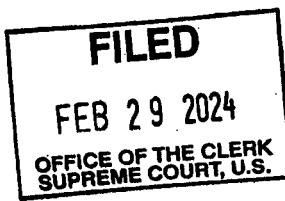


ORIGINAL

No.

23-6938

IN THE
SUPREME COURT OF THE UNITED STATES



Frank Garcia, 09B2727 — PETITIONER
(Your Name)

VS.

Joseph Noeth — 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):

NYS (W) District Court Docket no: 6:19-cv-06047 CJS

Appellate Division, Fourth Department Direct Appeal KA-10-00517

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.

Frank Garcia 09B2727
(Signature)

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

I, Frank 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>NA</u>	\$ <u>NA</u>
Self-employment	\$ <u>0</u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Interest and dividends	\$ <u>0</u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Gifts	\$ <u>200</u> ^{1/mtl}	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Alimony	\$ <u>0</u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Child Support	\$ <u>0</u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Unemployment payments	\$ <u>0</u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Other (specify): <u>DGCS Program</u>	\$ <u>19</u> ^{1/mtl}	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Total monthly income:	\$ <u>29</u>	\$ <u>NA</u>	\$ <u>NA</u>	\$ <u>NA</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
<u>Incarcerated</u>	<u>since 9/1/09.</u>		\$ <u>NA</u>
			\$
			\$
			\$

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 <u>Incarcerated</u>	Address <u>Since 9/1/09</u>	Dates of Employment <u> </u>	Gross monthly pay <u>\$ NA</u>
--	---------------------------------------	--	--

4. How much cash do you and your spouse have? \$ NA
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 ·	\$ · NA ·	\$ · 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 N/A.

Other real estate
Value **NA**

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

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

Other assets
Description _____, *NA* _____
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
_____	\$ _____	\$ _____
· NA ·	\$ · NA ·	\$ · NA ·
_____	\$ _____	\$ _____

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
_____	· NA ·	· NA ·
_____	_____	_____

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)	\$ NYS DOCCS	\$ · NA ·
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> 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>NA</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u></u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>0</u>	\$ <u></u>
Life	\$ <u>0</u>	\$ <u></u>
Health	\$ <u>0</u>	\$ <u></u>
Motor Vehicle	\$ <u>0</u>	\$ <u></u>
Other: _____	\$ <u>0</u>	\$ <u></u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>NA</u>	\$ <u></u>
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ <u></u>
Credit card(s)	\$ <u>0</u>	\$ <u></u>
Department store(s)	\$ <u>0</u>	\$ <u></u>
Other: _____	\$ <u>NA</u>	\$ <u></u>
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u></u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u></u>
Other (specify): <u>NYSDOCS Comissary</u>	\$ <u>200</u> ^{per month}	\$ <u></u>
Total monthly expenses:	<u>\$ 200</u> ^{per month}	\$ <u></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.

Sentences to LFWOP.

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.

Please find affixed hereto - Petitioner's three(3) most recent NYSDOCC inmate monthly financial statement.

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

Executed on: February 28, 2024

*ES Garcia
09B-2727*
(Signature)

STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES
ATTICA CORRECTIONAL FACILITY
INMATE STATEMENT FOR THE PERIOD 12/30/23 THRU 01/31/24

