No. _____

In The
Supreme Court of the United States

♦

GAVIN B. DAVIS,

Applicant,

v.

UNITED STATES,

Respondent.

♦

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

♦

RULE 22 APPLICATION FOR AN EXTENSION OF TIME

♦

Gavin B. Davis, Pro Per (#00197510)
Applicant
6245 Waldon Walk
San Antonio, TX 78261

QUESTION PRESENTED

If an attorney opens an interlocutory appeal from a release order, or a decision denying revocation or amendment of such release order (18 U.S.C. § 3145 (c); 18 U.S.C. § 3147, ¶ 3); and thereafter fails, or refuses upon express request, to file a brief (FRAP 9, and/or FRAP 28) into such appeal and subsequently such is dismissed for failure to prosecute, in the interests of justice and given the liberty interests at hand, a core tenet of our civil rights, should a circuit court liberally allow such appeal to be reinstated by a self-litigant and to avail all due process?

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PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b)(i), the Parties as follow:

Applicant, Mr. Gavin B. Davis, is an individual that is presently a resident of the State of Texas and a citizen of the United States of America. He holds a Bachelor of Science degree from Cornell University. Applicant was unlawfully detained from May 10, 2022 to Dec. 6, 2023[1]; ultimately, being released on Sep. 10,

[1] On Sep. 5, 2024, subsequent to modification of the terms and conditions of pretrial release, the District Court acknowledges the unlawful detainment of the Applicant to prior counsel John F. Carroll in its colloquy, "Mr. Carroll, you pointed out, it's been 28 months, and we could have done this 27 months ago." (22-219, Transcript, Dkt. 286, pg. 24, ln 14-15). Applicant was fully entitled to his timely release in May 2022 pursuant to 18 U.S.C. § 3142 (b); or, in the alternative, 18 U.S.C. § 3142 (c)(1)(B). Note: according to uscourts.gov, caseload statistics data tables, for the most recent 12-mo reporting period ending Sep. 30, 2024, Table H-3, indicates that the Department of Justice in the Western District of Texas seeks to detain approximately 19-out-of-20 persons, approximately 4.66x as punitive as the United States in aggregate and the most punitive district in the United States across 93 districts. (The Bail Reform Act carefully limits the circumstances under which detention may be sought to the most serious crimes (*U.S. v. Salerno*, 481 U.S. 739, 747, 107 S. Ct. 2095 95 L. Ed. 2d 697 (1987)). Courts should rarely detain defendants charged with non-capital offenses; doubts regarding propriety of release should be resolved in favor of the defendant. (*U.S. v. Townsend*, 897 F. 2d. 989 (9th Cir. 1990)). The juxtaposition of historic and precedential case law, such as *Salerno*, with the government's own particular data lay bare what is actually occurring in the United States of America by the Department of Justice in aggressively and punitively seeking pretrial detention far in excess of reason and law. (cf. *U.S. v. Bigelow*, 544 F.2d 904 (6th Cir. 1976), *Carbo v. United States, supra, United States v. Gilbert, supra.* As Mr. Justice Douglas was careful to emphasize, "Denial of bail should not be used as an indirect way of making a man shoulder a sentence for unproved crimes." 82 S.Ct. at 667. Application for review of order denied. *Carbo v. United States*, 369 U.S. 868, 82 S.Ct. 1137, 8 L.Ed.2d 274 (1962). In *Stack v. Boyle*, 342 U.S. 1, 4, 72 S.Ct. 1, 3, 96 L.Ed. 3 (1951), the Supreme Court said: From the passage of the Judiciary Act of 1789, 1 Stat. 73, 91, to the present Federal Rules of Criminal Procedure, Rule 46(a)(1), federal law has unequivocally provided that a person arrested for a non-capital offense shall be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. See *Hudson v. Parker*, 156 U.S. 277, 285, 15 S.Ct. 450, 453, 39 L.Ed. 424 (1895). Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.) Presuming one is actually provided the effective assistance of counsel as to that with which is guaranteed under the Sixth Amendment, only then thereafter, if the Constitutional safeguards of Due Process, each of procedurally and substantively, as set forth under the Fifth Amendment and statutorily, are upheld, does an accused have any chance of avoiding injustice, harm and injury that invariably coincide with either revocation of one's liberty or substantial curtailment thereof. Initiatives and efforts such as those of the Institute to End Mass Incarceration Clinic, a research and advocacy program at Harvard Law School; or the End Mass Incarceration initiative of the Brennan Center for Justice, a nonpartisan law and policy institute that works with the New York University Law School, exist at our nation's most prestigious universities for the precise reasons as brought forth in the Applicant's cross-action against the United States of America—where persons under color of power, ascribed and misused, continue to egregiously violate an individual's Constitutional and fundamental rights, prima facie.

