

No. 23-7378

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FREDERICK HERROD — PETITIONER
(Your Name)

FILED
APR 29 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

THE MEMBERS of 79TH Congress VS.
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):

U.S. District Court For THE WESTERN Dist of TEXAS-Austin
U.S. Dist. Court For THE EASTERN Dist of TEXAS - TEXARKANA

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

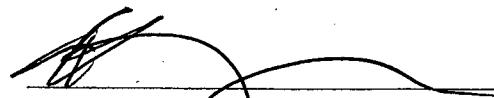
Petitioner's affidavit or declaration in support of this motion is attached hereto.

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)

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

I, Frederick Herrod, 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>40.00</u>	\$ <u>N/A</u>	\$ <u>70.00</u>	\$ <u>N/A</u>
Self-employment	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Income from real property (such as rental income)	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Interest and dividends	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Gifts	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Alimony	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Child Support	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Disability (such as social security, insurance payments)	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Unemployment payments	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Public-assistance (such as welfare)	\$ <u>N/A</u> \$ <u>10.00</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Other (specify): <u>None</u> <u>FRIENDS +</u> <u>Family</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Total monthly income:	\$ <u>50.00</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</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>B.O.P PRISONER Employment</u>	<u>F.CI TEXARKANA</u> <u>F.CI OKLAHOMA</u>	<u>2/1/21 TO PRESENT</u>	<u>\$ 40.00</u> <u>\$</u> <u>\$</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	Address	Dates of Employment	Gross monthly pay
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>\$</u> <u>\$</u> <u>N/A</u>

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
<u>INMATE TRUST Fund</u>	<u>\$ Account Balance</u> <u>\$ 57.19</u> <u>\$ AVAILABLE BALANCE</u> <u>35.04</u>	<u>\$</u> <u>\$</u> <u>N/A</u>

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

<input type="checkbox"/> Home	<input type="checkbox"/> Other real estate
Value <u>N/A</u>	Value <u>N/A</u>
<input type="checkbox"/> Motor Vehicle #1	<input type="checkbox"/> Motor Vehicle #2
Year, make & model <u>N/A</u>	Year, make & model <u>N/A</u>
Value <u>N/A</u>	Value <u>N/A</u>
<input type="checkbox"/> Other assets	
Description <u>N/A</u>	
Value <u>N/A</u>	

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>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
	\$ <u>N/A</u>	\$ <u>N/A</u>
	\$ <u>N/A</u>	\$ <u>N/A</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>N/A</u>	<u>N/A</u>	<u>N/A</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>N/A</u>	\$ <u>N/A</u>
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)	\$ <u>N/A</u>	\$ <u>N/A</u>
Home maintenance (repairs and upkeep)	\$ <u>N/A</u>	\$ <u>N/A</u>
Food	\$ <u>N/A</u>	\$ <u>N/A</u>
Clothing	\$ <u>N/A</u>	\$ <u>N/A</u>
Laundry and dry-cleaning	\$ <u>N/A</u>	\$ <u>N/A</u>
Medical and dental expenses	\$ <u>N/A</u>	\$ <u>N/A</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>N/A</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>N/A</u>	\$ <u>N/A</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>N/A</u>	\$ <u>N/A</u>
Life	\$ <u>N/A</u>	\$ <u>N/A</u>
Health	\$ <u>N/A</u>	\$ <u>N/A</u>
Motor Vehicle	\$ <u>N/A</u>	\$ <u>N/A</u>
Other: <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Installment payments		
Motor Vehicle	\$ <u>N/A</u>	\$ <u>N/A</u>
Credit card(s)	\$ <u>N/A</u>	\$ <u>N/A</u>
Department store(s)	\$ <u>N/A</u>	\$ <u>N/A</u>
Other: <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Alimony, maintenance, and support paid to others		
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>N/A</u>	\$ <u>N/A</u>
Other (specify): <u>HyGENCE, POSTAGE</u>	\$ <u>40.00</u>	\$ <u>N/A</u>
Total monthly expenses:	\$ <u>40.00</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.

I EXPECT TO WIN MY CASE AT THE SUPREME COURT AND
HAVE MY LIBERTY RESTORED

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? N/A

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

N/A

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? N/A

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

N/A

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

I HAVE BEEN INCARCERATED SINCE 8/16/19
SOMETIMES MY FRIENDS AND RELATIVES SEND MONEY TO MY TRUST FUND.
(FRIEND AND FAMILY SUPPORT)

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

Executed on: APRIL 29, 2024



(Signature)

Date: 04/29/2024
Time: 10:13:11 AM

Federal Bureau of Prisons
TRUFACS
View Inmate Transactions
Sensitive But Unclassified

