

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)

Defendant

KCDF

810 Commerce St.

Karnes City, TX 78118

QUESTION PRESENTED

For a criminally accused, such as the Applicant/Petitioner, conditionally released subject to certain terms and conditions pursuant to 18 U.S.C. § 3142 – who (i) *expressly* enters into such release order for reasons of personal safety (e.g. most reasonable persons would believe being at-liberty would be vastly safer than being detained in a penal capacity) – while (ii)(a) *timely* appealing such collateral pretrial release order interlocutory and (b) seeking *substantive* due process on such respective terms and conditions of pretrial release that materially and detrimentally affect fundamental rights (e.g. Fourth Amendment) of the accused – is such release as effectuated by an accused in order to, a priori, promptly secure a safer living environ despite alleged due process violations effectively render the release as involuntary under such circumstances – or – do ‘any and all’ pretrial release situations, including those expressly entered into for reasons of personal safety, unilaterally and absolutely foreclose interlocutory appellate review upon release and render each of district court substantive due process as moot and circuit court procedural and substantive due process as moot?

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 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; ultimately, being released on Sep. 10, 2024, for allegedly causing three of his fraternity brethren “substantial emotional distress”.

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)).

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.¹

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 Carroll timely prepare a Petition for a Writ of Certiorari to the Court who declined to do so.²

Rule 14.1(b)(iii)

¹ 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)

² 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.: 24-50612.

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 by virtue of the aforementioned. Applicant timely appealed such release order to the Fifth Circuit Court seeking substantive due process, as rightfully due.

The Circuit Court, in clear and plain error, found Applicant's interlocutory appeal as moot given Applicant's release—whereby, Applicant puts forth that 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.

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))³

³ 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. 24-50612, 5th Cir., Dec. 11, 2024, ECF 80, finding the interlocutory appeal as moot given Applicant's Sep. 10, 2024 release from pretrial detention. Also, counsel Carroll's Motion to Withdraw was denied – he is, in fact, obligated to move forward with assistance in the preparation and filing of a Petition for a Writ of Certiorari.

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, the Fifth Circuit Court in case no.: 24-50612, from which this movement is timely brought, did, in fact find jurisdiction; and, such standing on its own, is grounds for this Court to hold jurisdiction.

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.⁴

U.S. v. Davis, 22-219-FB, USDC WD TX, Applicant's Motion to Remove GPS Monitoring.

U.S. v. Davis, 22-219-FB, USDC WD TX, Applicant's Motion to Remove CPU Monitoring.

U.S. v. Davis, No. 24-50612, 5th Cir., Applicant's (Appellant) Memorandum and Request for Relief.

U.S. v. Davis, 22-219-FB, USDC WD TX, Applicant's Motion for Release.

U.S. v. Davis, 22-219-FB, USDC WD TX, Applicant's Motion for Reconsideration for Release.

U.S. v. Davis, 22-219-FB, USDC WD TX, Applicant's Motion for Release.

⁴ See e.g. *U.S. v. Tortora*, 922 F. 2d 880 (1st Cir. 1990)

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, 18 U.S.C. § 3142 (i), 18 U.S.C. § 3142 (c)(1)(B), 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^{5,6}. None of the 22-219 allegations are 18 U.S.C. § 3142 (e) charges.⁷ 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. Dkt. 109, Summary IAC Table) Moving in propria 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

⁵ 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 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))

⁶ 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.

⁷ 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)

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: 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 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.⁸ 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 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

⁸ Begging the question: as to why none of the prior four (4) defense attorneys had moved diligently and expediently for Appellant-Defendant's pretrial release (see e.g. deplorable, utterly disgraceful, unprofessional work product of prior counsel Kuntz lodged at Dkt. 51, 52)

Sentencing Range (U.S.S.G.) of fifteen (15) to twenty-one (21) months regarding the five (5) count superseding indictment.

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 – though on Sep. 11, 2024, such modified release order was immediately appealed⁹ (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

⁹ Also, in October 2024, prior defense counsel J. Carroll filed Motions to Remove each of GPS Monitoring and CPU Restriction / Monitoring as excessive, unreasonable and in violation of Applicant's rights including but not limited to those protected by the Fourth Amendment (see Dkt. 298, 299). Neither the District Court or the Circuit Court reached the merits of such motions. Prior defense counsel Carroll also filed responses (Dkt. 295, 296) to overly aggressive and Vindictive actions of the government seeking to neuter Applicant's pretrial rights (Dkt. 295, 296 on 290, 293, 292).

and conditions (18 U.S.C. § 3142 (c)(1)(B)) that reasonably assure (but do not guarantee) court appearance and safety.

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. Hooy*, 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))

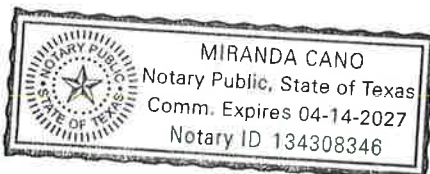
CONCLUSION

For the reasons stated herein, and in the interests of justice, the Court should grant Applicant an extension of time to file a petition for a writ of certiorari that appropriately addresses the Constitutional issues involved.

Respectfully submitted on this day, January 6, 2025

/s/ Gavin B. Davis

Mr. Gavin B. Davis, Pro Per
APPLICANT



MC 1/6/25

No. _____

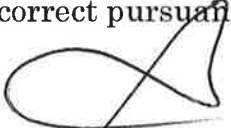
In The
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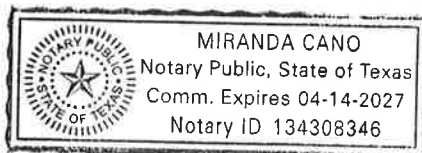
GAVIN B. DAVIS,
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v.
UNITED STATES,
Respondent.

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 3,085 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 January 6, 2025.


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



 1/6/25

No. _____

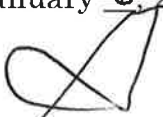
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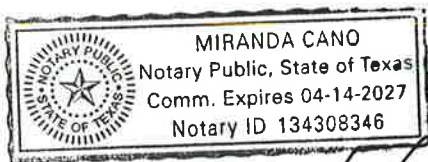
GAVIN B. DAVIS,
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v.
UNITED STATES,
Respondent.

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 January 6, 2025.


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



 1/6/25

**United States Court of Appeals
for the Fifth Circuit**

No. 24-50612
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
December 11, 2024

Lyle W. Cayce
Clerk

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

Before HIGGINBOTHAM, JONES, and OLDHAM, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the appeal is DISMISSED as moot.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion

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for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.