2024, for allegedly causing three of his fraternity brethren[2] "substantial emotional distress"[3]. Applicant was once again detained by U.S. Pretrial Services on Oct. 24,

[2] Applicant has civil litigation against one or more of the fraternity members, which was dismissed forum non-convens (*Davis v. Adler et. al.*, USDC SD Cal, 19-834); while the defendants therein, do not deny the facts, factual allegations or claims; itself, evidentiary, and held as circumstantial and constructive to additional claims of Deceit, Fraud, Fraudulent Deceit and otherwise. (as the Supreme Court explained more than 60 years ago in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), res judicata does not bar a suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions; and, whereby the continued direct and/or indirect actions by the defendants, such as those giving rise to USDC WD TX, 22-219, are precisely such worsening of conditions) (compare, for instance, the instant controversy; and, a reasonable response to potentially irritating contact / outreach: whereby, Applicant previously had a civil protective order against him in the Superior Court of California, Los Angeles County, case no.: 18STRO8633, which was (i) fully abided by and also (ii) expired and was not renewed (upon Applicant's movement, the District Court took Judicial Notice of 18STRO8633 on Feb. 19, 2025). On Dec. 4, 2018, Mr. Jason M. Adler (Hollywood, CA) sought a CIVIL Temporary Restraining Order of Mr. Davis. A hearing was set for Dec. 26, 2018, and Mr. Davis could not attend because he was in Texas for the winter holidays. Mr. Adler's Declaration states, "Ultimately I have refrained from issuing an RO b/c I was afraid of "kicking the hornets nest" and essentially riling him up. I figured if I ignored his emails and beat him in court (which I did) it would eventually end. Well it hasn't And I worry that giving him notice of a RO would give him the ability to dodge service, and possibly infuriate him to the point where he could become a threat." Mr. Adler's Declaration is evidentiary in multiple capacities including but not limited to: (i) acknowledging ignoring emails; (ii) is civil in nature; (iii) acknowledges that Mr. Davis is not actually a threat. As it relates to the underlying District Court case against the Applicant, USDC WD TX, 22-219, all that was necessary, were reasonable actions by either the alleged victim witnesses or the Department of Justice and Federal Bureau of Investigation. Applicant's first Notice, as unreasonable, and alleged as, separately, unlawful and in violation of Applicant's rights in one or more capacities, was the May 2022 22-219 indictment—in turn, leading to his unlawful detention of, initially, 28 months.

[3] In its case, 22-219, the Department of Justice has presented no evidence, whatsoever, as to the alleged "substantial emotional distress" caused to the three (3) alleged victim witnesses (e.g. evidence of psychological / counseling required; an increase in the amount of Tissues purchased while the alleged victim witnesses, curled up in the fetal position, cry themselves to sleep at night; etc.) (should 22-219 reach trial, Applicant fully expects the Department of Justice to produce witnesses with passive aggressive behaviors and training in theatre arts, such as each of Mr. Jason M. Adler and alleged victim witness P.M.) Also, as pertinent, the Department of Justice is willfully withholding discovery (see e.g. 22-219, Jun. 13, 2024 Transcript, Dkt. 245, pg. 33, ln 16-24, prosecutor Bettina Richardson, "Here's one of my concerns about that and one of the reasons that the government has held those until closer in time, is because they involve the relationship between the defendant and the fraternity brothers. I don't want to pour gasoline on the fire because there is a pending release order that he could -- he could comply with. And if he does, I'm nervous about turning over those materials to [prior defense counsel] Mr. Moore, that if Mr. Moore copies them and gives them to Mr. Davis, that then he's going to retaliate.") (see e.g. 18 U.S.C. § 3142 (j)) ("[t]he duty of disclosure effects not only the prosecutor, but the Government as a whole, including its investigative agencies". *United States v. Bryant*, 439 F.2d 642, 658 (DC Cir. 1971); the Texas State Bar Rules require a prosecutor in a criminal case to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense, and in connection with sentencing, disclose to the defense and the tribunal all unprivileged mitigating information known to the prosecutor...." Rule 3.09(d), Article 10, Section 9, State Bar Rules.) (also see e.g. ABA Rule 3.8, Special Responsibilities of a Prosecutor, subsection (d), states that a prosecutor shall, "make timely disclosure to the defense of all evidence or information

2024 for posting something to Twitter / X that was allegedly not related to stock trading.[4] Applicant has not been provided counsel as guaranteed under the Sixth Amendment[5] and has alleged constructive denial of counsel throughout the entirety of the underlying proceeding.

Respondent, United States of America, with service of process on the Solicitor General of the United States at Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington D.C. 20530-0001 (Rule 29.4(a)).

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known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense"; and, ABA Rule 3.4, Fairness to Opposing Party & Counsel) The Department of Justice is purposefully withholding discovery in the case and controversy favorable to the accused, prima facie—and, whereby, such information is alleged to be defamatory, libelous and evidentiary and also alleged to be criminal in nature. In addition, in an email from B. Richardson to former defense counsel, Thomas P. Moore, on May 28, 2024, she indicates, on behalf of the United States of America, express knowledge that "all of [Davis'] communications are shared amongst the fraternity brothers"; which is held, by the Applicant, as evidence of express knowledge of the claims as set forth in USDC SD Cal, 19-834 (see e.g. Doc. 1, ¶¶ 1-6, 20); and, could be part of joint Conspiracy, prima facie (*Id.* at pg. 11, ¶ 6; pg. 32-44).

