

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 21-cr-212 (ABJ)
	:	
JARED ADAMS,	:	
	:	
DEFENDANT.	:	

**GOVERNMENT’S MEMORANDUM IN OPPOSITION TO
DEFENDANT’S MOTION FOR THE U.S. MARSHALS SERVICE TO PROVIDE NON-
CUSTODIAL TRANSPORTATION AND SUBSISTENCE FOR TRIAL**

The Court should deny Defendant Jared Adams’s Motion for the U.S. Marshals Service to Provide Non-Custodial Transportation and Subsistence for Trial, ECF No. 50, because Adams has failed to show he is unable to pay for transportation and subsistence from his residence in Plain City, Ohio to Washington, D.C. Even if Adams could establish eligibility under 18 U.S.C. § 4285 for funds to travel to Washington, D.C., he is not entitled to lodging or subsistence during the trial or to expenses for post-trial travel to Ohio. Numerous other courts in this district have recently denied similar motions brought by January 6 defendants located around the country. Order, *United States v. Bacon*, 21-cr-488 (CRC), ECF No. 54 (D.D.C. Nov. 8, 2022); Minute Order, *United States v. Rodriguez*, No. 21-cr-483 (DLF) (D.D.C. Nov. 7, 2022); Minute Order, *United States v. Rossman*, No. 22-cr-280 (BAH) (D.D.C. Oct. 14, 2022).

BACKGROUND

On the morning of January 6, 2021, Adams drove from Plain City, Ohio, to Washington, D.C., where he saw President Trump speak and then marched to the Capitol, where he passed through scaffolding on the Capitol’s west side. Encountering a line of police, Adams said, “I hope DHS brought enough bullets.” Adams then entered the Capitol Building through the Senate Wing Door. He was inside for approximately ten minutes. After he left the building, Adams remained

on Capitol Grounds, and, after a confrontation with police, yelled, “next time we won’t leave our guns at home.” He drove home to Ohio that evening, leaving Washington, D.C. at approximately 5:30 p.m.

For his participation in the January 6, 2021 attack on the Capitol, Adams has been charged by an Information with violating 18 U.S.C. § 1752(a)(1) (Entering and Remaining in a Restricted Building or Grounds), 18 U.S.C. § 1752(a)(2) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds), 40 U.S.C. 5104(e)(2)(D) (Disorderly Conduct in a Capitol Building), 40 U.S.C. 5104(e)(2)(G)(Parading, Demonstrating, or Picketing in a Capitol Building). ECF No. 44. On October 26, 2022, Adams filed the instant motion. ECF No. 50.

ANALYSIS

Adams, a resident of Plain City, Ohio, requests under 18 U.S.C. § 4285 that the U.S. Marshal pay for his noncustodial transportation and subsistence “for his travel and subsistence expenses from Plain City, Ohio to Washington, D.C. and return to Plain City, Ohio for his attendance at trial in this matter.” ECF No. 50. Adams did not attach a declaration or an affidavit in support of his motion to establish that he was without means to pay for his transportation and subsistence while traveling from Ohio to Washington, D.C. for the trial. Instead, Adams’s counsel merely asserts he “does not have the financial ability to pay transportation expenses from Plain City, Ohio to Washington, D.C. and return to plain city.” ECF No. 50 at 1.

The Court should deny Adams’s motion because he has failed to establish that he is unable to pay for transportation and subsistence to the site of court and therefore he is not entitled to the relief he seeks.¹ Further, even if Adams could establish that he is unable to pay for his noncustodial

¹ This Court could deny Adams’s motion for subsistence to travel to the District of Columbia for trial without prejudice because Adams must supply supporting financial information. Even if such information established Adams’s financial eligibility, however, § 4285 does not provide for

transportation and subsistence while traveling from Ohio to Washington, D.C. for trial, Adams is not entitled to lodging or subsistence during trial or noncustodial transportation and subsistence post-trial while traveling from Washington, D.C. to Ohio.

Title 18, United States Code, Section 4285 provides:

Any judge or magistrate judge of the United States, when ordering a person released under chapter 207 on a condition of his subsequent appearance before that court, any division of that court, or any court of the United States in another judicial district in which criminal proceedings are pending, may, when the interests of justice would be served thereby and the United States judge or magistrate judge is satisfied, after appropriate inquiry, that the defendant is financially unable to provide the necessary transportation to appear before the required court on his own, direct the United States marshal to arrange for that person's means of noncustodial transportation or furnish the fare for such transportation to the place where his appearance is required, and in addition may direct the United States marshal to furnish that person with an amount of money for subsistence expenses to his destination, not to exceed the amount authorized as a per diem allowance for travel under section 5702(a) of title 5, United States Code. When so ordered, such expenses shall be paid by the marshal out of funds authorized by the Attorney General for such expenses.