Criteria: Search Criteria Results

Inmate	Reg#	Inmate Name	Facility	User Id	Transaction Type	Amount	Reference#	Receipt#	Payment#	Balance
04/23/2024 10:45:55 AM	15525010	HERROD, FREDERICK	OKL	TF25840	Sales - Fingerprint	(\$7.90)	2			\$60.69
04/15/2024 02:34:14 PM	15525010	HERROD, FREDERICK	OKL	TFXTL	TRUL Withdrawal	(\$2.00)	TL0415			\$68.59
04/15/2024 10:54:04 AM	15525010	HERROD, FREDERICK	OKL	TF25840	Sales - Fingerprint	(\$22.05)	6			\$70.59
04/09/2024 11:02:20 AM	15525010	HERROD, FREDERICK	OKL	TF25840	Sales - Fingerprint	(\$19.80)	5			\$92.64
04/03/2024 08:30:26 PM	15525010	HERROD, FREDERICK	OKL	TFXTL	TRUL Withdrawal	(\$2.00)	TL0403			\$112.44
04/03/2024 08:11:33 AM	15525010	HERROD, FREDERICK	OKL	TF26012	Debt Encumbrance	(\$10.15)	ZTEXD004 - 971			
04/03/2024 08:11:33 AM	15525010	HERROD, FREDERICK	OKL	TF26012	Payroll - IPP	\$50.75	ZIPP0324			\$114.44
04/02/2024 06:09:09 AM	15525010	HERROD, FREDERICK	OKL	amservic	Debt Encumbrance	(\$12.00)	ZTEXD004 - 965			
04/02/2024 06:09:09 AM	15525010	HERROD, FREDERICK	OKL	amservic	Western Union	\$60.00	333324093			\$63.69
04/01/2024 12:10:48 AM	15525010	HERROD, FREDERICK	OKL	AMServic	Debt Encumbrance - Released	\$3.24	ZTEXD004 - 852			
03/12/2024 11:11:36 AM	15525010	HERROD, FREDERICK	OKL	TF26089	Sales - Fingerprint	(\$34.85)	17			\$3.69
03/11/2024 09:10:47 PM	15525010	HERROD, FREDERICK	OKL	TFXTL	TRUL Withdrawal	(\$2.00)	TL0311			\$38.54
03/05/2024 01:20:49 PM	15525010	HERROD, FREDERICK	OKL	TF26012	Debt Encumbrance	(\$3.24)	ZTEXD004 - 852			
03/01/2024 12:10:44 AM	15525010	HERROD, FREDERICK	OKL	TF26012	Payroll - IPP	\$16.24	ZIPP0224			\$40.54
03/04/2024 11:10:50 AM	15525010	HERROD, FREDERICK	OKL	TF26089	Sales - Fingerprint	(\$10.90)	32			\$24.30
03/01/2024 12:10:44 AM	15525010	HERROD, FREDERICK	OKL	AMServic	PLRA Payment	(\$18.80)	ZTEXD004	339		\$35.20

Date: 04/29/2024
Time: 10:13:11 AM

Federal Bureau of Prisons
TRUFACS

View Inmate Transactions
Sensitive But Unclassified

Facility: OKL

Date/Time	Reg#	Inmate Name	Facility	User Id	Transaction Type	Amount	Reference#	Receipt#	Payment#	Balance
03/01/2024 12:10:44 AM	15525010	HERROD, FREDERICK	OKL	AMServic	Debt Encumbrance - Released	\$12.00	ZTEXD004 -			756
03/01/2024 12:10:44 AM	15525010	HERROD, FREDERICK	OKL	AMServic	PLRA - Released	\$6.80	ZTEXD004 -			751
02/27/2024 11:06:02 AM	15525010	HERROD, FREDERICK	OKL	TF26089	Sales - Fingerprint	(\$7.35)				\$54.00
02/21/2024 10:39:07 AM	15525010	HERROD, FREDERICK	OKL	TF26089	Sales - Fingerprint	(\$8.50)				\$61.35
02/13/2024 11:51:26 AM	15525010	HERROD, FREDERICK	OKL	TF26089	Sales - Fingerprint	(\$23.25)				\$69.85
02/11/2024 04:06:39 PM	15525010	HERROD, FREDERICK	OKL	amservic	Debt Encumbrance	(\$12.00)	ZTEXD004 -			756
02/11/2024 04:06:39 PM	15525010	HERROD, FREDERICK	OKL	amservic	Western Union	\$60.00				33324042
02/10/2024 03:18:53 AM	15525010	HERROD, FREDERICK	OKL	Sentry	Transfer - In from TRUFACS	\$33.10				\$33.10
02/10/2024 03:18:53 AM	15525010	HERROD, FREDERICK	OKL	Sentry	PLRA	(\$6.80)	ZTEXD004 -			751