[4] See e.g. 22-219, Dkt. 313, representing as unconscionable and a bona fide Abuse of Process (federal statute dictates that, "the term "abuse or threatened abuse of the legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action." The key elements of abuse of process is the malicious and deliberate misuse of regularly issued civil or criminal court process that is not justified by the underlying legal action, and that the abuser of process is interested only in accomplishing some improper purpose similar to the proper object of the process. Abuse of process is an intentional tort. Abuse of process encompasses the entire range of procedures incident to the litigation process such as discovery proceedings, the noticing of depositions and the issuing of subpoenas) (also as evidentiary, again on Feb. 19, 2025, U.S. Pretrial Services filed a PS-8 seeking revocation of Applicant's pretrial liberty, and was summarily denied; see Transcript, Dkt. 478, pg. 39-52) Applicant notes that U.S. Pretrial Services, an arm of the U.S. Government, the adversarial party in the proceeding; where such adversary cooperates with the U.S. Attorney (see e.g. 18 U.S.C. § 3154 (8), (10)) and works under the auspices of the Administrative Office of the U.S. Courts (see 18 U.S.C. § 3152 (a)), continues unlawfully seeking to confiscate his liberty interests in violation of his rights. Also, Applicant notes that according to uscourts.gov, caseload statistics data tables, for the most recent 12-mo reporting period ending Sep. 30, 2024, Table H-3, indicates that U.S. Pretrial Services recommends pretrial release for approximately 1-in-6 persons, ranking in the worst decile of the 93 districts reported (across the 93 districts, the average reported by district is 43.6% of persons are recommended by U.S. Pretrial Services for Release). It is each of unconscionable and evidentiary that persons rated Low Risk, such as the Applicant, by U.S. Pretrial Services National Pretrial Risk Assessment Tool (PTRA), a robust multi-variate regression analysis tool based on over five hundred thousand case records in its original development, are not provided recommendations for release pursuant to either 18 U.S.C. §§ 3142 (b), or (c)(1)(B).

[5] See e.g. 5CCA 25-50050, ECF 15, Feb. 13, 2025.

Respondent, United States of America, with service of process on Assistant U.S. Attorney, Bettina Richardson, 601 N.W. Loop 410, Suite 600, San Antonio, TX 78206, has waived service of process on Oct. 22, 2024.

PROCEEDINGS DIRECTLY RELATED

U.S. v. Davis, No. 22-cr-219-FB, U.S. District Court for the Western District of Texas. Decision of Sep. 5, 2024, granting Applicant's modification of the Dec. 6, 2023 terms and conditions of pretrial release.[6]

U.S. v. Davis, No. 24-50731, U.S. Court of Appeals for the Fifth Circuit, a 28 U.S.C. § 1291 interlocutory appeal from WD TX 22-219. Decision entered on Mar. 3, 2025. On Sep. 11, 2024, through counsel, Applicant appealed (22-219, Dkt. 283) the terms and conditions of release (22-219, Dkt. 281) modifying the release order of Dec. 6, 2024 (22-219, Dkt. 175) that the Applicant obtained moving in propia persona (see *Davis v. U.S.*, SCOTUS, 24-5088, 24-5204) after four (4) attorneys were terminated for deficient performance (see e.g., as related, 5CCA 25-50050, ECF 15, pending). On Dec. 19, 2024, via Clerk Order, the Fifth Circuit Court dismissed the interlocutory appeal pursuant to 5th Cir. R. 42 for failure to pay the filing fee, although Applicant was not obligated to pay any filing fee. As soon as practical, Applicant submitted a Motion to Reopen the Appeal on Feb. 22, 2025, and was denied via Clerk Order on Feb. 25, 2025. On Feb. 26, 2025, Applicant filed a FRAP 27b Motion for Reconsideration and was denied on Mar. 3, 2025.

U.S. v. Davis, No. 24-50612, U.S. Court of Appeals for the Fifth Circuit, a 28 U.S.C. § 1291 interlocutory appeal from WD TX 22-219. Decision entered on Dec. 11, 2024. Applicant was belatedly Noticed via counsel, John. F. Carroll, via Letter on Dec. 26, 2024. As a direct result thereof, Applicant was unable to timely file for rehearing (FRAP 40). On Dec. 27, 2024, Applicant expressly requested that counsel

[6] USDC WD TX, 22-219-FB, Dkt. 281, modifying 173, 175, as GRANTED (Dec'23) on Applicant's in propia persona Motion for Release (Dkt. 171)

Carroll timely prepare a Petition for a Writ of Certiorari to the Court who declined to do so.[7]

Rule 14.1(b)(iii)

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[7] Applicant also sent Carroll a Letter on Dec. 26, 2024 formally making such request (see e.g. *U.S. v. James*, 990 F. 2d 804, 1993 U.S. App. LEXIS 9992 (5th Cir. 1993), cert. denied, 511 U.S. 1034, 114 S. Ct. 1546, 128 L. Ed. 2d 197, 1994 U.S. LEXIS (1994), remanded, 103 F. 3d 125, 1996 U.S. App. LEXIS 35316 (5th Cir. 1996), Fifth Circuit Court's Adoption of the CJA requires an attorney to file a petition for a writ of certiorari if requested in writing by a defendant irrespective of the chance of success such petition may or may not have)

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INTRODUCTION

Applicant, Mr. Gavin B. Davis, brings this Rule 22 Application to the Circuit Justice for the Fifth Circuit Court of Appeals, the HON. SAMUEL A. ALITO, JR., respectfully requesting an extension of time (Rule 13.5) to file a petition for a writ of certiorari from case no.: 24-50731.

