

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

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Daverne Michael Foy, *Petitioner*,

vs.

United States of America, *Respondent*.

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MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

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The petitioner, Daverne Michael Foy, asks leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

The trial court below found Petitioner to be financially unable to obtain counsel and appointed a Federal Public Defender and court-appointed counsel to represent him in the district court. The district court subsequently appointed undersigned counsel on appeal. Copies of the Orders appointing counsel are attached.

Dated: March 4, 2019

Respectfully submitted,

/s/ C. Andrew Weber

C. Andrew Weber

Texas State Bar No. 00797641

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*Court Appointed Attorney for Petitioner*

FILED

17 OCT 24 AM 8:31

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY

AO  
CLERK

UNITED STATES OF AMERICA

-vs-

CAUSE NO. A-17-CR-172-SS

(1) DAVERNE FOY

ORDER

BE IT REMEMBERED on this day, the Court reviewed the file in the above-styled cause, and specifically the "Motion to Withdraw as Counsel and for Appointment of New Counsel on Appeal" [#89 filed October 19, 2017] and, thereafter, enters the following:

IT IS ORDERED that the Motion to Withdraw is GRANTED and Michael Macmunn Burke is relieved of all responsibilities in this case, except as set out in this order.

IT IS FURTHER ORDERED that Andrew Weber, whose address is 301 Congress Avenue, Suite 2000, Austin, Texas 78701, telephone number 512-495-6451, is appointed counsel for Davern Foy. Mr. Foy entered into a plea agreement in the above-captioned case and was sentenced on September 29, 2017 for "conspiracy to distribute and possession with intent to distribute more than 100 kilograms of marijuana." His sentence was for a term of 90 months, plus supervision, and the judgment was executed on September 29, 2017. Mr. Burke, Mr. Foy's then attorney, followed his instructions from Mr. Foy and filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit. The appointment of Andrew Weber was taken from the list of attorneys with appellate experience and he is ordered to represent Mr. Foy in his appeal.

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Mr. Burke is ordered to immediately contact Mr. Weber, give him a copy of the file, and orally bring him up to date with regard to Mr. Foy, his representation, and Mr. Foy's instructions. Mr. Weber is instructed to contact the United States Marshals Service and attempt to meet with Mr. Foy as soon as practicable as Mr. Foy is currently in the custody of the United States Marshals Service but is or will be assigned and sent to an appropriate penitentiary in the immediate future.

Mr. Weber is instructed to meet with the Clerk, obtain the appropriate forms, and execute them with regard to his need in preparation of a brief in this case to the Circuit. Mr. Foy had appointed counsel in the district court and, therefore, he is eligible for appointment of counsel in the appellate court.

After Mr. Burke has met with Mr. Weber, delivered all appropriate and necessary materials to him and has given him a complete oral history of his representation to date, he is discharged from further responsibilities in this case.

IT IS FINALLY ORDERED that the Clerk shall call Mr. Weber and advise him immediately of this appointment.

SIGNED this the 23 day of October 2017.

*Barnspurier*  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

United States of America §  
v. §  
§  
§  
§  
§  
Case Number: AU:17-CR-00172(1)-SS  
(1) Daverne Foy

## ORDER APPOINTING COUNSEL

The above-named defendant having satisfied this court after appropriate inquiry that he/she (1) does not wish to waive representation by counsel, and (2) is financially unable to obtain counsel, therefore, the Federal Public Defender is hereby APPOINTED to represent the defendant in the above styled and numbered cause.

Should this case proceed in the future before a United States District Judge, the appointment shall remain in effect until terminated, or a substituted attorney is appointed.

SIGNED this 23rd day of May, 2017.

  
ANDREW W AUSTIN  
U.S. MAGISTRATE JUDGE