

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2019

CARLOS CARO, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

**MOTION FOR LEAVE TO PROCEED
*IN FORMA PAUPERIS***

Pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States, Petitioner Carlos Caro requests to file the attached petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis*. Petitioner is currently incarcerated at the United States Penitentiary – Terre Haute in Terre Haute, Indiana and without hope of funds for employing private counsel.

Petitioner was charged in the United States District Court for the Western District of Virginia with the premeditated murder of a federal prison inmate that was alleged to have occurred at U.S.P. Lee on December 17, 2003. Indictment, *United States v. Caro*, U.S.D.C. No. 1:06CR0001 (Jan. 3, 2006). Prior to Petitioner's being indicted, the Government moved for appointment of counsel for Petitioner. *United States v. Caro*, Dist. Ct. No. MC 05-00001-JPJ,

Doc. 1. On January 27, 2005, due to Petitioner's indigency, the court appointed Stephen Kalista and James Simmons to represent Carlos Caro at trial. Dist. Ct. No. MC 05-00001-JPJ, Docs. 4, 6.

After Petitioner was convicted and sentenced to death, on April 24, 2007, the United States Court of Appeals for the Fourth Circuit appointed CJA counsel Kalista and Simmons to represent Petitioner on direct appeal pursuant to 18 U.S.C. § 3599(c). *United States v. Caro*, Fourth Cir. No. 07-05, Doc. 2. On August 22, 2007, the court granted a motion to substitute Assistant Federal Public Defender Denise Barrett of the Office of the Federal Public Defender for the District of Maryland for attorney Kalista. Fourth Cir. No. 07-05, Doc. 31. On January 10, 2008 attorney Sarah Gannett of the Federal Community Defender Office for the Eastern District of Pennsylvania entered her appearance for Petitioner. Fourth Cir. No. 07-05, Doc. 50. On January 28, 2009, Ms. Gannett filed a *nunc pro tunc* Motion to Appoint the Federal Community Defender Office for the Eastern District of Pennsylvania as co-counsel with Ms. Barrett and Mr. Simmons on Petitioner's appeal. *See Caro*, Fourth Cir. No. 07-05, Doc. 83. On February 12, 2009, the court granted the motion. *Caro*, Fourth Cir. No. 07-05, Doc. 88.

On March 17, 2010, the Fourth Circuit affirmed the conviction and sentence. *See Caro*, Fourth Cir. No. 07-05, Doc. 140. The Fourth Circuit denied a Motion for Rehearing and Rehearing En Banc on September 7, 2010. *See Caro*, Fourth Cir. No. 07-05, Doc. 152.

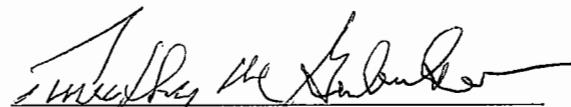
On May 10, 2011, Petitioner moved for the appointment of the Federal Public Defenders for the Districts of Arizona and the Western District of Virginia to serve as co-counsel in Petitioner's § 2255 proceedings. *See Caro*, Dist. Ct. No. 06 CR 00001, Doc. 767. The court granted the motion on May 11, 2011, pursuant to 18 U.S.C. §3599. *See Caro*, Dist. Ct. No. 06 CR 00001, Doc. 768. On May 11, 2011, Arizona Assistant Federal Public Defenders Karen Wilkinson and Robin C. Konrad entered their appearances. *See Caro*, Dist. Ct. No. 06 CR 00001, Doc. 769.

On May 12, 2011, Western District of Virginia Assistant Federal Public Defenders Fay Spence and Brian Beck entered appearances. *See Caro*, Dist. Ct. No. 06 CR 00001, Docs. 770 and 771. The district court denied § 2255 relief on May 4, 2015. *Caro*, Dist. Ct. No. 06 CR 00001, Doc. 808.

On January 7, 2016, the Fourth Circuit appointed the Federal Public Defender for the District of Arizona as lead counsel and the Federal Public Defender for the Western District of Virginia as co-counsel on the § 2255 appeal. Fourth Cir. No. 16-1, Doc. 2. On May 2, 2016, Assistant Federal Public Defender Timothy M. Gabrielsen entered his appearance after prior lead counsel left the Arizona Federal Public Defender's Office. Fourth Cir. No. 16-1, Doc. 19. The court denied relief on May 8, 2018. Fourth Cir. No. 16-1, Doc. 79. Rehearing and rehearing *en banc* were denied on July 6, 2018. Fourth Cir. No. 16-1, Doc. 84.

Thus, counsel appointed to represent Petitioner due to his indigency have continuously represented him since January 2006 in the district court and Fourth Circuit. Petitioner remains without funds with which to pay for the services of counsel to prepare the petition for writ of *certiorari*. For these reasons, Petitioner asks that this Court grant this motion and allow him to proceed *in forma pauperis*.

Respectfully submitted this 19th day of November, 2018.



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