Total Number Transactions: 25

Sales Invoice ---S.B.U.---

Oklahoma City FTC

MAIN

Account No. 15525010 TF25840

HERROD, FREDERICK

04/29/2024 10:43:51 AM TX#6581384 7

BEGINNING BALANCES:

Available Balance is \$38.54

Spending Limit Balance is \$150.05

Account Balance is \$60.69

=====

Qty	Description	Price
1	HOT PICKLES 12/CS	\$0.85
1	COOKIES- PEANUT B	\$0.50
1	REFRIED BEANS 18/	\$1.70
1	GREETING CARDS 6C	\$0.45
	Total	\$3.50

Charge 15525010 \$3.50

Items marked with * are Local Use Only

ENDING BALANCES:

Available Balance is \$35.04

Spending Limit Balance is \$146.55

Account Balance is \$57.19

Fingerprint Verified

Signature

ALL SALES FINAL! HOLDOVER ITEMS ARE NON-
TRANSFABLE

ORIGINAL

No. 23-7378

23-7378

FILED

APR 29 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

FREDERICK HERROD

— PETITIONER

(Your Name)

vs.

MEMBERS OF 79th CONGRESS

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH CIRCUIT COURT OF APPEALS (UNITED STATES)

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FREDERICK HERROD #15525-010

(Your Name)

FTC OKLAHOMA CITY - PO Box 898801

(Address)

OKLAHOMA CITY, OK 73189-8801

(City, State, Zip Code)

(405) 682-4075

(Phone Number)

RECEIVED
MAY - 3 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1) If the Congressional command of Federal Rule of Appellate Procedure 24(a)(5) requires that certain submissions MUST BE INCLUDED with a motion, is a pro se litigant entitled to a liberal construction of the submissions that MUST BE INCLUDED to aid the court in properly adjudicating his motion ?
- 2) Is the NECESSARY AND PROPER clause of Art. 1, sec 8, cl. 18 of the US Constitution considered in the "legitimate legislative sphere" for the purposes of determining the SPEECH AND DEBATE clause's absolute bar to interference ? (as applied to the appellant)
- 3) Are the accepted and usual course of judicial proceedings departed from if the appellant alleged Congress violated the NECESSARY AND PROPER clause of Art. 1, sec 8, cl. 18 of the US Constitution, and a district court fails to determine if Congress is acting within its "legitimate legislative sphere" ?
- 4) As applied to the appellant, is the definition of the "privilege" of habeas corpus, laid down by this court in Boumediene v Bush 553 US 723 HOLDINGS #3(c) apply to the appellant as a citizen of this country as it applies to aliens detained as enemy combatants ?
- 5) As applied to the appellant, can there be two seperate definitions/interpretations of the "privilege" of habeas corpus under one US Constitution ?
- 6) As applied to the appellant, did the subsections of 28 USC 2244(b)(2)(A) and (b)(2)(B)(i)&(ii) make his opportunity for habeas a meaningless opportunity to demonstrate that he was being held pursuant to the erroneous application of relevant law by placing limitations on the erroneous applications of relevant law that could be presented on habeas ?
- 7) As applied to the appellant, did the subsection of 28 USC 2255(e), in which Congress did not define the "inadequate or ineffective" standard, leaving the determination of the definition up to a article 3 judge under 28 USC 2243, make his opportunity for habeas a meaningless opportunity to demonstrate that he was being held pursuant to the erroneous application of relevant law, by primarily requiring proof of a undefined congressional standard that left the

determination up to the discretion of a article 3 judge, before the appellant could receive the "privilege" of habeas corpus ?

8) As applied to the plaintiff, is the DISCRETIONARY POWER in the statutory command of 28 USC 2243 instructing the judge to "dispose of the matter as law and justice require" the same definition of POWER in the Boumediene v Bush 553 US 723 HOLDINGS #3(c) and also the same definition in the Black's Law Dictionary ?

IA.

LIST OF PARTIES

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

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 judgment is the subject of this petition is as follows:

RELATED CASES

- 1) US District Court Eastern Dist of Tx (Texarkana Div.), Docket #5-23-CV-16. FREDERICK HERROD v. MEMBERS OF 79th CONGRESS. Final Judgment entered on 8/1/23.
- 2) US Court of Appeals for the 5th Cir., Docket #23-40481. FREDERICK HERROD v. MEMBERS OF 79th CONGRESS. Final Judgment entered on 2/8/24. Rehearing denied on 3/12/24.

