

---

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

**IN THE SUPREME COURT OF THE UNITED STATES**

---

**DEREK ROGERS,**

Petitioner,

v.

**UNITED STATES OF AMERICA,**

Respondent.

---

**MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

---

Petitioner, Derek Rogers, through undersigned counsel, moves pursuant to Supreme Court Rule 39.1 for leave to proceed *in forma pauperis* in his concurrently filed Petition for Writ of Certiorari. Mr. Rogers is indigent and has been appointed counsel in federal court previously.

As to his federal proceedings, the United States District Court for the Southern District of Iowa issued an order appointing counsel pursuant to 18 U.S.C. § 3599. *See* attached Docket Report for Southern District of Iowa Case no. 4:22-cv-00208, at Appendix A. Undersigned counsel likewise represented the Petitioner in the Eighth Circuit Court of Appeals pursuant to 18 U.S.C. § 3599. No appointment order was issued in that matter as Petitioner's Application for Certificate of Appealability was denied in Eighth Circuit Court of Appeals Case no. 24-3125. *See* Order Denying Certificate of Appealability and Dismissing Appeal, at Appendix B.

Petitioner's Petition for Rehearing and Hearing En Banc was denied on February 3, 2025. *See Order Denying Petition for Rehearing and Hearing En Banc*, at Appendix C.

Undersigned counsel hereby certifies that Mr. Rogers remains indigent. Mr. Rogers requests that this Court allow him to proceed *in forma pauperis*.

Respectfully submitted,

/s/ Nicholas A. Bailey  
Nicholas A. Bailey (AT0010682)  
BAILEY LAW FIRM, P.L.L.C.  
203 1<sup>st</sup> Avenue South, Suite A  
Altoona, IA 50009  
Phone: (515) 422-4331  
Fax: (888) 965-9614  
Email: [nbaileylaw@gmail.com](mailto:nbaileylaw@gmail.com)

*Counsel for Appellant*

## APPENDIX A

**U.S. District Court**  
**Southern District of Iowa (Central)**  
**CIVIL DOCKET FOR CASE #: 4:22-cv-00208-RGE**

Rogers v. United States of America  
Assigned to: Judge Rebecca Goodgame Ebinger  
related Case: [4:20-cr-00016-RGE-CFB-1](#)  
Case in other court: 8th CCA, 24-03125  
Cause: 28:2255 Motion to Vacate / Correct Illegal Sentence

Date Filed: 06/27/2022  
Date Terminated: 10/07/2024  
Jury Demand: None  
Nature of Suit: 510 Prisoner: Vacate Sentence  
Jurisdiction: U.S. Government Defendant

**Petitioner****Derek Rogers**

represented by **Nicholas A. Bailey**  
BAILEY LAW FIRM, PLLC  
203 1ST AVENUE SOUTH  
SUITE A  
ALTOONA, IA 50009  
515-422-4331  
Fax: 888-965-9614  
Email: [nbaileylaw@gmail.com](mailto:nbaileylaw@gmail.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: CJA Appointment*

V.

**Respondent****United States of America**

represented by **Kristin M. Herrera**  
UNITED STATES ATTORNEY'S OFFICE  
- DSM  
210 WALNUT STREET  
SUITE 455  
DES MOINES, IA 50309  
515-473-9300  
Email: [kristin.herrera@usdoj.gov](mailto:kristin.herrera@usdoj.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Government - Federal*

V.

