

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MISCELLANEOUS ORDER 2019.08.05

**IN RE: APPOINTMENT OF THE FEDERAL PUBLIC DEFENDER
FOR REHAIF AND DAVIS LITIGATION**

In Rehaif v. United States, 588 U.S. ___, 139 S. Ct. 2191 (2019), the United States Supreme Court held that in a prosecution under 18 U.S.C. § 922(g) and 18 U.S.C. § 924(a)(2), the government must prove both that the defendant knew that he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm. This holding abrogates United States v. Enslin, 327 F.3d 788, 798 (9th Cir. 2003) (citing United States v. Miller, 327 F.3d 788 (9th Cir. 1997)), among other cases.

In United States v. Davis, 588 U.S. ___, 139 S. Ct. 2319 (2019), the United States Supreme Court held that the residual clause of 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague.

In the interests of justice and efficient administration of the court docket and public resources, the Court ORDERS that pursuant to the provisions of the Criminal Justice Act, Title 18, U.S.C. § 3006A(a)(1) and (c), the Office of the Federal Public Defender for the Northern District of California is hereby presumptively appointed to represent any defendant previously determined to have been entitled to appointment of counsel, or who was previously represented by retained counsel and is presently indigent, to determine whether that defendant may qualify for relief under 28 U.S.C. § 2255 or 28 U.S.C. § 2241 in light of Rehaif or Davis, and to present any petitions, motions or applications relating thereto to the Court for disposition.

If the Federal Public Defender has a prohibitive conflict and may not represent a defendant who is potentially entitled to relief and who was previously represented by a CJA panel attorney, the CJA panel attorney is reappointed to represent the defendant for the Rehaif or Davis litigation and related proceedings. If the original CJA panel attorney is unavailable, has a conflict, or declines the appointment, a new CJA panel attorney shall be appointed according to the regular procedures of the Northern District of California for the appointment of counsel.

In accordance with Criminal Local Rule 44-2(a), counsel may inform the Court of his or her appearance on behalf of the defendant by electronically filing a notice of appearance. No separate court appearance for identification of counsel is required.

The Court will promptly notify the Federal Public Defender of all pending and new *pro se* motions and petitions seeking relief under Rehaif or Davis so the Federal Public Defender can decide whether to assume representation in those cases. The Federal Public Defender shall inform the Court of its decision within 21 days of the notification. The assigned Judge should not take any action on the defendant's *pro se* filing until either the 21 days expire or the parties file a status report, motion, or stipulation, whichever is earlier. In each of those cases, the Clerk of Court shall

enter on the docket a Clerk's Notice with a copy of this Miscellaneous Order informing the parties that the Federal Public Defender has been notified of the *pro se* motion for relief under Rehaif or Davis, and that any filing deadlines related to the *pro se* Rehaif or Davis motion are continued by 21 days.

The Probation Office and the United States District Court Clerk's Office are authorized without further order of the Court to disclose to the Federal Public Defender, CJA counsel, retained counsel, and the United States Attorney's Office, upon request, documents from the defendants' case files that are not otherwise available through the judiciary's Public Access to the Court Electronic Records ("PACER") service to determine defendants' eligibility for relief, to evaluate conflicts, and to file and litigate any petitions, motions or applications under Rehaif or Davis. The Probation Office and the Clerk's Office may disclose any such documents, including plea agreements, Presentence Investigation Reports, Statements of Reasons, Judgments, and any sealed documents. Neither appointed nor retained counsel may further distribute such documents unless so ordered by the Court.

The Probation Office is further authorized to provide the Federal Public Defender with data from its PACTS database in order to assist the Federal Public Defender in identifying the universe of defendants who may be eligible for relief.

IT IS SO ORDERED.

DATED: August 5, 2019

FOR THE COURT:



PHYLLIS J. HAMILTON
UNITED STATES DISTRICT CHIEF JUDGE