

No. 23-6315

IN THE
SUPREME COURT OF THE UNITED STATES

Miguel Antonio Garcia — PETITIONER
(Your Name)

VS.

James Anderson et al — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United States Court of Appeals For the Tenth Cir.
United States District Court For District of Colorado

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

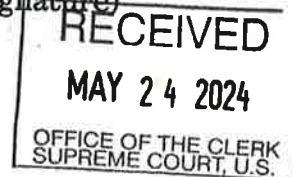
☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____, or

☐ a copy of the order of appointment is appended.

[Signature]
(Signature)



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

I, Miguel Antonio Garcia, 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	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Self-employment	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Interest and dividends	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Gifts	\$ <u>254.⁰⁰</u>	\$ <u>NA</u>	\$ <u>150.⁰⁰</u>	\$ <u>NA</u>
Alimony	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Child Support	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Unemployment payments	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
Total monthly income:	\$ <u>254.⁰⁰</u>	\$ <u>0</u>	\$ <u>150.⁰⁰</u>	\$ <u>0</u>

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
NA	NA	NA	\$ NA
NA	NA	NA	\$ NA
NA	NA	NA	\$ NA

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
NA	NA	NA	\$ NA
NA	NA	NA	\$ NA
NA	NA	NA	\$ NA

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.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
NA	\$ 0	\$ NA
Immediate Trust Fund	\$ 97.00	\$
NA	\$ 0	\$ NA

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

☐ Home
Value NA

☐ Other real estate
Value NA

☐ Motor Vehicle #1
Year, make & model NA
Value NA

☐ Motor Vehicle #2
Year, make & model NA
Value NA

☐ Other assets
Description NA
Value NA

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
<u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
<u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>
<u>NA</u>	\$ <u>0</u>	\$ <u>NA</u>

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
<u>E.G. G.G.</u>	<u>Mom</u>	<u>16, 9</u>
<u>NA</u>	<u>NA</u>	<u>NA</u>
<u>NA</u>	<u>NA</u>	<u>NA</u>

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)	\$ <u>NA</u>	\$ <u>NA</u>
Are real estate taxes included? ☐ Yes ☐ No		
Is property insurance included? ☐ Yes ☐ No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>NA</u>	\$ <u>NA</u>
Home maintenance (repairs and upkeep)	\$ <u>NA</u>	\$ <u>NA</u>
Food	\$ <u>125.00</u>	\$ <u>NA</u>
Clothing	\$ <u>29.00</u>	\$ <u>NA</u>
Laundry and dry-cleaning	\$ <u>NA</u>	\$ <u>NA</u>
Medical and dental expenses	\$ <u>NA</u>	\$ <u>NA</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>NA</u>	\$ <u>NA</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ <u>NA</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>NA</u>	\$ <u>NA</u>
Life	\$ <u>NA</u>	\$ <u>NA</u>
Health	\$ <u>NA</u>	\$ <u>NA</u>
Motor Vehicle	\$ <u>NA</u>	\$ <u>NA</u>
Other: _____	\$ <u>NA</u>	\$ <u>NA</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>NA</u>	\$ <u>NA</u>
Installment payments		
Motor Vehicle	\$ <u>NA</u>	\$ <u>NA</u>
Credit card(s)	\$ <u>NA</u>	\$ <u>NA</u>
Department store(s)	\$ <u>NA</u>	\$ <u>NA</u>
Other: _____	\$ <u>NA</u>	\$ <u>NA</u>
Alimony, maintenance, and support paid to others	\$ <u>NA</u>	\$ <u>NA</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>NA</u>	\$ <u>NA</u>
Other (specify): <u>Ten-Licks</u>	\$ <u>100</u>	\$ <u>NA</u>
Total monthly expenses:	\$ <u>254.00</u>	\$ <u>NA</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 broke

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

Executed on: May 8th, _____, 2024



(Signature)

No. 23-6315

In the Supreme Court of the United States

In RE. Miguel Antonio Garcia
petitioner

v

James Anderson et. al.
Respondant

Rule 44, Rehearing petition

Miguel Antonio Garcia
United States Penitentiary Victorville
P.O. Box 3900
Adelanto Ca. 92301
Pro-Se

List of Parties

[x] 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 judgement is the subject of this petition is as follows.

Clark Smith, Spencer Grove, Randy Yoder.

Related Cases

In Re. Miguel Antonio Garcia v. James Anderson et. al.

Supreme Court Case no. 23-6315

U.S.C.A. No. 22-1326

U.S.D.C. No. 22-CV-01209-LTB-GPG (D. Colo)

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Appendix; A. In Re: Miguel Antonio Garcia v. James Anderson et. al.

Case No. 23-6315; February 26th, 2024

Appendix; B, U.S. Court of Appeals For the Tenth Cir.