TABLE OF CONTENTS

OPINIONS BELOW.....	5
JURISDICTION.....	6
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	7-7A
STATEMENT OF THE CASE	8-11
REASONS FOR GRANTING THE WRIT	12-19
CONCLUSION.....	20

INDEX TO APPENDICES

APPENDIX A - Dist Court Docket Sheet, ECF DOC #20 leave to file superseding petition - ECF DOC #23 motion for 28 USC 1915(g), ECF DOC #21 28 USC 1331 complaint - ECF DOC #17 magistrate R&R - ECF #24 motion for declaratory relief - ECF #25 Objection to R&R - ECF 27 leave to amend petition - ECF 28 local rule CV-7 motion - ECF 29 leave to amend petition - ECF 30 Motion for Judicial Notice - ECF 31 leave to amend petition - ECF 32 Dist Court Dismissal - ECF 33 Final Judgment - ECF 35 Notice of appeal - ECF 37 Dist Court ORDER - 5th Cir DOC 12 Motion for IFP - 5th Cir DOC 47-1 Appeal Court Denial - 5th Cir DOC 51 Motion for rehearing - 5th Cir DOC 53 APPENDIX B denial of rehearing.

APPENDIX B ECF #21 ^{#24} and ^{#26} ARE ALL 5:23-CV-16 ARKANSAS
All documents are the same in Appendix B except for ECT #21 and ECF #26, ^{#24} ECF #21 and ECF #26 is the 5:23-CV-16 28 USC 1331 Texas Complaint. (Also #24)
Filings are similar because of the consolidated order by other Dist Courts.

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGE NUMBER</u>
Eastland v US Servicemens Fund, 421 US 491 at 502-504 -	9, 12
Gravel v US 408 US at 625 -	9, 12
Felker v Turpin 518 US 651, 663-664 -	9, 18
Jones v Hendrix 599 US <u>465</u> -	9
Zbylut v Red Star Marine Services Inc, 443 F.Supp 921 -	10, 13
Boumediene v. Bush 553 US 723 HOLDINGS #3(c) -	1, 1A, 9, 12, 13, 15, 16, 18
Kilbourn v Thompson 103 US at 204 -	12
Doe v McMillian 412 US at 313 -	13
Grayned v City of Rockford 408 US 104 -	18
US v Davis 204 L.Ed 2d 757 -	18

STATUTES AND RULES

Art. 1, sec 9 cl. 2 of US Constitution -	1, 1A, 9, 10, 12, 13, 15, 16, 17, 18
28 USC 2244 -	1, 9, 16, 15, 17
28 USC 2255 -	1, 10, 15, 16, 17, 18
Fed. R. App. P. 24 -	1, 10, 13, 17
Art. 1, sec 8, cl. 18 of US Constitution -	1, 11, 12, 13, 14, 15, 17, 18
Art. 1, sec 6 of US Constitution -	1, 10, 12, 13, 14, 15, 17
Military Commissions Act 7 -	15
28 USC 2243 -	1, 1A, 16, 17, 18
28 USC 1331 -	8, 9
United States Code Annotated TITLE 28 -	18

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A+B to the petition and is

reported at 2024 US App LEXIS 3001; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix A+B to the petition and is

reported at 2023 US Dist LEXIS 133325; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 2/8/24

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 3/12/24, and a copy of the order denying rehearing appears at Appendix A + B.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1) 28 USC 1331 provides: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, Laws, or Treaties of United States.
- 2) Art. 1, sec. 9, cl. 2 of US Constitution provides: The Privilege of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.
- 3) Art. 6, cl. 1 of US Constitution provides: The Senators and Representatives shall be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.
- 4) Art. 1, sec 8, cl. 18 of US Constitution provides: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.
- 5) 28 USC 2243 (clause 9) provides: The court shall summarily hear and determine the facts and dispose of the matter as law and justice require.
- 6) 28 USC 2255(e) provides that: An application for writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

7) Fed. R. App. Proc 24(a)(5) provides: MOTION IN THE COURT OF APPEALS. A party may file a motion to proceed on appeal informa pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its actions. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1)

8) 28 USC 2244(b)(2)(A) and 2244(b)(2)(B) provide: A claim presented in a second or successive habeas corpus application under 28 USC 2254 that was not presented in a prior application shall be dismissed unless- (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

9) United States Codes Annotated TITLE 28: (this provision involved is too lengthy).

10) Military Commissions Act 7: This provision is non applicable to this case.

STATEMENT OF THE CASE

1. COURSE OF PROCEEDINGS IN THE 28 USC 1331 NON-BIVENS CASE NOW BEFORE THIS COURT.

On 2/14/23, in a cause then pending in the US District Court for the Western Dist. of Arkansas, entitled Frederick Herrod v. The Members of 79th Congress, cause no. 4:23-CV-04014, the pending case was transferred to the US Dist. Court for the Eastern Dist. of Texas (Texarkana). On 3/17/23, in a cause then pending in the US Dist. Court for the Eastern Dist. of Texas (Beaumont), entitled Frederick Herrod v The Members of 79th Congress, cause no. 1:23-CV-63, was transferred to the US Dist. Court for the Eastern Dist. of Texas (Texarkana). Both cases were consolidated into civil action no. 5:23-CV-16. After several superseding amendments the clerk of the court distinguished on the record in ECF DOC #21 that there was in fact a 5:23-CV-16 Arkansas and also a 5:23-CV-16 Texas.

