

21-5114

NO: 1017-3678

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

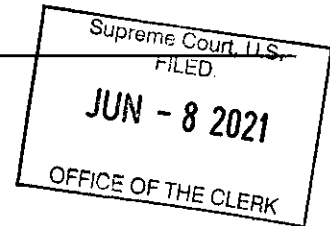
MARIO DANIELS,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

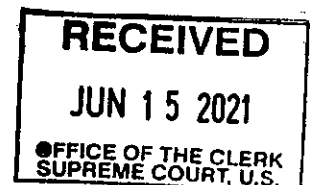
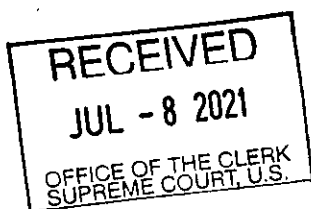


PETITION FOR WRIT OF CERTIORARI

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FIRST DISTRICT OF APPEALS

Mario Daniels, DC # N17238
DeSoto Correctional Institution Annex
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

PRO SE



QUESTION PRESENTED

I. Whether the First District Court of Appeals unauthorized abrogation of an Essential Element of the statutory offense of Aggravated Assault deprived Daniels of his Substantive Rights, and to have his criminal conviction rest upon a jury's determination that he is guilty beyond a reasonable doubt of the offense as statutorily defined by the Florida Legislature?

II. Whether the "egregiously invalid" legal reasoning espoused by the Florida First District Court of Appeals as a rational for denying Daniels' appeal demonstrates a willful violation of the "separation of powers doctrine," which effectively denied Daniels his Sixth Amendment Right to be informed of the nature and cause of the accusation brought against him by the government?

TABLE OF CONTENTS

Table of Contents.....	1
Index to Appendices	2
Table of Authorities	3,4
Opinion Below.....	5
Statement of Jurisdiction	5
Statement of the Case	6,7,8
Reasons Why This Writ Should Issue	9
Argument.....	10-13
Issue I.....	10-13
WHETHER THE FIRST DISTRICT COURT OF APPEALS UNAUTHORIZED ABROGATION OF AN ESSENTIAL ELEMENT OF THE STATUTORY OFFENSE OF AGGRAVATED ASSAULT DEPRIVED DANIELS OF HIS SUBSTANTIVE RIGHTS, AND TO HAVE HIS CRIMINAL CONVICTION REST UPON A JURY'S DETERMINATION THAT HE IS GUILTY BEYOND A REASONABLE DOUBT OF THE OFFENSE AS STATUTORILY DEFINED BY THE FLORIDA LEGISLATURE?	
Argument.....	14-18
Issue II	14-18
WHETHER THE "EGREGIOUSLY INVALID" LEGAL REASONING ESPOUSED BY THE FLORIDA FIRST DISTRICT COURT OF APPEALS AS A RATIONAL FOR DENYING DANIELS' APPEAL DEMONSTRATES A WILLFUL VIOLATION OF THE "SEPARATION OF POWERS DOCTRINE," WHICH EFFECTIVELY DENIED DANIELS HIS SIXTH AMENDMENT RIGHT TO BE	

INFORMED OF THE NATURE AND CAUSE OF THE
ACCUSATION BROUGHT AGAINST HIM BY THE
GOVERNMENT?