Applicant was provided conditional pretrial liberty on Sep. 10, 2024, though (i) on terms and conditions that were *not* provided substantive due process and (ii) materially and detrimentally affected Applicant's fundamental rights. Applicant entered into the release order for reasons of personal safety and deemed such as involuntary[8] by virtue of the aforementioned. Applicant timely appealed such release order to the Fifth Circuit Court seeking substantive due process, as rightfully due.

In case no.: 24-50612, the Circuit Court, in clear and plain error, found Applicant's interlocutory appeal as moot given Applicant's release—whereby, such remains a bona fide live controversy and such matters are not, in fact moot, but ripe. Conditional pretrial release contemplates a body of fundamental rights and should not be improperly adjudicated, abridged, or foreclosed in violation of due process, as alleged, has occurred – and whereby, interlocutory appellate review, was, in fact, an appropriate and timely remedial process.

In the interlocutory appeal from which the Applicant with this Application for an Extension of Time seeks to Petition the Court for a writ of certiorari from 5CCA case no.: 24-50731, prior counsel John F. Carroll (a) opened the appeal[9]; (b)

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[8] See e.g., as related, 5CCA 24-50612, Memorandum, ECF 31, Sep. 26, 2024, at pg. 12, fn. 5, "[s]uch does not constitute "consent" and further scrutiny is not only warranted; but, protected under the due process clause of the Fifth Amendment."

[9] Notice of Appeal timely filed Sep. 11, 2024 (22-219, Dkt. 283), one day after release. The Fifth Circuit Court of Appeals belatedly assigned a case number, i.e. 24-50731, on Oct. 29, 2024. During this period while Mr. Carroll was acting as counsel, a brief was filed into intimately related case no.: 24-50612 (ECF 31, Sep. 26, 2024; see also, ECF 46) for the same purposes (i.e. appeal of the Sep. 10, 2024 release order (22-219, Dkt. 281). On Dec. 11, 2024, the Circuit Court rendered Applicant's movement (through counsel) as moot. Applicant, now in custody (see e.g. 5CCA 24-50885, ECF 8) and without counsel (see e.g. 5CCA 25-50050, ECF 15) requested that prior counsel Carroll timely rectify the situation (e.g. via FRAP 27b, FRAP 40, and/or movement to the Supreme Court) who declined to provide any further assistance, despite Applicant formally Noticing him (see e.g. *U.S. v. James, supra*; also, see e.g. ABA Rule 1.2 (a), provides that a lawyer shall abide by a client's

withdrew in the underlying proceeding[10]; and (c) and failed to brief (FRAP 9 and/or FRAP 28) the appeal; which, was dismissed for failure to prosecute due to no fault of the Applicant, prima facie. As soon as practical, moving in propia persona, in February 2022, Applicant moved for reinstatement of the appeal and was denied[11], summarily foreclosing each of procedural and substantive due process—and in doing so, compounding per se prejudice, harm and injury that had already occurred in the violation of Applicant's Constitutional and fundamental rights including those as protected under each of 18 U.S.C. §§ 3142 (b) and (c)(1)(B).

Fundamental liberties protected by the Due Process clause include most of the rights enumerated in the Bill of Rights and certain personal choices to individual dignity and autonomy. (*U.S. v. Hare*, 873 F. 2d. 796 (5th Cir. 1989))[12]

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decisions concerning the objectives of the representation; *McQueen v. Blackburn*, 755 F. 2d 1174 (5th Cir. 1985); a defendant is entitled to an attorney who considers the defendant's views and seeks to accommodate all reasonable requests with respect to trial preparation and trial tactics.) (also, see *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) and *Faretta v. California*, 422 U.S. 806, 819-820, 95 S. Ct. 2525, 45 L. Ed. 2d 562; *U.S. v. Cronic*, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984)) (the *Faretta* court noted that the right to counsel is really the right to the assistance of counsel, "and an assistant, however expert, is still an assistant" (422 U.S. at 820) (emphasis added). The rights accorded by the Sixth Amendment include not having counsel present a defense that is not his defense. (*Id.*, 422 U.S. at 821)) Sixth Amendment guarantees a criminal defendant the right to counsel; which would include interlocutory appeals or matters pursued before the Supreme Court. Fourteenth Amendment guarantees a criminal appellant pursuing certain minimum safeguards necessary to make an appeal adequate and effective; among the safeguards is the right to counsel. The services of a lawyer will for virtually every layman be necessary to present an appeal in a form suitable for appellate consideration on the merits (*Evitts v. Lucey*, 469 U.S. 387 (1985)); (also, obvious deficiencies in representation may be addressed by an appellate court sua sponte (*Massaro v. U.S.*, 538 U.S. 500 (2003))) (Fed. R. Crim. P. 44 makes clear that a defendant's Sixth Amendment right to (the effective assistance) of counsel includes "every stage of the proceedings" including appeals (*Doherty v. U.S.*, 404 U.S. 28 (1971));

[10] On Oct. 22, 2024, Applicant was forced to proceed in propia persona over his objections (see e.g. Transcript, Dkt. 330, pg. 7, ln 2-21)

[11] Feb. 25, 2025; FRAP 27b reconsideration (ECF 21), den'd on Mar. 3, 2025.