18 U.S.C. § 4285. Thus, under § 4285, the district court or a magistrate judge “may, when the interest of justice would be served thereby,” order the U.S. Marshal to provide a defendant with funds for the noncustodial transportation and subsistence while traveling for court proceedings. *Id.* Expenses for subsistence under § 4285 are limited to the costs of traveling “to” a defendant’s destination. *Id.* To order travel and subsistence expenses, the district court or magistrate judge, however, must first be “satisfied, after appropriate inquiry, that the defendant is financially unable to provide the necessary transportation to appear before the required court on his own.” *Id.*; *see also United States v. Forest*, 597 F. Supp. 2d 163, 165-166 (D. Me. 2009) (noting that § 4285 “places the onus” on a defendant to demonstrate defendant “is so destitute” that defendant is

subsistence during trial or for return travel, and paying Adams’s expenses may not be in the interests of justice, as discussed in more detail below.

financially unable to provide funds necessary for transportation to court and that defendant must overcome “a heavy burden” to establish an inability to pay).

Other defendants have, like Adams, requested that courts go beyond the plain text of § 4285 and order the U.S. Marshal Service to pay not just the expenses of traveling *to* a trial, but expenses incurred *during* trial, as well as the return trip to a defendant’s residence. Courts have rejected this approach. For example, in *United States v. James*, 762 F. Supp. 1, 2 (D.D.C.1991), a court in this district denied a Massachusetts defendant’s *ex parte* motion under § 4285 for transportation and subsistence expenses from Washington, D.C. to Massachusetts because “while the statute authorizes payment to travel to the court, once at the site of the court, the statute does not authorize payment of subsistence during the course of the trial or hearing.” *Id.*; *see also United States v. Sandoval*, 812 F. Supp. 1156, 1157 (D. Kan. 1993)(“[W]hile the court may require the Marshal to provide money for subsistence during transit, this statute does not authorize the court to enter an order requiring the Marshal to provide money for subsistence upon reaching [the place of trial.]”); *United States v. Nave*, 733 F. Supp. 1002 (D. Md. 1990) (denying motion under § 4285 to authorize government funds for lodging during trial because § 4285 “does not authorize such payments, but only provides for payment of travel and subsistence to the place of trial.”); *United States v. Centeno*, No. 09-cr-3120–L, 2009 WL 3334144, at *1 (S.D. Cal. Oct. 15, 2009) (granting motion to provide transportation and subsistence funds only to the extent as it relates to one-way travel to court because § 4285 “only allows payment of one-way travel to a court appearance, and not for costs of return travel[,]” and that § 4285 “does not authorize payment for subsistence or lodging during trial.”).²

² Although 18 U.S.C. § 4285 does not permit the relief Adams requests, some courts have found alternative ways to provide defendants with funds for transportation and lodging. *United States v. Badalamenti*, No. 84-cr-236 (PNL), 1986 WL 8309 at *1-2 (S.D.N.Y. July 22, 1986) (finding that

A court may also deny a § 4285 motion on interest-of-justice grounds. Recently, in *United States v. Rossman*, another January 6 case, Chief Judge Howell denied a misdemeanor defendant's motion under § 4285 for travel expenses to attend his sentencing. Minute Order, *United States v. Rossman*, No. 22-cr-280 (BAH) (D.D.C. Oct. 14, 2022). She reasoned:

Regarding defendant's travel expenses, pursuant to 18 U.S.C. § 4285, funding may be dispensed when the defendant is "financially unable" to travel for his appearance on his own and "when the interests of justice would be served thereby." Defendant was able to travel to Washington, D.C. to engage in the very offense conduct that is the subject of these proceedings. The interests of justice would not be served by the U.S. Government paying for defendant to make that same trip now that he is to be sentenced for that offense conduct.

Id.

