

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

\_\_\_\_\_  
No. 09-12513  
\_\_\_\_\_

<p>FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT November 3, 2010 JOHN LEY CLERK</p>
---------------------------------------------------------------------------------------------------------

EZELL GILBERT,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

-----  
On Appeal from the United States District Court for the  
Middle District of Florida  
-----

(Opinion June 21, 2010, 609 F.3d 1159, 11<sup>th</sup> Cir. 2010)

(November 3, 2010)

BEFORE: DUBINA, Chief Judge, TJOFLAT, EDMONDSON, BLACK, CARNES, BARKETT,  
HULL, MARCUS, PRYOR, and MARTIN, Circuit Judges.\*

BY THE COURT:

A member of this Court in active service having requested a poll on the suggestion of rehearing en banc and a majority of the judges in this Court in active service having voted in favor of granting a rehearing en banc,

IT IS ORDERED that the above cause shall be reheard by this court en banc. The previous panel's opinion is hereby VACATED.

\_\_\_\_\_  
\*Judge Charles R. Wilson has recused himself and will not participate. Senior United States Circuit Judge James C. Hill has elected to participate in further proceedings in this matter pursuant to 28 U.S.C. § 46(c).