14-18

Certificate of Service

19

Certificate of Compliance With Type-Volume Limit

20

INDEX TO APPENDICES

A. Florida First District Court of Appeals Decision

in *State v. Daniels*

ii

B. Florida Supreme Court decision declining to accept jurisdiction

iii

TABLE OF AUTHORITIES

Cases

<i>A.R. Douglass, Inc. v. McRaney</i> , 102 Fla. 1141 137 So. 157 (Fla. 1931).....	15
<i>Armstrong v. City of Edgewater</i> , 157 So. 2d 422 (Fla. 1963)	15
<i>Auld</i> , 450 So. 2d at 219).....	15
<i>Battle v. State</i> , 292 So.2d 594 (2d DCA Fla. 1974).....	12
<i>Bush v. Schiavo</i> , 885 So. 2d 321 (Fla. 2004).....	14
<i>Chiles v. Children A, B, C, D, E, & F</i> , 589 So. 2d 260 (Fla. 1991).....	14
<i>Fla. House of Reps. v. Crist</i> , 999 So. 2d 601 (Fla. 2008).....	14
<i>Fong Foo v. United States</i> , 369 U. S. 141 (1962).....	10
<i>Fussell v. State</i> , 154 So. 3d 1233 (Fla. 1st DCA 2015).....	12
<i>Gilbert v. State</i> , 329 So.2d 339 (Fla. 3d DCA 1976).....	13
<i>Gilbert v. State</i> , 344 So. 2d 564 (Fla. 1977).....	5, 13
<i>In Re Winship</i> , 397 U.S. 358, 364, (1970).....	9, 15, 17
<i>Leland v Oregon</i> , 343 U.S. 790 (1952)	17
<i>McCullers v. State</i> , 206 So.2d 30 (4th DCA Fla. 1968).....	12
<i>Nelson v. State</i> , 157 So.2d 96 (3d DCA Fla. 1963).....	12
<i>Patterson v New York</i> , 432 U.S. 197	17
<i>State v. Burris</i> , 875 So. 2d 408 (Fla. 2004)	15
<i>State v. White</i> , 324 So.2d 630 (Fla. 1975).....	5, 11
<i>Sullivan v. Louisiana</i> , 508 US 275 (1993).....	9, 16

Tash v. Rogers, 246 So. 3d 1304 (Fla. 1st DCA 2018)..... 12

United States v. Gaudin, 515 U.S. 506 (1995) 9, 15, 16

White v. State, 299 So. 2d 143 (Fla. 1st DCA 1974)..... 12

Statutes

Section 784.011(1), of the Florida Statutes (2016) 10, 11, 16

Section 784.021(1), of the Florida Statutes (2016) 11, 16

United States Code

28 U.S.C. §1257(a)..... 5

OPINION BELOW

The Florida first district court of appeals issued its June 9, 2020 Opinion denying Petitioner's Direct Appeal based on an deliberate "misinterpretation" of Florida law that is plainly contrary to the law as espoused by the Florida Legislature, and determined constitutional by the Florida Supreme Court's *Precedent* established in the case of *State v. White*, 324 So.2d 630 (Fla. 1975); see also *Gilbert v. State*, 344 So. 2d 564 (Fla. 1977).

The Florida first district court of appeals subsequently denied Daniels' Motion for Rehearing on June 19, 2020. The opinion of the district court of Florida is reproduced in Appendix "A." This Court has jurisdiction under 28 U.S.C. §1257(a) to hear this cause.

STATEMENT OF JURISDICTION

The Decision of the Florida Supreme Court to decline to accept jurisdiction to bring the district courts of Florida in conformity with the Law enacted by the Florida Legislature, and established through the *Precedent* preserved via the case of *State v. White*, effectively sanctioned the district courts' usurpation of legislative authority. The district court's judgment was entered on March 23, 2020. A timely Motion for Rehearing was filed and, subsequently, denied by the district court June 19, 2020.

STATEMENT OF THE CASE

The commencement of this cause originated from the April 2, 2016 arrest of Petitioner on the allegations of discharging a firearm from a vehicle. On April 12, 2016, pursuant to the aforesaid accusations the State of Florida filed an Information charging Daniels with (1) Aggravated Assault with a firearm upon Malinda Jackson; (2) Discharging a firearm from a vehicle; and (3), Possession of a firearm by a convicted felon. (See Appendix, Exhibit "D").

Petitioner's trial commenced on April 20, 2017 with the State of Florida making the allegations that the jury would testimony that the occupants of a Burgundy Chevrolet Impala saw Daniels fire a firearm two times while inside the car with his girlfriend, Malinda Jackson. The State Attorney then told the jury that law enforcement officers went to Daniels' ex-girlfriend's house to interview her and try to search [the home] but did not find a gun.