On 8/1/23 the district court entered a final judgment against the plaintiff dismissing the case with prejudice as frivolous and for failure to state a claim upon which relief may be granted. (see ECF DOC #32 and #33)

On 8/14/23 the plaintiff filed a notice of appeal to the district court which was docketed on 8/21/23 and given the case no. 23-40481 in the 5th Cir Court of appeals. On 9/20/23 the district court issued an order stating that the plaintiffs appeal would not be taken in good faith. (ECF DOC #35 and ECF DOC #37)

On 9/21/23 the clerk of the 5th Cir. issued an order stating that the plaintiff could challenge the district court's denial of IFP status. The plaintiff did so on 10/26/23. (see 5th Cir ECF DOC #12)

On 2/8/24 the 5th Cir. denied the motion for leave to proceed IFP and dismissed the appeal as frivolous (see 5th Cir DOC#47-1 Appx A + B). On

2/22/24 the plaintiff filed a petition for rehearing (see 5th Cir DOC #51) and on 3/12/24 the petition for rehearing was denied by the 5th Cir. (see 5th Doc#53 in Appx A + B)

2. THE RELEVANT FACTS SURROUNDING THE JUDGMENT OF PETITIONERS 28 USC 1331 DISPOSITION.

The relevant facts are contained in the appellants complaint (ECF DOC #21, 22, 27, 29, 31, 32, 33, 35, 5th Cir DOC #12, and the 5th Cir denial of appellants IFP and REHEARING)(Appx A + B).

During the review of the appellants complaint in the district court, the district judge said that the appellants claims were without merit when he alleged that the Speech and Debate clause did not bar his claim because Congress acted outside of its "legitimate legislative sphere" (see ECF DOC #32 page 3, Appx A + B). The sentence directly after that contains the judges reasoning that the Boumediene v Bush 553 US 723 HOLDING #3(c) does not apply to the appellant. (the Boumediene HOLDING describes the "privilege" of habeas corpus). However, the appellant at ECF DOC #21 pages 6a - 6c (in both Appendix) gave a detailed description of what the "legitimate legislative sphere" is, and also support it with Supreme Court HOLDINGS that give way to Congress having to answer to claims in court "if the passage or rejection of proposed litigation is not an INTEGRAL part of the deliberative and communicative process" (see Eastland v US Servicemen's Fund, 421 US 491 at 503-504 and also Gravel v US 408 US at 625)

The district court in citing its Order of Dismissal (ECF DOC #32 & 33) adopted the Magistrate R&R (ECF DOC #17) stating that Felker v Turpin 518 US 651, 663-64 was the governing and controlling case for all claims against the Suspension clause under 28 USC 2244 and that Jones v Hendrix 599 US 465

was the governing and controlling case for claims against the Suspension Clause (Art 1, sec 9, cl. 2 of US Constitution) under second and successive 28 USC 2255. (see ECF DOC #17 & #32, Appx A and B)

One important point needs noting here. The 5th Cir. in the denial of the appellants motion for leave to proceed IFP stated that the appellant failed to address the district courts reason for dismissal of his complaint as frivolous and for failure to state a claim on the grounds that the defendants were barred from suit by Congressional Immunity under the Speech and Debate Clause. (see 5th Cir Case no. 23-40481, DOC ~~#47-1~~ page 2). However, in the appellants NOTICE OF APPEAL filed in the district court, the appellant made the argument that congress acted outside of its "legitimate legislative sphere" (see ECF DOC #35 pages 1 & 2). Although there was no case law cited in the NOTICE OF APPEAL, it is WELL UNDERSTOOD that the term "legitimate legislative sphere" comes from the Supreme Court HOLDING which regulate Congressional Immunity. And because the Fed. R. App. Proc 24(a)(5) require that a motion to challenge a district courts IFP ruling INCLUDE a copy of the AFFIDAVIT (notice of appeal), the NOTICE OF APPEAL should have been liberally construed as well and also apart of the argument. (see 5th Cir Doc #51 Appx A and B) Case law supports this position, see Zbylut v Red Star Marine Services Inc, 4443 F.Supp. 921, 1978 US Dist. LEXIS 19793 (SDNY) Rev'd 591 F.2d 1333 (2nd Cir 1978): "Indigent litigants who wish to appeal informa pauperis, are required under Rule 24 to not only show his inability to pay fees and cost, but also "even in halting fashion and with limitations of expression....MUST assert the TRIAL ERRORS he claims were committed"....The 5th Cir took the position that the appellant failed to identify the error in the district courts analysis, and that it was the same as if the appellant had not appealed the decision. (see 5th Cir Case no 23-40481, DOC ~~#47-1~~ - page 2 - Appx A and B) Appellant takes position that argument wasnt construed.

