whether this means EFTA protects millions of Americans who hold personal accounts in connection with sole proprietorships, freelance work, or single-member LLCs — the growing class of workers for whom the business/personal account distinction is increasingly blurred — is an unresolved first-impression question of substantial national importance. The Fifth Circuit

declined to resolve it. App. A at 4 n.6. This Court should.

C. The §1693m(e) Safe Harbor Does Not Apply

Respondents will invoke 15 U.S.C. § 1693m(e), which provides that no liability attaches to acts performed 'in good faith' conformity with CFPB rules. This defense misreads the provision. The safe harbor protects good-faith compliance with regulatory rules — it does not protect their violation. Regulation E, 12 C.F.R. § 1005.11(c), requires a financial institution to investigate and provisionally credit a consumer's account within ten business days of receiving a written error notice. If the June 6, 2025 communication was a legally sufficient notice — the precise question the consumer standing issue determines — then Respondents' 75-day response period was not good-faith regulatory compliance. It was a violation of the very regulation the safe harbor is designed to protect. The safe harbor thus depends on, rather than defeats, resolution of the consumer standing question under *Loper Bright*. Moreover, § 1693m(a)(2) provides statutory penalties of \$100–\$1,000 per violation entirely independent of actual damages restored. The voluntary restoration of \$67.66 does not eliminate exposure to statutory penalties and does not moot the controversy. *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 189 (2000).

B. The Consumer Standing and Notice Questions Are Linked Through the Amendment

Analysis The petition anticipates the argument that the two dismissal grounds — consumer standing uncertainty and notice pleading insufficiency — are independent, such that resolving consumer standing in Petitioner's favor would still leave the notice failure standing. This argument fails upon examination of the amendment analysis. The Fifth Circuit refused amendment on the ground that Petitioner had 'pleaded his best case' — meaning no amended complaint could state a viable EFTA claim. But this futility

finding rested on both grounds simultaneously: if EFTA does not cover Petitioner's account, no amended complaint could ever succeed regardless of notice pleading. If the Loper Bright question resolves in Petitioner's favor — establishing that EFTA covers a natural person regardless of business account associations — the only remaining obstacle is notice pleading specificity, a deficiency curable by amendment. The consumer standing question is therefore outcome-determinative of the amendment denial: its resolution determines whether any amended complaint could succeed, which is the precise inquiry the 'best case' doctrine requires. Resolving it in Petitioner's favor requires the lower court to allow amendment — the outcome Petitioner seeks.

TransUnion LLC v. Ramirez, 594 U.S. 413 (2021), confirms that concrete, particularized injuries satisfy standing. The untimely resolution of confirmed unauthorized charges — measured from June 6 to August 19, 2025, over ten weeks — caused a concrete informational and financial injury: Petitioner's account reflected unauthorized charges for months, affecting his available balance and financial decision-making. This concrete harm is distinct from, and survives, the eventual restoration of the dollar amount.

B. Dismissal Without Leave to Amend Was Inconsistent With *Foman*

The Fifth Circuit held Petitioner had 'pleaded his best case' and dismissed without leave to amend. But the 'best case' doctrine applies only where amendment would be futile — where no version of an amended complaint could state a claim. *Brewster v. Dretke*, 587 F.3d 764, 767–68 (5th Cir. 2009). Here, the deficiency was a pleading gap, not a legal impossibility. Petitioner possessed the June 6 communication and could have pled its

contents in an amendment. Amendment was not futile. This Court has held that leave to amend must be 'freely given.' *Foman v. Davis*, 371 U.S. 178, 182 (1962); Fed. R. Civ. P. 15(a)(2). The R&R; identified the deficiency and dismissed simultaneously — leaving no post-identification

opportunity to cure. Pro se complaints must be construed 'liberally.' *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Hale v. King*, 642 F.3d 492, 498–99 (5th Cir. 2011). Dismissal without leave, where the court itself acknowledged the threshold coverage question was unresolved, was an abuse of discretion.

VII. THREE DOWNSTREAM SYSTEMIC HARMS FOLLOW FROM THE FIFTH CIRCUIT'S STANDARD.

Structural Enforcement Gap. EFTA's private enforcement depends on individual consumers filing suit against non-compliant institutions. *Kashanchi v. Texas Commerce Medical Bank, N.A.*, 703 F.2d 936, 938–39 (5th Cir. 1983). When financial institutions can accumulate § 1915(B)(ii) pleading dismissals against unrepresented plaintiffs until a pre-filing injunction issues, the private enforcement architecture of federal consumer protection statutes erodes through procedural attrition — not legislative choice.

Wealth-Indexed Access. Counsel prevents § 1915 dismissals by correcting pleading deficiencies before filing. Unrepresented litigants accumulate them because of the absence of counsel — not bad faith. The Fifth Circuit's standard converts the systemic disadvantage of self-representation into the legal predicate for permanent loss of the right to petition without prior approval. The rule taxes poverty with the Constitution's most severe access restriction.

Settlement Visibility Asymmetry. The vexatious litigant framework can only count visible cases. Dismissed cases are public and count against the litigant. Settled cases — in which defendants implicitly concede merit by paying — are confidential and invisible. The more meritorious a litigant's claims, the worse his visible record may appear. This creates a structural incentive for defendants to litigate aggressively rather than settle — building the dismissal record that eventually bars the plaintiff while settling costs money and leaves no trace. The framework rewards institutional attrition over legitimate resolution, and does so at

the plaintiff's constitutional expense.

Conclusion

'Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.' *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). The pre-filing injunction in this case does not overcome that presumption. It was entered without adversarial testing, on a miscounted predicate record, under a standard that the Ninth and Fourth Circuits have rejected, against a non-prisoner in the absence of any congressional authorization, without the specificity Rule 65(d) requires, and without the individualized frivolousness findings the First Amendment demands.

The defendant labeled the refund "For We're Sorry." The CFPB found the same defendant violated the same statute and ordered \$175 million in relief. The court called the claim meritless. Three independent sources each refute that characterization. This Court should say so.

The petition for a writ of certiorari should be granted. Petitioner requests that this Court: (1) vacate the pre-filing injunction and remand with instructions to apply the individualized standard articulated in *Ringgold-Lockhart* and *Cromer*, excluding jurisdictional dismissals without prejudice from the predicate count, and holding a separate evidentiary hearing; (2) hold that § 1915(g)'s framework applies only to prisoners and that courts may not use inherent power to impose broader pre-filing requirements on non-prisoner civil litigants; (3) hold that pre-filing injunctions must comply with Rule 65(d) by specifying the standard for granting future leave; and (4) hold that 15 U.S.C. § 1693a(6)'s definition of 'consumer' as 'a natural person' must be

interpreted by its plain statutory text post-*Loper Bright*, without the agency-added 'household purposes' limitation of Regulation E.

Respectfully submitted,

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Dated: June 5, 2026

A handwritten signature in black ink, consisting of a large, stylized capital 'J' followed by a capital 'A' and a horizontal flourish extending to the right.