

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**AMENDED GENERAL ORDER 19-4  
As Amended December 15, 2020**

**STANDING PROCEDURAL ORDER RE:  
APPOINTMENT OF COUNSEL AND MOTIONS FOR RELIEF  
UNDER *REHAIF v. UNITED STATES***

Pursuant to the provisions of the Criminal Justice Act, Title 18, U.S.C. § 3006A(a)(1) and (c), and the discretion of the Court, the Office of the Federal Public Defender for the District of Massachusetts (“FPD”) is hereby appointed to develop a list of defendants who may be eligible for relief under the Supreme Court’s decision in *Rehaif v. United States*, 139 S.Ct. 2191 (2019).

The U.S. Probation Office for the District of Massachusetts is ordered to disclose, upon request, Presentence Reports to the Federal Public Defender’s Office for the purpose of determining eligibility for relief.

If the FPD determines that a defendant may be eligible for relief, it shall take the following steps.

- 1) In the case of a defendant who previously was found to be indigent and was represented by the FPD, the FPD is authorized to file a motion if it determines that a colorable claim exists and no conflict of interest exists;
- 2) In the case of a defendant who previously was found to be indigent and was represented by CJA counsel who is a member of the current CJA panel, the FPD will contact the CJA lawyer and determine whether that lawyer wishes to provide further representation.

- a) If the CJA lawyer expresses a willingness to represent the defendant, that lawyer shall file a request to be appointed for the purpose of reviewing the case to determine whether the defendant has a colorable claim and, if appropriate, for the purpose of preparing and filing a claim.
  - b) If the CJA lawyer is either unavailable or unwilling to undertake the representation, the FPD will 1) file a request to be appointed as counsel or 2) refer the case to a member of the CJA habeas panel or to a lawyer who meets the criteria set forth in General Order 16-1, hereafter referred to as members of the Supplemental Panel.<sup>1</sup> The lawyer to whom the case is referred shall file a request to be appointed.
- 3) If the FPD identifies a defendant who was previously represented by CJA counsel who no longer is a member of the panel, the FPD shall follow the procedure set forth in paragraph 2(b).
  - 4) If the FPD identifies a defendant who was *not* previously found to be indigent, the FPD shall follow the procedure set forth in paragraph 2(b). Either the FPD or the lawyer to whom the case is referred shall obtain a financial affidavit (CJA Form 23) from the defendant, and submit the completed form, along with a request to be appointed as counsel, to the Court.
  - 5) The Federal Public Defender is authorized to provide any PSR previously obtained by

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<sup>1</sup> General Order 16-1 authorized the Federal Public Defender and the chair of the Criminal Justice Act Board to compile a list of attorneys admitted to the bar of this Court who were willing to accept appointments to represent defendants seeking habeas relief under *Johnson v. United States*, 135 S.Ct. 2551 (2015), and who were qualified to do so. The FPD and CJA Board Chair will review and update that list for purposes of this order. As with the *Johnson* list, all attorneys must be *either* a current member of the CJA panel for this Court, a current member of the CJA panel for the First Circuit Court of Appeals, or have significant experience in federal habeas work.

her office to the lawyer to whom a case is referred.

- 6) Upon receipt of a request to be appointed in cases described in paragraphs 1 through 4, the Clerk shall promptly appoint the FPD, CJA counsel, or other selected attorney making the request.
- 7) If a lawyer appointed in accordance with General Order 19-4 determines that the defendant whom s/he has been appointed to represent has previously filed a petition under 28 U.S.C. § 2255 and that, therefore, a new petition raising a *Rehaif* claim would be deemed a second or successive petition, the lawyer may apply to the Court of Appeals for leave to file a second or successive petition. Any litigation in the Court of Appeals necessary to obtain the authorization required by 28 U.S.C. § 2255(h) shall be deemed to be ancillary to the district court representation. Therefore, any work expended in seeking that authorization may be included on the district court voucher. The Amendment of this Order by adding this paragraph 7 is effective nunc pro tunc to September 18, 2019.

So ordered.