During the defense's opening, Daniels argued to the jury that the State's entire case was tailored upon the circumstantial evidence presented primarily through the testimony of Jackson's friends and family, and that there not one thread of physical evidence demonstrating that committed the charged offenses.

Preceding the conclusion of the State's case-in-chief, the trial court questioned Daniels about his decision of whether to testify and if he understood, to which Daniels replied that he understood and the trial court said it will ask his

decision later in the day. The trial court then addressed defense counsel on the charges and asked about improper exhibition of a weapon being a category one lesser on count one and if either side requested that. Daniels asked the trial court to give the instruction on the lesser count. The State asked that under count one on aggravated assault after the fourth element that actual fear on the part of the person need not be shown be read in the jury instructions. Daniels asked that beyond a reasonable doubt instruction be read and the trial court stated it was in the instruction.

Thereafter, defense counsel informed the court that the defense would not be putting on any evidence. The trial court inquired whether Daniels would be testifying, to which counsel said he would not. The parties agreed that instructions to be given to jury would include lesser-included charges. (T.T. 321-333). Outside the presence of the jury, the defense motioned the trial court for a Judgment of Acquittal based on the State's failure to prove every essential element of the offense of aggravated assault. (T.T. 314-316).

During its closing argument, the State stated that the elements necessary for a conviction of aggravated assault only required proof of circumstances would induce a well-founded fear in the mind of a reasonable person. (T.T. 354-364). Daniels gave his closing argument and stated that the State had not proven Jackson was in fear and the state's evidence was illogical and conflicting. (T.T. 354-364).

The State then gave its final argument and reiterated Daniels' argument that the State picked and chose to mislead the jury to think he did something he did not do and Daniels objected as an incorrect statement of what was said, but the trial court overruled. (T.T. 371-372). The trial court gave the State requested instructions, without objections from the defense, and the jury found Daniels guilty of aggravated assault and discharging a firearm from a vehicle. (T.T. 383).

Daniels timely prosecuted an appeal with appointed appellate counsel filing an *Anders*¹ brief, contending that the appeal was without merit, thought "[T]he application of the reasonable person standard regarding the element of aggravated assault appeared dispositive."

Notwithstanding appellate counsel's *Anders* brief, the First District Court of Appeals "...directed briefing as to whether Daniels' motion for judgment of acquittal on his aggravated assault charge should have been granted based on the victim's testimony that she was not put in fear."

Following briefing, the district court of appeals determined that "...our precedent requires affirmance," i.e., "... that a well-founded fear of violence or imminent peril on the part of the victim is not an element of the statutory offense of aggravated assault,"

This Petition for a Writ of Certiorari now follows.

¹ 386 U.S. 738 (1967)

REASONS WHY THIS WRIT SHOULD ISSUE

I. IN THE CASE OF *United States v. Gaudin*, 515 U.S. 506, (1995), THIS COURT'S DECISION MADE CLEAR THAT THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION GUARANTEES THAT NO ONE WILL BE DEPRIVED OF LIBERTY WITHOUT "DUE PROCESS OF LAW"; AND THE SIXTH, THAT "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION."

THE COURT FURTHER DETERMINED, "WE HAVE HELD THAT THESE PROVISIONS REQUIRE CRIMINAL CONVICTIONS TO REST UPON A JURY DETERMINATION THAT THE DEFENDANT IS GUILTY OF EVERY ELEMENT OF THE CRIME WITH WHICH HE IS CHARGED, BEYOND A REASONABLE DOUBT. *Sullivan v. Louisiana*, 508 US 275, 277-278 (1993).

