

24-5204

ORIGINAL

No. \_\_\_\_\_

FILED  
JUL 18 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

In The  
Supreme Court of the United States



GAVIN B. DAVIS,  
Petitioner,

v.

UNITED STATES,  
Respondent.



On Petition for a Writ of Certiorari to the  
United States Court of Appeals,  
Fifth Circuit Court



MOTION FOR LEAVE TO PROCEED IFP



GAVIN B. DAVIS, Pro Per  
*Petitioner & Federalist*  
KCDF  
810 Commerce Street  
Karnes City, TX 78118

## INTRODUCTION

Petitioner, Mr. Gavin B. Davis, brings this Motion for Leave to Proceed In Forma Pauperis (“IFP”), on direct appeal from the Fifth Circuit judgment in case no.: 23-50812, a 28 U.S.C. § 1291 interlocutory appeal of a district court’s<sup>1</sup> denial<sup>2</sup> of Petitioner’s pretrial 18 U.S.C.

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<sup>1</sup> *U.S. v. Davis*, USDC WD TX, SA-22-cr-219-FB-HJB (“22-219”) (Defendant was detained on May 10, 2022 and charged with: (a) three (3) counts of 18 U.S.C. §§ 2261 (A)(2)(B) (Cyberstalking) which indicate that the Defendant caused his three (3) fraternity brothers from Cornell University “substantial emotional distress; and, (b) one (1) count of 18 U.S.C. § 875 (c) (Interstate communication threat to injure; stemming from one brief phone call on Dec. 24, 2020, or twenty-nine months prior to being charged) (see Indictment, 22-219, Dkt. 3). The three (3) alleged victim witnesses and the Defendant are graduates of Cornell University; have been employed in Hotel Real Estate (asset brokerage, structured financing, development, private equity) and have maintained professional and personal relationships with each other for over twenty (20) years. Further, the three (3) alleged victim witnesses live thousands of miles away from the Defendant (California, Colorado and Utah). There is no mandatory minimum sentence for the criminal allegations (Counts 1-4); which is indicative that such crimes are not so serious as to deny pretrial liberty. These are not crimes where an accused is normally denied their Constitutional right to pretrial liberty.

<sup>2</sup> See e.g. 22-219, Dkt. 148, Nov. 1, 2023 Transcript at pg. 4, ln 11-12, 13-18; at pg. 5, ln 4-14; see also, Petitioner’s Notice of Appeal, 22-219, Dkt. 149, Nov. 9, 2023

§ 3164 Motion for Release<sup>3</sup>, declining jurisdiction on Feb. 7, 2024<sup>4</sup> and FRAP 40 Rehearing on Feb. 21, 2024.<sup>5</sup>

Petitioner asks leave to file: the accompanying Petition for a Writ of Certiorari; an Application to Recall the Mandate (Rule 22); a Motion to Appoint Counsel (Rule 21); without prepayment of costs and to proceed in forma pauperis (Rule 39).

Petitioner has recently been granted leave to proceed in forma pauperis in directly related: (i) Fifth Circuit case no.: 23-50812<sup>6</sup>; as

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<sup>3</sup> See e.g. 22-219, Petitioner's 18 U.S.C. § 3164 Motion for pretrial Release, Dkt. 139

<sup>4</sup> 5<sup>th</sup> Cir., 23-50812, Opinion, ECF 93

<sup>5</sup> 5<sup>th</sup> Cir., 23-50812, ECF 100

<sup>6</sup> The Fifth Circuit has Noted that the Petitioner is "proceeding IFP in 23-50812" and that CJA counsel initially granted. (Rule 39.1)(see 23-50812 docket; Petitioner does not have docket access) In order for the Fifth Circuit to have GRANTED IFP status in 23-50812, Petitioner had to provide the Fifth Circuit Court with the requisite documentation as noted under SCOTUS Rule 39. However, as the Fifth Circuit Court errored in not reaching the merits of Petitioner's movement in 23-50812, declining jurisdiction: Petitioner's FRAP 9 Motion for Release and Motion to Appoint Counsel (see also, Fifth Circuit Court's CJA Plan (2023), Section 5) were not heard. Petitioner has submitted a contemporaneous

well, as in (ii) USDC WD TX, 22-219-FB-HJB.<sup>7,8</sup>

Also, recently on Apr. 16, 2024, Petitioner, as Plaintiff, in *Davis v. Global Tel\*Links Corporation* (“GTL”), USDC WD TX, 24-cv-284-FB-RFB, was GRANTED IFP status and the defendant was ordered to answer the 24-284 complaint and allegations of violating the

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Motion to Appoint Counsel (Rule 21) to the Supreme Court.

<sup>7</sup> On Sep. 5, 2023, Petitioner entered [a] *Farettta* waiver “as his sole mechanism of defense; without doing so, there may likely have been little contemporaneous evidence for the [Petitioner] to rely upon in relation to counsel Locke, now a non-advocate and bona fide opponent”.

<sup>8</sup> Subsequent to moving in propria persona on Sep. 5, 2023 in 22-219, Petitioner took the exact steps related to seeking his pretrial liberty that he timely requested that each of the prior four (4) defense attorneys take and was GRANTED conditional release; though, on terms and conditions that the Applicant views as punitive, oppressive and unlawful, *prima facie*. Such terms and conditions of the Dec. 6, 2023 Release Order collectively constitute, in no uncertain terms, a “virtual prison” (None of the proposed terms and conditions on form AO199B of the Dec. 6, 2023 Release Order: are (i) related to a (a) legitimate government interest; or, separately (b) justified as such; (ii) if potentially having legitimate purpose, are the least restrictive and most flexible respective term or condition as there are, in each instance, a multitude of less restrictive more flexible alternatives means and (iii) such ready alternatives have *deminimus* costs, respectively).

