IN THE SUPREME COURT OF NEW SOUTH WALES

ANTON TUTOVEANU
Petitioner

COMMISSIONER OF THE AUSTRALIAN FEDERAL POLICE
Respondent

Short submissions of Commissioner of Australian Federal Police in relation to Notice of Motion dated 21 November 2025

PART I INTRODUCTION

1. By Notice of Motion dated 21 November 2025, Anton Tutoveanu seeks an order in the nature of habeas corpus "to release the applicant Joel Davis from unlawful custody purportedly initiated by the Australian Federal Police". Mr Davis is named as the applicant in that notice of motion, and Mr Tutoveanu as "petitioner". The Commissioner of the Australian Federal Police (**AFP**) is named as the respondent.

2. The relevant circumstances are as follows:

   2.1. On 20 November 2025, members of the AFP arrested Mr Davis and charged him with one count of using a carriage service to menace, harass or cause offence, contrary to s 474.17 of the *Criminal Code* (Cth). At the time of his arrest, Mr Davis was on bail for previous offences. He was refused police bail.[1]

   2.2. On 21 November 2025, Mr Davis appeared before the NSW Local Court, represented by NSW Legal Aid. Magistrate Covington refused him bail. Mr Davis's matter is next before the Local Court on 3 December 2025.

3. In submissions dated 21 November 2025, Mr Tutoveanu says that he had been made aware of the recent arrest of Mr Davis, and contends that "[r]easonable persons would not in all the circumstances regard [Mr Davis] as having" committed the offence with which he is charged. The submissions were authored by Mr Tutoveanu as "Amicus".

4. The application should not be entertained. Mr Tutoveanu lacks standing to apply for habeas corpus on behalf of Mr Davis. The Commissioner is not the proper respondent to such an application. And, if reached, no proper basis for it has been shown.

PART II PETITIONER DOES NOT HAVE STANDING

5. Mr Tutoveanu has not established his standing to apply for the relief he seeks.

6. In response an email from Chambers asking if he is a legal practitioner or purported otherwise to represent Mr Davis,[2] Mr Tutoveanu did not say he is or did. Instead, he referred to *Re Adian Ashley of the House of Cooper* [2017] NSWSC 533 "for similar procedural circumstances". That case concerned an application for habeas brought by a non-lawyer "petitioner" to secure the release of another, described as the "applicant".

---

1 It does not appear to be in dispute that Mr Davis was arrested by the AFP, and was refused police bail: Submissions of Mr Tutoveanu, 21 November 2025 at [1], [3].

2 Cf email, Anton Tutoveanu to Chambers of Justice Walton, 22 November 2025 at 5.19pm.

It appears that Mr Tutoveanu wishes to invoke a similar procedure.

7. At least in some circumstances, a person may apply for habeas corpus to secure the release of another.[3] The leading Australian authority concerning when a court ought to entertain such an application appears to be *Clarkson v The Queen* [1986] VR 464.[4] As Crockett J there explained, applications have generally been entertained where the petitioner "had some entitlement … to seek the release from detention of the person detained by reason of some special circumstance that elevated him above the status of a mere stranger or volunteer".[5] One such circumstance is where "by reason of that detention [the detainee] is prevented from approaching the Court or providing instructions to another to do so".[6] There is no evidence to suggest that is the case here.

8. Justice Crockett went on to hold that the Court may "exercis[e] a discretion as to whom it will permit to apply for a writ on behalf of a prisoner". His Honour said:[7]

> [S]uch discretionary exercise must necessarily be flexible. Its operation will depend upon considerations such as the relationship between the prisoner and the applicant, whether the applicant is a genuinely concerned person, whether the prisoner is so circumstanced that he can and might be expected to make the application himself and whether the applicant may properly be thought to be acting officiously. This list is not exhaustive. There will be other considerations. Each case must be dealt with in the light of its own facts. But the boldly stated proposition that anyone in the community has the right as a third party to apply for the writ must today, I consider, be qualified to the extent that the Court has in an appropriate case a discretion to refuse an applicant standing to pursue the application.

9. The Court should exercise that discretion to refuse to entertain the Notice of Motion dated 21 November 2025. That is because:

   9.1. Mr Tutoveanu has not claimed to have a pre-existing relationship with Mr Davis but would appear to be a mere stranger or volunteer. The material does suggest he holds a concern about the legality of Mr Davis's detention. Nevertheless, by litigating that concern he "may properly be thought to be acting officiously".

