

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

ELLIS MASHBURN, JR.,
Petitioner,

v.

JOHN HAMM,
Commissioner,
Alabama Department of Corrections,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

MOTION TO PROCEED *IN FORMA PAUPERIS*

Petitioner Ellis Mashburn, Jr., pursuant to Rule 39 of the Supreme Court Rules, respectfully requests leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*. Mr. Mashburn has been incarcerated since 2002 and had appointed counsel at trial. He is currently indigent. Mr. Mashburn did not seek *in forma pauperis* status in the court below but is requesting it before this Court because he cannot afford the higher costs of filing a petition in this Court. In support of this motion, Mr.

Mashburn has attached a Declaration in Support of Motion for Leave to Proceed *In Forma Pauperis* as Appendix A.

For these reasons, Mr. Mashburn respectfully requests that this Court grant him leave to proceed *in forma pauperis* in this Court.

Respectfully submitted,

/s/ James M. Hubbard

RANDALL S. SUSSKIND

COUNSEL OF RECORD

JAMES M. HUBBARD

122 Commerce Street

Montgomery, AL 36104

Phone: (334) 269-1803

Fax: (334) 269-1806

Email: rsusskind@ejl.org
mhubbard@ejl.org

February 9, 2024

Counsel for Ellis Mashburn, Jr.

Appendix A

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

I, Ellis Masburn, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Self-employment	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Interest and dividends	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Gifts	\$ <u>250</u>	\$ <u>N/A</u>	\$ <u>250</u>	\$ <u>N/A</u>
Alimony	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Child Support	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Unemployment payments	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Total monthly income:	\$ <u>250</u>	\$ <u>N/A</u>	\$ <u>250</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>N/A</u>	<u>N/A</u>	<u>N/A</u>	\$ <u>N/A</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>N/A</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

4. How much cash do you and your spouse have? \$ 36
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>Ala. Dept Corrections Account</u>	\$ <u>36</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.

☐ Home
Value _____

☐ Other real estate
Value _____

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

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

☐ Other assets
Description _____
Value _____

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

Person owing you or your spouse money

Amount owed to you

Amount owed to your spouse

<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>0</u>	\$ <u>N/A</u>
Are real estate taxes included? ☐ Yes ☐ No		
Is property insurance included? ☐ Yes ☐ No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>0</u>	\$ <u>N/A</u>
Home maintenance (repairs and upkeep)	\$ <u>0</u>	\$ <u>N/A</u>
Food	\$ <u>220</u>	\$ <u>N/A</u>
Clothing	\$ <u>0</u>	\$ <u>N/A</u>
Laundry and dry-cleaning	\$ <u>0</u>	\$ <u>N/A</u>
Medical and dental expenses	\$ <u>0</u>	\$ <u>N/A</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>N/A</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>0</u>	\$ <u>N/A</u>
Life	\$ <u>0</u>	\$ <u>N/A</u>
Health	\$ <u>0</u>	\$ <u>N/A</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>N/A</u>
Other: _____	\$ <u>0</u>	\$ <u>N/A</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>0</u>	\$ <u>N/A</u>
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ <u>N/A</u>
Credit card(s)	\$ <u>0</u>	\$ <u>N/A</u>
Department store(s)	\$ <u>0</u>	\$ <u>N/A</u>
Other: _____	\$ <u>0</u>	\$ <u>N/A</u>
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u>N/A</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u>N/A</u>
Other (specify): <u>Phone</u>	\$ <u>30</u>	\$ <u>N/A</u>
Total monthly expenses:	\$ <u>250</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.

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.

I am incarcerated.

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

Executed on: January 30, 2024

Ellis Mashburn
(Signature)

Alabama Department of Corrections
Average Inmate Deposit Balances for MASHBURN, ELLIS LOUIS AIS# 0000Z730

	Average Balance	Gross Deposits
11/30/2023	\$23.43	\$275.00
10/31/2023	\$19.98	\$175.00
09/30/2023	\$57.29	\$475.00
08/31/2023	\$18.41	\$180.00
07/31/2023	\$18.10	\$325.00
06/30/2023	\$37.78	\$225.00
05/31/2023	\$24.11	\$275.00
04/30/2023	\$20.93	\$275.00
03/31/2023	\$38.17	\$275.00
02/28/2023	\$30.80	\$250.00
01/31/2023	\$32.88	\$500.00
12/31/2022	\$36.20	\$275.00
	\$29.84	\$3,505.00

I certify that this is a true and correct copy of inmate Mashburn's average balance and gross deposits.



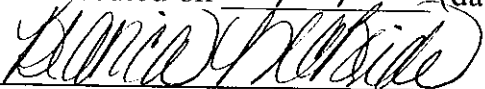
Bianca McBride

PRISON ACCOUNT CERTIFICATE

I hereby certify that Ellis Mashburn, AIS# Z730, has the sum of \$ 0.00 on account to his credit at Holman Correctional Facility, in Atmore, Alabama, where he is confined. I further certify that the amount on account to his credit at Holman Correctional Facility for the previous twelve (12) months is as follows:

December 2023	\$ <u>—</u>
November 2023	\$ <u>19.98.</u>
October 2023	\$ <u>57.29</u>
September 2023	\$ <u>18.41</u>
August 2023	\$ <u>18.10</u>
July 2023	\$ <u>37.78</u>
June 2023	\$ <u>24.11</u>
May 2023	\$ <u>20.93</u>
April 2023	\$ <u>38.17</u>
March 2023	\$ <u>20.80</u>
February 2023	\$ <u>32.88</u>
January 2023	\$ <u>36.20</u>

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 12/29/2023 (date).


AUTHORIZED OFFICER OF INSTITUTION