II. IT HAS BEEN LONG SETTLED THAT THE CONSTITUTION PROTECTS EVERY CRIMINAL DEFENDANT "AGAINST CONVICTION EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT NECESSARY TO CONSTITUTE THE CRIME WITH WHICH HE IS CHARGED." *In Re Winship*, 397 U.S. 358, 364, (1970). IT IS EQUALLY CLEAR THAT THE "CONSTITUTION GIVES A CRIMINAL DEFENDANT THE RIGHT TO DEMAND THAT A JURY FIND HIM GUILTY OF ALL THE ELEMENTS OF THE CRIME WITH WHICH HE IS CHARGED." *United States v. Gaudin*, 515 U.S. 506, 511 (1995).

ARGUMENT

ISSUE I

WHETHER THE FIRST DISTRICT COURT OF APPEALS UNAUTHORIZED ABROGATION OF AN ESSENTIAL ELEMENT OF THE STATUTORY OFFENSE OF AGGRAVATED ASSAULT DEPRIVED DANIELS OF HIS SUBSTANTIVE RIGHTS, AND TO HAVE HIS CRIMINAL CONVICTION REST UPON A JURY'S DETERMINATION THAT HE IS GUILTY BEYOND A REASONABLE DOUBT OF THE OFFENSE AS STATUTORILY DEFINED BY THE FLORIDA LEGISLATURE?

Respectfully, this Court should Grant this Writ of Certiorari to review the judgment of the Florida First District Court of Appeals because Daniels' conviction and sentence derives from "decisional law" based upon an "egregiously invalid foundation." *Fong Foo v. United States*, 369 U. S. 141, 143, 7 L. Ed. 2d 629 (1962).

Specifically, when the State of Florida elected the charge Daniels with the offense of Aggravated Assault, it did so pursuant to the criminal offense as statutorily defined by the Florida Legislature. Section 784.011(1), of the Florida Statutes (2016) defined "assault" as:

"An 'assault' is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent."

Section 784.021(1), of the Florida Statutes (2016) then builds upon §784.011(1) in defining an "aggravated assault" as:

- (1) An "aggravated assault" is an assault:**
 - (a) With a deadly weapon without intent to kill; or**
 - (b) With an intent to commit a felony.**

In the case of *State v. White*, 324 So.2d 630 (Fla. 1975), the Florida Supreme Court held that “[A]ssault does require awareness by the victim of imminent peril, or that a well-founded fear by the victim of violence or imminent peril is an element of aggravated assault.” Accordingly, the State Florida was obligated to present evidence during Daniels’ trial that he was guilty beyond a reasonable doubt of “conduct” that caused “a well-founded fear of violence or imminent peril on the part of the victim.”

The record is perceptibly deficient with regards to any evidence that Daniels caused “a well-founded fear of violence or imminent peril on the part of the victim.” However, and much to Daniels’ detriment, the trial courts, with the misguided blessings of the intermediate courts, have embarked on a dangerous campaign that erroneously informs the State that it is no longer required to prove that “[A] **well-founded fear of violence or imminent peril on the part of the victim is an essential element of the statutory offense of aggravated assault.**” Instead, as opposed to meeting the aforesaid statutory obligations, the government need only show that “... [a] reasonable person would experience a well-founded

fear of imminent harm..." to fulfill the requirement of aggravated assault. See *Tash v. Rogers*, 246 So. 3d 1304, 1305 (Fla. 1st DCA 2018) ("Appellate courts apply an objective standard in determining whether a reasonable person would experience a well-founded fear of imminent harm"); *Fussell v. State*, 154 So. 3d 1233, 1236 (Fla. 1st DCA 2015) (In determining whether evidence of assault is sufficient regarding the victim's fear, "[w]e have rejected the view that the state must meet both an objective and a subjective standard.").