**Interested Party****Dennis McKelvie**

represented by **Dennis E. McKelvie**  
MCKELVIE LAW OFFICE  
PO BOX 213  
GRINNELL, IA 50112  
641-821-0512  
Fax: 641 236 8449  
Email: [dsmckel@gmail.com](mailto:dsmckel@gmail.com)

*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED  
Designation: Retained*

Date Filed	#	Docket Text
02/11/2025	<a href="#">27</a>	MANDATE of USCA as to <a href="#">20</a> Notice of Appeal filed by Derek Rogers, <a href="#">21</a> Notice of Appeal filed by Derek Rogers. (vr) (Entered: 02/11/2025)
02/04/2025	<a href="#">26</a>	ORDER of USCA as to <a href="#">20</a> Notice of Appeal filed by Derek Rogers, <a href="#">21</a> Notice of Appeal filed by Derek Rogers. (vr) (Entered: 02/04/2025)
11/20/2024	<a href="#">25</a>	JUDGMENT of USCA advising certificate of appealability is denied and the appeal is dismissed as to <a href="#">20</a> Notice of Appeal filed by Derek Rogers, <a href="#">21</a> Notice of Appeal filed by Derek Rogers. Mandate to issue in 45 days. (Attachments: # <a href="#">1</a> Cover Letter) (vr) (Entered: 11/20/2024)
10/23/2024	<a href="#">24</a>	ORDER of USCA to submit documents as to <a href="#">20</a> Notice of Appeal filed by Derek Rogers, <a href="#">21</a> Notice of Appeal filed by Derek Rogers. (vr) (Entered: 10/23/2024)
10/23/2024	<a href="#">23</a>	USCA Case Number 24-3125 for <a href="#">20</a> Notice of Appeal filed by Derek Rogers, <a href="#">21</a> Notice of Appeal filed by Derek Rogers. (vr) (Entered: 10/23/2024)
10/21/2024	<a href="#">22</a>	NOTIFICATION OF APPEAL and NOA Supplement by District Court Clerk to USCA re <a href="#">20</a> Notice of Appeal, <a href="#">21</a> Notice of Appeal filed on 10/17/2024. (vr) (Entered: 10/21/2024)
10/17/2024	<a href="#">21</a>	*** SUPPLEMENT *** NOTICE OF APPEAL by Derek Rogers. (Bailey, Nicholas) Modified on 10/18/2024 - linked to <a href="#">20</a> (nla). (Entered: 10/17/2024)
10/17/2024	<a href="#">20</a>	NOTICE OF APPEAL as to <a href="#">18</a> Order by Derek Rogers. (Bailey, Nicholas) Modified on 10/18/2024 - linked to <a href="#">19</a> (nla). (Entered: 10/17/2024)
10/07/2024	<a href="#">19</a>	JUDGMENT in favor of United States of America against Derek Rogers. Signed by Clerk John S. Courter on 10/7/2024. (btg) (Entered: 10/07/2024)
10/04/2024	<a href="#">18</a>	ORDER Denying <a href="#">1</a> Motion to Vacate/Set Aside/Correct Sentence (2255) filed by Derek Rogers. See order for particulars. Signed by Judge Rebecca Goodgame Ebinger on 10/4/2024. (h) (Entered: 10/04/2024)
08/07/2024	<a href="#">17</a>	TRANSCRIPT of Proceedings re <a href="#">10</a> Writ Hearing held on 2/21/2024 before Judge Rebecca Goodgame Ebinger. Court Reporter/Transcriber: Shirley Ann Hall, Telephone Number: 515-284-6392. Page No(s).: 1-39. Transcript may be viewed at court public terminal or purchased through Court Reporter before deadline for Release of Transcript Restriction. After that date it may be obtained through court reporter, Clerk's Office, or PACER.. Redaction Request due 9/3/2024. Redacted Transcript Deadline set for 9/12/2024. Release of Transcript Restriction set for 11/8/2024. (mjd) (Entered: 08/07/2024)
04/08/2024	<a href="#">16</a>	BRIEF by Derek Rogers ***re <a href="#">10</a> *** re <a href="#">13</a> Brief/Other . (Bailey, Nicholas) Modified on 4/9/2024 (sml). (Entered: 04/08/2024)
04/02/2024	<a href="#">15</a>	TEXT ORDER Granting <a href="#">14</a> Motion for Extension of Time to File Petitioner's Post-Hearing Brief. Signed by Judge Rebecca Goodgame Ebinger on 4/2/2024. (h) (Entered: 04/02/2024)
04/02/2024	<a href="#">14</a>	MOTION for Extension of Time to File <i>Post Trial Reply Brief</i> by Derek Rogers. Responses due by 4/16/2024. (Bailey, Nicholas) (Entered: 04/02/2024)