More Importantly, if this court determines that the "legitimate legislative sphere" is in fact the NECESSARY AND PROPER clause of Art. 1, sec 8, cl. 18 of the US Constitution, then the appellants IFF motion in 5th Cir. DOC #12 should be ruled that the appellant DID NOT fail to address the district court's reason for dismissal of his complaint as frivolous and for failure to state a claim on the grounds that the defendants were barred from suit by Congressional Immunity under the Speech and Debate Clause. And also that he DID NOT abandon his claim, because the IFF motion in 5th Cir DOC #12 pages 2 and 5 speaks concretely about the application of the NECESSARY AND PROPER clause.

3. EXISTENCE OF JURISDICTION BELOW

Appellants Civil matter was dismissed with prejudice in the district court for the Eastern Dist of Texas, Texarkana Division. A notice of appeal was appropriately made in that court, and duly appealed to the 5th Cir. Court of Appeals.

REASONS FOR GRANTING THE PETITION

1. THE COURT OF APPEALS SANCTIONED A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY THE DISTRICT COURT.

The Supreme Court may use its supervisory authority to review rules that govern procedure in the US Court of Appeals (that are clear statutory commands by Congress) that may essentially sanction a departure from the accepted and usual course of judicial proceedings by a lower court.

The decision of the 5th Cir in this case holding that the appellant did not challenge the factual or legal aspect that his claim against the defendants was barred by Congressional Immunity, when in fact the appellant pointed ~~out~~ in his NOTICE OF APPEAL (affidavit to Dist Court - ECF DOC #35 pages 1 & 2) that Congress acted outside of its "legitimate legislative sphere" by not making laws that were NECESSARY AND PROPER under article 1, sec 8, cl. 18 of the US Constitution to protect his "privilege" of habeas corpus , sanctioned a departure by the lower court because the Supreme Court HOLDING clearly states: (US Servicemen's Fund 421 US 491, 503-504) "We REAFFIRM that once it is determined that members are acting within the "legitimate legislative sphere" the Speech and Debate Clause is an absolute bar to interference". Therefore, the appellant made the contention that congress was not acting within its "legitimate legislative sphere" because it made laws violating the "privilege" of habeas corpus as applied to the appellant. The appellant was relying on the definition of the "privilege" of habeas corpus that is defined in the Boumediene v Bush HOLDING 553 US 723 #3(c). The definition of "legitimate legislative sphere" in Kilbourn v Thompson 103 US at 204 and Gravel v US 408 US at 625 is: "activities that are an INTEGRAL part of the deliberative and communicative process by which members participate in committee and house proceedings with respect to the consideration of PASSAGE

OR REJECTION OF PROPOSED LEGISLATION..." Doe v McMillian 412 US at 313 makes it clear that "the clause has not extended beyond the "legislative sphere" and legislative acts are not all encompassing". These HOLDINGS all give meaning that the "legitimate legislative sphere" is the deciding factor if the Speech and Debate Clause acts as a bar to interference to Congressional Immunity. With that said, the appellant raised his claim in his NOTICE OF APPEAL (ECF DOC #35, pages 1 & 2) and if the "legitimate legislative sphere" is the deciding factor and the quoted phrase in Supreme Court HOLDINGS, then it is WELL UNDERSTOOD what the "legitimate legislative sphere" is. The appellant takes the strong position that the "legitimate legislative sphere" is the NECESSARY AND PROPER CLAUSE in Art. 1, sec 8, cl. 18 of the US Constitution. And if the appellant is correct then this case should fall on the question of whether or not the petitioner can use the definition of the "privilege" of habeas corpus in Boumediene v Bush 553 US 723 HOLDING #3(c).

Furthermore, the rules that govern the procedure in the US Courts of Appeals may have essentially sanctioned a departure from the accepted and usual course of judicial proceedings by a lower court because, the Appeal Court Judges may have expected Fed. R. App. Proc 24(a)(5) to only consider information from the petitioner contained in the "MOTION IN THE COURT OF APPEALS" itself. Under the entire scope of the rule, the text does not describe what the court will consider, yet it does describe what it must INCLUDE. Therefore, what MUST BE INCLUDED has been SUBMITTED. And what was SUBMITTED under the rule itself "identified the error in the district court's analysis" (see ECF DOC #35 pages 1 & 2) and also "did not fail to challenge any factual or legal aspect of the district's court disposition of his claims or the certification that his appeal was not taken in good faith". (see Zbylut v Red Star Marine Services Inc, 443 F.Supp. 921, 1978 US Dist. LEXIS 19793 (SDNY) Rev'd 591 F.2d 1333 (2nd Cir 1978). Meaning that "he did not abandon

the critical issue of his appeal". (see Petition for Rehearing 5th Cir DOC #51). Also even though the NOTICE OF APPEAL (ECF DOC #35 pages 1 & 2) did not contain or cite case law concerning the "legitimate legislative sphere", ignorance of the law is no excuse, and pro se litigants filings are to be liberally construed. Therefore, all parties included or adjudicating should know what the "legitimate legislative sphere" is.

