

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RAFIQ SABIR,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

DECLARATION IN SUPPORT OF
MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

CHARLES D. SWIFT, an attorney duly admitted to practice before this Court, hereby declares pursuant to 28 U.S.C. §1746 that the following is true and correct:

1. I am an attorney for Petitioner Rafiq Sabir and submit this declaration in support of his motion to proceed *in forma pauperis*.

2. I am the Director of the Constitutional Law Center for Muslims in America (CLCMA), which represents Dr. Sabir. CLCMA relies on grants and donations from members of the Muslim community. On other cases, we have been granted funds for experts under the Criminal Justice Act due to our non-profit status. Dr. Sabir is not paying legal fees or costs for our services on appeal.

3. I am fully familiar with Dr. Sabir's financial status.

4. At trial in the United States District Court for the Southern District of New York and on direct appeal to the United States Court of Appeals for the Second Circuit, Dr. Sabir was represented by counsel, Edward Wilford (now deceased),

appointed pursuant to the Criminal Justice Act, 18 U.S.C. §3006A.

5. In 2007, Dr. Sabir was convicted and sentenced to 25 years' imprisonment. He is currently incarcerated at the Federal Correctional Institution, Loretto in Cresson, Pennsylvania.

6. Dr. Sabir was permitted to proceed *in forma pauperis* in the district court and at the Second Circuit below. In 2012, Dr. Sabir filed his original 18 U.S.C. §2255 petition *pro se*. In mid-2016, while representing himself *pro se*, Dr. Sabir indicated to the district court that he had no money or savings. A copy of Dr. Sabir's signed financial declaration dated July 20, 2016 is attached as Exhibit A.

7. Thereafter, CLCMA was asked to assist and represent Dr. Sabir at no cost to him. In December 2020, while represented by CLCMA, Dr. Sabir submitted an Application to Proceed without Prepaying Fees or Costs dated December 14, 2020, attached as Exhibit B. In his application, Dr. Sabir again indicated he has no money and no savings. The district court granted his application to proceed *in forma pauperis*. A copy of the December 15, 2020 order is attached as Exhibit C.

8. His financial situation has not changed for the better since this time.

9. On August 25, 2021, I mailed a Form to Proceed *In Forma Pauperis* to Dr. Sabir at FCI Loretto, requesting he fill out and mail the form back to me. As of this date, his IFP Declaration/Form has not arrived at our office.

WHEREFORE we respectfully request that Rafiq Sabir be permitted to proceed *in forma pauperis*.

Dated: September 28, 2021

A handwritten signature in blue ink, appearing to read 'Charles D. Swift', with a long horizontal flourish extending to the right.

Charles D. Swift
Counsel for Petitioner

Exhibit A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 12 CIV. 8937 (LAP); 05 CR. 673 (LAP)

Caption [use short title]

Motion for: REQUEST FOR WRIT OF MANDAMUSIn Re: RAFIQ

Set forth below precise, complete statement of relief sought:

COMPEL DISTRICT COURT JUDGE TO ACT ON
AMONG OTHER THINGS: RULE 33 MOTION
MOTION TO AMEND 2255
MOTION TO AMEND RECORD

MOVING PARTY: RAFIQ SABIR☒ Plaintiff☒ Defendant☐ Appellant/Petitioner☐ Appellee/Respondent

MOVING ATTORNEY:

[name of attorney, with firm, address, phone number and e-mail]

PRO SEOPPOSING PARTY: JUDGE LORETTA A. PRESKA

OPPOSING ATTORNEY [Name]:

[name of attorney, with firm, address, phone number and e-mail]

NONECourt-Judge/Agency appealed from: NOT APPLICABLE

Please check appropriate boxes:

Has consent of opposing counsel:

A. been sought?

☐ Yes ☒ No

B. been obtained?

☐ Yes ☒ No

Has service been effected?

☒ Yes ☐ No

[Attach proof of service]

Is oral argument requested?

☒ Yes ☐ No

(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No

If yes, enter date: _____

Signature of Moving Attorney:

Date: 20 JULY 2016

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court?

