

U.S. Court of Appeals Fifth Circuit  
Clerk of Court: Lyle W. Cayce  
F. Edward Hebert Building  
600 S. Maestri Place  
New Orleans, LA 70130-3408  
(504) 310-7700

Re: Petitioner-Appellant Pro Se Appeal Brief  
Civ. Action No. 4:08-CV-147-Y  
Appeal No. 21-10301

Date: 5-3-21

Please find, per Federal Rules of Appellate Procedure 27(d)(3), 2021, enclosed the original and three copies of:

1. Relator's Motion for an Order or other relief
  - a. Form 4 Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis
  - b. Employee Earnings State
  - c. Means Order of Deficiencies
  - d. Gaines Corrected Form 4 Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis
  - e. Means Order denying Form 4 Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis.

in and regarding the above matter. Please bring it to the attention of the court for order and relief.

Respectfully submitted,

By: \_\_\_\_\_  
BARTON R. GAINES, Pro Se  
244 Siesta Court  
Granbury, Texas 76048  
Tel.: 682-500-7326  
Email bartongaines@gmail.com

U.S. Court of Appeals Fifth Circuit

Edward L. Marshall  
Chief, Criminal Appeals Division  
Texas Attorney General's Office  
P.O. BOX 12548  
Austin, Texas 78711  
Tel.: 512-936-1400  
Fax: 512-320-8132

Re: Petitioner-Appellant Pro Se Appeal Brief  
Civ. Action No. 4:08-CV-147-Y  
Appeal No. 21-10301

Date: 5-3-21

Please find enclosed a copy of:

1. Relator's Motion for an Order or other relief
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  - e. Means Order denying Form 4 Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis.

in and regarding the above matter. I am seeking to proceed on appeal in forma pauperis, and, contrary to the judge's ruling, I did adjust my weekly income to reflect my monthly.

Respectfully submitted,

By: \_\_\_\_\_  
BARTON R. GAINES, Pro Se  
244 Siesta Court  
Granbury, Texas 76048  
Tel.: 682-500-7326  
Email bartongaines@gmail.com

**App. Case No. 21-10301**

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**IN THE UNITED STATES COURT OF APPEALS**  
**FOR THE FIFTH CIRCUIT**

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BARTON R. GAINES, Relator

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On Appeal from the United States District Court for the Northern District of Texas,

Ft. Worth Division Civ. Action No. No. 4:08-CV-147-Y

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**RELATOR'S MOTION**  
**FOR AN ORDER OR OTHER RELIEF**

Relator, Mr. Barton R. Gaines, asks the Court to proceed on appeal in forma pauperis in this Court.

## A. INTRODUCTION

Relator is Barton R. Gaines; real party in interest is U.S. District Judge Terry Robert Means; respondent is Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division.

On 3-25-21 Gaines filed Form 4 Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis accompanied by an earnings statement from his current employer. *See Appendix A & B.*

On 4-15-21 Means filed order and notice of deficiency; Gaines overlooked the signature block included in nondescript heading's small print, and Gaines miscalculated his weekly pay for his monthly pay. Means ordered Gaines to sign and recalculate his weekly pay to reflect his monthly pay. *See Appendix C.*

On 4-16-21 Gaines corrected the above-mentioned deficiencies. *See Appendix D.*

On 4-27-21 Means denied Gaines corrected Form 4 Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis because, according to Means, although Gaines signed the affidavit, Gaines, did not adjust his weekly pay to reflect his monthly pay. *See Appendix E.* However, this is inaccurate. Gaines did

correct his weekly pay to reflect his monthly pay. See page “50-7”, Appendix D hereunder.<sup>1</sup>

## **B. Argument & Authorities**

As far as Gaines can tell, he can file a Motion, or an Application for Relief under Rule 27 of the Federal Rules of Appellant Procedure. See *Fed. R. App. Proc. 27, 2021*.

Also, as far as Gaines, can tell, he is supposed to file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4), which is:

(4) *Notice of District Court’s Denial*. The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis.