The decision of the 5th Cir in this case that the appellant failed to identify any error in the district court's analysis and failed to challenge any factual or legal aspect of the district court's disposition that his claim of the certification of his appeal was not taken in good faith, determining that he abandoned the critical issue of his appeal which essentially sanctioned a departure from the accepted and usual course of judicial proceedings by a lower court qualifies for review under that standard.

Because no consideration was taken of the appellants NOTICE OF APPEAL (ECF DOC #35, pages 1 & 2), indeed, the holding of the court below is so clearly wrong that reversal is warranted.. Once again, if this court determines that the "legitimate legislative sphere" is the NECESSARY AND PROPER clause of the US Constitution, then appellants IFP motion in 5th Cir. DOC #12 should be ruled that the appellant DID NOT fail to address the Dist Court's reason for dismissal of his complaint as frivolous and for failure to state a claim on the grounds that the defendants were barred from suit by Congressional Immunity under the Speech & Debate Clause. And also that he DID NOT abandon his claim, because the IFP motion in 5th Cir DOC #12 pages 2 and 5 speak concretely about the application of the NECESSARY & PROPER clause. A lack of review by the 5th Cir. sanctioned a departure from the accepted and usual course of judicial proceedings by a lower court.

2., THE COURT OF APPEALS ERRED IN DECIDING THAT THE APPELLANTS "CRITICAL" AND ONLY ISSUE OF APPEAL WAS CONGRESSIONAL IMMUNITY BEING A BAR TO HIS CLAIM UNDER THE SPEECH AND DEBATE CLAUSE.

The Court of Appeals erred in deciding that the appellants "critical issue" of appeal was only congressional immunity being a bar to his claim under the Speech and Debate Clause, because even though the district judges reason for denial in ECF DOC 33 was adopting the R&R of the Magistrate in ECF DOC #17, the district judge in ECF DOC 32 - page 3 gave the impression that the argument by the appellant about congress acting outside of its "legitimate legislative sphere" had no merit because the Supreme Court HOLDING in Boumediene v Bush 553 US 723 #3(c) defining the "privilege" of habeas corpus did not apply to the appellant based on the fact that the district judge quoted on page 3 that, "The case concerned the Military Commissions Act, not 2255, and did not alter multiple cases holding that 2244 and 2255 do not violate the suspension clause". The sequence of the district judges sentences in ECF DOC #32 page 3 gave the impression that he denied the appellant and dismissed his claim because the Supreme Court HOLDING did not apply to the appellant, therefore congress could not be held liable to make laws that were "NECESSARY AND PROPER" to protect the petitioners "privilege" of habeas corpus. Under this view, judging the sequence of the judge's sentences in ECF DOC #32 page 3, it would show that the court of appeals erred in deciding that the appellants only "critical issue" on appeal was congressional immunity being a bar to his claim under the Speech and Debate Clause.

3. THE COURT OF APPEALS USING REASONING THAT THE APPELLANTS "CRITICAL" AND ONLY ISSUE OF APPEAL WAS CONGRESSIONAL IMMUNITY BEING A BAR TO HIS CLAIM, AND APPELLANT NOT CHALLENGING THAT BAR, AS ABANDONING HIS CLAIM, ERRED BY DETERMINING NOT TO GIVE THIS COURTS DECISION RETROSPECTIVE EFFECT.

The retrospective effect needed by the Supreme Courts decision was that of Boumediene v Bush 553 US 723 HOLDINGS #3(c). The appellant made claims that the congressional statutes of 28 USC 2244(b)(2)(B)(i) and (ii), 28 USC 2255(e) and 28 USC 2243 violated his "privilege" of habeas corpus. The appellant made the contention in his 5th Cir. IFP motion DOC #12 - page 2, that the "privilege" of habeas corpus could not have two separate definitions for citizens of this country and aliens detained as enemy combatants under one US Constitution. Furthermore, the appellant made the distinction that he was not arguing that his habeas rights were being "suspended", but he was arguing that these congressional statutory subsections and statutes violated his "privilege" to habeas corpus, see ECF DOC #35 pages 2, 3 ,4 & 5... By making the decision that the appellant only had one "critical" issue and by not challenging it he abandoned his claim, the appeals court did not review a decision by the lower court and sanctioned a departure from the accepted and usual course of judicial proceedings.

