

Case No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2017

ATNAFU RAS MAKONNEN,
Petitioner,

vs.

MOTION TO PROCEED
IN FORMA PAUPERIS

THE UNITED STATES OF AMERICA,
Respondent

Petitioner Atnafu Ras Makonnen, through his CJA appellate counsel and pursuant to Rule 39 of the Supreme Court Rules moves this Court for leave to proceed with the present petition *in forma pauperis*, and states:

Petitioner Makonnen comes to this Court having been convicted of possession of a firearm by a convicted felon, and sentenced under the Armed Career Criminal Act to a minimum mandatory term of 15 years (188) months in prison.

This Petition arises from a final decision of the United States Eleventh Circuit Court of Appeals entered on February 5, 2018 upholding that enhanced mandatory ACCA sentence. A timely filed petition for rehearing was denied on April 4, 2018.

After this Court's decision in *Johnson v. United States*, 135 S.Ct. 2551(2015), Makonnen filed a *pro se* motion to vacate pursuant to 28 U.S.C. §2255. His motion was denied by the United States District Court, Southern District of Florida.

The district court refused to grant a certificate of appealability. Mr. Makonnen took an appeal to the Eleventh Circuit *pro se*. The Eleventh Circuit appointed the undersigned to represent Mr. Makonnen on appeal, and granted a COA on one issue:

Whether Mr. Makonnen has at least two violent felonies in combination with his serious drug offense, to qualify him as an armed career criminal, absent the ACCA's residual clause?

Several very sound reasons are presented in support of granting the writ, including that Makonnen does not have at least two violent felonies, in combination with a serious drug offense, to qualify him as an armed career criminal, absent the ACCA's residual clause; that Florida felony battery is not a violent offense; that attempted first degree murder with a deadly weapon is not a violent offense under Florida law; that attempted robbery with a firearm is not a violent felony under Florida law; and that mere sale of cocaine under Florida law is not a serious drug offense.

The Petition asks this Court to exercise its supervisory jurisdiction over the United States Courts and correct the illegal sentence that was imposed in this case.

Mr. Makonnen's financial status has not improved during his incarceration that began at the outset of this case, or even before that. He is still proceeding through court-appointed counsel. Accordingly Atnafu Makonnen respectfully requests that he be permitted to proceed with this petition in this Court *in forma pauperis* in light of his continuing indigence and his proceeding through CJA counsel on appeal.

Wherefore, Petitioner respectfully prays that this Honorable Court will grant him leave to proceed on petition for writ of certiorari *in forma pauperis*, waive the filing fee, waive the requirement for 40 printed copies of the petition, and accept eleven copies of the petition in typewritten form, that are submitted together with this motion.

Respectfully submitted,

/s/ Sheryl J. Lowenthal

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Dated: June 29, 2018