

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2020

CASE NO. _____

BERNARD MOORE,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent

MOTION TO PROCEED ON PETITION FOR WRIT OF CERTIORARI
IN FORMA PAUPERIS

Petitioner Bernard Moore, through his undersigned CJA counsel, moves the Court pursuant to Rule 39 of the Rules of the United States Supreme Court, to grant him leave to proceed *In Forma Pauperis* for this Petition for Writ of Certiorari. As good grounds in support of this motion Petitioner states:

Petitioner is presently in the custody of the United States Bureau of Prisons, serving a sentence of 240 months that was imposed following a jury trial, guilty verdict, and conviction on charges of drug trafficking and firearm possession in the Southern District of Florida.

Bernard Moore was found to be indigent by the district court in 2017. Undersigned counsel was appointed in 2017 by the district court, to represent Mr. Moore for purposes of his direct-appeal proceedings to the United States Court of Appeals, Eleventh Circuit, from the judgment of the Southern District of Florida . Mr. Moore has been continuously incarcerated since his arrest in 2016 for this case. His financial circumstances have not improved during the past four years that he has been incarcerated for this matter.

The Petition that is filed on behalf of Bernard Moore presents meritorious questions for this Court's review, including a matter of clear and direct conflict among the circuits, and the need for the Court to exercise its supervisory power over a decision of the Eleventh Circuit that affirms fundamental constitutional violations by the district court, and failure to follow this Court well-established precedent in *Griffith v. Kentucky*.

In *Rehaif v. United States*, this Court held that 18 U.S.C. §§ 922(g) and 924(a)(2) require the government to prove that “the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it.” 139 S.Ct. 2191, 2194 (2019). One “relevant status” is that the defendant have a prior conviction for “a crime punishable by imprisonment for a term exceeding one

year.” 18 U.S.C. § 922(g)(1).

There is a direct split in the Circuits in cases that were tried to a jury and were pending on direct appeal when this Court decided *Rehaif*. The first two questions presented by this petition are: *First*, whether in determining if the defendant’s substantial rights were affected by the failure of the indictment to charge, and the government to prove to the jury, that the defendant knew his relevant status, the courts of appeals may consider the “entire” record, including a presentence report containing facts about the defendant’s prior convictions that were not admitted or offered to be admitted at trial?

And Second, whether, even if the courts of appeals may consider the entire record, a court of appeals errs by considering only certain non-trial evidence, and not considering evidence on the record tending to show that the defendant lacks the requisite knowledge of his status, all of which violated due process guaranteed by the Fifth Amendment ?

Questions Three and Four

Whether in affirming Bernard Moore’s conviction and sentence, the United States Court of Appeals for the Eleventh Circuit has so far departed from the accep-

ted and usual course of judicial proceedings, and sanctions such a departure by the district court, as to call for the exercise of this Court's supervisory powers in that it violates every notion of reasonableness, fairness, due process, and common sense, **third**, to affirm where the Eleventh Circuit violated Moore's right to due process under the Fifth Amendment by failing to adhere to its own precedent, and precedent of this Court concerning his entitlement to relief while his case was pending on direct review to a change of law? And **fourth**, to affirm where there was a warrantless search in violation of the Fourth Amendment?

Fifth, whether the Eleventh Circuit reversibly erred and so far departed from the essential requirements of law as to require supervision and correction by this Court because the First Step Act was enacted while Moore's direct appeal was pending and Moore brought it to the attention of the Court; and in affirming the sentence, and failing to grant relief on First Step Act grounds, the Eleventh Circuit violated Moore's due process rights and ignored this Court's clear and binding precedent on a change in law while an appeal is pending?

Accordingly, for the foregoing reasons, and the meritorious questions presented to the Court for review, Petitioner Bernard Moore respectfully prays that this Honorable Court will grant this motion and will allow him to proceed before this Court on Petition for Writ of Certiorari *In Forma Pauperis* through his CJA-appointed counsel.

Respectfully submitted,

Is/ Sheryl J. Lowenthal

Sheryl J. Lowenthal, CJA Counsel for Petitioner
9130 S Dadeland Boulevard Suite 1511
Miami, Florida 33156-7851
Ph: 305-670-3360 Fax: 305-670-1314
Florida Bar No. 163475
Email: sjlowenthal@appeals.net

Dated: December 4, 2020