

No. _____

In the Supreme Court of the United States

October Term, 2018

MIGUEL MARTINEZ, Petitioner,

V.

THE STATE OF TEXAS

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

Petitioner, Miguel Martinez, pursuant to SUP. CT. R. 39.1, respectfully moves this Honorable Court for leave to proceed *in forma pauperis*, and for leave to file the attached Petition for Writ of Certiorari to the Court of Appeals for the Fourth Court of Appeals District of Texas without prepayment of fees. Petitioner was represented by retained counsel in the trial and appellate courts below until after his petition for discretionary review was refused by the Texas Court of Criminal Appeals. On January 2, 2019, petitioner filed a motion to appoint counsel and proceed *in forma pauperis* in the trial court, and Joel Perez was appointed to represent him in proceedings in that court, pursuant to TEX. CODE CRIM. PROC. ANN. art. 26.04. Leave to proceed *in forma pauperis* has not been sought in any other court.

Respectfully submitted:

/s/ Mark Stevens
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DATED: March 1, 2019.

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v.

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**AFFIDAVIT IN SUPPORT OF
MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS**

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: Miguel Martinez

Date: February 28, 2019.

My issue on certiorari is: Whether, contrary to *Oregon v. Kennedy*, the use of the *Wheeler* factors prevented the court below from considering the objective facts and circumstances, and accordingly, from accurately determining if the prosecutor intended to goad the defense into moving for a mistrial.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months			
Income source	Average monthly amount during the past 12 months			
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>
Self-employment	\$ <u>0</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>
Interest and dividends	\$ <u>0</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>
Gifts	\$ <u>25/mo.</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>
Alimony	\$ <u>0</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>
Child support	\$ <u>0</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>

Unemployment payments \$ 0 \$ n/a \$ n/a \$ n/a

Public-assistance
(such as welfare) \$ 0 \$ n/a \$ n/a \$ n/a

Other (specify):

\$ 0 \$ n/a \$ n/a \$ n/a
Total monthly income: \$ 25 \$ n/a \$ n/a \$ n/a

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
<u>none</u>	<u>n/a</u>	<u>n/a</u>	<u>0</u>

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.) not married

Employer	Address	Dates of employment	Gross monthly pay
<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>

4. How much cash do you and your spouse have? \$ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
<u>Generations</u>	<u>checking</u>	\$..... <u>0</u>	\$..... <u>n/a</u>
		\$..... <u>n/a</u>	\$..... <u>n/a</u>

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	(Value)	Other real estate	(Value)	Motor vehicle #1	(Value)
<i>n/a</i>	<i>0</i>	<i>n/a</i>	<i>0</i>	<i>n/a</i>	<i>0</i>

Make & year:
n/a

Model:
n/a

Registration #: *n/a*

Motor vehicle #2	(Value)	Other assets	(Value)	Other assets	(Value)
<i>n/a</i>	<i>0</i>	<i>n/a</i>	<i>0</i>	<i>n/a</i>	<i>00</i>

Make & year: *n/a*

Model: *n/a*

Registration #: *n/a*

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<i>n/a</i>	<i>0</i>	<i>n/a</i>

7. State the persons who rely on you or your spouse for support.

Name [or, if under 18, initials only]	Relationship	Age
n/a	n/a	n/a

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 0	\$ n/a
Are real-estate taxes included? Yes No	n/a	
Is property insurance included? Yes No	n/a	
Utilities (electricity, heating fuel, water, sewer, and Telephone)	\$ 0	\$ n/a
Home maintenance (repairs and upkeep)	\$ 0	\$ n/a
Food	\$ 25/mo	\$ n/a
Clothing	\$ 0	\$ n/a
Laundry and dry-cleaning	\$ 0	\$ n/a
Medical and dental expenses	\$ 0	\$ n/a
Transportation (not including motor vehicle payments)	\$ 0	\$ n/a

Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>1/a</u>
Insurance (not deducted from wages or included in mortgage payments)	\$ <u>0</u>	\$ <u>1/a</u>
Homeowner's or renter's:	\$ <u>0</u>	\$ <u>1/a</u>
Life:	\$ <u>0</u>	\$ <u>1/a</u>
Health:	\$ <u>0</u>	\$ <u>1/a</u>
Motor Vehicle:	\$ <u>0</u>	\$ <u>1/a</u>
Other:	\$ <u>0</u>	\$ <u>1/a</u>
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$ <u>0</u>	\$ <u>1/a</u>
Installment payments	\$ <u>0</u>	\$ <u>1/a</u>
Motor Vehicle:	\$ <u>0/</u>	\$ <u>1/a</u>
Credit card (name):	\$ <u>0</u>	\$ <u>1/a</u>
Department store (name):	\$ <u>0</u>	\$ <u>1/a</u>

Other: n/a - 0

Alimony, maintenance, and support paid
to others \$ 0 \$ n/a

Regular expenses for operation of
business, profession, or farm (attach
detailed statement) \$ 0 \$ 1/a

Other (specify): 0 n/a

Total monthly expenses: \$ 25⁰⁰ \$ n/a

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you spent--or will you be spending--any money for expenses or attorney fees in connection with this lawsuit? Yes No

If yes, how much? \$ 0

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal. *I have been incarcerated on this charge for 4 years, and two months. I do not have a job and have not worked since arrested. My sister sends me about \$25 per month and helped me in the past with legal fees, but is no longer able to.*

12. State the city and state of your legal residence. Bexar County Adult Detention Center; 200 N Comal St, San Antonio, TX 78207

Your daytime phone number: n/a

Your age: 31 Your years of schooling: 6 years.