   9.2. Significantly, there is no material to suggest that Mr Davis has given his "specific consent … that [Mr Tutoveanu] should apply for the writ in aid of" him, so as to "erase from the application the taint of officiousness" it may otherwise have.[8]

   9.3. Nor is there any material to suggest that Mr Davis could not make an application for habeas corpus himself, were he so advised. There is no evidence that he would be obstructed in doing so, or in seeking legal advice to that end.[9]

10. Those last two points are particularly significant in circumstances where, were the application to be entertained, s 71(2) of the *Supreme Court Act 1970* (NSW) would operate to bar any further application for habeas corpus "in respect of" Mr Davis, on the

---

3 See, eg, *Truth About Motorways Pty Ltd v Macquarie Infrastructure Investment Management Ltd* (2000) 200 CLR 591 (***Truth About Motorways***) at [2] (Gleeson CJ and McHugh J), [94] (Gummow J), [162] (Kirby J); *Ruddock v Vadarlis* (2001) 110 FCR 491 at [66] (Black CJ).

4 Having been referred to with apparent approval in, eg, *Truth About Motorways* (2000) 200 CLR 591 at [2] (Gleeson CJ and McHugh J), *Ruddock v Vadarlis* (2001) 110 FCR 491 at [66] (Black CJ).

5 *Clarkson v The Queen* [1986] VR 464 at 465-6.

6 *Clarkson v The Queen* [1986] VR 464 at 465.

7 *Clarkson v The Queen* [1986] VR 464 at 466.

8 Cf *Clarkson v The Queen* [1986] VR 464 at 467.

9 Cf *Clarkson v The Queen* [1986] VR 464 at 466-7.

same grounds, unless supported by fresh evidence. Mr Davis should not be prejudiced by an application made without his consent.

11. In those circumstances, no "clear case showing why the Court should be moved by a stranger rather than by the prisoner himself" has been made out, and the application should be refused.[10]

PART III THE COMMISSIONER IS NOT THE PROPER RESPONDENT

12. The Commissioner is not the proper respondent to an application for habeas corpus seeking the release of Mr Davis. That is because Mr Davis is no longer in the custody of the Commissioner or any AFP member, having been refused bail by a Magistrate.

13. As the Court of Appeal explained in *Dacich v Commissioner of Corrective Services* [2020] NSWCA 359 at [6], "[a]n order disposing of a writ of habeas corpus favourably to an applicant will be directed to the person having custody of the applicant, requiring that he or she be released." As in *Dacich*, "[i]n the present case, that person is the governor of the correctional centre in which [Mr Davis] is being held".

14. It follows that the governor is, and the Commissioner of Corrective Services NSW may be, a proper respondent to an application for a writ of habeas corpus: see *Dacich* at [9]-[11].[11] The Commissioner, not having custody of Mr Davis, is not: cf *Dacich* at [13].

PART IV NO BASIS FOR APPLICATION

15. Given that Mr Tutoveanu has not established his standing or entitlement to seek an order in the nature of habeas corpus with respect to (or on behalf of) Mr Davis, the Court can dismiss the present application without considering its merits. Nor is the Commissioner necessarily the appropriate party to address the Court on the merits of the application, not being a proper respondent to it.

16. The Commissioner will nevertheless endeavour to assist the Court if it is minded to consider the application. To that end, the Commissioner observes:

    16.1. Authority to detain Mr Davis may be evidenced by a warrant of commitment issued by Magistrate Covington under s 39 of the *Bail Act 2013* (Cth).[12] Such a warrant would be directed to the state authorities responsible for transporting and detaining Mr Davis, and authorise them to do so.[13]

    16.2. The Commissioner does not presently have a copy of any such warrant, but could make inquiries of the appropriate state authorities to ascertain whether it has been issued, and to obtain a copy for provision to the Court.

    16.3. If such a warrant exists, it is sufficient evidence of authority to detain unless the applicant shows some basis on which to cast doubt upon its validity.[14]

---

10 Cf *Clarkson v The Queen* [1986] VR 464 at 466-7.

11 See also, as a recent example of the former, *Fantakis v Governor of Macquarie Correctional Centre* [2025] NSWSC 996.

12 As picked up and applied by s 68 of the *Judiciary Act 1903* (Cth).

13 See *Criminal Procedure Act 1988* (NSW), s 242(2), as applied by s 96(1) of the *Bail Act 2013* (NSW).

14 See *Dacich v Commissioner of Corrective Services* [2020] NSWCA 359 at [16]. See also *Criminal Procedure Act 1988* (NSW), s 244 (concerning defects in warrants of commitment), as applied (mutatis mutandis) by s 96(1) of the *Bail Act 2013* (NSW).

17. The Notice of Motion reveals no such basis. It complains, in substance, that Mr Davis could not reasonably be regarded as having committed the offence with which he is charged. That is a question which might be relevant to bail, as going to the strength of the prosecution case. It will ultimately be tested at trial, if Mr Davis were to plead not guilty. It is not a matter going to the validity of Mr Davis's detention on remand.

PART V RELIEF

18. The Notice of Motion should be refused. There is no reason why costs should not follow the event.

23 November 2025

.....

Will Randles

Counsel for the Commissioner of the Australian Federal Police