[12] See also e.g., *Spencer v. Kemna*, 523 U.S. 1 (1997) citing to *Sibron v. New York*, 392 U.S. 40, 55-56, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968); *Pollard v. U.S.*, 352 U.S. 354, 1 L. Ed. 2d 893, 77 S. Ct. 481 (1957); *Evitts v. Lucey*, 469 U.S. 387, 83 L. Ed. 2d 821, 105 S. Ct. 830 (1985) (req' for restoration of rights); *Benton v. Maryland*, 395 U.S. 784, 790-791, 23 L. Ed. 2d 707, 89 S. Ct. 2056 (1969); also, *Vitek v. Jones*, 436 U.S. 407 (1978), recall of lower court mandate; *Carafas v. LaVallee*, 391 U.S. 234 (1968)

OPINIONS BELOW

U.S. v. Davis, No. 24-50731, U.S. Court of Appeals for the Fifth Circuit, Mar. 3, 2025, ECF 29, denying Applicant's movement to reinstate the appeal. Dismissal on grounds of failure to prosecute were due to no fault of the Applicant, but of counsel. Applicant should not be, in effect, procedurally defaulted due to no fault of his own; whereby, in failing to provide each of procedural and substantive due process; per se prejudice, harm and injury to Applicant's substantial and fundamental rights and liberty interests, and person and property, are compounded perpetuating injustice, prima facie.

JURISDICTION (Rule 14.1(e))

Jurisdiction is conferred properly conferred under the All Writs Act, Rule 10, the Court's inherent powers and the original jurisdiction of the underlying proceedings. As to the latter, in Fifth Circuit case no.: 24-50731, from which this movement is timely brought, jurisdictional grounds are the same as 23-50917 and 24-50612, also involving Applicant's pretrial liberty.

OTHER PERTINENT FILINGS (Rule 14.1(i)(vi))

Unlike in an ordinary appeal, in detention appeals, [a] court of appeals is free in determining appropriateness of order below as well as to consider materials not presented.[13]

U.S. v. Davis, 22-219-FB, USDC WD TX, Applicant's Motion to Remove GPS Monitoring, Dkt. 393, summarily den'd on Feb. 19. 2025, now 5CCA 25-50146.

U.S. v. Davis, 22-219-FB, USDC WD TX, Applicant's Motion to Remove CPU Monitoring, Dkt. 392, summarily den'd on Feb. 19. 2025, now 5CCA 25-50147.

U.S. v. Davis, No. 24-50612, U.S. Court of Appeals for the Fifth Circuit, Applicant's (Appellant) Memorandum and Request for Relief (ECF 31; also, ECF

[13] See e.g. *U.S. v. Tortora*, 922 F. 2d 880 (1st Cir. 1990)

46); substantively the same as an intended brief in the interlocutory appeal, 5CCA 24-50731, from which Applicant now moves before the Court.

U.S. v. Davis, 22-219-FB, USDC WD TX, Applicant's Motion for Release, representing reasonable terms and conditions of release as developed and submitted by prior counsel Mr. Thomas P. Moore (former Asst. U.S. Attorney for approximately twenty-five (25) years) and Mr. Fred Oliveras (former FBI Agent for approximately twenty-five (25) years), Dkt. 250 (Jul. 3, 2024)

U.S. v. Davis, 22-219-FB, USDC WD TX, Applicant's Motion for Reconsideration for Release, in propia persona, Dkt. 184, 185 (Jan. 8, 2024), as summarily denied.

U.S. v. Davis, 22-219-FB, USDC WD TX, Applicant's Motion for Release, in propia persona, Dkt. 171 (Dec. 6, 2023)

PRIMARY FEDERAL PROVISIONS INVOLVED (Rule 14.1(f))

The primary constitutional provisions, treaties, statutes, ordinances, and regulations involved in this case are: Due Process Clause of the Fifth Amendment, 18 U.S.C. § 3142 (b), 18 U.S.C. § 3142 (c)(1)(B), the Sixth Amendment, the Bail Reform Act, and 28 U.S.C. § 1291.

STATEMENT OF CASE (Rule 14.1(g))

Applicant was temporarily detained on May 10, 2022 in USDC WD TX, 22-219-FB on a four (4) count indictment for allegedly causing three (3) of his Cornell University fraternity brothers "substantial emotional distress," as disputed. On May 20, 2022, Applicant was detained without bond based on: (i) false, partial, and misleading information of the prosecution and Federal Bureau of Investigation Agent Charles Davidson; and (ii) grossly inaccurate information in a non-consensual U.S. Pretrial Services Report[14],[15]. None of the 22-219 allegations are 18 U.S.C. §

[14] Note: on Sep. 5, 2024, Applicant, having been in custody for twenty-eight (28) months, appearing for a bond modification hearing, the trial judge indicates to prior defense counsel, John F. Carroll, that such hearing could have occurred twenty-seven (27) months prior (see Transcript near end) lending evidentiary support as to the bona fide illegality of Applicant's pretrial detention. (see also

3142 (e) charges.[16] The 22-219 allegations carry no minimum sentence and a five (5) year maximum sentence.