* NAME:GARCIA FRANK DEPT ID:09B2727 CELL LOC:0D-38-39S NYSID:06709155R *
* *****

FACILITY	DATE	---- TRANSACTION ---- (COMMENTS)	TR-NUM	RECEIPT(+)	DISBURS(-)	COLLECTED AMT	STATEWIDE SPENDABLE	STATEWIDE ACCT BAL
		STARTING BALANCE AT ATTICA				.00	33.06	33.06
		BALANCE FORWARD						
ATTICA	12/30/23	ELECTRONIC RECEIPT	BE90853	50.00		.00	83.06	83.06
ATTICA	12/30/23	ELECTRONIC RECEIPT	BE91580	250.00		.00	333.06	333.06
ATTICA	01/03/24	TRANSFER FUNDS	G400074	15.67		.00	348.73	348.73
ATTICA	01/03/24	ADJ (VOID CK 70501)	507	5.00		.00	353.73	353.73
ATTICA	01/03/24	POSTAGE			3.99	.00	349.74	349.74
ATTICA	01/03/24	POSTAGE			.69	.00	349.05	349.05
ATTICA	01/03/24	POSTAGE			9.80	.00	339.25	339.25
ATTICA	01/03/24	POSTAGE			10.55	.00	328.70	328.70
ATTICA	01/03/24	ELECTRONIC RECEIPT	BE96290	300.00		.00	628.70	628.70
ATTICA	01/04/24	POSTAGE			6.50	.00	622.20	622.20
ATTICA	01/04/24	PAYROLL RCPT	137201	3.80		.00	626.00	626.00
ATTICA	01/09/24	OUT PUR (US DISTRICT)			5.00	.00	621.00	621.00
ATTICA	01/11/24	PAYROLL RCPT	137201	3.80		.00	624.80	624.80
ATTICA	01/16/24	POSTAGE			3.24	.00	621.56	621.56
ATTICA	01/16/24	POSTAGE			3.27	.00	618.29	618.29
ATTICA	01/16/24	MISC DIS (NOGE)			11.15	.00	607.14	607.14
ATTICA	01/16/24	ORG DUES (AAVG)			6.50	.00	600.64	600.64
ATTICA	01/18/24	PAYROLL RCPT	137201	4.75		.00	605.39	605.39
ATTICA	01/20/24	OUT PUR (CJF MINITRIES)			20.00	.00	585.39	585.39
ATTICA	01/23/24	MEDIA PUR(MEDIA)			16.00	.00	569.39	569.39
ATTICA	01/25/24	PAYROLL RCPT	137201	3.80		.00	573.19	573.19
ATTICA	01/26/24	COMM BUY			189.91	.00	383.28	383.28
ATTICA	01/26/24	ELECTRONIC RECEIPT	BF32241	50.00		.00	433.28	433.28
ATTICA	01/30/24	TIME DEPOSIT INT	I122023	.26		.00	433.54	433.54
ATTICA	01/30/24	ELECTRONIC RECEIPT	BF36445	150.00		.00	583.54	583.54
		MONTHLY ENDING TOTALS		837.08	286.60	.00	583.54	583.54
		ENDING BALANCE AT ATTICA						583.54
	20%	OF AVERAGE 6 MO SPENDABLE BALANCE		41.17	20%	OF AVERAGE 6 MO DEPOSIT AMT		61.53

LAGGED PAYROLL, DAYS LAGGED - 15 AMOUNT LAGGED - 6.20
THIS AMOUNT WILL BE ADDED TO YOUR ACCOUNT UPON RELEASE ONLY

* ENCUMBRANCES ESTABLISHED AND PAID IN THE CURRENT MONTH.

STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES
 ATTICA CORRECTIONAL FACILITY
 INMATE STATEMENT FOR THE PERIOD 12/01/23 THRU 12/29/23

 *
 * NAME:GARCIA FRANK DEPT ID:09B2727 CELL LOC:0D-38-39S NYSID:06709155R *
 *

FACILITY	DATE	---- TRANSACTION (COMMENTS)	TR-NUM	RECEIPT(+)	DISBURS(-)	COLLECTED AMT	STATEWIDE SPENDABLE	STATEWIDE ACCT BAL
		STARTING BALANCE AT ATTICA				.00	192.29	192.29
		BALANCE FORWARD						192.29
ATTICA	12/07/23	PAYROLL RCPT	137201	4.75		.00	197.04	197.04
ATTICA	12/08/23	COMM BUY			154.16	.00	42.88	42.88
ATTICA	12/14/23	ELECTRONIC RECEIPT	BE63540	50.00		.00	92.88	92.88
ATTICA	12/14/23	PAYROLL RCPT	137201	4.75		.00	97.63	97.63
ATTICA	12/19/23	TIME DEPOSIT INT	B22	.49		.00	98.12	98.12
ATTICA	12/20/23	ELECTRONIC RECEIPT	BE74224	50.00		.00	148.12	148.12
ATTICA	12/21/23	PAYROLL RCPT	137201	4.75		.00	152.87	152.87
ATTICA	12/28/23	PAYROLL RCPT	137201	4.75		.00	157.62	157.62
ATTICA	12/29/23	COMM BUY			124.56	.00	33.06	33.06
		MONTHLY ENDING TOTALS		119.49	278.72	.00	33.06	33.06
		ENDING BALANCE AT ATTICA						33.06
		20% OF AVERAGE 6 MO SPENDABLE BALANCE		30.71	20% OF AVERAGE 6 MO DEPOSIT AMT			47.61

LAGGED PAYROLL, DAYS LAGGED - 15 AMOUNT LAGGED - 6.20
 THIS AMOUNT WILL BE ADDED TO YOUR ACCOUNT UPON RELEASE ONLY

* ENCUMBRANCES ESTABLISHED AND PAID IN THE CURRENT MONTH.

STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES
ATTICA CORRECTIONAL FACILITY
INMATE STATEMENT FOR THE PERIOD 11/01/23 THRU 11/30/23

* NAME:GARCIA FRANK DEPT ID:09B2727 CELL LOC:0D-38-39S NYSID:06709155R *
*

FACILITY	DATE	---- TRANSACTION ---- (COMMENTS)	TR-NUM	RECEIPT(+) DISBURS(-)	COLLECTED AMT	STATEWIDE SPENDABLE	STATEWIDE ACCT BAL
		STARTING BALANCE AT ATTICA			.00	217.25	217.25
		BALANCE FORWARD					
ATTICA	11/02/23	PAYROLL RCPT	137201	4.75	.00	222.00	222.00
ATTICA	11/09/23	ADJ (VOID CK 69908)	507	2.60	.00	224.60	224.60
ATTICA	11/09/23	PAYROLL RCPT	137201	4.75	.00	229.35	229.35
ATTICA	11/14/23	COMM BUY			178.87	.00	50.48
ATTICA	11/14/23	OUT PUR (NATURESHAREHOU)			16.83	.00	33.65
ATTICA	11/16/23	ELECTRONIC RECEIPT	BE20971	50.00	.00	83.65	83.65
ATTICA	11/16/23	PAYROLL RCPT	137201	4.75	.00	88.40	88.40
ATTICA	11/22/23	PAYROLL RCPT	137201	4.75	.00	93.15	93.15
ATTICA	11/24/23	ELECTRONIC RECEIPT	BE33729	150.00	.00	243.15	243.15
ATTICA	11/29/23	OUT PUR (USDC)			5.00	.00	238.15
ATTICA	11/29/23	OUT PUR (WALKENHORST)			49.66	.00	188.49
ATTICA	11/30/23	PAYROLL RCPT	137201	3.80	.00	192.29	192.29
		MONTHLY ENDING TOTALS		225.40	250.36	.00	192.29
		ENDING BALANCE AT ATTICA					192.29
	20%	OF AVERAGE 6 MO SPENDABLE BALANCE		33.47	20% OF AVERAGE 6 MO DEPOSIT AMT		44.35

LAGGED PAYROLL, DAYS LAGGED - 15 AMOUNT LAGGED - 6.20
THIS AMOUNT WILL BE ADDED TO YOUR ACCOUNT UPON RELEASE ONLY

* ENCUMBRANCES ESTABLISHED AND PAID IN THE CURRENT MONTH.

STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES
 ATTICA CORRECTIONAL FACILITY
 INMATE STATEMENT FOR THE PERIOD 09/30/23 THRU 10/31/23

 *
 * NAME:GARCIA FRANK DEPT ID:09B2727 CELL LOC:0D-38-39S NYSID:06709155R *
 *

FACILITY	DATE	---- TRANSACTION ---- (COMMENTS)	TR-NUM	RECEIPT(+) DISBURS(-)	COLLECTED AMT	STATEWIDE SPENDABLE	STATEWIDE ACCT BAL
		STARTING BALANCE AT ATTICA				.00	67.63
		BALANCE FORWARD					67.63
ATTICA	10/02/23	ELECTRONIC RECEIPT	BD50893	150.00		.00	217.63
ATTICA	10/04/23	TRANSFER FUNDS	G399874	2.89		.00	220.52
ATTICA	10/05/23	PAYROLL RCPT	137201	4.75		.00	225.27
ATTICA	10/12/23	PAYROLL RCPT	137201	4.75		.00	230.02
ATTICA	10/16/23	COMM BUY			198.61	.00	31.41
ATTICA	10/16/23	ELECTRONIC RECEIPT	BD73732	50.00		.00	81.41
ATTICA	10/17/23	ORG DUES (AAVG)			6.00	.00	75.41
ATTICA	10/17/23	OUT PUR (ONTARIO COUNTY)			2.60	.00	72.81
ATTICA	10/18/23	ELECTRONIC RECEIPT	BD75926	50.00		.00	122.81
ATTICA	10/19/23	PAYROLL RCPT	137201	3.80		.00	126.61
ATTICA	10/25/23	MEDIA PUR(MEDIA)			13.00	.00	113.61
ATTICA	10/25/23	ELECTRONIC RECEIPT	BD85254	100.00		.00	213.61
ATTICA	10/26/23	PAYROLL RCPT	137201	4.75		.00	218.36
ATTICA	10/31/23	POSTAGE			1.11	.00	217.25
		MONTHLY ENDING TOTALS		370.94	221.32	.00	217.25
		ENDING BALANCE AT ATTICA					217.25
		20% OF AVERAGE 6 MO SPENDABLE BALANCE		40.32	20% OF AVERAGE 6 MO DEPOSIT AMT		53.13

LAGGED PAYROLL, DAYS LAGGED - 15 AMOUNT LAGGED - 6.20
 THIS AMOUNT WILL BE ADDED TO YOUR ACCOUNT UPON RELEASE ONLY

* ENCUMBRANCES ESTABLISHED AND PAID IN THE CURRENT MONTH.