

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2020

CASE NO. _____

DELSON MARC,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent

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

Petitioner Delson Marc, 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 his Petition for Writ of Certiorari. As good grounds in support of this motion Petitioner states:

Delson Marc is presently in custody, having been sentenced in the Southern District of Florida to 240 months' imprisonment following a conviction on charges related to controlled substances and firearms.

Mr. Marc was found to be indigent in the district court, and has been proceeding through CJA counsel in the district court and on appeal since January 2019. Undersigned counsel was appointed in 2019 by the district court, to

represent Mr. Marc 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. Marc has been continuously incarcerated since his arrest in 2018 for this case. His financial circumstances have not improved over the past three years that he has been incarcerated for this matter.

The Petition that is filed on behalf of Delson Marc 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.

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 between the Circuits in cases regarding the applicability of the *Rehaif* decision, and two cases pending before this Court following oral arguments on April 20, 2021, that could directly impact Mr. Marc's convictions, specifically the petitions filed on behalf of Gregory Greer and Michael Gary.

The questions presented in the petition are as follows: In *Rehaif v. United States*, 139 S.Ct. 2191, 2194 (2019), this Court held that 18 U.S.C. Sections 922(g) and 924(a)(2) require that the government prove “the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it.” 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 between the Circuits in cases that were tried to a jury and were pending on direct appeal when this Court decided *Rehaif*. The two questions presented in this Petition are:

*The Circuits are split. Does this opinion directly conflict with *United States v. Gary*, 4th Cir. 2014, oral argument before this Court on April 20, 2021, in determining whether in light of *Rehaif*, a defendant's conviction may be affirmed even though the indictment did not charge, and the government did not prove, that the defendant knew his felon status, which is an essential element of 18 U.S.C. §922(g)?*

*Additionally, will the forthcoming resolution by this Court of the matter of *Gregory Greer v. United States*, Case No., 19-8709, oral argument on April 20, 2021, will be applicable to and dispositive of the questions raised in Delson Marc's case and in this Petition.*

Accordingly, for the foregoing reasons, Petitioner Delson Marc 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,

Isi 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

Dated: May 13, 2021

Email: silowenthal@appeals.net

North Florida Office: 221 East Government Street Pensacola, Florida 32502
Phone: 850-912-6710

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 18-80153-CR-DIMITROULEAS/MATTHEWMAN

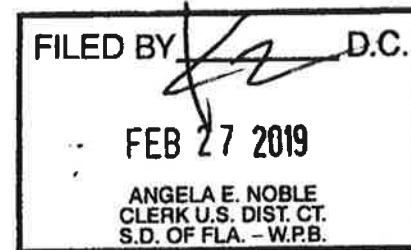
UNITED STATES OF AMERICA,

Plaintiff,

vs.

DELSON MARC,

Defendant.



ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL OF RECORD AND FOR APPOINTMENT OF APPELLATE COUNSEL [DE 173]

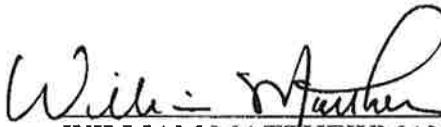
THIS CAUSE is before the Court upon CJA counsel for Defendant, Barry M. Wax's Motion to Withdraw as Counsel of Record and for Appointment of Appellate Counsel [DE 173]. The motion was referred to the undersigned by United States District Judge William P. Dimitrouleas. *See* DE 175. The Court held a hearing on defense counsel's Motion to Withdraw as Counsel of Record and for Appointment of Appellate Counsel [DE 173] on February 27, 2019.

At the hearing, Mr. Wax represented to the Court that he was recently appointed CJA counsel in this case on January 11, 2019 [DE 147] in the midst of a busy trial schedule. Mr. Wax further represented to the Court that he believed Defendant would be best served if an attorney specifically from the appellate wheel of the CJA panel were appointed to represent Defendant in his appeal to the Eleventh Circuit. At the hearing, Defendant stated that he is in agreement with Mr. Wax's Motion. Defendant requests that Mr. Wax be permitted to withdraw, and that appellate counsel be appointed to represent Defendant in his pending appeal.

The Court has considered the Motion and the arguments presented at the hearing and finds

that there is good cause to grant Mr. Wax's request to withdraw as counsel of record and that it is in the interests of justice to appoint appellate counsel in this case. Accordingly, it is hereby **ORDERED AND ADJUDGED** that Mr. Wax's Motion to Withdraw as Counsel of Record and for Appointment of Appellate Counsel [DE 173] is **GRANTED**. Mr. Wax is hereby discharged as Defendant's attorney of record in this case. Sheryl Lowenthal, Esq. is hereby appointed as CJA counsel for purposes of appeal.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 27th day of February, 2019.



WILLIAM MATTHEWMAN
UNITED STATES MAGISTRATE JUDGE