

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2025

CASE NO. _____

PHILLIP TIMOTHY HOWARD,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

MOTION TO PROCEED *IN FORMA PAUPERIS*

Petitioner PHILLIP TIMOTHY HOWARD, through undersigned CJA appellate counsel, files this motion to proceed in this Court *In Forma Pauperis* on Petition for Writ of Certiorari, and in support of this motion states:

Petitioner was charged in 2022 in the Northern District of Florida in a single-defendant, single-count RICO indictment with fifteen allegations. The record shows that after months of the parties filing motions and pleadings in preparation for jury trial, Dr. Howard entered a guilty plea, was convicted, sentenced to prison for fourteen years, and

presently is incarcerated at the Atlanta, Georgia Federal Correctional Institution with a **presumptive release date in October 2034.**

The Federal Public Defender was appointed to represent Dr. Howard in the district court. Undersigned was appointed to represent him on appeal to the Eleventh Circuit Court of Appeals. Copies of the Order appointing the Public Defender in December 2022, and the Order appointing undersigned for appeal in November 2023, are attached at the end of this motion for the Court's review.

His guilty plea was entered primarily to avoid a seven-week trial with potentially 75 or more prosecution witnesses. The questions presented in the petition are worthy of close review because it is well known by this Court, judicial officers, and lawyers across the country that over 90 percent of federal criminal prosecutions are resolved with guilty pleas, and innocent people do plead guilty. That may be a function of the Government overcharging defendants, threatening to indict family members, and presenting cooperating witnesses who may be motivated

to embellish or outright lie to gain favor with the prosecution. As Pro-

fessor Alan Dershowitz recognized decades ago, some prosecution witnesses have, at times, been known to engage in “testilying.”

The case arises from and is related to the NFL Class Action Concussion Litigation that has been proceeding in numerous courts and various jurisdictions across the country for many years.

Dr. Howard is a university professor, an ordained minister, a husband, father, and high school football coach. He was a trial attorney and member of The Florida Bar for 30 years. He participated in the successful Engle Tobacco Class Action Litigation. Earlier in his career he worked as a Florida Assistant Attorney General with mentors who include prestigious former Governors and a Florida Supreme Court Justice. Nonetheless, he was found guilty and was sentenced to fourteen years in prison (until he will be 76 years old).

He presently is incarcerated at the Federal Correctional Institution, Atlanta, Georgia, where is a trusted driver for FCI-BOP related matters off facility grounds in and around Atlanta. He teaches courses, writes essays, and provides spiritual guidance to fellow inmates.

The record is clear, and the testimony unrefuted that Dr. Howard had no *mens rea*, no intent to defraud or to take money from anyone. He did not proximately cause harm or loss to any person or entity. He was out of his office for months at a time teaching at university and participating in lengthy, complex trials.

He only learned about misconduct by the fund manager (DWR) years after it occurred. Others who managed and oversaw the investment fund may have committed fraud or other criminal activity, but Dr. Howard never made intentional misrepresentations to former NFL player claimants.

He was unaware of misinformation or failure to disclose adverse information about the fund's manager; nor was he aware that the proctor who supervised a battery of neuropsychological examinations to former NFL player-potential clients, had slightly adjusted some test scores. Even if that occurred, the proctor was an experienced physician, M.D., whose findings were validated by neurologists and other experts who subsequently evaluated those potential clients for concussion and brain damage.

Additionally, risk of loss was fully explained in official documents that were provided to every potential client, advising that they were required to have their own attorneys review and approve before they could invest in the fund. *The loans were fully monetized* as confirmed by audits prepared by court-appointed federal receivers.

Potential loss of investment is a reality and a risk in the financing industry. Lenders had recourse to collect on their loans within industry standards and guidelines. It is no fault of anyone but the lenders for failing to pursue collection of collectable, fully-monetized loans. For these reasons and others explained in the Petition, and based on authorities cited, the Petition is meritorious. This Court is requested to grant this motion to allow Dr. Howard (represented by appointed counsel in the district court and on appeal), to proceed *In Forma Pauperis* in this Court through CJA appellate counsel.

Very respectfully submitted,

/s/ Sheryl J. Lowenthal

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May 29, 2026
Revised July 6, 2026

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

UNITED STATES OF AMERICA

vs.

Case No. 4:22cr43-MW

PHILLIP TIMOTHY HOWARD,

Defendant.

_____ /

ORDER APPOINTING FEDERAL PUBLIC DEFENDER

Defendant has shown by sworn evidence that he qualifies for appointment of counsel. Accordingly, it is **ORDERED** that JOSEPH F. DEBELDER, Federal Public Defender, 227 N. Bronough Street, Room 4200, Tallahassee, Florida 32301, (850) 942-8818, is appointed to represent this defendant. If a Criminal Justice Act (CJA) panel attorney is selected by the Public Defender as Defendant's attorney, this order authorizes payment of the CJA attorney for work on behalf of Defendant from the time that attorney was contacted by the Public Defender to take the case and agreed to take the case, even though that work predated this order.

DONE AND ORDERED on December 1, 2022.

s/ Charles A. Stampelos

CHARLES A. STAMPELOS
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 4:22-cr-43-AW-MAL

PHILLIP TIMOTHY HOWARD,

Defendant.

_____ /

ORDER SUBSTITUTING COUNSEL

Federal Public Defender Joseph DeBelder and Assistant Federal Public Defender Janese Caruthers seek leave to withdraw. ECF No. 111. The motion is GRANTED. These attorneys are relieved of further responsibility in this case.

The court now appoints CJA Panel Attorney Sheryl Lowenthal as substitute counsel.

SO ORDERED on November 30, 2023.

s/ Allen Winsor

United States District Judge