Adams has failed to establish he is unable to pay for transportation to court for trial or that granting the motion is in the interest of justice. First, Adams's motion fails to provide the Court with an adequate basis to conduct an "appropriate inquiry" under § 4285 into Adams's ability to pay. In *Forest*, a defendant filed a motion under § 4285 for \$48.00 in funds to pay for travel and reimbursement to attend an upcoming Rule 11 proceeding. *Forest*, 597 F. Supp. 2d at 164. *Forest*

although § 4285 does not permit funds for subsistence during a trial, the trial lasting one year constituted an extraordinary circumstance and "fundamental fairness or due process" required the government to "provide either decent, non-custodial lodging or the cost of obtaining it."); *Nave*, 733 F. Supp. at 1003 (noting that in the absence of a congressional amendment to § 4285, indigent defendants "must either rely, for food and shelter, upon the kindness of friends or strangers, or make arrangements through the Pre-Trial Services Agency for lodging in some appropriate facility, such as a half-way house"); *United States v. Gundersen*, 978 F.2d 580, 584-85 (10th Cir. 1992) (holding the Pretrial Services Act, 18 U.S.C. §§ 3152-3156, requires Pretrial Services to provide defendants unable to qualify under 18 U.S.C. § 4285 for funds used for transportation and lodging); *but see United States v. Mendoza*, 734 F. Supp. 2d 281, 285-287 (E.D.N.Y. 2010) (rejecting the reasoning in *Nave* that a halfway house may be an appropriate lodging for a defendant on pretrial release and the reasoning in *Gundersen* that the Pretrial Services Agency may arrange for funding and lodging as an overbroad reading of the § 4285 and holding instead that a defendant may access funds under an "admittedly tortured" reading of the Criminal Justice Act, 18 U.S.C. § 3006A, by a court order authorizing defense counsel to access judiciary funds to arrange for their clients' transportation and lodging).

also supported her motion with documentation including a receipt that detailed Forest's social security benefits and her "usual expenses." *Id.* at 166. The court in *Forest* found the information insufficient and denied the motion because Forest's motion was: (1) unsworn, (2) her list of expenses included a monthly item that Forest could forgo to pay for the travel, and (3) based on the minimal amount of funds needed to travel, "the Court would require a much more intensive analysis of her entire financial situation before it could conclude that she had met the burden contemplated by the statute." *Id.*

Judge Cooper recently denied a nearly identical motion that similarly lacked any support for counsel's assertions about the defendant's inability to pay. *Bacon*, 21-cr-488 (CRC), ECF No. 54. Agreeing with the government's arguments, Judge Cooper ordered Bacon to include a "sworn statement and supporting documentation" to show that he is "financially unable to travel to trial," should he refile his motion. *Id.* at 1. Judge Cooper further noted, "18 U.S.C. § 4285 authorizes funding only for travel to trial and subsistence required during that travel," so "Defendant would not be entitled to funds during trial or for travel accommodations to return to Massachusetts." *Id.*

In a recent denial of another similar motion, Judge Friedrich noted that "one-way bus transportation from New York City to Washington, D.C. costs as little as \$30." Nov. 7, 2022 Minute Order, *Rodriguez*, No. 21-cr-483 (DLF). If defendant sought payment of those costs, Judge Friedrich ruled, he must submit a "(1) sworn affidavit describing his current financial circumstances, including his monthly income and expenses, his current savings and assets, and confirming the cost of same-day bus and subway transportation, and (2) attach[] documentary support for each of the attestations in his declaration." *Id.*

Internet research indicates that the cost of driving from Plain City, Ohio to Washington D.C. (as Adams did on January 6), around 425 miles, is approximately \$62.83, as of November

16, 2022.³ Google Maps indicates that the drive takes about seven hours. Therefore, any supporting material provided by Adams must establish that he is “financially unable” to pay \$62.83, plus the costs of one or two meals along the way. Adams should also explain why the government funding of his travel in these circumstances is in the “interests of justice,” 18 U.S.C. § 4285, and why the government should pay for his travel to Washington, D.C. now, when he was able to pay his own way on January 6.

CONCLUSION

Adams has not provided the Court with a declaration or sworn affidavit or documentation supporting his assertion that he is unable to pay which would allow the Court to fulfill its obligation to conduct an appropriate inquiry into Adams’s ability to pay. On this basis alone, the Court should deny the motion. His motion also impermissibly requests costs beyond those authorized by § 4285. Finally, Adams has failed to explain why it is in the interests of justice that the Court grant his motion. For all these reasons, the Court should deny Adams’s motion.

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney
DC Bar No. 481052

By: /s/ Alexis Loeb
Alexis Loeb
CA Bar No. 269895
Assistant United States Attorney
Detailed to USAO-DC
450 Golden Gate Ave., 11th Floor
San Francisco, CA 94102
Alexis.Loeb@usdoj.gov
Telephone: (415) 436-7168

³ See <https://www.travelmath.com/cost-of-driving/from/Ohio/to/Washington,+DC>.