Between May 2022 and Sep. 5, 2023, four (4) defense attorneys were discharged for cause: in writ, deficiencies with each of the respective terminated attorneys were (i) detailed; and (ii) not refuted – either in writ or orally. (also see e.g. 5CCA 25-50050, ECF 15) Moving in propia persona in September 2023, Applicant did precisely as he had reasonably instructed (see e.g. ABA Rule 1.2(a), 1.3, 3.2) each of the prior attorneys to do in seeking that with which he was entitled to in May 2022: pretrial liberty (whether on his Own Recognizance (see e.g. 18 U.S.C. § 3142 (b)) or in the alternative, on the least restrictive and most flexible terms and conditions to reasonably assure (but not guarantee) court appearance and safety (see e.g. 18 U.S.C. § 3142 (c)(1)(B))

In November 2023, each of the prosecution and the Federal Bureau of Investigation were caught[17]: in their illicit, malicious, Vindictive, bevy of false, partial and/or misleading information that led to the Applicant's unlawful detention. In turn, thereafter, a (rare) reopening of the Detention Hearing was Ordered for Dec. 6, 2023. Applicant, after seeking U.S. Pretrial Services to correct prior inaccuracies in their information and also requesting, thereafter, a new Pretrial Risk Assessment (PTRA) as independently produced by their national office, received a new report on Dec. 6, 2023, finding that the Applicant as "Low

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e.g., evidentiary contentions put forth (and also not disputed) in Dkt. 307 at Exhibit A, Petition, *Davis et. al. v. Molly Roth*, Bexar County, Texas, case no.: 2024CI23269, Legal Malpractice and Negligence; see also, e.g. 18 U.S.C. § 3006A (g)(3))

[15] Denial of bail should not be used as an individual way of making a man shoulder a sentence (*Carbo v. U.S.*, 82 S. Ct. 662 (1962)), as Applicant alleges has and is occurring in this case and controversy.

[16] None of the 22-219 allegations in the Indictment fall under 18 U.S.C. § 3142 (2)(3); and, therefore, the Applicant cannot be legally detained; and, also, none of the requisite six (6) conditions of 18 U.S.C. §§ 3142 (f)(1) or (2) are present; and, therefore, the original detention order of May 20, 2022, should have been timely vacated (see e.g. *U.S. v. LaLonde*, 246 F. Supp. 2d 873 (S.D. Ohio 2003), irrespective of a criminally accused purported or actual dangerousness to the community or to specific others, if none of the 3142 (f)(1) or (2) conditions are met, a defendant cannot be detained)

[17] See e.g. Nov. 8, 2023, in which Applicant cross-examines Federal Bureau of Investigation Agent Charles Davidson, 22-219, Transcript, Dkt. 148; and, proceeding of Nov. 13, 2023, Dkt. 170, in which Department of Justice concedes that Applicant had in fact been detained in May 2022 based on false, partial and misleading information provided by the government.

Risk" (note: U.S. Pretrial Services PTRA is the authoritative, empirical data set (several thousand entries) regarding matters such as recidivism for persons on pretrial release. A person categorized as "Low Risk", such as the Applicant, has close to a zero percent (0%) chance of either flight risk, safety issues, or committing crime.) On Applicant's Motion (Dkt. 171), he was GRANTED conditional liberty (Dkt. 173, 175) – perhaps, as somewhat unprecedented for a self-litigant.[18] Applicant timely moved for reconsideration (Dkt. 184) and was summarily denied on Jan. 8, 2024 (see text order).

In May 2024, the prosecution offered the Applicant a written plea offer of twenty-four (24) months Time Served and Three (3) Years Supervised Release. Applicant reasonably requested each of (i) clarification of terms and conditions of such bona fide offer and (ii) an attorney for such express purposes (i.e. to intelligently review such offer).

On May 28, 2024, AUSA B. Richardson sent an email to former senior AUSA and now standby counsel to Applicant in 22-219, Mr. T. Moore, which indicated a Sentencing Range (U.S.S.G.) of fifteen (15) to twenty-one (21) months regarding the five (5) count superseding indictment.[19]

On Jul. 3, 2024, defense counsel T. Moore in conjunction with former FBI Agent Oliveras submitted a Motion for Release (Dkt. 250) with reasonable terms and conditions therein.

On Sep. 5, 2024, Applicant's Dec. 6, 2023 proposed release order (Dkt. 173, 175) was modified (Dkt. 281) and he was subsequently released on Sep. 10, 2024 –

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[18] Begging the question: as to why none of the prior four (4) defense attorneys had moved diligently and expediently for Applicant's pretrial release (see e.g. deplorable, utterly disgraceful, unprofessional work product of prior counsel Kuntz lodged at 22-219,Dkt. 51, 52)