03/27/2024	<a href="#">13</a>	BRIEF Post-Hearing Brief by United States of America re 11 Order, . (Herrera, Kristin) (Entered: 03/27/2024)
03/08/2024	<a href="#">12</a>	BRIEF by Derek Rogers . (Bailey, Nicholas) (Entered: 03/08/2024)
02/21/2024	11	TEXT ORDER SETTING POST-TRIAL BRIEFING SCHEUDLE: Petitioner's post-trial brief shall be filed on or before March 8, 2024. Respondent shall respond on or before March 27, 2024. Petitioner's reply, if any, shall be filed on or before April 3, 2024. Signed by Judge Rebecca Goodgame Ebinger on 2/21/2024. (mm) (Entered: 02/21/2024)
02/21/2024	<a href="#">10</a>	Minute Entry for proceedings held before Judge Rebecca Goodgame Ebinger: Evidentiary Hearing held on 2/21/2024. (Court Reporter Chelsey Wheeler.) (Attachments: # <a href="#">1</a> Witness List) (mm) (Entered: 02/21/2024)
02/15/2024	9	TEXT ORDER Updating Location of Hearing re <a href="#">1</a> Motion to Vacate/Set Aside/Correct Sentence (2255) filed by Derek Rogers. The Writ Hearing set for 2/21/2024 at 9:00 AM will be held in Des Moines - Room 265 - 2nd Floor before Judge Rebecca Goodgame Ebinger. This is a change to the courtroom only. Signed by Judge Rebecca Goodgame Ebinger on 2/15/2024. (kjs) (Entered: 02/15/2024)
01/03/2024	<a href="#">8</a>	NOTICE of Appearance by Nicholas A. Bailey on behalf of Derek Rogers (Bailey, Nicholas) (Entered: 01/03/2024)
12/22/2023		***CJA Attorney Appointment accepted by Attorney Nicholas A. Bailey for Derek Rogers. (mrc) (Entered: 12/22/2023)
12/18/2023	<a href="#">7</a>	ORDER Setting Hearing Re: <a href="#">1</a> Motion to Vacate/Set Aside/Correct Sentence (2255) filed by Derek Rogers. Hearing is set for 2/21/2024 at 09:00 AM in Des Moines - Room 160-1st Floor North before Judge Rebecca Goodgame Ebinger. See order for particulars. Signed by Judge Rebecca Goodgame Ebinger on 12/18/2023. Copy of order mailed by chambers to petitioner. (h) (Entered: 12/18/2023)
02/10/2023	<a href="#">6</a>	REPLY by Derek Rogers re <a href="#">1</a> Motion to Vacate/Set Aside/Correct Sentence (2255). (kjw) (Entered: 02/10/2023)
01/12/2023	<a href="#">5</a>	RESPONSE to 2255 Motion to Vacate by Kristin M. Herrera on behalf of United States of America. (Herrera, Kristin) (Entered: 01/12/2023)
11/29/2022	<a href="#">4</a>	AFFIDAVIT of re <a href="#">3</a> Initial Review Order <i>Response Affidavit</i> by Dennis McKelvie. (McKelvie, Dennis) (Entered: 11/29/2022)
10/31/2022	<a href="#">3</a>	INITIAL REVIEW ORDER. See order for particulars. Signed by Judge Rebecca Goodgame Ebinger on 10/31/2022. Copy of order mailed by chambers to movant. (h) (Entered: 10/31/2022)
07/11/2022	<a href="#">2</a>	NOTICE of Appearance by Kristin M. Herrera on behalf of United States of America (Herrera, Kristin) (Entered: 07/11/2022)
06/27/2022	<a href="#">1</a>	MOTION to Vacate, Set Aside or Correct Sentence (2255), filed by Derek Rogers. (Attachments: # <a href="#">1</a> Memorandum in Support) (don) (Entered: 06/27/2022)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
05/04/2025 22:01:32			
PACER Login:	baileyna	Client Code:	Rogers