4. THE QUESTIONS RAISED IN THIS PETITION ARE IMPORTANT AND IMPROPERLY RESOLVED BY THE LOWER COURTS.

The 5th Circuit has chosen not to decide the important question of: "is the "legitimate legislative sphere" well understood to be the NECESSARY AND PROPER clause under Art 1, sec 8, cl 18 of the US Constitution" ? And also "do the congressional statutory subsections of 28 USC 2244(b)(2)(B)(i)&(ii) and 28 USC 2255(e) and 28 USC 2243 violate the appellants "privilege" of habeas corpus as defined by the Supreme Court in Boumediene v Bush 553 US 723 HOLDINGS #3(c). The appellant believes these questions have been settled by this court and are a firm basis for granting certiorari in this case:

1) The 5th Cir Court of Appeals made a highly questionable ruling not to liberally construe the appellants filing under a rule of appellate procedure without a "clear statutory command" NOT TO INCLUDE a submission that was REQUIRED to be INCLUDED under the authority of Congress. [see Fed. R. App. P 24(a)(5)]

2) This petition presents to this court a more fundamental question for review - Is the NECESSARY AND PROPER clause of Art 1, sec 8, cl 18 of the US Constitution considered in the "legitimate legislative sphere" for the purposes of determining the Speech and Debate Clause's absolute bar to interference ? (as applied to the appellant). Also as applied to the appellant may this courts decision in Boumediene v Bush 553 US 723 HOLDINGS #3(c), as to what describes the uncontroversial "privilege" of habeas corpus, be used as a sound and non-frivolous argument that the subsections of 28 USC 2244(b)(2)(B)(i)&(ii) violate his "privilege" of habeas corpus because the subsections only provide a "limited opportunity" and not a "meaningful opportunity" to demonstrate that he is being held pursuant to "erroneous application" of relevant law.. (part 2 of this question).. if the above question produces the answer that the petitioners "privilege" of habeas corpus

is a non-frivolous argument, is the above argument distinguishable from being governed by the controlling case FELKER v TURPIN in which ADEPA subsections did not amount to a "suspension" of the writ ? Also, as applied to the appellant, may this courts decision in Boumediene v Bush 553 US 723 HOLDINGS #3(c), as to what describes the uncontroversial "privilege" of habeas corpus be used as a sound and non-frivolous argument that the subsection of 28 USC 2255(e)* (which requires an applicant to first prove that the 2255 motion is "inadequate or ineffective" to test the legality of his detention, without clearly defining what "inadequate or ineffective" is, making the enactments prohibitions not clearly defined, and leaving the determination of what "inadequate or ineffective" is up to an article 3 judge under 28 USC 2243 which instructs the court to "summarily hear and determine the facts and dispose of the matter as law and justice require".) violate his "privilege" of habeas corpus because the subsections do not provide the "basic principle of due process" (see 408 US 104 GRAYNED V CITY OF ROCKFORD HEADNOTE #4 - see also US v DAVIS 204 L.Ed 2d 757 HEADNOTE #1)..(nowhere in the United States Code and particularly TITLE 28 Judiciary and Judicial Procedure - Part 6 Particular Proceedings - CHAPTER 153 HABEAS CORPUS does it give a congressional definition of "inadequate or ineffective") and also only provide a "discretionary opportunity" (under 28 USC 2243) and not a "meaningful opportunity" to demonstrate that he is being held pursuant to erroneous application of relevant law ? . (* also 28 USC 2243 - footnote for above)

Finally, are the accepted and usual course of judicial proceedings departed from if the appellant (as applied to the appellant) alleges that congress did not abide by the NECESSARY AND PROPER clause (Art 1, sec 8, cl 18 of US Constitution) when enacting law into legislation that did not protect and violated appellants "privilege" of habeas corpus, and request that congressional immunity be removed, so that a suit may commence (and congress

may be held liable), and if a court of law fails to properly determine whether the activities (or laws enacted) are an "INTEGRAL" (Webster's definition is ESSENTIAL and ESSENTIAL means BASIC or NECESSARY as in NECESSARY and PROPER clause) part of the deliberative and communicative process by which members participate in committee and house proceedings with respect to the consideration of PASSAGE or REJECTION of PROPOSED LITIGATION, so that it may be decided if congress is acting within its "legitimate legislative sphere"?

The decision of the 5th Cir is sufficiently unusual that it is important that this court review the petitioners case on certiorari to explain these principles in hopes that the appellant will receive a reversal and remand with instructions from this court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Date: 4/29/24