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

See *Fed. R. App. Proc. 24(a)(4) & (5), 2021*. So that is what Gaines is doing. He is filing a motion to proceed on appeal in forma pauperis in this Court within 30

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<sup>1</sup> The relevant portion of Gaines’s motion for leave to proceed in forma pauperis is as follows: Although I make roughly  $\$400 \times 4.35 = 1,700$  a month, I just spent over \$2000 to repair a car a family member is letting me drive to work. I completely drained my bank account, but for a \$1 and some change. I've been in prison for almost 20 years. I've been single all my life.

days after receiving Means Order denying his motion to proceed in forma pauperis on appeal.

The motion includes, as required, a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. *See* Fed. R. App. P. 27(a)(2)(B), 2021.

### **C. Conclusion**

Because Gaines did correct both deficiencies, that is, he signed the motion, and he adjusted his weekly pay to reflect his monthly pay,<sup>2</sup> Gaines asks the Court for permission to proceed in forma pauperis.

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<sup>2</sup> I.e., there is approximately 4.35 weeks in a month (i.e., (31, 28, 31, 30, 31, 30, 31, 31, 30, 31, 30, 31)/12); Gaines therefore multiplied \$400 a week by 4.35, which is approximately \$1,700 a month.

Respectfully submitted,

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BARTON R. GAINES, Pro Se  
244 Siesta Court  
Granbury, Texas 76048  
Tel.: 682-500-7326  
Email: bartongaines@gmail.com  
Signed: May 3, 2021

### **Certificates of Service**

I, the undersigned, certify that on 5-3-21, a copy of petitioner's motion for relief from the judgment was served by U.S. mail on the following attorney in charge for respondent:

Edward L. Marshall  
Chief, Criminal Appeals Division  
Texas Attorney General's Office  
P.O. BOX 12548  
Austin, Texas 78711  
Tel.: 512-936-1400  
Fax: 512-320-8132  
@texasattorneygeneral.gov

I further certify that required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13.

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Barton R. Gaines

### **Certificate Of Compliance with Rule 32(a)**

1. This motion complies with the type-volume limitation of Fed. R. App. P. 32(a) (7)(B) because this brief contains 562 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32a (6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Mac 2011 Version 14.5.7 in 14 point times new roman and 12 point times new roman for footnotes.

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Barton R. Gaines

### **List of Appendices**

1. Appendix A= Form 4 Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis
2. Appendix B= Employee Earnings State
3. Appendix C=Means Order of Deficiencies
4. Appendix D=Gaines Corrected Form 4 Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis
5. Appendix E=Means Order denying Form 4 Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis.



**FORM 4 AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**

United States District Court for the Northern District of Texas, Ft. Worth Div  
 Barton R. Gaines

v. Lorie Davis Case No. 4:08-CV-147-Y

<p><b>Affidavit in Support of Motion</b>                  I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S. – § 1621.)</p> <p>Signed: _____</p>	<p><b>Instructions</b>                  Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p style="text-align: center;"><b>3-25-21</b></p> <p>Date: _____</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Integrity, Extra-Ordinary, & Timeliness**

My issues on appeal are: \_\_\_\_\_

- 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 313/12=253 \$ _____	Spouse Single \$ _____	You \$ 400 \$ _____	Spouse Single \$ _____
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)	\$ n/a	\$ _____	\$ n/a	\$ _____
Unemployment payments	\$ _____	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ _____	\$ _____	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____	\$ _____	\$ _____
<b>Total monthly income:</b>	\$ 400	\$ _____	\$ 400	\$ _____

MISC-14

**FED. R. APP. P. WITH 5TH CIR. R. & IOPs**

2. List your 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
DCJ-CID	2661 FM 2054, Tenn. Colony, Tx	2-21-2002	\$0
FedEx	2001-B World Wide, Ft. Worth, Tx	1-31-2021	\$364

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
Single			

4. How much cash do you and your spouse have? \$ \$2

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

Financial institution	Type of account	Amount you have	Amount your spouse has
Bank	Checking	\$ \$2	\$
		\$	\$
		\$	\$