Miguel Antonio Garcia v. James Anderson et. al.

Case no. 22-1326, July 3rd, 2023

Appendix; C. U.S. District Court For Colorado.

Case no. 22-cv-01209-LTB-GPG; Doc. no. 19, 20; Date 9/15/2022

Case no. 22-cv-01209-LTB-KLM; Doc. 35; Date 6/2/2023

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In The
Supreme Court of the United States

Petition pursuant to rule 44 Rehearing

Petitioner respectfully Prays, For a Rehearing
from Judgement denying petition for Writ
of Mandamus

Opinions Below

[x] United States Supreme Court Order.

[x] For Cases in Federal Courts

The Opinion of the U.S. Court of Appeals, For
the Tenth Cir. Appears at Appendix A.

[x] Reported at Appellate Case no 22-1326, July 3,
2023, Garcia V. Anderson, et. al.

The Opinions of the U.S Dist Court, For Colorado

[x] Reported at District Court for Colorado, Garcia V. Anderson.

22-CV-01209 - LTB - GPG, Doc. no. 19, 20; 9/15/2022

22-CV-01209 - LTB - KLM; Doc. 35; 6/2/2023

Statutes and Rules

28 U.S.C. § 1651 (a)

28 U.S.C. § 2403 (a) may apply

28 U.S.C. § 144, § 455

Rules

Rule 44

other...

Executive Order 140741

May 25th, 2022

Joseph R. Biden Jr.

Proclamation

March 31st, 2023

Joseph R. Biden Jr.

V

Jurisdiction

Construction and Application of 28 U.S.C.A.
§ 1251; Implementing Original Jurisdiction
of Supreme Court. Article III

Constitutional Relevant Provisions

U.S. Constitution Art. 2; cl. 1

U.S. Constitution Art. 3

U.S. Constitution Amendment 5

U.S. Constitution Amendment 7

U.S. Constitution Amendment 9

U.S. Constitution Amendment 14

In The Supreme Court of the United States.

Miguel Antonio Garcia
petitioner

v.

James Anderson et. al.
Respondent

Rule 44, Rehearing Petition

Petitioner Miguel Antonio Garcia, respectfully Prays for a rehearing on Judgement February 26th, 2024. Petitioners claim was not subject to Heck's prior Invalidation requirement "Heck is inaplicable", Therefore the U.S. District Court for Colorado, The U.S. Court of Appeals For the Tenth Circuit, and now the Court at the U.S. Supreme Court erroneously denied plaintiff's Petition.

Statement of Facts...

1. June 10th, 2022, plaintiff filed Complaint, [ECF. NO. 7], asserting one claim "Fabricated Evidence" Requesting Monetary damages and injunctive relief.
2. August 16th, 2022, Magistrate Judge recommended Action to be dismissed with out prejudice pursuant to "the rule in *Hick v. Humphrey*, 512 U.S. 477 (1994). See *Id*@ Doc. 10, pg. 4
3. August 25, 2022, plaintiff filed motion to Correct Summary Judgement in order (ECF. no. 8) and reconsider under Fed. R. Civ. P. 59(e). See (ECF. no. 11) Aug. 25, 2022 .. See *Id*@ Doc. 17
4. August 26th, 2022, plaintiff filed motion to transfer Venue (ECF. No. 12). See *Id*. @ Doc. 17
5. September 2, 2022, Plaintiff filed, "Omnibus Motion / Transfer venue, Disqualify Magistrate Judge pursuant to 28 U.S.C. § 144 and § 455" See *Id* @ ECF. no. 16.

6. September 9th, 2022 the Court Denied above stated motions. See Id @ Doc. 17.
7. At times relevant Senior Judge Lewis T Babcock agreed with the Magistrate Judge, Dismissing Complaint [ECF. no. 7] See Id @ Doc. 19.
8. At times relevant Plaintiff, timely filed an appeal. On October 17, 2022, plaintiff filed a motion to Voluntary Dismiss case under Rule 41(c) See Id @ doc. 010110754895
For the reason "during institutional lock down, The unskilled litigant described in First Tier Mortg. 498 U.S. at. 276. Was unable to utilize legal CPU in order to research and assemble brief before deadline." See Id @ motion to recall..
9. February 17th, 2023, Plaintiff Filed a new Complaint, implementing Executive Order 14074 where the Court mv-constructed as an amended Complaint See Id @ doc. 27

10. March 24, 2023 Judge Lewis T. Babcock
"Denied as moot" because the case was dismissed
and judgement was entered on September 15 2022"
See Id @ doc. 32.
11. May 30, 2023, plaintiff Filed an Emergency
Ex-Parte Rule 60(b)(6) Motion For Relief
from Order. See Id @ Doc. 33
12. June 2, 2023 Judge Lewis T Babcock Denied
"motion for relief from order" See Id @ Doc. 35.
Further stating "further filings in this closed
action will be stricken."
13. June 18th, 2023 plaintiff filed an "Emergency
Ex-parte Motion to recall or Modify Mandate
pursuant to Rule 41.2 for Reentry of Judgement."
14. July 3rd, 2023 the Courts Denied Motion
to recall or modify mandate.
15. 28 U.S.C. §1651(c), Plaintiffs writ will be in
aid of the Courts appellate jurisdiction, exceptional
circumstances protecting plaintiffs Constitutional rights
warrant the exercise of Courts discretionary power. As shown
above "relief cannot be obtained from any other court."