Suffice it to say, the legal reasonings espoused by the appeals courts of Florida completely contravenes the law as defined by the Florida Legislature. Consequently, when other district courts of appeals issued conflicting decisions with the Florida First District Court of Appeals' correct legal conclusion on this fundamental principle of law in the case of *White v. State*, 299 So. 2d 143 (Fla. 1st DCA 1974), that "[T]he victim's well-founded fear that violence is imminent is an element of the statutory offense of aggravated assault," the Florida Supreme Court determine that the first district court was "correct, affirmed" and, therefore, **"...disapproved the conflicting *Battle v. State*, 292 So.2d 594 (2d DCA Fla. 1974), and *McCullers v. State*, 206 So.2d 30 (4th DCA Fla. 1968), *cert. denied*, 210 So.2d 868 (Fla. 1968), decisions on this point, as well as the conflicting decision in *Nelson v. State*, 157 So.2d 96 (3d DCA Fla. 1963), *cert. denied*, 165 So.2d 178 (Fla.1964)."**

In *White*, the Florida Supreme Court held that “[A]ssault does require awareness by the victim of imminent peril, or that a well-founded fear by the victim of violence or imminent peril is an element of aggravated assault.” The Supreme Court would then Reiterated its previous decision in deciding the case of *Gilbert v. State*, 344 So. 2d 564 (Fla. 1977). There, that Court “quashed” the Third District’s decision in *Gilbert v. State*, 329 So.2d 339 (Fla. 3d DCA 1976) where the district court’s decisions conflicted with its decision on the same point of law where the petitioner was found guilty of aggravated assault.

As can be easily deduced, each of these cases stood for the rule of law, “[T]hat a well-founded fear of violence or imminent peril on the part of the victim is not an element of the statutory offense of aggravated assault.” Hence, by overturning these cases, the Florida Supreme Court emphasized that it disapproved of the holdings of every district court’s ruling that was contrary; i.e., “...the victim’s well-founded fear that violence is imminent is an element of the statutory offense of aggravated assault.”

ARGUMENT

ISSUE II

WHETHER THE "EGREGIOUSLY INVALID" LEGAL REASONING ESPOUSED BY THE FLORIDA FIRST DISTRICT COURT OF APPEALS AS A RATIONAL FOR DENYING DANIELS' APPEAL DEMONSTRATES A WILLFUL VIOLATION OF THE "SEPARATION OF POWERS DOCTRINE," WHICH EFFECTIVELY DENIED DANIELS HIS SIXTH AMENDMENT RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION BROUGHT AGAINST HIM BY THE GOVERNMENT?

Most importantly, the bedrock of the Florida Constitution is the Separation of Powers Doctrine, which provides that "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided" in the Constitution. Art. II 3, Fla. Const. In construing Florida's Constitution, Florida courts have traditionally applied a strict separation of powers doctrine. *Fla. House of Reps. v. Crist*, 999 So. 2d 601, 611 (Fla. 2008) (quoting *Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004)). The separation of powers doctrine encompasses two fundamental prohibitions, the first being "that no branch may encroach upon the powers of another." *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla. 1991). The doctrine is directed only to those powers which belong exclusively to a single branch of government. Thus, a branch of government is prohibited from exercising a power only when that power has been constitutionally assigned exclusively to another branch.

Secondly, the courts are courts of law, not a legislature. Subject to the strictures of state and federal constitutions, it is for the legislatures to declare the public policy of what acts constitute a criminal offense in the State of Florida, what elements must be proven to establish the commission of those offenses, and what may constitute an affirmative defense to criminal liability. *See State v. Burris*, 875 So. 2d 408, 413-14 (Fla. 2004) ("To construe the statute in a way that would extend or modify its express terms would be an inappropriate abrogation of legislative power." (citing *Auld*, 450 So. 2d at 219) ("[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction. (quoting *A.R. Douglass, Inc. v. McRaney*, 102 Fla. 1141, 137 So. 157, 159 (Fla. 1931); *Armstrong v. City of Edgewater*, 157 So. 2d 422, 425 (Fla. 1963); *Cambell v. State*, 37 So. 3d 948, 950 (Fla. 5th DCA 2010) ("Courts generally do not have the authority to add elements to a crime that has been put in place statutorily by the legislature.")).