Federal Communications Act (FCA) and the Sherman Act.

In *Pothier v. Rodman*, 261 U.S. 307, 309; further, “we think an affidavit is sufficient which states that one cannot because of his poverty “pay or give security for the costs .. and still be able to provide” himself and dependents “with the necessities of life”. This, generally, relates to IFP status in federal civil litigation; but is relevant and should be sufficient on its own; or together with reliance upon the IFP status in the directly related underlying proceedings.

#### **PETITIONER’S AFFIDAVIT**

Petitioner, Mr. Gavin B. Davis, notes that he was provided an attorney due to indigence in the ongoing trial proceeding, USDC WD TX, 22-cr-219-FB-HJB; and, that there have been no positive changes to the Petitioner’s financial

status since his continued detention<sup>9</sup> dating to May 10, 2022. Petitioner cannot, because of his poverty, pay or give security for the costs of this appeal and still be able to provide himself and dependents with the necessities of life.

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<sup>9</sup> Petitioner is rated by U.S. Pretrial Services as a “Low” risk. The 22-219 allegations (Counts 1-4, Indictment, Dkt. 3) carry no minimum sentence and a five-year maximum – the manner in which the Petitioner’s Constitutional rights have been egregiously violated in taking him into custody should be extraordinarily shocking to any person interested in Constitutional Law. Also, Petitioner puts forth that: none of the four (4) 22-219 criminal allegations in the Indictment (Dkt. 3) fall under 18 U.S.C. § 3142 (e)(3) – and therefore, (A) the Petitioner cannot be legally detained; and, (B) separately, the current detention is, in fact, unlawful; and, (ii) none of the requisite six (6) conditions of 18 U.S.C. §§ 3142 (f)(1) or (2) are present; and, therefore, the Detention Order of May 20, 2022 must be timely Vacated (see e.g. *U.S. v. LaLonde*, 246 F. Supp. 2d 873 (S.D. Ohio 2003); “the magistrate’s detention order was vacated, as the statute did not permit the detention of the defendant who did not satisfy any of the conditions of a subsection of the statute regardless of his dangerousness to the community or to specific others” (LEXIS case overview). There is something incredibly wrong with this case and controversy – where – Petitioner’s Constitutional rights have been violated in multiple capacities (e.g. pretrial liberty; counsel as to that which is guaranteed under the Sixth Amendment; Due Process)

DECLARATIONS MADE UNDER PENALTY  
OF PERJURY

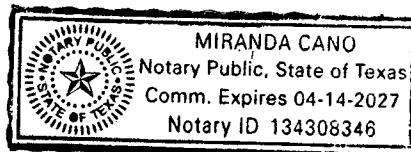
All matters herein by the Petitioner are so declared under penalty of perjury as true and correct to the best of my knowledge and so declared as true and correct under penalty of perjury pursuant to 28 U.S.C. § 1746.

Mr. Gavin B. Davis, Individually

Petitioner

DATE:

7/9/24 11:24 CT



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

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

*(b) detained since May 10, 2022*

<b>Employer</b>	<b>Address</b>	<b>Dates of Employment</b>	<b>Gross monthly pay</b>
_____	_____	_____	\$_____
_____	_____	_____	\$_____
_____	_____	_____	\$_____

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.)

<b>Employer</b>	<b>Address</b>	<b>Dates of Employment</b>	<b>Gross monthly pay</b>
<i>N/A</i>	_____	_____	\$_____
_____	_____	_____	\$_____
_____	_____	_____	\$_____

4. How much cash do you and your spouse have? \$ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

<b>Type of account (e.g., checking or savings)</b>	<b>Amount you have</b>	<b>Amount your spouse has</b>
<i>X</i>	\$_____	\$_____
_____	\$_____	\$_____
_____	\$_____	\$_____

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

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

<b>Person owing you or your spouse money</b>	<b>Amount owed to you</b>	<b>Amount owed to your spouse</b>
<u>Unknown</u>	\$ <u>Unknown</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").

<b>Name</b>	<b>Relationship</b>	<b>Age</b>
<u>None</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.

	<b>You</b>	<b>Your spouse</b>
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>0</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>0</u>	\$ _____
Home maintenance (repairs and upkeep)	\$ <u>0</u>	\$ _____
Food	\$ <u>0</u>	\$ _____
Clothing	\$ <u>0</u>	\$ _____
Laundry and dry-cleaning	\$ <u>0</u>	\$ _____
Medical and dental expenses	\$ <u>0</u>	\$ _____

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

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.

Subsequent to being left destitute, the California and federal court systems have totally failed me. I look forward to returning to work. I have had a horrendous experience with the court system – which appears to be inaccessible to a lay person.

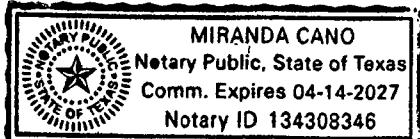
I declare under penalty of perjury that the foregoing is true and correct.

Executed on:

May 3, 20 24  
July 9, 2024

Gavin B. Davis

(Signature)



mca 7/9/24