[19] Applicant moved for dismissal of belatedly added, Count 5, "as the information related to Count 5 from Jan. 14, 2021, was (i) known; and, separately, (ii) readily available to the prosecution when it brought the four count indictment on May 4, 2022 (dkt. 3). The prosecution is unable to prove that the increase in charge was justified by any objective change in circumstances or in the state of evidence that (legitimately) influenced the original charging process. (see e.g. *U.S. v. Leach*, 613 F. 3d 1295, 1980 U.S. App. LEXIS 19588 (5th Cir. 1980); bad faith on part of government in bringing superseding indictment). The addition of Count 5, therefore, also fails the 30-day maximum for indicting (18 U.S.C. § 3162(a)(1)) on this charge (see also e.g. *United States v. Cobb*, 975 F.2d 152 (5th Cir. 1992), cert. denied, 507 U.S. 965, 113 S. Ct. 1397 (1993). *United States v. Pikus*, 39 F.4th 39 (2d Cir., 2022)" (Dkt. 396 at ¶ 3)" (Notice of Appeal, 22-219, Dkt. 463)

though on Sep. 11, 2024, such modified release order was immediately appealed. The Circuit Court has not provided procedural or substantive due process to the Applicant moving in propia persona, compounding per se prejudice, harm and injury stemming from such violations (see also e.g., 5th Cir. 24-50612; also, Applicant belatedly received information on the dismissal which found the interlocutory appeal as 'moot' given Applicant's release; which, is disputed for reasons including but not limited to material collateral consequences affecting Applicant's substantive rights and an ongoing live controversy regarding pretrial liberty)

REASONS FOR TIMELY GRANTING RELIEF (Rule 14.1(h))

I. CONSTITUTIONAL DUE PROCESS PROTECTIONS ARE INTENDED TO ACT AS SAFEGUARDS AGAINST THE INFRINGEMENT ON ONE'S FUNDAMENTAL RIGHTS AND THOSE OF PRETRIAL LIBERTY ARE ALWAYS RIPE FOR INTERLOCUTORY APPELLATE REVIEW.

Pretrial release encompasses a range of potential terms and conditions in addition to one's liberty vis-à-vis detainment: it is, in fact, in certain aspects (e.g. those other than 18 U.S.C. § 3142 (b)) 'conditional' – though in such capacity, is to be: (a) provided with the safeguards of each of (i) procedural and (ii) substantive due process (as Constitutionally guaranteed); and, (b) under the least restrictive terms and conditions (18 U.S.C. § 3142 (c)(1)(B)) that reasonably assure (but do not guarantee) court appearance and safety. Further, an accused such not be procedurally defaulted and thereafter have a substantive body of rights affected due to an attorney's failure to prosecute; where sought for timely remediation in propia persona. A person can never gain liberty lost during periods of unlawful infringement.

II. INTERLOCUTORY APPELLATE REVIEW OF PRETRIAL RELEASE DECISIONS IS FUNDAMENTAL TO UPHOLDING THE CONSTITUTIONAL INTENT OF PRETRIAL LIBERTY WITHOUT SUMMARY ABRIDGEMENT, ADJUDICATION OR FORECLOSURE AND DUE PROCESS VIOLATIONS.

Relief in this type of case must be speedy if it is to be effective (*Stack v. Boyle*, 342 U.S. 1 (1951)). See also, due process and other concerns stemming from unlawful pretrial detention; e.g. *U.S. v. Goodson*, 204 F. 3d 508 (4th Cir. 1999) citing *Smith v. Hooey*, 393 U.S. 374, 378, 21 L. Ed. 607, 89 S. Ct. 575 (1969), quoting *U.S. v. Ewell*, 383 U.S. 116, 120, 15 L. Ed. 2d 667, 86 S. Ct. 773 (1966))

CONCLUSION

For the reasons stated herein, and in the interests of justice, the Court should (i) grant Applicant an extension of time to file a petition for a writ of certiorari that appropriately addresses the Constitutional issues involved; or, (ii) provided sound reason treat this Rule 22 Application akin to a Rule 22 Application to Recall a Mandate, where no Mandate actually issued; but in lieu thereof, simply reinstate the 24-50731 Appeal. Applicant respectfully requests that the Court grant any relief that it deems appropriate.

Respectfully submitted on this day, March 25, 2025

/s/ Gavin B. Davis

Mr. Gavin B. Davis, Pro Per
APPLICANT

No. _____

In The
Supreme Court of the United States

♦

GAVIN B. DAVIS,
Applicant,
v.
UNITED STATES,
Respondent.

♦

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

♦

CERTIFICATE OF COMPLIANCE

♦

As required by Supreme Court Rule 33.1 (h), I certify that the Rule 22 Application contains 8,943 qualified words, excluding the parts of the document that are exempted by Rule 33.1 (d). The aforementioned is declared under penalty of perjury as true and correct pursuant to 28 U.S.C. § 1746. Executed on March 25, 2025.

GAVIN B. DAVIS (#00197510), Pro Per
Applicant

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

March 03, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 24-50731 USA v. Davis
USDC No. 5:22-CR-219-1

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: Jasmine J. Forman
Jasmine J. Forman, Deputy Clerk

Mr. Gavin Blake Davis
Mr. Philip Devlin
Mr. Joseph H. Gay Jr.

United States Court of Appeals for the Fifth Circuit

No. 24-50731

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GAVIN BLAKE DAVIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:22-CR-219-1

ORDER:

On February 25, 2025, the clerk DENIED Appellant's motion to reopen this appeal. Upon consideration of appellant's motion for reconsideration, IT IS ORDERED that the motion is DENIED.