If you are a prisoner, seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

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 (Value)
n/a	n/a	n/a
		Make & year: _____
		Model: _____
		Registration # _____

**MISC-14**

**FED. R. APP. P. WITH 5TH CIR. R. & IOPs**

Motor vehicle #2 (Value) n/a	Other assets (Value) n/a	Other assets (Value) n/a
Make & year: _____	_____	_____
Model: _____	_____	_____
Registration #: _____	_____	_____

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

Person owing you or your spouse money n/a	Amount owed to you n/a	Amount owed to your spouse n/a
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. State the persons who rely on you or your spouse for support.

Name (or, if under 18, initials only) n/a	Relationship n/a	Age n/a
_____	_____	_____
_____	_____	_____
_____	_____	_____

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, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 200	\$ n/a
Are real-estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and Telephone)	\$ 50	\$ _____
Home maintenance (repairs and upkeep)	\$ 20	\$ _____
Food	\$ 50	\$ _____
Clothing	\$ 20	\$ _____
Laundry and dry-cleaning	\$ 20	\$ _____
Medical and dental expenses	\$ 20	\$ _____
Transportation (not including motor vehicle payments)	\$ 26.84	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ 50	\$ _____

**MISC-14**

**FED. R. APP. P. WITH 5TH CIR. R. & IOPs**

Insurance (not deducted from wages or included in Mortgage payments)	\$ <u>n/a</u>	\$ <u>n/a</u>
Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
<b>Parole &amp; Ct. Cost</b>	<u>20+12=32</u>	
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in Mortgage payments) (specify): _____	\$ _____	\$ _____
Installment payments	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Credit card (name): _____	\$ _____	\$ _____
Department store (name): _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses:	\$ <u>478.84</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 spent -or will you be spending-any money for expenses or attorney fees in connection with this lawsuit?     Yes     No

If yes, how much? \$ \_\_\_\_\_

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.  
 Although I make roughly \$400\*4.35=1,700 a month, I just spent over \$2000 (See Attachment A) to repair a car a family member is letting me drive to work. I completely drained my bank account, but for a \$1 and some change. I've been in prison for almost 20 years. I've been single all my life. I have also attached as Attachment B copy of how much my benefits are from work.

**MISC-14**

FED. R. APP. P. WITH 5TH CIR. R. & IOPs

12. State the [city and state] of your legal residence.  
Granbury, Texas

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Your daytime phone number: ( 682 ) 500-2753

Your age: 38 Your years of schooling: 12+4=16

MISC-14

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

BARTON RAY GAINES, §  
§  
Petitioner, §  
§  
v. § No. 4:08-CV-147-Y  
§  
NATHANIEL QUARTERMAN, Director, §  
Texas Department of Criminal §  
Justice, Correctional §  
Institutions Division, §  
§  
Respondent. §

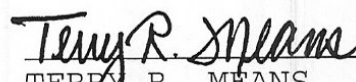
ORDER AND NOTICE OF DEFICIENCY

Petitioner has filed a notice of appeal (doc. 27) from the Court's March 11, 2021, order (doc. 26) denying his rule 60(b)(6) motion in this habeas action and a "Form 4 Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis" (doc. 28). Petitioner, who is not confined, must address the following deficiencies:

- ( x ) The submitted "Form 4 Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis" is not signed and sworn or affirmed by Petitioner and is insufficient to determine whether Petitioner is entitled to *in-forma-pauperis* status on appeal because it reflects the amount of money Petitioner received from employment for one week without adjusting the amount to show the monthly rate as instructed.

Accordingly, Petitioner is ORDERED to resubmit his "Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis" no later than 30 days from today. Failure to do so will result in denial of the motion.

Signed April 15, 2021.

