

No. 22-

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT LEMKE — PETITIONER
(Your Name)

VS.

THE UNITED STATES OF AMERICA — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

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

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT;

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____
CRIMINAL JUSTICE ACT _____, or

a copy of the order of appointment is appended.

BRENDAN WHITE, ATTORNEY

(Signature)

UNITED STATES SUPREME COURT

X

ROBERT LEMKE,

No. 22-_____

Petitioner,

v.

UNITED STATES OF AMERICA,

AFFIRMATION IN SUPPORT
OF MOTION FOR IN FORMA
PAUPERIS RELIEF

Respondent.

X

BRENDAN WHITE, an attorney duly admitted to practice in this Court, hereby affirms the following under penalty of perjury:

1. represent Robert Lemke, the Petitioner in the above-captioned Petition.

This Affirmation is in support of his motion for in forma pauperis relief in this Court.

2. By Order of April 18, 2022, I was assigned by the United States Court of Appeals for the Second Circuit to, to represent Mr. Lemke in his appeal (2d Cir. Dkt. No. 22-156) of the judgment of conviction in the United States District Court for the Southern District of New York. (S.D.N.Y. Dkt. No. 21-CR-100). (A copy of the Second Circuit's Order assigning me is attached hereto as Exhibit A.) Prior to my assignment, Mr. Lemke had been represented in the Southern District of New York by assigned counsel. He has remained incarcerated since then. (A copy of the affirmation of prior counsel is attached hereto as Exhibit B.)

WHEREFORE, it is respectfully requested that the foregoing motion for in forma pauperis relief be granted.

DATED: New York, New York

April 17, 2023

/s/ _____
BRENDAN WHITE

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of April, two thousand twenty-two.

ORDER

United States of America,
Appellee,

Docket No. 22-156

v.

Robert Lemke, AKA Sealed Defendant 1,
Defendant - Appellant.

The Federal Defenders of New York, Inc. move to be relieved as counsel for the Appellant.

IT IS HEREBY ORDERED that the motion to be relieved is GRANTED. Brendan M. White, Esq., White & White, 524 East 20th Street, #6D, New York, NY 10009 is assigned as new counsel pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A. Attorney White is directed to review Local Rule 31.2 regarding procedures for setting the filing dates for the submission of briefs.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court


Catherine O'Hagan Wolfe



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA : DECLARATION
Appellee,
- v. - : Docket No. 22-156

ROBERT LEMKE, :
a/k/a Sealed Defendant 1
Defendant-Appellant. :
-----x

SARAH BAUMGARTEL, declares under penalty of perjury,
pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney with the Federal Defenders of New York, Inc., Appeals Bureau, counsel to defendant-appellant Robert Lemke. I make this declaration in support of a motion for an order relieving this Office as counsel on appeal and assigning new counsel from the Court's CJA panel.

2. This is an appeal from the judgment of the District Court for the Southern District of New York (Hellerstein, J.), entered on January 24, 2022. Mr. Lemke pled guilty to one count of making interstate threats, in violation of 18 U.S.C. § 875(c). On December 20, 2021, the district court sentenced Mr.

Lemke to 36 months' imprisonment and three years of supervised release.

Mr. Lemke is currently serving his prison sentence.

3. Mr. Lemke was represented in the district court by an attorney from the Southern District Office of the Federal Defenders. On my review of the record, I have identified a conflict of interest. Mr. Lemke wrote a letter to the district court stating that his trial counsel made false assertions to the court, and he has expressed dissatisfaction with his trial counsel's representation. Federal Defender trial and appellate attorneys are part of the same law firm. As a result, as an ethical matter, Mr. Lemke's complaints about his trial counsel create a conflict of interest and we cannot be the ones who advise him as to whether he was properly represented below.

4. For these reasons, we respectfully request that Federal Defenders be relieved as counsel on appeal, and that new counsel be appointed from the Court's CJA panel. Accordingly, we are respectfully requesting that our Office be relieved, and that new counsel be appointed to represent Mr. Lemke on this appeal.

WHEREFORE, it is respectfully requested that this Court issue an order relieving Federal Defenders of New York as counsel on appeal and assigning new counsel from the Court's CJA panel.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: New York, New York
April 12, 2022

/s/
Sarah Baumgartel