☐ Yes ☒ No

Requested return date and explanation of emergency: _____

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED****DENIED.**

FOR THE COURT:

CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____

By: _____

Form T-1080 (Revised 10/31/02)

RECEIVED
 2016 JUL 28 AM 9:54
 U.S. COURT OF APPEALS
 CLERK'S OFFICE

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, RAFIQ SABIR, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0	\$ N/A	\$ 0	\$ N/A
Self-employment	\$ 0	\$	\$	\$
Income from real property (such as rental income)	\$ 0	\$	\$	\$
Interest and dividends	\$ 0	\$	\$	\$
Gifts	\$ 0	\$	\$	\$
Alimony	\$ 0	\$	\$	\$
Child Support	\$ 0	\$	\$	\$
Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
Total monthly income:	\$ 0	\$ N/A	\$ 0	\$ N/A

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
FBOP	FLI DANBURY RTE 37 DANBURY CT	12/14 - 3/15	\$ 15.00
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
			\$
			\$

4. How much cash do you and your spouse have? \$
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

No money in any financial institutions

Financial institution	Type of account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value N/A

☐ Other real estate
Value none

☐ Motor Vehicle #1
Year, make & model none
Value _____

☐ Motor Vehicle #2
Year, make & model none
Value _____

☐ Other assets
Description none
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or
your spouse money

Amount owed to you

Amount owed to your spouse

none

\$ none

\$ N/A

\$ _____

\$ _____

\$ _____

\$ _____

7. State the persons who rely on you or your spouse for support.

Name

Relationship

Age

FBO P

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

You

Your spouse

Rent or home-mortgage payment
(include lot rented for mobile home)

\$ 0

\$ N/A

Are real estate taxes included? ☐ Yes ☐ No

Is property insurance included? ☐ Yes ☐ No

Utilities (electricity, heating fuel,
water, sewer, and telephone)

\$ _____

\$ _____

Home maintenance (repairs and upkeep)

\$ _____

\$ _____

Food

\$ _____

\$ _____

Clothing

\$ _____

\$ _____

Laundry and dry-cleaning

\$ _____

\$ _____

Medical and dental expenses

\$ _____

\$ _____

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ _____	\$ _____
Installment payments		
Motor Vehicle	\$ _____	\$ _____
Credit card(s)	\$ _____	\$ _____
Department store(s)	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ <u>V</u>
Total monthly expenses:	\$ <u>0</u>	\$ <u>N/A</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I am in prison and the best employment I might get pays \$20.00 to \$30.00 per month

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: My [Signature] 20 JULY, 2016

[Signature]
(Signature)

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rafiq Sabir

(full name of the plaintiff or petitioner applying (each person must submit a separate application))

-against-

12 CV 8937 (LAP) () ()

(Provide docket number, if available; if filing this with your complaint, you will not yet have a docket number.)

United States of America

(full name(s) of the defendant(s)/respondent(s))

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* (IFP) (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? ☒ Yes ☐ No (If "No," go to Question 2.)
I am being held at: FMC Butner, PO Box 1600, Butner, NC 27509

Do you receive any payment from this institution? ☐ Yes ☒ No

Monthly amount: _____

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☒ No

If "yes," my employer's name and address are:

Gross monthly pay or wages: _____

If "no," what was your last date of employment? _____

Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

(a) Business, profession, or other self-employment	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
(b) Rent payments, interest, or dividends	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

- | | | |
|---|---|--|
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (d) Disability or worker's compensation payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (e) Gifts or inheritances | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.) | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (g) Any other sources | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

- (a) \$100.00 gift from my daughter in October 2020
 \$100.00 gift from charitable organization around April 2020.
 This organization gives me same gift once a year, which I expect around April 2021.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

Prison provides food, basic clothing, shelter, medical care

4. How much money do you have in cash or in a checking, savings, or inmate account?
 \$145.06 available balance; \$100.00 pre-release savings
5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:
 No.
6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:
 No.
7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):
 None.
8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:
 No.

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

3 December 2020

Dated

SABIR, RAFIQ

Name (Last, First, MI)

FMC Butner, PO Box 1600 Butner

Address

N/A

Telephone Number

Signature

55312-066

Prison Identification # (if incarcerated)

NC

27509

State

Zip Code

N/A

E-mail Address (if available)

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

RAFIQ SABIR,

Defendant.

No. 05-CR-673 (LAP)

No. 12-CV-8937 (LAP)

ORDER

LORETTA A. PRESKA, UNITED STATES DISTRICT JUDGE:

Mr. Sabir's amended motion [dkt. no. 273 in 05-CR-673; dkt. no. 61 in 12-CV-8937] to proceed with his appeal in forma pauperis is GRANTED. Mr. Sabir's original motion [dkt. no. 272 in 05-CR-673; dkt. no. 60 in 12-CV-8937] is DENIED as moot.

SO ORDERED.

Dated: December 15, 2020
New York, New York


LORETTA A. PRESKA, U.S.D.J.