Leslie H. Southwick

LESLIE H. SOUTHWICK
United States Circuit Judge

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

February 25, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 24-50731 USA v. Davis
USDC No. 5:22-CR-219-1

The court has taken the following action in this case: Appellant's motion to reopen this appeal is DENIED.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Casey A. Sullivan, Deputy Clerk
504-310-7642

Mr. Gavin Blake Davis
Mr. Joseph H. Gay Jr.

United States of America,

Plaintiff - Appellee

v.

Gavin Blake Davis,

Defendant - Appellant

10/29/2024	☐ 1	CASE CAPTION updated. Party information modified for Gavin Blake Davis in 24-50731. Update: This case is no longer an additional to case No. 24-50612 and is now it's own lead case.. [24-50731] (CAS) [Entered: 10/29/2024 10:31 AM]
10/29/2024	☐ 2	CASE CAPTION updated. Party information modified for USA in 24-50731. Update: Counsel added for party USA. [24-50731] (CAS) [Entered: 10/29/2024 10:35 AM]
10/29/2024	☐ 3 2 pg, 123.57 KB	NON-DIRECT CRIMINAL CASE docketed. NOA filed by Appellant Mr. Gavin Blake Davis [24-50731] (CAS) [Entered: 10/29/2024 10:42 AM]
11/06/2024	☐ 8 4 pg, 96.23 KB	INITIAL CASE CHECK by Attorney Advisor complete. Action: Case OK to Process. [8] Initial AA Check Due satisfied.. Fee due on 11/21/2024 for Appellant Gavin Blake Davis [24-50731] (ABT) [Entered: 11/06/2024 08:21 AM]
11/21/2024	☐ 9 4 pg, 96.14 KB	UPDATED CASE PROCESSING NOTICE sent. [24-50731] (ABT) [Entered: 11/21/2024 03:26 PM]
11/27/2024	☐ 10	IN ACCORDANCE WITH 5TH CIRCUIT RULE 42.3.1, the appeal is subject to dismissal in 15 days for failure to comply with the initial written deadline. Fee deadline updated to 12/12/2024 for Appellant Gavin Blake Davis [24-50731] (CAS) [Entered: 11/27/2024 04:06 PM]
12/19/2024	☐ 11 2 pg, 151.83 KB	CLERK ORDER dismissing appeal pursuant to 5th Circuit Rule 42 for failure to pay fee [11] [24-50731] (CAS) [Entered: 12/19/2024 11:51 AM]
01/13/2025	☐ 13	UPDATED CASE PROCESSING NOTICE--Copy of dismissal order re-sent. [24-50731] (CAS) [Entered: 01/13/2025 03:31 PM]
02/22/2025	☐ 14	UPDATED CASE PROCESSING NOTICE sent. Dismissal order sent to current address. [24-50731] (CAS) [Entered: 02/22/2025 11:18 PM]
02/22/2025	☐ 15 4 pg, 414.83 KB	MOTION filed by Appellant Mr. Gavin Blake Davis to reopen case [15] Default Remedied. Date of service: 02/22/2025 [24-50731] (CAS) [Entered: 02/24/2025 04:22 PM]
02/23/2025	☐ 20 5 pg, 668.58 KB	LETTER filed by Appellant Mr. Gavin Blake Davis correspondence-titled Master Case Timeline. [24-50731] (CAS) [Entered: 02/25/2025 11:48 AM]
02/25/2025	☐ 19 1 pg, 43.73 KB	CLERK ORDER denying Motion to reopen case filed by Appellant Mr. Gavin Blake Davis [15] [24-50731] (CAS) [Entered: 02/25/2025 10:35 AM]
02/26/2025	☐ 21 7 pg, 606.06 KB	MOTION filed by Appellant Mr. Gavin Blake Davis for reconsideration of the 02/25/2025 clerk order denying Motion to reopen case filed by Appellant Mr. Gavin Blake Davis in 24-50731 [15] [21]. Date of service: 02/26/2025 [24-50731] (CAS) [Entered: 02/27/2025 04:35 PM]
03/03/2025	☐ 29 2 pg, 107.42 KB	COURT ORDER denying Motion for reconsideration filed by Appellant Mr. Gavin Blake Davis [21] [24-50731] (JJF) [Entered: 03/03/2025 12:06 PM]

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No. _____

In The
Supreme Court of the United States

♦

GAVIN B. DAVIS,
Applicant,
v.
UNITED STATES,
Respondent.

♦

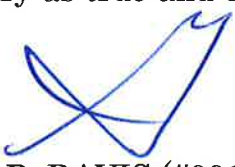
On Petition for a Writ of Certiorari to the
United States Court of Appeals, Fifth Circuit

♦

CERTIFICATE OF SERVICE

♦

As required by Supreme Court Rule 39.2, 22.2, 29.5 (c), Proof of Service, I certify that one (1) copy of the Rule 22 Application was completed via U.S. Mail to Respondent, United States of America, Solicitor General of the United States at Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington D.C. 20530-0001. AUSA B. Richardson (San Antonio TX) waived service of process of all legal correspondence on October 22, 2024. The aforementioned is declared under penalty of perjury as true and correct pursuant to 28 U.S.C. § 1746. Executed on March 25, 2025.



GAVIN B. DAVIS (#00197510), Pro Per
Applicant