16. The petition for a writ of Mandamus in the above entitled case was filed on September 6, 2023, and placed on the docket December 21, 2023, Petition was Denied Feb. 26, 2024

Ground: 1

Hick v. Humphrey - §1983

The Courts Dismissed Complaint, as well as Petition For Mandamus erroneously based on the Heck rule. Petitioner was not subject to Heck prior - invalidation

requirement. Specifically petitioner argues only "Fabricated Evidence", in §1983 claim

Plaintiffs Complaint does not imply that "the prisoners confinement was invalid" or that the duration of his confinement should have been shorter" nor implies "the relief he seeks is a determination that he is "entitled" to immediate release or a speedier release from imprisonment." Heck, 512 U.S. at 486-487, 114 S. Ct. 2364 129 L. Ed. 2d. 383. Therefore Plaintiffs §1983 claim was not subject to Heck's prior Invalidation requirement and limited to intervening circumstances of substantial or controlling effect.

Ground: 2

Heck v. Humphrey, 512 U.S. 477 (1994).
§ 1985

Plaintiff asserts the primary basis
of Jurisdiction § 1983 and § 1985 § 1987
§ 1985 (3) are not barred by Heck.
where named defendants "conspired to
Interfere with Civil rights" § 1985 (3)
Depriving me of equal protection of laws
Discriminating against me for being
Hispanic." See Id @ Complaint. Defendants
engaged in wrongful conduct
Discriminating against plaintiff on
account of his race. § 1985(3).

This substantial ground was not
previously presented.

Ground: 3.

Haines v. Kerner (1972) pro-se litigant.

I hereby Certify that the petition for rehearing is presented in good faith and not for delay...

"A pro-se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520-21, 30 L. Ed. 2d. 652, 92 S. Ct. 594 (1972)

This rule means that if the Court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements. "Wanjika v. Johnson County, 2015 U.S. Dist. Lexis 65299 (D. Kan. Mar. 23, 2015, 10. cr.) As this substantial ground was not previously presented...

Ground: 4

Executive Order 14074

"The term 'Serious Misconduct' means 'bias', 'discrimination', 'obstruction of Justice, False reports, false statements under oath.' Executive Order 14074, by President Joseph R. Biden Jr. enables plaintiff 'to Complain of Un-Constitutional treatment at the hands of State officials.' *Hick v. Humphrey*, 512 U.S. 477, 480, 114 S. Ct. 2364.

Therefore I Miguel Antonio Garcia Prays
In Texas Name, for re-hearing on my petition
as this petition is presented in good faith
and not for Delay..

Respectfully Submitted. May 8th, 2024
Miguel Antonio Garcia # 44824-013
United States Penitentiary Victorville.
P.O. Box 3900 ; Adelanto CA. 92301



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: May 8th, 2024

- Certificate of Service -

Certificate of Service, on grounds limited to intervening circumstances of substantial controlling effect, as well as other substantial grounds not previously presented as well as certify that petition for rehearing is presented in good faith and not for delay.

Declaration setting forth the Date of Deposit in the institutions internal mailing system.

I Miguel Antonio Garcia, Here by Certify that petition for rehearing, was placed in the institutions internal mail system, postage pre-paid First class postage, to Clerk of the Court @ 1 First St. N.E., Washington D.C. 20543 and Solicitor General of the United States, Room 5616; Department of Justice, 950 Pennsylvania Ave. N.W. Washington D.C. 20530. On May 8th 2024

Respectfully Submitted on May 8th 2024
Miguel Antonio Garcia #44824-013
United States Penitentiary Victorville.
P.O. Box 3900; Adelanto CA. 92301



No. 23-6315

IN THE
SUPREME COURT OF THE UNITED STATES

Miguel Antonio Garcia — PETITIONER
(Your Name)

VS.

James Anderson et al. — RESPONDENT(S)

PROOF OF SERVICE

I, Miguel Antonio Garcia, do swear or declare that on this date, May 8th, 2024, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States; Room 5616
Department of Justice; 950 Pennsylvania Ave N.W.
Washington, D.C. 20530-0001

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

Executed on May 8th, 2024


(Signature)