  
\_\_\_\_\_  
TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE

**FORM 4 AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**

United States District Court for the Northern District of Texas, Ft. Worth Div  
 Barton R. Gaines

v. Lorie Davis Case No. 4:08-CV-147-Y

<p><b>Affidavit in Support of Motion</b>                  I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S. – § 1621.)</p> <p>Signed: _____</p>	<p><b>Instructions</b>                  Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p style="text-align: center;"><b>3-25-21</b></p> <p>Date: _____</p>
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Disability (such as social security, insurance payments)	\$ n/a	\$ _____	\$ n/a	\$ _____
Unemployment payments	\$ _____	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ _____	\$ _____	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____	\$ _____	\$ _____
<b>Total monthly income:</b>	\$ 400	\$ _____	\$ 400	\$ _____

MISC-14

**FED. R. APP. P. WITH 5TH CIR. R. & IOPs**

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DCJ-CID	2661 FM 2054, Tenn. Colony, Tx	2-21-2002	\$0
FedEx	2001-B World Wide, Ft. Worth, Tx	1-31-2021	\$364

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.)

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Financial institution	Type of account	Amount you have	Amount your spouse has
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		\$	\$
		\$	\$

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n/a	n/a	n/a
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		Model: _____
		Registration # _____

**MISC-14**



**FED. R. APP. P. WITH 5TH CIR. R. & IOPs**

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Make & year: _____	_____	_____
Model: _____	_____	_____
Registration #: _____	_____	_____

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

Person owing you or your spouse money n/a	Amount owed to you n/a	Amount owed to your spouse n/a
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. State the persons who rely on you or your spouse for support.

Name (or, if under 18, initials only) n/a	Relationship n/a	Age n/a
_____	_____	_____
_____	_____	_____
_____	_____	_____

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, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 200	\$ n/a
Are real-estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and Telephone)	\$ 50	\$ _____
Home maintenance (repairs and upkeep)	\$ 20	\$ _____
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**MISC-14**

FED. R. APP. P. WITH 5TH CIR. R. & IOPs

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Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Parole & Ct. Cost	<u>20+12=32</u>	
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in Mortgage payments) (specify): _____	\$ _____	\$ _____
Installment payments	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Credit card (name): _____	\$ _____	\$ _____
Department store (name): _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses:	\$ <u>478.84</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 spent -or will you be spending-any money for expenses or attorney fees in connection with this lawsuit?  Yes  No

If yes, how much? \$ \_\_\_\_\_

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.  
 Although I make roughly \$400\*4.35=1,700 a month, I just spent over \$2000 (See Attachment A) to repair a car a family member is letting me drive to work. I completely drained my bank account, but for a \$1 and some change. I've been in prison for almost 20 years. I've been single all my life. I have also attached as Attachment B copy of how much my benefits are from work.

MISC-14

FED. R. APP. P. WITH 5TH CIR. R. & IOPs

12. State the [city and state] of your legal residence.  
Granbury, Texas

---

Your daytime phone number: ( 682 ) 500-2753

Your age: 38 Your years of schooling: 12+4=16

MISC-14

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

BARTON RAY GAINES,

Petitioner,

v.

NATHANIEL QUARTERMAN, Director,  
Texas Department of Criminal  
Justice, Correctional  
Institutions Division,

Respondent.

§  
§  
§  
§  
§  
§  
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No. 4:08-CV-147-Y

ORDER

In accordance with the Court's April 15, 2021 Order and Notice of Deficiency (doc. 30), Petitioner has resubmitted his "Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis" (doc. 31) Although the resubmitted form is signed or affirmed by Petitioner, he failed to adjust the amount that he receives weekly from employment to show the monthly rate and to provide supporting documentation, such as earnings statements from January 31, 2021<sup>1</sup> through the present, to assist the Court in determining whether *in-forma-pauperis* status should be granted. Accordingly, his motion to proceed *in forma pauperis* on appeal is DENIED.

Signed April 27, 2021.



TERRY R. MEANS

UNITED STATES DISTRICT JUDGE

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<sup>1</sup>Petitioner has been released from the Correctional Institutions Division of the Texas Department of Criminal Justice and asserts that he began employment with FedEx on January 31, 2021. (Aff. 2, doc. 31.) With his initial affidavit, he submitted one earnings statement for the period of January 31, 2021 through February 6, 2021.