<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	4:22-cv-00208-RGE Start date: 1/1/1980 End date: 5/5/2025
<b>Billable Pages:</b>	3	<b>Cost:</b>	0.30

## APPENDIX B

**United States Court of Appeals**

***For The Eighth Circuit***

Thomas F. Eagleton U.S. Courthouse  
111 South 10th Street, Room 24.329

**St. Louis, Missouri 63102**

**Maureen W. Gornik**  
*Acting Clerk of Court*

**VOICE (314) 244-2400**

**FAX (314) 244-2780**

**[www.ca8.uscourts.gov](http://www.ca8.uscourts.gov)**

November 19, 2024

Derek Rogers  
FEDERAL CORRECTIONAL INSTITUTION  
37631-054  
9595 W. Quincy Avenue  
Littleton, CO 80123-0000

RE: 24-3125 Derek Rogers v. United States

Dear Derek Rogers:

Enclosed is a copy of the dispositive order entered today in the referenced case.

Please review [Federal Rules of Appellate Procedure](#) and the [Eighth Circuit Rules](#) on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing must be received by the clerk's office within the time set by FRAP 40 in cases where the United States or an officer or agency thereof is a party (within 45 days of entry of judgment). Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. Except as provided by Rule 25(a)(2)(iii) of the Federal Rules of Appellate Procedure, pro se petitions for rehearing are not afforded a grace period for mailing and are subject to being denied if not timely received.

Maureen W. Gornik  
Acting Clerk of Court

AMT

Enclosure(s)

cc: Nicholas Alan Bailey  
Clerk, U.S. District Court, Southern Iowa  
Kristin Herrera

District Court/Agency Case Number(s): 4:22-cv-00208-RGE

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

---

No: 24-3125

---

Derek Rogers

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

---

Appeal from U.S. District Court for the Southern District of Iowa - Central  
(4:22-cv-00208-RGE)

---

**JUDGMENT**

Before BENTON, ERICKSON, and KOBES, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

November 19, 2024

Order Entered at the Direction of the Court:  
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

---

/s/ Maureen W. Gornik

## APPENDIX C

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No: 24-3125

Derek Rogers

Appellant

v.

United States of America

Appellee

---

Appeal from U.S. District Court for the Southern District of Iowa - Central  
(4:22-cv-00208-RGE)

---

**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

February 03, 2025

Order Entered at the Direction of the Court:  
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

---

/s/ Maureen W. Gornik

---

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

---

**IN THE SUPREME COURT OF THE UNITED STATES**

---

**DEREK ROGERS,**

Petitioner,

v.

**UNITED STATES OF AMERICA,**

Respondent.

---

**CERTIFICATE OF SERVICE**

---

Pursuant to Supreme Court Rule 29(5)(b), I certify that a copy of the Motion for Leave to Proceed *In Forma Pauperis* was sent via 1st Class Mail to the U.S. Supreme Court and counsel for the Respondent on May 5, 2025. A copy of the Motion was also sent to counsel for the Respondent by electronic mail on May 5, 2025. Respondent counsel's name, address, and telephone number are set forth below:

Kristin M. Herrera  
United States Attorney's Office  
210 Walnut Street  
Suite 455  
Des Moines, Iowa 50309  
515-473-9300  
Email: kristin.herrera@usdoj.gov

Respectfully submitted,

/s/ Nicholas A. Bailey

Nicholas A. Bailey (AT0010682)  
BAILEY LAW FIRM, P.L.L.C.  
203 1<sup>st</sup> Avenue South, Suite A  
Altoona, IA 50009  
Phone: (515) 422-4331  
Fax: (888) 965-9614  
Email: [nbaileylaw@gmail.com](mailto:nbaileylaw@gmail.com)

*Counsel for Appellant*