

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM 2019

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DAVID GULBRANDSON, *Petitioner*,

v.

CHARLES L. RYAN, et al., *Respondent*.

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MOTION FOR LEAVE TO PROCEED  
*IN FORMA PAUPERIS*

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Pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States, Petitioner David Gulbrandson requests to file the attached petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Mr. Gulbrandson is incarcerated in the Arizona State Prison Complex-Eyman, in Florence, Arizona, and has been so incarcerated since he was convicted in state court for first degree murder and sentenced to death on February 19, 1993. The Arizona Supreme Court imposed a sentence of death on *de novo* review on direct appeal on November 2, 1995. *See State v. Gulbrandson*, 184 Ariz. 46, 906 P.2d 579 (1995).

After state post-conviction relief was denied on November 19, 1998, the United States District Court for the District of Arizona appointed as counsel for Mr. Gulbrandson in his federal capital habeas corpus case Stephen E. Eberhardt, Esq., and Richard Lougee, Esq. *See Gulbrandson*

v. Stewart, Dist. Ct. No. CIV 98-2024-PHX-SMM, Dkt. 6. The appointments were made pursuant to 21 U.S.C. § 848(q)(4)(B), (q)(6), and (q)(8). In the same order, the court further ordered that Gulbrandson be permitted to proceed *in forma pauperis*. *Id.* On May 30, 2007, Mr. Gulbrandson moved in the Ninth Circuit for Mr. Lougee to withdraw for health reasons and for the Federal Public Defender for the District of Arizona (“FPD”) to be appointed as co-counsel with Mr. Eberhardt. *Gulbrandson v. Schriro*, Ninth Cir. No. 07-99012, Dkt. 3. On June 19, 2007, the Ninth Circuit granted that motion, and the Court ordered the Federal Public Defender for the District of Arizona, Jon M. Sands, to appear for Mr. Gulbrandson. *Id.*, Dkt. 4. Arizona Assistant FPD Timothy M. Gabrielsen entered his appearance on June 22, 2007, and represented Mr. Gulbrandson continuously until this Court denied the petition for writ of certiorari that was filed after the Ninth Circuit affirmed the district court’s denial of relief in *Gulbrandson v. Ryan*, 738 F. 3d 976 (2013), and later denied a petition for rehearing on August 11, 2014. *See Orders, Gulbrandson v. Ryan*, U.S. S. Ct. No. 13-9631, June 6, 2014, and August 11, 2014.

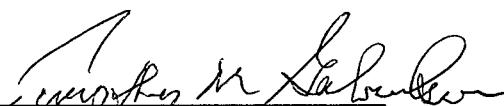
On January 23, 2014, prior to the conclusion of federal habeas appeals, the district court, pursuant to the relevant protocol and *Harbison v. Bell*, 556 U.S. 180, 190 n.7 (2009), filed an order allowing the FPD to appear on Mr. Gulbrandson’s behalf in successive state post-conviction proceedings. *See Gulbrandson*, Dist. Ct. No. CIV 98-2024-PHX-SMM, Dkt. 97. Arizona Assistant FPD Cary Sandman appeared on June 23, 2014, on Mr. Gulbrandson’s behalf and filed a state post-conviction relief (“PCR”) petition in the Superior Court of Maricopa County, Arizona, *see State v. Gulbrandson*, Maricopa Cty. Super. Ct. No. CR-91-90974, and remained his counsel through the denial of a petition for review in the Arizona Supreme Court on July 13, 2016. Order, *State v. Gulbrandson*, Ariz. S. Ct. No. CR-15-0196-PC (July 13, 2016). Undersigned counsel petitioned this Court for a writ of certiorari to the Superior Court of Arizona, which this Court denied on February 21, 2017. U.S. S. Ct. No. 16-7083.

In the action giving rise to the instant petition for writ of certiorari, on June 16, 2017, Mr. Gulbrandson, again through undersigned counsel, filed a second-in-time petition for writ of habeas corpus under 28 U.S.C. § 2254 in the United States District Court for the District of Arizona. *See Gulbrandson v. Ryan*, U.S.D.C. No. CV-17-01891, Dkt. 1. The district court denied relief on the basis that the petition was second or successive (“SOS”) and Mr. Gulbrandson had not obtained authorization to file from the Ninth Circuit as required under 28 U.S.C. § 2244(b)(3)(A), and the court denied a certificate of appealability (“COA”). *Id.*, Dkt. 10 at 9. The Ninth Circuit also denied a COA. *See Gulbrandson v. Ryan*, Ninth Cir. No. 18-15829, Dkt. 12 (Aug. 15, 2018). Undersigned counsel continues to represent Mr. Gulbrandson before this Court.

Thus, counsel appointed to represent Mr. Gulbrandson due to his indigency in the federal habeas proceedings have continuously represented him since 1998. Mr. Gulbrandson has remained in prison for more than 25 years. For these reasons, Mr. Gulbrandson asks that this Court grant this motion and allow him to proceed *in forma pauperis*.

Respectfully submitted this 9th day of November, 2018.

Jon M. Sands  
Federal Public Defender  
Timothy M. Gabrielsen  
Assistant Federal Public Defender

By:   
Timothy M. Gabrielsen  
Counsel of Record for Petitioner