Moreover, the statute that creates the crime in question typically sets forth those constituent parts. Consequently, a jury must find the existence of each such element beyond a reasonable doubt. See, e.g., *United States v. Gaudin*, 515 U.S. 506, 510 (1995); *In Re Winship*, 397 U.S. 358 (1970). Therefore, the Florida First District Court of Appeals' usurpative act of "abrogating" an essential element of

the statutory crime of Aggravated Assault deprived Daniels of his Fifth and Sixth Amendment rights to Due Process of Law, and to have his criminal conviction rest upon a jury's determination that he is guilty of the offense charged beyond a reasonable doubt.

In the case *Sub Judice*, by taking away the essential element of the offense of aggravated assault, the Florida first District court of Appeals violated the fundamental principles laid down by the Florida Legislature's enactment of Section 784.011(1), Florida Statutes and Section 784.021(1), Florida Statutes. This Court held that the Due Process Clause and the Sixth Amendment right to a jury trial provide a defendant who is charged with a serious offense with the constitutional right to insist that his guilt be determined beyond a reasonable doubt by a jury. *Sullivan v. Louisiana*, 508 U.S. 275, 277-78, (1993).

Reiterating these basic principles, this Court in **Gaudin** held that the Constitution "*requires criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.*" 515 U.S. at 510, 115. More specifically, the Gaudin Court held that if there are either factual questions or mixed questions of law and fact with respect to any element of an offense, the defendant has suffered an infringement upon his constitutional rights if those questions are not submitted to the jury for proof beyond a reasonable doubt. *Id.* at 511-15, 522-23.

Moreover, and lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. Hence, because the factfinder is given the authority to determine a verdict of guilty in accordance with the Due Process Clause, the prosecution bears the burden of proving all elements of the offense charged., (see, e.g., *Patterson v New York*, 432 U.S. 197; *Leland v Oregon*, 343 U.S. 790 (1952)) and must persuade the factfinder "beyond a reasonable doubt" of the facts necessary to establish each of those elements. See, *In Re Winship*, 397 US 358 (1970); *Cool v United States*, 409 US 100 (1972).

This beyond-a-reasonable-doubt requirement, which was adhered to by all common-law jurisdictions, applies in state as well as federal proceedings. Moreover, the requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. Therefore, the accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt.

Here, at the close of the all the evidence at trial, the defense moved for a Judgment of Acquittal based on the government's failure to prove beyond a reasonable doubt the alleged "... victim's awareness of imminent peril, or that she had a well-founded fear of violence to her person." Indeed, the victim explicitly stated that Daniels committed no action that caused her to be fearful or concerned about imminent peril to her person. The trial court denied the motion and the state appellate court infringed on the authority conferred on the Florida Legislature under Article II, §3 of the Florida Constitution an *Affirmed* the decision by concluding that "[T]hat a well-founded fear of violence or imminent peril on the part of the victim is not an element of the statutory offense of aggravated assault."

The Florida First District Court of Appeals' determination that the essential element constituting the crime of aggravated assault in Florida is no longer valid clearly violates Daniels' Substantive Rights and, therefore, is at odds with the United States Constitution, the Statutory Law Enacted by the Florida Legislature, and the *Precedents* established by the decisions issued by this Court.

CONCLUSION

Wherefore, it is respectfully requested that this Court grant this Writ of Certiorari to review the judgment of the Florida First District Court of Appeals.

Dated this 6th day of June 2021.

Respectfully submitted,

/s/ _____
Mario Daniels, DC # N17238
DeSoto Correctional Institution Annex
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing Motion has been furnished to: Office of the Attorney General, PL-01, The Capitol, Tallahassee,
Florida, FL 32399 by enclosing said document in an envelope with proper postage affixed, and placing the aforesaid in the hands of DeSoto Correctional Institution Annex's Officials for mailing this ____ day of June 2021.

/s/ _____
Mario Daniels, DC # N17238